Regd.No.PRAKASAM/13/2021-2023 R.N.I.No.APENG/2004/15906

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# Law Summary

( Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

2022 Vol.(1) Date of Publication 31-3-2022 PART - 6



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MODE OF CITATION: 2022 (1) L.S

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( Founder : Late Sri G.S. GUPTA)

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PART - 6, 31ST MARCH 2022)

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HELD: Difference between talaq-eahsan and talaq-e-biddat is that, in the former the divorce can be revoked and is not final till the completion of iddat period, in the latter the divorce is instant and irrevocable - Petitioner No.1 clearly mentioned pronounced a single talaq in his notice - Though severing of marital ties had an instantaneous effect, it did not have an irrevocable effect - Ties were severed by Petitioner No.1 as it is a requirement under talaq-e-ahsan to not have any conjugal relations till the iddat period - Therefore, the contents of the complaint lacks the ingredients of the offence under Sec.4 of the Muslim Women (Protection of Rights on Marriage) Act - Criminal proceedings stand quashed and Criminal Petition stands allowed. **(T.S.)** ***162***

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HELD: Conduct of the appellant, from the evidence led by the prosecution, indicates that neither was there any premeditation nor an intention to kill the deceased

***--X--***

# “WOMAN” - WE HAVE TO BECOME WARRIORS THAN A MERE PACIFIST

**PVS SAILAJA**
(Assistant Professor
Mahatma Gandhi College Of Law Hyderabad)

**“**WE ALL BE AWARE WITH THAT WOMEN ARE HALF THE WORLD AND HOLD UP HALF THE SKY BUT WHERE ARE THEY WHEN IT COMES TO EQUALITY?”

Woman empowerment is a much-discussed theme overall today. woman have battled a long and hard fight for equivalent freedoms and rights, right to education and right to employment. Despite the fact that gender discrimination has not yet been completely tended to, we have made considerable progress from being simple parental caregivers. A woman’s life is not generally bound to the kitchen yet on the off chance that she so chooses she can run the board room too. Just before International lady’s day March 8 ,2022 with a subject “Gender equality today for a sustainable tomorrow” here are some of ongoing legal advancements in the status of woman.

Mothers are our essential parental care givers and are regularly underestimated and undervalued. However, when she figures out how to support herself nobody can cause her to feel not exactly any man deserving his salt. As far as possible we have are the ones we develop to us. Life will head down the path we need it to head. Our own contemplations are the ship we should figure out how to explore. To enable overselfs first believe in worth. our gender isn’t our weakness and should not characterize what we are capable to do. There are Women in the military significantly more considerable than their male counterparts. There are woman CEO’s that have impelled their organizations to significance. We are living in liberated times and we should change our own convictions or beliefs to conquer discrimination.

Assuming that if we can bleed every month, carry one more life in our womb for nine months and give birth we can doubtlessly educate our self and work for an independent life. How difficult it should be when men can get it done, we can do it better.

The thought of equality, be that as it may, requires equity. The historical backdrop of social advancement is additionally the historical backdrop of imbalance and inequality. Inequality between countries, religions, identity, class, caste, race and sexuality. however,

the subject of woman's privileges poses a potential threat, cutting through all the layers of social delineation. German theorist and communal scientist Friedrich Engels in his classical writing states that**, "Woman was the first human being that tasted bondage. Woman was a slave before slavery existed".** The feminist resist for equal rights has been paved through legislation, be it the social justice, equal rights and the right to vote, to employment rights, property rights, rights governing divorce and marriage to child-care and medicine legislation in view of equivalent privileges and equal rights influences the actual very values of society, affecting the manner in which we vote, yet the manner in which we work, live and function as a family, the manner in which we access education, health care and justice. In the independent India some notable Rights exclusively for woman.

WOMEN AND INDISPENSABLE CHANGES IN INDIAN LAW

In India, the constitutionally ensured guaranteed for woman is frequently contradictory to the harsh societal reality of the land and its social standards. The struggle for woman's equality started in India in the twentieth century, during the struggle of for Independence. In the fight against the British, western educated pioneers

like B.R.Ambedkar, Mahatma Gandhi, Raja Ram Mohan Roy and Savitribai Phule urged woman to step away from their homes and hearths and enter the public in the sphere for Independence. Indian values, patriotism and social and cultural legacy were celebrated through the symbolism of 'Mother India'. Maybe without precedent for India, the possibility that a woman is essential for the larger Indian tapestry as a legal citizen flourished. The consideration of the female citizen into the public arena required citizenship rights and changes in the law, for example, right to education, inheritance privileges, abolition of sati and polygamy as well as remittance for widow-remarriage.

While a struggle for nationalism changed the lawful landscape of woman's freedoms through the colonial era time, the post-colonial era in India has been set apart by major developments like globalization, neo- liberal arrangements and the a leaps and in innovative development. This has extended woman's participation in the open arena. More Indian woman than ever are engaged in business enterprises ventures, worldwide platforms, global professions like publicizing and design, and have better open doors in view of the free development of products, capital and thoughts. Thoughts that question the actual nature of laws. Has our overall set of laws and legal system stayed aware of social change? Does our constitution have arrangements for equality or equity ? Do privileges and rights ensure equity? Is citizenship gendered? The accompanying article gives a brief outline of the current spate of woman driven legal reform in India and concludes

with a conversation on its socio - social effect on the very fabric actual of Indian woman.

In India, it is seen that woman are not much aware of their rights and that continues to excess latent in the society. Just an aware individual person can well recognize between just and only and .There is no lack of regulations or laws for woman. Our Constitution provides exclusive rights to women for their protection and advancement. Furthermore, IPC, CrPC and Evidence Act are also active with regards to woman and their protection. We have a few extraordinary laws too for effective implementation of the rights of woman against abuse, Harassment, brutality, violence, inequality and so forth, against them such as the Dowry Prohibition Act, 1961[1]; the Indecent Representation of Women (Prohibition) Act[2], the Protection of Women from Domestic violence Act, 2005 [3] ; the Immoral Traffic (Prevention) Act, 1956 [4] ; the Indecent Representation of Women (Prohibition) Act, 1986[5]; the Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013[6]; the Hindu Marriage Act, 1955 etc.[7]

JUDICIAL SAFEGUARDS FOR WOMEN'S RIGHTS

The cross country outrage over the fierce gang rape and resulting death of Jyoti Singhin New Delhi was the main thrust behind the declaration of the Criminal Law (Amendment) Act, 2013 "Criminal Law Amendment Act". The Criminal Law Amendment Act, 2013 that came into force on February 3, 2013 changed as well as embedded new section in the Indian Penal Code as to sexual offenses. A portion of the new offenses recognized by the Criminal Law Amendment Act are corrosive assaults, voyeurism, stalking, intentional disrobing of woman and sexual harassment.

In 2013, India embraced its first regulation explicitly resolving the issue of work place sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") instituted by the Ministry of Women and Child Development, India. Workplace sexual harassment is a type of gender discrimination which violates a woman's fundamental right to equity and right to life, ensured under Articles 14, 15 and 21 of the Constitution of India[8]. The POSH Act had been enacted with the object of forestalling and safeguarding woman against workplace sexual harassment (which incorporate of a hostile work environment) and to address objections of inappropriate behavior.

MATERNITY BENEFIT (AMENDMENT) ACT, 2017 ("MATERNITY AMENDMENT")[9]

The year 2017 witnessed the bold amendment to the Maternity Benefit Act, 1961 ("Maternity Act").The Maternity Amendment extends paid maternity leave for woman employees with less than two enduring children, from the original twelve (12) weeks

to 26 (26) weeks. A maximum of eight(8) weeks can be taken before the expected conveyance date and the leftover after childbirth. woman expecting their third child were also provided with the option to require twelve(12) long weeks of paid maternity leave-six (6) weeks before childbirth and six later. The Maternity Amendment accommodated for mothers adopting a child below three months of age, or "commissioning mothers" to require twelve (12) weeks of maternity leave from the date of receiving the child. The Maternity Amendment empowers mothers to work from home completing in the wake of finishing (26) weeks of leave subject to their work profiles and the employers' consent. The Maternity Amendment also mandates establishments employing 50 or more employees to have a crèche which is expected to have prescribed facilities and conveniences. woman employees reserve a right to visit the crèche four times each day, including during their rest stretch.

