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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART - 7 (15TH APRIL 2019)

Table Of Contents

Journal Section ..... 57 to 72

Reports of High Court of Andhra Pradesh .....1 to 6

Reports of Supreme Court ..... 187 to 240

Interested Subscribers can E-mail their Articles to

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NOMINAL - INDEX

Anurag Soni Vs. State of Chhattisgarh	(S.C.) 219
Chunduru Bulli Ammayi Vs. Chunduru Srinivasa Rao	(A.P.) 1
Gopala Krishna (D) by Lrs.& Ors.,Vs.Narayanagowda(D)byL.Rs.,& Ors.,	(S.C.) 207
Kushuma Devi Vs. Sheopati Devi (D) & Ors	(S.C.) 196
Manoj Kumar Vs. State of Uttarakhand	(S.C.) 193
Nutan Gautam Vs. Prakash Gautam	(S.C.) 189
P. Surendran Vs. State Inspector of Police	(S.C.) 187
Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan&Ors	(S.C.) 199
Rupali Devi Vs. State of Uttar Pradesh & Ors.,	(S.C.) 234
The Vijayawada Machinery Merchants Assn., Vs.TheCommissioner ofI.T.	(A.P.) 3

SUBJECT - INDEX

CIVIL PROCEDURE CODE - PRACTICE AND PROCEDURE - Whether Registry can questioned maintainability of the Petition - Registry could not have exercised such judicial power to answer maintainability of petition, when same was in realm of Court.

Refusal of Registry to register petition and list matter before court - Act of numbering a petition is purely administrative. **(S.C.) 187**

CIVIL PROCEDURE CODE, Order XXVI, Rule 10(A) - EVIDENCE ACT, Sec.73 - Court can exercise its power under Section 73 sparingly and in exceptional cases, more particularly, where either of the parties did not come forward with an application under Order 26 Rule 10(A) CPC. **(A.P.)** ***1***

CONSUMER PROTECTION ACT, 1986 Sec.2(r) - Builder – Possession - Occupancy Certificate - Builder obtained Occupancy Certificate almost 2 years after date stipulated in Apartment Buyer's Agreement - As a consequence, there was a failure to hand over possession of flat to Respondent-Flat Purchaser within a reasonable period - Clear case of deficiency of service on the part of Builder - Flat Purchaser was justified in terminating the Apartment Buyer's Agreement by filing the Consumer Complaint, and cannot be compelled to accept possession whenever it is offered by Builder - Respondent - Purchaser was legally entitled to seek refund of money deposited by him along with appropriate compensation. **(S.C.)** ***199***

CRIMINAL PROCEDURE CODE - Accused/Appellant used to frequently visit house of complainant - On day of incident, both complainant and his wife left for their duties, and their daughter, was alone at the house -Accused entered house and tried to establish forceful physical relations with the deceased and same was strongly resisted by her - Accused - strangulated the deceased by putting the weight of his right hand on throat of deceased - Accused thereafter orchestrated entire incident into a suicide

Held - In absence of any existing enmity between accused and witnesses there exists no ground to question veracity of witnesses or to raise a ground of false implication - Chain of events has been rightly analysed by both the courts below and same leads towards proving culpability of accused – Appeals stand dismissed. **(S.C.)** ***193***

HINDU LAW - Limitation –Suit by purchasers from granddaughter of owner for possession against persons who purchased the property from widow of grandfather – Plaintiffs lost their right after 12 years from the date of opening of succession – Even otherwise before codification of Hindu law grand daughter is not legal heir of male Hindu died intestate in mitakshara law. **(S.C.)** ***207***

HINDU MARRIAGE ACT, Sec. 13(1) (ia) (iii) – Respondent/Husband filed a petition for divorce, which was decreed ex-parte by Trial Court in favour of respondent - By an Interim Order of High Court in an appeal preferred by appellant, husband was permitted to take boy with him to Delhi and to leave him in Boarding House till start of the summer vacations - Further, mother was permitted to take child in summer vacations and leave him in School/Boarding House before reopening of School - Case of appellant that after summer vacation, boy was not inclined to go to Boarding school as he was more attached to his mother.

Held - Child cannot be compelled to join in New Delhi - Respondent is a natural father of child, he is also entitled to visitation rights – Respondent shall be permitted to visit his child and he is entitled to take child from the House of the appellant on any Sunday's and public holiday's - Appeals stand allowed. **(S.C.)** ***189***

INCOME TAX ACT, Secs.2(15), 12A & 12AA and Sec.11 - Appellant / Assesse Society registered under Societies Registration Act - Application filed u/Sec.12AA of Act before Commissioner of Income Tax to avail tax exemption u/Sec.11 stating that some of its objectives are for charitable purpose - Application dismissed by Appellate Tribunal and Commissioner - Hence present appeal, contending that objects and activities of appellant Society comes within the ambit of Cl.(15) of Sec.2 of Act - Hence satisfied requirements of Sec.12A & 12AA and entitled for its registration.

Respondent contends that appellant Society is not rendering any charitable purpose at least to specified public and it does not satisfy requirement of law to be registered u/Sec. 12AA of Act and appellant is not entitled to its registration u/Sec.12AA of Act.

In this case appellant also failed to establish that appellant's activities falls under ambit of Sec.2(15) of Act - Appeal, dismissed. **(A.P.)** ***3***

(INDIAN) PENAL CODE, Sec.376 –Appeal against conviction - Prosecutrix gave consent for sexual intercourse on the promise by the accused that he would marry the prosecutrix- Accused had refused to marry the prosecutrix and performed marriage with another woman - Accused has been convicted for the offence under Section 376 of the IPC.

Held - If it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC - Sentence of 10 years' RI awarded by the courts below is hereby reduced to seven years RI - Both the Courts below have rightly convicted the appellant under Section 376 of the IPC. **(S.C.)** ***219***

INDIAN PENAL CODE, Sec. 498A - CRIMINAL PROCEDURE CODE, Secs.178 & 179 - Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with the parents or other family members.

Held - Sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home - Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences u/Sec.498A of the Indian Penal Code. **(S.C.)** ***234***

RENT CONTROL LAWS - Appellant filed an eviction petition against the respondents – Trial Court decreed the suit and passed the decree for eviction against the respondents - Respondents aggrieved filed Rent Appeal, which was allowed by the Ld. ADJ and the eviction petition filed by the appellant was dismissed - Appellant filed a writ petition in the High Court, whereby, the High Court dismissed the writ petition and affirmed the order passed by the Ld. ADJ in the absence of the appellant – Thereafter, appellant filed an application for recall of the order, which was dismissed by the High Court – Hence present SLP.

Held - Every judicial or/and quasijudicial order passed by the Court/Tribunal/ Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion - Parties to the lis and so also the appellate/ revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order - In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion - High Court while passing the impugned order simply dismissed the writ petition without any discussion - Remand of the case to the High Court for its fresh disposal on merits. **(S.C.)** ***196***

--X--

When is production of ''Succession Certificate'' mandatory?

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Introduction:-

The word ''Debt'' has been defined under sub-section (2) of Section 214 of the Indian Succession Act, which clearly specifies that the word 'Debt' includes any debt except rent, revenue or profits payable in respect of land used for agricultural purpose. Under the Hindu Law, there are two schools. One is ''Dayabhaga'' and another is ''Mitakshara''. ''Dayabhaga'' school exists in Bengal, Assam and some part of Orissa whereas ''Mitakshara'' exists in rest of India. This article is confined to discuss the point when ''production of succession certificate is mandatory''. To answer this point, it is important to the difference between ''Succession'' and ''Survivorship''. The rule is that Succession certificate would be necessary only in case of succession but not in a case of survivorship in a Joint Hindu Family as was observed in Sreeram Rangaiah (died) per LRs Vs. Gajula Krisnaiah - **2006 (1) ALT 186 (D.B.)**. The concept of a birthright (survivorship) at which a person acquires rights on his birth even if the ancestor is still alive is fundamental to an understanding of the coparcenary. See. **B. Chandrakala Vs. A. Anuradha and another – 2015 (5) ALT 383 (DB)**.

''Succession'' and ''Survivorship'':-

The law insofar as it applies to joint family property governed by the Mitakshara school, prior to the amendment of 2005, when a male Hindu dies after the commencement of the Hindu Succession Act, 1956. leaving at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary as was held by the Hon'ble Supreme Court in **Radhamma and others Vs. H.N. Muddukrishna and others- 2019 (2) ALT (SC) 139 (DB)**. The same principle of law is followed in **Devireddy Suryanarayana Reddy (Died) per LRs Vs. Kusum Kasturamma and others** - **2015 (5) ALT 802** holding that whenever, a Hindu male, who is a member of coparcenary, dies before any partition in the family, his interest in coparcenary property would devolve by survivorship on other coparceners and not by succession, under Section 6 of Hindu Succession Act. Under Section 8 of Hindu Succession Act, after partition in Hindu family, the property fallen to the share of one of the coparceners becomes his separate property In case of death of such a Hindu male belonging to Mitakshara, intestate, the property fallen to his share devolves through succession in favour of his Class-I heirs.

By survivorship under Mitakshara law persons acquire by birth an interest in the joint or

coparcenary property. It is needless to state that on 9 September 2005, the Hindu Succession (Amendment Act), 2005 (Amendment Act) came into effect and daughters in a joint Hindu family, governed by Mitakshara law, were granted statutory right in the coparcenary property (being property not partitioned or alienated) of their fathers. Coparcenary begins with a common male ancestor with his lineal descendants in the male line within four degrees counting from and inclusive of such ancestor. The Mitakshara concept of coparcenary is based on the notion of son's birth((in view of amendment daughter's birth also) right in the joint family property. On the death of the coparcenar his interest devolved not upon his legal heirs but upon remaining coparcenars equally. This is called as a right of survivorship.

On the contrary property, right to which accrues not by birth but on the death of the last owner is called as a right of succession . Thus the property which devolves on Sons, daughter, brothers, nephews, uncles, etc., upon the death of the last owner is by way of succession rights. These relations do not take a vested interest in the property by birth. Their right to it arises for the first time on the death of the owner. Succession rights of a Hindu are governed by Hindu Succession Act 1956. Under Section 30 of Hindu Succession Act 1956 any Hindu can can bequeath (give) his share in property by executing a testamentary (by will) document as provided under Indian Succession Act. In case no such documents are executed during life time then property of male and female Hindu is governed by Sec 8 and Sec 16 respectively of Hindu Succession Act 1956.

Case of survivorship not within the ambit of that Indian Succession Act:-

Any case of survivorship not within the ambit of that Indian Succession Act, 1925. Succession Act covers cases of succession only and not of survivorship. Section 214 of Indian Succession Act, 1925 would not apply to a case where the devolution of interest is by survivorship i.e., if the devolution was not by survivorship, the provisions of Section 215 of Indian Succession Act, 1925 will be adopted and a succession certificate would be necessary.

The Hon'ble High Court of Andhra Pradesh under the power conferred under Section 265 of the Act, appointed Subordinate Judges (now Senior Civil Judges) including the Additional Judges in City Civil Courts, ex-officio as District delegates under the Act. As per ROC No.40/SO/72.2, the High Court, under Section 19(1) of Andhra Pradesh Civil Courts Act, 1972, authorized all the subordinate judges to take cognizance of any of the proceedings under India Succession Act, 1925 which cannot be disposed of by the District delegates. This aspect has been clarified by this High Court in CMA No.46 of 2010 dated 20.03.2010.

It is a matter for decision by civil court Question of Succession arises only if protected tenant obtained ownership certificate under Section 38-E of theA.P. (T.A.) Tenancy and Agricultural Lands Act, 1950. Of course, even then, revenue authority cannot decide the question of succession. See. Syed Abdul Majeed @ Mia Pasha and others Vs. Joint Collector-II, Ranga Reddy District and others - 2006 (5) ALT 754.

Sections 214 and 215 of the Indian Succession Act, 1925:-

As to the facts of this case, it is relevant to consider Sections 214 and 215 of the Indian Succession Act, 1925 which read as follows:-

214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.—(1) No Court shall— (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of— (ii) a certificate granted under section 31 or section 32 of the Administrator- General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or (iii) a succession certificate granted under Part X and having the debt sepcified therein, or (iv) a certificate granted under the Succession Certificate Act, 18891 (7 of 1889), or (v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889 having the debt specified therein. (2) The word ''debt'' in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

215. Effect on certificate of subsequent probate or letters of administration.— (1) A grant of probate or letters of administration in respect of an estate shall be deemed to supersede any certificate previously granted under Part X or under the Succession Certificate Act, 1889 (7 of 1889)1, or Bombay Regulation No.VIII of 1827, in respect of any debts or securities included in the estate. (2) When at the time of the grant of the probate or letters any suit or other proceeding instituted by the holder of any such certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding: Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

Important Rulings:-

In **Kotipalli Apparao v. Jakkam Venkanna, (1969) 2 Andh WR 479** wherein it was held by a Hon'ble Bench of the Andhra Pradesh High Court that "Having regard to the aforesaid interpretation of the provisions of Section 214 (1)(b) of the Indian Succession Act by a Bench of this Court, we have to agree with the Court below that it is not open to the petitioner to apply for execution of the decree obtained by the father without obtaining and producing a succession certificate as he claims by succession and not by survivorship." Their Lordships were pleased to hold that "unless a succession certificate is produced the execution proceedings should not be taken by a person who succeeded to the property on the basis of the will executed by the deceased decree-holder."

In **S. Rajyalakshmi vs S. Sitamahalakshmi AIR 1976 AP 361**, it was observed that when the devolution of interest was not by survivorship under Section 214 (1) (a), no decree could be passed unless a succession certificate was produced.

In **Khader Bee and others vs. Mohammad Vazir and others** , 2001 (2) ALT 513, the Hon'ble Court considered the question whether the Succession certificate as contemplated under Sec. 214 of the Indian Succession Act, 1925 is required for the purpose of executing a decree obtained in the suit for partition of immovable properties. It wa held that The word "debt'' has been defined under sub-section (2) of Section 214 of the Indian Succession Act, which clearly specifies that the word ''debt'' includes any debt except rent, revenue

or profits payable in respect of land used for agricultural purpose. The question raised in this revision petition has been considered by this Court in ***Rama Seshagiri Rao vs. N. Kamalakumari*** **- AIR 1982 AP 107**. This Court while interpreting Section 214 of the Indian Succession Act has held as under: 'Where execution petition was filed by the legal representative of the deceased decreeholder for execution of the decree for maintenance with charge the legal representative would not be required to obtain a Succession certificate before executing the decree for maintenance and for execution of a decree for costs. xxx xxx xxx A suit to recover money due on a simple mortgage by sale of the mortgaged property is a suit for recovery of debt, but it is a suit to enforce a charge on immovable property and no Succession certificate need be obtained by the heirs of the mortgagee to recover the money, therefore, an application for execution of a mortgage decree for realisation of the amounts by sale of the mortgaged property is not an application to obtain an order for payment of bebt.'. Untimately, In the present case, it was held that ''execution proceedings have been filed in pursuance of the decree obtained in the suit for partition of immovable properties. Hence, Succession certificate is not required as contemplated under Section 214; since it is not a debt within the meaning of sub-section (2) of Section 214 of the Indian Succession Act.

In another case in ***S. Rajayalakshmi vs. Smt. S. Sitamahalakshmi*** - **AIR 1976 AP 361** , this Court considered the applicability of Section 214 of the Act. This Court held that the Succession certificate is necessary, if a debt is sought to be recovered, for the purpose of other items of the decree, Succession certificate is not necessary.

In **Akula Mabukhan vs Rajamma And Ors** - **AIR 1963 AP 69** . for the proposition, it was held that if the execution petition is already filed by the decree-holder that execution petition could be continued by the legal representative without producing a succession certificate, but once the execution petition is filed by the legal representative himself, the succession certificate cannot be dispensed with therefore, the lower court erred in holding that no succession certificate is required.

In **K. Laxminarayan vs V. Gopalaswami And Anr.** - **AIR 1963 AP 438,** where Hon'ble Sri Justice Kumarayya, J, (as the then was) was pleased to hold that Section 214 would not apply to a case where the devolution of interest is by survivorship i.e., if the devolution was not by survivorship, the provisions of Section 215 will be adopted and a succession certificate would be necessary.

In **Radhamma and others Vs. H.N. Muddukrishna and others**- **2019 (2) ALT(SC) 139 (D.B.)**, it was held that The law insofar as it applies to joint family property governed by the Mitakshara school, prior to the amendment of 2005, when a male Hindu dies after the commencement of the Hindu Succession Act, 1956 leaving at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary. In fact, as was held in **Moturu Umadevi and others Vs. Bandaru Himmath Venkata Kumar and others** , **2017 (3) ALT 574** , t*he succession is governed by the provisions of Section 6 of the Act and not by survivorship.*

In only to To recover a decree debt by a legal heir of deceased decreeholder, production of succession certificate is mandatory, as was held in **Sreemanthula Kesavachari (died) per L.R. Sreemanthula Rajeswaramma v. Yayyavuru Vallamma (died) per L.Rs**.- **2008 (1) ALT 1.** It is thus clear that cases of survivorship not within the ambit of that

Indian Succession Act, 1925. Succession Act covers cases of succession only and not of survivorship.

In ***L.I.C. Of India v. T. Tirupathayya*** **- AIR 1963 AP 353** , this Court held as follows:

'Under the Hindu Law, there is a distinction between succession and the devolution of property by Survivorship. The succession Act, as is indicated in the preamble, covers cases of succession only and cases of survivorship are not within the ambit of that Act. Where a family is a joint Mitakshara family and the amount sought to be recovered is an asset of the joint family, the plaintiff, who claims by survivorship cannot be compelled to take out a succession certificate to enable him to recover the amount.'

In ***Venkatalakshmi v. The Central Bank***5**, the Madras High Court held that:**'The object of taking out a Succession certificate under section 214 of the Indian Succession Act is to give security to the debtors paying the debts due to the deceased and thus facilitate the collection of debts on succession. The purpose of the Act is not to enable litigant parties to have an opportunity of litigating contested questions of title to property. When a Bank is satisfied that the applicant is entitled to collect the debts it should not prescribe onerous conditions which are in no way necessary for its safety.'

In ***Shrimati Sankar v. Pila Debi*** - **76 C.W.N. 400** , the Calcutta High Court held that:'Section 214 (1) (a) of the Indian Succession Act is only a bar to the institution of execution proceeding by a person claiming on Succession. There is no bar to the continuance of execution proceedings which have already been initiated by the deceased Decree Holder.'

In ***Tojraj v. Mt. Rampyari*** **- AIR 1938 NAGPUR 528** , the Bombay High Court Nagpur Bench held that: 'Where a decree-holder dies during the pendency of his application and his heir or legal representative applies for substitution of his name for that of the deceased decree-holder, the Court cannot on that application proceed with the execution unless Succession certificate is produced which falls within the scope of Section 214 (1) (b) of the Indian Succession Act.'

In ***Mathura Prasad Jamuna Prasad v. Ghasi Ram @ Rajen*** **- 1997 M.P.L.J. 187** , the M.P. High Court held that: 'Where the execution sought by the legal heirs of the decree holder after his death, Section 214 (1) (b) is applicable and Succession certificate is necessary.'

In ***Bhaiyaji v. Jogeshwar Dayal Bajpai*** , the Allahabad High Court held that:

'The non-production of the documents mentioned in Section 214 (a) is no bar to a suit, but clause-(b) is a bar for passing of a decree.'

In ***Jadab Bai v. Puranmal*** **- AIR 1944 NAGPUR 243**, the Nagpur High Court held that: 'Where money decree has been obtained by the decree holder, succession certificate has to be obtained by the widow to execute the decree.'

