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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART - 6 (31ST MARCH 2018)

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ARBITRATION AND CONCILIATION ACT, 1996 - CONSTITUTION OF INDIA, Article 227 - Challenging an Arbitration Award, company which suffered the award, has come up with revision - Very maintainability of revision as against an Arbitration Award is questioned by respondent.

Held - Courts do not have administrative superintendence over arbitrators and arbitral tribunals - Once a judicial remedy is provided as against an arbitral award and such remedy is either extinguished or exhausted, no party can take recourse to the writ jurisdiction of this Court - Articles 226 or 227 are not the panacea for all diseases - Objection as to maintainability of revision is liable to be sustained and the revision is liable to be dismissed. **(Hyd.) 285**

(INDIAN)CONTRACT ACT, 1872, Sec.25 - Aggrieved by a preliminary decree for partition and a decree of cancellation of a Gift Settlement deed and two registered Sale deeds, defendants have come up with instant appeal - R1 filed a suit before Trial Court seeking partition and separate possession of her 1/3rd share in suit schedule property and also seeking a declaration that a Gift Settlement deed and registered sale deeds are null and void and not binding on her.

Held - Gift settlement is valid to the extent of 1/3 share of appellant - On a property owned or inherited by several persons, if one contributes something, he would not become the owner of the property - At the most, he may be entitled to demand contribution from the co-owners - Appeal stands dismissed. **(Hyd.) 267**

SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 - CONSTITUTION OF INDIA, Article.21 - Whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse.

Held - Procedural safeguards so that provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not abused:

i) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

ii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iii) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

iv) Any violation of direction (ii) and (iii) will be actionable by way of disciplinary action as well as contempt. The above directions are prospective.

Proceedings in the present case are clear abuse of process of court and are quashed. **(S.C.)** ***103***

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CANCELLATION OF SALE DEED EXECUTED BY ONE COPARCENER BY OTHER COPARCENERS IN RESPECT OF JOINT FAMILY PROPERTY-NATURE OF SUIT.

By
O.N.KRISHNA.Advocate.
TANUKU - W.G.Dt

This article is in respect of cancellation of sale deed or [alienation of property] executed by one coparcener or head of the family that is Kartha of a Hindu Joint family in respect of the joint family propertyand the procedure to be followed by other coparceners and the nature of the suit that is to be laid by other coparceners challenging or questioning the said sale transaction or alienation of property.

The moot point for consideration is whether

A] A suit can be filed for the cancellation of sale deed or alienation.,

B] A suit can be filed for declaration or

C] A partition suit for partition of properties including the property alienated ignoring the sale deed that is taking a plea that the alleged sale deed does not bind the plaintiff

At this juncture it is apt to mention the sections 31 and 34 of the Specific Relief Act, 1963

CHAPTER V of the Act deals with Cancellation of instruments

Section 31. When cancellation may be ordered:- [1] Any person against whom a written instrument if void or voidable and who has reasonable apprehension that such instrument,if left outstanding may cause him serious injury ,may sue to have it adjudged void or voidable and the Court may ,in its discretion , so adjudge it and order it to be delivered up and cancelled.

[2] If the instrument has been registered under the Indian Registration Act,1908[16 of 1908] the Court shall also send a copy of its decree to the other officer in whose office the instrument has been so registered and such officer shall note on the copy of the instrument contained in his books the fact its cancellation.

Section 32:- What instruments may be partially cancelled: xxxxxxxxxxxxxxx

Section 33:- Power to require benefit to be restored or compensation to be made when the instrument is cancelled or is successfully resisted as being void or voidable: xxxxxxxxxxxxx

CHAPTER VI of the Act deals with Declaratory Decrees:

Section 34:- Discretion of Court as to declaration of status or right: Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested deny his title to such character or right and the Court may in its discretion, maketherein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief.

Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere a declaration of title ,omits to do so.

Explanation: - A trustee of property is a " person interested to deny" a title adverse to the title of someone who is not in existence and for whom, if in existence , he would be a trustee.

Section 35:- Effect of declaration:- xxxxxxxx

The legal position is as follows:

In YalanalaMalleshwari and others v. AnanthulaSayamma and others- a decision reported in 2006 (6) ALT 523 (F.B) the Honourable High Court of A.P was pleased to hold that., (dealing with Section 31 and 34 of Specific Relief Act, 1963-at Para. 26, 28, 30 and 32)

At Para 26: It is misconception that in every situation, a person who suffers injury by reason of a document can file a suit for cancellation of such written statement. Two conditions must exist before one invokes Section 31 of Specific Relief Act. These are: the written instrument is void or voidable against such person; and such person must have reasonable apprehension that such instrument if left outstanding may cause him serious injury. Insofar as Section 34 of the Specific Relief Act is concerned, it is no doubt true that a person entitled to any right as to any property can seek declaration that he is so entitled to such right. Here again, the person who claims the right to property can institute a declaration suit only when the defendant denies or interested to deny the title of the plaintiff. The difference between the two situations is glaring. In one case, cancellation of deed can be sought in a Court only by a person who executed document and who perceives that such document is void or voidable. In the other case, even if a person is not a party to the document, he can maintain a suit for declaration.

At Para 28: In Iyyappa v. Ramakrishnamma the Madras Division Bench laid down that a suit for cancellation of an instrument will be maintainable only by the person who executed the document.

At Para 30: The Full Bench of Madras High Court noticed that when the instrument/ document is not executed by the plaintiff, the same does not create a cloud upon the title of the true owner nor does it create apprehension that it may be a source of danger. Accordingly a suit for cancellation of instrument by a person who did not execute the document would not lie. ————when the document itself is not executed by the plaintiff there is no necessity to have the document cancelled by a court decree, for it has no effect on the title of the true owner.

At Para 32: The law, therefore, may be taken as well settled that in all cases of void or voidable transactions, a suit for cancellation of a deed is not maintainable.

In Smt. Hoshiari Devi, Appellant v. Tajvir Singh and others, Respondent reported in AIR 1977 ALLAHABAD 295 page it was held that Specific Relief Act (1963), S. 31- Discretion of the Court- X,Y and Z having shares in inherited property- Y and Z selling some of the property- suit by X against Y, Z and purchaser for cancelling sale deed – X directed by court to avail of the alternate remedy of regular suit for partition.

Directing the plaintiff to seek his remedies in a regular suit for partition where in the entire property may be before the court to the dealt with in such a manner that the third party purchaser's interest may not be allowed to suffer as far as possible, would be sound exercise of discretion in such a case.

In a situation like this where third party's interest have come into existence,it would be a sound exercise of discretion not to decree the plaintiffs suit but to direct him to seek his remedies in a regular suit for partition wherein the entire property may be before the court to dealt with in such a manner that the third party's interest may not be allowed to suffer as far as possible .It is well known that that the suits for cancellation and the suits for declaration are both in the realm of the courts discretion. Section 31 of the New Specific Relief Act dealing with cancellation of instrument clearly says that the court may in its discretion so adjudge a written instrument as void or voidable and direct it to be delivered up and cancelled.Similarly in Section 34 dealing with declaratory decrees the expression used is " ——— and the court may in its discretion make therein a declaration". The plaintiff, therefore, did not have an absolute right to get the sale deed in question declared void or cancelled and the lower appellate court has given good reason for directing the plaintiff to file a regular suit for partition and to get her remedies by allotment of proportionately larger share in the jointly held plots which still remained in the hands of defendants 4 and 5.

In Muniyappa, petitioner v. Ramaiah, Respondent reported in AIR 1996 KARNATAKA 321 it was held that

Hindu law- joint family property- Alienation- Manager is entitled to alienate joint family property- Right of other coparceners- It is to file suit for partition and recover possession of his share- sale being only voidable, alienee can continue in possession until it is properly avoided.

The manager of a Joint Hindu Family is entitled to alienate the joint family property for joint family necessity or for the benefit of the estate, in certain circumstances .Whether the manager is the father or not, will not make any difference. If such an alienation is made by the manager of the Joint Hindu Family of joint family property, the sale would bind not only his share in the property but the share of other coparceners as well. No doubt, the other coparceners may be entitled to file a suit for partition and recover their share if the alienation was not for family necessity or for the benefit of the estate. The burden in such cases will also lie on the alienee to prove family necessity or the benefit to the estate to uphold the alienation by the manager.But that right of coparcener does

not affect competency of the manager to alienate the joint family property.When once such alienation is made , the alienee is entitled to be in possession of the property and right of any other coparcener is to sue for partition and recover possession of his share in the joint family properties. The sale being only voidable unless it is avoided by an action, thealienee is entitled to continue in possession. The position may be different if one coparcener alienates his share alone ,but once the alienation is made by the manager of the property , it will be effective until it is properly avoided by the non-alienating coparcener by filing a suit for partition.

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2018(1) L.S. 267 (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice V.Ramasubramanian &
The Hon'ble Mr. Justice T.Amarnath Goud

Gampa Srinivas & Ors., ..Appellants
Vs.
B.Sukeshini & Ors., ..Respondents

INDIAN CONTRACT ACT, 1872, Sec.25 - Aggrieved by a preliminary decree for partition and a decree of cancellation of a Gift Settlement deed and two registered Sale deeds, defendants have come up with instant appeal - R1 filed a suit before Trial Court seeking partition and separate possession of her 1/3rd share in suit schedule property and also seeking a declaration that a Gift Settlement deed and registered sale deeds are null and void and not binding on her.

Held - Gift settlement is valid to the extent of 1/3 share of appellant - On a property owned or inherited by several persons, if one contributes something, he would not become the owner of the property - At the most, he may be entitled to demand contribution from the co-owners - Appeal stands dismissed.

Mr.Vedula Venkata Ramana, Senior Counsel, representing D. Vijaya Kumar, Advocate for the Appellants.

R1, G. Purushotham Rao, R3 to R6, Mohd. Zaheeruddin, Advocate for the Respondents.

J U D G M E N T

(Per the Hon'ble Mr.Justice V.Ramasubramanian)

1. Aggrieved by a preliminary decree for partition and a decree of cancellation of a Gift Settlement deed and two registered Sale deeds, the defendants 6 to 9 have come up with the above regular appeal.

2. Heard Mr. Vedula Venkata Ramana, learned senior counsel appearing on behalf of Sri D. Vijaya Kumar, learned counsel for the appellants, Mr. G. Purushotham Rao, learned counsel for the 1st respondent and Mr. Zaheeruddin, learned counsel for the respondents 3 to 6.

3. The 1st respondent herein filed a suit in O.S.No.527 of 2007 on the file of XIII Additional Chief Judge, City Civil Court, Hyderabad, seeking partition and separate possession of her 1/3rd share in the suit schedule property and also seeking a declaration that a Gift Settlement deed dated 30-04-2005 and the registered sale deeds dated 27-01-2007 registered as Document Nos.322 and 323/2007 are null and void and not binding on the plaintiff. The case of the 1st respondent-plaintiff was that she was the daughter of the 2nd respondent herein (1st defendant in the suit), who is now no more and one G. Seetharamaiah; that the respondents 3 to 6 herein (who were defendants 2 to 5) were the legal heirs of the deceased brother of the plaintiff by name G. Keshava Rao; that the appellants herein

(who were defendants 6 to 9) were third party purchasers; that the plaintiff's father G. Seetharamaiah was an employee of the State Bank of India, who died on 27-02-1972, leaving behind him surviving his wife, who was the 1st defendant and a daughter (plaintiff) and a son by name G. Keshava Rao; that the son G. Keshava Rao died on 27-03-2007 leaving behind him surviving his mother, who was the 1st defendant, his wife, who was the 2nd defendant and his daughters and son, who were defendants 3 to 5; that the father late G. Seetharamaiah was allotted the suit schedule property by the State Bank of India Staff Housing Cooperative Society in the year 1969-70; that the said property was of an extent of about 403.62 square yards; that the advance for the allotment of the house was paid by the father Sri G. Seetharamaiah and he also paid monthly instalments till his death; that after his demise in the year 1972, the house was leased out to tenants from 1973 onwards on a monthly rent of Rs.1,500/-; that subsequently the rents were enhanced from time to time and the instalments to the Cooperative Housing Society were paid out of the rental income; that late G. Seetharamaiah nominated his wife (1st defendant), as required by the bye-laws of the Cooperative Society; that therefore, the Society transferred the property in the name of the 1st defendant under a registered Transfer Deed bearing Document No.360/1986; that since the suit schedule house was acquired by three persons namely G. Seetharamaiah, his legal heirs namely his wife (1st defendant), his daughter namely the plaintiff and G. Keshava Rao (his son) succeeded to the property in VRS, J. & TA, J. ccca_180_2011 6 equal shares; that however the son G. Keshava Rao got a Gift deed executed by the mother in his favour on 30-04-2005 as Document No.1425/2005; that the 1st defendant has been suffering from chronic hyper tension, diabetics and other diseases and was actually in depression due to prolonged use of medicines; that taking undue advantage of the circumstances, the son G. Keshava Rao used to take her to the Bank for withdrawing the pension and he got executed the Gift Settlement deed by misrepresenting and misleading her; that the plaintiff was not aware of these developments and came to know about the Gift Settlement only after G. Keshava Rao sold the property under two registered Sale Deeds dated 22-01-2007, in favour of defendants 6 to 9; that the 1st defendant has no right to deal with the 1/3rd share of the plaintiff in the suit schedule property; that the Gift Settlement deed dated 30-04-2005 does not bind the 1/3rd share of the plaintiff in the suit property; that the defendants 2 to 5 fraudulently and by misrepresenting, alienated the property in favour of defendants 6 to 9; that G. Keshava Rao had only 1/3rd share in the suit schedule property and did not have any right to alienate more than his share; that therefore, the sale deeds executed by G. Keshava Rao and his legal heirs are not binding upon the plaintiff; that as a matter of fact, G. Keshava Rao got appointment in the State Bank of India on compassionate grounds and thus he availed of the benefits, but attempted to deprive the plaintiff, of her right; that upon coming to know of the alienation made by G. Keshava Rao, the plaintiff issued a legal notice dated 28-02-2007 to G. Keshava Rao and defendants 6 to 9; that G. Keshava Rao issued a reply notice dated 13-03-2007; that defendants 6 to 9 also issued a reply notice dated 14-03-2007; that the plaintiff issued a rejoinder dated 27-03-2007; that G. Keshava Rao

died on 27-03-2007, after which the plaintiff issued another notice dated 18-04-2007 to defendants 2 to 5; and that therefore, the plaintiff was entitled to a decree for 1/3rd share in the suit schedule property and also a decree for declaration that the Gift Settlement deed as well as registered sale deeds are null and void.

4. The 1st defendant (mother of the plaintiff) filed a written statement contending, inter alia, that her husband G. Seetharamaiah was allotted the suit schedule property by the State Bank of India Staff Cooperative Housing Society Ltd., that during his lifetime he paid the advance amount as well as instalments; that after the death of G. Seetharamaiah, the 1st defendant paid the remaining instalments from out of the rents received from the tenants through the son late G. Keshava Rao; that the 1st defendant was nominated by G. Seetharamaiah during his life time to deal with the society with regard to the payment of equated monthly instalments; that due to the nomination, the property was transferred in the name of the 1st defendant alone, after the death of G. Seetharamaiah; that it is false to state that the gift settlement deed was executed by the 1st defendant in favour of her son G. Keshava Rao fraudulently; that the 1st defendant was never interested to execute any gift settlement in favour of her son; that during the life time of her son G. Keshava Rao, he advised the 1st defendant to get a loan in order to develop the property and took the 1st defendant for obtaining signatures on stamped papers, under the guise of obtaining pension; that being illiterate and household, the 1st defendant bonafide believed him and signed the papers without enquiry or consent of other children; that the 1st defendant came to know about the existence of the gift deed only from the material papers furnished in the suit; that the 1st defendant categorically admits that she had no right to execute such a gift settlement in favour of her son; that it is a mischief and misrepresentation played by her son along with defendants 2 to 5; that her son Keshava Rao also misrepresented on the earlier occasion by getting a registered document dated 05-01-2007 purported to be executed in favour of defendants 8 and 9; that the son misrepresented and misguided her to obtain signatures on the pretext of obtaining a loan and creating a mortgage; that bonafide believing his version, the 1st defendant signed on the documents, but never acted upon it, since the property was the subject matter of undivided joint family; that there was no cordial relationship between the 1st defendant and her son; that after the death of her son, the family members did not take care of the 1st defendant, forcing her to reside with her grand daughter; that the 1st defendant never parted with the possession of the suit property at any point of time; that it is admitted that the plaintiff, the 1st defendant and defendants 2 to 5 are entitled to 1/3rd share each in the suit property; that it is true that the 1st defendant's son got appointment on compassionate grounds upon the death of G. Seetharamaiah; that the 1st defendant was not aware of any correspondence between the plaintiff and other defendants; that the sale deeds executed by defendants 2 to 5 show that they conspired to knock away the entire property without the knowledge of the 1st defendant; and that therefore, the 1st defendant should also be granted a decree for 1/3rd share in the suit property.

5. The defendants 2 to 5 independently filed a written statement contending inter alia that the house bearing No.1-3-183/40/85 was built on the plot belonging to State Bank of India Staff Housing Cooperative Society Ltd., allotted in the name of late G. Seetharamaiah, who was himself an employee of the State Bank of India; that after the demise of G. Seetharamaiah on 27-02-1972, his son G. Keshava Rao not only became an employee of the bank on compassionate grounds, but also became entitled to the membership of the society; that however, the 1st defendant was admitted to the membership of the society, since she was a nominee; that since the society was also a financing Bank, the 1st defendant was made to open a Savings Bank account with standing instructions to meet the present and future demands; that the 1st defendant wrote a letter to the society expressing her difficulty to comply with the demand, as she was not employed; that the 1st defendant wanted her son G. Keshava Rao, who was also an employee of the bank and qualified to be a member of the society, to be made a member; that therefore, the society enabled G. Keshava Rao to apply for membership and issued a pass book in the name of G. Keshava Rao in which a sum of Rs.18,000/- was shown as debited with an opening balance of Rs.17,720/- after deducting the instalments received in the account from G. Keshava Rao; that the said loan amount was regularly recovered leaving an opening balance of Rs.540/- in the year 1991, which was cleared by the end of June, 1991, that to ratify the admission of late G. Keshava Rao as a member of the society and also in a grateful recognition of the discharge of the loan by Keshava Rao, the 1st defendant, who was only a nominee and not a staff member, executed a gift settlement deed in favour of G. Keshava Rao on 30-04-2005; that the 1st defendant executed the gift settlement deed voluntarily and out of her free will, which is covered by the Explanation to Section 25 of the Indian Contract Act, 1872; that there was neither any fraud nor misrepresentation by G. Keshava Rao or anybody on his behalf; that the 1st defendant, after having executed a registered gift settlement deed with full knowledge, has come up with a vague suggestion as there was a misrepresentation; that the suit schedule property was the absolute property of G. Keshava Rao and hence, defendants 2 to 5 alone were entitled to the same; that late G. Keshava Rao did not receive the terminal benefits of G. Seetharamaiah at any time and the same was received by the 1st defendant; that there is no cause of action for the plaintiff to file the suit; that the suit is neither properly valued nor sufficient court fee is paid; and that therefore, the suit is liable to be dismissed.