SHIELD TO MINORITY WOMAN -TRIPLE TALAQ

Instant Talaq or "Triple Talaq" or "Talaq-e-Biddat" is an Islamic practice that permits men to separate from their spouses promptly by articulating "talaq" (separate) three times. Yet again the Supreme Court, in its new milestone judgment of **Shayarabano Vs. Association of India**[10] pronounced on August 22, 2017set aside the practice of "Triple Talaq". The bench pronounced Triple Talaqas unconstitutional by a 3:2 larger part. The Judgment by the minority bench additionally directed the Government of Union of India to lay a proper regulation to regularize the procedures of divorce according to Shariat law.

Taking about the perspectives on the Supreme Court, the Muslim Women (Protection of Rights on Marriage) Bill, 2018[11] ("Triple Talaq Bill") was presented in Lok Sabha by the Minister of Law and Justice, in December, 2018. Also called the Triple Talaq Bill, the bill makes all declaration of talaq, including for composed or electronic structure form, to be void unlawful. It characterizes talaq as talaq-e-biddat or quite a few other comparative type of talaq pronounced by a Muslim man resulting about moment and irrevocable divorce.

The Triple Talaq Bill makes affirmation of Talaq a cognizable offense, drawing in as long as three years' imprisonment with a fine. The offense will be cognizable provided that information connecting with the offense is given by: (I) the married woman (against whom talaq has been declared), or (ii) any individual person connected with her by blood or marriage. The Triple Talaq Bills forthcoming the nod of the Rajya Sabha. Meanwhile, a ordinance penalizing the demonstration of triple talaq has been promulgated. The ordinance making the of moment triple talaq, penal offence has been given for a third time frame in February 2019.

ADULTERY AND ITS DECRIMINALIZATION

Another landmark step towards woman rights on September 27, 2018[12], a five-judge bench of the Supreme Court of India struck down another provincial era law, Section 497 of the Indian Penal Code that endorsed a greatest imprisonment of five years to men for adultery. Unlike India's sexual assault laws, which are connected with consent of the woman, the 158-year-old adultery law did not think about the woman's will. However woman couldn't be punished under the provision, a husband could Misra while perusing out portions of the judgment worked out for him and Justice AM Khanwilkar. Justice Chandrachud in his dissent held that the thought behind the idea was that presence of woman will disturb chastity, and that was placing weight of men's abstinence on woman. This slanders and generalizations woman, he analyzed. Justice R F Nariman held that the traditions and utilizations of Sabarimala temple should respect the fundamental right of woman to revere or worship in the temple.

CONCLUSION:

All things considered the woman of India are moderately disempowered and they appreciate rather lower status than that of men. Simple admittance to education and employment can help in the process of time empowerment. These are the apparatuses or the empowering factors through which the interaction gets speeded up. Nonetheless, accomplishment towards this objective relies more upon mentality. Regardless of such countless endeavors embraced by government and NGOs the image at present isn't satisfactory. Nonetheless, accomplishment towards this objective relies more upon mentality. Except if the demeanor towards the acknowledgment of unequal gender role by the general society and, surprisingly, the actual woman changed woman cannot grab the opportunity provided to them through sacred constitutional provision regulations and law etc. and so forth Till then we cannot say that woman are empowered in India in its genuine sense.

"WHEN WE ARE IN THE OPEN AIR , LEAPING OFF THINGS TO PROVE OUR POWER. FLY AND JUST FLY"

1. https://legislative.gov.in/actsofparliamentfromtheyear/dowry-prohibition-act-1961

2. https://www.indiacode.nic.in/handle/123456789/1768?

3.https://www.indiacode.nic.in/bitstream/123456789/15436/1/

4.https://www.indiacode.nic.in/handle/123456789/1661?locale=en

5. https://legislative.gov.in/sites/default/files/A1986-60_0.pdf

6 https://legislative.gov.in/sites/default/files/A2013-14.pdf

7 https://www.indiacode.nic.in/handle/123456789/1560?locale=en

8 https://www.mea.gov.in/Images/pdf1/Part3.pdf

9 https://www.legalserviceindia.com/legal/article-176-the-maternity-benefit-amendment-act

10 https://main.sci.gov.in/supremecourt/2016/6716/6716_2016_Judgement_22-Aug-2017.pdf

11 https://prsindia.org/billtrack/the-muslim-women-protection-of-rights-on-marriage-bill-2018

12 https://www.scobserver.in/cases/joseph-shine-v-union-of-india-decriminalisation-of-adultery-background/.

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## 2022(1) L.S. 195 (A.P.) (D.B.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ahasanuddin Amanullah &
The Hon'ble Mr.Justice
G. Ramakrishna Prasad

Harijana Katthi Krishna ..Petitioner
Vs.
The State of A.P., ..Respondent

**INDIAN PENAL CODE, Secs.302 and 304-Part II - Appeal against the Judgment rendered in Sessions Case, by which the appellant was found guilty of the offence under Section 302 of the Indian Penal Code –**

**HELD: Conduct of the appellant, from the evidence led by the prosecution, indicates that neither was there any premeditation nor an intention to kill the deceased - On the spur of the moment, by one blow to the head of the deceased, that too with a 2 feet wooden stick lying around, does not lead to believe that there was intention to kill the deceased - Act committed by the appellant would, no doubt, call for conviction, however, under Section 304-Part II of the IPC, and not under Section 302 - Conviction of the appellant for the action of causing the deceased's death is upheld but such conviction stands modified from Section 302 of IPC to Section 304-Part II of IPC.**

Crl.A.No.773/2015 Date: 18-2-2022

Mr.Nageshwara Rao Pappu Senior Advocate, assisted by V. Mythili, Advocates for the Appellant.

Mr.S. Dushyanth Reddy, Additional Public Prosecutor, Advocate for the Respondent.

**J U D G M E N T**

(per the Hon'ble Mr.Justice Ahsanuddin Amanullah)

1. We have heard Mr. Nageshwara Rao Pappu, learned senior counsel along with Ms. V. Mythili, learned counsel for the appellant, and; Mr. S. Dushyanth Reddy, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The present appeal is directed against the judgment dated 16.04.2015 rendered in Sessions Case No.393 of 2012 by the learned Special Judge for Trial of Cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-VIth Additional Sessions Judge, Kurnool (hereinafter referred to as the 'Trial Court'), by which the appellant, having been found guilty of the offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'), has been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default thereof to undergo two years' simple imprisonment.

3. The prosecution came to be instituted on the basis of the First Information Report, lodged by the Station House Officer, Krishnagiri Police Station, on the basis of

the statement recorded by Harijana Kathi Amrose (PW-1), relating to the death of his father viz. Harijana Kathi Nageswara Rao (hereinafter referred to as the 'deceased'), in which the appellant was made the sole accused. As per the prosecution's story, on the fateful day, the appellant, who is none other than the brother of the deceased, along with the deceased and the brother-in-law of the deceased went to the house of Kuruva Ramachandraiah @ Ramachandrudu (PW-5) for giving application to get drought relief cheques and at about 09.00 AM, in his house, the appellant is alleged to have shouted at the deceased in Telugu:

"LANGUAGE"

4. The aforesaid extract loosely translates in English to read:

> "What man, how many times I should tell you that you are taking away the drought relief cheques that belong to the father without giving it to me."

5. Having said so, it is alleged that he hit the deceased on the left side of the head with a 2 feet pattudu stick, which was available on the spot. It has further been alleged that due to the said blow, the deceased fell on the ground and PW-1, Harijana Devakanta Rangadu @ Ranganna (PW-2) and Harijana Kesavaiah (PW-3) as also PW-5, Nerakanti Ediga Giddaiah (PW-6) and Kuruva Bullineni Nadipi Rangadu (PW-7) witnessed the incident. It is stated that PW-1 rushed to the road to get a vehicle to shift the deceased, i.e. his father, to the hospital and was able to secure the jeep belonging to Kuruva Mahesh (PW-4). Thereafter, deceased was shifted to Government Hospital, Dhone, and the doctor informed that the father of the informant had succumbed to the injuries sustained.