In ***Abdul v. Shamseali*** **- AIR 1942 BOMBAY 285** , the Bombay High Court held that: 'The necessity for obtaining a succession certificate cannot be waived by the parties. The obligation is not merely one in favour of the debtor; it benefits also those interested in the

deceased's estate by requiring that money forming part of the estate shall only be paid to a person who has been considered suitable for the grant of a succession certificate.'

In ***S. Rajyalakshmi v. S. Sitamahalakshm*** **- AIR 1976 AP 361** , the A.P. High Court held that: 'If the representative of the decree holder is not a person on whom the interest has developed by survivorship, it will be necessary for him to obtain a succession certificate to recover a debt in execution proceedings under Section 214 (1) (b), if the execution petition itself is filed by him. Therefore, in a case where an execution application is filed by the legal representative of the deceased, succession certificate would be necessary when a "debt' is sought to be recovered. But when the execution is only for recovery of costs, no succession certificate is essential.'

In ***L.I.C. of India v. T. Tirupathayya*** **(supra)** a Division Bench of this High Court, while considering the scope of Section 214 of the succession Act, 1925, held as follows:

'Under the Hindu Law, there is a distinction between succession and devolution of property by survivorship. The succession Act, as is indicated in the preamble, covers cases of succession only and cases of survivorship are not within the ambit of that Act. Where a family is a joint Mitakshara family and the amount sought to be recovered is an asset of the joint family, the plaintiff, who claims by survivorship, cannot be compelled to take out a succession certificate to enable him to recover the amount.'

In ***S.D. Thapa v. M.P. Regmi*** **- AIR 1958 ASSAM 81** , the Gauhati High Court held that:

'Section 214 of the Indian succession Act only prohibits recovery of a debt against the debtor in the absence of a Probate or succession certificate. Where the suit is not against a debtor the provisions of the section are not attracted, nor does the section speak of any certificate in cases where a Probate has been granted.'

Appeal:- So, by virtue of the aforesaid conferment of powers, the Senior Civil Judges also have been entertaining the succession O.Ps as District delegates. As per Section 384 of the Act, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a succession certificate. **Pasumarthi Srinivas Vs. Nil.; 2017 (2) ALT 523 (Division Bench)**:-Following the letter Roc No.408/SO-3/2009, dated 01.11.2011 of the Registrar General, Andhra Pradesh High Court, Hyderabad, the Government of Andhra Pradesh issued G.O.Ms.No.11 dated 08.02.2012, which reads thus:

ORDER:
The Registrar General, High Court of Andhra Pradesh, Hyderabad, in his letter read above, has forwarded the Draft Notification with regard to the Conferment of powers on Senior Civil Judge Courts to entertain Original Petitions filed under the Indian Succession Act, 1925.

2. The Government after careful examination of the matter have decided to approve the Draft Notification with regard to the Conferment of powers on Senior Civil Judge Courts to entertain Original Petitions filed under the Indian Succession Act, 1925.

3. Accordingly, the following Notification will be published in an Extraordinary issue of the Andhra Pradesh Gazette.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 388 of the Indian Succession Act, 1925 (Central Act 39 of 1925) and of all other powers here unto enabling the Governor of Andhra Pradesh hereby confers powers on all the Principal Senior Civil Judges, where there are more than one Senior Civil Judges Court and Senior Civil Judges Court where only one Court is functioning at such station to entertain original petitions filed under the Indian Succession Act, 1925 and shall exercise the functions of District Judge under Part-X of the said Act within their respective jurisdictions.

So, by virtue of above G.O. the Government in concurrence with the High Court of Andhra Pradesh, by virtue of the powers conferred under Section 388(1) of Indian Succession Act, 1925, have issued notification conferring powers on all the Senior Civil Judges to entertain original petitions filed under Indian Succession Act, 1925 and to exercise the functions of District Judge under Part-X of the said Act within their respective jurisdictions.

Conclusion:- Under the Hindu Law, there is a distinction between succession and the devolution of property by Survivorship. The succession Act, as is indicated in the preamble, covers cases of succession only and cases of survivorship are not within the ambit of that Act. From the above, it is sum up to conclude that Section 214 of the Indian succession Act only prohibits recovery of a debt against the debtor in the absence of a Probate or succession certificate. Where the suit is not against a debtor the provisions of the section are not attracted, nor does the section speak of any certificate in cases where a Probate has been granted. In Muppidi Chandra Mohan Reddy and another Vs. Methuku Santosh, Jangaon District, rep by his SPA Holder and Natural Guardian Methuku Narsimha Rao- **2018 (5) ALT 537,** it was held that Succession certificate is conclusive proof of succession and vests right in such person to claim the properties belonging to deceased. *Section 384 of Indian Succession* **Act, 1925** *is subject to the other provisions of Part X, which means the said section is subject to Section 388 as per which, against the order passed by an inferior Court, an appeal shall lie before the District Judge and not before the High Court.* As I discussed above, 'Section 214 of the Indian Succession Act only prohibits recovery of a debt against the debtor in the absence of a Probate or succession certificate. Where the suit is not against a debtor the provisions of the section are not attracted. As was held in Pasumarthi Srinivas's case (supra), by virtue of G.O. Ms. No.11 dated 08.02.2012 the Government in concurrence with the High Court of Andhra Pradesh, by virtue of the powers conferred under Section 388(1) of Indian Succession Act, 1925, have issued notification conferring powers on all the Senior Civil Judges to entertain original petitions filed under Indian Succession Act, 1925 and to exercise the functions of District Judge under Part-X of the said Act within their respective jurisdictions.

–X–

JUVENILE JUSTICE SYSTEM AND ITS PROGRESSION IN THE WORLD

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INTRODUCTION:

Youth crime is a growing concern. Many young offenders are also victims with complex needs, leading to a public health approach that requires a balance of welfare and justice models. However, around the world, there are variable and inadequate legal frameworks and a lack of a specialist workforce. The UK and other high-income countries worldwide have established forensic child and adolescent psychiatry, a multifaceted discipline incorporating legal, psychiatric and developmental fields. Its adoption of an evidence-based therapeutic intervention philosophy has been associated with greater reductions in recidivism compared with punitive approaches prevalent in some countries worldwide, and it is, therefore, a superior approach to dealing with the problem of juvenile delinquency. Juvenile justice is a fundamental – but often overlooked – component of criminal justice systems. It is also a critical element of successful international legal development models, but in a similar way is not a major focus of many international foreign assistance donors. To be sure, a comprehensive international framework for juvenile justice is in place.

EVOLUTION OF JUVENILE JUSTICE SYSTEM:

During the British period, PopeClement XI in the year 1704 introduced the idea called "The correction and instruction of profligate youth''. LaterQueen Elizabeth who was inspiredby the idea of the Pope established institutions for Juvenile Offenders.
The first Juvenile courts wereestablished in Chicago in the year 1847 under the Juvenile Offenders act and England in 1905.

The legislature state in the USA by the Illonisnamed Juvenile Justice, for the first time,passed Juvenile Courts act. This act was enacted to segregate juvenileoffenders fromadults. The main aim of the act was to give the protection Juvenile.
In the Pre-independent era,King Hammurabi (1792-1750), who was the sixth king of the Babylonian Dynastyestablished separate treatment for Juvenile Offenders. In India, an act named as the Apprentices act, 1850, has stated that the juveniles who are at the age of 10-18, convicted by the court and in the rehabilitation, a process should be given vocational training.The Indian Penal code exempts children who are under the age of 7 years in section 82 and subsequently under section 83 who are in age between 7 to 14 because of the reason that they will not have to attend maturity. The legislature's

intention here is that children don't know what is right and what is wrong. For instance, if the child below the age of the 7 years commits theft, the child cannot be arrested because it is clearly stated in section 82 thatthey are exempted from criminal liability. The Reformatory schools act 1876 and 1897 was enacted for the treatment of offenders. This act states that courts can detain the offenders up to two to seven years, but then if they attain the age of majority, which is at the age of 18 years, they should not be detained and shall be released. The Old act of the Criminal Procedure Code which was enforced thenhas given special treatment for Juvenile Offenders where it probates the Good Juvenile offenders up to the age of 21 years. The Government of India enacted - Children's act with the primary aim to providecare, protection, maintenance, welfare, training, education etc. This act is applicable to the states as well as Union territories. Under this act, a boy is considered as a child who under the age of 16 years and a girl is considered a child under the age of 18 years.

"CHILD" TURNED TO "JUVENILE":

The authors would like to brief about their understanding of the word "Child turned to Juvenile." The word child meanshe/she may be a boy or a girl, who has no knowledge of what he/she is doing and whether it is legal or illegal. The word Juvenile is named after the child who commits the act which is illegal according to law. The child has no knowledge of what he/she was doing but the authors are concerned about the responsibility of the parents as well as educational institutions. Parents have the responsibility to monitor the behaviour of the child. The child might turnits mindset into criminal activities if the child sees violent behaviour in its surroundings (violent act against animals, left alone and has no empathy etc.,).

There are two types of family as per general categorization -Rich and Poor. In the richer family, there will be a lack of manner and empathy amongst them inspite of being well-placed and educated. And on the point of the second category who are poor people, involve in crime because there is lack of support, due to uneducated state, there will be lack of understanding amongst themselves and the society. Children involve in crimes though they have no knowledge of what they are actually doing because of lacking awareness among them. They involve rape because of lack of mannerand lack of fear to the society. The government should take the initiative to spread awareness among children in their school about the consequences of committing a crime.

JUVENILE JUSTICE SYSTEM IN COMMON LAW:

Common law system has developed during the British monarchy where the courts of equity used to deal with cases by applying the equitable principles based on the source of authority in Roman and Natural Law. Thus, the decision made by them are published and collected, by taking the precedents of those published judicial decision the courts are giving remedies or resolving the disputes in the present cases.

In common law, lawyers will make the representation before the judge and also examine

the witness.

JUVENILEDELINQUENCIES:

In every country, the juvenile justice system exists at a point of collision between competing principles. Everywhere, mature adults are treated as moral beings that make choices. These choices may often be ill-informed and may emerge from an impoverished social context, yet western legal traditions insist on treating most individuals in most circumstances as free moral agents and pin responsibility for their actions onto them. To do otherwise would be patronizing and authoritarian: it would be a denial of the individual's essential humanity[1]. Children, on the other hand, are regarded as a force of nature, and not as independent moral agents. They are restrained, supervised, trained and prepared to assume that status when they reach maturity. Even after the flattening of hierarchies that has continued since the 1960s, few parents or teachers have qualms about making choices for young children, especially if they can explain and justify their choices as being in the best interests of the child. Juvenile justice is the site of conflict between these two principles.

FEMALES IN THE JUVENILE JUSTICE SYSTEM:

Although arrests have decreased in recent years for both male and female youth, the rates of decrease are lower for females than for males (Federal Bureau of Investigation, n.d.). This has resulted in an increase in the proportion of juvenile court-involved youth who are female (Snyder &Sickmund, 2006). Concomitant with this heightened prevalence is a scholarship about the strengths and needs of young court-involved females[2]. This study uses a person-centred analytic approach to explore profiles of risk and service use among adolescent females involved in the juvenile justice system and examines associations between latent classes and later outcomes.

Gender-specific services have been recommended to meet the specific needs of females in the juvenile justice system[3]. This approach is responsive to the common risk factors female youth experience and to the environment in which they live. Studies evaluating gender-specific programming are few in number and methodologically limited, but it appears that they may be effective on some outcomes (Zahn, Day, Mihalic, &Tichavsky, 2009). The findings from this study suggest that such strategies, however, must take care to maintain sufficient flexibility to accommodate the multiple profiles likely populating the juvenile justice system.

Much work remains to be done to more completely understand the experiences, presentations, and outcomes of female juvenile court populations. LCA is one method to investigate profiles, and future research can extend these findings through prospective, longitudinal designs. The impact of policies and services designed to improve the lives of girls and young women is largely undetermined; additional work can address these gaps in knowledge.

EFFECTIVENESS OF THE NORMAL JUVENILE JUSTICE SYSTEM:

There is evidence that training and treatment programmes delivered within the framework of juvenile justice, where these have been singled out as worthy of an elaborate scientific evaluation, have a modest effect, on average, in changing the future behaviour of young offenders. Just a few programmes have much larger effects, but these are a small selection from an already select bunch. Comparing behaviour change programmes aimed at juvenile delinquency with programmes in another field such as psychotherapy for adults, it is clear that the effects of the juvenile delinquency Smith—The effectiveness of the juvenile justice system 191 programmes are much smaller. Probably there are fundamental reasons why these effects will always be relatively modest. Young offenders are often unwilling captives. They may not want to change, or may not recognize that a different pathway in life is a realistic possibility for them. Also, the setting of the training or treatment programme may have negative or stigmatizing elements even if the programme itself is entirely constructive. By contrast, most people with mental health problems consciously want to get better, even if there is unconscious resistance to the treatment; also, the stigma associated with medical treatment is less severe than that associated with criminal justice.

When youth are prostituted, the juvenile justice system typically approaches them in one of three ways, depending on state law:

(1) Prostitution of a juvenile is recognized as harm against children, so youth should never enter the juvenile justice system on a prostitution charge;

(2) Juvenile prostitution is deemed a status offence, so the juvenile justice system will work to obtain services and avoid detention for a youth; or

(3) Juvenile prostitution is a crime, so youth will enter the juvenile delinquency system.

As of this writing, one state, Illinois, had adopted the first approach. Other states, with “safe harbour” laws (see Section 1), had adopted the second approach; in these states, if a youth does not cooperate with services, a juvenile delinquency case can be reopened. Most other states had adopted the third approach, treating commercially sexually exploited and trafficked youth as delinquents so they enter the traditional juvenile justice system. Some of these states and localities within them have diversion programs so that, as in states adopting the second approach, youth identified as victims of trafficking can receive treatment as part of their rehabilitation or in lieu of punishment, but must cooperate with these services or the juvenile delinquency case will proceed or be reopened. Finally, the juvenile justice system has opportunities to identify victims of trafficking who are in the system on charges unrelated to prostitution through intake screenings, runaway and homeless programs, and programming in juvenile detention centres.[4]

JUVENILE JUSTICE SYSTEM IN INDIA:

JUVENILE JUSTICE ACT, 2015:

Justice act 2015 has come into force on January 15,2016. This act was enacted by the repealingearlier act Juvenile Justice Act 2000. The Legislature took the challenges to resolve the delay in the adoption process, a bunch of pending cases and accountability

of institutions through the new act. This act also laid down the procedure to safeguards the children who are in the conflict of law. The act has reduced the child age from 18 to 16 years because the Juvenile crime rate has rapidly increased. Before going into relevant provisions, the authors are glad that this act has changed the word Juvenile to a child in conflict with the law.

Through this act, the legislature introduced the Juvenile Justice Board and Child welfare committees and it is mandatory it should have atleast one woman in each committee and it should hold every district. The act also mentioned in section 8, the powers, duties and responsibilities of the board as well the committees is mentioned in section 29 of the act. In that committee, there will be one chairperson and four members who are specialist in dealing with the children.
Section 15 of this act deals with children who commita heinous crime between the ages 16-18 years, and it gives the option to the Juvenile Justice Board to transfer the cases of Heinous crimes to the courts of session after done with the preliminary assessments to it.

This is act has taken a good initiativeregarding the maintenance of the Child welfare committee, according to section 36 of the act, the child welfare committee has to submit the quarterly report which contains pending and disposal cases to the magistrate and the magistrate after examining the report if the pending cases are more the magistrate has to give directions to resolve the pending cases. If the magistrate thinks that, they should require the additional committees to resolve the pending case, he shall send the review reports to the stategovernment. If the same continues for the even after three months, the state government has the power to terminate the existing committee and shall constitutea new committee. The state governments should provide the safe place to stay people who are above 18 years or the age between 16-18, who commit heinous crimes. Section 54 of the act states that there should be Inspection committees to the state as well as district levels and it is compulsory for the committee to inspect the institutions once in the three months. Sections 55 of the act gives the power to both central and state to evaluate the work done by the committee and board which is introduced by this act and Police unit.

INTERNATIONAL CONCERNS FOR THE SYSTEM:
The International Juvenile Justice Observatory (IJJO)[5]is an organisation that provides information, communication, debates, analysis and proposals concerning juvenile justice as well as children or young people who have social difficulties, behavioural problems or are in conflict with the law. The mission of the International Juvenile Justice Observatory is to “contribute an international and inter-disciplinary vision of juvenile justice in order to create a future for minors and young people all over the world who are in situations of exclusion as a result of infringements of the law”. The IJJO aims at promoting international development strategies to create necessary policies, legislations and intervention methods with regard to global juvenile justice that is universally applicable in the world. The IJJO promotes and works towards the provisions of major international conventions and laws regarding juvenile justice such as UNCRC and UN Rules for the Protection of Juveniles.

The IJJO has specific objectives:

· To develop an international forum for discussion of research, interventions, and legislation in order to address the problem of juvenile delinquency

· To promote international relations regarding different ways of addressing the problem: legal, psychological, criminological, social, educational, cultural, police, medical, etc.

· To promote analysis at all level, globally, nationally and locally, of issues concerning young people in conflict with law

· To create alternate and changing solutions to problems in the field of juvenile justice

· To contribute to the improvement of legislation, education, justice, police, health care and social issues

· To create a knowledge space which is universally applicable and hence reach other to professionals, institutes and organisations by means of databases, conferences, workshops and seminars

· To provide support and information to developing countries so that they may create a healthy juvenile justice system

· To promote the formation of a worldwide network of juvenile justice observers

· To create awareness about commitment to solving issues relating to young offenders

· To promote and organise international gatherings which seek to share and widening the base of knowledge regarding juvenile justice.

THE UNITED NATIONS AND JUVENILE JUSTICE -

The 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (United Nations, 1985) and the 1990 Guidelines for the Prevention of Juvenile Delinquency (also referred to as "The Riyadh Guidelines") (United Nations, 1990) established basic actions to prevent children and young people from engaging in criminal activities, as well as to protect the human rights of youth already found to have broken the law. In 1989, the focus on safeguarding the human rights of children and young people was strengthened by the Convention on the Rights of the Child (CRC) (United Nations, 1989), which entered into force in 1990.

THE OFFICE OF JUVELINE JUSTICE AND DELINQUENCY PREVENTION -

OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. OJJDP supports the efforts of states, tribes, and communities to develop and implement effective and equitable juvenile justice systems that enhance public safety, ensure youth are held appropriately accountable to both crime victims and communities, and empower youth to live productive, law-abiding lives.

IMPROVEMENT TO JUVENILE JUSTICE SYSTEM[6] :

Focus on Positive Youth Development –

A growing perspective in juvenile justice is that of positive youth development, concentrating on a youth's "sense of competence, usefulness, belonging, and influence." Rather than

the traditional deficit-based model of highlighting an offender's flaws and wrongdoings, positive youth development chooses to accentuate optimistic views, holding on to good characteristics and strengths to encourage a better way of living. The PYD method incorporates the following:

- Assisting youth in recognizing and taking responsibility for their actions.
- Offering chances to repair any harm that resulted from their actions.
- Encouraging interaction with good role models.
- Providing solutions for better decision-making in the future.

Recognition and Treatment of Mental Illness -

Recent findings highlight the number of juvenile offenders in residential facilities that are suffering from a mental illness. Two-thirds of these juveniles exuded symptoms of depression, anxiety, and aggression. The number of individuals serving time with severe mental illness is two to four times higher than the national rate among youth.

45 percent of youth enters juvenile facilities without an initial mental health screening, greatly lessening the hopes for successful rehabilitation. Many organizations are recognizing the importance of mental health screening and treatment for youth offenders.Advocacy organizations, such as the Mental Health/Juvenile Justice Action Network, continue to push for greater efforts in mental health care provision in juvenile justice programs.

