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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PARTS - 9 & 10 (31ST MAY 2019)

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CONSUMER PROTECTION ACT, Sec.12(1)(c) - **CIVIL PROCEDURE CODE,** Or.1, Rule 8 - "Classs action" - Present appeal is filed against orders passed by National Consumer Dispitus Redressal Commission - Builder-Buyer agreement executed between appellant no.1 and respondent whereunder respondent was to deliver possession of offfice within 4 years - Similar such agreements entered into between appellant nos.2 to 44 - Respondent failed to honour its commitments of delivering possession in 4 years - Hence appellants 1 to 4 it seeking refund of amounts paid by them to respondent - An application u/Sec.12(1)(c) of Act was also filed seeking permission to institute complaint on behalf of all buyers of commercial units - It is alleged that complaints are consumers as they are booked shops for purpose of earning their lively hood by means of self employment - Even ootherwise complaints cannot know purpose for which allottees other than complainants had booked shops, commercial units in above said projeect - Therefore this "class action"u/Sec.12 (1)(c) of Act not only complainants but all allottees in the project is not maintainable.

National Commission concluded that case could not be accepted as "class action" and dismissed same - In this appeal dismissal of case as "class action" is questioned.

Interest of persons on whose behalf claim is brought must be common or they must have common grievance which they seek to get addressed - Oneness of interest is akin to common grievance against same person.

Such a complaint u/Sec.12(1)(c) of Act being to facilitate decision of consumer disputes in which a large number of consuumers are interested without recourse to each of them filing a individual complaint.

Term “person so interested” and “persons having same interest” used in Sec.12(1)(c) mean, persons having common grievance against same service providor - Use of words “all consumers so interested” and on behalf of or for benefit of “all consumers so interested” in Sec.12(1)(c) lives no doubt that such a complaint must necessarily be filed on behalf of or for benefit of all persons having common grievance, seeking common relief and consequently having community of interest against same service provider.

Since by virtue of Sec.13(6) of Consumer Protection Act provisions of Or.1, Rule 8 CPC apply to consumer complaints filed by one or more consumers where there are numerous consumers having same interest.

However National Commission in instant case completely lost sight of principles so clearly laid down in decisions referred above - Approach in instant case, was totally erroneous - Therefore appeal allowed and set aside order of National Commission.

(S.C.) ***41***

CONTEMPT OF COURTS ACT, Sec.2(c) - Appellant, advocate convicted for his undesirable conduct by High Court and has been sentenced to simple imprisonment of six months and a fine - Contemnor alleged that before pronouncement of the Order he saw one of the accused, sitting in the chamber of the CJM, who apprehended that his client will not get justice - Contemnor during lunch hour without taking permission from C.J.M. entered into his chamber along with 2-3 colleagues and started hurling filthy abuses to the CJM and raised his hand to beat the CJM.

Held - Advocate has acted contrary to the obligations - He has set a bad example before others while destroying the dignity of the court and the Judge - The action has the effect of weakening of confidence of the people in courts - High Court has noted that the concerned advocate did not apologise and has maligned and scandalised the subordinate court - He has made bare denial and has not shown any remorse for his misconduct - Considering the nature of misconduct, while upholding the conviction for criminal contempt, sentence of imprisonment of 6 months, shall remain suspended for further period of 3 years subject to contemnor, maintaining good and proper conduct with a condition that he shall not enter the premises of the District Judgeship, for a

and was liable to be set aside - No useful purpose would be served by proceeding with criminal prosecution against Appellants - FIR and charge sheet are quashed to meet ends of justice – Appeals allowed. **(S.C.)** ***49***

CRIMINALPROCEDURE CODE, Sec.407 - **NEGOTIABLE INSTRUMENTS ACT,** Sec.142 - Instant petition filed seeking transfer of CC from Court of JMFC, at Salur, Vizianagaram District, to Court of JMFC, at Anakapalle, Visakhapatnam District, on the ground that the petitioner is not well.

Held - If provisions pertaining to jurisdiction of Courts are intended to be construed rigidly, there would have been no necessity for providing for power of transfer under Section 407 Cr.PC - It is with an intention of giving power to the High Court, to transfer the cases, if circumstances enumerated therein exist, that Sec.407 is enacted - There cannot be any distinction made between cases falling under the N.I. Act and other cases, so far as those circumstances are concerned - There can be no argument that cases under N.I. Act do not need fair and impartial inquiry or trial, or that no question of law of unusual difficulty would arise, or that the parties to the cases under the N.I. Act do not deserve to have the general convenience, as do parties in other cases, or that ends of justice need not be of concern, in N.I. Act cases - There can be no demur in holding that Section 142 of N.I. Act is subject to Section 407 Cr.P.C - Criminal petition stands allowed. **(A.P.)** ***17***

CRIMINAL PROCEDURE CODE, Sec.482 – **INDIAN PENAL CODE,** Secs.302, 325, 326, 331 and 352 - In impugned Order, High Court (Single Judge) dismissed petition filed by appellant u/S.482 of Cr.P.C and, in consequence, affirmed Order passed by the Chief Judicial Magistrate, whereby appellant was summoned to face Session Trial - Whether High Court was right in dismissing the appellant's petition.

Held – In impugned order, High Court did not assign any reason as to why the petition is liable to be dismissed - Neither there is any discussion nor reasoning on submissions urged by the counsels for the parties - Approach of the High Court while disposing of the petition cannot be countenanced - Time and again, this Court has emphasized the necessity of giving reasons in support of conclusion because it is the reason, which indicates the application of mind - It is, therefore, obligatory for the Court to assign the reasons as to why the petition is allowed or rejected - Appeal succeeds and is accordingly allowed - Impugned order is set aside.

(S.C.) ***39***

(INDIAN) EVIDENCE ACT, Sec.45 - Civil Revision Petition - Petitioner challenged the Order in I.A., wherein, petition filed by Petitioner/Defendant u/S.45 of Indian Evidence Act 1872 sought to send Ex.A-1 promissory note to F.S.L. to ascertain age of signature and contents was dismissed.

Held – Though ink or a pen was manufactured in yester years, there is a possibility that a person may either deliberately or un-knowingly use such ink/pen to make a writing of signature several years after its manufacture - Mere determination of age of ink/writing by an expert will not clinch the issue as to when exactly the maker has written/signed document -Trial court is not right in rejecting the petitioner's request to refer the document to the expert, since the required expertise is available - Civil Revision Petition is allowed by setting aside the impugned order, and consequently, I.A. is allowed and the trial court is directed to refer Ex.A-1 promissory note for determining age of signature of the defendant at his own expenses. **(A.P.) 8**

LIMITATION ACT, Sec.5 - Whether Court below exercised its discretion correctly or not - Revision petition is filed questioning Order passed in EA – Application filed to condone the delay of 920 days in filing application to set aside ex parte order - Application is contested and the impugned order came to be passed by which lower Court dismissed the application.

Held - There is no satisfactory explanation for delay caused - Delay of 920 days can by no means be a small delay - Reasons given are also not clear - Length of delay is not important but sufficiency of reasons are important - Even though words "sufficient cause" has been liberally interpreted, they cannot be so liberally interpreted as to defeat provisions of law - Revision petition stands dismissed.

(A.P.) ***13***

NDPS ACT, Sec.8(c) r/w Sec.20(b) (ii)(c) - CRIMINAL PROCEDURE CODE, Secs.437 & 439 - Case of prosecution that petitioner acted as a mediator for purchase of 135kgs of Ganja.

Held - it cannot be said that petitioner would be entitled for acquittal and hence, Sec.37 of NDPS Act does not come in way of granting bail to the petitioner - Moreover, what this Court can understand from the language used in Sec.37(i)(b)(ii) is that the reasonable grounds should be in respect of believing that the accused is not guilty but not that he would be acquitted - However, Counsel for petitioner makes an alternative

prayer for granting interim bail to petitioner on ground that his wife is suffering from spine problem and that his presence for fixing up surgery to his wife is very much necessary - Fit case for granting interim bail to the petitioner - Criminal petition is disposed of and petitioner is enlarged on interim bail for a period of 30 days. **(A.P.) 11**

NEGOTIABLE INSTRUMENTS ACT, Secs.138 and 142 - Petitioners sought quash of criminal proceedings against them on ground that cheques issued by petitioners are towards a time barred debt and hence, no prosecution can lie against them - Petitioners borrowed amounts from the 2nd respondent and failed to discharge the amounts taken - Petitioners executed a demand promissory note, agreeing to pay the amount with interest at 24% per annum - Petitioners did not pay the said amounts and later issued cheque towards discharge of said amounts - Promissory note is also filed along with complaint - Promissory notes are of the year 2012, while cheques are issued in the year 2017 - Date of issuance of cheques is beyond three years from the date of issuance of the promissory note.

Held - Debt or other liability means a legally enforceable debt or other liability and enforcement of legal liability has to be in nature of civil suit because the debt or other liability cannot be recovered by filing a criminal case and when there is a bar of filing a suit by unregistered firm, the bar equally applies to criminal case as laid down in Explanation (2) of Section 138 of Negotiable Instruments Act - Limitation for enforcing the promissory notes expired much prior to the issuance of the cheques in question - Impugned complaints against the petitioners cannot be sustained - Criminal petitions are allowed. **(A.P.) *1***

(INDIAN) PENAL CODE, Secs- 190, 420, 467, 468, 471, 474 read with 120-B - REGISTRATION ACT, Sec.82 - Petition filed for quash of proceedings against petitioner, who is A10 before Court below - Petitioner contends that sanction is required to prosecute as petitioner is a public servant, and as per Section 83 of the Registration Act mandates permission of Inspector General, Registrar or Sub-Registrar.

Held - Unless prosecuting authority is Registering Officer, no permission is needed to be taken from Inspector-General, Registrar or Sub-Registrar - Quashing the proceedings against the petitioner, at this stage, would not be safe - Criminal petition

is dismissed, however, petitioner is given liberty to file a discharge petition before the Court below and raise all the contentions raised in this petition. **(A.P.)** ***5***

(INDIAN) PENAL CODE, Secs.- 148, 149, 323, 324, 325, 302, 307 & 506 - Criminal Appeal - High Court dismissed the revision petition and has confirmed the order of Trial Court - Appellants herein to face the trial along with other co-accused - Accused were not shown as accused in the challan/charge-sheet.

Held - Persons against whom no charge-sheet is filed can be summoned to face the trial – No error has been committed by the Courts below to summon the appellants herein to face the trial in exercise of power under Section 319 of the CrPC – No reason to interfere with the impugned order passed by the High Court – Appeal stands dismissed. **(S.C.)** ***59***

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LAW SUMMARY
2019 (2)
JOURNAL SECTION

HIERARCHY OF CRIMINAL COURTS IN INDIA

By
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Introduction:-

Legal system in India refers to a procedure or process for interpreting and enforcing the law. It elaborates the rights and responsibilities in a variety of ways. Therefore, it is the set of laws of a country and the ways in which they are interpreted and enforced. Criminal Justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. It is the process of punishing and reforming of offender. Those accused of crime have some protections against abuse of investigatory and prosecution powers. Criminal justice systems are very different around the world depending on the country

Hierarchy of Criminal Courts:-

1. ***Supreme Court*:-** The Supreme court is the highest and final court of appeal under the Constitution of India. It is the highest constitutional court. The Apex Court has the following extensive powers :- Under Article 32 of the Indian Constitution, Supreme Court has Writ jurisdiction.(See.A.32); It is the court of Record. It has power to punish for contempt under Article129; The Apex Court has original Jurisdiction under Article131; It is the highest Court of Appeal in the entire country under purview of Articles 132,133,134 & 136; Law declared by the Supreme Court binds on all Courts in India.(See. A.141 of the Constitution) ; It has advisory Jurisdiction under Article143 of the Indian Constitution.

Articles 124 to 147 of the Indian Constitution lay down the composition and jurisdiction of the Court. Mainly, it is an appellate court which takes up appeals against judgments of the High Courts of the states and territories. However, it also takes writ petitions in cases of serious human rights violations or any petition filed under Article 32 which is the right to

constitutional remedies or if a case involves a serious issue that needs immediate resolution.

2. ***High Court***:- In our country, there are various High Courts at the State and Union territory level, which together with the Supreme Court of India at the national level, comprise the country's judicial system. Each High Court has jurisdiction over a State, a Union territory or a Group of States and Union territories. In our Constitutional Scheme, the High Court is responsible for the entire administration of justice in the State.

High Court has the following powers:- It is the court of Record. It has power to punish for contempt under Article 215 of the Constitution; High Court has original Jurisdiction in civil and criminal matters; It has appellate jurisdiction in respect of criminal and civil cases decided by Subordinate courts in the State; It has revisional jurisdiction conferred under the Civil Procedure Code,1908 and Criminal Procedure Code, 1973; It has Writ jurisdiction under Article 226 of the Indian Constitution besides the administrative Jurisdiction over subordinate courts in the State.

Article 227 of the Constitution of India, makes it crystal clear. That apart, under criminal Procedure Code, the ultimate revisional jurisdiction, be it under Section 397 read with Section 401 or exercise of inherent power under Section 482, is vested in the High Court. Any judgment or order rendered by the High Court shall bind all the subordinate courts, tribunals and authorities within the territory of State and if only there is a direct judgment of the Supreme Court contra to the proposition laid down by High Court, there will be a scope of interpretation by the subordinate Court, tribunal or authority. But, the subordinate courts, tribunals or authorities within the State cannot ignore the decision of then High Court even if there is a decision of another High Court on that point. See. **Nasreen Jahan Begum and another Vs. Syed Mohammed Alamder Ali Abedi and another -** 1995 (2) ALT(CRI.)(A.P) 319.

3. ***Court of Session***:- In India, there are district courts under different State governments in India for each and every district or for one or more districts together taking into account the number of cases, population distribution in the district. *District Judges*:- (i) District Judges; (ii) Additional District Judge (iii) Principal Judge, Additional Principal Judge and Judges of City Civil and Sessions Court, Mumbai. (iv) Chief Judge and Additional Chief Judges of Court of Small Causes. Assistant Session Judge:- Senior Civil Judges:- (i) Chief Metropolitan Magistrate; (ii) Additional Chief Metropolitan Magistrates; (iii) Judges of Court of Small Causes and Metropolitan Magistrates; (iv) Civil Judges, Senior Division.

These district courts administer justice at a district level. In the district level, the District Judge or Additional District judge exercises jurisdiction both on original side and appellate side in civil and criminal matters arising in the District. The

territorial and pecuniary jurisdiction in civil matters is usually set in concerned State enactments on the subject of civil courts. On the criminal side, jurisdiction is exclusively derived from the criminal procedure code, 1973. As per this code, the maximum sentence a Sessions Judge may award to a convict is capital punishment.

Article 236 (a) of the Indian Constitution says that the expression district judge includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge.

4. ***Judicial Magistrate of First Class and in metropolitan area*** - **Metropolitan Magistrate; Chief Judicial Magistrate**:- Judicial Magistrates are appointed and controlled by the High Court and discharge judicial functions. Under section 11 (3) of the Code of Criminal Procedure, 1973, the High Court may confer the powers of judicial magistrate of the First Class or of the Second Class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

5. ***Judicail Magistrate of Second Class***:- Judicial Magistrates are appointed and controlled by the High Court and discharge judicial functions.

6. ***Executive Magistrate***:- In India, the Executive Magistrates are appointed and controlled by the State Government and discharge executive functions, i.e., maintenance of law and order. Unless otherwise defined by the District Magistrate, the jurisdiction and powers of every Executive Magistrate extends throughout the district or the metropolitan area, as the case may be as given u/s 22 of Cr.P.C.

Sentencing power of the Courts:-

Supreme Court : - Any sentence authorized by law.

High Court: Any Sentence authorized by law u/s 28(1) CrPC

Session Judge, Additional Session Judge:- Any sentence authorized by law, Sentence of death, however, is subject to confirmation by High Court u/s 28(2) CrPC

Assistant Session Judge:- Imprisonment upto 10 years and/or fine. u/s. 28(3)

Chief Judicial Magistrate, Chief Metropolitan Magistrate:- Imprisonment upto 7 years and/or fine. u/s 29(1)(4) of Cr.P.C.

Judicial Magistrate First Class, Metropolitan Magistrate:- Imprisonment upto 3 years and/or fine upto Rs. 10,000/-. u/s. 29(2) of Cr.P.C.

Judicial Magistrate Second Class:- Imprisonment upto 1 year and/or fine upto Rs. 5,000/-. u/s 29(3) of Cr.P.C.

Conclusion:-

The Supreme Court is the highest court of the country. It is established by the Constitution of India. It is the highest court of appeal. As per Indian Constitutional Scheme, the High

Court is responsible for the entire administration of justice in the State. Article 236 (a) of the Indian Constitution says that the expression district judge includes 'Assistant Sessions Judge'. The district courts administer justice at a district level. Under Article 236(b), the expression 'judicial service' is defined to mean a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge. Judicial service thus postulates a hierarchy of courts with the District Judge as the head and other judicial officers under him discharging only judicial functions. Going by these tests laid down as to what constitutes judicial service under Article 236 of the Constitution, the Labour Court judges and the judges of the Industrial Court can be held to belong to judicial service. The hierarchy contemplated in the case of Labour Court judges is the hierarchy of Labour Court judges and Industrial Court judges with the Industrial Court judges holding the superior position of District Judges. The Labour courts have also been held as subject to the High Courts power of superintendence under Article 227.

Proper administration of justice, being one of the main constitutional goals, has to be in consonance with the expectations of the society and with definite expertise in all fields of law. Administration of justice, *per se*, takes within its ambit, primarily, judicial experience and expertise by determining disputes between the parties in accordance with law as well as ensuring proper administration within thejierarchy of courts. See. **S.D. Joshi and others Vs. High Court of Judicature at Bombay and others** - 2011 (1) SCJ 169 (D.B.) . In the case of *Shri Kumar Padma Prasad v. Union of India* [(1992) 2 SCC 428], the Apex Court was considering whether the Legal Remembrancer-cum-Secretary (Law and Judicial) and Assistant to Deputy Commissioner, having powers analogous to First Class Judicial Magistrates, was holding a judicial office for the purposes of appointment as Judge of the High Court.

The expression judicial office has nowhere been defined in the Constitution of India unlike District Judge or Judicial Service which expressions have been explained under Article 236 of the Constitution of India. Still this expression has come up for consideration of this Court on different occasions and in different contexts. In the case of *H.R. Deb* (AIR 1968 SC 1495), the Supreme Court considered the distinction between judicial office and judicial service and held that expression judicial office signifies more than discharge of judicial functions. The phrase postulates that there is an office and that office is primarily judicial.

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DELAY IN DISPOSAL OF CASES AND REMEDIAL MEASURES

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Introduction:-

The Constitution Bench in a leading case of Abdul Rehman Antulay Vs. R.S.Nayak, has formulated a proposition as guiding principles regarding speedy trail and held that "The right to speedy trial is the right of the accused to be tried speedily as implicit in Article 21 of the Constitution of India spreading over through all stages from investigation, inquiry, trial, appeal, revision and retrial. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. Though it was not included in any of the articles in Constitution of India it was held by Hon'ble Apex court in catina of decisions that right to get speedy justice is fundamental right of Indian citizen and with that spirit so many laws legislations are enacted by the house of the people. Viz., Legal Services Authority Act, 1987, Gram Nyayalaya Act, 2008 and amendments to procedural legislations. 1976, 1999, 2002 amendments to code of civil procedure 1908 and 2008, 2013 amendments to code of criminal procedure code 1973 are brought only to render speedy justice to litigant public. It is considered to be a fact that any holdup in the court proceedings clearly leads to injustice. An unreasonable delay in providing the judgment is in itself unfair to the party that is accused and he should be discharged of his offence if there does not exist any genuine rationale for the happenings. However, this may not happen in every scenario as such delay may be due to certain extra-ordinary allegations and the only option is the instruction by the court to make the process faster. But in spite of taking so many steps by house of people and Hon'ble Apex court by way precedents in India on or average to dispose one civil suit it will take nearly 5 to 10 years and to dispose one criminal case it will take 2 to 3 years at trial court level based on the complicity involved in the case. Innocent person is the worst effected unfortunate, who has to take shelter of the courts for getting justice, which he can never calculate as to when than so called justice be finally arriving. None can compute his worries and the frustrations. Such sufferings and hardships made him to conclude that Delayed Justice is Denied Justice. It is obvious to say that inordinate and unnecessary delay defeats the end of justice. The heartening factor is that people's faith in our judicial system remains firm in spite of huge backlogs and delays. It is high time we make a scientific and rational analysis of the factors behind accumulation of arrears and devise specific plan to at least bring them within acceptable limit, within a reasonable time frame. We have, however, to find out ways and means to deal with the problem, so as to

retain the confidence of our people in the credibility and ability of the system.

Various Committees to Deal with the Delay:-

Various committees have been formed to investigate causes of pendency time and again. For instance, Rankin Committee was set up in the year 1924 on delay in civil cases in High Courts and subordinate Courts. Further, a High Court Arrears Committee under the chairmanship of Justice S.R. Das was appointed in 1949. In 1969, Hidayatulla CJ presided over a committee to look into the problem of arrears in all its aspects. Later on, Justice Shah was appointed the Chairman of the Committee. The Committee was known as High Courts Arrears Committee, 1972. The main stride was made by the committee formed under Justice Malimath. on the recommendations of Malimath Committee amendments were made in 1999 and 2002. It aimed at speedy disposal of cases. The Amendments of 1999 and 2002 were made effective from July 1st, 2002. The suggestions of the committee and resulting amendments thereto are as follows:-

1. Time Limit for filing Written statement, amendments of pleading, issuing summons etc., must be prescribed. It was withdrawn due to pressure from lawyers/advocates.

2. So far as possible parties must try to decide or settle the cases outside the court. A new section, Section 89, was introduced.

3. To record the evidences by issuing the commission instead by presence before the court of law. Commission for collecting evidences can be issued now under section 75 of CPC.

4. Time frame need to be provided for oral argument before the court of law.
5. Restriction on right to appeal.

Provisions under Civil Procedure Code relating to Speedy Trial

It is considered to be a fact that any holdup in the court proceedings clearly leads to injustice. An unreasonable delay in providing the judgment is in itself unfair to the party that is accused and he should be discharged of his offence if there does not exist any genuine rationale for the happenings. However, this may not happen in every scenario as such delay may be due to certain extra-ordinary allegations and the only option is the instruction by the court to make the process faster. To further this objective of expediting the legal process, the rights of parties to enter into a compromise or take back their suit is recognized.

1. This is through Order XXII, Rule 3 which “parties either to abandon a claim, or to request the court, to record the compromise between the parties.”
2. Through the insertion of Rule 3A, the objective was further bettered as a person cannot appeal from a compromise decree ensuring a trial that is faster and more justice-oriented.

3. one of the cardinal inclusions into this system has been the Section 89 through the amendment of 1999 which provided greater efficiency to the system of Lok Adalats. These changes brought in newer elements that if it known to the court that if a settlement can be brought forward, it shall make the conditions of such a settlement and pass on to both the camps for their analysis. After the court receives such comments, it shall either continue with the settlement or refer to other modes of settlement such as arbitration etc. The focus lies on the point that the courts must be faster in its justice delivery and unnecessary delays must be avoided at all costs. Another prime component of CPC is Summary Procedure.

4. To make sure that the trial process is being done in a quick manner with cases being done with quickly Section 47 of the Code explains that the questions which arise between the two sides of the suit that was passed, or through their legal representatives and in relation to the summation of the decree, shall be pronounced by the court not though any other different suit.

The Code of Civil Procedure has been amended different times and such amendments have brought forward certain changes to ensure that the trial procedure is shortened.

1. The amendment regarding Section 148 was that courts had the authority to expand the required period for an act.
2. The amendment limited it to a month through Section 13 of the Amendment Act in 1999. Also, there was a limit that was fixed towards numerous actions like the time-period for the statement to be made by the defendant and the application for summoning the witness being made.
3. An amendment to Rule 9 and Rule 9A of Order V put into reality the responsibility of putting forward the summons to the defendant. Also, this amendment expressely authorizes the use of newer means of communications like couriers etc.
4. Another important amendment in this respect has been “Section 27 of the CPC (Amendment) Act, 1999 and Section 12 of the CPC (Amendment) Act, 2002”: The amendment provided the commissioners with the power to record evidence and such power not to be restrained just to themselves. Prior to this amendment, the judge used to be over-burdened and it was a cause of delay but through such delegation, the process has become much faster.

General Reasons of Delay:-

Many factors are responsible for delay in dispensation of justice. Some prominent causes of delay are following-

1. Vacancies in Judiciary:-
2.Inadequate number of courts:-
3.Judicial officers not able to tackle those cases involving specialized knowledge:-
4.Abuse of Public Interest Litigation:-

5.Lack of adequate arrangement to monitor, track and bunch cases for hearing:-
6.Frequent Transfer of judges:-
7.Role of administrative staff of the court:-
8.Large number of appeals:-

Specific Causes of Delay:-

Apart from the causes of delay which we discussed earlier, there are some specific causes of delay in civil matters. Some of them are following-

1.Frequent Adjournments:-
2.Delay in serving of summons:-
3.Non-examination of process servers:-
4.Delay in filing Written Statement:-
5.Non-appearance of parties at the day fixed for hearing:-
6.Non-compliance of Order X:-
7.Non–compliance of some other provisions of CPC, 1908:-

Non-compliance of provisions of CPC also leads to delay. Courts and judges should abide following provisions of CPC properly in order to avoid delay- Order XI – Discovery & Inspection Order XII – Admission Order XIII – Production, Impounding and Return of Documents Order XV – Disposal of the suit at the first hearing.