6. The trial resulted in the appellant's conviction and sentencing as stated supra, against which this appeal has been preferred.

7. Learned senior counsel for the appellant submitted that the witnesses, both in the FIR as well as their statements, took a stand that the incident occurred in the house of PW-5; whereas in deposition, PW-5 has not only become hostile but in the cross-examination has stated that the said incident did not take place in his house. Learned counsel drew the attention of the Court to the rough sketch made by the Investigating Officer with regard to the place of occurrence, in which also there is no indication of any material much less blood being found in the house of PW-5, and rather there was blood on the road outside the house of PW-5 and on the other side of the road, the so-called weapon/stick and bloodstained soil have been recovered. Learned senior counsel submitted that when there are two versions with regard to place of occurrence, the benefit should go to the accused. For such proposition, learned counsel referred to the decision of the Hon'ble Supreme Court in Buta Singh v The State of Punjab, 1991 AIR SCW 1022, the relevant portion being at Paragraph No.

9, which reads as under:

> "9. From the above state of evidence, it appears that the defence version regarding the incident is a probable one and is supported by the find of blood from near the tubewell which is adjacent to the 'dera' of the appellant. When two versions are before the Court, the version which is supported by objective evidence cannot be brushed aside lightly unless it has been properly explained. As stated earlier, the prosecution has not explained how blood was found from near the tubewell and no blood was found from the spot where according to them the incident occurred. In addition to this, the factum regarding the delay in lodging of the First Information Report and the suspicion that it was delayed with a view to concocting the prosecution case and further the delay in forwarding the special report to the Magistrate as well as the case papers to the hospital shows that the investigation was not above board. In these circumstances, we think that the approach adopted by the Courts below cannot be justified."

8. It was further contended that the eye witnesses i.e. PWs 1 to 3 are interested witnesses inasmuch as PW-1 is the son of the deceased, PW-2 is the brother of the wife of the deceased and PW-3 is the son of another sister of the deceased's wife. Learned counsel submitted that even otherwise the presence of PWs 2 and 3 is not very natural. He submitted that the cause for the presence insofar as PW.2 is concerned, is stated that he has come to visit the deceased two days prior to the incident in relation to availing loan of Rs.10,000/- from him, whereas, apropos PW-3, there is absolutely no explanation as to why he was present at the place of occurrence that too for a cause which was quite personal, namely giving an application for receiving drought relief cheque(s). Learned counsel submitted that in the alternative, the Court may consider the fact that even as per the prosecution's witnesses, it is established that the incident, if at all perpetrated by the appellant, was at the spur of the moment without any premeditation and thus, conviction under Section 302 of IPC is unwarranted and, at best, the case can be one under Section 304 of the IPC. Learned counsel relied on the decision of the Hon'ble Supreme Court in Gurmukh Singh v State of Haryana, 2009 AIR SCW 6710, for contending that the parameters which should be looked into by the Court while sentencing have been explained at Paragraph No.24 thereof, which states:

> "24. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

a) Motive or previous enmity;

b) Whether the incident had taken place on the spur of the moment;

c) The intention/knowledge of the accused while inflicting the blow or injury;

d) Whether the death ensued instantaneously or the victim died after several days;

e) The gravity, dimension and nature of injury;

f) The age and general health condition of the accused;

g) Whether the injury was caused without premeditation in a sudden fight;

h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;

i) The criminal background and adverse history of the accused;

j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

k) Number of other criminal cases pending against the accused;

l) Incident occurred within the family members or close relations;

m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?",

9. It was submitted that, taking into consideration the facts in Gurmukh Singh (supra), the Hon'ble Supreme Court therein, converted conviction under Section 302 of IPC to that under Section 304-Part II of IPC and directed the accused to suffer rigorous imprisonment for seven years. Drawing analogy therefrom, the learned senior counsel for the appellant submitted that in the present case as per the depositions of PWs 1 to 3, when the deceased and the appellant were in the house of PW-5, for submitting applications for receiving drought relief cheques, all of a sudden, the appellant is said to have become angry, accusing the deceased of receiving drought relief cheque of their father without paying any amount to the appellant and thereafter the appellant is said to have picked up the pattudu stick which was lying there and hit the head of the deceased, due to which he fell down and the appellant is stated to have left the place of occurrence. Thus, learned senior counsel contended that this is clear admission of the fact, even by the prosecution, that the incident occurred on the spur of the moment and the same is further fortified by the statements of the witnesses that they had no time to react

or to prevent the same as it was unexpected. Learned senior counsel contended that the appellant had not come with any predetermined mind or with any arms to cause any grievous injury, much less death to the deceased, as he is said to have picked up an innocuous wooden stick of about 2 feet which happened to be lying in the vicinity, of which he could not have been aware beforehand. Thus, learned senior counsel prayed that the Court may consider modifying the conviction to that under Section 304-Part II of the IPC. He further requested that the Court may consider reducing the period of incarceration, since as on date, the appellant had suffered incarceration of about 7 years (6 years and 351 days, to be precise).

10. Per contra, Mr. Reddy, the learned APP submitted that the Trial Court has dealt with, in detail, the depositions of the witnesses and rightly rejected the controversy with regard to the place of occurrence of the incident in view of the overwhelming ocular evidence to the version that the incident occurred in the house of PW-5 and the recovery of bloodstained stick. Blood on the road in front of the house of PW-5 is also identified as the same blood on the clothes of the deceased. With regard to the appellant's plea on modifying the conviction to that under Section 304-Part II of the IPC, learned APP drew our attention to a recent decision rendered in State of Uttarakhand v Sachendra Singh Rawat, 2022 SCC OnLine SC 146, the relevant being Paragraph No.25(c), where 11 situations have been extracted as laid down in Pulicherla Nagaraju v State of A.P., (2006) 11 SCC 444. It is apposite to reproduce Paragraph No. 25(c) of Sachendra Singh Rawat (supra):

"c) In the case of Pulicherla Nagaraju (supra), this Court had an occasion to consider the case of culpable homicide not amounting to murder and the intention to cause death. It was observed and held by this Court that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows.''

11. At this juncture, on a direct query of the Court, as to, in the light of the very decision relied upon by the learned APP as also submissions advanced by him in

view of learned senior counsel for the appellant urging that the conviction required modification to one under Section 304-Part II of the IPC, learned APP could not effectively controvert the fact that the depositions of the witnesses and the prosecution's own story itself indicates that the incident occurred on the spur of the moment and the weapon used in the commission of offence was also not carried but just picked up from the place of occurrence, as is the version of PW-1, who is the informant, during his deposition before the Trial Court.

12. Having examined the facts and circumstances, and given our anxious thought to the submissions of learned counsel for the respective parties, the Court does not find any merit in the submissions of learned senior counsel qua the appellant's guilt, in view of the evidence on record and the discussions of learned Trial Court pertaining to the appellant in committing the crime. That being so, however, insofar as the conviction is concerned, the Court is persuaded to agree with the contention of learned senior counsel that, from the materials available on record, the statements of the witnesses and the attending circumstances, the appellant cannot be said to be guilty of committing a premeditated act, which should ensue in conviction under Section 302 of the IPC.

13. In this connection, it would be useful to reproduce Sections 302 and 304 of the IPC, which read as under:

"302. Punishment for murder – Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

xxx

304. Punishment for culpable homicide not amounting to murder – Whoever commits culpable homicide not amounting to murder shall be punished with (imprisonment for life), or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

14. Section 302 of IPC provides for punishment for murder; whereas Section 304 of IPC provides for punishment for culpable homicide not amounting to murder. The Court would pause at this juncture to emphasize that Section 304-Part II of IPC prescribes that whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend

to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

15. Before venturing further, we may also usefully take note of Sections 299 and 300 of the IPC defining 'Culpable homicide' and 'murder', respectively:

> "299. Culpable homicide – Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
>
> 300. Murder – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –
>
> Secondly – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –
>
> Thirdly – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –
>
> Fourthly – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

16. In Mahadev Prasad Kaushik v State of Uttar Pradesh, (2008) 14 SCC 479, the Hon'ble Supreme Court, upon considering Section 304 of the IPC, exposited as follows:

> "20. …
>
> A plain reading of the above section makes it clear that it is in two parts. The first part of the section is generally referred to as Section 304 Part I, whereas the second part as Section 304 Part II. The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

21. The makers of the Code observed:

"The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed."