Educational Opportunities -

Only 45 per cent of juvenile offenders within the system have at least six hours a day of school, wasting valuable time that could be used in bettering the offender for a reformed life outside of incarceration. Academic development is critical for all youth, and within the past two decades, more than 25 separate lawsuits were filed against states, charging with a lack of adequate education provision to incarcerated youth. Education provides empowerment and a higher chance for success upon release from the system, and continued activism and support are proving its worth in juvenile justice.

A continued and growing focus on opportunities for reform and rehabilitation in the juvenile justice system has hopes for lessening the number of offenders. By paying attention to positive youth development, recognizing and providing treatment for mental illness and offering sufficient educational opportunities, the juvenile justice system can reach a greater level of effectiveness in the future.

JUVENILE JUSTICE SYSTEM PROS AND CONS :

PROS:

v The authors are glad that the Juvenile Justice act 2015 (hereinafter"act") objectives are to take care of and protect the children.

v The act has introduced the Juvenile Justice Board, committee and the act also manifestly stated their powers, responsibilities of Board and Committee and the Police Unit.

v The act has divided the offence for instance: Heinous Offence, PettyOffence.

v The act primarily aim is to curb the crimes which aregrossly involved by the

Juveniles, so this act reduced the age from 18 to 16.

v The act has also imposeda penalty to the people who are influencing the child to use Tobacco, drug etc. under section 77 of the Juvenile Justice act 2015.

v To ministry of women and child development,Maneka Gandhi got a reward from various National and international communities of tobacco control community, and India is the first country to impose a penalty to influencer to immoral activities to child through this act.

v The authors are happy to convey that this act(Juvenile Justice act 2015) gives the care and protection to the child, and it also imposes the penalty who are influence the child to involve in an illegal act or immoral act and it also provides the steps to adoption etc.

CONS:

Ø The Juvenile Justice act 2015 is true that their objectives are to care and protection of child but it violates the child rights.

Ø The legislature is failed to comply with the constitution of India before passing the act.

Ø Indian Constitution clearly states the fundamental rights to the citizens and Non-citizens.

Ø Article 14 states that there is no right to state to deny the equality to the citizens in the aspects of equality before the law and equal protection of the law. The act which tells that the child aged under 16 who commitsa heinous crime shall be treated as the adult, then the liberty of the legislature to draw this comparisons questioned.

Ø Article 21 of the Indian Constitution also states that the Right to life and liberty except according to the procedure established by the law. Article 21 considers Universal right and Natural Law, which is also equally applicable to the citizens and non-citizensthrough the exception stated. If the act which is a violation of fundamental rights of the citizens of India can be struck down under Article 13 of Constitution. The authors like to mention how the Greeks thinkers consider Natural Law.

Ø Sophocles is one of the Greekthinkers says that: Natural Law is wise but written law is arbitrary.

Ø According to the Stoics of Natural Law: All human are equal and laws therefore applicable to all equally.

Ø Under Article 21 ambit, it covers the right for the security of the person. As

stated, the Maneka Gandhi Vs union of India right to live under article 21 includes the right to live with human dignity. In Olga Tellis vs Bombay Municipal Corporation stated the right to life includes the right to livelihood.

Ø The authors again relying upon Article 15(3) of Constitution of India which is again failed by the legislature to comply to before passing the act. Article 15(3) states that the state shall not preventif there are making special provisions for the benefit of the children and women. The word the Benefit of the children and women this expression tells that there should benefit to the child, but the legislature stated in their objectives for the care and protection of the child but this act treatsthe child as in par with adults.

Ø The Juvenile Justice Board which is established by the act is providing the legal aid to the Juveniles those who are not afford to the case, the act in the section 8(3)c of the act says that ensuring the availability of the legal aid by the legal institutions, the legal institutions may or may not provide the assistance after a few hearing of the case instead of that the legislature would have madea provision the ensuring the availability of legal aid to the juveniles until the case is disposed off.

CONCLUSION:

The reformers' best strategy is to recognize the multiple aims of the system, rather than sweep them under the carpet. Once these aims are acknowledged, it becomes clear that they do not have to be expressed in the same way everywhere. The comparison between Bremen and Denver has shown that the need to communicate societal disapproval in a demonstrative way and to establish a bedrock of general deterrence are not constants across contemporary societies and that the pressures leading to more punitive juvenile justice systems are not everywhere the same. The most consequentialist and instrumental analysis of the effects of juvenile justice comes from the United States, where the systems are punitive compared with those in Western Europe. That suggests that progressives should set evidence on the effectiveness of interventions with young people within a wider framework of analysis.

(Endnotes)

END NOTE

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1.Criminal Justice © 2005 SAGE Publications London, Thousand Oaks and New Delhi. www.sagepublications.com 1466 –8025; Vol: 5(2): 181 –195 DOI: 10.1177/1466802505053497

2e.g., Bright & Jonson-Reid, 2010 Carr, Hudson, Hanks, & Hunt, 2008 ; Cernkovich, Lanctô , & Giordano, 2008 Gavazzi, Lim, Yarcheck, Bostic, & Scheer, (2008).

3. Iowa Commission on the Status of Women, 1999

4. https://www.ncbi.nlm.nih.gov/books/NBK253348/

5. https://www.oijj.org/en

6. https://online.sju.edu/graduate/masters-criminal-justice/resources/articles/improving-effectiveness-of-juvenile-justice-program

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2019(1) L.S. 1 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
M. Satyanarayana Murthy

Chunduru Bulli Ammayi ..Petitioner
Vs.
Chunduru Srinivasa Rao ..Respondent

CIVIL PROCEDURE CODE, Order XXVI, Rule 10(A) - EVIDENCE ACT, Sec.73 - Court can exercise its power under Section 73 sparingly and in exceptional cases, more particularly, where either of the parties did not come forward with an application under Order 26 Rule 10(A) CPC.

Mr.Sai Gangadhar Chamarty, Advocate for the Petitioner.
Smt.I.Maamu Vani, Advocate for the Respondent.

O R D E R

This Civil Revision Petition is filed under Article 227 of the Constitution of India, questioning the order, dated 22.06.2018, in I.A.No.56 of 2018 in O.S.No.322 of 2015, passed by the I Additional Junior Civil Judge, Tanuku, whereby the petition filed under Order XXVI Rule 10(A) of the Code of Civil Procedure (for short 'C.P.C.'), to appoint a Commissioner for scientific investigation for comparison of the disputed signatures on Ex.B1 with admitted signatures.

2. The suit was filed for recovery of amount basing on a promissory note. The petitioner/defendant relying on Ex.B1, which is disputed by the plaintiff, the respondent herein, as it is a forged document.

3. At the stage of arguments, a petition was filed before the trial Court under Order XXVI Rule 10(A) C.P.C. for the said relief.

4. The Respondent filed counter opposing the petition on the ground that it was filed belatedly and that the Court can exercise power Under Section 73 of the Evidence Act.

5. The Trial Court accepted the contention of the respondent and dismissed the petition.

6. It is contended in the memorandum of grounds that delay is not a ground for dismissal of the petition and the Court can exercise its inherent powers when no party

come forward with an application to compare the disputed signatures and placed reliance on the judgment of the Division Bench in Janachaitanya Housing Ltd., Ameerpet v. Divya Financiers -AIR 2008 AP 163, where the Court held that delay is not a ground to dismiss the petition filed under Section 45 of the Evidence Act (for short 'the Act') and he also contended that power of the Civil Court under Section 73 of the Act can be exercised only in the exceptional circumstances but when the petitioner came forward with an application under Order XXI Rule 18 C.P.C., the Court can exercise such power under section 73 of the Act, since the Court is not an expert in undertaking such exercise of comparison and prayed to set aside the order.

7. Whereas, the learned counsel for the respondent supported the impugned order in all respects.

8. It is an undisputed fact that the respondent/defendant herein pleaded discharge of the debt due under the promissory note. However, the petitioner/ plaintiff denied the discharge while contending that the document i.e. Ex.B1 is a forged one. The signatures on Ex.B1 are in dispute and such signature can be proved in three different ways. One is by examining the defendant, who is present at the time of execution and the other is calling for opinion evidence and the third one is admission as held in State (Delhi Administration) v. Pali Ram- AIR 1979 SC 14.

9. Here, the petition is filed to refer the disputed document by invoking Order XXVI Rule 10A CPC and to prove the discharge. However, the trial Court dismissed the petition on the ground of delay but delay is not a ground in view the Division Bench judgement in Janachaitanya Housing Ltd referred to above and the same principle is reiterated in the latter judgment of the Full Bench of this Court in CRP No.1500 of 2010 dated 18.12.2015 in Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash.

9. Thus, in view of the law laid down by Division Bench and full Bench of High Court, the impugned order passed by the trial Court on the ground of delay cannot be sustained and the order is liable to be set aside on this ground.

10. The other ground for dismissal of the petition by the trial Court is that the Court can exercise power under Section 73 of the Evidence Act. The Court can exercise such power sparingly, in exceptional circumstances, more particularly, when either of parties did not come forward with an application under Order 26 Rule 10A to refer the disputed signatures to an expert for comparison and opinion. But, here the petitioner came forward with an application. In such a case, the Court must be slow

to exercise power under Section 73 of the Indian Evidence Act. Therefore, on that ground, dismissal of the petition is erroneous. Hence, the impugned order passed by the trial Court is liable to be set aside.

11. Accordingly, the Civil Revision Petition is allowed, directing the I Additional Junior Civil Judge, Tanuku, to refer the disputed signatures on Ex.B1 to expert along with admitted signatures of plaintiff/ respondent for comparision and opinion as per the procedure, call for the report within a month from today and dispose of the suit immediately on receipt of the report in accordance with law. No order as to costs.

12. Pending miscellaneous petitions, if any, shall stand closed.

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2019(1) L.S. 3 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice S.V.Bhatt &
The Hon'ble Mr.Justice M. Ganga Rao

The Vijayawada Machinery Merchants Assn., ..Appellant

Vs.

The Commissioner of I.T. Vijayawada ..Respondent

INCOME TAX ACT, Secs.2(15), 12A & 12AA and Sec.11 - Appellant / Assesse Society registered under Societies Registration Act - Application filed u/Sec.12AA of Act before Commissioner of Income Tax to avail tax exemption u/Sec.11 stating that some of its objectives are for charitable purpose - Application dismissed by Appellate Tribunal and Commissioner - Hence present appeal, contending that objects and activities of appellant Society comes within the ambit of Cl.(15) of Sec.2 of Act - Hence satisfied requirements of Sec.12A & 12AA and entitled for its registration.

Respondent contends that appellant Society is not rendering any charitable purpose at least to specified

public and it does not satisfy requirement of law to be registered u/Sec. 12AA of Act and appellant is not entitled to its registration u/ Sec.12AA of Act.

In this case appellant also failed to establish that appellant's activities falls under ambit of Sec.2(15) of Act - Appeal, dismissed.

Mr.Sai Gangadhar Chamarty, Advocate for the Appellant.
Mr.J.V.Prasad, SC for I.T. for Respondent.

O R D E R

(per the Hon'ble Mr.Justice M.Ganga Rao)

This appeal under section 260-A of the Income Tax Act, 1961 is directed against the order dated 24.06.2018 passed in I.T.A.No.688/VIZ/2013 by the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam, whereby the appeal filed by the appellant against the order dated 26.09.2013 in F.No.Hqrs(71)/CIT/VJA/12-13 of the Cossissioner of Income Tax was dismissed confirming the order passed by the Commissioner of Income Tax, Vijayawada and to grant registration of the appellant-society under Section 12AA of the Income Tax Act (for brief "the Act").

2. The appellant-assessee is a society registered under the provisions of the Societies Registration Act, 2001, XXI of 1860 in the name and style of Vijayawada Machinery Merchants Association, Vijayawada. The appellant filed an application under Section 12AA of the Act, 1961 before the Commissioner of Income Tax, Vijayawada, to register it as charitable society to avail tax exemption under Section 11 of the Income Tax Act, stating that some of its objectives are for charitable purpose as these are covered under "any other object of general public utility". The combined reading of provisions of Sections 2 (15), 11, 12, 13, 12A and 12AA of the Income Tax Act would show that the Industry, Trade Association, societies, which render charitable service to its members in particular and in general to the public. Its objectives are for charitable purposes as defined under Section 2 (15) of the Act are covered under" any other object of the general public utility, alone are entitled to be registered under Section 12AA of the Act.

3. The learned counsel for the appellant would contend that the objects and activities of the appellant society come within the ambit of clause 15 of Section 2 of the Act, as the words "charitable purpose", includes relief of the poor, education, yoga, medical relief and the advancement of any other object of general public utility. Hence, it satisfies the requeirement of Section 12A and 12AA of the Act, and entitles for its registration. The learned counsel for the appellant, in support of his contention, placed reliance on the

judgment of the Rajasthan High Court in Commissioner of Income Tax v. Jodhpur Chartered Accountants Society – (2002) 258 ITR 548.

4. Per contra, the learned counsel for the respondent would contend that the appellant society is not rendering any charitable purpose at least to the specified public and the benefits of the activities of the appellant society are restricted kto its members only. It does not satisfy the requirement of law to be registered under Section 12AA of the Act.

5. We have heard the learned counsel for both parties, perused the Record. We find that none of the objectives of the appellant association, as enumerated in its constitution, refers to rendering any charitable activities, services to the general public utility, comes within the ambit of words 'advancement of any other object of general public utility appearing in clause 15 of Section 2 of the Act. In this connection, the Board issued Circular No.11/2008 in F.No.134/34/2008-TPL, dated 19.11.2008. At para 3.1, it is clarified as under:

> 'There are industry and trade associations who claim exemption from tax under Section 11 on the ground that their objects are for charitable purposes as these are covered under any other object of general public utility. Under the principle of mutually, if trading takes place between persons who are associated together and contribute to a common fund for the financing ofsome venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributor and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members those would not fall under the purview of the proviso to section 2 (15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would not be governed by the additional conditions stipulate in the proviso to section 2 (15)'.

6. On perusal of the record, it reveals that the activities of the appellant society are restricted to contributions from the members. The primary object of the society is to promote and encourage unanimity and friendly feeling among the Machinery Merchants. As seen from the

income and expenditure account, no expenditure is incurred towards any charitable acitivity. It is also clear from the activities of the appellant that is is a mutual association or mutual concern. Hence, the objects and activities of the appellant would not satisfy the requirements of law, enumerated under Section 2 (15) and 12A and 12AA of the Income Tax Act and it is not entitle to its registration under Section 12AA of the Act.

7. We have gone through the judgment of the Rajasthan High Court in Commissioner of Income Tax v.Jodhpur Chartered Accounts society –(2002) 258 ITR 548, wherein it is held that the assessee is a Jodhpur Chartered Accountant Society, Jodhpur, the objects and activities of the society legitimately reflects charitable purpose as defined under Section 2 (15) of the Act. On facts, the activities and objects of the appellant do not meet the requeirement of Section 2 (15) of the Act to come within the scope of the definition. The said decision is not appllicable to the present case as facts situated are different.

8. The appellant failed to establish that the appellant's activities falls within the ambit of Section 2 (15) of the Act denoted as charitable purpose. We find that in view of elaborate consideration of fact and law by the Commissioner of Income Tax and the Appellate Tribunal, the substantial questions of law raised in the memorandum of appeal merits no consideration. Hence, the impugned order does not warrant our interference.

Accordingly the appeal is dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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2019 (1) L.S. 187 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
N.V. Ramana &
The Hon'ble Mr.Justice
M. Shatanagoudar

P. Surendran ..Petitioner
Vs.
State Inspector of Police ..Respondent

CIVIL PROCEDURE CODE - PRACTICE AND PROCEDURE - Whether Registry can questioned maintainability of the Petition - Registry could not have exercised such judicial power to answer maintainability of petition, when same was in realm of Court

Refusal of Registry to register petition and list matter before court - Act of numbering a petition is purely administrative.

O R D E R
(per the Hon'ble Mr.Justice
N.V. Ramana)

!. This Special Leave Petition has been filed against the impugned order and judgment dated 02.01.2019, in Crl.M.P. No. 5697 of 2018 passed by the Learned Court of. The Principle Sessions Judge of Kancheepuram District at Chengalpattu, Tamil Nadu and the order of the High Court Registry, in not numbering the anticipatory bail petition of the petitioner-accused herein.

2. We need to refer to the basic facts necessary for the disposal of the case at hand. An FIR was filed against the three co- accused (Murugesan, S. M. Ekambaram and Ramaswamy), before the PS Pallikaranai, St. Thomas Mount, Kancheepuram District, Tamil Nadu, being Crime No. 937 of 2017, dated 03.04.2017, under Section 147, 148, 448, 302 and 506 of IPC. It is averred that subsequently Offence under Section 3(ii) of the Scheduled castes and the Scheduled Tribes (prevention of atrocities) Act, 1989 ['SC/ST Act'] was also added. Further it is to be noted that the Petitioner herein was later arrayed as an accused by the police. In view of apprehension of arrest, the petitioner filed an Anticipatory Bail Application being Crl.M.P. No. 5697 of 2018, before the Learned Court of The Principal Sessions Judge of Kancheepuram at Chengalpattu.

3. The District Principal Judge by an Order dated 02.01.2019, dismissed the anticipatory bail application of the petitioner. Aggrieved by the same, petitioner approached the High Court of Madras seeking anticipatory bail, but the Registry of the High Court refused to number and list the matter before the court on the following office objection- "It may be stated how this petition for Anticipatory Bail is maintainable, since the offence is under SC/ST Act" Even though the petitioner herein replied to the aforesaid office objection, the High Court Registry rejected numbering of the petition and dismissed the Anticipatory

Bail Petition on the issue of maintainability under SC/ST Act.

4. Aggrieved by such non-registration, the petitioner is before this Court on a question of law as to whether the Madras High Court Registry was wrong, in not numbering the Anticipatory-Bail Petition and as to whether consequent dismissal of the same on the issue of maintainability of the petition impinges on the judicial function of the High Court?

5. In view of the importance of the matter, this Court had requested the assistance of the Attorney General for India who acceded our request and assisted this Court.

6. Learned Attorney General has stated that the stance of the Registry of the Madras High Court in refusing to number the anticipatory bail application and not placing it before the appropriate bench is incorrect. He states that in light of the subsequent amendment of 2018 to the SC/ST Act, particularly the inclusion of Section 18A under the SC/ST Act, appropriate bench has to adjudicate the matter as the same is a judicial function. Therefore, the registry of the Madras High Court cannot refuse to number the anticipatory bail application on the ground of maintainability.

7. Recently, the Government amended the SC/ST Act, through The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 No. 27 of 2018, wherein a new provision being Section 18-A was inserted, which reads as under- 18A. (1) For the purposes of this Act,— (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply. (2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.". (emphasis added)

8. We may note that the aforesaid amendment has been constitutionally challenged in various writ petitions listed before a different bench of this Court along with the R.P. (Crl.) No. 228 of 2018, titled Union of India v. State of Maharashtra and Others. However, the question before this Court herein is different, distinct and limited. We are only concerned with the question whether Registry could have questioned the maintainability of the Petition.

9. The nature of judicial function is well settled under our legal system. Judicial function is the duty to act judicially, which invests with that character. The distinguishing factor which separates administrative and judicial function is the duty and authority to act judicially. Judicial function may thus be defined as the process of considering the proposal, opposition and then arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice. A Constitution Bench of five judges in Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand and Ors., AIR 1963 SC 677, formulated the following criteria to ascertain

whether a decision or an act is judicial function or not, in the following manner- (1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule; (2) it declares rights or imposes upon parties obligations affecting their civil rights; and (3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact. (emphasis added) The act of numbering a petition is purely administrative. The objections taken by the Madras High Court Registry on the aspect of maintainability requires judicial application of mind by utilizing appropriate judicial standard. Moreover, the wordings of Section 18A of the SC/ST Act itself indicates at application of judicial mind. In this context, we accept the statement of the Attorney General, that the determination in this case is a judicial function and the High Court Registry could not have rejected the numbering.