8.Strikes by Lawyers:-

Remedial measures for crubbing delay:-

To eradicate delay in justice delivery system certainly drastic changes are needed in strict implementation of procedural laws. At the same time there must be some amendments to procedural laws by fixing time bounds in conducing cases in certain time and also there must be some mechanisim to check the implementation of such laws. The problem in our India is there are somany laws, but there is no mechanisim to implement the same. As such the laws are ramained unenforced which results in miscarraige of justice. However, the supreme court of India on its own with great wisdom has taken somany measures to eradicate the delay in rendering justice. The following are the some of the corrective measures in eardication of delay.

Holding of courts in jail by every chief metropolitan magistrate or the chief judicial magistrate or metropolitan magistrate/judicial magistrate of the area in which a district jail falls, on regular basis to take up the cases of those under trial prisoners who are involved in petty offences punishable upto three years or keen to confess their guilt:-

It is really a matter of great concern when one comes to know of the plight of the undertrials prisoners, languishing in jails for petty offences, who are even keen to confess their offences. This is mainly because of over-crowding of and congestion in jails compared to their built-in-capacity and that is so because of slow progress of cases in Courts and operation of the system of bail to the disadvantage of the poor and illiterate prisoners. The Chief Metropolitan Magistrate or the Chief Judicial Magistrate or Metropolitan Magistrate/ Judicial Magistrate of the area, in which a District jail falls, may hold his Court on regular basis in jail to take up the cases of those under-trial prisoners who are involved in petty offences punishable upto three years or are keen to confess their guilt. "Legal Aid Counsel" may be deputed in jails to help such prisoners and move applications on their behalf on the basis of which the Chief Metropolitan Magistrate or the Chief Judicial Magistrate or Metropolitan Magistrate/Judicial Magistrate may direct the investigating agency to expedite the filing of the Police report. Thereafter, if the prisoner voluntarily pleads guilty, he may be awarded appropriate punishment in accordance with law. There may be some cases in which the under-trial prisoners after moving such applications may change their mind and decide to contest the cases. Such cases may be transferred to the concerned Courts for trial in accordance with law. This exercise can go a long way in providing speedy justice to the poor under-trial prisoners and also reduce the jail population which is becoming a cause ofconcern.

Strengthening of A.D.R. System including Mediation and Conciliation:-

Whenever a person has civil dispute with someone, immediately he would go to a lawyer and the lawyer would advise him to file a case in a Court of law for redressal of his grievance. If he receives a legal notice, the advice of lawyer would be either not to respond or send a reply through him. But this is not the position in other countries, such as USA where a person going to lawyer, is advised to go for negotiation with the other party. Both the parties, generally represented by lawyers, would discuss and try to resolve the dispute by negotiations and the success rate is very high. Litigation through the Courts and Tribunals established by the State is one way of resolving the disputes. The Courts and Tribunals adjudicate and resolve the dispute through adversarial method of dispute resolution. Litigation as a method of dispute resolution leads to a win-lose situation. Associated with this win-lose situation is growth of animosity between the parties, which is not congenial for a peaceful society. One party wins and other party is a loser in litigation, whereas in Alternative Dispute Resolution, we try to achieve a win-win situation for both the parties. Nobody is the loser and both parties feel satisfied at the end of the day. If the ADR method is successful, it brings about a satisfactory solution to the dispute and the parties will not only be satisfied, the ill-will that would have existed between them will also end. ADR methods especially Mediation and Conciliation not only address the dispute, they also address the emotions underlying the dispute. In fact, for ADR to be successful, first the emotions and ego existing between the parties will have to be

addressed. Once the emotions and ego are effectively addressed, resolving the dispute becomes very easy. This requires wisdom and skill of counselling on the part of the Mediator or Conciliator.

Strengthening legal aid system:-

Article 39A of the Constitution mandates the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity. The State is required to provide legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The impact of Article 39A read with Article 21 of the Constitution has been to reinforce the right of a person involved in a criminal proceeding to legal aid. This Article has been thus used to interpret the right conferred by section 304 Cr.P.C. (Suk Das & Anr. v. Union Territory of Arunachal Pradesh) (AIR 1986 SC 991). A large majority of our people still live below the poverty line and are hardly able to afford two square meals and a shelter over their head. It would be unrealistic to expect them to afford the services of a competent advocate. Therefore, it becomes necessary for the State to have a strong legal aid system in place, which is capable of providing free legal aid to the poor and downtrodden, by engaging competent advocates who are motivated enough and have a zeal for legal aid work.

Progress Made In Modernization And Computerization Of Justice Delivery System, Establishment Of E-Courts And Video Conferencing Facilities:-

In this era of globalization and rapid technological developments, which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot afford to lag behind and has to be fully prepared to meet the challenge of the age. Inter-court and Intra court communication facilities, developed through use of Internet not only save time but also increase speed and efficiency. Day-to-Day management of Courts at all levels can be simplified and improved through use of Technology including availability of Case Law and administrative requirements. By using various IT tools it is possible to carry out bunching/grouping of the cases involving same question of law. If this is done, all such cases can be assigned to the same Court, which can dispose them of by a common Order. If point of law involved in the matter is identified in each case, it is possible to allocate subsequent cases involving the same question of law to the same Court, for being heard along with the previously instituted case.

Progress In Setting Up And Functioning Of Evening/Morning Courts In Subordinate Courts:-

Establishment of additional courts at any level involves enormous expenditure – capital as well as recurring. Appointment of wholetime staff – judicial and administrative

for new courts involves considerable recurring expenditure. On the other hand, if the existing courts could be made to function in two shifts, with the same infrastructure, utilizing the services of retired Judges and Judicial Officers, reputed for their integrity and ability, who are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The accumulated arrears can be liquidated quickly and smoothly.

Establishment Of Gram Nyayalayas:-

Law Commission of India, in its 114th Report on Gram Nyayalayas, suggested establishment of Gram Nyayalays so as to provide speedy, inexpensive and substantial justice to a common man. Based broadly on the recommendations of the Law Commission, Gram Nyayalayas Bill was introduced in Rajya Sabha and passed on 17th December, 2008. Lok Sabha passed the Bill on 22nd December, 2008. President of India gave assent to the Bill on 07th January, 2009. It extends to the whole of India except to the States of Jammu & Kashmir, Nagaland, Arunchal Pradesh and Sikkim. The Gram Nyayalays Act, 2008 provides for the establishment of Gram Nyayalays at the grass roots level for the purposes of providing assess to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

Increase in the strength of Judges:-

The Governments should not allow their financial constraints to come in the way of increase in the strength of judges. As per the information collected by First National Judicial Pay Commission, every state except Delhi has been providing less than 1% of the budget for subordinate judiciary whereas the figure is 1.03% in case of Delhi. In terms of G.N.P., the expenditure on judiciary in our country is hardly 0.2 per cent, whereas it is 1.2 per cent in Singapore, 1.4 per cent in United States of America and 4.3 per cent in United Kingdom.

Augmenting Infrastructure:-

Increase in the number of Judicial officers will have to be accompanied by proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and their condition particularly in small towns and moffusils is pathetic.

Shift System:-

Establishment of additional courts at any level involves enormous expenditure – capital as well as recurring. Appointment of whole time staff – judicial and administrative for new courts involves considerable recurring expenditure. on the other hand, if the existing courts could be made to function in two shifts, with the same infrastructure, utilizing the services of retired Judges and Judicial officers, reputed for their integrity and ability, who

are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The accumulated arrears can be liquidated quickly and smoothly.

Financial Autonomy:-

Judiciary is always held responsible for mounting arrears of Court Cases. But it does not control the resources of funds and has no powers to create additional Courts, appoint adequate Court staff and augment the infrastructure required for the Courts. For this reason, the shift system cannot be introduced. The High Courts have power of superintendence over the State judiciary but do not have financial power to create even post of one Subordinate Judge or subordinate staff or to acquire land or purchase building for setting up Courts or for their modernization.

Case Management:-

Case management requires early assignment of a case to a judge who then exercises judicial control over the case immediately after it is filed and keeps track of the record at every stage. The Judge applies judicial process to the rival contentions at the earliest stage after filing of the written statement and requires and enforces active participation and joint communication amongst the parties and their lawyers for the smooth progress of the case. Case management technique mobilizes early preparation of respective cases by the parties and their lawyers by requiring them to identify the real controversies in the case and seeking early response from the other sides on the questions of facts and law raised by the opponents; this is done effectively utilizing procedures laid down by Civil Procedure Code. It requires submission of separate case management statements by each party and enforces the other side to answer any of the requisitions, if any made by each party and, in addition, provides sanctions for non-compliance. As already discussed above allocation of time by judicial officer to each case certainly plays important role in achieving concept of speedy disposal. In such way the role of bench clerk and stenographers must be taken into consideration as their ability helps to judicial officer to complete the work in time so that he can concentrate time on next matters. Certain judicial officers failed to adhere the provision of CPC and its allied provisions. In AP Civil Rules of Practice and Circular orders rule 66, 101 and 142 also envisages certain guidelines to conduct case with in the prescribed time frame.

Training of Judges and Judicial staff:-

Regular training and orientation sharpens the adjudicatory skills of Judicial officers. A good training programme serves the futuristic needs of the system by improving the potential to optimum level. If judgments at the level of trial courts are of a high quality, the number of revisions and appeals may also get reduced. If the Judge is not competent he will take longer time to understand the facts and the law and to decide the case. The training needs to include Court and Case Management besides methods to improve their skills in hearing cases, taking decisions, writing judgments. It is also necessary to train

Judicial officers in the new legislations and the expanding field of trade and commerce so as to keep them well informed and enable them to handle new and complicated legal issues in an efficient manner.

Other suggestions to ensure expeditious disposal of cases–

a.Adherence of Alternate Dispute Resolution systems including arbitration, conciliation, mediation as provided under Sec. 89 CPC.

b. Check on unnecessary adjournments.

c.Proper adherence to the provisions of C.P.C.1908 and Cr. P.C. 1973.

d. Minimizing the delay in service of summons and filing of written statement in civil matters.

e. Time Limit to dispose of technical pleas by all courts.

f. Mechanism to monitor progress of cases from filing till disposal, categorise cases on the basis of urgency and priority and also grouping of cases.

g. Set annual targets and action plans for subordinate judiciary and High Courts to dispose of old cases and maintain a bi-monthly or quarterly performance review to ensure transparency and accountability.

h. Keep track to bridge the gap between institution and disposal of cases so that there is not much backlog

i. filling up of judicial vacancies and required supporting staff.

j. Modernisation, computerization and technology – court automation systems, e- ourts, digitization of court records, access to information about cases.

k. Strive for more alternative methods of dispute resolution in various forms like arbitration, mediation, pre-litigation mediation, negotiation, lok adalats, well-tructured and channelized plea bargaining, etc.

l.Appointment of committees at the high court level and district court level.

m.Framing of strict guidelines for grant of adjournments especially at the trial stage, also stricter timelines for cases, not permitting dilution of time frames specified in CPC for procedural steps in the civil proceedings.

n. Explore options of Saturday Courts for cases other than criminal appeals. Every drop counts for it is common place that little drops of water make the mighty ocean. It is small things that add up to produce the huge. It is through persistent efforts and continued application that major accomplishments would finally result.

o. Consider and explore options for setting up fast track courts and fixing time limits or deadlines for certain categories of cases especially in subordinate courts.

Conclusion

At the same time we should not resort in extra-ordinary hurry-up of cases by whatever means. As justice delayed is justice denied, similarly, the saying, justice hurried is justice buried is equally true. Therefore, sufficient, reasonable and due hearing of every cases with consideration of its circumstances is the necessary requirement of natural justice and balance of convenience. In fact, the untiring efforts put by fear and flavourless Indian Judiciary is doing commendable job of imparting justice in spite of so many difficulties, which created faith of public in the rule. of law is a great achievement, which really requires deep appreciation. Long delay has also the effect of defeating justice in quite a number of cases. As a result of such delay, the possibility cannot be ruled out of loss of important evidence, because of fading of memory or death of witnesses. The consequences thus would be that a party with even a strong case may lose it, not because of any fault of its own, but because of the tardy judicial process, entailing disillusionment to all those who at one time, set high hopes in courts. The problem of delay and huge arrears stares us all and unless we can do something about it, the whole system would get crushed under its weight. We must guard against the system getting discredited and people losing faith in it and taking recourse to extra legal remedies with all the sinister potentialities.

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LAW SUMMARY

2019 (2)

Andhra Pradesh High Court Reports

2019(2) L.S. 1 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present:
The Hon'ble Mrs.Justice
T. Rajani

Padala Veera Venkata
Satyanarayana Reddy ..Petitioner
Vs.
State of A.P. & Anr., ..Respondents

NEGOTIABLE INSTRUMENTS ACT, Secs.138 and 142 - Petitioners sought quash of criminal proceedings against them on ground that cheques issued by petitioners are towards a time barred debt and hence, no prosecution can lie against them - Petitioners borrowed amounts from the 2nd respondent and failed to discharge the amounts taken - Petitioners executed a demand promissory note, agreeing to pay the amount with interest at 24% per annum - Petitioners did not pay the said amounts and later issued cheque towards discharge of said amounts - Promissory note is also filed along with complaint - Promissory notes are of the year 2012, while cheques are issued in the year 2017 - Date of issuance of cheques is beyond three years from the date of issuance of the promissory note.

Held - Debt or other liability means a legally enforceable debt or other liability and enforcement of legal liability has to be in nature of civil suit because the debt or other liability cannot be recovered by filing a criminal case and when there is a bar of filing a suit by unregistered firm, the bar equally applies to criminal case as laid down in Explanation (2) of Section 138 of Negotiable Instruments Act - Limitation for enforcing the promissory notes expired much prior to the issuance of the cheques in question - Impugned complaints against the petitioners cannot be sustained - Criminal petitions are allowed.

Mr.S.V.S.S. Siva Ram, Advocate for the Petitioner.
Mr.TMK Chaitanya, Advocate for the Respondent 1.

C O M M O N O R D E R

1. Since the subject-matter of these petitions are one and the same, these petitions are being disposed of by this common order.

2. These petitions are filed seeking for quash of the proceedings against the respective petitioners in CC Nos.250, 255 and 254 of 2018 on the file of the Court of IV Special Magistrate, Visakhapatnam and CC No. 1346 of 2017 on the file of the Court of I Additional Chief Metropolitan Magistrate at Visakhapatnam and CC Nos.681 and 644 of 2017 on the file of the Court of II Additional Chief Metropolitan Magistrate at Visakhapatnam respectively. The offences alleged are under Sections 138 and 142 of the Negotiable Instruments Act, 1881.

3. For the sake of convenience, the respective petitioners and the respective complainants i.e., the 2nd respondent in these petitions will be referred to as 'petitioners' and 2nd respondent' respectively.

4. Heard the Counsel for the petitioners as well as the Public Prosecutor appearing for the 1st respondent and the Counsel appearing for the 2nd respondent.

5. The prime ground, on which the relief of quash is based for, is that the cheques issued by the petitioners are towards a time barred debt and hence, no prosecution can lie against them. According to the averments in the complaint, the petitioners approached the 2nd respondent and there were business transactions between them. The 2nd respondent is a medical practitioner while the petitioners have medical shops. The petitioners borrowed amounts from the 2nd respondent for different purposes and the petitioners failed to discharge the amounts taken by them from the 2nd respondent. The petitioners executed a demand promissory note, agreeing to pay the amount with interest at 24% per annum. The petitioners did not pay the said amounts and later issued cheque towards the discharge of the said amounts. The promissory note is also filed alongwith the complaint. The list of documents shows that the promissory notes are of the year 2012, while the cheques are issued in the year 2017. The date of issuance of cheques is beyond three years from the date of issuance of the promissory note. Hence, on the face of it, the cheques can be understood to have been issued towards a time barred debt.

6. The Counsel for the 2nd respondent relies on a judgment of the Hon'ble High Court of Bombay in between **Pragati Credit Co-operative v. Suresh, Criminal Application No.2933 of 2007** and Batch. The High Court of Bombay dealt with two questions which are formulated by the Sessions Judge therein, which are as follows:

> "(i) Does the issuance of a cheque in repayment of a time barred debt amounts to a written promise to pay the said debt within the meaning of Section 25(3) of the Indian Contract Act, 1872?
>
> (ii) If it amounts to such a promise, does such a promise, by itself, create any legally enforceable debt or other liability as contemplated by Section 138 of the Negotiable Instruments Act, 1881?"

By relying on the judgment of the Apex Court in **National Insurance Company Limited v. Seema Malhotra and others, 2001 (2) ALD 68 (SC) : (2001) 3 SCC 151**, the Bombay High Court held that the drawer of the cheque promises to the person in whose favour the cheque is drawn or to whom a cheque is endorsed, that the cheque on presentation would yield the amount in cash. When a cheque is drawn to pay wholly or in part, a debt which is not enforceable only by reason of bar of limitation, the cheque amounts to a promise governed by the sub-section (3) of Section 25 of the Contract Act. Such promise which is an agreement becomes exception to the general rule that an agreement without consideration is void. It further held that though on the date of making such promise by issuing a cheque, the debt which is promised to be paid may be already time barred, in view of sub-section (3) of Section 25 of the Contract Act, the promise/ agreement is valid and, therefore, the same is enforceable.

7. The Apex Court in National Insurance Company's case (supra), the ruling, which is relied upon by the Bombay High Court, dealt with the issue of the liability of the insurer when the cheque given by the insured towards the first premium amount is dishonoured by the drawee bank, to honour the contract of insurance. The Court, in the above circumstances, held that the insurer would not be under any obligation to honour the contract of insurance as the insured did not fulfil the promise of paying premium by issuing a cheque. The said proposition cannot be applied to a case where cheque has to be issued towards a legally enforceable debt.

8. The proposition laid down by the Apex Court that by virtue of Section 25(3), the purpose for which the cheque is issued becomes a promise on the part of the drawer of the cheque, will hold good only if there is a reciprocal promise. The failure of the drawer of the cheque towards premium, to fulfil the promise of paying the premium, would relieve the promised from the obligation that underlies the insurance of the cheque, but does not become a basis for prosecution or action. Such promise which is an agreement becomes exception to the general rule that an agreement without consideration is void, is what is said by the Supreme Court. There was a reciprocal promise in the case before the Apex Court, which can be considered as the consideration. Promise without consideration, would be a gratuitous promise and has no legal force. A mere moral duty to perform a promise, like promise to subscribe to a charitable institution, is without consideration and void. This ratio is reflected in the judgment of the Hon'ble High Court of Madhya Pradesh reported in a case between **Firm Gopal Co. Ltd. v. Firm Hazari Lal and Co., AIR 1963 MP 37**. The case of the promiser issuing cheque towards discharge of a time barred debt, would only be a promise to fulfil a moral duty and breach of such promise may subject him to civil liability, if the promise is construed as an agreement or even criminal liability if any criminality is made out from such promise. Section 25 of the Indian Contract Act makes a promise to discharge time

barred debt a valid agreement. But such agreement cannot be made a basis for prosecution under Section 138 of N.I. Act. A cheque issued for discharge of debt no doubt carries a promise to discharge the time barred debt but, for a prosecution under Section 138 N.I. Act, there should be a legally enforceable debt by the date of issuance of cheque. Such cheque becomes an agreement between the promisor and promised and becomes enforceable, but does not allow prosecution. Unless there is a legally enforceable debt, the cheque issued, promising to discharge a time barred debt will not make the promisor liable under Section 138 of the N.I. Act. In a case under Section 138 of N.I. Act, the issuance of the cheque itself must be towards a legally enforceable debt. Hence, the reasoning given by the Hon'ble High Court of Bombay does not persuade this Court.

9. The Counsel for the petitioner relies on two judgments of this Court in **Rakesh Agarwal v. K. Narasimha Rao, 2016 (1) ALT (Crl.) 136 (AP)** and **A. Yesubabu v. D. Appala Swamy, 2003 (2) ALD (Crl.) 707 (AP)**. In Rakesh Agarwal's case (supra), the Court held that once the promissory note debt is barred by time, it cannot be brought within Section 25 of the Contract Act treating the cheque as an acknowledgment of the time barred debt. In A. Yesubabu's case (supra), this Court held that if any cheque is issued by the accused after expiry of the limitation for releasing the debt, it cannot be said that it was issued for a legally enforceable debt. In the said case, the cheque was issued on 25.8.1994 nearly 7 years after the taking of the amount from the complainant. The Court considered the earlier ruling of this Court in **Giridhar Lal Rathi v. P.T.V. Ramanujachar and another, 1997 (2) Crimes 658**, wherein the loan was advanced in the year 1985 and the cheque was issued in the year 1990. It was held therein that by the time the cheque was issued, the debt appears to have been barred by limitation because there no acknowledgment is alleged to have been obtained by the appellant from R1-accused, before expiry of three years from the date of loan. It was held that the debt was not legally enforceable at the time of issuance of cheque and, therefore, vide explanation to Section 138 of N.I. Act, which reads as under :

> "Explanation.-Until the debt is legally recoverable the drawer of the cheque cannot be fastened with liability under Section 138 of N.I. Act" the cheque cannot be said to have been issued towards discharge of legally enforceable debt."

A Division Bench judgment of this Court was also relied upon by the High Court, which is rendered in **Mr. Amit Desai and another v. Shine Enterprises and another, 2000 (1) ALD (Crl.) 587 (AP) : 2000 Cri. LJ 2386**, wherein it was specifically laid down that the debt or other liability means a legally enforceable debt or other liability and enforcement of legal liability has to be in the nature of civil suit because the debt or other liability cannot be recovered by filing a criminal case and when there is a bar of filing a suit by unregistered firm, the bar equally applies

to criminal case as laid down in Explanation (2) of Section 138 of Negotiable Instruments Act.

10. In these cases, as already observed, the limitation for enforcing the promissory notes expired much prior to the issuance of the cheques in question. Hence, in view of the above, this Court opines that the impugned complaints cannot be sustained and that these are fit cases for quashing of the proceedings against the petitioners.

11. With the above observations, the criminal petitions are allowed and the proceedings against the respective petitioners in CC Nos.250, 255 and 254 of 2018 on the file of the Court of IV Special Magistrate, Visakhapatnam and CC No.1346 of 2017 on the file of the Court of I Additional Chief Metropolitan Magistrate at Visakhapatnam and CC Nos.681 and 644 of 2017 on the file of the Court of II Additional Chief Metropolitan Magistrate at Visakhapatnam respectively, are hereby quashed.

12. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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2019(2) L.S. 5 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mrs.Justice
T. Rajani

Konikineni Srinivasa Rao ..Petitioner
Vs.
State of A.P. & Ors., ..Respondents

INDIAN PENAL CODE, Secs- 190, 420, 467, 468, 471, 474 read with 120-B - REGISTRATION ACT, Sec.82 - Petition filed for quash of proceedings against petitioner, who is A10 before Court below - Petitioner contends that sanction is required to prosecute as petitioner is a public servant, and as per Section 83 of the Registration Act mandates permission of Inspector General, Registrar or Sub-Registrar.

Held - Unless prosecuting authority is Registering Officer, no permission is needed to be taken from Inspector-General, Registrar or Sub-Registrar - Quashing the proceedings against the petitioner, at this stage, would not be safe - Criminal petition is dismissed, however, petitioner is given liberty to file a discharge petition before the Court below and raise all the contentions raised in this petition.

Crl.PNo.10225/2018 Date: 5-2-2019

Mr.Sasanka Bhuvanagiri, Advocates for the Petitioner.

Public Prosecutor, Advocate for the Respondent 1.

J U D G M E N T

1. This petition is filed seeking for quash of the proceedings against the petitioner, who is A10 before the Court below, in CC No.3905 of 2018 on the file of the Court of IV Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District. The offences alleged are under Sections 190, 420, 467, 468, 471, 474 read with 120-B IPC and Section 82 of the Registration Act, 1908.

2. Heard the Counsel for the petitioner; the Public Prosecutor appearing for the 1st respondent and the Counsel appearing for the unofficial respondents.

3. The Counsel for the petitioner, importantly, contends that sanction is required to prosecute A10, being a public servant, as Section 83 of the Registration Act mandates permission of the Inspector General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed, in order to prosecute A10. Section 83 of the Act can be extracted for ready reference, which reads as follows :

> "83. Registering Officers may commence prosecutions.-(1) A prosecution for any offence under this Act coming to the knowledge of a Registering Officer in his official capacity may be commenced by or with the permission of the Inspector-General, [x x x] the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.
>
> (2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the Second Class."

4. The offence under Section 82 of the Act is also alleged against the petitioner. Section 83 speaks about the prosecution of the offences under the Act. Hence, it has to be examined whether permission, as mandated under Section 83, is required in this case or not.

5. The Counsel for the petitioner relies on a judgment of this Court reported in **Ummadisetti Ratnasagar v. State, rep. by Public Prosecutor, 2016 (2) ALD (Crl.) 135 : 2016 (3) ALT (Crl.) 26 (AP)**, wherein it was held that such permission is required since taking cognizance of the offence against the petitioner is violation of Section 197 Cr.PC is non-est in the eye of law. The allegation against the petitioner therein is that being a Sub-Registrar, he failed to properly scmtinize the stamp papers and the entries in the concerned registers to detect the ante-dated nature of the stamps. It cannot be disputed that scrutiny of the stamps and verification of the concerned

registers form part of the official duty of the petitioner therein.