6. The defendants 6 to 9, who are appellants herein, filed a separate written statement contending, inter alia, that they are bonafide purchasers of the suit property for valuable consideration; that they purchased the property from late G. Keshava Rao and his legal heirs, who are defendants 2 to 5, after calling for objections as required by law; that the notice calling for objections was published in the Hyderabad Edition of Eenadu on 25-12-2006; that the defendants were surprised to receive notice from the plaintiff after 10 months of the issue of the paper publication; that the sale deeds were executed after one month of the publication in Eenadu; that there is no dispute about G. Seetharamaiah being the employee of

the State Bank of India and being allotted the plot by the Cooperative Society, that there is also no dispute about G. Seetharamaiah passing away on 27-02-1972; that G. Keshava Rao died on 26-03-2007 due to lung cancer and not on 27-03-2007 as mentioned in the plaint; that late G. Seetharamiah was a member of the Cooperative Society during the period 1969-70 and he nominated the 1st defendant; that the 1st defendant was accordingly admitted as a member of the Cooperative Society and a transfer deed on 17-10-1986 was executed in favour of the 1st defendant; that by virtue of the transfer deed, the 1st defendant became the absolute and lawful owner of the suit schedule property; that the plaintiff is not entitled to make a claim 33 years after the death of their father and 19 years after the execution of the transfer deed by the Cooperative Society in the name of the 1st defendant; that the 1st defendant was the natural guardian of G. Keshava Rao, as he was a minor at the time when G. Seetharamaiah died on 27-02-1972; that therefore, the 1st defendant let out the premises to tenants and paid instalments to the Cooperative Society; that after Keshava Rao got employment in the Bank, he paid the instalments to the society from his salary; that succession opened in the year 1972 on the death of G. Seetharamaiah and the transfer deed in favour of the 1st defendant was executed after 14 years of the death of G. Seetharamaiah; that the 1st defendant never questioned either the transfer deed or the gift deed in favour of her son; that though the 1st defendant was not a party to the notices exchanged between the plaintiff and defendants 2 to 9, she has now come up with a claim showing that she is in collusion with the plaintiff; that the suit schedule property was not alienated either by fraud or by misrepresentation; that the suit property was sold for a sale consideration of Rs.51,00,000/-; that the 1st defendant executed a gift settlement deed voluntarily and with free will and never questioned the same; and that therefore, the suit was liable to be dismissed.

7. After the completion of the pleadings, but before the framing of issues, the 1st defendant died. Therefore, the trial Court framed the following issues as arising for consideration.

1) Whether the suit schedule property was acquired by late G. Seetharamaiah?

2) Whether the remaining instalments of the suit schedule property were paid by late G. Keshava Rao out of the rents accrued?

3) Whether the defendant No.1 was entitled to execute the gift settlement deed document No.1425/2005 dt. 30-04-2005 in favour of late G. Keshava Rao?

4) Whether the plaintiff is entitled for 1/3rd share in the suit schedule property and entitled for partition?

5) Whether the gift settlement deed dt.30-04-2005 and registered sale deeds dt.22.01.2007 are null and void and not binding on the plaintiff?

6) Whether the Court fee paid by the plaintiff is sufficient and proper?

7) To what relief?

8. The plaintiff examined herself as PW.1. She also examined her maternal uncle as

PW.2. PW.2 was also an employee of the State Bank of India. 15 documents were filed as Exs.A.1 to A.15 on behalf of the plaintiff. Ex.A.1 was the certified copy of the Gift Settlement deed dated 30-04-2005 executed by the 1st defendant in favour of her son. Exs.A.2 and A.3 were the certified copies of the registered sale deeds dated 27-01-2007 executed by late G. Keshava Rao and his legal heirs namely defendants 2 to 5 in favour of defendants 6 to 9. The certified copy of Encumbrance Certificate and the Market Value Assessment were filed as Exs.A.4 and A.5. A legal notice, reply legal notices, rejoinder notice etc., were filed as Exs.A.6 to A.11. The certified copy of the transfer deed dated 19-02-1986 executed by the Cooperative Society in favour of the 1st defendant was marked as Ex.A.12. The voters' lists for 1975, 1993 and 1984 were filed as Exs.A.13 to A.15.

9. The 2nd defendant examined herself as DW.1. A person, who claimed to be a friend of the 5th defendant and who witnessed the execution of the gift settlement deed by the 1st defendant in favour of her son G. Keshava Rao, was examined as DW.2. The 8th defendant examined himself as DW.3.

10. Six documents were marked on the side of the defendants. The original appointment order dated 01-03-1974 issued to G. Keshava Rao on compassionate grounds was filed as Ex.B.1. The original bank pass book showing repayment of the loan was filed Ex.B.2. The public notice published in Eenadu was filed as Ex.B.3. The registered agreements of sale dated 05-01-2007 and 04-01-2007 were marked respectively as Exs.B.4 and B.5. The death certificate of the 1st defendant was marked as Ex.B.6.

11. On the basis of the oral and documentary evidence adduced by the parties, the trial Court came to the conclusion on Issue No.1 that the suit schedule property was a self-acquired property of G. Seetharamaiah. On issue No.2, the trial Court held that after the death of G. Seetharamaiah, the instalments were paid out of the rents received from the suit schedule property.

12. On issue No.3, the trial Court held that though the 1st defendant executed the gift deed out of free will and consent, she was entitled to execute the gift deed only in respect of her 1/3rd share. On issue No.4, the trial Court held that the plaintiff is entitled to 1/3rd share in the suit property.

13. On issue No.5, the trial Court held that defendants 6 to 9 are bonafide purchasers, only in respect of the 1/3rd share of the defendants 2 to 5 and the other 1/3rd share gifted by the 1st defendant in favour of G. Keshava Rao. On issue No.6, the Court held that the court fee paid was correct.

14. On account of the findings on Issue Nos.1 to 6, the Court held on Issue No.7 that the plaintiff was entitled to a preliminary decree for partition of her 1/3rd share and also to a decree that the gift deed and the sale deeds are liable to be cancelled in so far as the 1/3rd share of the plaintiff was concerned.

15. Aggrieved by the said judgment and decree, the defendants 6 to 9 alone have come up with the above regular appeal. The defendants 2 to 5 have not come up with any appeal.

16. Assailing the judgment and decree of the Court below, it is contended by Mr. Vedula Venkataramana, learned senior counsel appearing for the appellants that the entire case of the plaintiff rested on (i) the allotment of the land on which the suit property is comprised, by the State Bank of India Staff Cooperative Housing Society, (ii) the payment of some of the instalments by the original allottee Sri G. Seetharamaiah and (iii) the payment of subsequent instalments either out of the rental income or out of the terminal benefits of G. Seetharamaiah. According to the learned senior counsel, the plaintiff failed to prove payment of instalments by her father G. Seetharamaiah and also failed to prove the existence of tenants in the suit property. The plaintiff also failed, according to the learned counsel, to prove the payment of instalments from out of terminal benefits. Therefore, it is contended by the learned senior counsel that the claim of the plaintiff that the suit property was termed as joint family property was without any basis and that as held by the Supreme Court in **D.S. Lakshmaiah v. L. Balasubramanyam** (2003) 10 SCC 310**,** there cannot be a presumption that a property is a joint family property, merely because of the existence of a joint family. Neither the nomination in favour of the 1st defendant nor the transfer of the suit schedule property by the Cooperative Housing Society in favour of the 1st defendant, according to the learned senior counsel, would make the property a joint family property entitling the plaintiff to partition.

17. Mr. Vedula Venkataramana, learned senior counsel also contended that the plaintiff has not come up with cross-objections or cross appeal as against the findings of the trial Court with regard to the Gift deed executed by the 1st defendant in favour of G. Keshava Rao and also with regard to the defendants 6 to 9 (appellants herein) being bonafide purchasers. Therefore, it is his contention that these findings have become final. It is further contended that once the Gift deed executed by the mother (D-1) is found to be valid, the trial Court ought to have gone by the express recitals contained in the gift settlement and dismissed the suit. The learned senior counsel further contended that the issue of acquiescence pleaded by the appellants herein in paragraph 5 of their written statement was completely overlooked and not answered by the trial Court, and that therefore, the judgment and decree of the Court below are liable to be set aside.

18. Supporting the arguments advanced by Mr. Vedula Venkataramana, learned senior counsel appearing for the appellants, it is contended by Mr. Mohd. Zaheeruddin, learned counsel for the respondents 3 to 6 (legal heirs of late G. Keshava Rao) that the finding in Paragraph 15 of the impugned judgment as though G. Keshava Rao was unemployed till March, 1974 and that thereafter his salary was only Rs.392/-, was without any pleading or evidence; that the presumptions made by the Court below in this regard led to a perverse finding as though the instalments for the property were paid out of the rental income; that the other findings recorded in Paragraph 15 of the judgment with regard to Ex.A.3 and with regard to the period up to which G. Keshava Rao stayed in the suit property, were also perverse, as they were not based upon any pleading or evidence; that the voters lists filed as Exs.A.13 to A.15 clearly

demonstrated that there existed a house in the suit property from 1969 onwards and that there was a valid lease between the tenants and late Keshava Rao, but there was no indication of the rent or tenure of the lease and that these Exs.A.13 to A.15 did not also prove the payment of instalments from out of the rental income and that the genuineness and validity of these exhibits were also not proved in accordance with law; that in contrast, Ex.B.2 disclosed the payment of instalments from the salary of Keshava Rao; that Ex.A.12 transfer deed very clearly showed that what was transferred was only an open plot and not a house; that therefore, to say that there was a house, which was leased out and the rental income was used to pay the instalments, were farfetched; that the trial Court failed to examine as to who incurred the cost of construction of the house, when what was transferred to the 1st defendant under Ex.A.12 was only a plot of land; that the presumption drawn by the Court of the existence of a house was contrary to the recitals contained in Ex.A.12, and hence, these presumptions are contrary to Sections 91 and 92 of the Indian Evidence Act, 1872 and that therefore, the judgment and decree of the Court below are liable to be set aside.

18. In response, it is contended by Mr. G. Purushotham Rao, learned counsel for the 1st respondent/plaintiff that even admittedly, the land on which the suit property was comprised was allotted to the plaintiff's father by the State Bank of India Staff Cooperative Housing Society; that after his demise, the society honoured the nomination made by the plaintiff's father and executed the transfer deed in favour of the plaintiff's mother; that the plaintiff's mother (D-1) had no independent income either to pay the remaining instalments or to put up a construction; that therefore, it was obvious that the remaining instalments were paid either from out of the rental income or from out of terminal benefits of G. Seetharamaiah; that even assuming that the remaining instalments were paid to the Society by late Keshava Rao (brother of the plaintiff and son of the 1st defendant), the same could not make him the absolute owner of the suit property; that recognizing the fact that nothing will make Keshava Rao the absolute owner of the property he got a gift deed from his mother, the 1st defendant; that by the very same logic, the 1st defendant could not also have become the absolute owner, as she got the transfer deed in her name only by virtue of the nomination and that too after the death of her husband; and that therefore, despite the findings with regard to the validity of the gift settlement deed and the validity of the sale deeds, the plaintiff's 1/3rd share cannot be denied to her and that therefore, the preliminary decree for partition was perfectly justified.

19. We have carefully considered the above submissions.

20. The rival contentions show that the following points arise for determination in the above appeal.

1) Whether the nomination made by the original allottee G. Setharamaiah in favour of his wife-1st defendant would make her the absolute owner of the suit property, entitling her to gift it to her son G. Keshava Rao?

2) Whether the plaintiff is guilty of acquiescence?

3) Whether the plaintiff became entitled to 1/3rd share of the suit property, in the facts and circumstances of the case?

Point No.1:

21. The first point arising for determination is as to whether the nomination made by the original allottee Sri G. Seetharamaiah would make his wife-1st defendant, the absolute owner of the suit property entitling her to gift the same to her son G. Keshava Rao.

22. It is seen from the recitals contained in Ex.A.12, the certified copy of the transfer deed dated 19-02-1986, that the State Bank of India Staff Cooperative Housing Society Limited is a Cooperative Society registered under the Andhra Pradesh Cooperative Societies Act; that the Cooperative Society purchased a vast extent of land under a sale deed dated 29-06-1966; that the society applied for sanction of a layout and the Municipal Corporation of Hyderabad, by its proceedings dated 18-11-1967 accorded sanction for the layout; and that the transferee was allotted Plot No.85 measuring about 403.62 square yards on 21-01-1971 for a total sale consideration of Rs.9,202.54ps.

23. It is also seen from the recitals contained in Ex.A.1, Gift Settlement deed dated 30-04-2005, that the allotment of the plot by the Cooperative Society was originally in favour of the 1st defendant's husband namely G. Seetharamaiah; that the said G. Seetharamaiah, being an employee of the State Bank of India, was also a member of the Society and he availed the facility of loan for the construction of house; that the loan was repayable in instalments; that even prior to the sanction of the loan, the society had obtained permission to construct houses on the plots; that upon the sudden demise of G. Seetharamaiah, while he was in service, the property was transferred to the 1st defendant, she being his nominee; that the 1st defendant was in peaceful possession and enjoyment of the property as an absolute owner; and that the 1st defendant constructed a house consisting of verandah, drawing room, hall, kitchen, dinning room and bath room by spending huge amounts and also cleared debts by paying all instalments pending upon the schedule property and that she was settling the property upon her son, out of natural love and affection and also on the apprehension that some property disputes among his wife and children may arise after her death. Since the defendants 2 to 5 herein stake their claim to the suit property on the strength of Ex.A-1 and also since the defendants 6 to 9 (appellants herein) purchased the property on the strength of Ex.A-1, they cannot now go back on the recitals contained in Ex. A-1. In fact none of the defendants 2 to 9 seek to question the recitals contained in Ex.A-1. Therefore, the narrative contained therein can be relied upon.

24. It is clear from the recitals contained in Exs.A.12 and A.1 that G. Seetharamaiah was the original allottee of the plot of land; that he was allotted the plot on 21-01-1971; that G. Seetharamaiah died on 27-02-1972 and that the son of G. Seetharamaiah was given appointment on compassionate grounds by the proceedings dated 01-03-1974 filed as Ex.B.1. Therefore, what follows is that from the date of allotment on 21-01-1971, up to the date of his death on 27-02-1972, G. Seetharamaiah was paying

the instalments towards the purchase of the plot and that at least until the date of his appointment, G. Seetharamaiah's son could not have paid the instalments, as he had not secured employment in the State Bank of India till then. There is also no dispute about the fact that the 1st defendant was not gainfully employed anywhere. If she was gainfully employed, her son G. Keshava Rao could not have got appointment on compassionate grounds.

25. As per the plaint, the monthly instalments to the Cooperative Society were paid from out of rental income. In paragraph 3 of the plaint, it was specifically pleaded that after the demise of G. Seetharamaiah in the year 1972, the house was let out to tenants from 1973 onwards on a monthly rent of Rs.1500/- and that subsequently, the rent was enhanced from time to time and that out of the rental income, the son G. Keshava Rao (husband of D-2 and father of D-3 to D-5) paid the remaining instalments to the society.

26. The 1st defendant herself filed a written statement admitting the fact that during the lifetime of G. Seetharamaiah, he paid the instalments, apart from the advance amount and that after his death, the 1st defendant paid the remaining instalments out of the rents collected from the tenants through her son G. Keshava Rao. In fact, the 1st defendant toed the line of the plaintiff and submitted in her written statement that the Gift Settlement deed was obtained from her by her son by fraudulent means. For the present, we shall keep this issue aside and examine as to how the instalments were paid to the Cooperative Society.

27. Interestingly, the defendants 2 to 5 took a very strange defence in so far as the payment of instalments to the society was concerned. In paragraph 3 of the written statement, the defendants 2 to 5 pleaded as follows:

"3. … … … After his demise on 27-02-1972 his son late G.Keshava Rao not only became an employee of SBI on compassionate ground but also became entitled for membership of SBI Staff Co-operative Housing Society Ltd., while Defendant No.1 is a widow and also a nominee of late G.Sitaramaiah and was admitted as member of SBI Staff Housing Co-operative Society Ltd., which is not only a federal society but also a financing Bank giving loans or advance money to staff members of SBI for whose benefits the society was floated subject to the conditions that defendant No.1 opens a Savings Bank A/c. with the standing instructions to meet the present demands and future demands which is likely to be made from time to time. But Defendant No.1 had written to the Society expressing her difficulty to comply with the demand as she was not a bread winner and wanted her son late G.Keshava Rao and employee from SBI and also qualified to be a member of SBI Staff Housing Co-operative Society Ltd., being made a member who would open in his name a Current A/c. from which he could draw his salary and demands of the society could be met and be paid through this Current Account. Thereupon the above said society made late G.Keshava Rao to apply for membership in prescribed form and issued a Pass Book in the name of G.Keshava Rao in which a sum of Rs.18,000/- was shown as debited with the opening balance of Rs.17,720/- after deducting the installments received in the said account

from late G.Keshava Rao and said loan amount was regularly recovered leaving opening balance of Rs.540/- in the year 1991 which was cleared by end of June, 1991. To ratify the admission of late Sri G.keshava Rao as member of abovesaid society and also in a grateful recognition of the loan being discharged in full by late G.Keshava Rao, as defendant No.1 who was admittedly not a staff member of SBI but admitted as a nominee of deceased member who has ceased to be member of the said society on the date of commencement of A.P. Cooperative Society (Amendment) Act of 1985. Defendant No.1 executed a registered Gift Settlement Deed, dated 30-4-2005 in favour of late G.Keshava Rao."

28. In other words, the stand taken by defendants 2 to 5 was that despite the 1st defendant being a nominee, late G. Keshava Rao was made the member of the Cooperative society and that he paid all the instalments and that the 1st defendant executed a registered Gift Settlement in favour of G. Keshava Rao for the purpose of ratifying the admission of G. Keshava Rao as a member of the Cooperative Society and also in grateful recognition of the discharge of the loan by G. Keshava Rao.

29. The above stand taken by defendants 2 to 5 was patently false for two reasons. They are: (1) G. Seetharamaiah died on 27-02-1972 and G. Keshava Rao got appointment on 01-03-1974. What happened during this period of 2 years is unknown; (2) If G. Keshava Rao had been made a member of the Cooperative Society, immediately upon his becoming an employee in March, 1974, the Cooperative Society could not have executed the transfer deed Ex.A.12 on 19-02-1986 in favour of the 1st defendant but should have executed the transfer deed in favour of Kashav Rao.

30. First of all, two persons of the same family cannot become members independently and succeed to one plot of land allotted to the original allottee. Assuming that it was so, then Ex.A.12 ought to have been executed either in favour of G. Keshava Rao independently or at least jointly in favour of the 1st defendant and G. Keshava Rao.

31. The pass book filed as Ex.B.2 shows that the total loan amount was Rs.18,000/- and the period of repayment was 20 years. It is stated in the first page of Ex.B.2 that the name of the member was G. Keshava Rao, son of Smt. G. Savithri (D-1). The monthly instalments payable was Rs.65/- comprising of (1) principal amount of Rs.40/- (2) maintenance charges of Rs.12.50 ps and other charges of Rs.12.50. The entries in Ex.B.2 show that payments were made in August, September, October, November and December, 1971 and also in January and February 1972. Thereafter, no payment was made for a period of 10 months from March to December 1972. But the amounts payable from March to December 1972 were remitted at one stroke on 24-01-1973. Thereafter, the payment was regularized. There were payments made in March, April, May, June, July, September, October, November and December 1973 and payments made in January and February 1974.

32. G. Keshava Rao got appointment only 01-03-1974 as evidenced by Ex. B-1. Therefore, the stand taken by the defendants 2 to 5 in paragraph 3 of the written statement

is totally false.

33. As we have indicated earlier, the transfer deed dated 19-02-1986 executed by the Society in favour of the 1st defendant and filed as Ex.A.12 contains recitals to the effect that the 1st defendant was the member and that the transfer was executed pursuant to the allotment made on 21-01-1971. This transfer deed was executed 12 years after G. Keshava Rao gained appointment in the State Bank of India on compassionate grounds. Therefore, he alone would have become entitled to get the transfer deed executed by the Society, if what is stated in paragraph 3 of the written statement of the defendants 2 to 5 is true. G. Keshava Rao need not have been at the mercy of the 1st defendant to get a Gift deed in his favour "out of love and affection" when the property should have lawfully gone to him had he been a member of the Cooperative Society, and had he paid the instalments.