10. Therefore, we hold that the High Court Registry could not have exercised such judicial power to answer the maintainability of the petition, when the same was in the realm of the Court. As the power of judicial function cannot be delegated to the Registry, we cannot sustain the order, rejecting the numbering/registration of the Petition, by the Madras High Court Registry. Accordingly, the Madras High Court Registry is directed to number the petition and place it before an appropriate bench.

11. Having said so, we make it clear that we have not expressed any views on the nature of the amendment, the standard of judicial review and the extent of justiciability under Section 18-A of the SC/ST Act, which is left open for the appropriate Bench to consider.

12. Before we part with this case, we note that this Court has not expressed any views on the merits of the case and the High Court is requested to consider the matter uninfluenced by the observations made herein.

13. In view of the discussion, this petition is accordingly disposed of in the aforesaid terms. Petition Allowed.

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2019 (1) L.S. 189 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Ms.Justice
R. Bhanumathi &
The Hon'ble Mr.Justice
R. Subhash Reddy

Nutan Gautam ..Petitioner

Vs.

Prakash Gautam ..Respondent

HINDU MARRIAGE ACT, Sec. 13(1) (ia) (iii) – Respondent/Husband filed a petition for divorce, which was decreed ex-parte by Trial Court in favour

of respondent - By an Interim Order of High Court in an appeal preferred by appellant, husband was permitted to take boy with him to Delhi and to leave him in Boarding House till start of the summer vacations - Further, mother was permitted to take child in summer vacations and leave him in School/Boarding House before reopening of School - Case of appellant that after summer vacation, boy was not inclined to go to Boarding school as he was more attached to his mother.

Held - Child cannot be compelled to join in New Delhi - Respondent is a natural father of child, he is also entitled to visitation rights – Respondent shall be permitted to visit his child and he is entitled to take child from the House of the appellant on any Sunday's and public holiday's - Appeals stand allowed.

J U D G M E N T

(per the Hon'ble Mr.Justice R. Subhash Reddy)

1. Leave granted.

2. These appeals are filed by the wife of the respondent herein aggrieved by orders dated 21.05.2018 and 20.08.2018 passed by the High Court of Judicature at Allahabad in First Appeal NO.316 of 2018.

3. The marriage of the appellant-wife and the responden thusband was solemnized in the year 2006. In the year 2009 a son was born to them who is named Krish alias Master Krishav Gautam. In the year 2012, respondent-husband filed a petition for divorce under Section 13(1)(ia)(iii) of the Hindu Marriage Act, 1955. The said divorce petition is decreed ex-parte by the Trial Court in favour of the respondent-husband. The Trial Court also directed that the son of the appellant, namely, Krish alias Master Krishav Gautam, should be admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi.

4. Aggrieved by the ex-parte order, the appellant herein filed First Appeal NO.316 of 2018 before the High Court of Judicature at Allahabad. Pursuant to order of the Family Court, the son of the parties has been admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi, and he has been put in a Boarding House of the School. By way of an interim order dated 21.05.2018, which is impugned in these appeals, the respondent-husband was permitted to take the boy with him to Delhi and to leave him in the Boarding House till the start of the summer vacations of 2018. Further, the appellant-mother was permitted to take the child in summer vacations and leave him in the School/Boarding House before the reopening of the School.

5. The Family Court has also awarded an amount of Rs.10,000/- per month towards maintenance for the appellant-wife. In view of the plea of the respondent-husband that the appellant-wife is entitled for maintenance only from one forum, appellant-wife is directed to elect one forum to which she wants to get maintenance.

6. After reopening of the School in the summer vacation, it appears that the boy,

Krish @ Master Krishav Gautam, was not willing to go to study in the Boarding House in Col. Satsangi's Kiran Memorial Public School, New Delhi. Further, fifteen 3 days' time was granted by the High Court to the appellantmother vide Order dated 20.08.2018 to comply Order dated 21.05.2018.

7. We have heard Mr. Harikumar V., learned counsel appearing for the appellant-wife, and Mr. R. Basant, learned senior counsel appearing for the respondent-husband.

8. It is contended by learned counsel for the appellant-wife that the boy is not willing to study in the Col. Satsangi's Kiran Memorial Public School, New Delhi, as he is attached to his mother very much and intends to study in his old school. Accordingly, he was admitted in Global International School, Shahjanpur, where he is comfortable with his studies. It is submitted at the Bar that as welfare of the child is the paramount consideration and he is good at studies by pursing his study in Global International School also at Shahjanpur, and requested to set aside the impugned order and permit the boy to continue in the same school at Shahjanpur.

9. On the other hand, Shri R. Basant, learned senior counsel appearing for the respondent, has submitted that the respondent is willing to join his son in the best school of Delhi by paying more than Rs.2,00,000/- (Rupees Two Lakhs) towards fees and it is in the interest and welfare of the child to allow him to study only at Col. Satsangi's Kiran Memorial Public School, New Delhi. Further, It is submitted that there was a specific 4 direction for joining the boy in the Boarding House/ School at New Delhi after reopening, the appellant-wife has violated Order dated 21.05.2018 and further Order dated 20.08.2018. It is submitted that wish of the child itself is not a criteria and the welfare of the child will be best served by admitting him in Col. Satsangi's Kiran Memorial Public School, New Delhi.

10. We have heard learned counsel on both the sides, perused Orders dated 21.05.2018 and 20.08.2018 and other materials placed on record.

11. It is clear from the materials placed on record, in view of the differences cropped up between the parties, respondenthusband has filed petition for divorce under Section 13(1)(ia) (iii) of the Hindu Marriage Act, 1955, in the year 2012 which is decreed ex-parte and appeal against that order is pending before the High Court. The appellant-wife is presently residing at her parental house at Shahjanpur, Uttar Pradesh. The boy is studying in Global International School, Shahjanpur, Uttar Pradesh, while granting ex-parte decree it appears that the Trial Court directed that their son should be admitted in Col. Satsangi's Kiran Memorial Public School, New Delhi. In view of such direction, it appears, the boy was admitted in the said School at New Delhi and was allowed to be taken by the appellant-wife in the summer vacation of 2018.

12. It is true that in Order dated 21.05.2018, the respondent was permitted to take the son and get him joined at Boarding House in Col. Satsangi's Kiran Memorial Public

School, New Delhi, and the appellant-wife was permitted to take custody of the boy in the summer vacation and to ensure that he returns to the Boarding House after summer vacation. It is the case of the appellant that after summer vacation the boy was not inclined to go to the Boarding House/School and wanted to study only in his old school, namely, Global International School, Shahjanpur. It is also not in dispute that the child was earlier studying in the same school where he is admitted now for further studies. We are informed now that he has now completed 3rd standard and is aged about 10 years.

It is natural, a boy of that age who has studied earlier in the school at Shahjanpur, willing to continue in the same school as much as he is acclimatised with the environment of such school where he has started his studies from Ist standard onwards. This Court also interacted with the boy and the boy expressed his desire to continue his studies only in Shahjanpur school. When the boy is not inclined to study in Col. Satsangi's Kiran Memorial Public School, New Delhi, and stay in the Boarding House, we are of the view that in the interest of the welfare of the child, he cannot be compelled to admit in Col. Satsangi's Kiran Memorial Public School, New Delhi, attached with the Boarding House. In such view of the matter, it cannot be said that the appellant-wife has violated the direction issued by the High Court vide Orders dated 21.05.2018 and 6 20.08.2018.

13. From the very perusal of the order impugned, it appears that the High Court has ascertained the views of the boy and has recorded that he is very much attached and has more affiliation towards his mother (appellant herein). In that view of the matter we are of the opinion that the child, namely, Krish @ Master Krishav Gautam cannot be compelled to join in Col. Satsangi's Kiran Memorial Public School at New Delhi. We are further of the view that in the interest and welfare of of the child, Krish @ Master Krishav Gautam shall be allowed to continue his study at Global International School, Shahjanpur.

14. Further, in the impugned order, the appellant-wife is directed to elect one forum from which she wants to get the maintenance. As the same is also not in conformity with the law, the said direction is liable to be set aside.

Ordered accordingly.

15. As the respondent-husband is a natural father of the child, namely, Krish @ Master Krishav Gautam, he is also entitled to visitation rights. We permit the respondenthusband to visit his child and he is entitled to take the child from the House of the appellant on any Sunday's and public holiday's whenever he visits Shahjanpur. The appellant-wife shall allow the child to leave along with the respondent-father at 09:00 a.m., and the respondent-husband to return the child at the house of the appellant-wife before 06:00 p.m. on the same day. For any further modification of visitation rights respondent-father is at liberty to move the High Court with appropriate application and the same shall be considered in accordance with law, keeping in view the welfare of the child.

16. For the aforesaid reasons, Orders dated 21.05.2018 and 20.08.2018 passed by the High Court of Judicature at Allahabad in First Appeal No.316 of 2018 are set aside. We request the High Court to dispose of the appeal itself as expeditiously as possible in accordance with law.

17. In the result, the appeals are allowed with the direction's as indicated above.

No costs.

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2019 (1) L.S. 193 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
N.V. Ramana
The Hon'ble Mr.Justice
M. Shantanagoudar &
The Hon'ble Mrs.Justice
Indira Banerjee

Manoj Kumar ..Petitioner
Vs.
State of Uttarakhand ..Respondent

CRIMINAL PROCEDURE CODE - Accused/Appellant used to frequently visit house of complainant - On day of incident, both complainant and his wife left for their duties, and their daughter, was alone at the house - Accused entered house and tried to establish forceful physical relations with the deceased and same was strongly resisted by her - Accused - strangulated the deceased by putting the weight of his right hand on throat of deceased - Accused thereafter orchestrated entire incident into a suicide

Held - In absence of any existing enmity between accused and witnesses there exists no ground to question veracity of witnesses or to raise a ground of false implication - Chain of events has been rightly analysed by both the courts below and same leads towards proving culpability of accused – Appeals stand dismissed.

JUDGMENT

1. The present matter is placed before us by virtue of referral order dated 22.05.2014 wherein the following question was placed for reference before us that, "whether the 2nd FIR and the investigation in pursuance of further information thereof should be straightway quashed or should it require a scrutiny during trial of the permissible matter of prejudice, and truthfulness of the evidence collected on the basis of second FIR."

2. But it is to be noted that, during the course of arguments counsels from both the sides admitted that, no second FIR was registered in the present case. Although the reference was made to us, to adjudicate the above question of law, basing on the submissions we can conclude that the issue of second FIR does not arise in the present matter. Therefore, we are proceeding to adjudicate the matter on merits.

3. The brief facts of the case necessary

for adjudication are as follows: the accused-appellant used to stay in the same block under the complainant (PW-1) and he used to frequently visit the house of complainant (PW-1). Further he also owned a betel shop in the vicinity. On the day of incident, i.e. 24.08.1993, both the complainant and his wife left for their duties, and their daughter (hereinafter referred as "the deceased') aged around 17 years, was alone at the house. Thereafter, on finding an opportunity at around 10.45 A.M., the accused-appellant entered the house and tried to establish forceful physical relations with the deceased and the same was strongly resisted by her.

Thus, a physical altercation broke out between the two, wherein the accused-appellant strangulated the deceased by putting the weight of his right hand on the throat of the deceased. The accused-appellant thereafter orchestrated the entire incident into a suicide, by hanging the deceased from the roof with 2 the help of a white bedsheet. However, during this incident, two key witnesses namely Kushalpal and Vinod Kumar (PW-2), visited the house of the complainant (PW-1) for some personal work. On their call at the main-door, they were addressed by the accused-appellant who informed them that nobody was present at home and therefore, considering the accused-petitioner to be a neighbour, both the persons left the house without doubting the accused-petitioner or suspecting that anything was wrong.

4. Later that day, after returning from duty at around 12:00 noon, the complainant (P.W-1) found the dead body of his daughter hanging from the roof and informed the police about the same. But subsequently, on 26.08.1993, Vinod Kumar (PW-2), visited the house of complainant and informed him that on the day of the incident, at around 11:00 A.M., the accused-appellant came out of their house on their call and informed them that nobody was at home. Therefore, the complainant (P.W-1) approached the police on 26.08.1993 to inform them about the presence of the accused at the scene of offence.

On the basis of the aforesaid information the First Information Report No. 221 was registered under Section 302 of Indian Penal Code against the accused-appellant and the search for 3 the accused was initiated. Simultaneously, on 26.08.1993, the accused appellant had made an extra-judicial confession before Sanjay Sharma (PW-4); who in turn narrated the entire incident before the Investigating Officer. Thereafter, investigation was conducted and after completion of the same, charge sheet was filed against the accused-appellant.

5. The trial court vide its judgment dated 14.05.1997, convicted the accused for offence under Section 302 of the IPC and sentenced him to undergo life imprisonment and pay a fine of Rs. 20,000/-, in default rigorous imprisonment of 5 years. Aggrieved, the appellant approached the High Court in Criminal Appeal No.1192 of 2001, wherein the High Court upheld the order of conviction passed by the trial court and dismissed the appeal preferred by the appellant. Aggrieved, the appellant preferred the present appeal.

6. Learned counsel for the accused-

appellant contended that the High Court gravely erred in convicting the accused for the aforesaid offence without any incriminating evidence against him. The counsel emphasized that the conviction was solely based on the extrajudicial confession which is not corroborated by any material evidence. Moreover, it was also contended that, it is a simple case of 4 suicide but PW-1 with the help of the testimonies of PW-2 and PW-4 has falsely implicated the appellant as an accused and these testimonies cannot be relied on as they were created as an afterthought after a delay of 2 days. Lastly, this being a case of circumstantial evidence, the chain of circumstances does not prove the guilt of the accused.

7. Learned counsel for the respondent contended that prosecution has successfully discharged its burden by placing reliance on last seen, extra-judicial confession made by the accused, injuries on the accused, absence of accused from his house at the time of occurrence and lack of an alibi to prove his presence elsewhere and the medical evidence. The counsel therefore contends that the High Court has rightly upheld the conviction of the accused keeping in view the aforesaid chain of circumstances which proves the guilt of the accused. Therefore, the counsel pleaded that the appeal of appellant being devoid of merits should be dismissed without any indulgence.

8. Heard the learned counsels on merits. Admittedly, since there is no direct evidence, the present case is based on circumstantial evidence. Therefore, it is pertinent to focus on facts leading to the completion of the chain of circumstances which proves the guilt of the accused.

9. The trial court began its analysis of the facts by laying emphasis on the proximity of the house of the deceased and the accused so as to prove that access was highly probable considering the fact that, the accused used to live in the floor beneath that of the deceased. Admittedly, on the date of incident, the deceased was alone in the house as her parents and siblings had left for their jobs and school at around 6:30 a.m. respectively. It is in this scenario that the evidence of Vinod Kumar (P.W.2) plays a vital role, as it proves that the accused was present at the scene of the offence. Vinod Kumar (P.W.2) clearly stated that he had visited the house of the complainant (P.W.1) and called out his name, although there was no response for the first time, the accused answered the second call and informed P.W.2 that there was no one available at home.

Owing to the proximity of both the families, P.W.2 left for his hometown without any suspicion. It is in this context that the evidence of complainant (P.W.1) becomes relevant so as to analyse the conduct of the accused just after the incident. P.W.1 has stated that the accused and his father were missing from their residence since the time of the offence itself and that they had not even participated in the cremation ceremony of the deceased. It was only on 27.08.1993 that the accused was apprehended by the police with the help of the secret informer.

10. Further, both the trial Court and the

High Court placed reliance on the injuries found on the face of the accused. It is pertinent to note that the accused failed to provide any explanation as to how he had incurred the aforesaid injuries. Further, the injuries on the body of the deceased also indicate signs of struggle. Furthermore, the post-mortem suggests that the death of deceased was not suicidal but rather she was hanged after she had lost consciousness.

All the aforesaid circumstances further substantiate the voluntary extra-judicial confession of the accused made before P.W-4. Moreover, the fact of the commission of death by hanging corroborated by the Exhibit P-12, (Panchayatnama) which notes that the deceased was hanging from the roof with the help of a bed sheet. It is noted that the Exhibit P-12, (Panchayatnama) stands proved by the Sub-Inspector (P.W.8). The extra-judicial confession of the accused, therefore, finds independent reliable corroboration from the aforesaid circumstances. (See Ram Singh v. State of U.P., 1967 7 Cri LJ 9) In light of the aforementioned chain of events, there exists sufficient evidence on record to connect the appellant with the death of the deceased, the motive of which is apparent.

11. In the absence of any existing enmity between the accused and the witnesses there exists no ground to question the veracity of the witnesses or to raise a ground of false implication. Therefore, considering the totality of the facts and circumstances, we conclude that the chain of events has been rightly analysed by both the courts below and the same leads towards proving the culpability of the accused. (See Prakash v. State of Rajasthan, (2013) 4 SCC 668)

12. Therefore, after perusal of the material on record we conclude that, the appeal preferred by the accused, being devoid of any merit is liable to be dismissed. In light of the same, we uphold the order of conviction passed by the High Court.

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2019 (1) L.S. 196 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Abhay Manohar Sapre &
The Hon'ble Mr.Justice
Dinesh Maheshwari

Kushuma Devi ..Petitioner
Vs.
Sheopati Devi (D) & Ors ...Respondents

RENT CONTROL LAWS - Appellant filed an eviction petition against the respondents – Trial Court decreed the suit and passed the decree for eviction against the respondents - Respondents aggrieved filed Rent Appeal, which was allowed by the Ld. ADJ and the eviction petition filed by the appellant was dismissed - Appellant filed a writ petition in the High Court, whereby, the High Court dismissed the writ petition and affirmed the order passed by the Ld. ADJ in the absence

C.A.Nos.3448-3449/2019 Date:8-4-2019

of the appellant – Thereafter, appellant filed an application for recall of the order, which was dismissed by the High Court – Hence present SLP.

Held - Every judicial or/and quasijudicial order passed by the Court/Tribunal/ Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion - Parties to the lis and so also the appellate/revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order - In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion - High Court while passing the impugned order simply dismissed the writ petition without any discussion - Remand of the case to the High Court for its fresh disposal on merits.

J U D G M E N T

(per the Hon'ble Mr.Justice Abhay Manohar Sapre

1. Leave granted.

2. These appeals are filed against the final judgment and order dated 27.07.2012 in CMWP No. 1 3231 of 2002 and order dated 16.01.2013 in CMRA No.247546 of 2013 passed by the High Court of Judicature at Allahabad.

3. A few facts need mention hereinbelow for the disposal of these appeals which involve a short point.

4. The appellant filed an eviction petition against the respondents being Misc. Case No. 18/1990. By order dated 19.04.1996, the Civil Judge decreed the suit and passed the decree for eviction against the respondents. The respondents felt aggrieved and filed Rent Appeal No. 4/1996 in the Court of A.D.J., Court No.8, Fatehpur. The first Appellate Court by order dated 04.12.2001 allowed the appeal and dismissed the eviction petition filed by the appellant. The appellant felt aggrieved and filed a writ petition in the High Court at Allahabad. By impugned order dated 27.07.2012, the High Court dismissed the writ petition and affirmed the order dated 04.12.2001 passed by the Additional District Judge, Court No.8, Fatehpur in the absence of the appellant. The appellant filed an application for recall of the order dated 27.07.2012. The High Court by order dated 16.01.2013 dismissed the said application. The appellant felt aggrieved by the said orders and has filed these appeals by way of special leave in this Court.