6. Per contra, the Counsel for the unofficial respondents relies on a judgment of the Supreme Court of India in between **Dharmadeo Rai v. Ramnagina Rai, Criminal Appeal No.33 of 1969**, wherein it was held at Paragraph 3 as follows :

"In this Court, the only point argued on behalf of the appellant was that the complaint was incompetent as it was filed by a person without obtaining the necessary permission under Section 83 of the Act and, therefore, the conviction was bad and must be set aside. Section 83 of the Act provides :

> "83. (1) A prosecution for any offence under this Act coming to the knowledge of a Registering Officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.
>
> (2) Offences punishable under this Act shall be triable by any Court or officer - exercising powers not less than those of a Magistrate of the Second Class."

On a reading of the section, it would be clear that it deals only with prosecution for an offence under the Act coming to the knowledge of the Registering Officer in his official capacity. It, in effect, provides that where an offence comes to the knowledge of the Registering Officer in his official capacity, a prosecution may be commenced by or with the permission of any of the officers mentioned in the section. The section can possibly have no application to cases in which offences are committed under the Act, but the offences do not come to the knowledge of the Registering Officer in his official capacity. If the Registering Officer does not know in his official capacity that the document produced before him is a false document or that the person appearing before him is personating some other person, the section has no application. The section is not prohibitory in that it does not preclude a private person from commencing a prosecution. Even in a case where the commission of an offence comes to the knowledge of the Registering Officer in his official capacity, the section does not prohibit a private person from commencing a prosecution as the section is clearly permissive in its language and intent. In other words, the section is an enabling one. It enables the persons mentioned therein to commence a prosecution in cases where the commission of the offence under the Act comes to the knowledge of the Registering Officer in his official capacity. The section enables the officers named to use their official position for the purpose of prosecution without, personal risk."

7. By relying on the judgment of the Supreme Court cited above this Court in **Crl. P No. 11774 of 2010 between Shaik @ Mohammed Gousinnisa Begum @**

Gousia Begum and others v. Shaik Abdul Rasheed and another, 2014 (1) ALD (Crl.) 143 (AP), also held that there is no legal impediment for a private person to launch prosecution without the permission of the registering authority. However, by considering the merits of the case, proceedings against A2 and A3 were quashed by this Court. Hence, it is clear that unless the prosecuting authority is the Registering Officer, no permission need to be taken from the Inspector-General, the Registrar or Sub-Registrar.

8. Coming to the merits of the case, the Counsel for the petitioner contends that there is only one allegation made against this petitioner that is, that A1 and A2 gave Rs. 10,000/- to A10, who is the petitioner herein, and he, in turn, obtained the signatures in connected documents and informed that the work is completed and asked them to take the documents after two days. He submits that, at best, the said allegation would attract the offence under the Prevention of Corruption Act, but the offences under Section 420 IPC cannot be alleged against the petitioner. But the charge-sheet shows that this petitioner asked for the original of the document, but, without the original being produced, he obtained the signatures on the connected documents which goes to show that he wanted to commit an act of cheating by manipulating the whole process, which is involved in the registration.

9. Hence, in view of the above, this Court opines that all these are the aspects, which have to be considered only during the time of trial and thereby, quashing the proceedings against the petitioner, at this stage, would not be safe.

10. With the above observations, the criminal petition is dismissed. However, considering the request of the petitioner's Counsel, the petitioner is given liberty to file a discharge petition before the Court below and raise all the contentions raised in this petition before the said Court and the Court below shall consider the same, uninfluenced by any of the observations made by this Court in this order, and dispose of the same as expeditiously as possible.

11. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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2019(2) L.S. 8 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
U. Durga Prasad Rao

G.V. Rami Reddy ..Petitioner

Vs.

D. Mohan Raju ..Respondent

INDIAN EVIDENCE ACT, Sec.45 - Civil Revision Petition - Petitioner challenged the Order in I.A., wherein,

C.R.P.No.6157/2018 Date:13-2-2019

petition filed by Petitioner/Defendant u/S.45 of Indian Evidence Act 1872 sought to send Ex.A-1 promissory note to F.S.L. to ascertain age of signature and contents was dismissed.

Held – Though ink or a pen was manufactured in yester years, there is a possibility that a person may either deliberately or un-knowingly use such ink/pen to make a writing of signature several years after its manufacture - Mere determination of age of ink/ writing by an expert will not clinch the issue as to when exactly the maker has written/signed document -Trial court is not right in rejecting the petitioner's request to refer the document to the expert, since the required expertise is available - Civil Revision Petition is allowed by setting aside the impugned order, and consequently, I.A. is allowed and the trial court is directed to refer Ex.A-1 promissory note for determining age of signature of the defendant at his own expenses.

Mr.Maheswara Rao, Kuncheam, Advocates for the Petitioner.
Mr.V. Nageswara Rao, Advocate for the Respondent.

J U D G M E N T

1. The challenge in this Civil Revision Petition is the order, dated 13.8.2018, in I.A. No.874 of 2018 in O.S. No.253 of 2015, passed by the learned III Additional district Judge, Tirupati, dismissing the Petition filed by the petitioner/defendant under Section 45 of the Indian Evidence Act 1872 seeking to send Ex.A-1 promissory note to F.S.L. to ascertain the age of the signature and the contents therein.

2. The defendant filed the said Petition on the contention that he did not execute Ex.A-1 pronote on 20-12-2012 as claimed by the plaintiff, -and on the other hand on a different occasion, he borrowed Rs.1,00,000/- from the plaintiff and plaintiff obtained his signature on a blank promissory note on 27-9-2008 and also obtained a cheque for security purpose and though the defendant discharged the said debt in March, 2009, the plaintiff returned the cheque but did not return the promissory note and he pressed into service the said blank promissory note and created Ex.A-1 with the date 20-12-2012 filed the instant suit. Thus, in essence, the defendant contends that Ex.A-1 was signed in the year 2008 but not in 2012 and for determination of the age of signature and contents in Ex.A-1, the document be referred to F.S.L.

3. The trial court mainly relying upon the decision, cited by the plaintiff, reported in Polana Jawaharlal Nehru v. Maddirala Prabhakara Reddy (1) 2017 (3) ALT 712 = 2017 (3) ALD 579, dismissed the petition. In that case, Justice V. Ramasubramanian, learned Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, observed that no useful purpose would be served by referring the document to the handwriting expert as it was highly doubtful, that it was possible for a handwriting expert to fix the age of the ink, where the dispute with regard to the age was only 4 years; at least if

the time gap was about 30 to 40 years, it might perhaps be possible for the handwriting expert to fix the age but when the time gap pleaded was just about 4 years, it would not be possible to fix the age. The trial Court judge, thus, dismissed the petition.

4. Heard Sri Maheswara Rao Kunchem, learned counsel for the petitioner, and Sri V. Nageswara Rao, learned counsel for the respondent.

5. Now the points that arise for determination in this Civil Revision Petition are:

1. Whether Forensic Expertise to determine the age of ink/pen is available in our country to refer the alleged document?

2. If point No.1 is held affirmatively, whether such determination of age of ink/handwriting is suffice to upheld the contention of the petitioner/ defendant, in the instant case?

6. Point No.1: It is to be noted that in the decision reported in R. Jagadeesan v. N. Ayyasamy (2) Manu/TH/1974/2010 2010 (1) CTC 424, a learned Judge of Madras High Court ascertained from Assistant Director, Document Division. Forensic Science Department, Government of Tamilnadu, Chennai, that there is one institution known as Nutron Activation Analysis, Bhab ha Atomic Research Centre (BARC), Mumbai, where there is facility to find out the approximate range of the time during which the writing would have been made and it is a Central Government Organization. Basing on the observation made by the learned Judge in Jagadeesan (2 supra), Dr. Justice B. Siva Sankara Rao, learned Judge of the High Court of Judicature at Hyderabad, in his decision reported in T. Rajalingam v. State of Telangana and others (3) 2017 (3) ALT (Crl.) 203 (A.P.) and Namineni Audi Seshaiah v. Numburu Mohan Rao, (4) 2018 (6) ALT 285 = 2018 (6) ALD 751 ordered that the documents therein be sent to the aforesaid organization for determination of age of the ink.

7. Thus, from the above, it is clear that there is an organization called Nutron Activation Analysis, BARC, Mumbai, which is a Central Government Organization, which undertakes the task of determining the age of ink/writing of a document.

8. It should be noted that the decision in Rajalingam (3 supra) which is an earlier decision, was not referred in Polana Jawaharlal Nehru's case (I supra), which was relied upon by the trial court. Therefore, the view expressed in Polana Jawaharlal Nehru's case (I supra) cannot be taken as precedent. This point is, thus, answered affirmatively.

9. Point No.2: Since point No.1 is held affirmatively, it has now to be seen whether ascertaining the age of the ink/writing on the document is suffice to uphold the contention of the defendant. Of course, I must admit that this aspect relates to the appreciation of evidence on the part of the trial court. However, I venture to frame this

point to caution the trial court in the light of a crucial observation made by a learned Judge of the High Court of Andhra Pradesh in Kambala Nageswara Rao v. Kesana Balakrishna (5) 2014 (I) ALT 636 = AIR 2014 A.P. 37, wherein it was observed thus:

> "4. ……. Even while not disputing his signature on the promissory note, the petitioner wanted the age thereof to be determined. Several complications arise in the regard. The mere determination of the age, even if there exists any facility for that purpose; cannot, by itself, determine the age of the signature in a given case, the ink, or for that matter, the pen, may have been manufactured several years ago, before it was used, to put a signature. If there was a gap of 10 years between the date of manufacture of ink or pen, and the date on which the signature was put or document was written, the document cannot be said to have been executed or signed on the date of manufacture of ink or pen."

10. Therefore, in a given case, though the ink or a pen was manufactured in yester years, there is a possibility that a person may either deliberately or un-knowingly use such ink/pen to make a writing of signature several years after its manufacture. In such an event, mere determination of the age of ink/writing by an expert will not clinch the issue as to when exactly the maker has written/signed the document. Therefore, the Courts must take note of this aspect while appreciating the rival contentions. This point is answered, accordingly.

11. Thus on a conspectus of the above findings, the trial court is not right in rejecting the petitioner's request to refer the document to the expert, since the required expertise is available, as noted supra.

12. In the result, the Civil Revision Petition is allowed by setting aside the impugned order and, consequently, I.A.No.874 of 2018 is allowed and the trial court is directed to refer Ex.A-1 promissory note to Nutron Activation Analysis, BARC, Mumbai, for determining the age of signature of the defendant at his own expenses. No order as to costs.

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

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2019(2) L.S. 11 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mrs.Justice
T. Rajani

Suksen Mandal ..Petitioner

Vs.

State of Andhra Pradesh ..Respondent

NDPS ACT, Sec.8(c) r/w Sec.20(b)(ii)(c) - CRIMINAL PROCEDURE CODE,

Crl.P No.79 of 2019 Date:30-01-2019

Secs.437 & 439 - Case of prosecution that petitioner acted as a mediator for purchase of 135kgs of Ganja.

Held - it cannot be said that petitioner would be entitled for acquittal and hence, Sec.37 of NDPS Act does not come in way of granting bail to the petitioner - Moreover, what this Court can understand from the language used in Sec.37(i)(b)(ii) is that the reasonable grounds should be in respect of believing that the accused is not guilty but not that he would be acquitted - However, Counsel for petitioner makes an alternative prayer for granting interim bail to petitioner on ground that his wife is suffering from spine problem and that his presence for fixing up surgery to his wife is very much necessary - Fit case for granting interim bail to the petitioner - Criminal petition is disposed of and petitioner is enlarged on interim bail for a period of 30 days.

Mr.G. Venkata Reddy, Advocates for the Petitioner.
Public Prosecutor, Advocate for the Respondent.

J U D G M E N T

1. This petition is filed, under Sections 437 and 439 of the Criminal Procedure Code, 1973, seeking to enlarge the petitioner, who is A4, on bail in Crime No.60 of 2017 on the file of the Station House Officer, Chinturu Police Station, East Godavari District. The offences alleged are under Section 8(c) read with 20(b)(ii)(c) of NDPS Act.

2. Heard the Counsel for the petitioner and the Public Prosecutor appearing for the respondent.

3. The case of the prosecution is that 135 Kgs. of Ganja is involved in this case and that this petitioner is acting as a mediator for purchase of Ganja. Hence, Section 37 of the NDPS Act comes in the way of granting bail to the petitioner as one of the two conditions for granting bail is the satisfaction of the Court that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit offence while on bail.

4. As regards this hurdle, the Counsel raised a technical argument based on the fact that the complainant and the Investigating Officer in this case are the same and hence, there is every likelihood of he being acquitted from the case. He relies on a judgment of the Supreme Court passed in Crl. A No. 1880 of 2011 between Mohan Lal and the State of Punjab wherein the Supreme Court held that, 'a fair investigation which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. The said judgment was passed in an appeal. Hence, the Apex Court deemed it appropriate to hold that the prosecution is vitiated.

5. On the other hand, the Public Prosecutor

relies on a judgment of this Court, dated 14.11.2018, passed in Crl. P Nos. 6901, 6918 and 6928 of 2018, wherein this Court by considering the said fact and also by relying on the judgment of the Supreme Court referred supra, set aside the cognizance orders of the Court and reverted the clock back to the crime registration stage and directed the Superintendent of Police concerned to handover the investigation to another police officer other than the person who conducted the raid and detected the crime and registered the FIR.

6. In view of the above, it cannot be said that the petitioner would be entitled for acquittal and hence, Section 37 of the NDPS Act does not come in the way of granting bail to the petitioner. Moreover, what this Court can understand from the language used in Section 37(i)(b)(ii) is that the reasonable grounds should be in respect of believing that the accused is not guilty but not that he would be acquitted. However, the Counsel for the petitioner makes an alternative prayer for granting interim bail to the petitioner on the ground that his wife is suffering from spine problem and that his presence for fixing up surgery to his wife is very much necessary.

7. Considering the above circumstances, this Court opines that this is a fit case for granting interim bail to the petitioner.

8. With the above observations, the criminal petition is disposed of and the petitioner is enlarged on interim bail for a period of 30 days starting from 31.1.2019 subject to the condition of his executing a personal bond for a sum of Rs. 20,000/-(Rupees Twenty thousand only) with two sureties for a like sum each to the satisfaction of the I Additional District and Sessions Judge, East Godavari at Rajamahendravaram. It is made clear that the petitioner shall surrender before the concerned State House Officer on 1.3.2019 without fail.

9. As a sequel, the miscellaneous applications, if any pending, shall stand closed.--X--

2019(2) L.S. 13 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
D.V.S.S. Somayajulu

Govindu Vidyulatha ..Petitioner

Vs.

Movva Suri Babu ..Respondent

LIMITATION ACT, Sec.5 - Whether Court below exercised its discretion correctly or not - Revision petition is filed questioning Order passed in EA – Application filed to condone the delay of 920 days in filing application to set aside ex parte order - Application is contested and the impugned order came to be passed by which lower Court dismissed the application.

Held - There is no satisfactory

C.R.P. No. 281/2018 Date:29-1-2019

explanation for delay caused - Delay of 920 days can by no means be a small delay - Reasons given are also not clear - Length of delay is not important but sufficiency of reasons are important - Even though words "sufficient cause" has been liberally interpreted, they cannot be so liberally interpreted as to defeat provisions of law - Revision petition stands dismissed.

Mr.K. Jyothi Prasad, Advocates for the Petitioner.
Mr.V.S.R. Anjaneyalu, Advocate for the Respondent.

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J U D G M E N T

This revision petition is filed questioning the order dated 11-12-2017 passed by the III Additional Senior Civil Judge, Vijayawada in EA. No. 378 of 2017 in EP. No. 83 of 2014 in OS. No. 1009 of 2011.

2. The application EA. No. 378 of 2017 is filed to condone the delay of 920 days in filing the application to set aside the ex parte order. The application is contested and the impugned order came to be passed by which the Court dismissed the application. Questioning the same, the present revision has been filed.

3. This Court has heard Sri K. Jyothi Prasad, learned counsel for the revision petitioner and Sri V.S.R. Anjaneyulu, learned counsel for the respondent.

4. Learned counsel for the revision petitioner argued that the revision petitioner is a widow and that the suit is filed for recovery of a debt allegedly due by her husband. According to the learned counsel, against the judgment and decree, which is passed in the suit on 20-03-2014, a first appeal has been filed bearing SR.No.290 of 2018 along with an application to condone the delay. Learned counsel submits that the enquiry in the application filed to condone the delay in filing the appeal is pending before the District Court and that the appeal is not numbered. He points out that in the interim period, the property that is valued at X 15 laksh is being brought for sale for recovery of a debt of ? 7.74 lakhs. In addition, learned counsel also points out that the petitioner met some third parties who are the relatives of deceased husband, who promised that the matter would be settled. Believing the said representation, the judgment debtor/revision petitioner did not contest the execution petitioner. Therefore, it is the submission of the learned counsel that the petitioner was set ex parte on 16-04-2015 as she relied upon the fraudulent representations of her husband's relatives. Hence, the prayer is made to condone the delay of 920 days.

5. In reply to this, learned counsel for the respondent pointed out that the suit was decreed after contest. He drew the attention of the Court to the judgment and decree passed on 20-03-2014 which clearly shows that a counsel appeared on behalf of the defendants and argued the matter. Counsel points out that the present revision petitioner was also examined as DW.I in the case. In addition, counsel points out that the execution petition was tiled in November, 2014 and notices were admittedly served on the revision petitioner, yet she did not

choose to contest the matter. Counsel also points out that a bare averment is made that the petitioner' and her children were misguided by some relatives and that absolutely no details are given of the said relatives or of the alleged wrong/fraudulent actions.

6. Counsel points out that although the application is filed under Section 5 of the Limitation Act, the attempt of the petitioner is to contest the execution petition itself, as can be seen from the various averments made about the value of the property, the adjournments taken, the lack of proper notice etc. Lastly, the learned counsel submits that the execution petition was filed in 2014; the appeal against the judgment and decree was filed on 30-11-2017 and the present application was moved on 18-01-2018. Counsel points out that all of these actions are part of a concerted plan to delay and defeat the decree. Counsel also argues that the application filed under Section 5 of the Limitation Act, is not at all carefully drafted and it does not clearly explain, who were the relatives, who are supposedly contacted and what is the deceit or fraud that is supposedly played. Learned counsel strongly urged that virtually no reasons are given for condonation of the delay.

7. Now the point for consideration is whether the Court below exercised its discretion correctly or not.

8. This Court after examining the facts notices that the judgment and decree were passed in March, 2014. After decree was passed, execution was levied on 12.1 1.2014 and till date, namely 2019, the property was not brought to sale.

9. In addition, this Court also notices that the affidavit that is filed does not state who are the "relatives" who have actually misguided the judgment debtor and her children; what is their connection with the judgment debtors, the decree holder and the present suit etc. The law is fairly clear on this subject. Order VI, Rule 4 CPC mandates that if malice, fraud, improper conduct etc., are alleged, the same should be categorically pleaded and proved. Admittedly, the revision petitioner received the notice in the execution petition. Para 5 of the affidavit fded to condone the delay merely says that she and her children were misguided by some relatives. Absolutely, no details whatsoever are given of the said actions of those relatives. A reading of the affidavit also shows that the revision petitioner is fully aware of the proceedings and the adjournment. Yet no clear and categorical details are given for the delay and the cause for the delay.

10. The Hon'ble Supreme Court of India in Esha Bhcittacharjee v. Managing Committee of Raghunathpur Nafar Academy (1)2013(12) SCC 649 = 2014 (1) ALT 1.2 (DN SC), clearly held in para 22.1(a) that an application for condonation of delay should be drafted with careful concern and not in a haphazard manner. Similarly, in para 22.4(d) the Hon'ble Supreme Court of India held as follows:-

"The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be

curbed, of course, within legal parameters."

11. In addition to this, learned counsel for the respondent also relied on B. Madhuri Goud v. B. Damodar Reddy (2) (2012) 12 SCC 693and argued that in similar circumstances when an appeal was filed after an ex parte decree was passed and no satisfactory explanation is given, the delay cannot be condoned.

12. This Court also notices the increasing tendency to draft affidavits in a casual manner. When issues of fraud, malice and improper behavior are stated as the reason or the cause for the delay, there should be clarity in the affidavit. Details of the alleged fraud/improper advise, details of the persons who are responsible for the same etc., should be pleaded with clarity. Since matters of this nature are decided mostly on affidavits, there is an absolute need for clarity in the affidavit. Simply, saying that the petitioner met with some relatives, who misguided her is not sufficient. Facts with sufficient details need to be stated on oath so that the truth can be ascertained. Condonation of delay cannot be taken for granted. The note of caution sounded by the Hon'ble Supreme Court that an applications for condonation of delay should be drafted with careful concern cannot be over emphasized. The tendency to treat condonation of delay in a casual manner is a practice that needs to be curbed.

13. The case on hand is a classic example of this. The revision petitioner is aware of the frling of the suit. She deposed in the suit as a witness. She is aware of the ex parte decree that was passed and an application filed by her in IA.No.884 of 2015 to set aside the decree was dism issed. She received the notice in the execution application. Later, she supposedly met some relatives who misguided her. The tone and tenor of her affidavit filed to condone the delay is not that of a mere house wife since a number of legal pleas were raised. Therefore, it is clear that she had the benefit of clear legal advise before filing the application. Hence, a greater duty was cast on the party to furnish the details and also on her counsel to draft the affidavit with greater clarity and with sufficient details but the same was not done.

14. Time and again it has been noticed that the travails of a decree holder/party begin after a decree is obtained. Execution of a decree is often more difficult and frustrating than obtaining a decree itself in many cases. A decree which was passed in 2014 has not resulted in an effective execution and an execution petition filed in March, 2014 has still not yielded any result to the decree holder till date.

15. This Court, after an examination of the facts in this case is of the clear opinion that the judgment of the Hon'ble Supreme court of India in Esha Bhattacharjee's case (1 supra) case is squarely applicable to the facts and circumstances. There is no satisfactory explanation for the delay that is caused. The delay of 920 days can by no means said to be a small delay. The reasons given are also not clear. The length of the delay is not important but the sufficiency of the reasons are important. Viewed from this perspective also the present affidavit is wholly lacking in proper

reasons. Even though the words "sufficient cause" has been liberally interpreted, they cannot be so liberally interpreted as to defeat the provisions of law. The discretion that this Court has in the words of the Apex Court in Lanka Venkateswarlu v. State of A. P. (3) 2011 (2) ALT 55 (SC) = (201 1)4 SCC 363 is not an unbridled or unlimited power, but is a power which should be exercised in a systematic manner informed by reason.

16. In the case on hand, for all the above reasons and in view of the law, this Court finds no merits in the revision petition and accordingly, the revision petition is dismissed.

17. As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed.

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2019(1) L.S. 17 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present:
The Hon'ble Mrs.Justice
T. Rajani

Bandaru Kanaka ..Petitioner

Vs.

Polaki Bala Saraswathi & Anr., ..Respondents

CRIMINALPROCEDURE CODE, Sec.407 - NEGOTIABLE INSTRUMENTS ACT, Sec.142 - Instant petition filed seeking transfer of CC from Court of JMFC, at Salur, Vizianagaram District, to Court of JMFC, at Anakapalle, Visakhapatnam District, on the ground that the petitioner is not well.

Held - If provisions pertaining to jurisdiction of Courts are intended to be construed rigidly, there would have been no necessity for providing for power of transfer under Section 407 Cr.PC - It is with an intention of giving power to the High Court, to transfer the cases, if circumstances enumerated therein exist, that Sec.407 is enacted - There cannot be any distinction made between cases falling under the N.I. Act and other cases, so far as those circumstances are concerned - There can be no argument that cases under N.I. Act do not need fair and impartial inquiry or trial, or that no question of law of unusual difficulty would arise,

Tr.Crl. P No.236/2018 Date"28-01-2019

or that the parties to the cases under the N.I. Act do not deserve to have the general convenience, as do parties in other cases, or that ends of justice need not be of concern, in N.I. Act cases - There can be no demur in holding that Section 142 of N.I. Act is subject to Section 407 Cr.P.C - Criminal petition stands allowed.

Mr.B.V Rama Rao, Advocate for the Petitioner.
Public Prosecutor, Advocate for the Respondent 2.

J U D G M E N T

1. This petition is filed seeking transfer of CC No.284 of 2017 from the Court of the Judicial Magistrate of First Class, at Salur, Vizianagaram District, to the Court of the Judicial Magistrate of First Class, at Anakapalle, Visakhapatnam District, on the ground that the petitioner is not well.

2. Heard the Counsel for the petitioner and the learned Public Prosecutor appearing for the 2nd respondent and the Counsel for the 1st respondent.

3. In support of the contention of the petitioner's Counsel that the petitioner is facing difficulty in attending the Court at Vizianagaram, he filed the Medical Certificate, wherein it is stated that the petitioner is suffering from HTN diabetes mellitus and associated symptoms and heart disease from May, 2018. He further submits that the 1st respondent is a resident of Visakhapatnam and he makes an alternative prayer at the time of arguments that the case may be transferred to any Court in Visakhapatnam, so that it would be convenient to both parties.

4. He further contends that it would be easy for the petitioner to attend the Court in Visakhapatnam, which is very nearer to Anakapalle, than to go to Vizianagaram.