The makers further stated:

"It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion."

22. Before Section 304 can be invoked, the following ingredients must be satisfied:

(i) the death of the person must have been caused;

(ii) such death must have been caused by the act of the accused by causing bodily injury;

(iii) there must be an intention on the part of the accused:

(a) to cause death; or

(b) to cause such bodily injury which is likely to cause death (Part I);

(iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II)."

(italicised in original)

17. In the instant case, in view of the discussions hereinabove and having regard to the scope of Section 304-Part II of IPC, we find that the conduct of the appellant, from the evidence led by the prosecution itself, indicates that neither was there any premeditation nor an intention to kill the deceased. Rather, on the spur of the moment, by one blow to the head of the deceased, that too with a 2 feet wooden stick lying around, does not lead us to believe that there was intention to kill the deceased. In our considered opinion, the act committed by the appellant would, no doubt, call for conviction, however, under

Section 304-Part II of the IPC, and not under Section 302.

18. Accordingly, the Court upholds the conviction of the appellant for the action of causing the deceased's death but modifies such conviction from Section 302 of IPC to Section 304- Part II of IPC. We are also persuaded, in the interest of justice, to modify the sentence of the appellant to the period already undergone. Bail bonds, if any, executed by the appellant shall stand cancelled and he shall be set at liberty. The jail authorities are directed to release the appellant forthwith, if not required in any other case. The Registry shall communicate a copy of this judgement to the Jail Superintendent, Central Prison, Kadapa, Kadapa District.

19. Ergo, this Criminal Appeal stands disposed of in the aforementioned terms.

20. Pending Miscellaneous Petitions, if any, stand closed.

–X–

## 2022(1) L.S. 203 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Subba Reddy Satti

Karukola Vasudevarao ..Petitioner
Vs.
Karri Suseelamma ..Respondent

**CIVIL PROCEDURE CODE, Sec.100 - Unsuccessful plaintiffs filed the present second appeal against the decree and judgment in A.S., confirming the decree and judgment in O.S. - Plaintiffs filed the suit seeking permanent injunction restraining the defendants from interfering with the peaceful possession of the plaint schedule property.**

**HELD: Court below considered both oral and documentary evidence and came to conclusion that the suit for injunction simplicitor in the facts of the case is not maintainable without seeking for declaration of title - Trial court also recorded finding about possession - Findings recorded by the Courts below are based on evidence available on record - No questions of law much less substantial questions of law involved in the present second appeal under Sec.100 CPC - Second appeal stands dismissed.**

Mr.Molhammed Gayasuddin, Advocate for the Petitioner.

S.A.No.64/2021 Date:8-3-2022

**J U D G M E N T**

The unsuccessful plaintiffs filed the present second appeal against the decree and judgment dated 07.11.2019 in A.S.No.212 of 2014 on the file of the Court of VI Additional District Judge, Sompeta, confirming the decree and judgment dated 31.12.2001 in O.S.No.105 of 1988 on the file of the Court of Junior Civil Judge, Palasa.

2.For the sake of convenience, parties to this second appeal are referred to as they were arrayed in suit.

3.Plaintiffs filed the suit seeking permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the plaint schedule property. Plaint schedule property is shown in schedule as, an extent of Ac.0.22½ cents in S.No.232/2A/1/B; Ac.1.37½ cents in S.No.232/2A/2/A; Ac.0.40 cents in S.No.232/2A/1/B; Ac.0.62½ cents in S.No.232/2A/1/C; Ac.0.82½ cents in S.No.232/2A/2/B; Ac.0.25 cents in S.No.232/2A/1/C, totaling an extent of Ac.3.70 cents in Patta No.122 of Parasamba @ Kasibugga, Palasa Mandal, Srikakulam District.

4. It was averred in the plaint that the plaint schedule properties are joint family property of all the plaintiffs; that the plaint schedule properties were purchased under registered sale deeds dated 24.07.1971 and 24.11.1972 with the joint family monies; that the plaintiffs are in exclusive possession and enjoyment of the same; that the defendants without any manner of right are trying to invade into the plaint schedule properties; that the 2nd defendant worked as Tahsildar, Palasa and 3rd defendant is the daughter of 2nd defendant; that defendants 1 and 2 in connivance with each other created sham and nominal documents and tried to trespass into the schedule properties and hence filed the suit for the reliefs mentioned supra.

5.Originally, suit was filed against defendants 1 to 3. Pending suit 1st defendant died and his legal representatives were brought on record as defendants 4 to 10. Defendants 11 to 36 were brought on record being the purchasers from 3rd defendant pendent lite. Pending the suit, 2nd defendant also died and 3rd defendant was recognized as his legal representative.

6.The 7th defendant filed written statement and the same was adopted by defendants 2 to 6 and 8. In the written statement, it was contended *interalia* that the plaintiffs have nothing to do with the schedule properties in S.No.232/7 in an extent of Ac.3.77 cents; that the 1st defendant sold Ac.2.25 cents of land to 3rd defendant in the year 1972, which was allotted to him as per the splitting up joint pattas by the then Deputy Tahsildar, Tekkali on 27.07.1973, and have been enjoying the land with absolute rights by paying land revenue to the Government; that the

authorities also issued pattadar pass books in favour of defendants; that the plaint schedule is incorrect and prayed the Court dismiss the suit.

7.Subsequent purchasers of the schedule properties also filed written statement. It was contended that total extent of land in S.No.232 covered by Patta No.121 is Ac.28.02 cents, which is a joint family property of 1st defendant, Karji Raghunadha Sahu,

Illatom Suryanarayana and Penta Jayalakshmi etc; that the 1st defendant enjoyed the properties and later sold North-East portion of an extent of Ac.2.25 cents covered by S.No.232 to 3rd defendant under a registered sale deed dated 24.06.1972 and delivered possession by demarcating the boundaries; that the 3rd defendant applied for sub-division of the properties covered by sale deed dated 24.06.1972; that sub-division was effected and survey number was revised as S.No.232/P.1; that the vendors of the plaintiffs had no title; that pending suit 3rd defendant sold plots to defendants 11 to 36 and they are in peaceful possession and enjoyment of the property and prayed the Court dismiss the suit.

8.During the course of trial, on behalf of plaintiffs, 2nd plaintiff was examined as P.W.1 and got examined P.W.2 and Exs.A-1 to A-19 were marked. On behalf of defendants, 9th defendant was examined as D.W.1 and got examined D.Ws.2 to 5 and Exs.B-1 to B-65 were marked.

9.Heard Sri Mohammed Gayasuddin, learned counsel for the appellants.

10.Learned counsel for the appellants would contend that the judgments of the Courts below vitiated in not granting injunction basing on Exs.A-1 and A-3 sale deeds. He would further contend that 3rd defendant executed sale deed in favour of defendants 11 to 36 pending suit and hence, they are hit by doctrine of *lis pendens*. He would further contend that in the appeal an interlocutory application was filed under Order 41 Rule 27 of CPC seeking to receive additional documents and the first appellate Court ought to have decided the said application before disposal of the appeal, but

not along with the appeal. Hence, he prayed this Court to set aside the decree and judgments of the Courts below.

11.O.S.No.105 of 1988 was filed for perpetual injunction, basing on registered sale deeds dated 24.07.1971 and 24.11.1972. Defendants filed written statement and denied the title of plaintiffs. Defendants also pleaded title to the property by virtue of Ex.B-2 registered sale deed dated 24.06.1972 executed by 1st defendant in favour of 3rd defendant. Ex.B-3 pattadar pass book was also marked, wherein the extent owned by 1st defendant, was

shown as Ac.3.75 cents. The other revenue records were also filed by defendants to substantiate their contention that the 1st defendant got the property of Ac.3.75 cents and he sold Ac.2.25 cents to 3rd defendant.