34. Another interesting claim by defendants 2 to 5 in paragraph 4 of the written statement is that the 1st defendant executed the registered Gift Settlement deed in favour of her son G. Keshava Rao to regularize the admission of G. Keshava Rao as a member of the Cooperative Society after she ceased to be a member of the society on the date of commencement of the Andhra Pradesh Cooperative Societies (Amendment) Act 1985 in terms of the second proviso to Section 19 (1). But this argument is, to say the least, is an argument of convenience. After the 1985 amendment, no individual can be a member of a financing bank or a federal society, by virtue of the first proviso to Section 19 (1). If an individual was already a member of a financing bank or federal society, he will cease to be a member on the date of commencement of the Amendment Act 1985. This is by virtue of the second proviso.

35. If the 1st defendant, by virtue of being an individual will cease to be a member of the State Bank of India Staff Cooperative Housing Society by virtue of the second proviso to Section 19(1), we do not know how G. Keshava Rao, again an individual, could have become a member after the 1985 Amendment. Therefore, the defence taken by defendants 2 to 5 as though it was G. Keshava Rao, who paid all the instalments, appears to be completely false.

36. Coming to the defence taken by defendants 6 to 9, who are the appellants herein, they have admitted in paragraph 4 of their written statement that G. Keshava Rao was a minor in 1973 and that the 1st defendant let out the premises to tenants and that G. Keshava Rao was paying instalments after getting employment in State Bank of India. Therefore, it is clear that at least up to the date of his appointment, G. Keshava Rao could not have paid the instalments.

37. There is one more interesting defence put up by defendants 6 to 9 in paragraph 5 of the written statement. They have admitted in paragraph 5 that upon the demise of G. Seetharamaiah on 27-02-1972, succession opened. But they have pleaded that the plaintiff kept quiet from 1972 to till 1986 and that therefore, there was acquiescence. We shall deal with this aspect later.

38. It is clear from the pleadings of parties (1) that G. Seetharamaiah was the allottee; (2) that he paid the instalments up to the

date of his death and that his right to property devolved upon all his legal heirs namely his wife (D-1), one son by name G. Keshava Rao and one daughter, who was the plaintiff, in equal shares. It was only because of the nomination by G. Seetharamaiah that the Cooperative Society admitted the 1st defendant to the membership of the society and executed a transfer deed in her favour under Ex.A.12.

39. That takes us to the next question as to what is the effect of the nomination.

40. It is well-settled that nomination does not alter the course of succession under the personal law of the parties and that a nominee is no more than an agent authorized to receive the property for the eventual distribution among the legal heirs. In the context of nomination under Section 39 of the Insurance Act, 1938, the Supreme Court held in **Smt. Sarbati Devi v. Smt. Usha Devi (**AIR 1984 SC 346) that Section 39 was not intended to act as a third mode of succession (the first and second being testamentary and intestate succession) and that the nomination does not alter the course of succession. Though the aforesaid decision of the Supreme Court was in the context of a Life Insurance Policy, the rationale behind the same applies even to allotment of properties by Co-operative Societies.

41. In **Om Siddharaj Co-operative Housing Society Limited v. State of Maharashtra (**1998(4) BomCR 506), a Division Bench of the Bombay High Court was concerned with a fight between two persons who were nominated by the Member of the Co-operative Society at different points of time. While dealing with the question revolving around the validity of the second nomination, the Division Bench of the Bombay High Court cited with approval the opinion rendered by a Single Judge in **Gopal Vishnu Ghatnekar v. Madhukar Vishnu Ghatnekar (**AIR 1982 Bom 482) to the effect that the provision for nomination was intended to make certain, the person with whom the society has to deal with and not to create interest in the nominee to the exclusion of those who in law will be entitled to the estate. In the passage of the decision of the learned Single Judge reproduced by the Division Bench with approval, it was indicated that the provision for transferring a share and interest to a nominee, as will be decided by the society is only meant to provide the interregnum between the death and the full administration of the estate and not for the purpose of conferring any permanent right on such a person to a property forming part of the estate of the deceased.

42. In **Indrani Wahi v. Registrar of Co-operative Societies** (2016) 6 SCC 440), which arose under the West Bengal Co-operative Societies Act, 1983, the son of the original allottee challenged the transfer of membership in favour of the daughter, on the basis of the nomination by the father. When the matter reached the Supreme Court, the Supreme Court took note of three earlier decisions of the Court viz., (i) Usha Ranjan Bhattacharjee v. Abinash Chandra Chakraborty [(1997) 10 SCC 347], (ii) Smt. Sarbati Devi v. Smt. Usha Devi [(1984) 1 SCC 424] and (iii) Gayatri De v. Mousumi Co-operative Housing Society Ltd. [(2004) 5 SCC 90]. In Usha Ranjan Bhattacharjee, the Court directed possession of the flat to be handed over to the nominee, but left the dispute relating to title to the flat to

be decided by the appropriate forum. The Court made it clear that the holding of a valid nomination could not ipso facto, result in the transfer of title in favour of the nominee.

43. In Indrani Wahi, the Supreme Court analysed the decision in Sarbati Devi and Gayatri De and came to the conclusion that both of them are not relevant for deciding the controversy on hand in Indrani Wahi. Thereafter, the Supreme Court proceeded to consider Sections 79 and 80 of the West Bengal Co-operative Societies Act, 1983 and held that the Co-operative Society has no option except to transfer the membership in favour of the nominee. However, the Court clarified that such a transfer of membership would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.

44. In **Shakti Yezdani v. Jayanand Jayant Salgonkar (**Appeal Nos.311&313/2015, dt.01-12-2016), a Division Bench of the Bombay High Court had an occasion to consider the entire case law on the point, both with respect to the provisions of the Companies Act and the Depositories Act, 1996 as well as with respect to the Maharashtra Co-operative Societies Act. After dealing in extenso with the decision of the Supreme Court in Indrani Wahi, the Division Bench of the Bombay High Court pointed out in para-34 of its decision that the provisions relating to nominations under various enactments have been consistently interpreted by the Apex Court by holding that the nominee does not get absolute title to the property, which is the subject matter of nomination. The Division Bench of the Bombay High Court also pointed out that the Supreme Court did not dilute this principle even in Indrani Wahi.

45. Therefore, the law is well-settled that even in respect of a co-operative society, the nomination to the membership or even to the allotment does not tantamount to testamentary or intestate succession to the property under allotment. Hence, it is trite to point out that mere nomination by a member of the co-operative society does not enable the nominee to claim succession to the property to the exclusion of the legal heirs who are otherwise entitled to succeed.

46. Once it is clear that the nomination by Sitaramaiah in favour of the 1st defendant did not make her solely entitled to succeed to the plot of land allotted by the co-operative society or even to the house property constructed thereon, it follows as a natural corollary that the 1st defendant was not entitled to execute a gift settlement in favour of her son Keshava Rao. Upon the death of the original allottee Sitaramaiah, his right and interest in the plot of land and the house constructed thereon was inherited by three persons viz., (i) his wife - the 1st defendant, (ii) his daughter - the plaintiff and (iii) his son - late Keshava Rao whose legal heirs are the defendants 2 to 5. Therefore, at the most, the gift settlement executed by the 1st defendant could hold good only to the extent of her 1/3 share in the suit schedule property. Hence, we hold on point No.1 for determination that the nomination by Sitaramaiah in favour of his wife - the 1st defendant did not make her the absolute owner of the suit property entitling her to gift the same to her son Keshava Rao.

47. Incidental to our conclusion on point No.1 for determination, is the question whether the gift deed executed by the 1st defendant in favour of late Keshava Rao was valid at least to the extent of the 1/

3 undivided share that the 1st defendant was in any case entitled to.

48. The 1st defendant filed a written statement claiming that she was illiterate and that her son got her signatures on papers giving an impression as though a loan was to be obtained for the development of the property and that her son misrepresented and misguided her and obtained her signatures in the gift settlement deed. But unfortunately, the 1st defendant could not go to the witness box, as she died after filing the written statement but before framing of the issues. Though the plaintiff examined her maternal uncle as P.W.2, he did not talk about the execution of the gift settlement deed by his sister, the 1st defendant. On the contrary, he submitted in cross-examination that he was not aware of the gift settlement. Therefore, the claim made by the 1st defendant in her written statement that she was misrepresented and misguided to sign papers without having any intention to make a gift settlement, went unsubstantiated.

49. In contrast, the defendants 2 to 5 examined a person by name Purushotham as D.W.2. He was one of the witnesses who signed Ex.A-1 settlement deed. Though he claimed in cross-examination that he did not know the contents of Ex.A-1 himself, he confirmed having attested the gift settlement deed.

50. In such circumstances, it is not possible to hold that Ex.A-1 gift settlement deed is not even valid insofar as the 1/3 share of the 1st defendant is concerned. Hence, the finding of the Court below on this aspect that Ex.A-1 gift settlement is valid to the extent of the 1/3 share of the 1st defendant, has to be confirmed, even while holding that the 1st defendant had no right by virtue of the mere nomination to gift the entire suit schedule property to late Keshava Rao.

Point No.2:

51. The second point arising for determination is as to whether the plaintiff is guilty of acquiescence.

52. In **B.L. Sreedhar v. K.M. Muni Reddy** (2003) 2 SCC 355), the Supreme Court extracted the statement of Lord Chancellor in **Duke of Leads v. Earn of Amherst (**1946 (78) RR 47), explaining the doctrine of acquiescence as follows:

"If a person having a right and seeing another person about to commit or in course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act."

53. Quoting from **Ramsden v. Dyson** (1866) LR 1 HL 129), the Supreme Court went on to point out that a common case of acquiescence is where a man who has a charge or encumbrance upon such property, stands by and allows another to advance money on it or to expend money upon it and that the equity considers it to be the duty of such a person to be active and to state his adverse title and that it would be dishonest in him to remain willfully passive in order to profit by the mistake which he might have prevented.

54. In order to constitute acquiescence,

two things are to be established viz., (a) that the party against whom acquiescence is set up, should have full knowledge of his right and (b) that there was an act of omission or commission on the part of that party to the detriment of the opponent.

55. However, as pointed out by the Supreme Court in **Sha Mulchand v. Jawahar Mills (**AIR 1953 SC 98), **a man who has a vested interest and in whom the legal title lies, does not and cannot lose that title by mere standing by or even by saying that he has abandoned his right unless there is something more viz., inducing another party by his words or conduct to believe the truth of that statement and to act upon it to his detriment.**

56. In **Power Control Appliances v. Sumeet Machines Pvt. Ltd.** (1994) 2 SCC 448), the Supreme Court pointed out that **acquiescence is a course of conduct inconsistent with the claim**. It is the act of a person sitting by, when another is invading his rights. It implies positive acts and not merely silence or inaction. The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the opponent.

57. After quoting the exposition of law made in Power Control Appliances, the Supreme Court in **State of Punjab v. Davinder Pal Singh Bhullar (**AIR 2012 SC 364) also quoted with approval the opinion rendered in **P.John Chandy & Co. Pvt. Ltd. v. John P. Thomas (**AIR 2002 SC 2057) to the effect that inaction in every case does not lead to an inference of implied consent or acquiescence.

58. In **Habeeb Bank Ltd. v. Habeeb Bank**[1981] 1 WLR 1265), the Court of Appeal pointed out that in order to succeed in a plea of acquiescence, a defendant must demonstrate all the five probanda contained in the judgment of Fry, J. in **Willmott v. Barber** (1880) 15 Ch D 96). But with the development of law over a century, the English Courts held that irrespective of whether all the five probanda could be established or not, at least three things should be shown viz., (i) that the party must be acting under a mistake as to his legal rights, (ii) that the plaintiff encouraged that course of action either by statement or conduct and (iii) that the defendant acted upon the plaintiff's representation or encouragement to their detriment.

59. The decision of the Court of Appeal in Habeeb Bank was noted by the Supreme Court in **Khoday Distilleries Ltd. v. The Scotch Whisky Association (**Appeal (Civil) No.4179/2008, dt.27-5-2008).

60. Acquiescence is actually one of the several types of estoppel. The Indian Evidence Act, 1872 recognizes – (i) estoppel by record, (ii) estoppel by deed and (iii) estoppel by conduct. Acquiescence would fall under the third category.

61. Keeping these principles in mind let us come back to the facts of the present case. In this case, there was nothing on record to show that the plaintiff acquiesced to any of the transactions. As could be seen from the facts of the case, the plot of land was allotted by the Co-operative Society in favour of the plaintiff's father G.Sitaramaiah, way back in the year 1971. After his death in the year 1972, the

membership was transferred to the 1st defendant on account of nomination and eventually the transfer deed was executed in the year 1986. The plaintiff cannot be held guilty of acquiescence, when the transfer deed was executed by the Co-operative Society in favour of the 1st defendant. As the law is well-settled that the transfer in favour of the nominee did not tantamount to altering the law of succession, the plaintiff was not at fault in keeping quiet when the transfer deed was executed in 1986 in favour of her mother. None of the three elements constituting acquiescence can be found in the silence on the part of the plaintiff when the transfer deed was executed by the Cooperative Society in favour of her mother in 1986.

62. The gift settlement deed was executed by the 1st defendant in favour of her son in April, 2005 and there is nothing on record to show whether the plaintiff was aware of the gift settlement at all.

63. Interestingly, the plea of acquiescence is not taken by the defendants 2 to 5 but taken only by the defendants 6 to 9, who are the subsequent purchasers. But according to them, they came to know about the existence of the plaintiff only when pre-suit notices were exchanged. Therefore, they cannot actually set up the plea of acquiescence, since a party whose existence was not even known to the defendants 6 to 9, could not have made any representation or misrepresentation enticing the defendants 6 to 9 to enter into any transaction.

64. In fact, the defendants 6 to 9 also pleaded in their written statement that they were bona fide purchasers for valuable consideration and that before going ahead with the purchase, they made a paper publication in the Telugu Daily 'Eenadu' inviting objections. The paper publication was also filed as Ex.B-3.

65. But the most fundamental enquiry that the defendants 6 to 9 ought to have made, more than making a paper publication, was about the number of legal heirs left behind by Sitaramaiah. As a matter of fact, the gift settlement deed executed by the 1st defendant in favour of Keshava Rao, on the basis of which the defendants 6 to 9 purchased the property, contains recitals about the existence of the plaintiff. In page-3 of Ex.A-1 gift settlement deed, it is stated as follows:

"Whereas the Settlor is an age-old woman of 73 years of age, blessed with one daughter and one son by names Smt. Bathula Sukeshini, and Sri Govu Keshav Rao i.e., Settlee, now the Settlor has decided to gift the schedule property to Settlee forever to remove all further complications that may arise in future. Whereas the daughter of Settlor Mrs. Sukeshini was performed marriage on 06-3-1975 with Mr. Bathula Suresh Chandra S/o. Bathula Dharampuri belonging to a well-off family, and the Settlor and Settlee have spent huge amounts, and given sufficient amounts and articles for her future married life. Mrs. Sukeshini is having large chunks of property and her husband is looking after means of livelihood in a dignified manner. Whereas the Settlee supported Settlor morally and monetary in performing marriage of her daughter and also by giving a huge worth of gold, articles, cash and kind at the time of Mrs. Sukeshini marriage and also on several other occasions. The Settlee and

Settlor have already taken an utmost care of maintenance and livelihood of Mrs. Sukeshini."

66. Therefore, instead of making a paper publication and inviting objections from unknown parties, the defendants 6 to 9 ought to have made enquiries with the plaintiff, a class-1 legal heir of Sitaramaiah. Any amount of enquiry made with the whole world except the person concerned, would not make a purchaser, a bona fide purchaser. Therefore, it hardly lies in the mouth of the defendants 6 to 9 to plead acquiescence against the plaintiff, whose existence they were made aware of, but with whom they never cared to make enquiry, when they were prepared to make enquiries with the whole world. Hence, the second point arising for determination is also to be answered against the appellants.

Point No.3:

67. The last point arising for determination is as to whether the plaintiff is entitled to a decree for partition of 1/3 share in the suit schedule property.

68. We have already held in answer to point No.1 that the property was originally acquired by G.Sitaramaiah, by virtue of being a member of the Co-operative Society and by virtue of getting allotment of the property. Since he died intestate and the property was transferred by the Co-operative Society in favour of his nominee, the succession that opened upon the death of Sitaramaiah entitled the plaintiff to 1/3rd share in the suit property.

69. Several contentions were raised, not in the course of oral arguments but in the form of written submissions that there was no proof to show payment of balance of instalments either by the 1st defendant or from out of the rental income from the property and that it was only Keshava Rao who paid the remaining instalments.

70. But we have to point out that the mere entries in the Pass Book do not constitute the proof to show that payments of the remaining instalments were made by Keshava Rao. Even assuming without admitting that the remaining instalments were paid by Keshava Rao, he was supposed to be in enjoyment of the property or in enjoyment of the rental income if he himself was not in occupation.

71. In any case, if Keshava Rao had made payment of the remaining instalments, in relation to a property allotted to his father who died intestate, such payment of instalments would partake the character of gratuitous payments. On a property owned or inherited by several persons, if one contributes something, he would not become the owner of the property. At the most, he may be entitled to demand contribution from the co-owners.

72. Therefore, on point No.3, we hold that the plaintiff was entitled to a decree for 1/3 share in the suit property and the Trial Court was right in decreeing the suit.

73. In fine, we find no merits in the above appeal and hence, the appeal is dismissed with costs. The miscellaneous petitions, if any, pending in this appeal shall stand closed.

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2018(1) L.S. 285 (D.B.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice V.Ramasubramanian &
The Hon'ble Mr. Justice T.Amarnath Goud

M/s. 4g Identity Solutions Pvt.Ltd., ..Appellants

Vs.

M/s. Bloom Solutions Pvt. Ltd., & Anr., ..Respondents

ARBITRATION AND CONCILIATION ACT, 1996 - CONSTITUTION OF INDIA, Article 227 - Challenging an Arbitration Award, company which suffered the award, has come up with revision - Very maintainability of revision as against an Arbitration Award is questioned by respondent.

Held - Courts do not have administrative superintendence over arbitrators and arbitral tribunals - Once a judicial remedy is provided as against an arbitral award and such remedy is either extinguished or exhausted, no party can take recourse to the writ jurisdiction of this Court - Articles 226 or 227 are not the panacea for all diseases - Objection as to maintainability of revision is liable to be sustained and the revision is liable to be dismissed.

Mr.S. Ravi, Senior Counsel, Advocate for the Petitioner.

Mr.P.V. Ramaraju, Advocate for the Respondent.

J U D G M E N T

(per the Hon'ble Mr.Justice V.Ramasubramanian)

1. Challenging an Arbitration Award, the company which suffered the award, has come up with the above revision under Article 227 of the Constitution of India.

2. Heard Mr. S. Ravi, learned senior counsel appearing for the petitioner and Mr. P.V. Ramaraju, learned counsel appearing for the 1st respondent/award holder.

3. At the outset, the very maintainability of the revision under Article 227 of the Constitution as against an Arbitration Award is questioned and hence, the same has to be dealt with, before any other aspect could be gone into.

4. It appears that the petitioner and the 1st respondent entered into two Memoranda of Understanding and they contained a clause for arbitration. A dispute arose after the termination of the Memoranda of Understanding with effect from 31-12-2001. Therefore, the 1st respondent herein issued a notice to the petitioner on 08-08-2014 invoking the arbitration clause and calling upon them to have discussions with their General Manager for the appointment of an Arbitrator by consent and also cautioning that if the petitioner failed to respond, they

would proceed to appoint an Arbitrator by themselves.