5. The Counsel for the 1st respondent though does not plead any inconvenience, with regard to the transfer as sought for by the petitioner, raised a technical objection and argues that Section 142 of the Negotiable Instruments Act confers jurisdiction on the Court within whose jurisdiction cheque is delivered for collection and hence that Court alone shall try the case. The non-obstante clause in Section 142 of the Negotiable Instruments Act, pertaining to the provisions of Criminal Procedure Code, has to be taken as pertaining to the provisions of the Criminal Procedure Code, which deal with jurisdiction of Courts. But, in the considered opinion of this Court, Section 142 of the Negotiable Instruments Act does not overrule the power given to the High Court under Section 407 Cr.PC.

Section 407 Cr.PC is as follows :

"407. Power of High Court to transfer cases and appeals.-(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial

cannot be had in any criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) That any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeals, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself;

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative;

Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under subsection (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under subsection (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless atleast twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under

Section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any persons who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under subsection (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under Section 197."

6. If provisions pertaining to jurisdiction of Courts are intended to be construed rigidly, there would have been no necessity for providing for power of transfer under Section 407 Cr.PC. It is with an intention of giving power to the High Court, to transfer the cases, if circumstances enumerated therein exist, that Section 407 is enacted. There cannot be any distinction made between cases falling under the N.I. Act and other cases, so far as those circumstances are concerned. There can be no argument that cases under N.I. Act do not need fair and impartial inquiry or trial, or that no question of law of unusual difficulty would arise, or that the parties to the cases under the N.I. Act do not deserve to have the general convenience, as do the parties in other cases, or that ends of justice need not be of concern, in N.I. Act cases. There can be no demur in holding that Section 142 of N.I. Act is subject to Section 407 Cr.PC.

7. Hence, considering the above, the criminal petition is allowed and CC No.284 of 2017 on the file of the Court of the Judicial Magistrate of First Class, at Salur, Vizianagaram District, shall be transferred to any Magistrate Court in Visakhapatnam, after obtaining the orders from the District Judge, Visakhapatnam.

8. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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LAW SUMMARY

2019 (2)

Supreme Court Reports

2019 (2) L.S. 1 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mrs.Justice
R.Banumathi &
The Hon'ble Mr.Justice
R. Subhash Reddy

Birla Corporation Limited ..Petitioner
Vs.
Adventz Investments
& Holdings Ltd. & Ors., ..Respondents

CRIMINAL PROCEDURE CODE - INDIAN PENAL CODE, Secs.22, 29, 120-B, 379, 403 & 411 – Whether High Court was right in quashing criminal proceedings qua documents No. 1 to 28 on ground that mere information contained in documents cannot be considered as "moveable property" and cannot be subject of offence of theft or receipt of stolen property.

Held – Use of documents No.1 to 28 and documents No.29 to 54 by Respondents in judicial proceedings is to substantiate their case namely, "oppression and mismanagement" of administration of Appellant-Company and their plea in other pending proceedings and such use of documents in litigations pending between parties would not amount to theft – No "dishonest intention" or "wrongful gain" could be attributed to Respondents and there is no "wrongful loss" to Appellant so as to attract ingredients of Sections 378 and 380 IPC – Continuation of criminal proceedings would be abuse of process of Court – Impugned judgment of the High Court qua documents No. 29 to 54 is set aside – Supreme Court has the power to quash any judicial proceedings in exercise of its power under Article 136 of the Constitution of India – Appeal stands allowed.

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

Leave granted.

2. These appeals arise out of the judgment dated 15.05.2015 passed by the High Court of Calcutta in C.R.R. No. 323 of 2011 in and by which the High Court quashed the complaint of the appellant-Company filed under Sections 379, 403 and 411 IPC read with Section 120-B IPC qua documents No. 1 to 28 of the Schedule. Insofar as documents No. 29 to 54 of the Schedule, the High Court remitted the matter to the trial court to proceed with the matter in

Crl.A.Nos. 875, 877, 876/2019 Dt:09-5-2019

accordance with law.

3. Being aggrieved by quashing of the complaint qua documents No. 1 to 28, the appellant-complainant has preferred appeal (SLP (Crl.) No. 9053 of 2016). Being aggrieved by remitting the matter to the trial court qua documents No. 29 to 54, the respondents have filed appeal [SLP(CrL) D No. 6405 of 2019 and SLP(CrL) D. No. 6122 of 2019]. Though the SLPs by the respondents are filed with delay, in the interest of justice, delay in filing the SLPs are condoned.

4. These appeals arise out of the criminal complaint filed by the appellant-Company which belong to Madhav Prasad Birla (MPB) Group, now under the control of respondent No. 17-Harshvardhan Lodha who is the son of Rajendra Singh Lodha. The impugned complaint has a background of multitude of litigations filed by the respondents and others. Brief facts which led to filing of these appeals are that one Priyamvada Devi Birla(PDB) and her husband Madhav Prasad Birla (MPB) were in control and management of several corporate entities which are collectively referred to as the M.P. Birla Group of Industries. They did not have any children. They have created several trusts for undertaking charitable activities in particular on the education side. PDB died on 03.07.2004 and MPB had predeceased her. There is an ongoing dispute over legality of a Will allegedly executed by Priyamvada Devi Birla (PDB) dated 18.04.1999 in favour of Rajendra Singh Lodha and respondent No. 17-son of said Rajendra Singh Lodha. On 19.07.2004, a petition was filed by Rajendra Singh Lodha, father of respondent No. 17 for grant of probate of the purported Will before the High Court at Calcutta. The Probate Petition has been converted into a testamentary suit for grant of Letters of Administration. Krishna Kumar Birla (KKB), Basant Kumar Birla (BKB), Ganga Prasad Birla (GPB) and Yashovardhan Birla (YB) have filed caveats to oppose the grant of probate of the said Will dated 18.04.1999. The High Court held that Ganga Prasad Birla (GPB) has a caveatable interest and therefore, he has a right to oppose the grant of probate of the said Will. The said testamentary suit is pending. Subsequently, Krishna Kumar Birla (KKB), Kashi Nath Tapuriah (KNT) andPradip Kumar Khaitan (PKK) filed an application for grant of probate of the 1982 Will of Madhav Prasad Birla (MPB) and Ganga Prasad Birla (GPB); Kashi Nath Tapuriah (KNT) and Pradip Kumar Khaitan (PKK) have filed an application for grant of probate of the 1982 Will of Madhav Prasad Birla (MPB) before the High Court at Calcutta and the said testamentary proceedings are also pending.

5. Respondents No. 1 to 5 who are shareholders of the appellant Company and the trust-Birla Education Trust represented by respondent No. 6, had filed a Company petition in CP No. 1/2010 under Sections 397 and 398 of the Companies Act, 1956 before the Company Law Board (CLB) alleging oppression and mismanagement being perpetrated by respondent No. 17 who is in administration and operation of the said Company. The petition before the CLB has been filed through respondents No. 6 to 9 who are shown as accused Nos.

6 to 9 in the complaint.

6. On 24.03.2010, respondents No. 12 to 16 have filed five civil suits in the High Court of Calcutta (CS Nos. 73-77/2010) under Section 92 of the Code of Civil Procedure stating that in the year 1988, MPB and PDB had created five mutual and reciprocal trusts to leave the estate covered by these trusts for charity. These trusts are said to have been revoked just three days prior to the alleged Will dated 18.04.1999. In the said suits in CS No. 73-77/2010, respondents No. 12 to 16 have challenged the revocation of the five trusts and prayed for recovery of the properties of the public charity and for enforcement of the public trust obligations of the properties vested in the said five trusts.

7. The company petition in CP No. 1/2010 was filed before CLB (now pending before NCLT) on 10.03.2010. In the said company petition, documents No. 1 to 54 have been filed. The advance copy of the company petition and the copies of the documents have been served upon the appellant-Company. Document No. 1-Internal Audit Report of the appellant Company was filed in the civil suits filed by respondents No. 12 to 16 challenging the revocation of the five trusts created by MPB and PDB. Alleging theft and misappropriation of all the documents No. 1 to 54, the appellant Company filed the criminal complaint under Sections 379, 403, 411 read with Section 120B IPC against respondents No. 1 to 16 and in the said complaint, appellant was represented by Shri Samir Ganguly who is the Vice-President (Legal) of the appellant-company. The gravamen of the allegations in the complaint is that copies of 54 documents wereused before the Company Law Board (CLB) in C.P. No. 1 of 2010 filed by respondents No. 1 to 5 and Birla Education Trust represented by respondent No. 6. Copy of one such document viz., Internal Audit Report of Chanderia Unit of the appellant Company has been filed along with the interlocutory applications filed by respondents No. 13 to 16 in the civil suits which were filed challenging the revocation of trusts and for recovery of properties vested in the trust.

8. Let us understand the array of the parties. Each one of respondents No. 1 to 5 are the shareholders of the appellant-Company. Respondent No. 6-Pradip Kumar Khaitan is a reputed lawyer and a trustee of Birla Education Trust. Respondent No. 7-Akshay Poddar is a Director of respondent No. 1-Adventz Investments & Holdings Limited. Respondent No. 8-Santosh Kumar Poddar is the Director of respondent No. 3-Britex (India) Limited. Respondent No. 9-Bal Kishan Toshniwal is the Director of respondent No. 2-Govind Promoters Private Limited. Respondent No. 10-Birla Buildings Limited is in-charge of the overall maintenance and upkeep of Birla Buildings where the appellant Company is located. Respondent No. 11-S. Chakrabarty is the Chief Executive Officer of respondent No. 10. Respondents No.12 to 16 are ones who have filed the suits CS No. 73-77/2010 under Section 92 CPC before the High Court at Calcutta challenging the revocation of the trusts and for recovery of the properties of the public charity. Respondent No. 17-Harshvardhan Lodha is the son of late

Rajendra Singh Lodha and now the Director-cum-Chairman of the appellant-Company against whom C.P. No. 1 of 2010 has been filed.

9. The allegations in the complaint in brief are as under:-

The complaint contains a list of fifty-four documents with their brief description given in the Schedule of the complaint. Document No. 1 is an Internal Audit Report of Chanderia unit of the appellant Company for the period ending November, 2009. According to the appellant-complainant, keeping in mind the confidential nature of the report, only six copies were made. Out of which, five sets were sent to officers of the Company individually named and one was retained by the Auditor. The Internal Audit Report produced by the respondents is the copy of one of the original five sets which was sent to one Bachh Raj Nahar-Executive Director and Chief Executive Officer of the Company. It is alleged that respondents No. 1 to 16 have stolen/misappropriated documents No. 2 to 28 from the appellant's premises and that after photocopying the documents, they were kept back in the appellant's premises. It is alleged that documents No. 29 to 54 have been stolen/ misappropriated from the appellant's premises and that after photocopying the documents, they were not returned in the appellant's premises and the originals are still in the possession of the respondents. Before making the complaint, the complainant-appellant had conducted an internal enquiry to find out how these documents reached the respondents.

10. These documents have at all times been kept at the registered office of the appellant-Birla Buildings. These documents have restricted access and are meant for the consumption of designated and specified individuals only. These documents include intra-company correspondence, internal audit reports, agreements etc. in relation to operations of the Company. The appellant-complainant alleges that respondents No. 1 to 9 and 12 to 16 gained access to the Internal Audit Report and other documents unauthorizedly and illegally with the aid of respondent No. 10-Birla Buildings Limited and respondent No. 11-S. Chakrabarty, CEO who are in-charge of upkeep of the building in which the office of the appellant-complainant is situated.

11. The appellant further averred that by letter dated 29.03.2010, the Company through its advocate called upon the advocate of respondents No. 1 to 6 to disclose as to how they obtained the documents mentioned in the Schedule of the complaint. The respondents sent reply dated 30.03.2010 and evaded giving any response to the said query on the premise that there was no procedure of the Company Law Board (CLB) for seeking such information. Appellant-Company sent a letter dated 17.04.2010 to respondents No. 12

to 16 calling upon them to explain as to how they came in possession of the documents; but there was no reply. In the rejoinder filed by respondents No. 1 to 6, they again failed and/or refused to state how they procured these documents.

12. Appellant alleged that without the consent of the appellant Company, the respondents/ accused have dishonestly stolen/ misappropriated the documents and thus committed theft and conspiracy to commit theft. It is also averred that the respondents/ accused dishonestly received or retained the stolen property knowing and having reason to believe the same to be stolen property and as such committed the offence punishable under Section 411IPC. It is alleged that the respondents/accusedthus dishonestly committed theft of the documents No. 1 to 54 belonging to the appellant Company and misappropriated them by converting the same for their own use and thus committed the offences punishable under Sections 379, 403 IPC read with Section 120-B IPC.

13. Complainant Shri Samir Ganguly was examined on 06.10.2010. Since some of the accused persons are residents beyond local jurisdiction of the court, the trial court/ the Magistrate fixed the matter for enquiry under Section 202 Cr.P.C. on 08.10.2010. An employee of the appellant Company by name P.B. Dinesh was examined on 08.10.2010. Considering the averments in the complaint and the statement of Complainant Shri Samir Ganguly and P.B. Dinesh, the learned Magistrate vide order dated 08.10.2010 found that there are sufficient grounds for proceeding against all the sixteen respondents and ordered issuance of summons to the respondents for the offences punishable under Sections 380, 411 and 120B IPC.

14. Aggrieved by the summoning order dated 08.10.2010, respondents filed petition under Section 482 Cr.P.C. before the High Court for quashing the criminal proceedings. Insofar as compliance of the procedure in taking cognizance of the offences, the High Court held that upon perusal of the averments in the complaint and the statement of representative of the company Shri Samir Ganguly and P. B. Dinesh, the Magistrate satisfied himself that there were sufficient grounds for proceeding against the accused and ordered to issue process against the sixteen accused and the High Court held that on the procedural aspect, the Magistrate did not commit any error. The High Court held that since originals of documents No. 1 to 28 are still in the custody of the complainant, taking away the information contained in such documents cannot be considered to be “movable property” and the temporary removal of the documents for taking away the contents thereon by itself cannot be the subject of the offence of theft or dishonest misappropriation of property as well as dishonest receiving of the stolen property. On those findings, the High Court held that the complaint would not survive in respect of the documents No. 1 to 28. Insofar as documents No. 29 to 54 are concerned, the High Court held that as the originals of those documents are missing, the complaint discloses ingredients of the

offence of theft. The High Court held that insofar as documents No. 29 to 54 are concerned, the complainant can proceed againstthe respondents and accordingly remitted the matter to the trial court.

15. On behalf of the appellant, Mr. C.A. Sundaram, learned senior counsel submitted that the appellant discharged the initial burden placed upon it by adducing pre-summoning evidence by examining two witnesses and based upon the averments in the complaint and the statement of witnesses Shri Samir Ganguly and P.B. Dinesh, the Magistrate satisfied himself that there are sufficient grounds for proceeding against the accused and the High Court rightly held that there was no irregularity in the procedure followed by the Magistrate in issuing process against the respondents. The learned senior counsel submitted that respondents No. 1 to 9 have produced the documents before the Company Law Board and respondents No. 12 to 16 have filed document No. 1-Internal Audit Report which are highly confidential documents and having not disclosed the source for the accusation/ possession of the documents, prima facie case in dishonest removal of the documents have been made out and the Magistrate rightly found that there are sufficient grounds for proceeding against the respondents/ accused and took the cognizance of the offences under Sections 380, 411 and 120-B IPC.

16. The learned senior counsel for the appellant submitted that when the Magistrate has taken cognizance of the offence, the High Court ought not to have substituted its views for the summoning order passed by the Magistrate qua documents No. 1 to 28. In support of his submission, reliance was placed upon Smt. Nagawwa v. Veer anna Shivalingappa Konjalgi and Others (1976) 3 SCC 736 and number of other decisions. It was submitted that the High Court was not right in quashing the criminal complaint qua documents No. 1 to 28.

17. In appeal preferred by the respondents, they assailed the order of issuance of process against the respondents by the Magistrate contending that there were no adequate materials so as to arrive at satisfaction of the Magistrate that there were sufficient grounds for proceeding against the respondents. It was submitted that the production of the copies of the documents in the Company Law Petition and in the civil suits would not amount to theft and the averments in the complaint and the statement of the complainant and witness P.B. Dinesh would not attract the ingredients of theft and there was no application of mind of the learned Magistrate and the Magistrate mechanically issued process against the respondents and the High Court ought to have quashed the proceedings in toto.

18. On behalf of respondents No. 1 to 5, Mr. Kapil Sibal, learned senior counsel submitted that the complaint lacks specification as to the time and manner of the commission of the offence and who committed theft of the documents and when and how the same was detected. The learned senior counsel contended that the averments in the complaint do not make

out a prima facie case of theft and that the materials placed before the Magistrate were inadequate and there were no sufficient grounds for proceeding against the respondents and the High Court ought to have quashed the entire proceedings in toto. The learned senior counsel further submitted that document No. 1-Internal Audit Report of the appellant Company and other documents have been filed by the respondents in the company petition before the CLB to substantiate their case of oppression and mismanagement, which can never amount to theft. Learned senior counsel contended that when the documents are produced in the proceedings before the Company Law Board for vindication of their rights or defence, the criminal complaint filed by the appellant is nothing but a "legal thumb screw" and the High Court rightly quashed the criminal proceedings qua documents No. 1 to 28. It was submitted that since there was neither application of mind by the Magistrate nor any reasoned order has been passed disclosing the satisfaction of the mind, the entire proceedings before the Magistrate is liable to be quashed.

19. Mr. Mukul Rohatgi, learned senior counsel appearing on behalf of respondent No. 10 and Mr. Amit Desai, learned senior counsel appearing on behalf of respondent No. 11 submitted that respondent No. 10 has the overall responsibility of the management and maintenance of the "building" in which the office of the appellant is situated and there are no specific allegations in the complaint as to how respondents No. 10 and 11 had access to these documents which were in the custody of designated employees of the complainant. It was submitted that in the absence of allegations in the complaint to prove commission of offence by respondents No. 10 and 11, the mere fact that respondents No. 10 and 11 are responsible for the maintenance of the building by itself, cannot lead to an inference that respondents No. 10 and 11 are responsible for the theft.

20. On behalf of respondent No. 11, learned senior counsel submitted that respondent No. 11 is the CEO of respondent No. 10-Company and is overall administrative in-charge of the company's affairs in Birla Building and in the absence of specific allegations against him, the mere official position of respondent No. 11 will not automatically make him vulnerable to criminal prosecution. The learned senior counsel further submitted that the doctrine of vicarious liability is based upon a legal presumption and creates fictional liability and since the doctrine of vicarious liability is not available (as a matter of law) in regard to offences under the IPC, the complainant cannot rely upon a legal presumption of an act or mens rea to proceed against respondent No. 11 in a criminal case.

21. On behalf of respondents No. 13 to 16, Mr. Ranjit Kumar and Mr. Debal Banerjee, learned senior counsel submitted that the trial court had not applied its mind to the materials on record and the averments in the complaint and the statement of the witnesses do not make a prima facie case and the Magistrate mechanically issued process against respondents No. 12 to 16.

It was submitted that filing a document in the judicial proceedings can never be termed as an act of "theft' or "dishonest misappropriation" so as to attract the ingredients of Sections 380 and 411 IPC read with Section 120-B IPC.

22. Reiterating the contention of other respondents, Mr. K.V. Viswanathan, learned senior counsel appearing on behalf of respondent No. 6 submitted that respondent No. 6 is a well reputed lawyer and a trustee of the Birla Education Trust which is a shareholder of the appellant Company. The learned senior counsel further submitted that in the absence of specific allegations against respondent No. 6, he cannot be made vicariously liable merely because he is adorning the position of trustee in Birla Education Trust. It was submitted that the complaint filed by the appellant is intended to arm twist the respondents from ventilating the legitimate rights before the appropriate judicial forum and in the absence of materials, the proceedings initiated against respondent No. 6 is liable to be quashed.

23. On behalf of respondents No. 7 to 9, Mr. Sidharth Luthra, learned senior counsel submitted that absolutely there are no averments as to how the said documents had gone out of the possession of the appellant-complainant and mere possession of the copy of the documents will not amount to theft nor would amount to conspiracy. It was submitted that even assuming that the evidence was illegally obtained, the same cannot be shut out and it cannot amount to theft.

24. We have considered the submissions of the learned senior counsel appearing on behalf of the appellant and the respondents and carefully perused the impugned judgment and materials on record.

25. The following questions arise for consideration in these appeals:-

(i) Whether the allegations in the complaint and the statement of the complainant and other materials before the Magistrate were sufficient to constitute prima facie case to justify the satisfaction of the Magistrate in issuing process against the respondents?

(ii) Whether the respondents are right in contending that in taking cognizance of the offences under Sections 380, 411 and 120-B IPC and ordering issuance of process against the respondents is vitiated due to non-application of mind?

(iii) Whether the High Court was right in quashing the criminal proceedings qua documents No. 1 to 28 on the ground that mere information contained in the documents cannot be considered as "moveable property" and cannot be the subject of the offence of theft or receipt of stolen property?

(iv) Whether filing of the documents in question in the petition before the Company Law Board to substantiate their case of oppression and

mismanagement and document No. 1 in the civil suits challenging revocation of the trust deeds would amount to theft justifying taking cognizance of the offences?

(v) Whether there is dishonest moving of documents causing wrongful loss to the appellants and wrongful gain to the respondents?

(vi) Whether filing of documents in the judicial proceedings can be termed as an act of theft causing wrongful gain to oneself and wrongful loss to the opponent so as to attract the ingredients of Section 378 I PC?

26. Complaint filed under Section 200 Cr.P.C. and enquiry contemplated under Section 202 Cr.P.C. and issuance of process:- Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.

27. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.

28. In National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-"9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of

the allegations made in the complaint:

> (i) on the materials placed by the complainant before the court;
>
> (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and
>
> (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

29. In Mehmood ull Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and held as under:-

"2. Chapter XV Cr.P.C. deals with the further procedure for dealing with "Complaints to Magistrate". Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person "for the purpose of deciding whether or not there is sufficient ground for proceeding". If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.

3. Chapter XVI Cr.P.C deals with "Commencement of Proceedings before Magistrate". If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused."

30. Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar and Another v. State (NCT of Delhi) and Another (2012) 5 SCC 424, it was held as under:-

> "11. In Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492 (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of

proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

31. Under the amended sub-section (1) to Section 202 Cr.P.C, it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

32. By Cr.P.C. (Amendment) Act, 2005, in Section 202 Cr.P.C. of the Principal Act with effect from 23.06.2006, in sub-section (1), the words "...and shall, in a case where accused is residing at a place beyond the area in which he exercises jurisdiction..." were inserted by Section 19 of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:-

> "False complaints are filed against persons residing at far off places simply to harass them. In order to see that the innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

33. Considering the scope of amendment to Section 202 Cr.P.C, in Vijay Dhanuka and Others v. Najima Mamtaj and Others (2014) 14 SCC 638, it was held as under:-

> "12.....The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can

be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another (2017) 3 SCC 528 and National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488.

34. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood ull Rehman, this Court held as under:-

"22.....the Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C.. if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C.. by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C, the High Court under Section 482 Cr.PC. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before

the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

35. In Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others (1998) 5 SCC 749, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law governing the issue. In para (28), it was held as under:-

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The principle that summoning an accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in GHCL Employees Stock Option Trust v. India Infoline Limited (2013) 4 SCC 505.

36. To be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. In Punjab National Bank and Others v. Surendra Prasad Sinha 1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.

37. At the stage of issuance of process to the accused, the Magistrate is not

required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there are sufficient grounds for proceeding against the accused. In Jagdish Ram v. State of Rajasthan and Another (2004) 4 SCC 432, it was held as under:-

> "10.....The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

38. Extensive reference to the case law would clearly show that the allegations in the complaint and complainant's statement and other materials must show that there are sufficient grounds for proceeding against the accused. In the light of the above principles, let us consider the present case whether the allegations in the complaint and the statement of the complainant and other materials before the Magistrate were sufficient enough to constitute prima-facie case to justify the Magistrate's satisfaction that there were sufficient grounds for proceeding against the respondents-accused and whether there was application of mind by the learned Magistrate in taking cognizance of the offences and issuing process to the respondents.

39. Respondents No. 1 to 5 are minority shareholders in the appellant-Company. Respondent No. 6 is a lawyer and a trustee of Birla Education Trust. Respondent No. 6 had been empowered to file petition before the CLB. Respondents No. 7, 8 and 9 are the Directors of respondents No. 1, 3 and 2 respectively. On 10.03.2010, Company Petition CP No. 1/2010 was filed before the Company Law Board under Sections 235, 237, 247, 250, 397, 398, 402 and 403 of the Companies Act, 1956 by respondents No. 1 to 5 who are the shareholders of the appellant Company alleging oppression and mismanagement. M/s Birla Education Trust (represented by respondent No. 6) is also one of the petitioners in the Company Petition. Along with the Company Petition, the copy of the documents in question i.e. documents No. 1 to 54 including document No. 1-Internal Audit Report were filed and advance copy of the Company Petition and copy of the documents were given to the appellant.