5. The impugned order reads as under: "Having gone through the impugned order, I do not find any patent illegality or irregularity therein warranting interference. Findings of fact have been recorded which have not been shown perverse or contrary to material on record. I, therefore, do not find any reason to interfere. The scope of judicial review under Article 227 is very limited and narrow as discussed in detail by this Court in Civil Misc. Writ Petition No.27433 of 1991 (Lala Ram Narain vs. Xth Additional District Judge, Moradabad & Ors.) decided on 13.07.2012.

There is nothing which may justify judicial review of order impugned in this writ petition in the light of exposition of law, as discussed in the above judgment."

6. The short question, which arises for consideration in these appeals, is whether the aforementioned impugned order is legally sustainable or not.

7. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow these appeals, set aside the impugned orders and remand the case to the High Court for deciding the appellant's writ petition afresh on merits in accordance with law.

8. The need to remand the case to the High Court has occasioned because from the perusal of the impugned order dated 27.07.2012 quoted above, we find that it is an unreasoned order. In other words, the High Court neither discussed the issues arising the case, nor dealt with any of the submissions urged by the parties and nor assigned any reason as to why it has dismissed the writ petition.

9. This Court has consistently laid down that every judicial or/and quasijudicial order passed by the Court/Tribunal/Authority concerned, which decides the lis between the parties, must be supported with the reasons in support of its conclusion. The parties to the lis and so also the appellate/ revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/ Tribunal/Authority for reaching to such conclusion. (See State of Maharashtra vs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129, Jawahar Lal Singh vs. Naresh Singh & Ors., (1987) 2 SCC 222, State of U.P. vs. Battan & Ors., (2001) 10 SCC 607, Raj Kishore Jha vs. State of Bihar & Ors., (2003) 11 SCC 519 and State of Orissa vs. Dhaniram Luhar, (2004) 5 SCC 568). 5

10. The orders impugned in these appeals suffer from the aforesaid error, because, as would be clear from the perusal of the order, the High Court while passing the impugned order simply dismissed the writ petition without any discussion, finding and the reason.

11. We are, therefore, of the view that such order is not legally sustainable and hence deserves to be set aside.

12. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned orders are set aside. The case is remanded to the High Court for deciding the writ petition afresh, out of which these appeals arise, for its disposal in accordance with law keeping in view the observations made above.

13. Since we have formed an opinion to remand the case to the High Court for its fresh disposal on merits, we have not expressed any opinion on the merits of the case while deciding these appeals. The High Court will, therefore, decide the writ petition uninfluenced by any observations made by this Court in this order as expeditiously as possible preferably within six months.

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2019 (1) L.S. 199 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
U.U. Lalit &
The Hon'ble Mr.Justice
Indu Malhotra

Pioneer Urban Land
& Infrastructure Ltd., ..Appellant

Vs.

Govindan Raghavan
& Ors., ..Respondents

CONSUMER PROTECTION ACT, 1986 Sec.2(r) - Builder – Possession - Occupancy Certificate - Builder obtained Occupancy Certificate almost 2 years after date stipulated in Apartment Buyer's Agreement - As a consequence, there was a failure to hand over possession of flat to Respondent-Flat Purchaser within a reasonable period - Clear case of deficiency of service on the part of Builder - Flat Purchaser was justified in terminating the Apartment Buyer's Agreement by filing the Consumer Complaint, and cannot be compelled to accept possession whenever it is offered by Builder - Respondent - Purchaser was legally entitled to seek refund of money deposited by him along with appropriate compensation.

CA.Nos.12238/2018 &
1677/2019 Date:2-4-2019

J U D G M E N T

(per the Hon'ble Mr.Justice
Indu Malhotra)

The present statutory Appeals have been filed Under Section 23 of the Consumer Protection Act, 1986 to challenge the Final judgment and Order dated 23.10.2018 passed in Consumer Case No. 238 of 2017 and Consumer Case No. 239 of 2017 by the National Consumer Disputes Redressal Commission (hereinafter referred to as "the National Commission").

2. Since a common issue arises in both the Civil Appeals, they are being disposed of by the present common judgment and Order.

3. For the sake of brevity, the facts in C.A. No. 12238 of 2018 are being referred to, being the lead matter.

The factual matrix of the said Civil Appeal is as under: 3.1. The Appellant-Builder launched a residential project by the name "Araya Complex" in Sector 62, Golf Course Extension Road, Gurugram. The Respondent-Flat Purchaser entered into an Apartment Buyer's Agreement dated 08.05.2012 with the Appellant-Builder to purchase an apartment in the said project for a total sale consideration of Rs. 4,83,25,280/-. As per Clause 11.2 of the Agreement, the Appellant-Builder was to make all efforts to apply for the Occupancy Certificate within 39 months from the date of excavation, with a grace period of 180 days. 3.2. The excavation of the project commenced on 04.06.2012. As per Clause 11.2 of the Agreement, the Builder was required to apply for the Occupancy

Certificate by 04.09.2015, or within a further grace period of 6 months i.e. by 04.03.2016, and offer possession of the flat to the Respondent-Flat Purchaser. The Appellant-Builder however failed to apply for the Occupancy Certificate as per the stipulations in the Agreement. 3.3. The Respondent-Flat Purchaser filed a Consumer Complaint before the National Commission on 27.01.2017 alleging deficiency of service on the part of the AppellantBuilder for failure to obtain the Occupancy Certificate, and hand over possession of the flat. The Respondent prayed inter-alia for: • Refund of the entire amount deposited being Rs. 4,48,43,026/-, along with Interest @18% p.a.; and • Compensation of Rs. 10,00,000/- for mental agony, harassment, discomfort and undue hardship; and • Refund of the wrongfully charged taxes including Service Tax, and other charges along with Interest @18% p.a.; and • Litigation Costs of Rs. 1,00,000/-. 3.4. On 06.02.2017, the National Commission passed an ex-parte Interim Order restraining the Appellant-Builder from cancelling the allotment made in favour of the Respondent-Flat Purchaser during the pendency of the Consumer Case. 3.5. During the pendency of the proceedings before the National Commission, the Appellant-Builder obtained the Occupancy Certificate on 23.07.2018, and issued a Possession Letter to the Respondent-Flat Purchaser on 28.08.2018. 3.6. The Appellant-Builder submitted before the National Commission that since the construction of the apartment was complete, and the Occupancy Certificate had since been obtained, the Respondent-Flat Purchaser must be directed to take possession of the apartment, instead of directing refund of the amount deposited. 3.7. The Respondent-Flat Purchaser however submitted that he was not interested in taking possession of the apartment on account of the inordinate delay of almost 3 years. The Respondent-Flat Purchaser stated that he had, in the meanwhile, taken an alternate property in Gurugram, and sought refund of the entire amount of Rs. 4,48,43,026/- deposited by him along with Interest @18% p.a. 3.8. The National Commission vide Final judgment and Order dated 23.10.2018 allowed the Consumer Complaint filed by the Respondent-Flat Purchaser, and held that since the last date stipulated for construction had expired about 3 years before the Occupancy Certificate was obtained, the Respondent-Flat Purchaser could not be compelled to take possession at such a belated stage. The grounds urged by the Appellant-Builder for delay in handing over possession were not justified, so as to deny awarding compensation to the Respondent-Flat Purchaser. The clauses in the Agreement were held to be wholly one-sided, unfair, and not binding on the Respondent-Flat Purchaser. The Appellant-Builder was directed to refund Rs. 4,48,43,026/- i.e. the amount deposited by the Respondent-Flat Purchaser, along with Interest @10.7% S.I. p.a. towards compensation. The rate of Interest @10.7% S.I. p.a. was fixed in accordance with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 which reads as follows:

15. An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the

notice, advertisement, prospectus or brochure in the terms of Section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of Clause (b) Sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of Sub-section (4) of Section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. ....(Emphasis supplied) However, for the period when the Interim Order dated 06.02.2017 was in operation, which restrained the Appellant-Builder from cancelling the Respondent's allotment, no Interest was awarded. The National Commission ordered payment of Interest from the date of each installment till 05.02.2017; and from the date of the Order passed by the Commission till the date on which the amount would be refunded. 3.9. Aggrieved by the Order dated 23.10.2018 passed by the National Commission, the Appellant-Builder preferred the present statutory Appeal Under Section 23 of the Consumer Protection Act, 1986.

4. Mr. C.A. Sundaram, Senior Counsel appeared for the Appellant-Builder, and drew our attention to the following Clauses in the Apartment Buyer's Agreement dated 08.05.2012 viz. Clause 11.5 (ii), (iv) and (v) along with Clause 20 which read as under:

11.5. (ii) In the event of further delay by the Developer in handing over of the possession of the Unit even after 12 months from the end of grace period, then in such case, the intending Allottee shall have an additional option to terminate this Agreement by giving termination notice of 90 days to the Developer and refund of the actual installment paid by him against the Unit after adjusting the taxes paid/interest/ penalty on delayed payments. ... (iv) Developer shall, within ninety (90) days from the date of receipt of termination notice of said Unit, refund to the intending Allottee, all the monies received excluding the service tax collected on various remittances, till the date of the refund, from the Intending Allottee under this Agreement. In case the Developer fails to refund the Sale Price, the Developer shall pay interest to the Intending Allottee @ 9% per annum for any period beyond the said period of ninety (90) days. The Intending Allottee shall have no other claim against the Developer in respect of the said Unit along with the parking space. The Intending Allottee in this event shall have no right to seek any compensation apart from the interest as stipulated herein. ... (v) If the Intending Allottee fails to exercise his right of termination within the time limit as aforesaid, by delivery to the Developer of a written notice acknowledged by the Developer in this regard, then he shall not be entitled to terminate this Agreement thereafter and he shall continue to be bound by the provisions of this Agreement, provided that in such case, the Developer shall continue to pay the compensation provided herein. 20. RIGHT OF CANCELLATION BY THE ALLOTTEE Except to the extent specifically and expressly stated elsewhere

in this Agreement, the Intending Allottee shall have the right to cancel this Agreement solely in the event of the clear and unambiguous failure of the warranties of the Developer that leads to frustration of the contract on that account. In such case, the Allottee shall be entitled to a refund of the installments actually paid by it along with interest thereon @ 6% per annum, within a period of 90 days from the date of communication to the Developer in this regard less any payments made towards taxes paid by the Developer or interest paid due or payable, any other amount of a non-refundable nature. No other claim, whatsoever, monetary or otherwise shall lie against the Developer nor shall be raised otherwise or in any manner whatsoever by the Allottee. Save and except to this limited extent, the Allottee shall not have any right to cancel this Agreement on any ground whatsoever. (Emphasis supplied) 4.1. It was submitted that the Respondent-Flat Purchaser was not entitled to refund of the amount deposited, since the Apartment Buyer's Agreement was not terminated by the Respondent-Flat Purchaser in accordance with Clause 11.5 (ii) of the Agreement, which stipulates that the allottee has to terminate the Agreement by giving a Termination Notice of 90 days to the Developer. Since the Respondent-Flat Purchaser had not terminated the Agreement by a written notice as per Clause 11.5, the Builder could not sell the apartment, and refund the money to the Respondent-Flat Purchaser. On the contrary, the Respondent filed a Consumer Complaint and obtained an ex-parte Interim Order dated 06.02.2017 restraining the Builder from cancelling the allotment made in favour of the Respondent. 4.2. It was further submitted that if the filing of the Consumer Complaint is considered as an act of termination of the Agreement, then the same was premature. As per Clause 11.5 (ii), the Respondent-Flat Purchaser could have claimed refund only after the expiry of 12 months after the grace period came to an end i.e. after 04.03.2017. However, the Consumer Complaint was filed on 27.01.2017. In these circumstances, even if it is found that the AppellantBuilder is liable to refund the amount deposited with Interest, then the date of the Impugned Order i.e. 23.10.2018, must be treated as the date of serving the Termination Notice as per Clause 11.5 (ii) of the Agreement, and the Appellant-Builder should be held liable to pay Interest only after 90 days from the date of termination i.e. from 23.01.2019. 4.3. With respect to rate of Interest awarded by the National Commission, it was submitted that the Commission erred in granting Interest @10.7% S.I. p.a. even though Clause 20 of the Agreement provided Interest @6% p.a. in case of delay in handing over possession. Even under Clause 11.5 of the Agreement, the Builder was liable to pay Interest @9% p.a., but not @10.7% S.I. p.a. The learned Senior Counsel relied upon this Court's judgment in Bharathi Knitting Co. v. DHL Worldwide Express Courier Division of Airfreight Ltd., (1996) 4 SCC 704 and submitted that the National Commission could not have granted compensation in excess of the rate prescribed by the Agreement.

5. Mr. Sushil Kaushik, learned Counsel represented the Respondent-Flat Purchaser. 5.1. It was submitted that the filing of the

Consumer Complaint may be treated as his Termination Notice under Clause 11.5 (ii) of the Agreement. Under the Agreement, the Builder was obligated to apply for the Occupancy Certificate within 39 months from the date of excavation, with a grace period of further 6 months. The period got over by 04.03.3016 after taking into account the grace period. Admittedly, the Appellant-Builder offered possession after an inordinate delay of almost 3 years on 28.08.2018. On account of the inordinate delay, the Respondent-Flat Purchaser had no option but to arrange for alternate accommodation in Gurugram. Hence, he could not be compelled to take possession of the apartment after such a long delay. It was in these circumstances that the Respondent-Flat Purchaser sought stay of the cancellation of the allotment as a collateral, till his claim for refund was adjudicated by the National Commission. 5.2. It was further submitted that the Clauses of the Agreement were one-sided. As per Clause 6.4 (ii) of the Apartment Buyer's Agreement, the Appellant Builder could charge Interest @18% p.a. for delayed payments. However, the Appellant-Builder was not required to pay equivalent Interest to the Respondent-Flat Purchaser for delay in handing over possession of the flat. On the contrary, as per Clause 11.5 (iv) of the Agreement, in case of delay on the part of the Appellant-Builder in handing over possession of the flat, the Respondent-Flat Purchaser was entitled to Interest @9% p.a. only. 5.3. The Respondent further submitted that the National Commission had ordered payment of Interest as per the statutory Rules i.e. Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 @10.7% S.I. p.a. The Respondent-Flat Purchaser submitted that he had obtained a loan for Rs. 3,30,00,000/- from Standard Chartered Bank to purchase the flat in question, and had entered into a Tripartite Loan Agreement with the Bank and the Builder. The RespondentFlat Purchaser had to pay Interest @10% p.a. for servicing the loan for the entire period. Hence, Interest @10.7% S.I. p.a. awarded by the National Commission was just and fair. It was pointed out that even though the National Commission had not granted Interest for the period during which the Order of stay of cancellation of the allotment was in operation, the Respondent-Flat Purchaser had to pay Interest to the Bank even for this period. 5.4. The Respondent-Flat Purchaser submitted that the present Appeal be dismissed, and the Builder be directed to pay the amount awarded by the National Commission with Interest, within 1 week, so that the Respondent can discharge his loan liability

. 6. We have heard the learned Counsel for both the parties, and perused the pleadings, and written submissions filed. 6.1. In the present case, admittedly the Appellant-Builder obtained the Occupancy Certificate almost 2 years after the date stipulated in the Apartment Buyer's Agreement. As a consequence, there was a failure to hand over possession of the flat to the Respondent-Flat Purchaser within a reasonable period. The Occupancy Certificate was obtained after a delay of more than 2 years on 28.08.2018 during the pendency of the proceedings before the National Commission. In Lucknow Development Authority v. M.K. Gupta, (1994)

1 SCC 243 this Court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune Infrastructure and Anr. v. Trevor D'Lima and Ors., (2018) 5 SCC 442 this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation. 6.2. The Respondent-Flat Purchaser has made out a clear case of deficiency of service on the part of the Appellant-Builder. The Respondent-Flat Purchaser was justified in terminating the Apartment Buyer's Agreement by filing the Consumer Complaint, and cannot be compelled to accept the possession whenever it is offered by the Builder. The RespondentPurchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation. 6.3. The National Commission in the Impugned Order dated 23.10.2018 held that the Clauses relied upon by the Builder were wholly one-sided, unfair and unreasonable, and could not be relied upon. The Law Commission of India in its 199th Report, addressed the issue of 'Unfair (Procedural & Substantive) Terms in Contract'. The Law Commission inter-alia recommended that a legislation be enacted to counter such unfair terms in contracts. In the draft legislation provided in the Report, it was stated that: A contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties. 6.4. A perusal of the Apartment Buyer's Agreement dated 08.05.2012 reveals stark incongruities between the remedies available to both the parties. For instance, Clause 6.4 (ii) of the Agreement entitles the Appellant-Builder to charge Interest @18% p.a. on account of any delay in payment of installments from the RespondentFlat Purchaser. Clause 6.4 (iii) of the Agreement entitles the Appellant-Builder to cancel the allotment and terminate the Agreement, if any installment remains in arrears for more than 30 days. On the other hand, as per Clause 11.5 of the Agreement, if the Appellant-Builder fails to deliver possession of the apartment within the stipulated period, the Respondent-Flat Purchaser has to wait for a period of 12 months after the end of the grace period, before serving a Termination Notice of 90 days on the Appellant-Builder and even thereafter, the AppellantBuilder gets 90 days to refund only the actual installment paid by the Respondent-Flat Purchaser, after adjusting the taxes paid, interest and penalty on delayed payments. In case of any delay thereafter, the Appellant-Builder is liable to pay Interest @9% p.a. only. 6.5. Another instance is Clause 23.4 of the Agreement which entitles the Appellant-Builder to serve a Termination Notice upon the Respondent-Flat Purchaser for breach of any contractual obligation. If the Respondent-Flat Purchaser fails to rectify the default within 30 days of the Termination Notice, then the Agreement automatically stands cancelled, and the Appellant-Builder has the right to forfeit the entire amount of Earnest Money towards liquidated damages. On the other hand, as Clause 11.5 (v) of the Agreement,

if the Respondent-Flat Purchaser fails to exercise his right of termination within the time limit provided in Clause 11.5, then he shall not be entitled to terminate the Agreement thereafter, and shall be bound by the provisions of the Agreement. 6.6. Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words:"'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ...", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive. In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors., (1986) 3 SCC 156 this Court held that: 89. ... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable Clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract, however unfair, unreasonable and unconscionable a Clause in that contract or form or Rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. ... ... These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.(Emphasis supplied) 6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of

the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent-Flat Purchaser. The Appellant-Builder could not seek to bind the Respondent with such one-sided contractual terms.

8. We also reject the submission made by the Appellant-Builder that the National Commission was not justified in awarding Interest @10.7% S.I. p.a. for the period commencing from the date of payment of each installment, till the date on which the amount was paid, excluding only the period during which the stay of cancellation of the allotment was in operation. In Bangalore Development Authority v. Syndicate Bank, (2007) 6 SCC 711 a Coordinate Bench of this Court held that when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund. 8.1. In the present case, the National Commission has passed an equitable Order. The Commission has not awarded any Interest for the period during which the Order of stay of cancellation of the allotment was in operation on the request of the Respondent-Flat Purchaser. The National Commission has rightly awarded Interest @10.7% S.I. p.a. by applying Rule 15 of the Haryana Real Estate (Regulation And Development) Rules, 2017 from the date of each installment till 05.02.2017 i.e. till the date after which the Order of stay of cancellation of the allotment was passed; and thereafter, from the date of the Commission's final Order till the date on which the amount is refunded with Interest

. 9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant-Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent-Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent-Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent-Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent-Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent-Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest.

10. The Civil Appeals are accordingly dismissed, and the Final judgment and Order dated 23.10.2018 passed by the National Consumer Disputes Redressal Commission is affirmed. The Appellant is granted a period of three months from today to refund the amount to the Respondent. All pending Applications, if any, are accordingly disposed of.