5. On the ground that the petitioner did not respond, the 1st respondent appointed the 2nd respondent as the Arbitrator and he entered reference.

6. However, the petitioner filed an application in I.A.No.1 of 2015 challenging the appointment of the Arbitrator. But the said application was dismissed by the Arbitrator on 18-04-2015.

7. It appears that the counsel for the petitioner thereafter never appeared before the Arbitrator. Therefore, the petitioner was set ex parte and an Arbitration Award came to be passed on 18-05- 2015.

8. In the meantime, the petitioner seems to have made an abortive attempt to challenge the order dated 18-04-2015 passed by the Arbitrator in I.A.No.1 of 2015, by way of an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. But the same was not even numbered by the court of the Chief Judge, City Civil Court, Hyderabad, and the petitioner did not pursue the matter further.

9. It appears that the petitioner attempted to challenge the ex parte award by way of an application under Section 34 of the Act, but the same was rejected as having been filed with a delay beyond the condonable period. Therefore, the petitioner filed an earlier revision in C.R.P.No.5786 of 2015, which did not see the light of the day. However, a petition for execution was filed in E.P.No.54 of 2015 by the 1st respondent/award holder. Therefore, the petitioner came up with the above revision challenging the award, abandoning C.R.P.No.5786 of 2015. It appears that a stay of further proceedings in the execution proceedings was granted in the above C.R.P., after which the first revision in C.R.P.No.5786 of 2015 was withdrawn.

10. The above sequence of events discloses that there is no challenge to the Arbitration Award in a manner prescribed by the Arbitration and Conciliation Act, 1996. The time available for challenging an Arbitration Award under Section 34 of the Act has also expired. According to the petitioner, they were taken for a royal ride by their counsel at every stage and that they have also filed a complaint against their previous counsel before the Bar Council and that in such extraordinary circumstances, they have come up invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution.

11. Challenging the very maintainability of the revision, it is contended by Mr. P.V. Rama Raju, learned counsel for the respondent that the Constitution Bench of the Supreme Court has already settled the issue by holding in paragraph No.44 of its decision in **S.B.P. & Co vs. Patel Engineering Ltd. (**AIR 2006 SC 450), that the awards passed by arbitral tribunals are not capable of being corrected by the High Court under Articles 226 or 227. The same view was also echoed by a learned Judge of this Court in **Government of Madhya**

Pradesh vs. P.V. Vidyasagar (AIR 2004 AP 89).

12. However, relying upon (1) a judgment of a learned Judge of the Bomba High Court in **M/s. Anuptech Equipments Private Ltd vs. M/s. Ganpati Co-op. Housing Society Ltd. (**AIR 1999 BOMBAY 219); (2) a decision of the Division Bench of the Bombay High Court **in Dowell Leasing and Finance Ltd., vs. Radhesyam B. Khandelwal (**LAWS (BOM) 2007 (7) 83); (3) the decision of a learned Judge of the Gauhati High Court in **Raj International vs. Tripura Jute Mills Ltd. (**LAWS (GAU) 2008 (5) 33); (4) the decision of a learned Judge of Calcutta High Court in **Tuff Drilling Pvt. Ltd. vs. Srei Infrastructure Pvt. Ltd. (**LAWS (CAL) 2015 (2) 95); (5) the decision of the Supreme Court arising out of the said decision in **Srei Infrastructure Pvt. Ltd. vs. Tuff Drilling Pvt. Ltd.** (2017) 12 SCALE 105); and (6) the decision of the Supreme Court in **Shalini Shyam Shetty vs. Rajendra Shankar Patil** (2010) 8 SCC 329), it is contended by Mr. S. Ravi, learned Senior Counsel appearing for the petitioners that under extraordinary circumstances, the remedy under Articles 226 or 227 is not ousted.

13. We have considered the rival contentions.

14. At the out set it should be pointed out that the Arbitration and Conciliation Act, 1996 provides an alternative dispute resolution mechanism, enabling the parties to have their disputes resolved, outside the court, as provided by the terms of the contract entered into by them. Arbitrators and arbitral tribunals are creatures not of statute but of contract. Therefore, Courts do not have administrative superintendence over arbitrators and arbitral tribunals.

15. As a matter of fact, arbitration agreements are intended to keep the interference by the Courts to the minimum. Generally an agreement in restraint of legal proceedings is void under Section 28 of the Indian Contract Act, 1872. But an agreement to refer a dispute to arbitration is an exception to the prescription under Section 28. This is why, Section 5 of the Arbitration and Conciliation Act, 1996 makes it clear that there shall be no judicial intervention in respect of any proceeding under the Act except as provided in the Act itself. An award passed in terms of Section 31 (1) of the Act is amenable to challenge only in a manner prescribed by Section 34. Once a challenge made under Section 34 is rejected or the time limit for filing a petition under Section 34 has expired, an award becomes final and binding on the parties in terms of Section 35. Keeping this fundamental principle in mind, we shall now examine the decisions relied upon by the learned Senior Counsel for the petitioner.

16. In Anuptech Equipments Pvt. Ltd., the arbitral tribunal terminated the proceedings under Section 32(2) on account of the failure of the claimant to file his statement of claim, by invoking Section 25 (a). But after the arbitral tribunal decided to terminate the proceedings, a challenge was made to the

appointment of one of the arbitrators, on the ground that he was not a fellow of the Indian Institute of Architects, as required by Clause-56 of the agreement. However, the arbitral tribunal terminated the proceedings. Therefore, the petitioner before the Bombay High Court filed an Arbitration Petition, purportedly under Sections 12(3)(b), 13, 14, 15 and 24 of the Arbitration and Conciliation Act, 1996. It must be pointed out that no petition under Articles 226 or 227 was filed before the Bombay High Court in Anumptech Equipments.

17. Therefore, an objection was raised in that case that the challenge to the arbitration award was barred by Section 34(3) and that the petition was not maintainable. Instead of confining the discussion to the question whether a petition under Sections 12, 13, 14, 15 and 24 was maintainable or not, the Bombay High Court, in Anumptech Equipments, extended the scope of the enquiry by holding that wherever an order affecting the rights of a party attains finality, the party affected thereby can seek recourse to the extraordinary remedy available under Articles 226 or 227. To come to the said conclusion, the Bombay High Court drew parallel from Section 10-A of the Industrial Disputes Act 1947 and the decisions of the Supreme Court in **Engineering Mazdoor Sabha vs. Hind Cycles Ltd**. (AIR 1963 SC 874)and **Rohtas Industries Ltd. vs. Rohtas Industries Staff Union (**AIR 1976 SC 425), wherein it was held that even if the arbitrator appointed under Section 10-A of the Industrial Disputes Act, 1947, was not a Tribunal, a writ may lie against his Award under Article 226. The Bombay High Court went by the logic that irrespective of whether it was a statutory arbitration or private arbitration, the arbitrator or arbitral tribunal would at least be a "person" and hence would be amenable to the jurisdiction under Articles 226 or 227.

19. The ratio laid down by the learned Single Judge of the Bombay High Court in Anuptech Equipments was reiterated by a Division Bench of the very same High Court in Dowell Leasing and Finance Limited. Though the decision of the Constitution Bench of the Supreme Court in S.B.P. & Co was cited before the Division Bench of the Bombay High Court in Dowell Leasing, the Division Bench took a view that the Supreme Court did not go in S.B.P. & Co., to the extent of holding that no writ would lie against an arbitral tribunal or that an arbitral tribunal is not a person against whom a writ can be issued.

20. In Tuff Drilling Pvt. Ltd., a single Judge of the Calcutta High Court was concerned with a case where after having appointed a sole arbitrator by consent, the petitioner did not submit a statement of claim, resulting in the termination of the proceedings under Section 25(a). The application to recall the said order was dismissed on the ground that the arbitrator had become functus officio. When that order was challenged, the learned Judge of the Calcutta High Court took the view that an arbitral tribunal is a quasi judicial authority discharging judicial functions and that therefore, there was no impediment for entertaining a petition under Article 227.

21. The above decision of the learned Judge of the Calcutta High Court in Tuff Drilling Pvt. Ltd., was taken on appeal to the Supreme Court. The Supreme Court framed three issues as arising for consideration, which are as follows:

> 1. Whether arbitral tribunal which has terminated the proceeding Under Section 25(a) due to non filing of claim by claimant has jurisdiction to consider the application for recall of the order terminating the proceedings on sufficient cause being shown by the claimant?
>
> 2. Whether the order passed by the arbitral tribunal Under Section 25(a) terminating the proceeding is amenable to jurisdiction of High Court under Article 227 of the Constitution of India?
>
> 3. Whether the Order passed under Section 25(a) terminating the proceeding is an award under the 1996 Act so as to amenable to the remedy under Section 34 of the Act?

On issue No.1 the Supreme Court came to the conclusion that the arbitral tribunal had jurisdiction to consider an application for recalling the order terminating the proceedings. After holding so, on issue No.1, the Supreme Court refused to go into issue Nos.2 and 3. In other words, the question of maintainability of a petition under Articles 226 or 227 was left open.

22. In Raj International, a learned Single Judge of the Gauhati High Court equated an arbitral tribunal to a statutory authority and held in paragraph 21 that when he did not exercise his power vested on him, a petition under Article 227 was maintainable. Despite the decision of the Constitution Bench in S.B.P. & Co., being brought to its notice, the Gauhati High Court relied upon the decision of the Supreme Court in **Surya Dev Rai v. Ram Chander Rai (**AIR 2003 SC 3044)to hold that the power of superintendence conferred upon the High Court under Article 227 was both administrative as well as judicial.

23. But as we have pointed out earlier, the first judgment relied upon by Mr. S. Ravi, learned Senior Counsel, which was that of a learned Judge of the Bombay High Court in Anumtech Equipments Pvt. Ltd., did not actually arise out of a petition under Articles 226 or 227. What was before the learned Judge was actually a petition under Sections 12 to 15 and 24 of the Arbitration and Conciliation Act, 1996 itself. Therefore, we do not know how the scope of the enquiry was extended beyond the provisions of the Arbitration and Conciliation Act, 1996.

24. In any case, two reasons appear to have weighed with the learned Judge of the Bombay High Court in Anuptech Equipments to take the view that he did. They are – (1) that even a private person is amenable to the writ jurisdiction under Article 226; and (2) that the remedy of a writ was held to be available even against

an award passed by an arbitrator appointed under Section 10-A of the Industrial Disputes Act, 1947.

25. But with great respect to the learned Judge, what was over looked by the learned Judge is the fact that in order to maintain a writ petition as against a private person, who does not come within the purview of a State or other authority, he must be vested with an obligation to perform a public duty. The fundamental requirement for the maintainability of a writ against a private individual is that he should have been called upon to discharge a public duty. 26. While adjudicating a dispute arising out of a contract between two commercial entities, an arbitrator or arbitral tribunal cannot be said to be performing a public Duty. This aspect has been completely lost sight of by the Bombay High Court in Anuptech Equipments.

27. The decision of the Division Bench of the Bombay High Court in Dowell Leasing was authored by the same learned Judge who decided Anuptech and the Division Bench read the decision of the Constitution Bench in S.B.P. & Co narrowly. It would be appropriate at this stage to extract paragraph-44 of the decision of the Constitution Bench in S.B.P. & Co., which reads as follows:

> "It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even through if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible."

28. There was absolutely no scope for the Division Bench of the Bombay High Court to come to the conclusion that the Supreme Court did not take the view in S.B.P. & Co.

that no writ will lie against an arbitral tribunal, or that an arbitral tribunal is not a person against whom a writ can be issued.

29. As we have indicated earlier, it is the vesting of a public duty upon a private individual that would make such an individual amenable to the writ jurisdiction. The reason as to why the Supreme Court held an arbitration award under Section 10-A of the Industrial Disputes Act, 1947 to be amenable to the jurisdiction under Articles 226 or 227, was that such an award was actually binding not only upon the parties before the arbitrator but also the persons, who were not parties to the arbitration. The very object of the Industrial Disputes Act was to maintain peace in industries. That is why conciliation always precedes adjudication by an Industrial Tribunal or labour Court or arbitrators. An Arbitrator under Section 10-A of the Industrial Disputes Act, 1947 performs a public duty in the sense that he attempts to bring harmony and peace in the industry. More over, sub-section (3) of Section 10-A of the Industrial Disputes Act requires a copy of the arbitration agreement to be forwarded to the appropriate Government and the appropriate Government is obliged to publish the agreement in the Government Gazette. Under subsection (3-A) of Section 10-A even the employers and workmen, who are not parties to the arbitration agreement, but who are concerned in the dispute, are entitled to an opportunity to present their case before the arbitrator. Therefore, arbitration under the Industrial Disputes Act is not merely confined to the parties to the agreement, as in the case of arbitration under the Arbitration and Conciliation Act, 1996. In fact, the arbitration award passed under Section 10-A is to be submitted to the appropriate Government and the appropriate Government is entitled to issue a notification prohibiting the continuance of any strike or lock out in connection with such a dispute. Therefore, the arbitrator under Section 10-A of the Industrial Disputes Act performs both statutory and public duties. But an arbitrator appointed by contract between two commercial entities cannot be elevated to the status of a person performing public duties.

30. The decision of the learned Judge of the Calcutta High Court in Tuff Drilling Pvt. Ltd., cannot be pressed into service, on the basis of the judgment of the Supreme Court in Srei Infrastructure Finance Ltd., since the Supreme Court did not answer the second issue arising for consideration. Similarly, the decision of the learned Single Judge of the Gauhati High Court, with great respect, does not reflect the correct position in law. The Gauhati High Court proceeded on the basis as though an arbitrator is a statutory authority. The inference drawn by the Gauhati High Court in Raj International on the basis of the decision of the Supreme Court in Surya Dev Rai that the power of superintendence conferred upon the High Court under Article 227 is both administrative as well as judicial, does not apply to arbitral proceedings. The contours of jurisdiction of this Court under Articles 226 or 227 over Tribunals, is clearly demarcated by the Constitution Bench in **L. Chandra Kumar vs. Union of India** (1997) 3 SCC 261).

In paragraphs 91 and 92 of its decision, the Supreme Court pointed out that the jurisdiction of this Court under Articles 226 or 227 is over the "**decisions of such tribunals**". Therefore, we do not have administrative superintendence over arbitrators and arbitral tribunals appointed either by the parties under the contract or by the High Court in terms of Section 11(6).

31. Coming to the judicial superintendence, Section 5 of the Arbitration and Conciliation Act, 1996 read with Sections 34 and 35 provide a complete answer. Once a judicial remedy is provided as against an arbitral award and such remedy is either extinguished or exhausted, no party can take recourse to the writ jurisdiction of this Court. Articles 226 or 227 are not the panacea for all diseases. If the argument of the learned Senior Counsel for the petitioner is accepted on the ground that a party cannot be left without a remedy, then as against every order which has attained finality, a writ can be filed.

32. We can examine this issue from another angle also. Arbitral proceedings are actually a substitute for civil proceedings before civil Courts. Even in civil proceedings, a writ under Articles 226 or 227 is not maintainable as against a judgment and decree of a subordinate Court. Every judgment and decree of a subordinate Court is open to challenge in a regular appeal under Section 96 and thereafter by way of a second appeal under Section 100 of the Code of Civil Procedure. Let us take for instance, a case where an ex parte decree is passed and the party could not avail any of the remedies available under CPC. Will it be open to such a party to file a writ petition under Article 226 or 227 challenging the decree on the ground that he lost all other avenues. Even in a case where the decree is vitiated by fraud, the remedy is not under Article 226 or 227. But a case of fraud, allegedly perpetrated by a party's own counsel, will not come within the purview of a fraud that would vitiate the decree of a Civil Court.

33. Therefore, to hold that a writ petition or a revision petition under Articles 226 or 227 would lie as against an arbitration award, would be to recognize a remedy not available even to a litigant before the civil Court. Hence the objection as to the maintainability of the revision is liable to be sustained and the revision is liable to be dismissed.

34. Accordingly, the civil revision petition is dismissed as not maintainable. As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed no costs

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2018 (1) L.S. 103 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Adarsh Kumar Goel &
The Hon'ble Mr.Justice
Uday Umesh Lalit

Dr. Subhash Kashinath Mahajan ..Appellant

Vs.

State of Maharashtra & Anr., ..Respondents

SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 - CONSTITUTION OF INDIA, Article.21 - Whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse.

Held - Procedural safeguards so that provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not abused:

i) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

ii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iii) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

iv) Any violation of direction (ii) and (iii) will be actionable by way of disciplinary action as well as contempt. The above directions are prospective.

Proceedings in the present case are clear abuse of process of court and are quashed.

J U D G M E N T

(Per the Hon'ble Mr.Justice Adarsh Kumar Goel)

1. This appeal has been preferred against the order dated 5th May, 2017 of the High Court of Judicature at Bombay in Criminal Application No.1015 of 2016.

2. On 20th November, 2017 the following order was passed by this Court:-

"Heard learned counsel for the parties.

Certain adverse remarks were recorded against respondent no. 2-Bhaskar Karbhari Gaidwad by the Principal and Head of the Department of the College of Pharmacy where respondent no. 2 was employed. Respondent No. 2 sought sanction for his prosecution under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and for certain other connected offences. The said matter was dealt with by the petitioner and sanction was declined. This led to another complaint by the respondent no. 2 against the petitioner under the said provisions. The quashing of the said complaint has been declined by the High Court.

The question which has arisen in the course of consideration of this matter is whether any unilateral allegation of mala fide can be ground to prosecute officers who dealt with the matter in official capacity and if such allegation is falsely made what is protection available against such abuse.

Needless to say that if the allegation is to be acted upon, the proceedings can result in arrest or prosecution of the person and have serious consequences on his right to liberty even on a false complaint which may not be intended by law meant for protection of a bona fide victim.

The question is whether this will be just and fair procedure under Article 21 of the Constitution of India or there can be procedural safeguards so that provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not abused for extraneous considerations. Issue notice returnable on 10th January, 2018. In the meanwhile, there shall be stay of further proceedings.

Issue notice to Attorney General of India also as the issue involves interpretation of a central statute.

Mr. Amrendra Sharan, learned senior counsel is requested to assist the Court as amicus. Mr. Sharan will be at liberty to have assistance of Mr. Amit Anand Tiwari, Advocate. … …"

3. Though certain facts are stated while framing the question already noted, some more facts may be noted. The appellant herein is the original accused in the case registered at City Police Station, Karad for the offences punishable under Sections 3(1)(ix), 3(2)(vi) and 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act) as also Sections 182, 192, 193, 203 and 219 read with 34 of the Indian Penal Code, 1860 (IPC). He was serving as Director of Technical Education in the State of Maharashtra at the relevant time.

4. The second respondent - the complainant is an employee of the department. He was earlier employed as a Store Keeper in the Government College of Pharmacy, Karad. He was later posted at Government Distance Education Institute, Pune. Dr. Satish Bhise and Dr. Kishor Burade, who were his seniors but nonscheduled caste, made adverse entry in his annual confidential report to the effect that his integrity and character was not good. He lodged FIR with Karad Police Station against the said two officers under the Atrocities Act on 4th January, 2006 on that ground. The concerned Investigating Officer applied for sanction under Section 197 Cr.P.C. against them to the Director of Technical Education on 21st December, 2010. The sanction was refused by the appellant on 20th January, 2011.

Because of this, 'C' Summary Report was filed against Bhise and Burade which was not accepted by the court. He then lodged the present FIR against the appellant. According to the complainant, the Director of Technical Education was not competent to grant/refuse sanction as the above two persons are Class-I officers and only the State Government could grant sanction. Thus, according to him, the appellant committed the offences alleged in the FIR dated 28th March, 2016 by illegally dealing with the matter of sanction.