40. On 24.03.2010, respondents No. 12 to 16 have filed five civil suits under Section 92 of Code of Civil Procedure before the High Court of Calcutta being CS Nos.73-77 of 2010 challenging the revocation of five public charitable trusts created by Madhav Prasad Birla (MPB) and Priyamvada Devi Birla (PDB) in 1988. Respondents No. 12 to 16 have averred that the trusts have assets worth thousands of crores of rupees which are vested with the trusts dedicated

for charity. In the said suits, respondents No. 12 to 16 have challenged the revocation of the trusts and sought for recovery of the property that are vested in the public charity through the five trusts set up by MPB and PDB and the said suits are pending. On 29.03.2010, five interlocutory applications have been filed in the aforesaid suits praying for interim reliefs and in those applications, respondents No. 12 to 16 annexed photocopy of the document No. 1-Internal Audit Report of the Chanderia unit of Birla Corporation Limited for the period ending November, 2009. About seven months thereafter on 04.10.2010, criminal complaint was filed by the appellant against respondents No. 1 to 16 under Sections 379, 403 and 411 read with Section 120-B IPC alleging theft of the documents and receipt of stolen property and dishonest misappropriation of the documents. Of the sixteen accused, six are corporate entities and rest are natural persons. Respondents No. 1 to 5 are the shareholders who filed the Company Petition CP No. 1 of 2010. Respondents No. 12 to 16 are the plaintiffs who have instituted civil suits challenging the revocation of the five trusts and for recovery of the properties that are vested in the public charity.

41. Respondents No. 3, 6, 12 and some of the other respondents are the residents beyond the local limits of the trial court - 10thMetropolitan Magistrate, Calcutta. Since number of accused are residents beyond the local limits of the trial court, as per amended provision of Section 202 Cr.P.C, it is obligatory upon the Magistrate that before summoning the accused, he shall enquire into the case or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there are sufficient grounds for proceeding against the accused. In the present case, the learned Magistrate has opted to hold such enquiry himself.

42. The complaint alleges that the respondents have gained unauthorized access and possession of the documents No. 1 to 54. It is alleged that documents No. 1 to 28 have been stolen/misappropriated from the premises of the appellant and that after photocopying the documents, they were kept back in the premises. In so far as documents No. 29 to 54, it is alleged that they have been stolen/misappropriated and have not been returned and are still in the possession of the respondents. It is alleged that respondents No. 1 to 16 had gained unauthorized access and exercised to control over the said documents. It is further alleged that by letter dated 29.03.2010, on being called upon to disclose as to how the respondents had obtained the documents, the respondents by letter dated 30.03.2010 evaded making response to the query on the premise that there was no procedure of the CLB for seeking such information.

43. The gist of the allegations in the complaint are:-

(i) Respondent No. 10-Company is in-charge of day to day maintenance of the building which houses office of the complainant and others.

Respondent No. 11 is the CEO In-charge of respondent No. 10 and responsible for the day to day administration of respondent No. 10.

(ii) Respondents No. 1 to 9 are in possession of photocopies of documents No. 1 to 28 and stated to be in possession of originals of documents No. 29 to 54;

(iii) Use of photocopies of documents No. 1 to 24 by respondents No. 1 to 9 in the company petition before the CLB and use of document No. 1-Internal Audit Report by respondents No. 12 to 16 in the civil suits filed by them;

(iv) The documents are highly confidential and meant for use/ consumption only of designated and specified individuals of the appellant Company and the respondents have gained unauthorized access to the documents and exercise of control over the documents; and

(v) Omission to explain the source of copies of documents in spite of issuance of notice dated 29.03.2010 to respondents No. 1 to 9 and notice dated 01.04.2010 to respondents No. 12 to 16.

44. With reference to document No. 1-Internal Audit Report of Chanderia Unit, it is alleged that one copy of the original of document No. 1 was marked to Bachh Raj Nagar and it was claimed to be still with them. With reference to documents No. 2to 28, in para No. (20) of the complaint, it is alleged that the documents were kept in the premises on the 3rd and 4th floor with the concerned individuals or their secretaries and the respondents have gained unauthorised access and had control over the documents. The allegations against the respondents is that respondents No. 10 and 11 are under the control and management of the Birla Buildings and has security and the overall responsibility of the management and maintenance of the same. It is alleged that the respondents in connivance with respondents No. 10 and 11 have gained unauthorised access to the documents and thus the documents have been stolen from the premises and then misappropriated. The averments in the complaint even if taken at its face value and accepted in its entirety do not constitute prima facie offence under Section 378 IPC.

45. After referring to filing of CP No. 1/2010 where the xerox copies of the documents were annexed, the complaint alleges as under:-

"9.....The Company submits that the said documents are highly confidential internal records and correspondence of Company and its officers. These documents were at all time kept inside the registered office of the Company at the said premises. These documents have restricted access and are meant for the perusal and consumption only of designated and specified individuals. These documents and the information contained therein is the property of company over which no unauthorized person has any

right."

46. On 06.10.2010, Vice-President (Legal) - Power of Attorney of the complainant Company, Shri Samir Ganguly was examined as a representative of the Company under Section 200 Cr.P.C. Shri Samir Ganguly has stated "that the accused persons have filed various litigations before various forums. These accused persons have committed a serious crime of theft of various documents which I have mentioned in my compliant." Shri Samir Ganguly has further stated as under:-

"....Our office situated at Birla Building, 9/1, R.N. Mukherjee at 3rd & 4th Floor. Accused No. 10 has full control of maintenance and security to each and every floor...."

".....In normal course, the accused persons could never have access to those documents except by illegal means. The documents are highly confidential like internal audit report of one of our units which is not supposed to be in their possession. Other accused persons have filed five civil suits basing on those stolen documents, from which I apprehend that all accused persons in connivance with each other have procured those documents by theft....."

47. Being the Vice-President (Legal) and a representative of the Company, Shri Samir Ganguly may not have personal knowledge of the averments made in the complaint and he has not attributed any specific overt act to any of the respondents. Shri Samir Ganguly has only alleged that he apprehends that all the accused persons in connivance with each other have procured the documents. The allegations in the statement of the complainant are vague and lack material particulars as to the commission of the theft. Complainant Shri Samir Ganguly has neither attributed to any facts nor material particulars as to the commission of theft.

48. Respondent No. 10-Birla Buildings Limited is responsible for the day to day affairs of the maintenance of the building. Respondent No. 11-S. Chakrabarty is the CEO of Respondent No. 10-Birla Buildings Limited. In the complaint, there are no specific averments against respondents No. 10 and 11 as to how they had access to the 3rd and 4th floors of the building owned by the appellant Company and as to how they are responsible in moving the documents out of the possession of the appellant. Likewise, no specific overt act of "dishonest removal" of the documents is attributed to the other respondents. The mere fact that respondents No. 10 and 11 are responsible for security and maintenance of the building cannot lead to an inference that respondents No. 10 and 11 are responsible for the theft.

49. So far as respondent No. 11 who is the CEO of respondent No. 10-Company is concerned, it is stated that he is responsible for the day to day affairs of respondent No. 10-Company and the complainant invoked the doctrine of vicarious liability. The learned senior counsel Mr.

Desai has submitted that for proceeding against respondent No. 11, the complaint must show "active role" of the natural person. Reliance was placed upon Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609, wherein it was held as under:-

"43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent....."

50. As rightly submitted by learned senior counsel for respondents No. 10 and 11, it is inconceivable that respondent No. 11, CEO of respondent No. 10-Company, if committed the offence of theft, would have been permitted to continue in that profession. Be it noted, the complainant-appellant Company is also a shareholder in respondent No. 10-Company and had its nominee Mr. S.N. Prasad on the Board of Directors of the appellant at the relevant time till his death in December, 2012. It is pertinent to note that no complaint has ever been made against respondent No. 11 against alleged theft or any other overt act. In the absence of particulars or prima-facie case in the complaint or the statement of Shri Samir Ganguly against respondents No. 10 and 11, the satisfaction of the Magistrate appears to be on the presumptive footing that respondents No. 10 and 11 are in-charge of maintenance of the building. Likewise, issuance of process to other respondents is only on the presumptive footing that they have filed copies of the documents in CP No. 1/2010 and in the civil suits filed challenging revocation of the trusts.

51. In his order dated 06.10.2010, the Magistrate observed that since some of the accused persons are residents beyond the local jurisdiction of the court, the matter further requires to be enquired into under Section 202 Cr.P.C. and therefore, fixed the matter for further enquiry on 08.10.2010. On 08.10.2010, P.B. Dinesh, employee of the appellant Company was examined who have stated that respondent No. 14-Kumar Mangalam Birla is the Chairman of Aditya Birla Group having their office in Mumbai; respondent No. 15-Sidharth Birla is also a part of that Company and he resides at Alipore, Calcutta; respondent No. 13-Rajendra Prasad Pansari is a resident of Calcutta who has now joined Birla Group. Witness P.B. Dinesh has stated that these respondents have procured documents stolen from the appellant's custody and filed case before the Company Law Board on the basis of those documents.

52. Based on the allegations in the complaint and the statements of Shri Samir Ganguly and P.B. Dinesh, the Metropolitan Magistrate took cognizance and directed issuance of summons to respondents No. 1 to 16. As pointed out earlier, as per Notes on Clause 19, the object behind the amendment to Section 202 Cr.P.C. is to ensure that innocent persons who are residing at far off places are not harassed by unscrupulous persons. The amendment therefore, makes it obligatory upon the Magistrate that before summoning the accused residing beyond the jurisdiction, the Magistrate has to

enquire the case either himself or direct investigation to be made by the police officer and is required to apply his mind and record his satisfaction with reasons.

53. As pointed our earlier, P.B. Dinesh had merely stated that respondent No. 14-Shri Kumar Mangalam Birla is the Chairman of Aditya Birla Group having their office in Mumbai and respondent No. 15-Shri Sidharth Birla is a part of the Company and resides at Alipore. P.B. Dinesh has also stated that respondent No. 13-Rajendra Prasad Pansari stays in Calcutta and that he was an ex-employee of Birla Corporation and now he has joined Birla Group. P.B. Dinesh has thus stated about residence of respondent No. 14 being at Mumbai and residence of respondents No. 13 and 15 at Calcutta. There are no specific allegations against respondent No. 14 or against any other respondents who are residing outside the jurisdiction. Likewise, no specific allegation as to how respondent No. 14 or other respondents who are residing outside the jurisdiction have gained entry into the building of the appellant Company and committed theft of the documents nor any specific allegation as to the alleged conspiracy.

54. In the statement of P.B. Dinesh, there is only a bare statement that respondents No. 13 to 15 have filed case before the Company Law Board that the documents are highly confidential and that they have procured the documents stolen from the custody of the appellant. There are no specific allegations against respondents No. 13 to 15. Likewise, there are no specific allegations against the other accused who are residing outside the jurisdiction of the court and how and when they committed theft of the documents that how they entered into conspiracy. Considering the various litigations pending between the parties before issuing summons, the learned Magistrate ought to have considered the complaint and statement of witnesses and satisfied himself that there are prima facie materials showing the ingredients of the offence of theft (house theft) and receipt of stolen property.

55. While ordering issuance of process against the accused, the Magistrate must take into consideration the averments in the complaint, statement of the complainant examined on oath and the statement of witnesses examined. As held in Mehmood ull Rehman, since it is a process of taking a judicial notice of certain facts which constitute an offence, there has to be application of mind whether the materials brought before the court would constitute the offence and whether there are sufficient grounds for proceeding against the accused. It is not a mechanical process.

56. As held in Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Another AIR 1963 SC 1430 and in a series of judgments of the Supreme Court, the object of an enquiry under Section 202 Cr.P.C. is for the Magistrate to scrutinize the material produced by the complainant to satisfy himself that the complaint is not frivolous and that there is evidence/material which forms sufficient ground for the Magistrate to proceed to issue process under Section

204 Cr.P.C. It is the duty of the Magistrate to elicit every fact that would establish the bona fides of the complaint and the complainant.

57. The order of the Magistrate dated 08.10.2010 reads as under:-

> "The representative of the complainant Company is present. This court takes the case record up for enquiry under Section 202 Cr.P.C. itself. Witness P.B. Dinesh is examined during the enquiry and his statement has been recorded. Purpose of the enquiry seems to have been meted out. Perused the affidavit filed for that purpose on behalf of the complainant company. Perused the documents (both original and xerox copies) suppolied and relied on by the complainant company in support of its case. Considering all above I find sufficient grounds for proceeding against all the sixteen accused persons for commission of an offence under Sections 380, 411, 120B I PC. Cognizance is taken. Issue summons accordingly upon the accused persons fixing 10.12.2010 for S/R and appearance. Requisites at once."

For taking cognizance of the offence, the Magistrate thus inter alia relied upon the statement of the complainant and P.B. Dinesh to arrive at a conclusion that a prima facie case is made out against the respondents. As discussed earlier, neither the statement of the complainant nor the statement of P.B. Dines contain the particulars as to the commission of the offence to have satisfied the Magistrate that there were sufficient grounds for proceeding against the accused. By perusal of the above order passed by the Magistrate, we find absolutely nothing to indicate application of mind in taking cognizance of the offence against respondents No. 1 to 16 including the respondents who are residents beyond the jurisdiction of the court. Though speaking or elaborate reasoned orders are not required at this stage, there must be sufficient indication that there was application of mind by the Magistrate to the facts constituting the commission of offence.

58. There are no averments in the complaint nor allegations in the statement of the complainant or witness P.B. Dinesh as to when and how the theft was committed. The complaint has been filed alleging commission of the offence punishable under Sections 380, 411 and 120B IPC. The Magistrate has taken cognizance under Sections 380, 411 and 120B IPC. The offence under Section 380 IPC in the case instituted otherwise than on a police report is a warrant case triable by the Magistrate under Chapter XIX - Trial of warrant cases by Magistrates, XIX-B -Cases instituted otherwise than on police report. For the offences triable under Chapter XIX - trial of warrant cases by the Magistrate, the court has to frame the charge. As per Section 212 Cr.P.C, the charge shall contain such particulars as to the time and place of the alleged offence and the person against whom or the thing in respect of which, the offence was

committed as are reasonably sufficient to give the accused notice of the matter with which he is charged. In the present case, the complaint lacks particulars as to time and the place of theft or the person who has committed theft. There are no averments in the complaint alleging that how the documents had gone out of the possession of the complainant. There are only mere statement of the complainant Shri Samir Ganguly that respondents No. 12 to 16 have filed civil suits basing on the stolen documents and that he apprehends that all the accused persons in connivance with each other must have procured the documents by theft. In the absence of particulars, by mere possession of the documents or mere production of the documents in the Company Petition or civil suits, it cannot be said that sufficient grounds were made out to proceed against the accused or that the satisfaction of the Magistrate was well founded justifying issuance of process.

59. As held in Pepsi Foods Limited, summoning the accused for a criminal offence is a serious matter and the respondents are answerable in the criminal court. The non-application of mind as to the materials cannot be brushed aside as a procedural irregularity. There is no indication in the order of the Magistrate dated 08.10.2010 as to application of the mind and as to the satisfaction of the Magistrate as to the sufficient ground for proceeding against the respondents under Sections 380, 411 and 120-B IPC.

60. The High Court held that witness P.B. Dinesh has stated about alleged involvement of some of the accused and there is no fundamental error committed by the Magistrate in following the procedure under Chapter XIX of the Criminal Procedure Code. The High Court further observed that the flaw at the worst would be a procedural irregularity. The order dated 08.10.2010 taking cognizance of the offence under Sections 380, 411 and 120B IPC against respondents No. 1 to 16 are liable to be set aside. The Magistrate who is conducting an investigation under Section 202 Cr.P.C. has full power in collecting the evidence and examining the matter. We are conscious that once the Magistrate is exercised his discretion, it is not for the Sessions Court or the High Court to substitute its own discretion for that of the Magistrate to examine the case on merits. The Magistrate may not embark upon detailed enquiry or discussion of the merits/demerits of the case. But the Magistrate is required to consider whether a prima case has been made out or not and apply the mind to the materials before satisfying himself that there are sufficient grounds for proceeding against the accused. In the case in hand, we do not find that the satisfaction of the Magistrate for issuance of summons is well founded.

61. The object of investigation under Section 202 Cr.P.C. is “for the purpose of deciding whether or not there is sufficient ground for proceeding”. The enquiry under Section 202 Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one on which no action need be

taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused. The issuance of process should not be mechanical nor should be made as an instrument of harassment to the accused. As discussed earlier, issuance of process to the accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity. In the present case, the satisfaction of the Magistrate in ordering issuance of process to the respondents is not well founded and the order summoning the accused cannot be sustained. The impugned order of the High Court holding that there was compliance of the procedure under Section 202 Cr.P.C. cannot be sustained and is liable to be set aside.

Production of copies of documents in the Company Petition - whether would amount to theft:

62. So far as documents No. 1 to 28 filed in the company petition, the High Court held that since originals of documents No. 1 to 28 are still in the custody of the appellant Company-complainant, temporary removal of those documents and the subject of alleged removal was “the information” contained in those documents, the same cannot be considered to be “movable property”. The High Court took the view that such temporary removal of documents and use of information cannot be the subject of the offence of theft or dishonest misappropriation of property as well as dishonest receiving of the stolen property.

63. Insofar as documents No. 1 to 28 are concerned, the point falling for consideration is whether the temporary removal of the documents and filing of photocopies and use of the information/contents of the documents can be the subject matter of theft.

64. Contention of the appellant is that the very act of moving the documents out of the possession of the appellant-Company would amount to theft. It was submitted that the loss need not be caused by permanent deprivation of the property; but loss due to theft may be caused even by temporary moving of the property. In support of this contention, the learned senior counsel for the appellants placed much reliance upon Pyare Lal Bhargava v. State of Rajasthan AIR 1963 SC 1094. In the said case, wherein the appellant-Pyare Lal Bhargava, a superintendent in the Chief Engineer’s Office, at the instance of one Ram Kumar Ram got a file from the Secretariat through a clerk and took the file to his house, made it available to said Ram Kumar Ram who replaced the same documents in the file with other papers and thereafter, returned the file the next day. In the said case, the arguments was advanced contending that appellant/accused Pyare Lal Bhargava was one of the officers working in the department and the facts do not constitute the offence of theft for the reason that there was no intention to take it dishonestly as he had taken it only for the purpose of showing the documents

to Ram Kumar Ram and returned it on the next day to the office and therefore, he had not taken the said file out of the possession of any person. Rejecting the said contention, the Supreme Court held that

> ".....To commit theft, one need not take movable property permanently out of the possession of another with the intention not to return it to him. It would satisfy the definition if he took any movable property out of the possession of another person though

he intended to return it later on.....". In the light of the ratio laid down in Pyare Lal Bhargava, temporary removal of original documents for the purpose of replicating the information contained in them in some other medium would thus fulfill the requirement of "moving" of property which is the actus reus of the offence of theft as defined under Section 378 IPC.

65. In Pyare Lal Bhargava, yet another contention raised was that the accused did not intend to take it dishonestly as he did not receive any "wrongful gain" or caused any "wrongful loss" to any other person. Rejecting the said contention, in Pyare Lal Bhargava, the Supreme Court held as under:-

"8.....To commit theft one need not take movable property permanently out of the possession of another with the intention not to return it to him. It would satisfy the definition if he took any movable property out of the possession of another person though he intended to return it later on. We cannot also agree with learned Counsel that there is no wrongful loss in the present case. Wrongful loss is loss by unlawful means of property to which the person losing it is legally entitled. It cannot be disputed that the appellant unauthorizedly took the file from the office and handed it over to Ram Kumar Ram. He had, therefore, unlawfully taken the file from the department, and for a short time he deprived the Engineering Department of the possession of the said file. The loss need not be caused by a permanent deprivation of property but may be caused even by temporary dispossession, though the person taking it intended to restore it sooner or later. A temporary period of deprivation or dispossession of the property of another causes loss to the other....."

66. One of the foremost components of theft is that the subject matter of the theft needs to be a "moveable property". "Moveable property" is defined in Section 22 IPC which includes a corporeal property of every description. It is beyond doubt that a document is a "moveable property" within the meaning of Section 22 IPC which can be the subject matter of theft. A "document is a "corporeal property". A thing is "corporeal" if it has a body, material and a physical presence. As per Section 29 IPC, "Document" denotes "any matter expressed or described uponany substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used as evidence of that matter". The first Explanation to Section 29 IPC provides that it is immaterial by what means or upon what

substance these are formed. This definition would include within its ambit photocopy of a document. As per Explanation No. 2 of Section 29 IPC, letters, figures or marks shall be deemed to be expressed by such letters, figures or marks within the meaning of the Section. Such letters, figures or marks thus have a material and physical presence. Therefore, it can also be inferred that the said information would be deemed to fall within the purview of "Document" - a corporeal property.

67. Information contained in a document, if replicated, can be the subject of theft and can result in wrongful loss, even though the original document was only temporarily removed from its lawful custody for the purpose of extracting the information contained therein. In the case of K.N. Mehra vs. State of Rajasthan AIR 1957 SC 369, this Court held that gain or loss contemplated need not be a total acquisition or a total deprivation but it is enough if it is a temporary retention of property by the person wrongfully gaining or a temporary keeping out of property from person legally entitled.

68. The High Court, in our view, was not right in holding that the replication of the documents or use of information in the documents No. 1 to 28 and the contents thereon are not corporeal property and would not amount to theft qua documents No. 1 to 28. The documents and the replication of the documents and the contents thereon have physical presence and therefore, are certainly "corporeal property" and the same can be the subject matter of theft.

69. The main question falling for consideration is whether in the facts and circumstances of the case in hand whether temporary removal of the documents and using them in the litigations pending between the parties would amount to theft warranting lodging of a criminal complaint.

70. Admittedly, documents No. 1 to 54 including the Document No. 1-Internal Audit Report of Chanderia unit of the appellant Company has been filed by the respondents in the company petition. These documents are intra-company correspondence, internal audit reports, agreements, etc. in relation to the operations of the appellant Company. Admittedly, these documents have been produced in the company petition by the shareholders of the appellant-Company to substantiate their case of oppression and mismanagement by respondent No. 17 and for vindication of their rights. As discussed infra in the facts and circumstances of the case in hand, in our view taking away of the documents temporarily and using them in the pending litigations between the parties would not amount to theft.

71. In the criminal complaint, by order dated 08.10.2010, the Magistrate has taken the cognizance of the offence under Section 380 IPC - "Theft in dwelling house, etc.". In order to constitute theft, the following ingredients are essential:-

i. Dishonest intention to take property;

ii. The property must be moveable;

iii. It should be taken out of the possession of another person;

iv. It should be taken without the consent of that person;

v. There must be some removal of the property in order to accomplish the taking of it.

72. Intention is the gist of the offence. It is the intention of the taker which must determine whether taking or moving of a thing is theft. The intention to take "dishonestly" exists when the takerintends to cause wrongful loss to any other which amounts to theft. It is an essential ingredient of the offence of "theft that the movable property should have been "moved" out of the possession of any person without his consent. "Movable property" is defined in Section 22 of IPC, which reads as under:-

" Movable property - The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth."

"Dishonestly" has been defined in Section 24 IPC, which reads as under:-

"Dishonestly - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

"Wrongful gain" and "Wrongful loss" have been defined in Section 23 IPC which read as under:-

"Wrongful gain" - "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss" - "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully - A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property"

73. In the facts and circumstances of the case, it is to be seen in using the documents in the litigation, whether there is "dishonest intention" on the part of the respondents in causing "wrongful loss" to the appellant Company and getting "wrongful gain" for themselves. Respondents No. 1 to 5 are the shareholders of the appellant-Company and they have produced the photocopies of the documents No. 1 to 54 in the CLB proceedings which were filed by them on the ground of oppression and mismanagement. Merely because the respondents have produced the copies of the documents in the CLB proceedings, it cannot be said that the respondents have

removed the documents with "dishonest intention. Copies of documents are produced in support of the case of respondents No. 1 to 5 and to enable the Court to arrive at the truth in a judicial proceeding involving alleged oppression and mismanagement in the affairs of the appellant Company by respondent No. 17. A person can be said to have "dishonest intention" if in taking the property it is the intention to wrongful gain by unlawful means or to cause wrongful loss by unlawful means. As discussed earlier, the complaint does not allege that there was any wrongful gain to the respondents or wrongful loss to the appellant-Company so as to constitute ingredients of theft under Section 378 IPC. The complaint only alleges that the copies of the document were used in the CLB proceedings by respondents No. 1 to 5. There is no allegation of "wrongful gain" to the respondents or "wrongful loss" to the appellant.

74. As pointed out earlier, documents No. 1 to 54 are filed in the Company Petition to substantiate their case of oppression and mismanagement. Filing of documents in the CLB proceedings is only to assert their claim of oppression and mismanagement of the appellant Company. According to the respondents, there is a bona fide dispute of oppression and mismanagement and the documents No. 1 to 54 are filed only to substantiate their case. When a bona fide dispute exists between the parties as to whether there is oppression and mismanagement, there is no question of "wrongful gain" to the respondents or "wrongful loss" to the appellant. In using the documents, when there is no dishonest intention to cause "wrongful loss" to the complainant and "wrongful gain" to the respondents, it cannot be said that the ingredients of theft are made out.

75. As discussed earlier, respondents No. 12 to 16 have filed five civil suits challenging the cancellation of the trusts for recovery of the property that had vested in public charity through the trust deeds. Respondents No. 12 to 16 have filed copy of document No. 1-Internal Audit Report of Chanderia Unit of the appellant Company. By the time, the document was filed in the interlocutory applications filed in the civil suits, the document was already filed in CP No. 1/2010. Here again, there is a bona fide dispute as to the correctness of cancellation of the revocation of the trusts deed and to substantiate the averments in the complaint and in the interlocutory applications. It cannot be said that the respondents No. 1 to 16 had dishonest intention in using the documents so as to cause "wrongful loss" to the appellant or "wrongful gain" to themselves so as to attract the ingredients of theft under Section 378 IPC.