12.Suit was filed on 22.07.1988. By the time, the suit was filed basing on Exs.A-1 and A-3, Ex B-2 registered sale deed is in existence. By filing written statement and pleading registered sale deeds, defendants denied the title of plaintiffs as also title of vendor of the plaintiff. In view of the said denial, since the denial is not for the sake of denial, cloud over the property, the plaintiffs ought to have filed suit for declaration instead of injunction simplicitor. Though question of title would be incidentally go into in a suit filed for injunction, when the adversary parties are claiming the schedule property under registered documents the plaintiffs ought to have filed suit for declaration. Complicated question of title will not be determined in a suit for perpetual injunction. Court would only concerned possession of the plaintiffs on the date of filing of the suit.

13.It is interested to note that a suggestion was put to D.W.3, 26th defendant in the suit, that he trespassed into their site under the guise of Ex.B-60 sale deed dated 31.05.1993. If plaintiffs' have been in possession of the property prior to filing of the suit, the plaintiffs would have been sought for amendment in view of the subsequent developments pending the suit (alleged trespass). This instance makes the things more than discernable that the plaintiffs failed to prove their possession over the schedule property either as on the date of filing of the suit.

14.Plaintiffs relied upon Ex.A-5 true copy of Village Account, wherein Figure Fasli 1400 was struck off by correcting fasli 1395 to 1408 without any signature by the attesting authority or the staff of revenue department. It shows that faslis on Adangals were interpolated and it raises doubt about its genuineness. Plaintiffs also did not examine any person from the revenue department to establish genuineness of Ex.A-5. Exs.A-7 to A-11 are post *litis* documents and hence, no importance be attached to those documents. Ex.A-17 also contains corrections in respect of signature of attestation authority. It is also settled law that entries in revenue records do not confer title. A perusal of the documents filed by the plaintiffs prima facie do not establish possession over the schedule property on the day of filing of the suit, sine qua non, in a suit filed for perpetual injunction.

15.The Hon'ble Apex Court in **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Ors.** AIR 2008 SC 2033 held thus:

"(a) Where a cloud is raised over plaintiff's title and he doesnot have possession,a suit for declaration and possession, with or without a

consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his

property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

16.In view of the law declared by the Hon'ble Apex Court, the suit filed and continued by appellants/plaintiffs for perpetual injunction notwithstanding the denial of title by respondents may not proper. The dismissal of the suit by the Trial Court and confirmation of the judgment and decree by Appellate Court do not call for any interference by this Hon'ble Court under Sec 100 CPC.

17. After dismissal of the suit by the trial Court, the plaintiffs filed appeal, wherein they filed I.A.No.264 of 2014 under Order 41 Rule 27 of CPC to receive the copy of FMB; I.A.No.265 of 2014 was filed to receive Photostat copies of pattadar pass books issued in favour of appellant Nos.1, 4 and 3, original notice issued by the Mandal Revenue Officer, Palasa and office copy of letter addressed to Mandal Revenue Officer, Palasa; I.A.No.126 of 2015 was filed under Rule 128 of Civil Rules of Practice to send Exs.B-42 to B-47 in O.S.No.14 of 2014 on the file of VI Additional District Judge, Sompeta; I.A.No.263 of 2014 was filed under Rule 129 of Civil Rules of Practice to send for certain documents. In support of the said interlocutory applications, the appellants relied on the order passed in C.R.P.No.4177 of 2001. A perusal of the order passed in C.R.P.No.4177 of 2001 manifest that it was filed questioning the order of amendment of plaint schedule, but it has nothing to do with the documents. The first appellate Court considered the scope of Order XLI Rule 27 CPC all the aspects and dismissed the appeal *vide* judgment dated 07.11.2019.

18.The Court below considered both oral and documentary evidence came to conclusion that the suit for injunction simplicitor in the facts of the case is not maintainable without seeking for declaration of title. Apart from the same, in fact, trial court also recorded finding about possession. The findings recorded by the Courts below are based on evidence available on record. This Court do not find question of law much less substantial questions of law involved in the present second appeal under Sec 100 CPC. Hence the appeal fails and is liable to dismissed, however, without costs.

19.Accordingly, the second appeal is dismissed. No order as to costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

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**2022(1) L.S. 209 (A.P.)**

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ninala Jayasurya

P. Swarna Kumari ..Petitioner
Vs.
Mr.Raavi Venkateswara Rao ..Respondent

**A.P. COURT FEES AND SUITS VALUATION ACT, Sec.34(2) - Petitioner presented a plaint under Section 26 and Order VII, Rules 1 to 7 of the Code of Civil Procedure before the Trial Court seeking partition of the plaint schedule property - Plaint was returned by docket order.**

**HELD: Plaint averments alone to be considered to fix court fee - Civil Revision Petition stands allowed - Trial Court is directed to accept the Court Fee in respect of the suit in question under Section 34(2) of the Act and proceed with the matter, in accordance with Law.**

Mr. Saigangadhar Chamarty, Advocate for the Petitioner.

**O R D E R**

Heard learned counsel for the petitioner. Since the plaint was returned at the stage of scrutiny, this Court is inclined to dispose of the matter, even without issuing notice to the respondents.

2. The petitioner presented a plaint under Section 26 and Order VII, Rules 1 to 7 of the Code of Civil Procedure before the Court of XI Additional District Judge, Gudivada, vide G.L.606/2021 on 25.3.2021 seeking partition of the plaint schedule property. The said plaint was returned by docket order dated 30.8.2021, which reads as follows:

> "Heard the counsel for the plaintiff through BJVC. Perused the record and the submissions made to the objections of the Office. As the plaintiff is requesting the claim on Codicil dated 04.10.2015, the plaintiff is directed to value the claim on the market value of the property to the extent of the share claimed under Section 34(1) of A.P. C.F. and S.V.Act.Hence, returned."

Aggrieved by the same, the petitioner/ plaintiff filed the present Civil Revision Petition.

3.Learned counsel for the petitioner *inter alia* submits that the docket order dated 30.8.2021 returning the plaint is legally unsustainable. He submits that the Trial Court failed to consider Section 34 of the A.P. Court Fee & Suits Valuation Act (for short, the Act), in a proper perspective and erroneously directed the petitioner to value the claim on the market value of the property. He further submits that while considering the value of the suit, only the averments in the plaint are required to be taken into consideration. However, the

learned Trial Court has gone further into the matter beyond the plaint averments and the same is not permissible in law. Learned counsel, in support of his contentions, places reliance on **N.Savithri vs. N.Hanmappa**2017 (1) ALT 287, and **B.Anusha vs. B.Laxmikanth Reddy 2**004 (3) ALD 274.

4.In **N.Savithri,** the plaintiffs therein sought for partition and separate possession of the plaint schedule properties. The Trial Court taking into consideration the sale deeds said to have been executed by the defendants therein, returned the plaint for payment of Court Fee on the basis of the valuation of the properties, as per the sale deeds. Learned Judge while referring to Section 34 of the Act, *inter alia* opined that the Trial Court could not have gone by the contents of the documents to the exclusion of the plaint averments and allowed the Revision Petition with a direction to the Trial Court to accept the Court Fee under Section 34(2) of the Act. Learned Judge also opined that in the event the issue of valuation of the suit and payment of proper Court Fee thereon arises at the subsequent stage, the Trial Court would always be at liberty to take recourse to use of such power.

5.Further, in **B.Anusha** (cited supra), which is also a matter pertaining to partition of properties and return of the plaint for payment of adequate Court Fee, a Learned Judge while reiterating the legal position opined that for determining Court Fee, the averments made in the plaint have to be taken into consideration. The Learned Judge while allowing the Revision Petition held that the said order would not preclude the Trial Court from framing an issue, if an objection is raised by the defendants with respect to payment of Court Fee or the Trial Court is always at liberty to issue cheque slip at any stage, under Section 11 thereof.