5. The complaint is fully extracted below: "In the year 2009 I was working as store keeper in the Govt. Pharmacy College Karad, at that time I have registered complaint to Karad City Police Station Cr. NO. 3122/ 09 u/s 3(1)9, 3(2)(7)6 of S.C. & S.T. (Preention of Atrocities) Act and the investigation was done by Shri Bharat Tangade, then D.Y.S.P. Karad division Karad in the investigation 1) Satish Balkrushna Bhise, then Principal Pharmacy College Karad, 2) Kishor Balkrishna Burade, then Professor, Pharmacy College Karad has been realized as accused in the present crime. Investigation officer collect sufficient evidence against both the accused, but both the accused are from Govt. Technical Education department Class 1 Public Servant, so before filing charge sheet against them he wrote the letter to the senior office of the accused u/s 197 of Cr.P.C. to take the permission at that time Mr. Subhash Kashinath Mahajan was working as incharge director of the office. Today also he is working as same post. Mr. Mahajan does not belongs to S.C. & S.T. but he knew that I belongs to S.C. and S.T.
In fact both the accused involved in crime No. 3122/09 are working on class 1 post and to file a charge sheet against them the permission has to be taken according to Cr.P.C. Section 197. This fact known to Shri Mahajan and Mr. Mahajan knew that this office did not have such right to give permission. So Mr. Mahajan send letter to Mumbai Office. Infact to give the required permission or to refuse the permission is not comes under the jurisdiction of incharge direction, Technical Education Mumbai. But, Mr. Mahajan misused his powers so that, accused may be benefited, he took the decision and refused the permission to file the charge sheet against the accused. So that, investigation officer Shri Bharat Tangade fails to submit the charge sheet against the both the accused, but he complain to submit 'C' summary report."

6. The appellant, after he was granted anticipatory bail, applied to the High Court under Section 482 Cr.P.C. for quashing the proceedings on the ground that he had merely passed a bonafide administrative order in his official capacity. His action in doing so cannot amount to an offence, even if the order was erroneous. The High Court rejected the petition.

7. Dealing with the contention that if such cases are not quashed, recording of genuine adverse remarks against an employee who is a member of SC/ST or passing a legitimate administrative order in discharge of official duties will become difficult and jeopardise the administration, the High Court observed that no public servant or reviewing authority need to apprehend any action by way of false or frivolous prosecution but the penal provisions of the Atrocities Act could not be faulted merely because of possibility of abuse. It was observed that in the facts

and circumstances, inherent power to quash could not be exercised as it may send a wrong signal to the downtrodden and backward sections of the society.

8. We have heard Shri Amrendra Sharan, learned senior counsel, appearing as amicus, Shri Maninder Singh, learned Additional Solicitor General, appearing for the Union of India, Shri C.U. Singh, learned senior counsel and the other learned counsel appearing for the intervenors and learned counsel for the parties and perused the record.

9. We may refer to the submissions put forward before the Court:

Submissions of learned Amicus

10. Learned amicus submitted that in facts of the present case, no offence was made out under Sections 3(1)(ix), 3(2)(vi) and 3(2)(vii) of the Atrocities Act and Sections 182, 192, 193, 203 and 219 of the Indian Penal Code and, thus, the High Court ought to have quashed the proceedings. He submitted the following table to explain his point:

Provisions of the SC/ST Act invoked in this case	**Applicability of the provisions in the facts of the case**
3. Punishment for offences atrocities.– 3 [(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -**(ix):** gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;	The provision mandates a "false and frivolous information given by the public servant", however in the present case, the Petitioner has denied sanction for prosecution which clearly does not amount to false or frivolous information. Thus, a case under Section 3(1)(ix) of the SC/ST Act is not made out.
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3(2)(vi): knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence;	Section 3(2)(vi) requires causing of disappearance of evidence with the intention of screening the offender from legal punishment, however, in the present case, there is noallegation that the petitioner has caused disappearance of any evidence. Therefore the ingredients of Sections 3(2)(vi) is not made out.
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(vii) being a public servant, commits any offence under this section, shall	

be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.	Since no offence under section 3 of the SCST is made out this section cannot be attracted.
Provisions of IPC alleged	**Applicability of the provisions in the facts of instant case**
182. False information, with intent to cause public servant to use his lawful power to the injury of another person. – Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant –(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which mayextend to six months, or with fine which may extend to one thousand rupees, or withboth.	A false information is an information which has been given deliberately with an intention to deceive. However, in this case denial of sanction for prosecution cannot be construed as a false information in any way. It is an order of administrative authority. Therefore no case is made out under Section 182 of the code.
192. Fabricating false evidence. – whoever causes any circumstance to exist or *[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion	The ingredients of Section 192 IPC is not made out therefore this section will not apply in the present case. It was not a judicial proceeding and the petitioner has neither fabricated false evidence nor made any false entry in any book, record or electronic data. Mere exercising of administrative power cannot be construed as fabricating false evidence.

uponthe evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".	
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193. Punishment for false evidence. – Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, an shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable.	Since there was no 'false evidence', therefore the possibility of punishment accruing to false evidence is ruled out
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203. Giving false information respecting an offence committed.– Whoever knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	For the reasons already stated hereinabove, the present case does not meet the ingredients of this section, therefore is precluded from being prosecuted here. A mere opinion of a senior officer in an ACR does not amount to giving false information.
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219. Public servant in judicial proceeding corruptly making report, etc., contrary to law. – Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.	The denial of sanction to prosecute the two government servants against whom the Complainant/ Respondent no. 2 had originally filed an FIR cannot be construed as making corrupt report therefore the case of the petitioner does not fall within the ambit of this provision

11. It was submitted by learned amicus that FIR was lodged after five years of the order passed by the appellant. The order was passed on 20th January, 2011 while the FIR was lodged on 28th March, 2016 which further strengthened the case for quashing in addition to the facts and legal contentions noted in the previous para. Moreover, in absence of any allegation of malafides, even if order passed by the appellant was erroneous proceedings against him are not called for.

12. Learned amicus submitted that under the scheme of the Atrocities Act, several offences may solely depend upon the version of the complainant which may not be found to be true. There may not be any other tangible material. One sided version, before trial, cannot displace the presumption of innocence. Such version may at times be self serving and for extraneous reason. Jeopardising liberty of a person on an untried unilateral version, without any verification or tangible material, is against the fundamental rights guaranteed under the Constitution. Before liberty of a person is taken away, there has to be fair, reasonable and just procedure. Referring to Section 41(1)(b) Cr.P.C. it was submitted that arrest could be effected only if there was 'credible' information and only if the police officer had 'reason to believe' that the offence had been committed and that such arrest was necessary. Thus, the power of arrest should be exercised only after complying with the safeguards intended under Sections 41 and 41A Cr.P.C. It was submitted that the expression 'reason to believe' in Section 41 Cr.P.C. had to be read in the light of Section 26 IPC and judgments interpreting the said expression. The said expression was not at par with suspicion. Reference has been made in this regard to **Joti Prasad versus State of Haryana (**1993 Supp (2) SCC 497)**, Badan Singh @ Baddo versus State of U.P. & Ors. (**2002 CriLJ 1392)**, Adri Dharan Das versus State of West Bengal (**(2005) 4 SCC 303)**, Tata Chemicals Ltd. versus Commissioner of Customs (**(2015) 11 SCC 628)and **Ganga Saran & Sons Pvt. Ltd. versus Income Tax Officer & Ors. (**(1981) 3 SCC 143)In the present context, to balance the right of liberty of the accused guaranteed under Article 21, which could be taken away only by just fair and reasonable procedure and to check abuse of power by police and injustice to a citizen, exercise of right of arrest was required to be suitably regulated by way of guidelines by this Court under Article 32 read with Article 141 of the Constitution. Some filters were required to be incorporated to meet the mandate of Articles 14 and 21 to strengthen the rule of law.

13. Learned amicus submitted that this Court has generally acknowledged the misuse of power of arrest and directed that arrest should not be mechanical. It has been laid down that the exercise of power of arrest requires reasonable belief about a person's complicity and also about need to effect arrest. Reliance has been placed on **Joginder Kumar versus State of U.P.** (1994) 4 SCC 260)**, M.C. Abraham versus State of Maharashtra** (2003) 2 SCC 649)**, D. Venkatasubramaniam versus M. K. Mohan Krishnamachari** (2009) 10 SCC 488)**, Arnesh Kumar versus State of Bihar** (2014) 8 SCC 273)and **Rini Johar & Ors.**

versus State of M.P. & Ors. (2016) 11 SCC 703)

14. It was submitted that in the context of the Atrocities Act, in the absence of tangible material to support a version, to prevent exercise of arbitrary power of arrest, a preliminary enquiry may be made mandatory. Reasons should be required to be recorded that information was credible and arrest was necessary. In the case of public servant, approval of disciplinary authority should be obtained and in other cases approval of Superintendent of Police should be necessary. While granting such permission, based on a preliminary enquiry, the authority granting permission should be satisfied about credibility of the information and also about need for arrest. If an arrest is effected, while granting remand, the Magistrate must pass a speaking order as to correctness or otherwise of the reasons for which arrest is effected. These requirements will enforce right of concerned citizens under Articles 14 and 21 without in any manner affecting genuine objects of the Act.

15. Learned amicus further submitted that Section 18 of the Atrocities Act, which excludes Section 438 Cr.P.C., violates constitutional mandate under Articles 14 and 21 and is ultra vires the Constitution. The said provision was upheld in **State of M.P. versus Ram Krishna Balothia** (1995) 3 SCC 221)but the said judgment was in ignorance of the Constitution Bench judgment in **Gurbaksh Singh Sibbia etc. versus State of Punjab** (1980) 2 SCC 565). If a Court is not debarred from granting anticipatory bail even in most heinous offences including murder, rape, dacoity, robbery, NDPS, sedition etc., which are punishable with longer periods depending upon parameters for grant of anticipatory bail, taking away such power in respect of offences under the Act is discriminatory and violative of Article 14. Exclusion of court's jurisdiction, even where the court is satisfied that arrest of a person was not called for, has no nexus with the object of the Atrocities Act. In this regard, reliance has been placed on following observations in **Sibbia** (supra).

"10. Shri V.M. Tarkunde, appearing on behalf of some of the appellants, while supporting the contentions of the other appellants, said that since the denial of bail amounts to deprivation of personal liberty, courts should lean against the imposition of unnecessary restrictions on the scope of Section 438, when no such restrictions are imposed by the legislature in the terms of that section. The learned Counsel added a new dimension to the argument by invoking Article 21 of the Constitution. He urged that Section 438 is a procedural provision which is concerned with the personal liberty of an individual who has not been convicted of the offence in respect of which he seeks bail and who must therefore be presumed to be innocent. The validity of that section must accordingly be examined by the test of fairness and reasonableness which is implicit in Article 21. If the legislature itself were to impose an unreasonable restriction on the grant of anticipatory bail, such a restriction could have been struck down as being violative of Article 21. Therefore, while determining the scope of Section 438, the court should not impose any unfair or unreasonable limitation on the individual's right to obtain

an order of anticipatory bail. Imposition of an unfair or unreasonable limitation, according to the learned Counsel, would be violative of Article 21, irrespective of whether it is imposed by legislation or by judicial decision.

13. … …The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant.

…. **21.** …. …A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. …

26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi (1978) 1 SCC 248, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

16. Reliance has also placed on recent judgment of this Court in **Nikesh Tarachand Shah versus Union of India and Anr.** (2017) 13 Scale 609, 2017 SCC OnLine SC 1355)declaring Section 45 of the Prevention of Money Laundering Act, 2002 unconstitutional. This Court held that fetters on grant of bail under the said provision when such fetters were not applicable to other offences punishable in like manners was discriminatory and against the principle of fair just and reasonable procedure.

Submissions of counsel for intervenor supporting the appeal

17. Ms. Manisha T. Karia, counsel appearing for intervenor on behalf of Sapna Korde @ Ketaki Ghodinde, who also claims to be victim of a false complaint, submitted that respondent No. 2 lodged a false FIR No. 3210 of 2017 dated 2nd November, 2017 against her at Khadki police station

alleging that she, in collusion with the appellant herein, pressurized respondent no. 2 to withdraw the FIR No.164 of 2016 registered with Karad Police Station and she falsely implicated respondent no. 2 in a sexual harassment case. She is working as an Assistant Professor in the Department of Instrumentation and Control in College of Engineering, Pune since last eight years where respondent No. 2 was working as a storekeeper. She had made a complaint against him for her sexual harassment and as a reaction, the FIR was lodged by respondent No. 2 by way of the Atrocities Act. Her anticipatory bail application was rejected by the session court but the High Court, vide order dated 23rd November, 2017, granted interim protection against arrest. Thereafter, respondent No. 2 initiated proceedings under Section 107 Cr.P.C. and the intervenor received notice dated 2nd December, 2017 from the Magistrate. It was submitted that there was no safeguard against false implication, undue harassment and uncalled for arrest and thus, this Court must incorporate safeguards against unreasonable and arbitrary power of arrest in such cases without following just fair and reasonable procedure which may be laid down by this Court. Such requirement, it was submitted, was implicit requirement of law but was not being followed.

18. Laying down safeguards to enforce constitutional guarantee under Article 21 was necessary in view of the Sixth Report dated 19th December, 2014 of the Standing Committee on Social Justice and Empowerment (2014-15) on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 rejecting the stand of the Ministry to the effect that there was no need to provide for action against false or malafide implication under the Atrocities Act. It was observed therein:-

"3.9 The Committee are not inclined to accept the contention of the Ministry that those who are found to be misusing the provisions of the Act can be tried as per normal law of the land under the relevant sections of the IPC. The Committee are of the firm view that the PoA Act, being a special law, should be wholesome to the extent that it must contain an inbuilt provision for securing justice for those too who are falsely implicated with mala fide under it. More so, when the law makers have shown such perspicacity in addressing such issues/misgivings when they inserted clause 14 (Punishment for false or malicious complaint and false evidence) in 'The Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013."

19. Thus, unless this Court laid down appropriate guidelines, there will be no protection available against arbitrary arrests or false implications in violation of Article 21 of the Constitution. The intervenor submitted that preliminary enquiry must be held before arrest with regard to the following factors:

"a. Date and time of the incident and provocation.

b. Preexisting dispute between the parties or rivalry.

c. Gravity of the issue involved.

d. Nature of allegations by both the parties.

e. Necessary documents and evidence by the victim and accused to substantiate their case to be placed before committee.

f. The proceedings may be recorded to avoid allegations of bias and non-transparency."

20. The following further safeguards have been suggested by the counsel for the intervenor:

"Arrest specifically in connection with offences under POA Act should only be made with the prior sanction of the Magistrate. However this may not apply in case arrest has to be made in connection with other offences under IPC. Further the gravity of offence also needs to be seen since most of the cases at the institutional level are only on the basis of mere altercations or action by the public servants in their official capacity.

Secondly if the Accused under the POA Act surrenders with prior notice to the Public Prosecutor, then his bail Application should be considered on the same day and if not the regular bail, then at the least interim bail should be granted in the interest of justice. This requirement may be read into Section 18 of the POA Act."

21. In support of the submission that courts have acknowledged the misuse of law, reliance has also been placed on the following Judgments :

(i) Judgment of the Madras High Court in **Jones versus State (**2004 SCC OnLine Mad 922: 2004 CriLJ 2755)wherein the High Court observed:

"This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them."

(ii) Judgment of Gujarat High Court in **Dr. N.T. Desai vs. State of Gujarat** (1997) 2 GLR 942)observing :

"But then having closely examined the complaint more particularly in the context and light of the backdrop of the peculiar facts situation highlighted by the petitioner leading ultimately to filing of the complaint, this Court prime facie at the very outset is at some doubt about the complainant's story and yet if it readily, mechanically like a gullible child accepts the allegations made in the complaint at its face value, it would be surely blundering and wandering away from the path of bail-justice, making itself readily available in the hands of the

scheming complainant who on mere asking will get arrested accused on some false allegations of having committed non-bailable offence, under the Atrocity Act, meaning thereby the Court rendering itself quite deaf, dumb and blind mortgaging its commonsense, ordinary prudence with no perception for justice, denying the rightful protection to the accused becoming ready pawn pliable in the hands of sometime scheming, unscrupulous complainants !!! This sort of a surrender to prima facie doubtful allegation in the complaint is not at all a judicial approach, if not unjudicial !! At the cost of repetition, 1 make it clear that these observations are only preliminary, at this stage only in peculiar background of the case highlighted by petitioner-accused and for that purpose may be even in future be so highlighted by the accused in some other cases to the satisfaction of the Court ! The reason is having regard to the basic cardinal tenets of the criminal jurisprudence more particularly in view of the peculiar circumstances highlighted by the accused which allegedly actuated complainant to victimise him, in case if ultimately at the end of trial what the accused has submitted in defence is accepted as probable or true and as a result, the accused is given a clean bill, holding that the complaint was nothing else but false, concoction by way of spite to wreck the personal vengeance then in that case what indeed would be the remedy and redresses in the hands of the petitioner, who in the instant case is Doctor by profession and for that purpose in other cases an innocent citizen? He stands not only stigmatised by filing of a false complaint against him but he shall stand further subjected to trial !! Not only that but before that even subjected to arrest before the public eye and taken to Special Court where only he could pray for bail ! Thus, subjected to all sort of agonies, pains and sufferings lowering his image and esteem in the eye of public because the Court when approached adopted the helpless attitude? Under such bewildering circumstances, what indeed would be the face of the Court and the fate of the Administration of Justice denying bail to some victimised innocent accused at crucial stage when he surrenders to the Court custody for the purpose?!! Should the Court proclaiming doing justice stand befooled at the hands of some mischievous complainant with head-down in shame !! Supposing for giving false evidence before the Court, the complainant is ordered to be prosecuted, but then will such prosecutions of complainant bring back the damage already done to an innocent !! **Bearing in mind this most embarrassing and excruciating situation created by the complainant when, this Court as a Constitutional functionary is duty bound to zealously protect the liberty of citizen, should it be helplessly watching and passively surrendering itself to sometimes prima facie ex-facie malicious complaint denying simple bail to the accused? In this regard, perhaps, it may be idly said that accused can be given compensation for the malicious prosecution and ultimate refusal of bail or anticipatory bail !! True, but then in that case what compensation can any Court would be in a position to give when the complainant is a person who is poor enough unable to pay a single pie?!!**

Not only that but in case complainant is rich and able to pay compensation then even can any monetary compensation ever adequately compensate the wrong accused suffered at the hands of the malicious complainant? It is here that the conscience of this Court stands pricked and terribly perturbed and indeed will have a sleepless night if what ought we do not know where the petitioner, in the facts and circumstances of the case be quite innocent and accordingly a needy consumer of bail justice and yet is unnecessarily subjected to arrest taken to the police custody and then before Court because of denial of bail to him at this stage !!"

(iii) Dealing with the same issue, the Gujarat High Court in **Dhiren Prafulbhai Shah versus State of Gujarat (**2016 CriLJ 2217)observed as under:

"48. In the course of my present sitting, I have come across various cases wherein the provisions of Atrocities Act are misused. I find that various complaints are filed immediately after elections, be it Panchayat, Municipal or Corporation, alleging offence under the Atrocities Act. I have no hesitation in saying that in most of the cases, it was found that the F.I.R.s/Complaints were filed only to settle the score with their opponents after defeat in the elections. I have also come across various cases, wherein, private civil disputes arising out of property, monetary matters, dispute between an employee and employer, dispute between the subordinate and his superior - are given penal and the complaints are being filed either under Section 190 r/w. 200 or F.I.Rs. at the police station. The matter in hand is one another example of misuse of the Act. As observed by me earlier, the purpose of bringing SC and ST Act is to put-down the atrocities committed on the members of the Scheduled Castes and Scheduled Tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties like the case one in hand, which is alien to the provisions contemplated under the laudable Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised over-zealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.