76. How the respondents had access to the documents may be one thing. It may perhaps have bearing on the evidentiary value to be attached to the documents. But to say that it amounts to theft and seeking to prosecute the respondents is nothing but an attempt to cow down their defence in the litigation or to deprive the respondents of their valuable defence. In Pooran Mal v.

Director of Inspection (Investigation), New Delhi and Others (1974) 1 SCC 345, it has been held by the Constitution Bench that even in case of illegal search and seizure, the documents obtained cannot be shut out from consideration as long as they are relevant to the matters in issue. In the present case, the documents are used in good faith in the legal proceedings i.e. Company Petition filed by respondents No. 1 to 5 alleging oppression and mismanagement and the other suits are the civil suits challenging the cancellation of the Trusts. These cases are pending and both the parties are hotly contesting those cases. Use of the documents in judicial proceeding by the respondents is to substantiate the case of oppression and mismanagement of the appellant-Company. Absolutely, no "dishonest intention" or "wrongful gain" could be attributed to the respondents. Likewise, there is no "wrongful loss" to the appellants so as to attract the ingredients of Sections 378 and 380 IPC.

77. The intention under Section 24 IPC "dishonestly" must be to cause "wrongful loss" to the other or to have "wrongful gain" for oneself. In determining whether a person has acted dishonestly or not, it is the intention which has to be seen. By filing the documents in the legal proceedings, there is no intention on the part of the respondents to cause "wrongful loss" to the appellant nor intention to make "wrongful gain" to themselves. Filing of the documents in the legal proceedings is only to vindicate their stand in the company petition. We find much force in the submission of the learned senior counsel, Mr. Sibal, appearing for respondents No. 1 to 5 that the attempt of the appellant in trying to prosecute the respondents appears to arm-twist the respondents in an attempt to shut out the relevant material documents before the CLB proceedings by prosecuting respondents No. 1 to 9 and in the civil suits.

78. Whether respondents should have called for the documents in accordance with various provisions:-

Contention on behalf of the appellant is that despite there being adequate provisions under Section 10-E of Companies Act and Section 91 Cr.P.C. relating to summoning of documents and of discovery, interrogatories and inspection of documents under Order XI CPC, the respondents resorted to dubious methods to procure the documents and thus, cannot skirt the liability for their actions by contending that since the documents were used for a legal proceeding, it cannot be theft.

79. Undoubtedly, adequate provisions have been provided in all the laws concerned with the instant case to enable a party to a suit or the concerned court to require the production of all documents and materials considered necessary or desirable for proper adjudication of the dispute at hand. If a document in possession is not produced after notice, there is further presumption under Section 114 illus.(g) that the evidence if produced would have been unfavourable to the opposite party.

80. The respondents herein are alleged to have used the documents of appellant-

Corporation without calling upon them to produce the documents in accordance with law. Of course, the litigants and their counsel are expected to comply with the provisions of law and court discovery rules in producing the documents. But merely because the respondents have not called for the documents as per the provisions, it cannot be said that they have committed "theft'. It may be that the respondents have not issued notice calling upon the appellant-Corporation to produce the documents or may not have taken steps in accordance with various provisions of law calling upon them to produce documents. This may probably be the point to be raised in appropriate proceedings so as to advance arguments as to the evidentiary value to be attached to the documents. But it would be far-fetched to say that the respondents have dishonestly removed the documents and committed the offence of theft and that they are to face criminal prosecution for theft of the documents. It would only be an arm-twisting tactics to deprive the respondents from pursuing their defence with relevant evidence and materials. Since we have held that there are no sufficient ground for proceeding against the respondents and that the order of issuance of summons itself is not sustainable, we are not inclined to go further deep on this aspect; nor express our views as to the evidentiary value to be attached to the documents in the relevant proceedings. Lest, it would amount to expressing our views in the pending proceedings between the parties.

81. Whether the criminal prosecution against the respondents be permitted to continue:- As discussed earlier, admittedly the parties are entangled in several litigations. Allegations of theft and misappropriation are relating to the documents No. 1 to 28 and the documents No. 1 to 54 which are filed in the company petition and filing of Internal Audit Report in the civil suits. As discussed earlier, there are no specific allegations as to when, where and how the respondents havecommitted theft; nor are there specific allegations against the respondents accused. Allegations in the complaint, being taken at their face value, do not disclose prima-facie case nor the ingredients of the offence of house theft or misappropriation are made out.

82. Exercise of power under Section 482 Cr.P.C. envisages three circumstances in which the inherent jurisdiction may be exercised namely:- (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Inherent jurisdiction under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution.

83. It is well settled that the inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Smt.

Nagawwa v. Veeranna Shivalingappa Konjalgiand Others (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:-

> "5.....Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

84. In State of Haryana and Others v. Bhajan Lal and Others 1992 Supp (1) SCC 335, the Supreme Court considered the scope of inherent powers of the Court and after referring to earlier decisions, the Supreme Court enumerated categories of cases by way of illustration where the extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised by the High Court to prevent abuse of process of Court or otherwise to secure ends of justice. It was held that "where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

85. In the present case, it is one thing to say that the documents have not been

secured in accordance with the law and no value could be attached to them. But merely because documents have been produced from one source or other, it cannot be said that documents have been dishonestly removed to obtain "wrongful gain" to the respondents and cause "wrongful loss" to the appellant. Where it appears that the criminal complaint has been filed to bring pressure upon the respondents who are shown as accused in the criminal case, the complaint is to be quashed.

86. In Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736, the Supreme Court after observing that there is a growing tendency in business circles to convert powerful civil disputes in criminal cases held as under:-

> "14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

87. In Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others (1988) 1 SCC 692, it was held that "when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima-facie establish the offence." It was further held that "while considering the matter, the court is to take into consideration any special feature which appear in a particular case showing whether or not it is expedient in the interest of justice to permit a prosecution to continue."

88. The FIR or the criminal proceedings can be quashed if the allegations do not make out a prima-facie case or allegations are so improbable that no prudent person would ever reach a just conclusion that there are sufficient grounds for proceeding against the accused. So far as, the allegation of retention of the documents No. 29 to 54, in our view, no allegation as to when and how the original documents were removed and retained by the respondents. Where on the admitted facts no prima-case case is made out against the accused for proceeding or when the Supreme Court is satisfied that the criminal proceedings amount to abuse of process of court, Supreme Court has the power to quash any judicial proceedings in exercise of its power under Article 136 of the Constitution of India. In our view, the present case is a fit case for exercising the power in quashing the

criminal complaint qua the documents No. 29 to 54 also.

89. We summarise our conclusions as under:- By the order of the Magistrate dated 08.10.2010, cognizance was taken against respondents No. 1 to 16 for commission of the offences under Sections 380, 411 and 120B IPC. There are no averments in the complaint nor are there allegations in the statement of the complainant or the witness P.B. Dinesh as to when and how the theft was committed and the order of the Magistrate dated 08.10.2010 taking cognizance of the criminal case against respondents No. 1 to 16 qua documents No. 1 to 54 is liable to be set aside.

It is held that the "document" as defined in Section 29 IPC is a "moveable property" within the meaning of Section 22 IPC which can be the subject matter of theft. The information contained thereon in the documents would also fall within the purview of the "corporeal property" and can be the subject matter of the theft. The findings of the High Court is modified to that extent.

In the facts and circumstances of the present case, use of documents No. 1 to 28 and documents No. 29 to 54 by the respondents in judicial proceedings is to substantiate their case namely, "oppression and mismanagement" of the administration of appellant-Company and their plea in other pending proceedings and such use of the documents in the litigations pending between the parties would not amount to theft. No "dishonest intention" or "wrongful gain" could be attributed to the respondents and there is no "wrongful loss" to the appellant so as to attract the ingredients of Sections 378 and 380 IPC. Considering the facts and circumstances of the present case and the number of litigations pending between the parties, in our considered view, continuation of the criminal proceedings would be an abuse of the process of the court. The order of the Magistrate dated 08.10.2010 taking cognizance of the offences and the issuance of summons to respondents No. 1 to 16 and the criminal proceedings thereon are liable to be quashed.

90. In the result, the impugned judgment of the High Court dated 15.05.2015 qua Documents No. 29 to 54 is set aside and the appeals arising out of SLP(CrL) D.Nos.6405 and 6122 of 2019 preferred by the respondents are allowed. The appeal arising out of SLP(Crl.) No. 9053 of 2016 preferred by the appellants qua Documents No. 1 to 28 is dismissed.

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2018 (2) L.S. 32 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Arun Mishra &
The Hon'ble Mr.Justice
Navin Sinha

Rakesh Tiwari, Advocate ..Appellant
Vs.
Alok Pandey, C.J.M ...Respondent

CONTEMPT OF COURTS ACT, Sec.2(c) - Appellant, advocate convicted for his undesirable conduct by High Court and has been sentenced to simple imprisonment of six months and a fine - Contemnor alleged that before pronouncement of the Order he saw one of the accused, sitting in the chamber of the CJM, who apprehended that his client will not get justice - Contemnor during lunch hour without taking permission from C.J.M. entered into his chamber along with 2-3 colleagues and started hurling filthy abuses to the CJM and raised his hand to beat the CJM.

Held - Advocate has acted contrary to the obligations - He has set a bad example before others while destroying the dignity of the court and the Judge - The action has the effect of weakening of confidence of the people in courts - High Court has noted that the concerned advocate did not apologise and has maligned and scandalised the subordinate court - He has made bare denial and has not shown any remorse for his misconduct - Considering the nature of misconduct, while upholding the conviction for criminal contempt, sentence of imprisonment of 6 months, shall remain suspended for further period of 3 years subject to contemnor, maintaining good and proper conduct with a condition that he shall not enter the premises of the District Judgeship, for a further period of three years in addition to what he has undergone already - In case of non violation of aforesaid condition the sentence after three years shall be remitted - However, sentence of imprisonment may be activated by this Court in case it is found that there is breach of any condition made by the concerned advocate during the period of three years.

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

1. The appellant, advocate, has been convicted for his undesirable conduct by the High Court vide impugned judgment and order under the Contempt of Courts Act and has been sentenced to simple imprisonment of six months and a fine of Rs.2000/- and in case of non-payment of fine, to undergo simple imprisonment for a further period of 15 days. He has also been directed not to enter the premises of the District Judgeship, Allahabad for a period of six

Crl..A.No. 1223/2015 Date:10-5-2019

months w.e.f. 15.7.2015 and the contemnor shall remain under constant watch of the District Judge, Allahabad, for a period of two years; and in case of any objectionable conduct, causing interference in peaceful and smooth functioning of the court, the District Judge has been asked to report the matter to the High Court.

2. The contemnor has been charged with criminal contempt to the following effect: "Sri Rakesh Tripathi, Advocate, on 21st December, 2012 during lunch hour without taking permission from C.J.M., Allahabad entered into his chamber along with 2-3 colleagues and at the said point of time he started hurling filthy abuses to the CJM and the matter did not end there, as he also raised his hand to beat the Chief Judicial Magistrate and also threatened him of dire consequences. The contemnor also asked the C.J.M. as to why he has not passed an order for lodging F.I.R. when he had asked for the same. This act on the part of the contemnor constitutes criminal contempt within the meaning of Section 2(c) of Contempt of Courts Act, 1971, as this act has not only lowered the authority of the Court but also scandalised the Court and the same has also the tendency of interference with the due course of administration of justice."

3. The reply was filed by the contemnor to the effect that he had filed an application on behalf of Akhilesh Kumar Shukla on 19.10.2012 under section 156(3) Cr.P.C. which was heard by C.J.M. of Allahabad on 30.10.2012 and 8.11.2012 was the date fixed for passing the order. The contemnor alleged that before pronouncement of the order on 8.11.2012 he saw one of the accused, Sharad Tandon, General Manager, District Industries Centre, Allahabad, sitting in the chamber of the CJM. He apprehended that his client will not get justice, hence, he moved an application on 8.11.2012 before the Chief Judicial Magistrate not to pass any order since the contemnor was willing to file a transfer application before the District Judge, Allahabad. The CJM assured not to pass any order but actually passed an order on the same day by converting application filed under section 156(3) Cr.PC into a complaint case registered as Case No.13500 of 2012. The CJM took away the application from record. Thereafter, the contemnor moved an application before the District & Sessions Judge, Allahabad on 9.11.2012 making a complaint against the CJM, Allahabad.

4. Another application was filed by the contemnor on 30.11.2012 under section 156(3) Cr. P.C. by counsel appearing on behalf of Alok Kumar Shukla. He stated to the CJM that he had moved an application before the Sessions Judge, Allahabad, hence, CJM should not pass any order. The same should be placed before the Sessions Judge, Allahabad for assigning the same to some other court. In January, 2013 the contemnor came to know that the CJM had passed an order on 18.12.2012 treating the application registered as Complaint Case No.1919/2013. Initially, it was registered as Miscellaneous Application No.1747/XII/2012. Non-bailable warrant has been issued in the same. He did not enter into the chamber of the CJM on 21.12.2012, neither abused

nor threatened him to beat. The advocates were on strike on the said date. There was no question of entering the chamber of CJM or to use filthy language.

5. The High Court has found the contemnor along with 2-3 junior advocates entered the chamber of the CJM and misbehaved as well as attempted to assault him. No application was filed by him on 8.11.2012 before the CJM not to pass any order. It was a concocted story. The Magistrate did not reject the application outright and required the complainant to adduce evidence which course was available to him. The contemnor did not pursue the matter and got the earlier case dismissed as not pressed and filed second application. On this the CJM has again registered the complaint case. The matter is pending in which non-bailable warrant has been issued against the accused. The allegation of sympathy towards accused by the Magistrate has been found to be unfounded, baseless and figment of imagination of contemnor. The defense taken has not been substantiated by the contemnor.

6. The High Court has observed that considering the increasing tendency of the advocates in making scurrilous allegations against the Presiding Officers of subordinate courts has to be curbed. The acts of abusing and misbehaving are on increase. The action of the advocate amounts to lowering the dignity and majesty of the court. A deliberate attempt to scandalise a judicial officer of subordinate court is bound to shake the confidence of the litigant public in the system and has to be tackled strictly. Damage is not only to the reputation of the Judge but also to the fair name of the judiciary. Judges cannot be tamed by such tactics into submission to secure a desired order. The foundation of the system is based on independence and impartiality of the Judges as well as responsibility to impart justice. In case their confidence, impartiality and reputation are shaken the same is bound to adversely affect the independence of the judiciary.

7. In our opinion, an advocate is duty bound to act as per the higher status conferred upon him as an officer of the court. He plays a vital role in preservation of society and justice delivery system. Advocate has no business to threaten a Judge or hurl abuses for judicial order which he has passed. In case of complaint of the Judge, it was open to the advocate to approach concerned higher authorities but there is no licence to any member of the Bar to indulge in such undignified conduct to lower down the dignity of the Court. Such attempts deserve to be nipped at the earliest as there is no room to such attack by a member of noble profession.

8. The role of a lawyer is indispensable in the justice delivery system. He has to follow the professional ethics and also to maintain high standards. He has to assist the court and also defend the interest of his client. He has to give due regard to his opponent and also to his counsel. What may be proper to others in the society, may be improper for him to do as he belongs to an intellectual class of the society and as a member of the noble profession, the

expectations from him are accordingly higher. Advocates are held in high esteem in the society. The dignity of court is in fact dignity of the system of which an advocate being officer of the court. The act of the advocate in the present case is not only improper but requires gross condemnation.

9. It has been observed by this Court in the matter of Mr. 'G,', A Senior Advocate of the Supreme Court in AIR 1954 SC 557 that an advocate has to conduct himself in a manner befitting the high and honourable profession. Following observations have been made in para 41 :

"41. .....

"with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially priviledged class of persons who, because of their priviledged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character. ... He [a legal practitioner} is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action."

10. Similarly in Lalit Mohan Das v. Advocate General, Orissa AIR 1957 SC 250, this Court observed :

"A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can faitly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open Court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury, because preliminary point of jurisdiction and Court fees, which order had been upheld by the High Court in revision. Scandalising the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From that point of view, the conduct of the appellant was highly reprehensible."

11. The main question urged is as to the sentence to be imposed in the case. In Supreme Court Bar Association v. Union of India & Anr. (1998) 4 SCC 409, this Court has laid down that though it is not permissible for a court to suspend the licence to practice but at the same time it is open to this Court or the High Court to debar an advocate from appearing in the court. This Court has laid

down that though suspension of a lawyer is not permissible to be ordered but when he is convicted under the contempt of court, it is possible for this Court or the High Court to prevent the advocate to appear in the court. The Court has observed:

"80. In a given case it may be possible, for this Court or the High Court, the prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his license or debarring him to practice as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-an- Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his license to practice as an advocate in other courts or Tribunals."

(emphasis supplied)

12. In Pravin C. Shah v. K.A. Mohd. Ali & Anr. (2001) 8 SCC 650, this Court observed that an advocate found guilty of contempt cannot have an unreserved right to appear in court, the court may refuse to hear him:

"17. When the rules stipulate that a person who committed contempt of court cannot have the unreserved right to continue to appear and plead and conduct cases in the courts without any qualm or remorse, the Bar Council cannot overrule such a regulation concerning the orderly conduct of court proceedings. Courts of law are structured in such a design as to evoke respect and reverence for the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behavior he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceeding inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practice law. While the Bar Council can exercise control over the latter the High Court should be in control of the former.

*** *** ***

20. Lord Denning had observed as follows in Hadkinson vs. Hadkinson 1952 (2) All ER 567: (All ER p.575B-C)

"…I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being

heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed."

*** *** ***

35. It is still open to the respondent Advocate to purge himself of the contempt in the manner indicated above. But until that process is completed respondent Advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent-advocates."

(emphasis supplied)

13. In Bar Council of India v. High Court of Kerala (2004) 6 SCC 311, this Court has observed thus:

"29. Punishment for commission of contempt and punishment for misconduct, professional or other misconduct, stand on different footings. A person does not have a fundamental right to practice in any court. Such a right is conferred upon him under the provisions of the Advocates Act which necessarily would mean that the conditions laid down therein would be applicable in relation thereto. Section 30 of the Act uses the expressions "subject to", which would include Section 34 of the Act."

(emphasis supplied)

14. In R K Anand v. Registrar, Delhi High Court (2009) 8 SCC 106, this Court has observed that advocate can be disallowed from appearing in court on being found guilty of contempt of court:

"238. In Supreme Court Bar Assn. the direction prohibiting an advocate from appearing in court for a specified period was viewed as a total and complete denial of his right to practice law and the bar was considered as a punishment inflicted on him. In Ex. Capt. Harish Uppal it was seen not as punishment for professional misconduct but as a measure necessary to regulate the court's proceedings and to maintain the dignity and orderly functioning of the courts. We may respectfully add that in a given case a direction disallowing an advocate who is convicted of criminal contempt from appearing in court may not only be a measure to maintain the dignity and orderly functioning of the courts but may become necessary for the self-protection of the court and for preservation of the purity of court proceedings. Let us, for example, take the case where an advocate is shown to have accepted money in the name of a judge or on the pretext of influencing him; or where an advocate is found tampering with the court's record; or where an advocate is found actively taking part in faking court orders (fake bail orders are not unknown in several High Courts!);

or where an advocate has made it into a practice to browbeat and abuse judges and on that basis has earned the reputation to get a case transferred from an "inconvenient" court; or where an advocate is found to be in the habit of sending unfounded and unsubstantiated allegation petitions against judicial officers and judges to the superior courts. Unfortunately, these examples are not from imagination. These things are happening more frequently than we care to acknowledge.

239. We may also add that these illustrations are not exhaustive but there may be other ways in which a malefactor's conduct and actions may pose a real and imminent threat to the purity of court proceedings, cardinal to any court's functioning, apart from constituting a substantive offense and contempt of court and professional misconduct. In such a situation the court does not only have the right but it also has the obligation cast upon it to protect itself and save the purity of its proceedings from being polluted in any way and to that end bar the malefactor from appearing before the courts for an appropriate period of time.

240. It is already explained in Ex. Captain Harish Uppal that a direction of this kind by the Court cannot be equated with punishment for professional misconduct. Further, the prohibition against appearance in courts does not affect the right of the lawyer concerned to carry on his legal practice in other ways as indicated in the decision. We respectfully submit that the decision in Ex-Capt. Harish Uppal v. Union of India places the issue in correct perspective and must be followed to answer the question at issue before us."

(emphasis supplied)

15. In the instant case the advocate has acted contrary to the obligations. He has set a bad example before others while destroying the dignity of the court and the Judge. The action has the effect of weakening of confidence of the people in courts. The judiciary is one of the main pillars of democracy and is essential to peaceful and orderly development of society. The Judge has to deliver justice in a fearless and impartial manner. He cannot be intimidated in any manner or insulted by hurling abuses. Judges are not fearful saints. They have to be fearless preachers so as to preserve the independence of the judiciary which is absolutely necessary for survival of democracy.

16. The act stated amounts to criminal contempt of court. The High Court has noted that the concerned advocate did not apologise and has maligned and scandalised the subordinate court. He has made bare denial and has not shown any remorse for his misconduct. Considering the gravamen of the allegations the High Court has imposed the imprisonment of SI for 6 months with fine of Rs.2000 and in default to pay fine or to undergo SI for 15 days. He has been restrained from enering the judgeship of Alahabad for a period of 6 months that was to commence from 15.7.2015 and he had been kept under watch for a period of 2 years. Considering

the nature of misconduct, while upholding the conviction for criminal contempt, we modify the sentence in the following manner :

1. The sentence of imprisonment of 6 months shall remain suspended for further period of 3 years subject to his maintaining good and proper conduct with a condition that he shall not enter the premises of the District Judgeship, Allahabad for a further period of three years in addition to what he has undergone already. The period shall commence from 1.7.2019 to 30.6.2022. In case of non violation of aforesaid condition the sentence after three years shall be remitted.

2. However, sentence of imprisonment may be activated by this Court in case it is found that there is breach of any condition made by the concerned advocate during the period of three years.

3. He shall deposit fine of Rs.2000 as imposed by the High Court. In case of failure to deposit fine he shall not enter the premises of District Judgeship for a period of three months.

17. The appeal is, accordingly, disposed of. No costs.

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2018 (2) L.S. 39 (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

Jitender Kumar @
Jitender Singh ..Appellant

Vs.

The State of Bihar ..Respondent

CRIMINAL PROCEDURE CODE, Sec.482 – INDIAN PENAL CODE, Secs.302, 325, 326, 331 and 352 - In impugned Order, High Court (Single Judge) dismissed petition filed by appellant u/S.482 of Cr.P.C and, in consequence, affirmed Order passed by the Chief Judicial Magistrate, whereby appellant was summoned to face Session Trial - Whether High Court was right in dismissing the appellant's petition.

Held – In impugned order, High Court did not assign any reason as to why the petition is liable to be dismissed - Neither there is any discussion nor reasoning on submissions urged by the counsels for the parties - Approach of the High Court while disposing of the petition cannot be countenanced - Time and again, this Court has emphasized the necessity of giving reasons in support of conclusion because it is the reason,

which indicates the application of mind - It is, therefore, obligatory for the Court to assign the reasons as to why the petition is allowed or rejected - Appeal succeeds and is accordingly allowed - Impugned order is set aside.

J U D G M E N T

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

Leave granted.

2. This appeal is directed against the final judgment and order dated 28.03.2019 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No.5293 of 2019 whereby the High Court dismissed the petition filed by the appellant herein.

3. A few facts need mention here-in-below for the disposal of this appeal, which involves a short point.

4. By impugned order, the High Court (Single Judge) dismissed the petition filed by the appellant herein under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.) and, in consequence, affirmed the order dated 09.04.2015 passed by the Chief Judicial Magistrate, Jamui in connection with P.S. Case No.154 of 2013 whereby the appellant along was summoned to face Session Trial No.280 of 2016 pending in the Court of First Additional & Sessions Judge, Jamui for the offences punishable under Sections 302, 325, 326, 331, 352 read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC").

5. The short question, which arises for consideration in this appeal, is whether the High Court was right in dismissing the appellant's petition.

6. Heard Ms. Anjana Prakash, learned senior counsel for the appellant and Ms. Hemlata Ranga, learned counsel for the respondent-State.

7. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow this appeal, set aside the impugned order and remand the case to the High Court (Single Judge) for deciding the appellant's petition afresh on merits in accordance with law.

8. The need to remand the case to the High Court has occasioned because on perusal of the impugned order, we find that paras 1 to 4 contain facts of the case, paras 5 and 6 contain the submissions of the learned counsel for the parties, paras 7 to 9 refer to what transpired in the Trial Court, paras 10 and 11 contain quotation from two decisions of this Court and para 12 contains the conclusion, which reads as under:

"12. After giving analytical thought to the facts and circumstances of the case, the instant petition is found devoid of merit, consequent thereupon is dismissed."

9. In the entire impugned order, which consists of 13 paras, we find that the High Court did not assign any reason as to why the petition is liable to be dismissed. In other words, neither there is any discussion and nor the reasoning on the submissions urged by the learned counsel for the parties.

10. In our view, such approach of the High Court while disposing of the petition cannot be countenanced. Time and again, this Court has emphasized the necessity of giving reasons in support of the conclusion because it is the reason, which indicates the application of mind. It is, therefore, obligatory for the Court to assign the reasons as to why the petition is allowed or rejected, as the case may be.

11. As mentioned above, para 12 only records the conclusion. It is for this reason, we feel that the matter must go back to the High Court for deciding the petition afresh on merits in accordance with law.

12. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The matter is remanded to the High Court for deciding the petition, out of which this appeal arises, afresh on merits in accordance with law keeping in view the observations made above.

13. We, however, make it clear that we have not expressed any opinion on the merits of the issues arising in the case having formed an opinion to remand the case to the High Court for deciding it afresh on the ground mentioned above. The High Court will, therefore, decide the matter on its merits uninfluenced by any of our observations made in this order.

14. The parties are granted liberty to mention the matter in the High Court for its early hearing.

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2018 (2) L.S. 41 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Arun Mishra &
The Hon'ble Mr.Justice
Uday Umesh Lalit

Anjum Hussain
& Ors., ..Appellants

Vs.

Intellicity Business
Park Pvt. Ltd. & Ors., ..Respondents

CONSUMER PROTECTION ACT, Sec.12(1)(c) - CIVIL PROCEDURE CODE, Or.1, Rule 8 - "Classs action" - Present appeal is filed against orders passed by National Consumer Dispitus Redressal Commission - Builder-Buyer agreement executed between appellant no.1 and respondent whereunder respondent was to deliver possession of offfice within 4 years - Similar such agreements entered into between appellant nos.2 to 44 - Respondent failed to honour its commitments of delivering possession in 4 years - Hence appellants 1 to 4 it seeking refund of amounts paid by them to respondent - An application u/Sec.12(1)(c) of Act was also filed seeking permission to institute

complaint on behalf of all buyers of commercial units - It is alleged that complaints are consumers as they are booked shops for purpose of earning their lively hood by means of self employment - Even ootherwise complaints cannot know purpose for which allottees other than complainants had booked shops, commercial units in above said projeect - Therefore this "class action"u/Sec.12 (1)(c) of Act not only complainants but all allottees in the project is not maintainable.

National Commission concluded that case could not be accepted as "class action" and dismissed same - In this appeal dismissal of case as "class action" is questioned.

Interest of persons on whose behalf claim is brought must be common or they must have common grievance which they seek to get addressed - Oneness of interest is akin to common grievance against same person.

Such a complaint u/Sec.12(1)(c) of Act being to facilitate decision of consumer disputes in which a large number of consuumers are interested without recourse to each of them filing a individual complaint.

Term "person so interested" and "persons having same interest" used in Sec.12(1)(c) mean, persons having common grievance against same service providor - Use of words "all consumers so interested" and on behalf of or for benefit of "all consumers so interested" in Sec.12(1)(c) lives no doubt that such a complaint must necessarily be filed on behalf of or for benefit of all persons having common grievance, seeking common relief and consequently having community of interest against same service provider.

Since by virtue of Sec.13(6) of Consumer Protection Act provisions of Or.1, Rule 8 CPC apply to consumer complaints filed by one or more consumers where there are numerous consumers having same interest.

However National Commission in instant case completely lost sight of principles so clearly laid down in decisions referred above - Approach in instant case, was totally erroneous - Therefore appeal allowed and set aside order of National Commission.

J U D G M E N T

(per the Hon'ble Mr.Justice Uday Umesh Lalit)

1. This appeal under Section 23 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) is directed against the Judgment and Order dated 10.10.2018 passed by the National Consumer Disputes Redressal Commission, New Delhi ('the National Commission', for short) in Consumer Case No.2241 of 2018 preferred by the appellants.

2. The appellant no.1 had booked an office

space admeasuring about 440 sq.ft in a project consisting of residential units, shops and offices launched by the respondent. The Builder – Buyer Agreement was executed between the appellant no.1 and the respondent on 02.12.2013, whereunder the respondent was to deliver possession of the office unit within four years. Similar such Agreements were entered into between the appellant nos.2 to 44 and the respondent in respect of various units from the same project. 3. Since the respondent had failed to honour its commitments of delivering possession in four years and as the project was still at the stage of excavation, Case No.2241 of 2018 was filed by the appellants 1 to 44 seeking refund of the amounts paid by them to the respondent along with interest and compensation. An application under Section 12(1)(c) of the Act was also filed by the appellants.

4. The first listing of the case before the National Commission was on 10.10.2018 when the application moved by the appellants under Section 12(1)(c) of the Act was dealt with by the National Commission as under:-

1. This complaint has been instituted for the benefit of entire class of buyers, who have booked shops/offices in a project namely "Intellicity" consisting of residential units, shops and offices at Greater Noida. The scope of this complaint is not restricted only to the complainants. An application seeking permission in terms of Section 12(1)(c) of the Consumer Protection Act, to institute this complaint on behalf of all such buyers of commercial units, being IA/ 18734/2018, has also been filed, along with the complaint. It is alleged that the complainants are consumers as they had booked small shops/offices for the purpose of earing their livelihood by means of self-employment.

1. As provided in Section 2(1)(d) of the Consumer Protection Act, the term 'consumer' excludes from its ambit, a person hiring or availing services for a commercial purpose, unless he can bring his case within the four-corners of the explanation below Section 2(1)(d) of the Consumer Protection Act. A person hiring or availing services for the purpose of earning his livelihood by way of self-employment has thereby been included in the definition of 'consumer'. Otherwise, a shop/commercial unit is deemed to be booked for a commercial purpose.

2. Since the scope of the complaint is not restrict only to the complainants and encompasses all the allottees of the shops/ commercial units, as is specifically stated in the complaint and is also evident from the prayers made in the compliant, seeking direction to the opposite party to refund the amount deposited by each complainant as well as other allottees along with interest and compensation, it would be maintainable as a class action only if it is alleged and shown that all the allottees of the shops/ commercial units in the above referred project had booked the same solely for the purpose of the earning their livelihood by way of self-employment, meaning thereby that all the allottees intend to work themselves in these shops/commercial units and the occupation of the said units by them has to be for

the purpose of earning their livelihood. A careful perusal of the complaint would show that it is not even alleged that all the allottees of the commercial units/shops in the above referred project had booked the said shops/units solely for the purpose of the earning their livelihood by way of self-employment. In the absence of such an averment in the complaint, no evidence can even be led to prove that not only the complainants but all the allottees of the shops/commercial units had booked the same solely for the purpose of the earning their livelihood by way of self-employment. Even otherwise, the complainants cannot know the purpose for which the allottees, other than the complainants had booked the shops, commercial units in the aforesaid project. The said purpose can be in the knowledge only of the concerned allottees. Therefore, this class action under Section 12(1)(c) of the Consumer Protection Act on behalf of not only the complainants but all the allottees of the shops/commercial units in the aforesaid project is not maintainable."

5. The National Commission thus concluded that the case could not be accepted as class action and dismissed the same. It was however observed that the dismissal would not come in the way of the complainants availing such other remedies as would be open to them.

6. The dismissal of the case as class action is questioned in this appeal.

7. We heard Mr. Yash Srivastava, learned Advocate for the appellants and Mr. Ashutosh Dubey, learned Advocate for the respondent.

8. Relevant provisions of the Act may be adverted to at the outset. Sections 2(1)b and 2(1)(d) of the Act define "complainant" and "consumer" as under:-

(b) "complainant" means –

(i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

(d) "consumer" means any person who

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale

or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person; but does not include a person who avails of such services for any commercial purpose;

Explanation : For the purposes of this clause "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood, and services availed by him by means of self-employment;

9. Section 12 of the Act states:

12. Manner in which complaint shall be made – (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Forum, by –

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumers association whether the consumer to whom the goods sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general."

10. Section 13(6) of the Act reads as under:

13. Procedure on admission of complaint – (1) to (5).....

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of subsection (1) of section 2, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a the plaintiff and the defendant shall be construed as a reference to a complaint or the opposite party, as the case may be.

11. According to the National Commission, though all the appellants had a common grievance that the respondent had not delivered possession of the respective units booked by them and thus the respondent was deficient in rendering service, it was not shown how many of the allottees had booked the shops/commercial units solely

for the purchase of earning their livelihood by way of self-employment.

12. In Chairman, Tamil Nadu Housing Board, Madras vs. T. N. Ganapathy ((1990) 1 SCC 608)it was held by this Court that the persons who may be represented in a Suit under Order 1 Rule 8 of Civil Procedure Code need not have the same cause of action and all that is required for application of said provision is that the persons concerned must have common interest or common grievance. What is required is sameness of interest. Paragraphs 7 and 9 of the decision were as under:-

7. On the question of maintainability of the suit in a representative capacity under Order I, Rule 8 of the Code of Civil Procedure, it has been contended that since the injury complained of is in regard to demand of money and that too by a separate demand against each of the allottees, giving rise to different causes of action, Rule 1 has no application. The learned counsel proceeded to say that it is not known whether each of the allottees in Ashok Nagar had been even served with an additional demand before the suit was filed; and further emphasised that those who had been so served are interested in defeating only the demand individually referable to each of them. Each one of them is not interested in what happens to the others. It is, therefore, suggested that only such of the allottees who have already been served with additional demands are entitled to maintain an action in court, and they also should do it by filing separate suits. We do not find any merit in the argument. The provisions of Order I of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. In Kodia Goundar v. Velandi Goundar (ILR 1955 Mad 339: AIR 1955 Mad 281) a Full Bench of the Madras High Court observed that on the plain language of Order I Rule 8, the principal requirement to bring a suit within that rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted. The court, while considering whether leave under the rule should be granted or not, should examine whether there is sufficient community of interest to justify the adoption of the procedure provided under the rule. The object for which this provision is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There are no words in the rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction as the present one.

… … …

9. It is true that each of the allottees is interested individually in fighting out the

demand separately made or going to be made on him and, thus, separate causes of action arise in the case, but, that does not make Order I Rule 8 inapplicable. Earlier there was some doubt about the rule covering such a case which now stands clarified by the Explanation introduced by the Code of Civil Procedure (Amendment) Act, 1976, which reads as follows:

"Explanation.— For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

The objects and reasons for the amendment were stated below:

"Objects and Reasons: Clause 55; sub-clause (iv), — Rule 8 of Order I deals with representative suits. Under this rule, where there are numerous persons having the same interest in one suit, one or more of them may, with the permission of the court, sue or be sued, on behalf of all of them. The rule has created a doubt as to whether the party representing others should have the same cause of action as the persons represented by him. The rule is being substituted by a new rule and an explanation is being added to clarify that such persons need not have the same cause of action."

There is, therefore, no doubt that the persons who may be represented in a suit under Order I, Rule 8 need not have the same cause of action. The trial court in the present case was right in permitting the respondent to sue on behalf of all the allottees of Ashok Nagar. We, therefore, do not find any merit in this appeal which is dismissed with costs. Before closing, however, we would like to point out that the plaintiff has represented only those in the low income group in Ashok Nagar who will be governed by this judgment, and nothing that has been said or decided in this case is applicable to any other group or colony."

13. Very same issue was dealt with by Full Bench of the National Commission in Ambrish Kumar Shukla and Ors. vs. Ferrous Infrastructure Pvt. Ltd. (Consumer Case No.97 of 2016, decided on 07.10.2016). The National Commission relied upon the decision of this Court in T.N. Housing Board1. Relevant portion of the decision of the National Commission was :-

"10. Since by virtue of Section 13(6) of the Consumer Protection Act, the provisions of the Order 1 Rule 8 of CPC apply to the consumer complaints filed by one or more consumers where there are numerous consumers having the same interest, the decision of the Hon'ble Supreme Court in Tamil Nadu Housing Board (supra) would squarely apply, while answering the reference. The purpose of giving a statutory recognition to such a complaint being to avoid the multiplicity of litigation, the effort should be to give an interpretation which would sub serve the said objective, by reducing the increasing inflow of the

consumer complaints to the Consumer Forums. The reduction in the number of consumer complaints will be cost effective not only for the consumers but also for the service provider.

11.……As held by the Hon'ble Supreme Court in Tamil Nadu Housing Board (supra), the interest of the persons on whose behalf the claim is brought must be common or they must have a common grievance which they seek to get addressed. The defect or deficiency in the goods purchased, or the services hired or availed of by them should be the same for all the consumers on whose behalf or for whose benefit the complaint is filed. Therefore, the oneness of the interest is akin to a common grievance against the same person. If, for instance, a number of flats or plots in a project are sold by a builder/developer to a number of persons, he fails to deliver possession of the said flats/plots within the time frame promised by him, and a complaint is filed by one or more such persons, either seeking delivery of possession of flats/plots purchased by them and other purchasers in the said project, or refund of the money paid by them and the other purchasers to the developer/builder is sought, the grievance of such persons being common i.e. the failure of the builder/developer to deliver timely possession of the flats/plots sold to them, they would have same interest in the subject matter of the complaint and sufficient community of interest to justify the adoption of the procedure prescribed in Order 1 Rule 8 of the Code of Civil Procedure, provided that the complaint is filed on behalf of or for the benefit of all the persons having a common grievance against the same developer/builder, and identical relief is sought for all such consumers.

The primary object behind permitting a class action such as a complaint under Section 12(1)(c) of the Consumer Protection Act being to facilitate the decision of a consumer dispute in which a large number of consumers are interested, without recourse to each of them filing an individual complaint, it is necessary that such a complaint is filed on behalf of or for the benefit of all the persons having such a community of interest. A complaint on behalf of only some of them therefore will not be maintainable. If for instance, 100 flat buyers/plot buyers in a project have a common grievance against the Builder/Developer and a complaint under Section 12(1)(c) of the Consumer Protection Act is filed on behalf of or for the benefit of say 10 of them, the primary purpose behind permitting a class action will not be achieved, since the remaining 90 aggrieved persons will be compelled either to file individual complaints or to file complaints on behalf of or for the benefit of the different group of purchasers in the same project. This, in our view, could not have been the Legislative intent. The term 'persons so interested' and 'persons having the same interest' used in Section 12(1)(c) mean, the persons having a common grievance against the same service provider. The use of the words 'all consumers so interested' and "on behalf of or for the benefit of all consumers so interested", in Section 12(1) (c) leaves no doubt that such a complaint must necessarily be filed on behalf

of or for the benefit of all the persons having a common grievance, seeking a common relief and consequently having a community of interest against the same service provider."

14. It was observed by this Court in T.N. Housing Board1 that the provision must receive an interpretation which would subserve the object for its enactment. It is in this light that the Full Bench of the National Commission held that oneness of the interest is akin to a common grievance against the same person.

15. However, the National Commission in the instant case, completely lost sight of the principles so clearly laid down in the decisions referred to above. In our view, the approach in the instant case was totally erroneous.

16. We, therefore, allow this appeal, set aside the Order under appeal. The application preferred by the appellants under Section 12(v)(o) of the Act is held to be maintainable. Case No.2241 of 2018 is restored to the file of the National Commission and shall be proceeded with in accordance with law.

17. The appeal is allowed in aforesaid terms. No costs.

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2018 (2) L.S. 49 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mrs.Justice
R. Banumathi &
The Hon'ble Mr.Justice
Abdul Nazeer

Sasikala Pushpa
& Ors., ..Appellants

Vs.

State of Tamil Nadu ..Respondent

CRIMINAL PROCEDURE CODE, Sec.340 - INDIAN PENAL CODE, Secs.193, 294(b), 323, 344, 354(A), 466, 468, 471, and 506(i) - High Court dismissed anticipatory bail application filed by Appellants - Single Judge of High Court also directed Registrar (Judicial) to lodge complaint against Appellants - Pursuant to direction of High Court, Registrar (Judicial) lodged complaint against Appellants, with respect to alleged forgery committed by them in signing vakalatnama, on basis of which, FIR for offences punishable under Sections 193, 466, 468 and 471 IPC was registered against Appellants.

Held - Mere incorrect statement in vakalatnama would not amount to a forged document – There was no prima facie evidence to show that Appellants intended to cause damage

or injury or any other acts - Since disputed version in vakalatnama appeared to be inadvertent mistake with no intention to make misrepresentation, direction of High Court to lodge criminal complaint against Appellants could not be sustained and was liable to be set aside - No useful purpose would be served by proceeding with criminal prosecution against Appellants - FIR and charge sheet are quashed to meet ends of justice – Appeals allowed.

J U D G M E N T

(per the Hon'ble Mr.Justice R. Banumathi)

Leave granted.

2. These appeals [SLP(Crl) Nos. 7252, 7287 and 8206 of 2016] arise out of the judgment dated 14.09.2016 passed by the Madurai Bench of Madras High Court dismissing anticipatory bail application in Crl. OP (MD) No. 15370 of 2016 filed by the appellants. By the same judgment, the learned Single Judge of the High Court directed the Registrar (Judicial) to lodge a complaint with the jurisdictional police station against the appellants with respect to the alleged forgery committed by them in signing the vakalatnama. Pursuant to the direction of the High Court, the Registrar (Judicial) lodged a complaint with K. Pudur Police Station, Madurai on 19.09.2016, on the basis of which, FIR in Crime No. 1331/2016 for the offences punishable under Sections 193, 466, 468 and 471 IPC was registered against the appellants.

3. The first appellant was the then Member of Rajya Sabha and expelled Member of AIADMK Political Party. The third appellant is the husband of the first appellant. A complaint was filed by one Banumathi who was then working as maid in the house of the appellants in the year 2011 alleging that she was sexually harassed while she was working in the house of the appellants. Based on the said complaint, a criminal case was registered against all the appellants in Crime No. 5/2016 in All Women's Police Station under Sections 294(b), 323, 344, 354(A) and 506(i) IPC and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. The first appellant denied all the allegations and claimed that the same was result of political vendetta against her.

4. The appellants filed bail application under Section 438 Cr.P.C. in Crl.OP(MD) No.15370 of 2016 against the said offences before the Madurai Bench of Madras High Court along with vakalatnama bearing the signature of appellants No.1 and 3 dated 18.08.2016. The first appellant left for Singapore from New Delhi on 17.08.2016. While filing bail application in Crl.OP(MD) No. 15370 of 2016, the appellants filed vakalatnama wherein it was stated that the said vakalatnama was signed by the appellants before Advocate Mr. Vijaykumar on 17.08.2016 at Madurai. Challenging the maintainability of the bail petition and the vakalatnama, the respondent-State filed preliminary objections and submitted that appellant No.1 had left for Singapore from New Delhi on 17.08.2016 at 23.15 hours. Similarly, appellant No.3 had left for Singapore from Bengaluru on 18.08.2016

at 09.30 AM. It was alleged that the appellants filed anticipatory bail application on 18.08.2016 as if they were present in Madurai on 17.08.2016 and signed the affidavit and vakalatnama in the presence of an advocate at Madurai. TheHigh Court vide order dated 23.08.2016 directed the appellants to appear before the court on 29.08.2016 and to give their explanation with regard to the said preliminary objection. Accordingly, the appellants appeared before the court on the said date and submitted their affidavit before the High Court stating that the date mentioned in the vakalatnama was an inadvertent mistake.

5. In the impugned judgment, the High Court held that the explanations given by the appellants are not satisfactory and the same is contradictory to the written version as contained in the vakalatnama. Referring to the affidavit filed by the appellants, the High Court pointed out that appellant No.1 has given explanation that she never came to Madurai for signing the vakalatnama and that she had never signed the vakalatnama in the presence of advocate Mr. Vijaykumar at Madurai. The learned Single Judge therefore held that prima facie, it appears that the document has been forged and the same has been signed and executed outside Madurai and produced before this court as though, it has been signed and executed at Madurai and the same has been utilized and filed before the High Court. On the above findings, the High Court directed the Registrar (Judicial) to lodge the complaint against the appellants with the jurisdictional police station. Pursuant to the direction of the High Court, the Registrar (Judicial) lodged a complaint with K. Pudur Police Station, Madurai on 19.09.2016. Based on the complaint lodged by the Registrar (Judicial) of the High Court, FIR in Crime No. 1331/ 2016 was registered with K. Pudur Police Station, Madurai on 19.09.2016 for the offences punishable under Sections 193, 466, 468 and 471 IPC.

6. Being aggrieved, the appellants have filed these appeals. By the order dated 26.09.2016, the Supreme Court directed that no coercive action be taken against the appellants in Crime No. 1331/2016 and also in Crime No. 5/2016 and granted interim protection to the appellants from arrest.

7. It has been urged by Mr. Sanjay Hegde, learned senior counsel appearing for the appellants that the High Court erred in not considering the fact that the vakalatnama contains the signature of the appellants and that the date thereon is a purely clerical error. It was submitted that the High Court has not recorded a finding to the effect that it is 'expedient in the interest of justice' to lodge a complaint against the appellants and the High Court erred in issuing directions to lodge the complaint to the police for registering criminal case against the appellants. Further, it was contended that the High Court also erred in law in treating the vakalatnama filed by the appellants as the main reason for dismissing the anticipatory bail application.

8. Mr. Yogesh Kanna, learned counsel appearing for the State of Tamil Nadu submitted that the High Court has categorically found that the first appellant

has not signed the vakalatnama in Madurai on 18.08.2016 and therefore, the appellants have committed fraud upon the court and the High Court rightly issued directions to the Registrar for lodging complaint against the appellants. The learned counsel further submitted that the first appellant being the then Member of Parliament and her husband-the third appellant being a businessman and influential person are not cooperating with the investigation and the first appellant has given evasive reply to the questions raised by the Investigation Officer. It was submitted that no grounds are made out for setting aside the directions issued by the High Court and for quashing of the FIR No.1331/2016 registered on the directions of the High Court. The learned counsel placed reliance upon Sachida Nand Singh and another v. State of Bihar and another (1998) 2 SCC 493.

9. We have carefully considered the submissions and perused the impugned judgment and other materials placed on record. The point falling for consideration is whether in the facts and circumstances of the case, the court was right in issuing directions to lodge the complaint against the appellants before the concerned police station for forgery and for creation of forged document.

10. It is fairly well settled that before lodging of the complaint, it is necessary that the court must be satisfied that it was expedient in the interest of justice to lodge the complaint. It is not necessary that the court must use the actual words of Section 340 Cr.P.C; but the court should record a finding indicating its satisfaction that it is expedient in the interest of justice that an enquiry should be made. Observing that under Section 340 Cr.P.C, the prosecution is to be launched only if it is expedient in the interest of justice and not on mere allegations or to vindicate personal vendetta, In Iqbal Singh Marwah v. Meenakshi Marwah (2005) 4 SCC 370, this Court held as under:

"23 In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(l)(fo), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(6). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal.

In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint....."

11. Before proceeding to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C, the court must satisfy itself that "it is expedient in the interest of justice". The language in Section 340 Cr.P.C. shows that such a course will be adopted only if the interest of justice requires and not in every case. It has to be seen in the facts and circumstances of the present case whether any prima facie case is made out for forgery or making a forged document warranting issuance of directions for lodging the complaint under Section 193, 467, 468 and 471 IPC.

12. Based on the complaint of one Banumathi for the alleged harassment, a case in Crime No.5/2016 under Sections 294(b), 323, 344, 354-A and 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 was registered against the appellants. Appellant No.1 filed anticipatory bail application No.1627/2016 before the High Court of Delhi. The High Court of Delhi vide order dated 11.08.2016 granted interim protection to the appellants and directed the appellants to avail the remedy before the court of competent jurisdiction in the State of Tamil Nadu or the High Court of Madras. The High Court of Delhi directed that no coercive action be taken against the appellants in FIR No.5/2016 till 22.08.2016 subject to their joining the investigation as and when directed by the Investigating Officer.

13. Pursuant to the order of the High Court of Delhi, the appellants filed anticipatory bail application before the High Court of Madras at Madurai Bench in Bail Application No.15370/2016 on 18.08.2016. In the said application, preliminary objection was raised by the State alleging "that the appellants have played fraudon the court by filing a vakalatnama signed by them on 17.08.2016 attested by an advocate from Madurai as if appellants No.1 and 3 were present in Madurai on 17.08.2016 whereas appellant No.1 left for Singapore from New Delhi on 17.08.2016". The third appellant left for Singapore from Bengaluru on 18.08.2016. Alleging that they have filed false vakalatnama, the respondent-State raised objection for maintainability of the petition. In the meanwhile, on 22.08.2016, the Investigating Officer included Section 9(I)(n) read with Section 10, Section 16 read with Section 17 of Protection of Children from Sexual Offences Act, 2012 in Crime No.5/2016.

14. The High Court rejected the anticipatory bail application and declined to grant pre-arrest bail in Crime No.5/2016. The High Court held that the first appellant never came to Madurai for signing the vakalatnama in the presence of advocate Vijaykumar and therefore, prima facie it appears that the document has been forged and the same has been signed and executed outside Madurai as though it has been signed and executed at Madurai and the same has been utilized by the appellants before the court. Placing reliance upon Sachida Nand Singh, the High Court observed that the act committed by the appellants amount to fraud played upon the court and thus,

directed the Registrar (Judicial) to lodge a complaint against all the appellants who signed the vakalatnama in Crl.O.P.(MD) No.15370/2016.

15. In the present appeals, we are mainly concerned with the findings of the High Court that by filing the vakalatnama in Crl.O.P.(MD) No.15370/2016, the appellants have played fraud upon the court and the issuance of the direction to the Registrar (Judicial) to lodge the complaint against the appellants for forgery. As pointed out earlier, the appellants have filed Crl.O.P.(MD) No.15370/2016 on 18.08.2016 in which they have filed the vakalatnama wherein it had been stated as under:-

"Executed before me this 17th day of August, 2016. Before me, S. Vijaykumar, No.51 law Chambers, High Court Madurai."