6.Having considered the submissions made by learned counsel for the petitioner and in the light of the expression of the Learned Judges in the above referred Judgments, this Court finds merit in the submissions made by learned counsel for the petitioner. The above referred Judgments, in the considered view of this Court, are applicable to the case on hand.

7.Accordingly, the Civil Revision Petition is allowed.

Learned Trial Court is directed to accept the Court Fee in respect of the suit in question under Section 34(2) of the Act and proceed with the matter, in accordance with Law. No costs. As a sequel, all the pending miscellaneous applications, if any, shall stand closed.

–X–

**2022(1) L.S. 211 (A.P.)**

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Ms.Justice
B.S. Bhanumathi

Panchakarla Nagamani ..Petitioner
Vs.
Chode Kanaka Mahalakshmi ..Respondent

**CIVIL PROCEDURE CODE, Or.VII, Rl.11 - Civil Revision Petition against the Orders of the Rent Controller Court, dismissing the application in I.A. filed by the defendants 1 to 4, requesting to reject the plaint.**

**HELD: A suit cannot be maintained for enforcing a direction in a Writ Petition - When the plaintiffs already secured directions in the Order in the Writ, a further proceeding in the form of a Suit does not lie by clever drafting of the relief by extending the directions already obtained in the Writ Petition - The relief claimed in the present suit is a camouflage to bring the matter within contours of Suit before a civil Court - Impugned Order stands set aside and Civil Revision Petition stands allowed.**

Mr.Devalraju Anil Kumar, Advocate for the Petitioner.
Mr.D.Ramakrishna, Advocate for the Respondent.

C.R.P. No.6921/2018 Date: 21-2-2022

**O R D E R**

This Civil Revision Petition is directed against the orders dated 23.07.2018 of the learned Rent Controller-cum-IV Additional Junior Civil Judge, Vijayawada, dismissing the application in I.A.No.358 of 2017 in O.S.No.116 of 2017 filed by the defendants 1 to 4 under Order VII Rule 11 of the Code of Civil Procedure ('the Code', for short) requesting to reject the plaint .

**2.**Heard Sri D.Anil Kumar, learned counsel for the revision petitioners. There is no representation for the contesting respondents

1 and 2. Learned counsel for the revision petitioners submit that respondents 3 and 4 are not necessary parties to this revision as they have not filed any counter before the trial Court. Respondent No.5 is stated to be not a necessary party.

**3.**The case of the defendants in support of the request made in the application for rejection of the plaint, in brief, is as follows:-

The plaintiffs filed the suit seeking the relief of mandatory injunction directing the defendants 5 & 6 to take appropriate action by demolishing the 3rd & 4th floors after conducting enquiry as per the directions dated 04.02.2016, of this High Court in W.P.No.3280 of 2016 against the plaint schedule property and for consequential relief of permanent injunction restraining defendants 1 to 4 from ever interfering with the plaintiffs joint rights in the stair case, terrace of the building and common amenities. The defendants 1 and

2 are the

GPA Holders. The 3rd defendant and 4th defendant constructed plaint schedule property, i.e., G+4 as builders, by name, "Sri Sai Sowdha" group house and the plaintiffs purchased a flat each in the 1st and 2nd floor in that group house. After purchase of the flats, the plaintiffs, in collusion with defendants 1, 2 and 4, with a view to secure wrongful gain, harassed the 3rd defendant by filing cases before District Consumer Forum-II, Vijayawada and also suit in O.S.Nos.410 of 2016 and 1153 of 2014 on the file of VI Additional Senior Civil Judge, Vijayawada. Later, the suit came to be dismissed on the basis of the memo filed by the plaintiffs. A writ petition in W.P.No.3280 of 2016 was filed before the High Court. The plaintiffs filed the instant suit with false and untenable grounds. The plaintiffs raised common reliefs in all the suits. Further, they have not taken any permission to file a fresh suit while not pressing the earlier suits filed by them.

According to the defendants, the plaint is liable for rejection on the following grounds:

(i) The pleadings in the plaint as well as cause of action are contrary to the orders made in W.P.No.3280 of 2016; (ii) The plaintiffs suppressed real/nature of the orders in W.P.No.3280 of 2016; (iii) The plaintiffs suppressed the contents of the order in W.P.No.3280 of 2016; (iv) The suit is premature; (v) The plaintiffs suppressed the cases filed by them against the defendants 1, 2 and 4 and the 3rd defendant; (vi) The reliefs sought for by the plaintiffs are hit by the principle of *res judicata*; and (vii) The plaintiffs did not pay proper court fee.

**4.**On the other hand, the case of the plaintiffs, in their counter, in brief, is that the petition is not maintainable either on facts or under law. Though a group house was constructed by the defendants, and all the inmates are entitled for the amenities therein, the defendants are causing obstructions in using the amenities in spite of the orders of the Court. As a counter blast to the contempt case filed by the plaintiffs, the defendants filed the instant petition to reject the plaint. The plaintiffs filed the present suit only after not pressing the earlier suits filed by them by reserving their right to file fresh suit. As the defendants failed to comply with the order of the High Court in W.P.No.3280 of 2016, the present suit has been filed and the application to reject the plaint is liable to be dismissed.

**5.**At the time of hearing of the interlocutory application before the trial Court, no oral and documentary evidence was adduced. The trial Court, having regard to the averments in the plaint, dismissed the application of the defendants. Having preferred the present revision, the defendants reiterated the contentions which are referred to supra and which are urged in the affidavit filed in support of the application. Further, it is argued that a suit does not lie for enforcement of directions given in a writ petition. The plaintiffs reiterated their stand as urged in the plaint and in the counter affidavit filed in the interlocutory application.

**6.**To examine the question as to whether the plaint is liable to be rejected

or not, it is necessary to examine the plaint averments independently, because, while considering an application under Order VII Rule 11 of the Code, the Court has to examine the averments in the plaint and the pleas taken in defence now by the defendants would be irrelevant.

**7.** For the purpose of better appreciation, relevant portion of Order VII Rule 11 of the Code is excerpted herein below:

"**11. Rejection of plaint**.— The plaint shall be rejected in the following cases:— (a) where it does not disclose a cause of action;

(b) …. …. …. ….

(c) …. …. …. ….

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) …. …. …. ….

(f) "

A perusal of the aforesaid provision would make it clear that a plaint is liable for rejection, if the suit is barred by any law or where it does not disclose a cause of action.

**8.**In **United Insurance Co. v. C. R. Ramanatham,** 1989 (1) ALT 190 this Court in paragraph 10 observed as under:

> "Under Order VII Rule 11 (d) a plaint must be rejected only if the averments therein explicitly disclose that the suit was barred by the provisions of any law, but not otherwise. The Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit is found. Neither the express language of clause (d) of Rule 11 nor its intendment clothes the Court with such a power. The words "where the suit appears to be barred by any law" are qualified by "the statement in the plaint". What is explicitly mentioned in the plaint, therefore, must alone be the basis for the exercise of power under Order VII Rule 11 (d), but not the conclusions that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. Where there was no such explicit statement in the plaint the question whether there was any legal barricade to the suit must be tried as an issue at the appropriate stage and that by this procedure alone the interests of both the parties to the suit could be safeguarded."

In a decision in **Bhau Ram vs. Janak Singh and others** AIR 2012 SC 3023, it is held as under:

"The law has been settled by this Court in various decisions that while considering an application under Order VII Rule

11 Code of Civil Procedure, the Court has to examine the averments in the plaint and the pleas taken by the Defendants in its written statements would be irrelevant.

[vide C. Natrajan v. Ashim Bai and Anr. (2007) 14 SCC 183, Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors. (2007) 10 SCC 59, Hardesh Ores (P) Ltd. v. Hede and Co. (2007) 5 SCC 614, Mayar (H.K.) Ltd. and Ors. v. Owners & Parties, Vessel M.V. Fortune Express and Ors. (2006) 3 SCC 100, Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137, Saleem Bhai and Ors. v. State of Maharashtra and Ors. (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, JT 2012 (6) SC 149."

**9.** Thus, it is settled law that petition under Order VII Rule 11 of the Code can be decided based only on the averments in the plaint and not by considering the defence taken or proposed to be taken in the written statement. Most of the contentions raised by the revision petitioners are based on the defences. However, one main point to be considered is maintainability of the suit for enforcing the directions given in a writ petition.