49. Passing mechanically orders by the Court of Magistrates in complaint and/or registration of the F.I.R. at the Police Station, which do not have any criminal element, causes great hardships, humiliation, inconvenience and harassment to the citizens. For no reasons the reputation of the citizen is put to stake as immediately after the said orders are passed, innocent citizens are turned as accused. One should not overlook the fact that there is Section-18 in the Atrocities Act, which imposes a bar so far as the grant of anticipatory bail is concerned, if the offence is one under the Atrocities Act. If a person is accused having committed murder, dacoity, rape, etc., he can pray for anticipatory bail under Section-438 of the Cr.P.C. on the ground that he is innocent and has been falsely involved, but if a person alleged to have committed an offence under the Atrocities Act, cannot pray for an anticipatory bail

because of the bar of Section-18 of the Act, and he would get arrested. This is the reason for the authorities to guard against any misuse of the Provisions of the Atrocities Act."

(iv) Judgment of Gujarat High Court in **Pankaj D Suthar versus State of Gujarat** (1992)1 GLR 405)observing :

"4. …**But then, what according to this Court is the most welcome step by way of collective wisdom of the Parliament in ushering social beneficial legislation cannot be permitted to be abused and converted into an instrument to blackmail to wreak some personal vengeance for settling and scoring personal vendetta or by way of some counter-blasts against opponents some public servants, as prima facie appears to have been done in the present case. The basic questions in such circumstances therefore are-Whether a torch which is lighted to dispel the darkness can it be permitted to set on fire the innocent surroundings? Whether a knife an instrument which is meant for saving human life by using the same in the course of operation by a surgeon, can it be permitted to be used in taking the life of some innocent?** The very same fundamental question arises in the facts and circumstances of this case also, viz., 'whether any statute like the present Atrocities Act, especially enacted for the purposes of protecting weaker sections of the society hailing from S.C. & S.T. communities can be permitted to be abused by conveniently converting the same into a weapon of wrecking personal vengeance on the opponents?**' The answer to this question is undoubtedly and obviously 'No'. Under such circumstances, if the Courts are to apply such provision of Section 18 of the Atrocities Act quite mechanically and blindly merely guided by some general and popular prejudices based on some words and tricky accusations in the complaint on mere assumptions without intelligently scrutinising and testing the probabilities, truthfulness, genuineness and otherwise dependability of the accusations in the complaint etc., then it would be simply unwittingly and credulously playing in the hands of some scheming unscrupulous complainant in denying the justice.** Virtually, it would be tantamount to abdicating and relegating its judicial duty, function of doing justice in such matters in favour and hands of such unscrupulous complainant by making him a Judge in his own cause. This is simply unthinkable and therefore impermissible. **Whether the provisions of any particular Act and for that purpose the rules made thereunder are applicable to the facts of a particular case or not, is always and unquestionably a matter which lies strictly and exclusively within the domain of 'judicial consideration-discretion' and therefore neither mere allegations made in the complainant by themselves nor bare denials by the accused can either automatically vest or divest the Court from discharging its ultimate judicial function-duty to closely scrutinise and test the prima facie dependability of the allegations made in the complaint and reach its own decision."**

(v) Judgment of Bombay High Court in **Sharad versus State of Maharashtra (**2015(4) BomCR(Crl) 545)observing :

"12. **We hasten to add that such type of complaints for rampant misuse of the provisions of Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are largely being filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests. We think the learned Members of the Bar have enormous social responsibility and obligation to ensure that the social fabric of the society is not damaged or ruined. They must ensure that exaggerated versions should not be reflected in the criminal complaints having the outrageous effect of independence of judicial and quasi judicial authorities so also the public servants. We cannot tolerate putting them in a spooked, chagrined and fearful state while performing their public duties and functions. We also think that a serious re-look at the provisions of the Act of 1989 which are being now largely misused is warranted by the Legislature, of course, on the basis of pragmatic realities and public opinion. A copy of this Judgment is directed to be sent to the Law Commission for information."**

22. It was, thus, submitted that above judgments are merely illustrations to show that the abuse of law was rampant. If mere accusations are treated as sufficient, it may unfairly damage the personal and professional reputation of a citizen. There is a need to balance the societal interest and peace on the one hand and the protection of rights of victims of such false allegations on the other. If allegations are against an employee, a committee should be formed in every department as follows:-

"i. The employer or Head of every institution may be directed to constitute an internal committee to look into the matters and specific grievances related to atrocities committed on the members of SC/ST. ……..

ii. That before proceeding to lodge any FIR or criminal complaint, a written complaint should made to the internal committee of the institution along with supportive evidence. iii. Such committee may be given the power to conduct a preliminary inquiry into the matter by hearing both the parties and other evidence, so as to ascertain the existence of a prima facie case under the POA Act."

23. It has been further suggested that Magistrate must verify the averments in a Complaint/FIR to ascertain whether a prima facie case is made out and whether arrest was necessary and only then arrest should be made or continued.

24. It is further submitted by the counsel for the intervenor that the Atrocities Act is also prone to misuse on account of monetary incentive being available merely for lodging a case under Rule 12(4) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Such incentive may encourage not only genuine victims but, there being no safeguard even against

a false case being registered only to get the monetary incentive, such false cases may be filed without any remedy to the affected person.

25. Reference has also been made to Annual Report 2016-2017 of the Ministry of Social Justice and Empowerment and data compiled by the Government of Maharashtra for the years 1990 to 2013 (dated 30th April, 2013) in respect of offences registered under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Protection of Civil Rights Act, 1955 against Maharashtra Members of Parliament, Member of Legislative Assembly, Zill Parishad Adhyaksha, Gramsevak, Talathi, B.D.O., Collector, Palakmantri, Chief Minister, Home Minister, IPS, IAS, IRS, IFS, MNP Commissioner, MNP Assistant Commissioner, other Government Officer/Servant, other non-Government Officers/Servants (numeric data prepared on the basis of information available).

26. As per data (Crime in India 2016 – Statistics) compiled by the National Crime Records Bureau, Ministry of Home Affairs under the headings "**Police Disposal of Crime/Atrocities against SCs cases (State/UT-wise)-2016**" (Table 7A.4) and "**Police Disposal of Crime/Atrocities against STs Cases (State/UTwise) – 2016"** (Table 7C.4) it is mentioned that in the year 2016, 5347 cases were found to be false cases out of the investigated out of SC cases and 912 were found to be false cases out of ST cases. It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction. (**Reference**: Annual Report 2016-2017 published by the Department of Social Justice & Empowerment, Ministry of Social Justice and Empowerment, Government of India).

Interventions against the appellant

27. Intervention application has also been filed by one Ananda Sakharam Jadhav who claims to be convenor of the Bahujan Karmachari Kalyan Sangh. Shri C.U. Singh, learned senior counsel appearing for the said intervenor, submitted that where law is clear no guideline should be issued by the Court. Reliance has been placed on **State of Jharkhand and Anr. Versus Govind Singh** (2005)10 SCC 437)and **Rohitash Kumar and Ors versus Om Prakash Sharma and Ors.** (2013)11 SCC 451)It was submitted that this Court could not lay down guidelines in the nature of legislation.

28. Shri C.U. Singh submitted that the Section 18 of the Atrocities Act has already been upheld in **Balothia** (supra) and **Manju Devi versus Onkarjit Singh Ahluwalia** (2017) 13 SCC 439). He also relied upon Statement of Objects and Reasons of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2013 dated 14th July, 2014. Therein it is stated that there are procedural hurdles such as non-registration of cases, procedural delays in investigation, arrests and filing of charge-sheets and delays in trial and low conviction rate on account of which in spite of deterrent provisions,

atrocities against SC/ST continues at disturbing level which necessitated amendment in the Act.

29. Further intervention has been sought by one Yogendra Mohan Harsh. Learned counsel for the said intervenor submitted that atrocities against SCs and STs are increasing and if submissions of amicus are to be accepted, the Act will be rendered ineffective and teethless.

Submissions of learned Additional Solicitor General (ASG)

30. Learned ASG submitted that in view of decisions in **Balothia** (supra) and **Manju Devi** (supra) there is no occasion to go into the issue of validity of provisions of the Atrocities Act. He also submitted that decisions of this Court in **Vilas Pandurang Pawar and Anr. versus State of Maharashtra and Ors.** (2012) 8 SCC 795)and **Shakuntla Devi versus Baljinder Singh** (2014) 15 SCC 521)permit grant of anticipatory bail if no prima facie case is made out. Thus, in genuine cases anticipatory bail can be granted. He also submitted that the Government of India had issued advisories on 3rd February, 2005, 1st April, 2010 and 23rd May, 2016 and also further amended the Atrocities Act vide Amendment Act No. 1 of 2016 which provides for creation of Special Courts as well as Exclusive Special Courts. Referring to the data submitted by the National Crime Records Bureau (NCRB) it was further submitted that out of the total number of complaints investigated by the police in the year 2015, both for the persons belonging to the SC category and also belonging to the ST category, in almost 15-16% cases, the competent police authorities had filed closure reports. Out of the cases disposed of by the courts in 2015, more than 75% cases have resulted in acquittal/withdrawal or compounding of the cases. It was submitted that certain complaints were received alleging misuse of the Atrocities Act and a question was also raised in Parliament as to what punishment should be given against false cases. The reply given was that awarding punishment to members of SCs and STs for false implication would be against the spirit of the Act. A press statement dated 19th March, 2015 was issued by the Central Government to the effect that in case of false cases, relevant Sections of IPC can be invoked. It was submitted that no guideline should be laid down by this Court which may be legislative in nature.

Consideration of the issue whether directions can be issued by this Court to protect fundamental right under Article 21 against uncalled for false implication and arrests

31. We may, at the outset, observe that jurisdiction of this Court to issue appropriate orders or directions for enforcement of fundamental rights is a basic feature of the Constitution. This Court, as the ultimate interpreter of the Constitution, has to uphold the constitutional rights and values. Articles 14, 19 and 21 represent the foundational values which form the basis of the rule of law. Contents of the said rights have to be interpreted in a manner which enables the citizens to enjoy the said rights. Right to equality and life and liberty have to be

protected against any unreasonable procedure, even if it is enacted by the legislature. The substantive as well as procedural laws must conform to Articles 14 and 21. Any abrogation of the said rights has to be nullified by this Court by appropriate orders or directions. Power of the legislature has to be exercised consistent with the fundamental rights. Enforcement of a legislation has also to be consistent with the fundamental rights. Undoubtedly, this Court has jurisdiction to enforce the fundamental rights of life and liberty against any executive or legislative action. The expression 'procedure established by law' under Article 21 implies just, fair and reasonable procedure (Maneka Gandhi vs. UOI (1978) 1 SCC 248, paras 82 to 85).

32. This Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental rights (Bandhua Mukti Morcha vs. UOI (1984) 3 SCC 161, para 13). There are enumerable decisions of this Court where this approach has been adopted and directions issued with a view to enforce fundamental rights which may sometimes be perceived as legislative in nature. Such directions can certainly be issued and continued till an appropriate legislation is enacted (Vishakha versus State of Rajasthan (1997) 6 SCC 241, para 16; Lakshmi Kant Pandey v. UOI (1983) 2 SCC 244; Common Cause v. UOI (1996) 1 SCC 753; M.C. Mehta v. State of T.N. (1996) 6 SCC 756). Role of this Court travels beyond merely dispute settling and directions can certainly be issued which are not directly in conflict with a valid statute (Supreme Court Bar Asson. V. UOI (1998) 4 SCC 409, para 48). Power to declare law carries with it, within the limits of duty, to make law when none exists (Dayaram vs. Sudhir Batham (2012) 1 SCC 333, para 18).

33. Constitution Bench of this Court in **Union of India versus Raghubir Singh** (1989(2) SCC 754)**,** observed :

"7. … It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions of the State flows from the decisions of the superior Courts. "There was a time," observed Lord Reid, "When it was thought almost indecent to suggest that Judges make law - They only declare it.... But we do not believe in fairly tales any more." "The Judge as Law Maker", p. 22. In countries such as the United Kingdom, where Parliament as the legislative organ is supreme and stands at the apex of the constitutional structure of the State, the role played by judicial law-making is limited.

In the first place the function of the Courts is restricted to the interpretation of laws made by Parliament, and the Courts have no power to question the validity of Parliamentary statutes, the Diceyan dictum holding true that the British Parliament is paramount and all powerful. In the second place, the law enunciated in every decision of the Courts in England can be superseded

by an Act of Parliament. As Cockburn C.J. observed in Exp. Canon Selwyn (1872) 36 JP Jo 54: There is no judicial body in the country by which the validity of an Act of Parliament could be questioned. An act of the Legislature is superior in authority to any Court of Law.

And Ungoed Thomas J., in Cheney v. Conn, (1968) 1 All ER 779 referred to a Parliamentary statute as "the highest form of law...which prevails over every other form of law." The position is substantially different under a written Constitution such as the one which governs us. The Constitution of India, which represents the Supreme Law of the land, envisages three distinct organs of the State, each with its own distinctive functions, each a pillar of the State.

Broadly, while Parliament and the State Legislature fin India enact the law and the Executive Government implements it, the judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the Legislation sought to be implemented One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights. In this regard, the Courts in India possess a power not known to the English Courts. Where a statute is declared invalid in India it cannot be reinstated unless constitutional sanction is obtained therefore by a constitutional amendment of an appropriately modified version of the statute is enacted which accords with constitutional prescription. The range of judicial, review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law.

The power extends to examining the validity of even an amendment to the Constitution, for now it has been repeatedly held that no constitutional amendment can be sustained which [violates the basic structure of the Constitution. See Kesavananda Bharati Sripadagalayaru v. State of Kerala AIR1973SC1461), Smt. Indira Nehru. Gandhi v. Raj Narain [1976]2SCR347], Minerva Mills Ltd. v. Union of India [1981]1SCR206] and recently in S. P. Sampath Kumar v. Union of India [(1987)ILLJ128SC]. With this impressive expanse of judicial power, it is only right that the superior Courts in India should be conscious of the enormous responsibility which rests on them. This is specially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on« all Courts within the territory of India."

34. The law has been summed up in a decision in **Rajesh Kumar versus State** (2011) 13 SCC 706)as follows:

"62. Until the decision was rendered in Maneka Gandhi (supra), Article 21 was viewed by this Court as rarely embodying the Diceyian concept of rule of law that no one can be deprived of his personal liberty by an executive action unsupported by law. If there was a law which provided some sort of a procedure it was enough to deprive a person of his life or personal liberty. In

this connection, if we refer to the example given by Justice S.R. Das in his judgment in A.K. Gopalan (supra) that if the law provided the Bishop of Rochester 'be boiled in oil' it would be valid under Article 21. But after the decision in Maneka Gandhi (supra) which marks a watershed in the development of constitutional law in our country, this Court, for the first time, took the view that Article 21 affords protection not only against the executive action but also against the legislation which deprives a person of his life and personal liberty unless the law for deprivation is reasonable, just and fair. and it was held that the concept of reasonableness runs like a golden thread through the entire fabric of the Constitution and it is not enough for the law to provide some semblance of a procedure. The procedure for depriving a person of his life and personal liberty must be eminently just, reasonable and fair and if challenged before the Court it is for the Court to determine whether such procedure is reasonable, just and fair and if the Court finds that it is not so, the Court will strike down the same."

35. Apart from the above, there are enumerable occasions when this Court has issued directions for enforcement of fundamental rights e.g., directions regarding functioning of caste scrutiny Committee (Madhuri Patil v. Tribal Development (1994) 6 SCC 241); directions to regulate appointment of law officers (State of Punjab versus Brijeshwar Singh Chahal (2016) 1 SCC 1)**;** directions to regulate powers of this Court and High Courts in designating Senior Advocates (Indira Jaising versus Supreme Court of India (2017) 9 SCC 766); guidelines have been issued for the welfare of a child accompanying his/her mother in imprisonment (R.D. Upadhyay versus State of A.P. (2007) 15 SCC 337); directions for checking trafficking of women and children (Bachpan Bachao Andolan v. UOI (2011) 5 SCC 1); for night shelters for the homeless (Union for Civil Liberties versus UOI (2010)5 SCC 318); directions to check malnutrition in children (People's Union for Civil Liberties versus UOI (2004) 12 SCC 104 and (2010) 15 SCC 57); directions to provide medical assistance by Government run hospitals (Paschim Banga Khet Mazdoor Samity versus State of W.B. (1996) 4 SCC 37); directions for protection of human rights of prisoners (39Sunil Batra versus Delhi Admn. (1978) 4 SCC 494); directions for speedy trial of under trials (Hussainara Khatoon (IV) versus Home Secy. State of Bihar (1980) 1 SCC 98). The list goes on.

36. Issuance of directions to regulate the power of arrest has also been the subject matter of decisions of this Court. In **Joginder Kumar versus State of U.P. (**(1994) 4 SCC 260)**,** this Court observed that horizon of human rights is expanding. There are complaints of violation of human rights because of indiscriminate arrests. The law of arrest is of balancing individual rights, liberties and privileges, duties, obligations and responsibilities. On the one side is the social need to check a crime, on the other there is social need for protection of liberty, oppression and abuse by the police and the other law enforcing agencies. This Court noted the 3rd Report of the National Police Commission to the effect that power of arrest was one of the chief sources of corruption of police. 60% of arrests were unnecessary or unjustified.

The arrest could be unjustified only in grave offences to inspire the confidence of the victim, to check the accused from committing further crime and to prevent him from absconding. The National Police Commission recommended that the police officer making arrest should record reasons. This Court observed that no arrest can be made merely because it is lawful to do so. The exercise of power must be for a valid purpose. Except in heinous offences arrest must be avoided. This requirement was read into Article 21 (Para 21). **In Arnesh Kumar versus State of Bihar** (2014) 8 SCC 273), this Court observed that arrest brings humiliation, curtails freedom and casts scars forever. It is considered a tool for harassment and oppression. The drastic power is to be exercised with caution. Power of arrest is a lucrative source of corruption. Referring to the amendment of law in Section 41 Cr.P.C., in the light of recommendations of the Law Commissions, it was directed that arrest may be justified only if there is 'credible information' or 'reasonable suspicion' and if arrest was necessary to prevent further offence or for proper investigation or to check interference with the evidence. Reasons are required to be recorded. However, compliance on the ground is far from satisfactory for obvious reasons. The scrutiny by the Magistrates is also not adequate. This Court issued the following directions:

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1) (b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded

in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

37. In **D.K. Basu versus State of W.B**. (1997) 1 SCC 416), this Court, to check abuse of arrest and drastic police power, directed as follows:

"35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so

requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

37. The requirements, referred to above flow from Articles 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier."

38. In **Rini Johar** (supra) this Court considered the issue of wrongful arrest and payment of compensation. It was observed that wrongful arrest violates Article 21 of the Constitution and thus the victim of arrest was entitled to compensation. This Court noted the observations and guidelines laid down against wrongful arrests in **Joginder Kumar** (supra), **D.K. Basu** (supra), **Arnesh Kumar** (supra) and other cases and held that since the arrest is in violation of guidelines laid down by this Court and is violative of Article 21, the person arrested was entitled to compensation.