The above version in the vakalatnama looks as if appellants No.1 and 3 have signed the vakalatnama in Madurai on 17.08.2016; but actually the first appellant did not visit Madurai and left for Singapore from New Delhi on 17.08.2016 at 11.15 PM. It is pertinent to note that in the affidavit filed by the appellants before the High Court on 29.08.2016, the first appellant has taken the plea that there has been a clerical error. Appellant No.1 has stated that on 16.08.2016, she and her son-appellant No.2 signed the vakalatnama in New Delhi and that the same was signed through appellant No.3 who was in Bengaluru. It is stated that after receiving the vakalatnama, appellant No.3 reached Madurai on the same day evening by road and handed over it to the lawyer and returned back to Bengaluru by road on the same day and thereafter, appellant No.3 left for Singapore in the morning of 18.08.2016 at 09.30 AM. According to the appellants, when the vakalatnama was filed in the High Court of Madras at Madurai Bench, it was mistakenly recorded that it has been signed on 18.08.2016 in Madurai. The explanation given by the appellants appears to be plausible and we find no reason to disbelieve the same and their affidavit dated 29.08.2016.

16. A vakalatnama is only a document which authorizes an advocate to appear on behalf of the party and by and large, it has no bearing on the merits of the case. We find force in the contention of the learned senior counsel for the appellants that there is no reason as to why a party would deliberately furnish a false date and place in the vakalatnama. Appellant No.1 left for Singapore from New Delhi on the night of 17.08.2016 and appellant No.3 left for Singapore from Bengaluru on the morning of 18.08.2016 at 09.30 AM which fact admitted by both the parties. In the affidavit filed before the High Court, the first appellant clearly stated that she and her son appellant No.2 signed the vakalatnama on 16.08.2016 and the same was sent to her husband-appellant No.3 who was in Bengaluru who in turn handed over the same to the advocate at Madurai. The appellants have admitted their signatures in the vakalatnama. The sequence of events as stated in the affidavit of the appellants, in our view, do not make out a case of forgery. The High Court has not recorded any finding as to why it rejected the plea of the appellants made in the affidavit which has also been reiterated by them in their explanation before the court when they

personally appeared before the court.

17. Mr. Yogesh Kanna, the learned counsel appearing for the State of Tamil Nadu placed reliance upon Sachida Nand Singh and submitted that even if any offence involving forgery of document is committed outside the precincts of the court and long before its production in the court, the same would also be treated as one affecting the administration of justice. After referring to various judgments, in Sachida Nand Singh, it was held as under:-

"11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records."

18. There could be no two views about the proposition that even if forgery is committed outside the precincts of the court and long before its production in the court, it would also be treated as one affecting the administration of justice. But in the present case, the vakalatnama filed by the appellants in Crl.O.P.(MD) No.15370/2016 seeking anticipatory bail in Crime No.5/2016 cannot be said to be a forged document. As pointed out earlier, the appellants have admitted their signatures in the vakalatnama. They only allege that it was mistakenly recorded that it has been signed on 18.08.2016 at Madurai in the presence of the advocate. Of course, the version in the vakalatnama is an incorrect statement. In our opinion, the High Court was not justified in terming the said mistake or error as fraud. Fraud implies intentionally deception aimed or achieving some wrongful gain or causing wrongful loss or injury to another. Intention being the mens rea is the essential ingredient to hold that a fraud has been played upon the court. The learned counsel for the State has submitted that upon examination of the signature in the vakalatnama, the hand-writing expert has opined that it is not the signature of the appellants and therefore, the intention of the appellants to create a forged document has been clearly made out. We do not find any merit in the submission as the appellants themselves admitted their signatures in the vakalatnama. In the light of the statement of the appellants admitting their signatures in the vakalatnama, we do not think that the opinion of the handwriting expert would stand on any higher footing. There is nothing on record to suggest that the appellants gained anything by playing fraud or practising deception. In the absence of any material to substantiate the allegations, in our view, the High Court was not justified in accusing the appellants fraud.

19. Even assuming that the version in the vakalatnama is wrong, mere incorrect

statement in the vakalatnama would not amount to create a forged document and it cannot be the reason for exercising the jurisdiction under Section 340 Cr.P.C. for issuance of direction to lodge the criminal complaint against the appellants.

20. In Amarsang Nathaji v. Hardik Harshadbhai Patel (2017) 1 SCC 117, this Court held that before proceeding under Section 340 Cr.P.C, the court has to be satisfied about the deliberate falsehood on a matter of substance and there must be a reasonable foundation for the charge. Observing that some inaccuracy in the statement or mere false statement may not invite a prosecution, it was held as under:-

"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. v. Union of India (1992) 3 SCC 178). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."

The same view was quoted with approval in Chintamani Malviya v. High Court of M.P. (2018) 6 SCC 15.

21. Applying the ratio of the above decisions, in our view, there is no prima facie evidence to show that the appellants had intended to cause damage or injury or any other acts. Since the disputed version in the vakalatnama appears to be an inadvertent mistake with no intention to make misrepresentation, in our view, the direction of the High Court to lodge a criminal complaint against the appellants cannot be sustained and the same is liable to be set aside.

22. The learned counsel for the State submitted that in Crime No.1331/2016, criminal case was registered based on the direction of the High Court and upon completion of the investigation, charge sheet has also been filed. As held in Pepsi Foods Limited and another v. Special Judge Magistrate and others (1998) 5 SCC 749, summoning of an accused in a criminal case is a serious thing; more so to face a trial in criminal case registered with the direction of the High Court. Since the appellants themselves have admitted their signatures in the vakalatnama and the version in the vakalatnama that they have signed at Madurai on 18.08.2016 is an advertent mistake, in our view, even if the trial proceeds, there may not be any possibility ofthe appellants being convicted for the alleged offences of forgery and for making forged document.

23. In Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS and Another (2006) 7 SCC 188, it was held as under:-

"7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction..... In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

24. In the facts and circumstances of the present case, in our view, no useful purpose would be served by proceeding with the criminal prosecution against the appellants. Without further going into the merits of the case, we quash the FIR in Crime No.1331/ 2016 and also quash the charge sheet pending before the concerned Magistrate. The FIR and the charge sheet are quashed only in the facts and circumstances of the present case and to meet the ends of justice. It is made clear that taking advantage of quashing of the case, the appellants shall not resort to any further consequential proceedings.

25. Crime No.5/2016:- In the impugned order, the High Court has declined to grant anticipatory bail to the appellants. The Supreme Court vide order dated 26.09.2016 granted interim protection to the appellants in Crime No.5/2016 registered in All Women's Police Station, Pudukkottai, Tuticorin district. The learned senior counsel appearing for the appellants submitted that the appellants have compromised the matter with the victim Banumathi and that based on the compromise, they have already filed quash petition before the High Court of Madras in which the High Court has directed the parties to approach the concerned police station. We are not inclined to go into the merits of the said matter, except to extend interim protection granted to the appellants in Crime No.5/2016 till the disposal of the said case.

26. Crime No.276/2016:- On 11.10.2016, the appellants along with other accused are said to have caused damage to thehousehold articles and car of one Suganthi who was the advocate for the victim-Banumathi in Crime No.5/2016. Based on the complaint lodged by one Muthu-a relative of the said Suganthi, a criminal case was registered against the appellants under Sections 147, 148, 448,

506(II) IPC and under Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss Act, 1992) in Crime No.276/2016 of Thisayanvilai Police Station, Tirunelveli. The appellants have filed the anticipatory bail application before the High Court and by order dated 18.11.2016, the High Court granted anticipatory bail to appellants No.2 and 3 and the learned Single Judge took the view that custodial interrogation of appellant No.1 is required and declined to grant anticipatory bail to appellant No.1. The order dated 18.11.2016 is the subject matter of challenge in SLP(CrL) Nos.9064/2016 and 9065/2016. When the matter came up for admission before this Court, vide order dated 22.11.2016, this Court has granted interim protection to appellant No.1. Therefore, case against the appellants was registered under Sections 147, 148, 448, 506(ii) IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss Act, 1992) in Crime No.276/2016 (Thisayanvilai, Thirunelveli). The High Court declined anticipatory bail to the first appellant by holding that her custodial interrogation is necessary whereas appellants No.2 and 3 were granted anticipatory bail.

27. In the result, all the appeals are disposed of as under:-SLP(CrL) No.7252/2016:- The impugned order of the High Court issuing direction to lodge criminal complaint against the appellants is set aside and the appeal is allowed. Considering the facts and circumstances of the case, the FIR in Crime No.1331/2016 (K. Pudur Police Station) and the charge sheet filed thereon are quashed and the appeal is allowed accordingly. As pointed out in para No.(23), taking advantage of the quashing of the FIR in Crime No.1331 of 2016, the appellants shall not resort to any further or consequential proceedings.

28. SLP(Crl) Nos. 7287/2016 and 8206/2016:- The interim protection granted to the appellants in Crime No.5/2016 (AWPS, Pudukkottai, Tuticorin District) is extended till the disposal of the criminal case arising out of Crime No.5/2016.

29. SLP(Crl) Nos. 9064/2016 and 9065/2016:- The interim protection granted to the appellants by the order dated 22.11.2016 in Crime No.276/2016 (Thisayanvilai Police Station,Thirunelveli) is extended till the disposal of the criminal case arising out of Crime No.276/2016. The appellants are granted anticipatory bail in Crime No.276/2016 which shall hold good till the disposal of the criminal case. So far as quashing of criminal case in Crime No.276/2016, the appellants are at liberty to approach the High Court and the High Court shall consider the same on its own merits.

2018 (2) L.S. 59 (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

Rajesh & Others ..Appellants
Vs.
State of Haryana ..Respondent

INDIAN PENAL CODE, Secs.- 148, 149, 323, 324, 325, 302, 307 & 506 - Criminal Appeal - High Court dismissed the revision petition and has confirmed the order of Trial Court - Appellants herein to face the trial along with other co-accused - Accused were not shown as accused in the challan/charge-sheet.

Held - Persons against whom no charge-sheet is filed can be summoned to face the trial – No error has been committed by the Courts below to summon the appellants herein to face the trial in exercise of power under Section 319 of the CrPC – No reason to interfere with the impugned order passed by the High Court – Appeal stands dismissed.

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

Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 19.12.2018 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Revision - CRR No. 521 of 2018 by which the High Court has dismissed the said revision petition preferred by the appellants herein and has confirmed the order dated 28.10.2017 passed by the learned Trial Court, by which the appellants herein were summoned to face the trial for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 of the IPC, the appellants herein have preferred the present appeal.

3. The facts leading to the present appeal in nutshell are as under:

That one Hukum Singh lodged one FIR No. 180 on 12.06.2016 at Police Station Sadar, Panipat against ten accused, including the appellants herein for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 of the IPC. It was alleged that on 12.06.2016 at about 1.30 pm, he along with his son Bhajji and Hari son of Parkash were going from Panipat to his village Chhajpur Khurd on his tractor. His son had parked his motorcycle in front of the shop of Nande at bus stand. Therefore, his son Bhajji and Hari son of Parkash alighted from the tractor to pick up the motorcycle. When his son picked up the motorcycle, in the meantime, Sunil son of Jagpal came on Splendor motorcycle. Ravit son of Ramesh and Vicky son of Jaswant were sitting on pillion behind him on motorcycle. Sheela son of Paras was on his motorcycle Pulsar and Sumit son of Jagdish, Rinku son of Rai Singh were sitting behind him on his motorcycle.

Sunder son of Om Singh was on motorcycle Bullet and Rajesh son of Prem and Sanjay son of Bishni were sitting behind him on the said motorcycle. Ankush son of Rajinder was on his motorcycle make Splendor and Jagdish son of Devi Singh and Tejpal son of Nar Singh were sitting behind him. Joni son of Sahab Singh was on his motorcycle Bullet and Sachin son of Khilla was sitting behind him. They were armed with swards, pistols, hockeys, iron bars and gandasi etc. They attacked his son Bhajji and Hari son of Parkash. Ravit son of Ramesh was armed with a hockey, Vicky son of Jaswant was armed with wooden baton, Sheela son of Paras was armed with gandasi. Sumit son of Jagdish was armed with pistol, Rinky son of Rai Singh was armed with iron bar, Sunder son of Om Singh was armed with wooden baton, Rajesh son of Prem was armed with sword, Jagdish son of Devi Singh was armed with lathi, Tejpal son of Nar Singh was armed with iron bar, Joni son of Sahab Singh was armed with wooden handle of spade, Sachin son of Ruhla Ram was armed with sword and Joginder son of Sahi Ram was having gandasi with him. Rajesh son of Prem exhorted to kill both of them because they were pressing hard for their ejectment from panchayat land. Pursuant to exhortation, accused inflicted injuries to his son and Hari son of Parkash with their respective weapons. When he raised alarm, accused sped away on their motorcycles threatening to kill them in case any action is taken against them. In the meantime, his brother Mahender came there and they removed both the injured to Prem Hospital where Hari son of Parkash succumbed to his injuries on 14.06.2016 during treatment.

3.1 That all the accused named in the FIR were arrested. The Investigating Officer conducted the investigation and found ten persons involved in the said incident. However, the Investigating Officer found that the appellants herein (six in numbers) were not present at the site of incident. That the Investigating Officer submitted his report under Section 173(2) of the CrPC against four accused only. That, thereafter the Investigating Agency conducted further investigation by Jagdeep Singh HPS, DSP, Panipat. It appears that a report under Section 173(8) of the CrPC was also submitted. According to the Investigating Officer, on the date of the commission of the offence the appellants herein were not present at the place of occurrence, rather they were found on different places which have been found by the Investigating Agency also. It appears that thereafter, as the appellants herein were in custody, the SHO, Police Station Sadar filed the applications before the Judicial Magistrate, First Class, Panipat on 01.09.2016 and 28.10.2016 submitting that after investigation no challan is filed against the appellants herein and no evidence is found against them and, therefore, they may be discharged/released. That the learned Magistrate directed to release the appellants. That, thereafter the trial proceeded further against the remaining accused against whom the challan/charge-sheet was filed. The prosecution examined two witnesses - P.W.1, the original informant and P.W.2, Bhajji, the injured eye witness. Both of them corroborated the case of the prosecution and categorically stated that the appellants herein were also present at the time of incident. Both of them were

cross-examined by the defence. That, thereafter the original informant P.W.1 submitted the application before the learned Magistrate under Section 319 of the CrPC to summon the appellants herein to face the trial for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 of the IPC. It was the case on behalf of the original informant that P.W.1 and P.W.2 who were examined during the course of the trial, in their depositions both of them have corroborated the case of the prosecution and the statements which they had made before the police have also been found corroborated and their statements before the Court are part of the application filed and, therefore the appellants herein who were named in the FIR are to be summoned to face the trial. That, by a detailed judgment and order, the learned Magistrate in exercise of powers under Section 319 of the CrPC has directed to issue summons against the appellants herein to face the trial along with the other co-accused for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 of the IPC

3.2 The order passed by the learned Magistrate has been confirmed in revision by the High Court by the impugned judgment and order. Hence the present appeal by the appellants herein who are issued the summons to face the trial in exercise of powers under Section 319 of the CrPC.

4. Shri R. Basant, learned Senior Advocate has appeared on behalf of the appellants herein.

4.1 Shri Basant, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that, in the facts and circumstances of the case, the learned Magistrate has erred in summoning the appellants herein to face the trial in exercise of powers under Section 319 of the CrPC.

4.2 It is vehemently submitted by Shri Basant, learned Senior Advocate appearing on behalf of the appellants that both, the High Court as well as the learned Trial Court have not properly appreciated the scope and ambit of the powers to be exercised under Section 319 of the CrPC. Relying upon the decision of this Court in the case of Hardeep Singh v. State of Punjab (2014) 3 SCC 92, it is submitted by the learned Senior Advocate appearing on behalf of the appellants that, as observed and held by this Court, the power under Section 319 of the CrPC is a discretionary and an extraordinary power and it is to be exercised sparingly and only in those cases where the circumstances of the case so warrant.

4.3 It is submitted by the learned Senior Advocate appearing on behalf of the appellants that the learned Magistrate has mechanically passed the order despite the fact that there was no strong and cogent evidence on record even at the time of the trial.

4.4 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that, in the present case, as such, the investigating agency thoroughly investigated the case when all the appellants were in judicial custody and after taking into account all the facts and evidence, came to the conclusion that all the

appellants were innocent as they were not present at the place of incident and thereafter submitted the report under Section 173(2) of the CrPC and filed the challan only against four accused persons and did not file the challan against the appellants herein. It is submitted that not only that, even thereafter also, further investigation was carried out by the DCP who submitted the report under Section 173(8) of the CrPC and in that report also all the appellants were found innocent. It is submitted that, therefore, the SHO, Police Station Sadar submitted the applications praying for discharge of the appellants specifically stating that the appellants are innocent and the learned Magistrate allowed the said discharge applications, though opposed by the complainant. It is submitted that, therefore, once the learned Magistrate discharged the appellants on the applications submitted by the SHO, Police Station, Sadar, thereafter solely on the basis of depositions of P.W.1 and P.W.2 which was nothing but reiteration of what they stated in their statements before the police, the learned Magistrate was not justified in summoning the appellants herein to face the trial in exercise of powers under Section 319 of the CrPC.

4.5 Relying upon the decision of this Court in the case of Bijendra Singh v. State of Rajasthan (2017) 7 SCC 706, it is vehemently submitted by Shri Basant, learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court, merely on the basis of the deposition of the complainant and some other persons, with no other material to support their socalled verbal/ocular version, no person can be arrayed as an accused in exercise of powers under Section 319 of the CrPC. It is submitted by the learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court in the aforesaid decision, such an "evidence" recorded during the trial is nothing more than the statements which was already there under Section 161 of the CrPC recorded at the time of investigation of the case. Relying upon the aforesaid decision, it is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellants that, in any case, the learned Magistrate was bound to look into the evidence collected by the investigating officer during investigation which suggested that the accused were not present at the time of commission of the offence. It is submitted that, in the present case, the learned Magistrate on the applications submitted by the SHO in fact discharged the accused-appellants herein and allowed the applications submitted by the SHO in which it was categorically stated that the appellants are innocent and that they were not present at the time of the incident. It is submitted that therefore the High Court has erred in dismissing the revision petition and confirming the order passed by the learned Magistrate in summoning the accused-appellants herein to face the trial for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 of the IPC, which was passed in exercise of powers under Section 319 of the CrPC.

5. Learned counsel appearing on behalf of the respondent-State of Haryana has supported the order passed by the learned Magistrate as well as the impugned judgment

and order passed by the High Court. He has also relied upon some of the observations made by this Court in the case of Hardeep Singh (supra) and even some of the observations made by this Court in the case of Bijendra Singh (supra).

5.1 It is vehemently submitted by the learned counsel appearing on behalf of the State that it is not correct to state that the appellants herein were discharged by the learned Magistrate on the applications filed by the SHO, It is submitted that the SHO submitted the applications to discharge the appellants from the custody and to release them as they were in jail and those applications came to be allowed. It is submitted that therefore the orders dated 01.09.2016 and 28.10.2016 cannot be said to be the orders of discharge in stricto sensu, as sought to be contended on behalf of the appellants.

5.2 It is submitted that, in the present case, even at the initial stage when the investigating officer submitted the report under Section 173(2) of the CrPC and the challan was filed only against four accused persons, out of ten accused persons named in the FIR and the remaining six accused (appellants herein) were dropped, nothing is on record that the learned Magistrate accepted the report/closure report against the appellants and, that too, by following the procedure as required as per the decision of this Court in the case of Bhagwant Singh v. Commissioner of Police (1985) 2 SCC 537. It is submitted that, as per settled law, before even accepting the closure report, an opportunity is required to be given to the informant to submit the objections/ protest and only thereafter the closure report can be accepted. It is submitted that, in the present case, no such procedure was followed. It is submitted that thereafter when in the examination-in-chief/ cross-examination, P.W.1 and P.W.2, who are the informant and the injured eye witness respectively, categorically deposed that the appellants were also present at the time of the incident and they actively participated in commission of offence and, therefore, in the facts and circumstances of the case, the learned Magistrate was justified in issuing the summons against the appellants to face the trial along with the other co-accused. It is submitted that, therefore, the order passed by the learned Trial Court is rightly confirmed by the High Court by the impugned judgment and order.

5.3 Making the above submissions, it is prayed to dismiss the present appeal.

6. Heard learned counsel appearing on behalf of the respective parties at length. We have also perused and considered the orders passed by the High Court as well as the learned Trial Court in depth.

6.1 At the outset, it is required to be noted that, in the present case, what is under challenge is the impugned order passed by the High Court dismissing the revision application and confirming the order passed by the learned Trial Court summoning the accused in exercise of powers under Section 319 of the CrPC and to face the trial for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 of the IPC. It is required to be noted that, in the present case, the original

complainantfirst informant specifically named ten persons as accused, including the appellants herein. However, thereafter after the investigation, the investigating officer filed the charge-sheet/ challan against four accused persons only and no challan/ charge-sheet was filed against the appellants herein. Nothing is on record whether at that time any specific closure report was submitted by the investigating officer or not. Nothing is on record whether at that stage an opportunity was given to the complainant/original informant to submit any protest application or not. Assuming that nonfiling of the charge-sheet/ challan against the remaining accused named in the FIR can be said to be a closure report, in that case also, as per the settled proposition of law and more particularly, the decision of this Court in the case of Bhagwant Singh (supra), before accepting the closure report, the Magistrate is bound to issue notice to the complainant/original informant and the complainant/original informant is required to be given an opportunity to submit the protest application and, thereafter, after giving an opportunity to the complainant/original informant, the Magistrate may either accept the closure report or may not accept the closure report and direct to proceed further against those persons for whom the closure report was submitted. In the present case, nothing is on record that such a procedure was followed by the learned Magistrate. That, thereafter the trial proceeded against the four accused persons against whom the charge-sheet/ challan was filed. During the trial, the depositions of P.W.1 and P.W.2 were recorded. Both of them were even cross-examined. In the deposition, P.W.1 and P.W.2 specifically stated the overacts by the appellants herein and the role played by them and categorically stated that at the time of the incident/commission of the offence, the appellants herein were also present and they participated in the commission of the offence. That, thereafter, on the application submitted by the original complainant submitted under Section 319 of the CrPC, the learned Magistrate found a prima facie case against the appellants herein and summoned the appellants herein to face the trial along with other co-accused. The said order has been confirmed by the High Court. Therefore, the short question posed for the consideration of this Court is whether, in the facts and circumstances of the case, the Trial Court was justified in summoning the appellants herein to face the trial in exercise of powers under Section 319 of the CrPC?

7. While considering the aforesaid question/ issue, few decisions of this Court are required to be referred to and considered.

7.1 The first decision which is required to be considered is a decision of the Constitution Bench of this Court in the case of Hardeep Singh (supra) which has been consistently followed by this Court in subsequent decisions.

7.2 In the case of Hardeep Singh (supra), this Court had the occasion to consider in detail the scope and ambit of the powers of the Magistrate under Section 319 of the CrPC; the object and purpose of Section 319 of the CrPC etc. In the said case, the following five questions fell for consideration before this Court:

"(i) What is the stage at which power under Section 319 CrPC can be exercised?

(ii) Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

(iii) Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

(iv) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

(v) Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?"

7.3 While considering the aforesaid questions, this Court observed and held as under:

"12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and the judgments that have been relied on for the said purpose. The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scotfree by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

22. In our opinion, Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial. .....

47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pretrial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. .....

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded

by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC.

55. Accordingly, we hold that the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

56. ..... What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 CrPC is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 CrPC at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses are being recorded."

7.4 While answering question No. (iii), namely whether the word "evidence" used in Section 319(1) of the CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial, this Court, in the aforesaid decision has observed and held as under:

"58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be "where ... it appears from the evidence" before the court.

59. Before we answer this issue, let us examine the meaning of the word "evidence". According to Section 3 of the Evidence Act, "evidence" means and includes:

"(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court; such documents are called documentary evidence."

78. It is, therefore, clear that the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

82. This pretrial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material along with the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. .....

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court

after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial."

7.5 While answering question No. (ii), namely whether the word "evidence" used in Section 319(1) of the CrPC means as arising in examination-in-chief or also together with cross-examination, in the aforesaid decision, this Court has observed and held as under:

"86. The second question referred to herein is in relation to the word "evidence" as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh [(2001) 6 SCC 248 : 2001 SCC (Cri) 1090 : AIR 2001 SC 2521] , it was held that: (SCC p. 252, para 10)

"10. ... It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not."

87. In Ranjit Singh [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554 : AIR 1998 SC 3148] , this Court held that: (SCC p. 156, para 20)

"20. ... it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers."

88. In Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] , it was held that the prerequisite for exercise of power under Section 319 CrPC is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even wait till the cross-examination is over and that there would be no illegality in doing so. A similar view has been taken by a twoJudge Bench in Harbhajan Singh v. State of Punjab [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] . This Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355] seems to have misread the judgment in Mohd. Shafi[Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] , as it construed that the said judgment laid down that for the exercise of power under Section 319 CrPC, the court has to necessarily wait till the witness is cross-examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 CrPC.

89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899]and Harbhajan Singh [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words “such person could be tried” instead of should be tried. Hence, what is required is not to have a minitrial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this minitrial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of subsection (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

91. Further, in our opinion, there does not seem to be any logic behind waiting till the cross-examination of the witness is over. It is to be kept in mind that at the time of exercise of power under Section 319 CrPC, the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the cross-examination is to be taken into consideration, the person sought to be arraigned as an accused cannot cross-examine the witness(es) prior to passing of an order under Section 319 CrPC, as such a procedure is not contemplated by CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as an accused as it would only help the prosecution in

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