–X–

2019 (1) L.S. 207 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Ashok Bhushan &
The Hon'ble Mr.Justice
K.M.Jospeh

Gopala Krishna (D) by Lrs.
& Ors., ..Appellants

Vs.

Narayanagowda (D) by
L.Rs., & Ors., ..Respondents

HINDU LAW - Limitation – Suit by purchasers from granddaughter of owner for possession against persons who purchased the property from widow of grandfather – Plaintiffs lost their right after 12 years from the date of opening of succession – Even otherwise before codification of Hindu law grand daughter is not legal heir of male Hindu died intestate in mitakshara law.

J U D G M E N T
(per the Hon'ble Mr.Justice
K.M.Joseph)

1. This appeal filed by special leave is directed against the judgment dated 28.11.2005 passed by the High Court of Karnataka in Regular Second Appeal Nos. 870/1996 and 871/1996. The High Court, by its impugned judgment, dismissed the appeals and affirmed the judgment of the First Appellate Court which had reversed the decree passed by the Trial Court. The Trial Court decreed the suits [O.S. No. 68/1985 and 21/1986 (O.S. No. 393/75)] filed by the appellants.

2. The case of the appellants is as follows:-

One Ramanna was the owner of the properties which are scheduled to the plaint. He passed away in 1907. He was married to Jankamma (first wife) who predeceased him. The second wife Seethamma passed away in the year 1938. Through his first wife (Jankamma), he had a daughter named Venkamma. Venkamma passed away in 1910. Venkamma, in turn, had a daughter named Jankamma. The appellants before us claimed right to the properties by virtue of sale deeds executed by Jankamma in the year 1955.

After the sale executed by Jankamma, the father of the first plaintiff and the second plaintiff claimed that they were in possession of the suit properties. The respondents filed the suits (bearing O.S. Nos. 211 and 213 of 1955) for declaration of their title and injunction. The said suit was decreed by the Trial Court. The High Court in second appeal set aside the decree of the lower court and confirmed the sale of Jankamma in favour of the first plaintiff's father and the second plaintiff and held that title to the properties could not be decided. It is their case that since Venkamma survived Ramanna, Jankamma became a full owner of the properties and through her under the sale deed, the plaintiffs claimed absolute ownership, and sued for declaration of title, recovery of possession and mesne

profits.

3. The respondents, on the other hand, denied the allegations that Ramanna had a daughter by name Venkamma and Venkamma had a daughter by name Jankamma. The ownership by Jankamma was denied. Seethamma had sold the properties to her brother - Srinivasa Rao.

It is the further case of the respondents (defendants) that they purchased property from Srinivasa Rao under registered sale deed dated 13.09.1954 and they are in possession since then. They also claimed adverse possession. They have been found to be in possession right upto the High Court in the earlier proceedings.

4. The Trial Court decreed the suit and found inter alia that Venkamma was the daughter of Ramanna and Venkamma had two daughters by name Patamma and Jankamma. Patamma died and Jankamma alone survived. The Trial Court further proceeded to enquire whether Jankamma had acquired any right in the properties of her grandfather which was alienated to the plaintiffs. The Court referred to the following findings of the High Court in the earlier litigation commenced by the respondents:

"17. Now, whether Seethamma independently got any right to acquire the suit property from her husband is a matter to be looked into.
Further, this aspect has also been considered by the Hon'ble High Court in S.A. No. 801/60 at page-16. It is observed in the said judgment:-

"Now it should be point out that although there is no dispute that Ramanna left behind him his wife Seethamma, who died in the year 1938, there was a serious controversy in this litigation in regard to the question whether Ramanna had a daughter Jankamma. A question which was even more serious than that was whether Venkamma was alive when Ramanna died in the year 1907 or there about. This question assumes great importance in the context of the finding recorded by the courts below, that Seethamma under the provisions of Mysore Hindu Law Women's Right to property Act became an absolute owner of the properties of her husband. It is clear from Sec. 10(2)(g) of the Act that she could become absolute owner of these properties, only if Ramanna when he died did not left behind his a daughter or daughter's son. If Venkamma was the daughter of Ramanna and she was alive when Ramanna died, then it becomes clear that Sec. 10(2)(g) of the Act is no application and Seethamma had only a widow's estate and the properties could not become her Sreedhana properties. It was for this purpose to demonstrate that they did not that way become Sreedhana properties of Seethamma that defendants contended that Ramanna left behind him his daughter Venkamma and that Venkamma had a child Jankamma, who could convey to the contesting defendants the properties purchased by them.

Both the courts have found that Venkamma was the daughter of Ramanna and that finding being a finding on the question of fact has remained undisturbed. They have further found that defendant No.8 is Jankamma, daughter of Venkamma and

that finding is equally unassailable for the same reason.

18. While answering issue Nos. 1 and 2, not only I have come to the conclusion that Venkamma survived her further and she was the daughter of Ramanna and she had a daughter by name Jankamma but earlier proceedings between the same parties have also established this fact beyond any shadow of doubt. When Venkamma survived her father, who died in the year 1907, then Seethamma, the 2nd wife of late Ramanna enquiring the properties of her husband could not have been there at all. Because as it is already stated above under Section 10(2)(g) of Hindu Law Women's Right to Properties Act she could not become an absolute owner of the properties of her husband, Ramanna. Because Ramanna had left behind his daughter Venkamma. The said Venkamma died in the year 1910. Leaving behind her daughter by name Jankamma. So under Section 10(2)(g) of the said Act, Seethamma had only a widow's estate but the properties of her husband could not form her Sreedhana properties so in that way any alienations made by her in favour of her brother Srinivasa Rao were all illegal."

5. When Venkamma survived her father then Seethamma (the second wife of Ramanna) could not acquire properties of her husband. Reference was made to Section 10(2)(g) of the Hindu Law Women's Right to Properties Act (for short 'the State Act'). On finding that Ramanna had left behind her daughter - Venkamma who died in the year 1910, therefore under Section 10(2)(g) of the Act, the widow Seethamma had only widow's estate which could not form her Stridhan properties and therefore any alienation made by her in favour of her brother - Srinivasa Rao was illegal. Seethamma was found to have no vested interest in the properties of her husband except having widow's estate. Seethamma herself had not acquired any saleable interest in the properties of her husband - Ramanna. It was observed that in the earlier second appeal that the sale by Srinivas Rao in favour of the respondents could not be sustained and accordingly the sale had been set aside only confirming the decree for permanent injunction against the appellants. The sale of the properties by Jankamma was upheld in the earlier proceedings. On this basis, the sale of properties by Seethamma in favour of her brother was found to be illegal entitling the plaintiffs to be declared as owner.

6. The contention of the respondents was that they were in possession and there were also entries in the revenue record to that effect. It was found that the entries in the revenue record would not advance the case of the respondents.

The Trial Court proceeded to consider the question whether the possession of the defendants could be found to be adverse and the Court came to the conclusion that the defendants had miserably failed to establish adverse possession. The contention based on limitation was accordingly rejected. Accordingly, on these findings, the suit came to be decreed declaring the appellants as owners of the scheduled properties and entitled to recover possession of the suit properties and also

mesne profits from the respondents.

7. In the first appeal, the Appellate Court inter alia found that the respondents were in possession and if the properties were not recovered within 12 years, then the right to recovery is extinguished as per the decision in [AIR 1972 Mysore 22].

Though the High Court in the earlier round of litigation observed that the question relating to whether Venkamma survived Ramanna or predeceased him has to be decided, the appellants should have approached the Court immediately but they had approached the Court with the delay of beyond 12 years and that too without giving any proper explanation for the delay.

It was found that the right of the appellants for recovery of possession on the foot of their acquisition of title by sale from Jankamma on 16.04.1955 accrued on 16.04.1955. The judgment of the High Court in the earlier second appeal delivered on 16.09.1963 did not give rise to any cause of action. Accordingly, the appeals were allowed and the suits were dismissed.

Proceedings in the High Court

8. The High Court framed the following substantial questions of law in R.S.A. No. 870/96 and R.S.A. No. 871/96:

R.S.A. No. 870/96

i) Whether the finding of the first appellate Court that the suit is barred by time is without considering the provisions of Section 65 of the Limitation Act of 1963?

ii) Whether the finding that the respondents have perfected their title by adverse possession is justified when they have contended that they are the owners of the property by virtue of a registered sale deed?

R.S.A. No. 871/96

i) Whether the lower appellate Court was justified in holding that the suit was barred by limitation?

ii) Whether the lower appellant court was justified in holding that the respondents acquired title by adverse possession?

9. The High Court came to the following findings after referring to the relationship of the parties. It was found inter alia that during the life time of Jankamma although the properties were sold by Seethamma in favour of his brother Srinivasa Rao but she had not challenged the same, so possession of the properties by the defendants by virtue of sale deed in favour of Srinivasa Rao and by Srinivasa Rao in favour of the respondents remained unchallenged and that would be the starting point of limitation.

10. The transferees from Jankamma namely the appellants moved the Court only in 1975, 1985 and 1986. As per Madras School of Mitakshara Law in a catena of decisions, it is held that at a place other than Bombay State the right of survivorship necessarily is in favour of the widow than the daughter and the grand-daughter. So the alienation made by Seethamma in favour of Srinivas Rao and by Srinivas Rao to the respondents could not be said to be invalid.

11. Thereafter, the Court referred to the 'the State Act' and observed that even under Section 4 as per Section 4(1)(ii) of the State Act, the widow stands in preference to the daughters i.e. the right of widow (Seethamma) is preferable to the right of daughter and Jankamma's position comes only afterwards. Jankamma - the grand daughter is in category (ix) of the aforesaid provision.

12. Such being the position of law, the sale made by Jankamma, grand-daughter of Ramanna, in favour of the appellants, if any, is non est, more so, as noted, since Jankamma had not challenged the earlier sale made by Seethamma in favour of Srinivas Rao. Seethamma although had a limited interest, the alienation had not been challenged by the reversioners of Ramanna for 50 years. The right of Seethamma stood unchallenged and the alienation made also remained unchallenged. As regards the point relating to limitation, it was found that first of all Jankamma had to challenge the alienation by Seethamma, which was of the year 1913. No special privilege was given in excluding limitation created by the Limitation Act by the observation of the High Court in the earlier second appeals (801/1960 and 819/1960). Since the right of Seethamma had not been challenged by Jankamma, the suits are necessarily barred by time.

Thereafter, regarding the adverse possession, this is what the Court held:

"As to the point of adverse possession is concerned, it is made clear by the lower appellate court that even after order of declaration has been negatived by this Court in the second appeals 801/60 and 819/60, the suits are belatedly filed by the plaintiffs in the year 1985 and 86 respectively and as such Sreenivas Rao and thereafter, the defendants have acquired right and title to the suit properties by adverse possession. It is needless to say that when necessarily these defendants have set up their right not only for possession, but also by virtue of the sale deed, that finding would not be appropriate."

13. We have heard learned counsel for the parties. Learned counsel for the appellant drew our attention to Section 4 of the State Act and then he further sought support from Section 10 of the Act. Section 10 (2) (g) of the Act reads as follows:-

"10. (2) Stridhana includes:-

(g) property taken by inheritance by a female

from another female and property taken by inheritance by a female from her husband or son, or from a male relative connected by blood except when there is a daughter or daughter's son of the propositus alive at the time the property is so inherited."

14. The appellant's contention is that the High Court has committed a clear error in taking the view that Seethamma - the widow would get an absolute right. It is his contention that as per the definition of Stridhan which undoubtedly is her absolute right, there is an exception carved out in Section 10(2)(g) of the Act. In so far as the properties in question were properties inherited by Seethamma on the death of her husband - Ramanna and at that time

the daughter Venkamma was very much alive, therefore, Seethamma would not get an absolute right. In this case, the daughter of Ramanna (Venkamma) died only in 1910 which was after the death of Ramanna – 1907. When succession to the estate of Ramanna in 1907 opened, then Seethamma his widow would inherit the property where the right is only limited to the estate of a widow. On her death, the property would revert back to the reversioners of her late husband - Ramanna.

15. It is his complaint that the High Court has overlooked this vital aspect by not referring to Section 10 of the Act and confining its focus on Section 4 of the State Act. Under Section 4 of the State Act, the widow has priority over daughter and granddaughter.

When it was pointed out to the learned counsel for the appellant that since Ramanna died in 1907 and the State Act was not in existence as the Act was passed in 1933, learned counsel for the appellant took up another contention. He contended that under the Mitakshara law which was applicable, the widow was entitled only to a limited estate. He would contend that the position even prior to the passing of the State Act was that the widow did not get absolute estate.

16. Per contra, learned counsel for the respondents would contend that Seethamma had transferred the property in the year 1913. Seethamma died in 1938. If that is so, the suit should have been filed if at all within a period of 12 years from the date on which the alleged right in the reversioners came to be vested namely upon the death of Seethamma in the year 1938. The period of 12 years would run out in 1950. The appellants - plaintiffs purchased the property in the year 1955 from Jankamma - grand daughter of Ramanna. Even then the suit was filed by them only after more than 20 years. It is further contended by learned counsel for the respondent that under Mitakshara law applicable in the region in question, the grand daughter was not a heir. Only the daughter of a male upon his death intestate could inherit the property. Therefore, even the limited right attributed to the widow Seethamma would by default become an absolute right. Findings in the earlier Second Appeal

17. The findings in the earlier Second Appeals which emanated from the suits filed by the respondents are as follows: The High Court did not interfere with a finding that the sale deeds executed by Seethamma in favour of Srinivas Rao were genuine. Equally, the High Court affirmed the finding that the respondents in this appeal were in possession of the properties purchased by them. Jankamma was found to be the grand-daughter of Ramanna. Further, the Court proceeded to pose the question whether Venkamma was a daughter of Ramanna and whether she was alive when Ramanna died having regard to Section 10(2)(g) of the State Act. It was noticed that both the Courts below had found that Venkamma was the daughter of Ramanna and Jankamma was the daughter of Venkamma. It was, however, observed that there were no pleadings as to whether Venkamma survived or predeceased

x Gopala Krishna (D) by Lrs.& Ors.,Vs. Narayanagowda (D) by L.Rs., & Ors., 213
Ramanna.

18. The Court was of the view that the first issue in all the cases was whether Seethamma became absolute owner of the properties of her husband and it was equally true that the processes by which she could become such owner would be by her being alive and there being no surviving child of Ramanna when he died. It was found that the parties did not have the opportunity to produce all evidences in this regard and an investigation was required. The finding that Seethamma became absolute owner of Ramanna's properties was set aside. The Court, however, proceeded to find that the fact that the aforesaid finding was set aside did not mean that the Court held that Seethamma had not become the absolute owner. No opinion was expressed as it was dependent upon the question whether Venkamma was alive when Ramanna died and materials in this regard were insufficient.

19. On this basis, the decree declaring the respondents to be the owners of the property was set aside. The decree restraining the appellants from disturbing the respondents' possession was also affirmed. It may be seen from the judgment of the High Court in the earlier round of litigation that the respondents were found to be in possession. The question relating to title was essentially not decided as is clear from what was found by the High Court. The Court left it open to be decided on the basis that Seethamma would become absolute owner if Venkamma - the daughter of Ramanna had not survived Ramanna.

20. Now we shall proceed to render our findings. Position of a Hindu Widow prior to Hindu Succession Act and the State Act There is no dispute that the parties are governed by the Madras School of Hindu Law. Thereunder, every female who succeeded as a heir whether to a male or a female, took a limited estate in the property inherited by her. As regards widow's estate, this statement is found in Mulla Hindu Law, 23rd Edition.

"176. Widow's estate – A widow or other limited heirs is not a tenant for life, but is owner of the property inherited by her, subject to certain restrictions on alienation and subject to its devolving upon the next heir of the last full owner upon her death. The whole estate is for the time vested in her, and she represents it completely. As stated in a Privy Council case, her right is of the nature of a right of property; her position is that of owner; her powers in that character are, however limited; but so long as she is alive no one has any vested interest in the succession." In Jaisri Sahu v. Rajdewan Dubey & Ors. [AIR 1962 SC 83], this Court proceeded to hold that it could not be an inflexible proposition of law that whenever there is a usufructory mortgage, the widow could not sell the property on the ground that it would deprive the reversioners of the right to redeem it. This is what the Court held:

".....Such a proposition could be supported only if the widow is in the position of a trustee, holding the estate for the benefit of the reversioners, with a duty cast on her to preserve the properties and pass them on intact to them.
That, however, is not the law. When a widow

succeeds as heir to her husband, the ownership in the properties both legal and beneficial vests in her. She fully represents the estate, the interest of the reversioners therein being only spec successiones. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to any one. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an incident of the estate as known to Hindu law. It is for this reason that it has been held that when Crown takes the property by escheat it takes it free from any alienation made by the widow of the last male holder which is not valid under the Hindu law vide : Collector of Masulipatam v. Cavaly Venkata 8 Moo Ind App 529(PC). Where, however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume. Her powers in this regard are, as held in a series of decisions beginning with Hunooman Persaud v. Mussamat Babooee Mundraj Koonweree, 6 Moo Ind App 393 (PC) those of the manager of an infant's estate or the manager of joint Hindu family." (Emphasis Supplied)

21. In Gogula Gurumurthy & Ors. v. Kurimeti Ayyappa (1975) 4 SCC 458, this Court reiterated the position of a Hindu widow and of greater relevance to us held no one has any vested interest in succession as long as the widow is alive.

"A hindu widow is entitled to the full beneficial enjoyment of the estate. So long as she is not guilty of wilful waste, she is answerable to no one. Her estate is not a life-estate, because in certain circumstances she can give an absolute and complete title. Nor is it in any sense an estate held in trust for reversioners. Within the limits imposed upon her, the female holder has the most absolute power of enjoyment and is accountable to no one. She fully represents the estate, and so long as she is alive, no one has any vested interests in the succession. It cannot be predicted who would be the nearest reversioner at the time of her death. It is, therefore, impossible for a reversioner to contend that for any loss which the estate might have sustained due to the negligence on the part of the widow he should be compensated from out of the widow's separate properties. He is entitled to get only the property left on the date of the death of the widow. The widow could have, during her lifetime, for necessity, including her maintenance alienated the whole estate." (Emphasis Supplied) The impact of the State Act of 1933 The State Act that is the Mysore Act of 1933 (as it was when it was passed) came into force on first day of January, 1934.

Section 2 reads as follows: -

"2. (1) This Act applies to persons who but for the passing of this Act, would have been subject to the law of Mitakshara in respect of the provisions herein enacted.