39. In **Subramanian Swamy versus UOI (**2016) 7 SCC 221**),** this Court considered the issue of validity of provisions creating defamation as an offence. In the course of said judgment, need for harmony in competing claims of different interests was considered. This Court observed that the fundamental rights are all parts of an integrated scheme and their waters must mix to constitute grand flow of impartial justice (Para 137). This Court also observed that legislation should not invade the rights and should not smack of arbitrariness. Considering the principles of

reasonableness, this Court observed that ultimate impact of rights has to be determined. This was different from abuse or misuse of legislation. Proportionality of restraint has to be kept in mind while determining constitutionality. Concept of public interest and social interest determine the needs of the society (Para 130). After referring to **Maneka Gandhi (supra),** it was observed that it is the duty of this Court to strike a balance in the right of speech and right to protect reputation (Para 144). The restriction of law should be rational and connected to the purpose for which it is necessary. It should not be arbitrary or excessive (Para 194 and 195).

40. Again this Court in **Siddharam Satlingappa Mhetre versus State of Maharashtra (**(2011) 1 SCC 694)laid down parameters for exercise of discretion of anticipatory bail having regard to the fundamental right of liberty under Article 21 of the Constitution and the needs of the society where such liberty may be required to be taken away. It was observed:

"Relevance and importance of personal liberty

36. All human beings are born with some unalienable rights like life, liberty and pursuit of happiness. The importance of these natural rights can be found in the fact that these are fundamental for their proper existence and no other right can be enjoyed without the presence of right to life and liberty. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. That is why "liberty" is called the very quintessence of a civilised existence. …

52. The fundamental rights represent the basic values enriched by the people of this country. The aim behind having elementary right of the individual such as the Right to Life and Liberty is not fulfilled as desired by the Framers of the Constitution. It is to preserve and protect certain basic human rights against interference by the State. The inclusion of a chapter in the Constitution is in accordance with the trends of modern democratic thought. The object is to ensure the inviolability of certain essential rights against political vicissitudes. …

54. Life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilised society.

64. The object of Article 21 is to prevent encroachment upon personal liberty in any manner. Article 21 is repository of all human rights essential for a person or a citizen. A fruitful and meaningful life presupposes life full of dignity, honour, health and welfare. In the modern "Welfare Philosophy", it is for the State to ensure these essentials of life to all its citizens, and if possible to non-citizens. While invoking the provisions of Article 21, and by referring to the oftquoted statement of Joseph Addison, "Better to die ten thousand deaths than wound my honour", the Apex Court in Khedat Mazdoor Chetna Sangath v. State of M.P. (1994) 6 SCC 260 posed to itself a question "If dignity

or honour vanishes what remains of life?" This is the significance of the Right to Life and Personal Liberty guaranteed under the Constitution of India in its Third Part. …

International Charters

Universal Declaration of Human Rights, 1948

80. Article 3 of the Universal Declaration says:

"3. Everyone has the right to life, liberty and security of person."

Article 9 provides:

"9. No one shall be subjected to arbitrary arrest, detention or exile."

Article 10 says:

"10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." [As to its legal effect, see M. v. United Nations & Belgium (1972) 45 Inter LR 446 (Inter LR at pp. 447, 451.)]

86. According to the Report of the National Police Commission, when the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.

87. The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

88. The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case.

In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

90. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

110. The Law Commission in July 2002 has severely criticised the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the Police Department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this article to the 41st Report of the Law Commission wherein the Commission saw "no justification" to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind these sentiments and spirit of the judgments of this Court in Sibbia case (1980)2 SCC 565 and Joginder Kumar v. State of U.P.(1994)4 SCC 260.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court

should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.

Irrational and indiscriminate arrests are gross violation of human rights

115. In Joginder Kumar case (supra) a three-Judge Bench of this Court has referred to the 3rd Report of the National Police Commission, in which it is mentioned that the quality of arrests by the police in India mentioned the power of arrest as one of the chief sources of corruption in the police. The Report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

117. In case, the State considers the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive:

(1) Direct the accused to join the investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested.

(2) Seize either the passport or such other related documents, such as, the title deeds of properties or the fixed deposit receipts/ share certificates of the accused.

(3) Direct the accused to execute bonds.

(4) The accused may be directed to furnish sureties of a number of persons which according to the prosecution are necessary in view of the facts of the particular case.

(5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.

(6) Bank accounts be frozen for small duration during the investigation.

118. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer.

119. Exercise of jurisdiction under Section 438 CrPC is an extremely important judicial function of a Judge and must be entrusted to judicial officers with some experience and good track record. Both the individual and society have vital interest in orders passed by the courts in anticipatory bail applications.

120. It is imperative for the High Courts through its judicial academies to periodically organise workshops, symposiums, seminars and lectures by the experts to sensitise judicial officers, police officers and investigating officers so that they can properly comprehend the importance of personal liberty vis-à-vis social interests. They must learn to maintain fine balance between the personal liberty and the social interests"

41. It is, thus, too late in the day to accept an objection that this Court may not issue any direction which may be perceived to be of legislative nature even if it is necessary to enforce fundamental rights under Articles 14 and 21 of the Constitution.

Further consideration of potential impact of working of Atrocities Act on spreading casteism

42. In the light of submissions made, it is

necessary to express concern that working of the Atrocities Act should not result in perpetuating casteism which can have an adverse impact on integration of the society and the constitutional values. Such concern has also been expressed by this Court on several occasions. Secularism is a basic feature of the Constitution. Irrespective of caste or religion, the Constitution guarantees equality in its preamble as well as other provisions including Articles 14-16. The Constitution envisages a cohesive, unified and casteless society.

43. Dr. B.R. Ambedkar, in his famous speech on 25th November, 1949, on conclusion of deliberations of the Constituent Assembly, stated :

"These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them.

…. … … … … … … …

In India there are castes. The castes are antinational. In the first place because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint."

44. In **Indra Sawhney and Ors versus Union of India and Ors. (**1992 Supp(3) SCC 217)this Court observed:

"339. Secularism is the basic feature of the Indian Constitution. It envisages a cohesive, unified and casteless society. The Constitution has completely obliterated the caste system and has assured equality before law. Reference to caste under Articles 15(2) and 16(2) is only to obliterate it. The prohibition on the ground of caste is total, the mandate is that never again in this country caste shall raise its head. Even access to shops on the ground of caste is prohibited. The progress of India has been from casteism to egalitarianism — from feudalism to freedom.

340. The caste system which has been put in the grave by the framers of the Constitution is trying to raise its ugly head in various forms. Caste poses a serious threat to the secularism and as a consequence to the integrity of the country. Those who do not learn from the events of history are doomed to suffer again. It is, therefore, of utmost importance for the people of India to adhere in letter and spirit to the Constitution which has moulded this country into a sovereign, socialist, secular democratic republic and has promised to secure to all its citizens justice, social,

economic and political, equality of status and of opportunity."

45. In the Report of the National Commission to Review the Working of the Constitution one of the failures of the working of the Constitution noted was that the elections continued to be fought on caste lines. The said observations have been quoted in **People's Union for Civil Liberties (PUCL) and Anr. Etc. versus Union of India and Anr.** (2003)4 SCC 399)as follows:

"20. It is to be stated that similar views are expressed in the Report submitted in March 2002 by the National Commission to Review the Working of the Constitution appointed by the Union Government for reviewing the working of the Constitution. Relevant recommendations are as under:

"Successes and failures

4.4. During the last half-a-century, there have been thirteen general elections to the Lok Sabha and a much large number to various State Legislative Assemblies. We can take legitimate pride in that these have been successful and generally acknowledged to be free and fair. But, the experience has also brought to the fore many distortions, some very serious, generating a deep concern in many quarters. **There are constant references to the unhealthy role of money power, muscle power and mafia power and to criminalisation, corruption, communalism and casteism."**

46. The speech of the then Prime Minister Shri Atal Behari Vajpayee on this aspect was also noted in para 48 of the above judgment which is as follows:

"Mr Divan in course of his arguments, had raised some submissions on the subject — 'Criminalisation of Politics' and participation of criminals in the electoral process as candidates and in that connection, he had brought to our notice the order of the Election Commission of India dated 28-8-1997. ... — 'Whither Accountability', published in The Pioneer, Shri Atal Behari Vajpayee had called for a national debate on all the possible alternatives for systematic changes to cleanse our democratic governing system of its present mess. He has expressed his dissatisfaction that neither Parliament nor the State Vidhan Sabhas are doing, with any degree of competence or commitment, what they are primarily meant to do: legislative function. According to him, barring exceptions, those who get elected to these democratic institutions are neither trained, formally or informally, in law-making nor do they seem to have an inclination to develop the necessary knowledge and competence in their profession. He has further indicated that those individuals in society who are generally interested in serving the electorate and performing legislative functions are finding it increasingly difficult to succeed in today's electoral system and **the electoral system has been almost totally subverted by money power, muscle power, and vote bank considerations of castes and communities.** Shri Vajpayee also had indicated that the corruption in the governing structures has, therefore, corroded the very core of elective democracy. According to him, the certainty of scope of corruption in the governing

structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and coalitions often without the popular mandate. Yet they capture and survive in power due to inherent systematic flows. **He further stated that casteism, corruption and politicisation have eroded the integrity and efficacy of our civil service structure also. The manifestos, policies, programmes of the political parties have lost meaning in the present system of governance due to lack of accountability."**

47. We are thus of the view that interpretation of the Atrocities Act should promote constitutional values of fraternity and integration of the society. This may require check on false implications of innocent citizens on caste lines.

Issue of anticipatory bail

48. In the light of the above, we first consider the question whether there is an absolute bar to the grant of anticipatory bail in which case the contention for revisiting the validity of the said provision may need consideration in the light of decisions of this Court relied upon by learned amicus.

49. Section 18 of the Atrocities Act containing bar against grant of anticipatory bail is as follows:

"Section 438 of the Code not to apply to persons committing an offence under the Act. – Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

50. In **Balothia** (supra), Section 18 was held not to be violative of Articles 14 and 21 of the Constitution. It was observed that exclusion of Section 438 Cr.P.C. in connection with offences under the Act had to be viewed in the context of prevailing social conditions and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate the victims and prevent or obstruct them in the prosecution of these offenders, if they are granted anticipatory bail. Referring to the Statement of Objects and Reasons, it was observed that members of SC and ST are vulnerable and are denied number of civil rights and they are subjected to humiliation and harassment. They assert their rights and demand statutory protection. Vested interests try to cow them down and terrorise them. There was increase in disturbing trend of commission of atrocities against members of SC and ST. Thus, the persons who are alleged to have committed such offences can misuse their liberty, if anticipatory bail is granted. They can terrorise the victims and prevent investigation.

51. Though we find merit in the submission of learned amicus that judgment of this Court in **Ram Krishna Balothia (supra)** may need to be revisited in view of judgments of this Court, particularly **Maneka Gandhi** (supra), we consider it unnecessary to refer the matter to the larger Bench as the judgment can be clarified in the light of law laid down by this Court. Exclusion of anticipatory bail has been justified only to

protect victims of perpetrators of crime. It cannot be read as being applicable to those who are falsely implicated for extraneous reasons and have not committed the offence on prima facie independent scrutiny. Access to justice being a fundamental right, grain has to be separated from the chaff, by an independent mechanism. Liberty of one citizen cannot be placed at the whim of another. Law has to protect the innocent and punish the guilty. Thus considered, exclusion has to be applied to genuine cases and not to false ones. This will help in achieving the object of the law.

52. If the provisions of the Act are compared as against certain other enactments where similar restrictions are put on consideration of matter for grant of anticipatory bail or grant of regular bail, an interesting situation emerges. Section 17(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 ("TADA" for short - since repealed) stated "…nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under the provisions of this Act…". Section 17(5) of the TADA Act put further restriction on a person accused of an offence punishable under the TADA Act being released on regular bail and one of the conditions was: Where the Public Prosecutor opposes the application for grant of bail, the court had to be satisfied that there were reasonable grounds for believing that the accused was not guilty of such offence and that he was not likely to commit any such offence while on bail. The provisions of the Unlawful Activities (Prevention) Act, 1967 (for short "the UAPA Act"), namely under Section 43D(4) and 43D(5) are similar to the aforesaid Sections 17(4) and 17(5) of the TADA Act. Similarly the provisions of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act"), namely, Sections 21(3) and 21(4) are also identical in terms. Thus the impact of release of a person accused of having committed the concerned offences under these special enactments was dealt with by the Legislature not only at the stage of consideration of the matter for anticipatory bail but even after the arrest at the stage of grant of regular bail as well. The provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act) are, however, distinct in that the restriction under Section 37 is at a stage where the matter is considered for grant of regular bail. No such restriction is thought of and put in place at the stage of consideration of matter for grant of anticipatory bail. On the other hand, the provisions of the Act are diametrically opposite and the restriction in Section 18 is only at the stage of consideration of matter for anticipatory bail and no such restriction is available while the matter is to be considered for grant of regular bail. Theoretically it is possible to say that an application under Section 438 of the Code may be rejected by the Court because of express restrictions in Section 18 of the Act but the very same court can grant bail under the provisions of Section 437 of the Code, immediately after the arrest. There seems to be no logical rationale behind this situation of putting a fetter on grant of anticipatory bail whereas there is no such prohibition in any way for grant of regular bail. It is, therefore, all the more necessary

and important that the express exclusion under Section 18 of the Act is limited to genuine cases and inapplicable where no prima facie case is made out.

53. We have no quarrel with the proposition laid down in the said judgment that persons committing offences under the Atrocities Act ought not to be granted anticipatory bail in the same manner in which the anticipatory bail is granted in other cases punishable with similar sentence. Still, the question remains whether in cases where there is no prima facie case under the Act, bar under Section 18 operates can be considered. We are unable to read the said judgment as laying down that exclusion is applicable to such situations. If a person is able to show that, prima facie, he has not committed any atrocity against a member of SC and ST and that the allegation was mala fide and prima facie false and that prima facie no case was made out, we do not see any justification for applying Section 18 in such cases. Consideration in the mind of this Court in **Balothia** (supra) is that the perpetrators of atrocities should not be granted anticipatory bail so that they may not terrorise the victims. Consistent with this view, it can certainly be said that innocent persons against whom there was no prima facie case or patently false case cannot be subjected to the same treatment as the persons who are prima facie perpetrators of the crime.

54. In view of decisions in **Vilas Pandurang Pawar (supra)** and **Shakuntla Devi (supra),** learned ASG has rightly stated that there is no absolute bar to grant anticipatory bail if no prima facie case is made out inspite of validity of Section 18 of the Atrocities Act being upheld.

55. In **Hema Mishra versus State of U.P.** (2014) 4 SCC 453 – paras 21, 34 to 36)**,** it has been expressly laid down that inspite of the statutory bar against grant of anticipatory bail, a Constitutional Court is not debarred from exercising its jurisdiction to grant relief. This Court considered the issue of anticipatory bail where such provision does not apply. Reference was made to the view in **Lal Kamlendra Pratap Singh versus State of Uttar Pradesh and Ors.** (2009) 4 SCC 437)to the effect that interim bail can be granted even in such cases without accused being actually arrested. Reference was also made to **Kartar Singh versus State of Punjab** (1994) 3 SCC 569 – para 368 (17)to the effect that jurisdiction under Article 226 is not barred even in such cases.

56. It is well settled that a statute is to be read in the context of the background and its object. Instead of literal interpretation, the court may, in the present context, prefer purposive interpretation to achieve the object of law. Doctrine of proportionality is well known for advancing the object of Articles 14 and 21. A procedural penal provision affecting liberty of citizen must be read consistent with the concept of fairness and reasonableness.

57. A Constitution Bench of this Court in **Kedar Nath versus State of Bihar (**AIR 1962 SC 955 : 1962 Supp (2) SCR 769)observed:

"26. It is also well settled that in

interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress [vide (1) Bengal Immunity Company Limited v. State of Bihar[1955 2 SCR 603] and (2) R.M.D. Chamarbaugwala v. Union of India[1957 SCR 930]. Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence.

27. We may also consider the legal position, as it should emerge, assuming that the main Section 124-A is capable of being construed in the literal sense in which the Judicial Committee of the Privy Council has construed it in the cases referred to above. On that assumption, is it not open to this Court to construe the section in such a way as to avoid the alleged unconstitutionality by limiting the application of the section in the way in which the Federal Court intended to apply it? In our opinion, there are decisions of this Court which amply justify our taking that view of the legal position. This Court, in the case of R.M.D. Chamarbaugwalla v. Union of India has examined in detail the several decisions of this Court, as also of the courts in America and Australia. After examining those decisions, this Court came to the conclusion that if the impugned provisions of a law come within the constitutional powers of the legislature by adopting one view of the words of the impugned section or Act, the Court will take that view of the matter and limit its application accordingly, in preference to the view which would make it unconstitutional on another view of the interpretation of the words in question. In that case, the Court had to choose between a definition of the expression "Prize Competitions" as limited to those competitions which were of a gambling character and those which were not. The Court chose the former interpretation which made the rest of the provisions of the Act, Prize Competitions Act (42 of 1955), with particular reference to Sections 4 and 5 of the Act and Rules 11 and 12 framed thereunder, valid. The Court held that the penalty attached only to those competitions which involved the element of gambling and those competitions in which success depended to a substantial degree on skill were held to be out of the purview of the Act. **The ratio decidendi in that case, in our opinion, applied to the case in hand insofar as we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace."**

58. In the present context, wisdom of legislature in creating an offence cannot be questioned but individual justice is a judicial function depending on facts. As a policy, anticipatory bail may be excluded but exclusion cannot be intended to apply where a patently malafide version is put forward. Courts have inherent jurisdiction to do justice

and this jurisdiction cannot be intended to be excluded. Thus, exclusion of Court's jurisdiction is not to be read as absolute.

59. There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be black mailed with the threat of a false case being registered under the Atrocities Act, without any protection of law. This cannot be the scenario in a civilized society. Similarly, even a non public servant can be black mailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and liberty. Thus, literal interpretation cannot be preferred in the present situation.

60. Applying the above well known principle, we hold that the exclusion of Section 438 Cr.P.C. applies when a prima facie case of commission of offence under the Atrocities Act is made. On the other hand, if it can be shown that the allegations are prima facie motivated and false, such exclusion will not apply.