**10.** A suit cannot be maintained for enforcing direction in a writ petition. A suit can be filed to obtain direction(s) in the form of decree. When the plaintiffs already secured directions in the order in the writ, a further proceeding in the form of a suit does not lie by clever drafting of the relief by extending the directions already obtained in the writ petition. The relief claimed in the present suit is a camouflage to bring the matter within contours of suit before a civil Court. The trial Court examined the petition in the light of the contentions of the petitioners in the nature of defence in the suit, but it has not examined the maintainability of the suit from the pleadings in the plaint itself. Thus, for the aforesaid reasons, the impugned order is liable to be set aside. Consequently, I.A.No.358 of 2017 is allowed.

**11.** Accordingly, this civil revision petition is allowed setting aside the order, dated 23.07.2018 in I.A.No.358 of 2017 in O.S.No.116 of 2017 and allowing the said application.There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

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## 2022 (1) L.S. 131 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mrs.Justice
Lalitha Kanneganti

Kampat Phani Kumar & Ors., ..Petitioners

Vs.

Union of India ..Respondent

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, Section 8(C) read with Sections 22(C), 27A, 28 and 29 of the - Criminal Petitions filed by the Petitioners/Accused Nos. 5, 2, 3, 4 and 1 seeking bail - Case of the prosecution is that Accused No.1 with around 3 kgs. of Alprazolam was coming in a car along with other person to sell the contraband to Accused No.2 for approximately Rs.12 lakhs.**

**HELD: When stringent conditions are imposed for grant of bail under Section 37, all other sections under the NDPS Act also have to be implemented strictly - Petitioners failed to demonstrate before this Court what is the prejudice caused to the accused - NCB officials could connect the accused to the alleged crime and the accused could not satisfy the conditions under Section 37 of the NDPS Act, as such not entitled for bail - Criminal Petitions stand dismissed.**

Crl.P.Nos.8264/2022 etc., Date: 22-2-2022

Mr.V. Narasimha Charyulu, Posani Venkateswarlu, T.P. Acharya, R. Chandra Sekhar Reddy, P. Nageswara Rao, Advocate for the Petitioners.

Mr.B. Narsimha Sharma, Advocate for the Respondent.

**J U D G M E N T**

1. All these Criminal Petitions under Sections 437 and 439 Cr.P.C. are filed by the petitioners – Accused Nos. 5, 2, 3, 4 and 1 respectively in NCB F.No. 48/1/10/ 2021/NCB/SUBZONE/ H;YD on the file of Intelligence Officer, NCB, Hyderabad Sub-Zone registered for the offence punishable under Section 8(C) read with Section 22(C), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, seeking bail.

2. The case of the prosecution in brief is that on 14.08.2021, at about 13.30 hours, on receipt of reliable information that Yachamaneni Sudhakar (Accused No.1) aged about 45 years, whitish-complexioned person of Patwari Enclave, Opposite IDL Colony, Hyderabad with around 3 kgs. of Alprazolam was coming in a car bearing Registration No. AP 09 CU 7710 along with other person to sell the contraband to one Allanki Naresh (Accused No.2) for approximately Rs. 12 lakhs who will also come in a car bearing Registration No. TS 11 EC 7292 along with one other person and the exchange of contraband and money will take place near Ujwala Grand on Medak – Hyderabad Road, Gandi Maisamma, Domara Pochampally Dindigul, Medchal-

Malkajgiri, at around 16.00 hours, a team of NCB, Hyderabad proceeded to the above mentioned location, secured two independent witnesses and intercepted the persons came in the above said vehicles while exchanging the bags having cash and contraband and seized 3.2 kgs. of Alprazolam, Rs.12.75 lacs cash in the presence of independent witnesses under panchanama dated 14.08.2021. Accused Nos. 1, 2, 3 and 4 were summoned to give their voluntary statements. During the course of investigation, search operations were conducted at the residence of Accused No.1 and M/s Shree Karthikeya Life Sciences, Balanagar and recovered 50 gms. of Alprazolam and raw material used in manufacture of Alprazolam.

Accused No.5 in his voluntary statement dated 15.08.2021 admitted that in January 2021, Accused No.1 approached him and asked to join his company M/s Shree Karthikeya Life Science to help him and till date, he paid Rs.1,10,000/- in cash. Later, he came to know that Accused No.4 is the partner of Accused No.1. Thereafter, Accused No.5 took single bed room pent house on rent basis in the same building where M/s Shree Karthikeya Life Science exists and every month they used to manufacture 5 kgs. of Alprazolam and used to deliver different persons located in Gummadidala and Dindigal and Accused No.1 requested to provide and drive Honda Amze car having Registration No. AP 09 CU 7710 for delivery of Alprazolam.

The accused confessed that they do not have any permission or license for manufacturing, storing, transporting, sale and possession of such chemical. It is submitted that Accused No.5 not only assisted Accused No.1 in transporting but also assisted in manufacturing Alprazolam. The voluntary statements of Accused Nos. 2 and 3 also corroborated the fact that sometimes, Accused No.1 used to come in Honda Amaze car having Registration No. AP 09 CU 7710 and sometimes, he used to come by auto rickshaw for supply of Alprazolam. Accused No.4 who worked in pharma companies assisted Accused No.1 in manufacturing the contraband.

It is stated that the seized contraband was produced before the Hon'ble XXI Metropolitan Magistrate, Cyberabad at Medchal on 19.08.2021 and samples were drawn in her presence and they were sent to CFSL, Hyderabad for chemical analysis. The CFSL report dated 22.11.2021 confirmed the presence of Alprazolam and Nordazepam (both are banned substances) in the seized contraband.

3. **Crl.P.No. 297 of 2022 (Accused No.1):**

Sri P. Kasi Nageswara Rao, learned counsel appearing for Accused No.1 submits that it is alleged that approximately 3.25 kgs. of Alprazolam was seized. He submits that Alprazolam is not a contraband and the same is a medicine enlisted in Schedule H1 of Drugs and Cosmetics Act. He submits that the respondent officials have seized the white powder but the same was not sent for analysis and without getting the same analyzed, it cannot be concluded

that the petitioners were carrying Alprazolam and they ought not have been arrayed as accused. It is submitted that the NCB officials have not followed the procedure under Sections 50 and 42 of the NDPS Act. It is stated that seizure was affected at 17.30 hours on 14.08.2021 and as per panchanama, panchas were called at 17.30 hours and calling the panchas and conducting seizure at the same time would clearly establish that the petitioner and others have been implicated in this case. Learned counsel submits that the petitioner was arrested on 16.08.2021 and since then he has been languishing in jail. He submits that M/s Shree Karthikeya Life Science has a licence and as per the terms and conditions of the licence, the licensee is permitted to store and stock allopathic drugs including Alprazolam purchased under valid purchase invoice. He submits that being a licensee, Accused No.1 can stock Alprazolam and he cannot be alleged to have committed the offence under the NDPS Act. Hence, it is submitted that the case of the petitioner may be considered for grant of bail.

Crl.Petition No. 8277 of 2021 (Accused Nos. 2 and 3):

Sri Posani Venkateswarlu, learned counsel appearing on behalf of Sri T. P. Acharya, learned counsel for the petitioners – Accused Nos. 2 and 3 submits that the NCB officials failed to follow the procedure while seizing the contraband and the procedure adopted by them is unknown to law and contrary to the precedents. He submits that even as per the complaint, they have mixed the powder in all the packets and then placed the same before the Magistrate and samples were drawn. He submits that in the remand report, it is stated that contraband seized was Alprazolam but the FSL report shows that along with Alprazolam, Nordazepam is also present. He submits that the Hon'ble Apex Court in **Union of India v. Mohanlal** (2016) 3 SCC 379) has categorically held that samples have to be drawn before the Magistrate and the procedure adopted by the police has caused prejudice to the accused and on that ground also they are entitled for bail. He also submits that in between 04.00 and 06.00 P.M., the NCB officials intercepted four persons and seized substance and thereafter, conducted panchanama within two hours. According to the learned counsel, within two hours, it is humanly impossible to complete panchanama wherein 2500 words were written and it draws a presumption that the accused have been intercepted somewhere and brought to the place stated in the remand report. He submits that these things would draw a conclusion that the petitioners might not have been involved in this case and as such, the rigor of Section 37 of the NDPS Act is not applicable. He further submits that in catena of cases, the Supreme Court has observed that basing on illegal search, there shall not be any conviction because search and seizure is preliminary evidence, illegal search cannot be treated as preliminary evidence.