(2) Save as aforesaid, nothing herein contained shall be deemed to affect any rules or incidents of the Hindu Law which are not inconsistent with the provisions of

this Act." Thus, the rules or incidents of Hindu law to the extent they were not inconsistent with the Act was to continue to operate. Section (4) of the Act provided as follows:-

"4(1) The succession to a Hindu male dying intestate shall, in the first place, vest in the members of the family of the propositus mentioned below, and in the following order:-
(ii) the widow;
(iii) daughters;
(ix) daughters' daughters;
As far as Section 10 is concerned, the relevant portion reads as follows: -

"10(1) "Stridhana" means property of every description belonging to a Hindu female, other than property in which she has, by law or under the terms of an instrument, only a limited estate.
10(2) Stridhana includes:-
(g) property taken by inheritance by a female from another female and property taken by inheritance by a female from her husband or son, or from a male relative connected by blood except when there is a daughter or daughter's son of the propositus alive at the time the property is so inherited." It is necessary to notice Section 11 also. Section 11 reads as follows:-

"11.(1) A female owning stridhana property shall have over it absolute and unrestricted powers both of enjoyment and of disposition inter vivos and by will, subject only to the general law relating to guardianship during minority.
(2) Except when acting as the lawful guardian of his wife, a husband shall have no right to or interest in any portion of his wife's stridhana during her life nor shall he be entitled to control the exercise of any of her powers in relation thereto." Thus, the female owning stridhana property was conferred absolute powers to dispose of the same as also in the matter of enjoyment. The disposal could be by will or transfer inter vivos. The only limitation was the law relating to guardianship would continue to operate during minority. Reverting back to Section 10 (2) (g), the property inherited by a woman inter alia from her husband was brought under the definition of stridhana. This was a clear expansion of a widow's rights by conferring upon a widow absolute right over property inherited from her husband being a radical departure from the widow's estate under Hindu Law which was a limited estate and under which there was no such absolute right of disposal. There was however a catch and it was this. If the husband was survived by the widow and a daughter or a daughter son, then the widow's estate as understood in Hindu Law was to continue undisturbed. If a daughter or grandson as mentioned did not survive the husband, the widow would get the absolute right notwithstanding Section 10(1) defining stridhana as meaning property of any description belonging to a Hindu female other than which she has by law 'only a limited estate'. Thus though under Section 4, the widow would inherit in preference to the daughter and daughters' daughter the nature of the right is as contained in Section 10 and Section 11, the effect of which we have called out.

22. The next thing which we must ascertain is who are the reversioners. The reversioners are the heirs of the last full owner, who

would be entitled to succeed to the estate of such owner on the death of a widow or other limited heir, if they be then living (as per para 175 of the Mulla on Hindu Law).

The nature of the interest of reversioners is also discussed under the same para, which is as follows:

(2) Interest of reversioners – The interest of a reversioner is an interest expectant on the death of a limited heir and is not a vested interest. It is a spes successionis or a mere chance of succession within the meaning of Section 6, Transfer of Property Act, 1882. It cannot, therefore, be sold, mortgaged or assigned, nor can it be relinquished. A transfer of a spes successionis is a nullity, and it has no effect in law.

23. Under the Hindu Law, a widow took a limited estate. She was not a trustee for the reversioners. She was owner of the properties. But she could alienate the property only for necessity or benefit of the estate. By the State Act, the widow's estate became stridhana, which by virtue of Section 11 conferred upon her absolute right to dispose the property either by way of inter vivos transfer or will. The State Act came into force on 01.01.1934. When the succession opened on Ramanna dying in 1907, he was survived by both his widow Seethama and also his daughter Venkamma. Therefore, it is quite clear that Seethama would not get an absolute right under Section 11 of the State Act. When succession opened in this case to the estate of Ramanna, in fact, the State Act was not in force at that time. The estate which was inherited by Seethama was that of a widow. Therefore, be it from stand point of Hindu Law as applicable prior to the State Act or the provisions of the State Act, Seethama did not acquire absolute rights. As such, the right which she had, was the right of the Hindu widow under Hindu Law. Further, as long as Seethamma - widow of Ramanna was alive, no reversioners had any vested interest. The daughter of Ramanna (Venkamma) through his first wife passed away in the year 1910. At that time, Seethamma the widow of Ramanna was alive. Therefore, she (Venkamma) would not get any right in the property. Seethamma died only in the year 1938. When Seethamma died in 1938, no doubt Jankamma was alive. It is here that we must consider the argument of learned counsel for the respondents that the daughter of a daughter was not recognized as a heir. When succession opened upon the death of the widow, in this case, namely Seethamma in the year 1938, if Jankamma could be treated as the reversioner being grand daughter of the last full owner, then the property would vest in Jankamma.

24. There would be two obstacles for the appellants:- firstly, it would have to be held that Jankamma being the grand daughter of Ramanna was a reversioner upon the death of Seethamma, the widow of Ramanna. Secondly, even assuming for a moment that Jankamma was the reversioner whether it was incumbent upon her to institute proceedings for recovery of possession within 12 years of death of Seethamma.

25. Taking up the second question, we

notice the following commentary of Mulla on Hindu Law:

"207. Reversioner's suit for possession and limitation._ A suit by reversioners, entitled to succeed to the estate on the death of a widow or other limited heir, for possession of immovable property from an alienee from her must be brought within 12 years from her death (the Indian Limitation Act, 1908, Schedule I, Article 141), and of movable property, within six years from that date. Now see Articles 65, 109 and 113 of the new Limitation Act, 1963.

Description of Suit	Period of Limitation	Time from which period begins to run
140. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.	Twelve years	When his estate falls into possession.
141. Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	Twelve years	When the female dies.

The reversioner may sue for possession without suing to have alienation set aside. The reason is that he is entitled to treat the unauthorized alienation as a nullity without the intervention of any court.

26. Learned counsel for the respondents has placed considerable reliance on the judgment of this Court in Kalipada Chakraborti & Anr. v. Palani Bala Devi & Ors. [AIR 1953 SC 125]. Therein, this Court dealt with transfer of Shebeiti right by Hindu Widow and the suit by reversioners challenging the same. This Court held as follows:

"But all doubts on this point were set at rest by the decision of the Privy Council itself in Faggo v. Utsava [(1929) 56 I.A. 267] and the law can now be taken to be perfectly well settled that except where a decree has been obtained fairly and properly and without fraud and collusion against the Hindu female heir in respect to a property held by her as a limited owner, the cause of action for a suit to be instituted by a reversioner to recover such property either against an alienee from the female heir or a trespasser who held adversely to her accrues only on the death of the female heir. This principle, which has been recognized in the law of limitation in this country eversince 1871 seems to us to be quite in accordance with

the acknowledged principles of Hindu law. The right of reversionary heirs is in the nature of spes successionis, and as the reversioners do not trace their title through or from the widow, it would be manifestly unjust if they are to lose their rights simply because the widow has suffered the property to be destroyed by the adverse possession of a stranger. The contention raised by Mr. Ghose as regards the general principle to be applied in such cases cannot, therefore, be regarded as sound.

Ordinarily, there are two limitations upon a widow's estate. In the first place, her rights of alienation are restricted and the in the second place, after her death the property goes not to her heirs but to the heirs of the last male owner." This view has been followed in the judgment reported in AIR 1969 SC 204. The law of limitation relevant at that point of time was the Indian Limitation Act, 1908. It is crucial to notice Articles 140 and 141:-

It is this statutory framework which formed the basis of the law laid down by this Court which we have noticed. It is next relevant to notice Section 28 of the Act:-

"28. Extinguishment of right to property. - At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished." In other words, while it was open to the reversioners to ignore an alienation made by a Hindu widow and the period of limitation would not start to run upon a transfer effected by the Hindu widow, undoubtedly, the period of limitation for filing a suit for recovery of possession would commence upon the death of the widow.

27. The property was alienated by Seethamma, the widow of Ramanna in favour of her brother Srinivas Rao in the year 1913. Undoubtedly, it was open to the reversioner to proceed on the basis that such alienation does not bind her.

28. Thereafter, in 1938, Seethamma passed away. Even proceeding on the basis that Jankamma, the grand-daughter of Ramanna was a reversioner, her estate in expectancy became vested in her, upon the death of the Ramanna's widow, Seethamma in 1938. While it is true that it was open to the reversioner to ignore the sale deed executed by the widow, as not binding on her, as far as suit for recovery of possession, the law clearly provided for a period of 12 years and the period of limitation started with the death of the limited owner, namely, the widow in 1938. The time started ticking with the passing away of the widow in 1938. The period of limitation being 12 years, it ran out in 1950. With the running out of the period of limitation prescribed under the Limitation Act, 1908 (by Articles 140 and 141), the very right of the alleged reversioner Jankamma also came to an end. Thus, when she executed the sale in the year 1955 in favour of the appellants, she could not have conveyed any right. That apart, even for a moment, proceeding on the basis that period of limitation would start from 12 years from 1955 when the sale deed was executed in favour of the appellants by Jankamma even that period ran out in 1967. Admittedly, the suits were filed several years even after 1967. Section 31 of the Limitation Act, 1963 reads as follows:-

"31 Provisions as to barred or pending suits, etc:-
Nothing in this Act shall,—

(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), expired before the commencement of this Act; or

(b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement." Quite clearly much before the Limitation Act, 1963 came into force, the period of limitation for instituting the suits had expired. This is apart from the effect of not filing such a suit on the very right itself.

29. In such circumstances, we see no reason to interfere with the judgment of the High Court. The appeals will stand dismissed with no order as to costs.

–X–

2019 (1) L.S. 219 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
L Nageswara Rao &
The Hon'ble Mr.Justice
M.R.Shah

Anurag Soni …Appellant
Vs.
State of Chhattisgarh …Respondent

INDIAN PENAL CODE, Sec.376 – Appeal against conviction - Prosecutrix gave consent for sexual intercourse on the promise by the accused that he would marry the prosecutrix - Accused had refused to marry the prosecutrix and performed marriage with another woman - Accused has been convicted for the offence under Section 376 of the IPC.

Held - If it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as

defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC - Sentence of 10 years' RI awarded by the courts below is hereby reduced to seven years RI - Both the Courts below have rightly convicted the appellant under Section 376 of the IPC.

J U D G M E N T

(per the Hon'ble Mr.Justice M.R.Shah)

The application for impleadment of the prosecutrix is allowed, in terms of the prayer made.

1.1 Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.10.2018 passed by the High Court Signature Not Verified of Chhattisgarh at Bilaspur in Criminal Appeal No. 1270/2014, Digitally signed by VISHAL ANAND Date: 2019.04.10 16:27:05 IST Reason:

by which the High Court has dismissed the said appeal preferred by the appellant herein – the original accused and has confirmed the judgment and order of conviction passed by the learned trial Court convicting the original accused for the offence under Section 376(1) of the IPC and sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.50,000/-, in default of payment of fine, to further undergo additional rigorous imprisonment for six months, the original accused has preferred the present appeal.

3. The prosecution case in brief was that the prosecutrix was the resident of Koni, Bilaspur, District Bilaspur. Prosecutrix was familiar with the accused since 2009 and there was love affair between them. The appellant had even proposed her for marriage and this fact was within the knowledge of their respective family members. At the time of incident, accused was posted as Junior Doctor in the government hospital of Maalkharoda and at that time the prosecutrix was doing her studies of Pharmacy in Bhilai. On 28.4.2013 the accused expressed his desire to the prosecutrix that he wanted to meet her and accordingly on 29.4.2013 at 7.25 a.m. the prosecutrix boarded Durg Danapur Express train and reached Sakti railway station from where the accused took her on a motorcycle to his house situated at Maalkharoda and there she stayed from 2 pm of 29.4.2013 to 3 p.m. of 30.4.2013 and during this period despite refusal of the prosecutrix the accused established physical relation with her on the pretext of marrying her. On 30.4.2013 the accused asked the prosecutrix to leave by saying that on 1st or 2nd May he will talk to his parents about their marriage and he will soon marry with her. On 30.4.2013 at about 6 in the evening accused Anurag Soni and the prosecutrix reached Bilaspur by train and from where their friend namely Umashankar took them on a motorcycle to the house of Mallika Humne, friend of prosecutrix, where the accused dropped her and went back. Next morning accused dropped the prosecutrix at Railway Station, Bilaspur from where she boarded train for Bhilai (Durg). Accused asked the prosecutrix

not to tell about the incident to anyone and as a result of which the prosecutrix did not disclose the incident to anyone, but from 2.5.2013 to 5.5.2013 the prosecutrix had repeatedly asked from the accused about the marriage and when she did not receive any reply from the accused, on 6.5.2013, she informed her family members about the incident and then the family members of the prosecutrix had gone to the house of accused at village Kharod and informed his family members about the incident whereupon the family members of accused had said that now marriage of accused and prosecutrix was the only option available. In the meantime, members of both the families used to visit house of each other, however, after keeping the prosecutrix and her family members in dark for about two months, the accused had refused to marry the prosecutrix and performed marriage with another girl and then on 21.6.2013 the prosecutrix submitted written report (Ex. P-3) in the police station Maalkharoda in respect of rape committed by the accused upon her on the pretext of marriage based on which FIR (Ex.P-4) for the offence under Section 376 of IPC was registered against the accused. 3.1 That during the course of investigation, the investigating officer recorded the statement of concerned witnesses including the prosecutrix. The investigating officer collected the medical evidence and other evidence. The accused was arrested. After completion of the entire investigation, a charge sheet was filed against the accused for the offence punishable under Section 376 of the IPC. 3.2 That the learned magistrate committed the case to the learned Sessions Court, which was numbered as Sessions Trial No. 201/2013. That the learned Sessions Court framed the charge against the accused for the offence under Section 376 of the IPC. The accused denied the charge so framed and claimed trial, and therefore he came to be tried by the learned Sessions Court for the aforesaid offence.

3.3 The prosecution in support of its case examined as many as 13 witnesses including the prosecutrix (PW3) as under:

1.	Pritam Soni	PW1
2.	Manikchand	PW2
3.	Prosecutrix	PW3
4.	Patwari Ghanshyam	PW4
5.	Dr. C.K. Singh	PW5
6.	Dr. K.L. Oraon	PW6
7.	Amritlal	PW7
8.	Pankaj Soni	PW8
9.	Dr. P.C. Jain	PW9
10.	Constable Jawaharlal	PW10
11.	Sub-Inspector S.P. Singh	PW11
12.	Inspector Sheetal Sidar	PW12
13.	Srimati Priyanka Soni	PW13

3.4 After the closing pursis were submitted by the

prosecution, three witnesses were examined on behalf of the accused in defence. The statement of appellant-accused was recorded under Section 313 of the Cr.P.C. wherein he denied the circumstances appearing against him and pleaded innocence and false implication. As per the

accused his marriage was already fixed with one Priyanka Soni and this was in the knowledge of the prosecutrix, even then the prosecutrix and her family members continued to pressurise him to marry the prosecutrix, and then he married with Priyanka Soni on 10.06.2013 in Arya Samaj. Therefore, it was the case on behalf of the accused that a false FIR was lodged against him.

4. That on appreciation of evidence, the learned Sessions Court observed and held that the prosecutrix gave consent for sexual intercourse on a misrepresentation of fact and the promise by the accused that he would marry the prosecutrix and therefore the said consent cannot be said to be a consent and therefore the accused committed the offence under Section 376 of the IPC. Thereupon, the learned Sessions Court convicted the accused for the offence under Section 376 of the IPC and sentenced him to undergo 10 years rigorous imprisonment.

5. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned Sessions Court, the accused preferred appeal before the High Court. By the impugned judgment and order, the High Court has dismissed the appeal and has confirmed the judgment and order passed by the learned Sessions Court convicting the accused for the offence under Section 376 of the IPC.

6. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the appeal and confirming the conviction and sentence of the accused for the offence under Section 376 of the IPC, the original accused has preferred the present appeal.

6.1 Shri S. Nagamuthu, learned Senior Advocate has appeared on behalf of the accused and Shri Pranav Sachdeva and Shri Praveen Chaturvedi, learned advocates have appeared on behalf of the State as well as the original complainant – prosecutrix respectively.

6.2 Shri Nagamuthu, learned Senior Advocate appearing on behalf of the accused has vehemently submitted that in the facts and circumstances of the case, both the courts below have materially erred in convicting the accused for the offence under Section 376 of the IPC. It is further submitted that while convicting the accused for the offence under Section 376 of the IPC and while holding that the accused committed the rape under Section 375 of the IPC, the courts below have not at all considered Section 90 of the IPC and Section 114-A of the Evidence Act in its true perspective.

6.3 It is further submitted by the learned Senior Advocate appearing on behalf of the accused that in the present case as such the prosecutrix was in love with the accused and she wanted to marry the accused. It is submitted that it was the specific case on behalf of the accused, so stated in his 313 statement, that as such the prosecutrix and her family members were in the knowledge that the marriage of the appellant

is already fixed with Priyanka Soni and even then the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix.

6.4 It is further submitted by the learned Senior Advocate appearing on behalf of the accused that even assuming that the accused gave promise to the prosecutrix to marry and thereafter the accused did not marry the prosecutrix, the same can be said to be a 'breach of promise' and cannot be said to be a rape under Section 375 of the IPC.

6.5 In support of his submissions, Shri S. Nagamuthu, learned Senior Advocate has heavily relied upon the following decisions of this Court; Dr. Dhruvaram Murlidhar Sonar v. The State of Maharashtra (2019) SCC Online 3100; Tilak Raj v. State of Himachal Pradesh (2016) 4 SCC 140; Deepak Gulati v. State of Haryana (2013) 7 SCC 675; Uday v. State of Karnataka (2003) 4 SCC 46; Deelip Singh v. State of Bihar (2005) 1 SCC 88; and Shivashankar alias Shiva v. State of Karnataka (2018) SCC Online SC 3106.

6.6 Therefore, Shri S. Nagamuthu, learned senior counsel appearing on behalf of the accused, has submitted that in fact thereafter the accused has married one Priyanka Soni and even the prosecutrix also got married.

6.7 Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeal and quash and set aside the conviction and sentence of the appellant- accused for the offence under Section 376 of the IPC.

7. The present appeal is vehemently opposed by the learned advocates appearing on behalf of the State as well as the original complainant – prosecutrix.

7.1 It is vehemently submitted by the learned advocates appearing on behalf of the State as well as the prosecutrix that the present case is not a case of mere breach of promise to marry, as contended by the learned Senior Advocate appearing on behalf of the accused. It is submitted that in the present case, from the very beginning and from the inception, the intention of the accused was not to marry with the prosecutrix and he was to marry one another lady Priyanka Soni. It is submitted that despite the above he called the prosecutrix at his residence and by giving promise that he would marry, he had a sexual intercourse with the prosecutrix. It is submitted that, in fact, the prosecutrix initially objected to have any sexual intercourse, however, as the accused gave assurance and promise that he would marry, the prosecutrix gave consent. It is submitted that as the consent was obtained by the accused on misconception of fact and therefore the same cannot be said to be a consent even considering Section 90 of the IPC, and the consent was on misconception of fact, both the courts below have rightly held the accused guilty for the offence under Section 376 of the IPC.

7.2 It is further submitted by the learned advocates appearing on behalf of the State

as well as the prosecutrix that even the conduct on the part of the accused which is born out from the record that when the parents of the accused and the prosecutrix subsequently met to fix the marriage, instead of remaining present the accused ran away. It is submitted that it has come in evidence that the accused was already to marry one another lady Priyanka Soni and therefore there was no intention on the part of the accused from the very inception not to marry the prosecutrix and despite the same by giving false promise to marry, he obtained the consent of the prosecutrix and had a sexual intercourse. It is submitted that therefore in the facts and circumstances of the case, it has been established and proved beyond doubt that the consent given by the prosecutrix was on misconception of fact and therefore the same cannot be said to be a consent and therefore the appellant-accused is rightly convicted under Section 376 of the IPC.

7.3 Learned advocates appearing on behalf of the respondent-State as well as the original complainant – prosecutrix have relied upon certain decisions of this Court on Section 375 of the IPC, Section 90 of the IPC and on consent on misconception of fact and on consensual sex, which will be referred to and considered hereinafter.

7.4 Now so far as the reliance placed on the decisions of this Court, relied upon by the learned counsel appearing on behalf of the accused, referred to hereinabove, learned advocates appearing on behalf of the State as well as the original complainant – prosecutrix have submitted that none of the aforesaid decisions shall be applicable to the facts of the case on hand. It is submitted that even some of the observations made by this Court in the aforesaid decisions, relied upon by the learned senior counsel appearing on behalf of the accused, would be applicable in favour of the prosecutrix, more particularly, para 20 of Dhruvaram Murlidhar Sonar (supra), para 21 of Deepak Gulati (supra); and paras 21 and 23 in the case of Uday (supra). 7.5 Making the above submissions and relying upon the above decisions, it is prayed to dismiss the present appeal.