61. The Gujarat High Court in **Pankaj D Suthar** (supra) considered the question whether Section 18 of the Atrocities Act excludes grant of anticipatory bail when on prima facie judicial scrutiny, allegations are found to be not free from doubt. The said question was answered as follows:

"**4. Now undoubtedly it is true that the alleged offence under the Atrocities Act is a very serious offence and if indeed the complaint is ultimately found to be truthful and genuine one, there cannot be any two views about the strictest possible view taken in such matter.** Not only that but if the complaint is also found to be prima facie dependable one that is to say, free from doubt, then as a warranted under Section 18 of the Atrocities Act, even the anticipatory bail to such accused has got to be refused. **In fact, the Parliament in its utmost wisdom has rightly evidenced great concern and anxiety over the atrocities which are going on unabatedly on S.Cs. & S.Ts. by inserting the provisions under Section 18 of the Atrocities Act disabling the accused from obtaining the anticipatory bail under Section 438 of the Code. This indeed is a welcome step and in accordance with the axiomatic truth, viz., 'the disease grown desperately must be treated desperately else not'.** The disease of commission of offences by way of atrocities against the members of S.Cs. and S.Ts. are unabatedly going on since last hundreds of years and in the recent past have become alarmingly increasing and has become so rampant, breath taking and has reached such a desperate pass that it indeed needed a very stringent and

desperate legislation which could help save the situation by effectively providing the legal protection to such cursed, crushed and downtrodden members of S.Cs. & S.Ts. communities. Under such circumstances, it is equally the paramount duty of every Court to see that it responds to legislative concern and call and ensure effective implementation of the Atrocities Act, by seeing that the provisions enshrined in the said Act are duly complied with. **But then, what according to this Court is the most welcome step by way of collective wisdom of the Parliament in ushering social beneficial legislation cannot be permitted to be abused and converted into an instrument to blackmail to wreak some personal vengeance for settling and scoring personal vendetta or by way of some counter-blasts against opponents some public servants, as prima facie appears to have been done in the present case. The basic questions in such circumstances therefore are- Whether a torch which is lighted to dispel the darkness can it be permitted to set on fire the innocent surroundings? Whether a knife an instrument which is meant for saving human life by using the same in the course of operation by a surgeon, can it be permitted to be used in taking the life of some innocent?** The very same fundamental question arises in the facts and circumstances of this case also, viz., 'whether any statute like the present Atrocities Act, especially enacted for the purposes of protecting weaker sections of the society hailing from S.C. & S.T. communities can be permitted to be abused by conveniently converting the same into a weapon of wrecking personal vengeance on the opponents?' **The answer to this question is undoubtedly and obviously 'No'. Under such circumstances, if the Courts are to apply such provision of Section 18 of the Atrocities Act quite mechanically and blindly merely guided by some general and popular prejudices based on some words and tricky accusations in the complaint on mere assumptions without intelligently scrutinising and testing the probabilities, truthfulness, genuineness and otherwise dependability of the accusations in the complaint etc., then it would be simply unwittingly and credulously playing in the hands of some scheming unscrupulous complainant in denying the justice.** Virtually, it would be tentamount to abdicating and relegating its judicial duty, fanction of doing justice in such matters in favour and hands of such unscrupulous complainant by making him a Judge in his own cause. This is simply unthinkable and therefore impermissible. **Whether the provisions of any particular Act and for that purpose the rules made thereunder are applicable to the facts of a particular case or not, is always and unquestionably a matter which lies strictly and exclusively within the domain of 'judicial consideration-discretion' and therefore neither mere allegations made in the complainant by themselves nor bare denials by the accused can either automatically vest or divest the Court from discharging its ultimate judicial function-duty to closely scrutinise and test the prima facie dependability of the allegations made in the complaint and reach its own**

decision.

5. Now reverting to the contents of the complaint and attending circumstances high lighted by Mr. Pardiwala, the learned Advocate for the petitioner-accused, the same prima facie clearly demonstrates that at this stage the story revealed by the complainant docs not appear to be free from doubt. If that is so, very applicability of the Atrocities Act is rendered doubtful. If that is the situation, then to refuse the anticipatory bail on mere accusations and assumptions that the petitioner-accused has committed an offence under the Atrocities Act would be absolutely illegal, unjudicious, unjust and ultimately a travesty of justice. No Court can ever embark upon such hazards of refusing anticipatory bail on mere doubtful accusations and assumptions that Atrocities Act is applicable. No Court could and should be permitted to bo 'spoon-fed' by the complainant whatever he wants to feed and swallow whatever he wants the Court to gulp down to attain and secure his unjust mala fide motivated ends. **Section 18 of the Atrocities Act gives a vision, direction and mandate to the Court as to the cases where the anticipatory bail must be refused, but it does not and it certainly cannot whisk away the right of any Court to have a prima facie judicial scrutiny of the allegations made in the complaint. Nor can it under its hunch permit provisions of law being abused to suit the mala fide motivated ends of some unscrupulous complainant. In this case also if indeed this Court been satisfied with the story revealed by the complainant as truthful and genuine, then anticipatory bail would have been surely rejected right forth as a matter of course, but since the submissions of Mr. Pardiwala have considerable force, this Court has no alternative but to accept the same in the larger interests of justice to see that merely on the count of the firsthand prejudice attempted to be caused by allegations in the complaint, the petitioner-accused is not denied his precious right of the anticipatory bail.**

6. In view of the aforesaid discussion, though in a way the learned A.P.P. is absolutely right when he submitted that no anticipatory bail can be granted to the petitioner-accused because of Section 18 of the Atrocities Act, in the opinion of this Court, his submission fails because at this stage it is too difficult to rule out the probability of the accusations levelled by the complainant against the petitioner-accused having committed an offence under the Atrocities Act being false, vexatious and by way of counterblast as stemming from the ulterior motive to humiliate, disgrace and demoralise the petitioner-accused who is a public servant. When that is the result and position, there is no question of bypassing of Section 18 of the Atrocities Act arises as apprehended by the learned A.P.P. Taking into consideration the facts and circumstances of this particular case, and in view of the aforesaid discussion, this Misc. Criminal Application for anticipatory bail deserves to be allowed and is allowed accordingly"

62. The above view was reiterated in **Dr. N.T. Desai** (supra), after considering the judgment of this Court in **Balothia** (supra). It was observed that even taking Section 18 of the Atrocities Act to be valid, if the Court, prima-facie, found the story of complainant to be doubtful, the accused could not be allowed to be arrested. Doing so would be unjudicial. It was observed;-

"**8. To deal first with the preliminary objection raised by the learned A.P.P. Mr. Desai, it may be stated that the Supreme Court's decision rendered in the case of State of M.P. & Anr. v. Ramkishan Balothia (supra) stands on altogether quite different footing where the vires of Section 18 of the Act came to be decided. The Apex Court has ultimately held that Section 18 of the Act was not ultra vires. This Court is indeed in respectful agreement with the aforesaid decision of the Supreme Court….. ….. …. … …. … … …**

But then having closely examined the complaint more particularly in the context and light of the backdrop of the peculiar facts situation highlighted by the petitioner leading ultimately to filing of the complaint, this Court prime facie at the very outset is at some doubt about the complainant's story and yet if it readily, mechanically like a gullible child accepts the allegations made in the complaint at its face value, it would be surely blundering and wandering away from the path of bail-justice, making itself readily available in the hands of the scheming complainant who on mere asking will get arrested accused on some false allegations of having committed non-bailable offence, under the Atrocity Act, meaning thereby the Court rendering itself quite deaf, dumb and blind mortgaging its commonsense, ordinary prudence with no perception for justice, denying the rightful protection to the accused becoming ready pawn pliable in the hands of sometime scheming, unscrupulous complainants !!! This sort of a surrender to prima facie doubtful allegation in the complaint is not at all a judicial approach, if not unjudicial !!..."

63. The above judgments correctly lays down the scope of exclusion as well as permissibility of anticipatory bail in cases under the Atrocities Act and are consistent with the view we take. Section 18 of the Atrocities Act has, thus, to be read and interpreted in this manner. At this stage, we may note that we have seen a contra view of the Division Bench of the said High Court in **Pravinchandra N Solanki and Ors. versus State of Gujarat** (2012)1 GLR 499)**.** We are unable to accept the said view for the reasons already given and overrule the same.

64. Concept of "Due process" and principles of 8th Amendment of the U.S. Constitution have been read by this Court as part of guarantee under Article 21 of the Constitution. In **State of Punjab versus Dalbir Singh** (2012) 3 SCC 346), it was observed :

"80. It has already been noted hereinabove that in our Constitution the concept of "due

process" was incorporated in view of the judgment of this Court in Maneka Gandhi[(1978) 1 SCC 248] The principles of the Eighth Amendment have also been incorporated in our laws. This has been acknowledged by the Constitution Bench of this Court in Sunil Batra [(1978) 4 SCC 494] In Sunil Batra case, SCC para 52 at p. 518 of the Report, Krishna Iyer, J. speaking for the Bench held as follows:

"52. True, our Constitution has no 'due process' clause or the Eighth Amendment; but, in this branch of law, after Cooper [Rustom Cavasjee Cooper vs. UOI (1970) 1 SCC 248] and Maneka Gandhi the consequence is the same. For what is punitively outrageous, scandalisingly unusual or cruel and rehabilitatively counterproductive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19 and if inflicted with procedural unfairness, falls foul of Article 21."

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84. The principle of "due process" is an emanation from the Magna Carta doctrine. This was accepted in American jurisprudence (see Munn v. Illinois [24 L Ed77], L Ed p. 90 : US p. 142). Again this was acknowledged in Planned Parenthood of Southeastern Pennsylvania v. Casey [120 L Ed 2d 674] wherein the American Supreme Court observed as follows:

"The guarantees of due process, though having their roots in Magna Carta's 'per legem terrae' and considered as procedural safeguards 'against executive usurpation and tyranny', have in this country 'become bulwarks also against arbitrary legislation'."

85. All these concepts of "due process" and the concept of a just, fair and reasonable law have been read by this Court into the guarantee under Articles 14 and 21 of the Constitution…."

65. Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court. In **Noor Aga versus State of Punjab** (2008) 16 SCC 417)**,** it was observed:

"33. Presumption of innocence is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. It, however, cannot per se be equated with the fundamental right and liberty adumbrated in Article 21 of the Constitution of India. It, having regard to the extent thereof, would not militate against other statutory provisions (which, of course, must be read in the light of the constitutional guarantees as adumbrated in Articles 20 and 21 of the Constitution of India).

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35. A right to be presumed innocent, subject to the establishment of certain foundational facts and burden of proof, to a certain extent, can be placed on an accused. It must be construed having regard to the other international conventions and having regard to the fact that it has been held to be

constitutional. Thus, a statute may be constitutional but a prosecution thereunder may not be held to be one. Indisputably, civil liberties and rights of citizens must be upheld.

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43. The issue of reverse burden vis-à-vis the human rights regime must also be noticed. The approach of the common law is that it is the duty of the prosecution to prove a person guilty. Indisputably, this common law principle was subject to parliamentary legislation to the contrary. The concern now shown worldwide is that Parliaments had frequently been making inroads on the basic presumption of innocence. Unfortunately, unlike other countries no systematic study has been made in India as to how many offences are triable in the court where the legal burden is on the accused. In the United Kingdom it is stated that about 40% of the offences triable in the Crown Court appear to violate the presumption. (See "The Presumption of Innocence in English Criminal Law", 1996, CRIM. L. REV. 306, at p. 309.)

44. In Article 11(1) of the Universal Declaration of Human Rights (1948) it is stated:

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law…."

Similar provisions have been made in Article 6.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and Article 14.2 of the International Covenant on Civil and Political Rights (1966).

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47. We may notice that Sachs, J. in State v. Coetzee [1997(2) LRC 593] explained the significance of the presumption of innocence in the following terms: "There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book. … Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption ... the list is unfortunately almost endless, and nothing would be left of the presumption of

innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases."

In view of the above, an accused is certainly entitled to show to the Court, if he apprehends arrest, that case of the complainant was motivated. If it can be so shown there is no reason that the Court is not able to protect liberty of such a person. There cannot be any mandate under the law for arrest of an innocent. The law has to be interpreted accordingly.

66. We have already noted the working of the Act in the last three decades. It has been judicially acknowledged that there are instances of abuse of the Act by vested interests against political opponents in Panchayat, Municipal or other elections, to settle private civil disputes arising out of property, monetary disputes, employment disputes and seniority disputes (Dhiren Praful bhai (supra). It may be noticed that by way of rampant misuse complaints are 'largely being filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests' (Sharad (supra).

67. Innocent citizens are termed as accused, which is not intended by the legislature. The legislature never intended to use the Atrocities Act as an instrument to blackmail or to wreak personal vengeance. The Act is also not intended to deter public servants from performing their bona fide duties. Thus, unless exclusion of anticipatory bail is limited to genuine cases and inapplicable to cases where there is no prima facie case was made out, there will be no protection available to innocent citizens. Thus, limiting the exclusion of anticipatory bail in such cases is essential for protection of fundamental right of life and liberty under Article 21 of the Constitution.

68. Accordingly, we have no hesitation in holding that exclusion of provision for anticipatory bail will not apply when no prima facie case is made out or the case is patently false or mala fide. This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In doing so, we are reiterating a well established principle of law that protection of innocent against abuse of law is part of inherent jurisdiction of the Court being part of access to justice and protection of liberty against any oppressive action such as mala fide arrest. In doing so, we are not diluting the efficacy of Section 18 in deserving cases where Court finds a case to be prima facie genuine warranting custodial interrogation and pre-trial arrest and detention.

69. In **Lal Kamlendra Pratap**(supra)**,** this Court held that even if there is no provision for anticipatory bail, the Court can grant interim bail in suitable cases. It was observed :

"6. Learned counsel for the appellant apprehends that the appellant will be arrested as there is no provision for anticipatory bail in the State of U.P. He placed reliance on a decision of the Allahabad High Court in Amarawati v. State of U.P. [2005 Crl LJ 755 (All)] in which a seven-Judge Full Bench of the Allahabad High Court held that the court, if it deems

fit in the facts and circumstances of the case, may grant interim bail pending final disposal of the bail application. The Full Bench also observed that arrest is not a must whenever an FIR of a cognizable offence is lodged. The Full Bench placed reliance on the decision of this Court in Joginder Kumar v. State of U.P.[(1992) 4 SCC 260]

7. We fully agree with the view of the High Court in Amarawati case and we direct that the said decision be followed by all courts in U.P. in letter and spirit, particularly since the provision for anticipatory bail does not exist in U.P.

8. In appropriate cases interim bail should be granted pending disposal of the final bail application, since arrest and detention of a person can cause irreparable loss to a person's reputation, as held by this Court in Joginder Kumar case. Also, arrest is not a must in all cases of cognizable offences, and in deciding whether to arrest or not the police officer must be guided and act according to the principles laid down in Joginder Kumar case."

70. In **Vikas Pandurang case** (supra), it was observed :

"10. …..When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail**, unless it prima facie finds that such an offence is not made out."**

71. Law laid down by this Court in **Joginder Kumar** (supra), **Arnesh Kumar** (supra), **Rini Johar** (supra), **Siddharam Satlingappa** (supra) to check uncalled for arrest cannot be ignored and clearly applies to arrests under the Atrocities Act. Protection of innocent is as important as punishing the guilty.

72. In **Dadu alias Tulsidas versus State of Maharashtra** (2000)8SCC 437)while considering the validity of exclusion of bail by an appellate court in NDPS cases, this Court noted the submission that the legislature could not take away judicial powers by statutory prohibition against suspending the sentence during the pendency of the appeal. This is an essential judicial function. The relevant observations are:

"16. Learned counsel appearing for the parties were more concerned with the adverse effect of the section on the powers of the judiciary. Impliedly conceding that the section was valid so far as it pertained to the appropriate Government, it was argued that the legislature is not competent to take away the judicial powers of the court by statutory prohibition as is shown to have been done vide the impugned section. Awarding sentence, upon conviction, is concededly a judicial function to be discharged by the courts of law established in the country. It is always a matter of judicial discretion, however, subject to any mandatory minimum sentence prescribed by the law. The award of sentence by a criminal court wherever made subject to the right of appeal cannot be interfered or intermeddled with in a way which amounts to not only interference but actually taking away the power of judicial review. Awarding

the sentence and consideration of its legality or adequacy in appeal is essentially a judicial function embracing within its ambit the power to suspend the sentence under the peculiar circumstances of each case, pending the disposal of the appeal."

73. On the above reasoning, it is difficult to hold that the legislature wanted exclusion of judicial function of going into correctness or otherwise of the allegation in a criminal case before liberty of a person is taken away. The legislature could not have intended that any unilateral version should be treated as conclusive and the person making such allegation should be the sole judge of its correctness to the exclusion of judicial function of courts of assessing the truth or otherwise of the rival contentions before personal liberty of a person is adversely affected.

74. It is thus patent that in cases under the Atrocities Act, exclusion of right of anticipatory bail is applicable only if the case is shown to bona fide and that prima facie it falls under the Atrocities Act and not otherwise. Section 18 does not apply where there is no prima facie case or to cases of patent false implication or when the allegation is motivated for extraneous reasons. We approve the view of the Gujarat High Court in **Pankaj D Suthar (supra)** and **Dr. N.T. Desai (supra)**. We clarify the Judgments in **Balothia** (supra) and **Manju Devi** (supra) to this effect.

Issue of safeguards against arrest and false implications

75. We may now deal with the issue as to what directions, if any, are necessary, apart from clarifying the legal position with regard to anticipatory bail. The under privileged need to be protected against any atrocities to give effect to the Constitutional ideals. The Atrocities Act has been enacted with this objective. At the same time, the said Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by police for extraneous reasons against other citizens as has been found on several occasions in decisions referred to above. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee. Law should not result in caste hatred. The preamble to the Constitution, which is the guiding star for interpretation, incorporates the values of liberty, equality and fraternity.

76. We are satisfied, in the light of statistics already referred as well as cited decisions and observations of the Standing Committee of Parliament that there is need to safeguard innocent citizens against false implication and unnecessary arrest for which there is no sanction under the law which is against the constitutional guarantee and law of arrest laid down by this Court.

77. We are conscious that normal rule is to register FIR if any information discloses commission of a cognizable offence. There are however, exceptions to this rule. In **Lalita Kumari versus State of U.P.** (2014) 2 SCC 1)**,** it was observed :

"115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates

the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

xxxx xxxx xxxx

117. In the context of offences relating to corruption, this Court in P. Sirajuddin [(1970) 1 SCC 595] expressed the need for a preliminary inquiry before proceeding against public servants.

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120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

78. The above view is consistent with earlier judgments in **State of U.P. versus Bhagwant Kishore Joshi (**AIR 1964 SC 221 = 1964(3) SCR 221)and **P. Sirajuddin versus State of Madras** (1970) 1 SCC 595)**.** In **Bhagwant Kishore** it was observed:

"… … …In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a Police Officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. No doubt, Section 5A of the Prevention of Corruption Act was enacted for preventing harassment to a Government servant and with this object in view investigation, except with the previous permission of a Magistrate, is not permitted to be made by an officer below the rank of a Deputy Superintendent of Police. Where however, a Police Officer makes some preliminary enquiries, does not arrest or even question an accused or question any witnesses but merely makes a few discreet enquiries or looks at some documents without making any notes, it is difficult to

visualize how any possible harassment or even embarrassment would result therefrom to the suspect or the accused person. … …"

In **Sirajuddin** (supra) it was observed:

"17. … …Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti- Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can of taken to an enquiry by officers of this department but any such enquiry must proceed in a fair and reasonable manner. … …"

79. We are of the view that cases under the Atrocities Act also fall in exceptional category where preliminary inquiry must be held. Such inquiry must be time-bound and should not exceed seven days in view of directions in **Lalita Kumari** (supra).

80. Even if preliminary inquiry is held and case is registered, arrest is not a must as we have already noted. In **Lalita Kumari** (supra) it was observed :

"107. While registration of FIR is mandatory, arrest of the accused immediately on registration of FIR is not at all mandatory. In fact, registration of FIR and arrest of an accused person are two entirely different concepts under the law, and there are several safeguards available against arrest. Moreover, it is also pertinent to mention that an accused person also has a right to apply for "anticipatory bail" under the provisions of Section 438 of the Code if the conditions mentioned therein are satisfied. Thus, in appropriate cases, he can avoid the arrest under that provision by obtaining an order from the court."

81. Accordingly, we direct that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a public servant, without written permission of the Senior Superintendent of Police of the District. Such permissions must be granted for recorded reasons which must be served on the person to be arrested and to the concerned court. As and when a person arrested is produced before the Magistrate, the Magistrate must apply his mind to the reasons recorded and further detention should be allowed only if the reasons recorded are found to be valid. To avoid false implication, before FIR is registered, preliminary enquiry may be made whether the case falls in the parameters of the Atrocities Act and is not frivolous or motivated.

Consideration of present case

82. As far as the present case is concerned, we find merit in the submissions of learned amicus that the proceedings against the appellant are liable to be quashed.

Conclusions

83. Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in **Pankaj D Suthar** (supra) and **Dr. N.T. Desai** (supra) and clarify the judgments of this Court in **Balothia** (supra) and **Manju Devi** (supra);

iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt. The above directions are prospective.

84. Before parting with the judgment, we place on record our sincere appreciation for the invaluable assistance rendered by learned Amicus and also assistance rendered by learned counsel who have appeared in this case.

The appeal is accordingly allowed in the above terms.

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