8. Heard learned counsel appearing on behalf of the respective parties at length.

9. In the present case, the accused has been convicted for the offence under Section 376 of the IPC. It is the case on behalf of the appellant-accused that as it is a case of a consensual sex, the Courts below have committed an error in convicting the accused for the offence under Section 376 of the IPC. Both the Courts below have accepted the case of the prosecution that the consent of the prosecutrix was given on the basis of misconception of fact and, therefore, considering Section 90 of the IPC, such a consent cannot be said to be a consent and, therefore, the accused has committed the rape as defined under Section 375 of the IPC and thereby has committed an offence under Section 376 of the IPC. Therefore, the question which has been posed before this Court is, whether in the facts and circumstances of the case and

considering the evidence on record, the Courts below have committed any error in holding the accused guilty for the offence under Section 376 of the IPC?

10. While considering this appeal on merits further, some of the decisions of this Court on Section 375 and Section 90 of the IPC and on the consent/consensual sex are required to be referred to and considered:

10.1 In the case of Kaini Rajan v. State of Kerala (2013) 9 SCC 113, this Court has explained the essentials and parameters of the offence of rape. In the said decision, in para 12, this Court observed and held as under:

"12. Section 375 IPC defines the expression "rape", which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression "against her will" means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression "consent". Section 90, though, does not define "consent", but describes what is not consent. "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. (See State of H.P. v. Mango Ram (2000) 7 SCC 224" 10.2 In the case of Deepak Gulati v. State of Haryana (2013) 7 SCC 675, this Court observed and held in paragraphs 21 and 24 as under:

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where

the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

10.3 In the case of Yedla Srinivasa Rao v. State of A.P. (2006) 11 SCC 615, this Court also considered the amendment made in the Indian Evidence Act – Section 114-A of the Evidence Act. In that case, the sexual intercourse was committed with the prosecutrix by the accused. As per the prosecutrix, the accused used to come to her sister's house in between 11 a.m. and 12 noon daily and asked her for sexual intercourse with him. She refused to participate in the said act but the accused kept on persisting and persuading her. She resisted for about 3 months. On one day, the accused came to her sister's house at about 12 noon and closed the doors and had sexual intercourse forcibly, without her consent and against her will. When she asked the accused as to why he spoiled her life, he gave assurance that he would marry her and asked her not to cry, though his parents were not agreeing for the marriage. It was found that on the basis of the assurance given by the accused this process of sexual intercourse continued and he kept on assuring that he would marry her. When she became pregnant, she informed about the pregnancy to the accused. He got certain tablets for abortion but they did not work. When she was in the third month of pregnancy, she again insisted for the marriage and the accused answered that his parents are not agreeable. She deposed that had he not promised, she would not have allowed him to have sexual intercourse with her. The question was raised before the Panchayat of elders and the prosecutrix was present in the Panchayat along with her sister and

brother-in-law. The accused and his father both attended the Panchayat and the accused admitted about the illegal contacts with the prosecutrix and causing pregnancy. The accused asked for two days' time for marrying the prosecutrix and the Panchayat accordingly granted time. But after the Panchayat meeting the accused absconded from the village and when the accused did not fulfil his promise which was made before the Panchayat, the prosecutrix lodged the complaint. Considering the aforesaid facts and after considering Section 90 of the IPC, this Court convicted the accused for the offence under Section 376 of the IPC. While convicting the accused, this Court in paragraphs 9, 10,15 and 16 observed and held as under:

"9. The question in the present case is whether this conduct of the accused apparently falls under any of the six descriptions of Section 375 IPC as mentioned above. It is clear that the prosecutrix had sexual intercourse with the accused on the representation made by the accused that he would marry her. This was a false promise held out by the accused. Had this promise not been given perhaps, she would not have permitted the accused to have sexual intercourse. Therefore, whether this amounts to a consent or the accused obtained a consent by playing fraud on her. Section 90 of the Penal Code says that if the consent has been given under fear of injury or a misconception of fact, such consent obtained, cannot be construed to be a valid consent. Section 90 reads as under:

"90. Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or [Consent of insane person] if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or [Consent of child] unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

10. It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before the panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right

from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent. …….

15. In this connection reference may be made to the amendment made in the Evidence Act. Section 114-A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114-A reads as under:

"114-A. Presumption as to absence of consent in certain prosecutions for rape.— In a prosecution for rape under clause (a) or clause (b) or clause
(c) or clause (d) or clause (e) or clause (g) of sub- section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent."

16. If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW 1, she resisted and she did not give consent to the accused at the first instance and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant and it became clear that the accused did not wish to marry her." 10.4 In the case of State of U.P. v. Naushad (2013) 16 SCC 651, in the similar facts and circumstances of the case, this Court reversed the acquittal by the High Court and convicted the accused for the offence under Section 376 of the IPC. This Court observed and held as under:

"17. Section 376 IPC prescribes the punishment for the offence of rape. Section 375 IPC defines the offence of rape, and enumerates six descriptions of the offence. The description "secondly" speaks of rape "without her consent". Thus, sexual intercourse by a man with a woman without her consent will constitute the offence of rape. We have to examine as to whether in the present case, the accused is guilty of the act of sexual intercourse with the prosecutrix "against her consent". The prosecutrix in this case has deposed on record that the accused promised marriage with her and had sexual intercourse with her on this pretext and when she got pregnant, his family refused to marry him

with her on the ground that she is of "bad character".

18. How is "consent" defined? Section 90 IPC defines consent known to be given under "fear or misconception" which reads as under:

"90.Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;" (emphasis supplied) Thus, if consent is given by the prosecutrix under a misconception of fact, it is vitiated.

19. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 IPC. Thus, the alleged consent said to have been obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix. ....." 10.5 Even in the case of Dr. Dhruvaram Murlidhar Sonar (supra), upon which reliance has been placed by the learned counsel appearing on behalf of the accused, in paragraph 23, this Court has observed that there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception, this Court observed and held as under:

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused,

on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC." 10.6 The High Court of Delhi in Sujit Ranjan v. State [Criminal Appeal No. 248 of 2011 decided on 27.01.2011], after referring to and considering several decisions of this Court, ultimately in paragraph 16, observed and held as under:

"16. Legal position which can be culled out from the judicial pronouncements referred above is that the consent given by the prosecutrix to have sexual intercourse with whom she is in love, on a promise that he would marry her on a later date, cannot be considered as given under "misconception of fact".

Whether consent given by the prosecutrix to sexual intercourse is voluntary or whether it is given under "misconception of fact" depends on the facts of each case. While considering the question of consent, the Court must consider the evidence before it and the surrounding circumstances before reaching a conclusion. Evidence adduced by the prosecution has to be weighed keeping in mind that the burden is on the prosecution to prove each and every ingredient of the offence. Prosecution must lead positive evidence to give rise to inference beyond reasonable doubt that accused had no intention to marry prosecutrix at all from inception and that promise made was false to his knowledge. The failure to keep the promise on a future uncertain date may be on account of variety of reasons and could not always amount to "misconception of fact" right from the inception."

11. So far as the decisions upon which reliance has been placed by the learned counsel appearing on behalf of the accused referred to hereinabove are concerned, the same shall not be applicable to the facts of the case on hand. In the case of Tilak Raj (supra), the prosecutrix was an adult and matured lady of around 40 years at the time of the incident. It was admitted by the prosecutrix in her testimony that she was in a relationship with the accused for last two years prior to the incident and he used to stay overnight at her residence. Therefore, considering the evidence as a whole, including FIR, testimony of the prosecutrix and the MLC report, this Court found that the story of the prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable and on facts it was found that the act of the accused seems to be consensual. It is required to be noted that before this Court the accused was acquitted for the offence under Section 376 of the IPC, however, the High Court convicted him under Sections 417 and 506 of the IPC. Therefore, on facts, the said decision shall not be of any assistance to the appellant

in the present case. 11.1 Even in the case of Deepak Gulati (supra) it was observed that the accused can be convicted for rape if the court reaches the conclusion that the intention of the accused was mala fide, and that he had clandestine motives. 11.2 Even the decisions of this Court in Uday (supra), Deelip Singh (supra) and Shivashankar alias Shive v. State of Karnataka (2108) SCC Online 3106 shall not be applicable to the case of the accused on hand.

12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.

13. Applying the law laid down by this Court in the aforesaid decisions, the following facts emerging from the evidence on record are required to be considered:

(i) That the family of the prosecutrix and the accused were known to each other and, therefore, even the prosecutrix and the accused were known to each other;

(ii) That though the accused was to marry another girl – Priyanka Soni, the accused continued to talk of marriage with the prosecutrix and continued to give the promise that he will marry the prosecutrix;

(iii) That on 28.04.2013 the appellant expressed his wish telephonically to meet with the prosecutrix and responding to that the prosecutrix went to the place of the accused on 29.04.2013 by train, where the accused received her at the railway station Sakti and took her to his place of residence in Malkharauda;

(iv) That during her stay at the house of the accused from 2.00 pm on 29.04.2013 to 3.00 pm on 30.04.2013, they had physical relation thrice;

(v) That as per the case of the prosecutrix, the prosecutrix initially refused to have physical relation, but then the appellant allured her with a promise to marry and had physical relation with her;

(vi) That, thereafter the prosecutrix called the accused number of times asking him about the marriage, however, the accused did not reply positively;

(vii) That thereafter the prosecutrix informed about the incident to her family members on 06.05.2013;

(viii) That the family members of the prosecutrix negotiated with the family

members of the accused;

(ix) That on 23.05.2013, the appellant expressed his willingness to marry the prosecutrix and a social function was scheduled on 30.05.2013, which did not take place;

(x) That, again the family members of both the parties had talks, in which the marriage was negotiated and a social function was scheduled on 10.06.2013, which was again not held and further, the social event was fixed for 20.06.2013;

(xi) That on 20.06.2013, the appellant telephonically informed the prosecutrix that he has already married;

(xii) That, Priyanka Soni PW-13, who is the wife of the accused stated that one year prior to the marriage that took place on 10.06.2013, the negotiations were going on; and

(xiii) That the accused married Priyanka Soni on 10.06.2013 in Arya Samaj, even prior to the social function for the marriage of the accused the prosecutrix was scheduled on 10.06.2013 and even thereafter the social event was fixed for 20.06.2013.

14. Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had a physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of the IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 of the IPC. Though, in Section 313 statement, the accused came up with a case that the prosecutrix and his family members were in knowledge that his marriage was already fixed with Priyanka Soni, even then, the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix, it is required to be noted that first of all the same is not proved by the accused. Even otherwise, considering the circumstances and evidence on record, referred to hereinabove, such a story is not believable. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that that appellant's marriage is fixed with another lady – Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation. In the deposition, the prosecutrix specifically stated that initially she did not give her consent for physical relationship, however, on the appellant's promise that he would

marry her and relying upon such promise, she consented for physical relationship with the appellant- accused. Even considering Section 114-A of the Indian Evidence Act, which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her. As observed hereinabove, from the very inception, the promise given by the accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with Priyanka Soni was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship. Therefore, considering the aforesaid facts and circumstances of the case and considering the law laid down by this Court in the aforesaid decisions, we are of the opinion that both the Courts below have rightly held that the consent given by the prosecutrix was on misconception of fact and, therefore, the same cannot be said to be a consent so as to excuse the accused for the charge of rape as defined under Section 375 of the IPC. Both the Courts below have rightly convicted the accused for the offence under Section 376 of the IPC.

15. Now, so far as the submission on behalf of the accused-appellant that the accused had marriage with Priyanka Soni on 10.06.2013 and even the prosecutrix has also married and, therefore, the accused may not be convicted is concerned, the same cannot be accepted. The prosecution has been successful by leading cogent evidence that from the very inspection the accused had no intention to marry the victim and that he had mala fide motives and had made false promise only to satisfy the lust. But for the false promise by the accused to marry the prosecutrix, the prosecutrix would not have given the consent to have the physical relationship. It was a clear case of cheating and deception.

As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase now-a-days. Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, the rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity. Therefore, merely because the accused had married with another lady and/or even the prosecutrix

has subsequently married, is no ground not to convict the appellant- accused for the offence punishable under Section 376 of the IPC. The appellant-accused must face the consequences of the crime committed by him.

16. In view of the above and for the reasons stated above, we are of the opinion that both the Courts below have rightly convicted the appellant-accused under Section 376 of the IPC. We also maintain the conviction of the appellant-accused under Section 376 of the IPC. However, in the facts and circumstances of the case and the request made by the learned counsel appearing on behalf of the appellant-accused, the sentence of 10 years' RI awarded by the courts below is hereby reduced to seven years RI, the minimum which was prescribed at the relevant time of commission of offence under Section 376 of the IPC. Consequently, the present appeal is partly allowed to the aforesaid modification in the sentence only.

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2019 (1) L.S. 234 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Chief Justice of India
Ranjan Gogoi
The Hon'ble Mr.Justice
L. Nageswara Rao
The Hon'ble Mr.Justice
Sanjay Kishan Kaul

Rupali Devi ..Appellant
Vs.
State of Uttar Pradesh
& Ors., ..Respondents

INDIAN PENAL CODE, Sec. 498A - CRIMINAL PROCEDURE CODE, Secs.178 & 179 - Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with the parents or other family members.

Held - Sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home - Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the

husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences u/Sec.498A of the Indian Penal Code.

J U D G M E N T

(per the Hon'ble Mr.Justice Ranjan Gogoi)

1. "Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with the Signature Not Verified Digitally signed by DEEPAK GUGLANI Date: 2019.04.09 17:17:30 IST Reason: parents or other family members". This is the precise question that arises for determination in this group of appeals.

2. The opinions of this Court on the aforesaid question being sharply divided, the present reference to a larger Bench has been made for consideration of the question indicated hereinabove.

3. In

(i) Y. Abraham Ajith and Others v. Inspector of Police, Chennai and Another (2004) 8 SCC 100.

(ii) Ramesh and Others v. State of Tamil Nadu (2005) 3 SCC

(iii) Manish Ratan and Others v. State of Madhya Pradesh and Another (2007) 1 SCC 262.

(iv) Amarendu Jyoti and Others v. State of Chhattisgarh and Others (2014) 12 SCC 362.

a view has been taken that if on account of cruelty committed to a wife in a matrimonial home she takes shelter in the parental home and if no specific act of commission of cruelty in the parental home can be attributed to the husband or his relatives, the initiation of proceedings under Section 498A in the courts having jurisdiction in the area where the parental home is situated will not be permissible. The core fact that would be required to be noted in the above cases is that there were no allegations made on behalf of the aggrieved wife that any overt act of cruelty or harassment had been caused to her at the parental home after she had left the matrimonial home. It is in these circumstances that the view had been expressed in the above cases that the offence of cruelty having been committed in the matrimonial home the same does not amount to a continuing offence committed in the parental home to which place the aggrieved wife may have later shifted.

4. In Sujata Mukherjee v. Prashant Kumar Mukherjee (1997) 5 SCC 30; Sunita Kumari Kashyap v. State of Bihar and Another (2011) 11 SCC 301 and State of M.P. v. Suresh

Kaushal & Anr. (2003) 11 SCC 126 a seemingly different view has been taken. However, the said view may appear to be based in the particular facts of each of the cases in question. For instance, in Sujata Mukherjee (Supra) there was a specific allegation that the husband, after committing acts of cruelty in the matrimonial home, had also gone to the parental house of the wife where she had taken shelter and had assaulted her there. On the said facts this court in Sujata Mukherjee (Supra) held that the offence is a continuing offence under Section 178 (c) of the Cr.P.C. In Sunita Kumari Kashyap (Supra), there was an allegation that the wife was illtreated by her husband who left her at her parental home and further that the husband had not made any enquiries about her thereafter. There was a further allegation that even when the wife had tried to contact the husband, he had not responded. In the said facts, this court took the view that the consequences of the offence under Section 498A have occurred at the parental home and, therefore, the court at that place would have jurisdiction to take cognizance of the offence alleged in view of Section 179 of the Cr.P.C. Similarly in State of M.P. vs. Suresh Kaushal (Supra) as the miscarriage was caused to the wife at Jabalpur, her parental home, on account of cruelty meted out to her in the matrimonial home, it was held that the court at the place of the parental home of the wife would have jurisdiction to entertain the complaint under Section 179 Cr.P.C.

5. The above two views which the learned referring bench had considered while making the present reference, as already noticed, were founded on the peculiar facts of the two sets of cases before the Court. It may be possible to sustain both the views in the light of the facts of the cases in which such view was rendered by this court. What confronts the court in the present case is however different. Whether in a case where cruelty had been committed in a matrimonial home by the husband or the relatives of the husband and the wife leaves the matrimonial home and takes shelter in the parental home located at a different place, would the courts situated at the place of the parental home of the wife have jurisdiction to entertain the complaint under Section 498A. This is in a situation where no overt act of cruelty or harassment is alleged to have been committed by the husband at the parental home where the wife had taken shelter.

6. A look at the provisions of Chapter XIII of the Code of Criminal Procedure, 1973 (Cr.P.C) dealing with the jurisdiction of the Criminal Court in inquires and trials will now be required. Section 177 of the Code of Criminal Procedure contemplates that “every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed”. It is, therefore, clear that in the normal course, it is the court within whose local jurisdiction the offence is committed that would have the power and authority to take cognizance of the offence in question.

7. Sections 178 and 179 are exceptions to the above rule and may be set out hereinunder:

"178.Place of inquiry or trial.-
(a) When it is uncertain in which of several local areas an offence was committed, or
(b) where an offence is committed partly in one local area and partly in another, or
(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas." "179. Offence triable where act is done or consequence ensues.- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

8. Section 178 creates an exception to the "ordinary rule" engrafted in Section 177 by permitting the courts in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

9. At this stage it may also be useful to take note of what can be understood to a continuing offence. The issue is no longer res integra having been answered by this court in State of Bihar v. Deokaran Nenshi (1972) 2 SCC 890. Para 5 may be usefully noticed in this regard.

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues.

In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

10. The question that has posed for an answer has nothing to do with the provisions of Section 178 (b) or (c). What has to be really determined is whether the exception carved out by Section 179 would have any application to confer jurisdiction in the courts situated in the local area where the parental house of the wife is located.

11. To answer the above question, one will have to look into the Statement of Objects and Reasons of the Criminal Law [2 nd Amendment Act, 1983 (Act 46 of 1983)] by which Section 498A was inserted in the Indian Penal Code. The section itself may be noticed in the first instance:

"498A.Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty" means —

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

12. Section 498A of the Indian Penal Code was introduced by the Criminal Law (second amendment) Act, 1983. In addition to the aforesaid amendment in the Indian Penal Code, the provisions of Sections 174 and 176 of the Code of Criminal Procedure, 1973 relating to inquiries by police in case of death by suicides and inquiries by magistrates into cause of such deaths were also amended. Section 198A was also inserted in the Code of Criminal Procedure with regard to prosecution of offences under Section 498A. Further by an amendment in the first schedule to the Cr.PC the offence under Section 498A was made cognizable and non-bailable. Of considerable significance is the introduction of Section 113A in the Indian Evidence Act by the Criminal Law (second amendment) Act, 1983 providing for presumption as to abetment of suicide by a married woman to be drawn if such suicide had been committed within a period of seven years from the date of marriage of the married woman and she had been subjected to cruelty. Section 113A is in the following term:

"113-A. Presumption as to abetment of suicide by a married woman.– When the question is whether the commission of

suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Explanation.– For the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860)."

13. The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The above stated object of the amendment cannot be overlooked while answering the question arising in the present case. The judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (second amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

14. "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a

civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well- being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty. The provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C which would squarely be applicable to the present case as an answer to the question raised.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.

17. All the appeals are disposed of in terms of the above.

–X–

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