He submits that these petitioners

are implicated basing on the confession of co-accused and as per the judgment of the Hon'ble Apex Court in **Tofan Singh v. State of Tamilnadu** (2021) 4 Supreme Court Cases 1), confession of co-accused cannot be the basis for convicting the accused and that such confession cannot be taken into consideration. He submits that it is the case of the prosecution that as per the call data, there is communication among the accused. He submits that call data is not admissible in evidence unless and until such call data is recorded; it may not be used either as preliminary evidence or secondary evidence or substantive evidence. It is submitted that in the entire charge-sheet, there is no whisper about recording of their voice. It is also submitted that just because they are moving together, a conclusion cannot be drawn that petitioners have committed the offence and all of them have colluded together. Learned counsel submits that the manner in which the search was conducted, how the panchanama was drafted and basing on call data, the petitioners were alleged to have committed the offence, would prima facie create any amount of doubt on the case of the prosecution, as such, once they have come out of the rigor of Section 37 of the Act, then the procedure contemplated under Section 439 Cr.P.C. has to be followed.

According to the learned counsel, the petitioners have no criminal antecedents and they are ready to cooperate with the investigation. He submits that there is no possibility of tampering with the evidence and influencing the witnesses because all the witnesses are official witnesses and panch witnesses and entire investigation is completed and charge sheet is also filed. He further submits that as the petitioners are languishing in jail from the last 155 days, and as they are the bread winners of the family, their case may be considered for grant of bail.

Crl.Petition No. 10184 of 2021 (Accused No.4):

Sri R. Chandra Sekhar Reddy, learned counsel appearing for Accused No.4 submits that the petitioner – Accused No.4 has been implicated in this case and he was never in possession of Alprazolam of 50 grams, laboratory equipment and raw material products. He submits that in fact, the NCB officials, in order to harass the petitioner, falsely implicated him in the present case. It is submitted that NCB officials have failed to follow the procedure under Section 42 of the NDPS Act and the Investigating Agency extracted the statement of the petitioner – Accused No.4 on the basis of which he is implicated by threat and coercion. It is submitted that the petitioner was arrested on 16.08.2021 and since then, he has been languishing in jail. He further submits that the quantity alleged to have been seized from the petitioner is not a commercial quantity but intermediary quantity, hence, his case may be considered for grant of bail. It is also argued that the NCB officials have not followed the procedure and for statistical purpose, the present case has been foisted. He relied on the judgment of the Apex Court in **Mohanlal' case** (cited supra).

Crl.Petition No.8264 of 2021 (Accused No.5):

Sri V. Narasimha Charyulu, learned counsel for Accused No.5 submits that Accused No.5 has nothing to do with the alleged offence. In fact, he is eking out his livelihood by running taxi and he has been implicated in this case only on the ground that Accused Nos. 1 and 2 sat in his car. He submits that Accused No.1 confessed that he is the owner of chemical but was not in possession of the same. He submits that if at all there are allegations, they are against Accused Nos. 1 and 4 but not against this accused. He submits that it is nowhere stated that this petitioner has knowledge about the transportation of narcotic substance nor he was financially benefited out of it. He also reiterated the contentions advanced by the other counsel that the NCB officials failed to follow the procedure contemplated under Sections 42 and 50 of the NDPS Act. He also submits that the hasty manner in which the panchanama was conducted would show that all the petitioners have been implicated in this case. He submits that the petitioner was arrested and remanded to judicial custody on 16.08.2021 and since then, he has been languishing in jail.

4. On the other hand, learned Standing Counsel for NCB Sri B. Narsimha Sharma filed counter-affidavit as well as additional affidavit along with all relevant material and complaint. He submits that on credible information that Accused No.1 is going to sell 3 kgs. of Alprazolam along with other persons to one Avinash for Rs. 12 lacs and exchange of contraband will take place at Ujwal Grand on Medchal-Hyderabad Road, the NCB officials reached the place and by following the procedure contemplated under the NDPS Act for conduct of search and seizure, arrested the petitioners. He submits that he does not dispute the fact that NCB officials mixed contraband and took it to the Magistrate and later, before the Magistrate, as contemplated under the Act and as per the judgment of the Hon'ble Apex Court in **Mohanlal's case,** have taken out the samples. He submits that as per the FSL report, the said contraband is containing two substances; one is Alprazolam and other is Nordazepam and both are psychotropic substances as per the Schedule.

It is submitted that even if the NCB officials have mixed the powder from all the packets, the accused failed to submit before this Court what is the prejudice caused to them. It is submitted that in this case, both the quantities that are seized are commercial quantities and both are psychotropic substances and in the entire Petition or during the course of arguments, except stating that prejudice is caused to them, they have failed to submit before this Court what is the prejudice caused to them. He submits that a huge quantity of contraband is seized and based on these grounds, the petitioners are not entitled for bail. He submits that Accused Nos.1 to 5 were intercepted by the team of NCB officials in the presence of two independent witnesses while they were trying to

exchange Alprazolam of 3.2 kgs. for the cash of Rs.12.75 lacs. He submits that Accused Nos. 1 to 5 confessed that they do not have any permission or licence for manufacturing, storing, transporting, sale and possession of such chemical.

It is submitted Accused No.5 not only assisted Accused No.1 in transportation of Alprazolam, but also assisted in manufacturing. He submits that one dryer also seized from the pent house of Accused No.5 whose keys are available with Accused No.1. He submits that the statements of Accused Nos. 2 and 3 also corroborated the said facts. The learned Standing Counsel for NCB submits that Accused No.4 is having knowledge of working in pharma companies and in his statement, he mentioned that he worked in Dr. Reddy's Laboratories from 1993 to 2016 and later joined MSN Laboratories as Executive which establishes that he can assist Accused No.1 in manufacturing contraband. He submits that Accused Nos. 1, 2, 3 and 5 have the knowledge of carrying the substance which is a scheduled substance under the NDPS Act at Sl.No. 178. He submits that Section 50 of the Act applies only for personal search of the accused and not when it is made in respect of some baggage, article, vehicle which the accused at the relevant point of time was carrying. With regard to the submission that within two hours, the panchanama was completed, the learned Standing Counsel submits that there are two sets of panchas and officers involved in this case; one at Ujwala Grand on 14.08.2021 and other on 14/15.08.2021 at 17.30 hours at M/s Shree Karthikeya Life Sciences which is as under:

| S.NO | Panchanama date and location | Panchas approached at | Starting time of panchanama | Seizure effect at |
|---|---|---|---|---|
| 1. | 14.08.2021 at Ujwala Grand | 1545hrs | 1600hrs | 1730hrs |
| 2. | 14/15.08.2021 at M/s.Shree Karthikeya Life Sciences | 1730hrs | 1845hrs | Whole night |

Hence, the learned Standing Counsel submits that the contention of the learned counsel for the petitioners that it is a stage-managed show and the petitioners are implicated in the crime, has no legs to stand. He submits that as per Section 37 of the NDPS Act, if bail has to be granted to the petitioners, the Court has to record reasons that the petitioners are not guilty of such offence and that they are not likely to commit any offence. He submits that as per the information furnished by the Nodal

officer, Reliance JIO, Hyderabad, the call data of Accused No.5 from 01.03.2021 to 14.08.2021 shows that he was regularly contacting mobile numbers of Accused Nos. 1 and 4 which establishes the conspiracy between the three accused. He submits that not only the call data but as per the tower location, it is found that both Accused Nos. 4 and 5 were found either at their residence or at M/s Shree Karthikeya Life Science most of the times and Accused Nos. 4 and 5 were frequently visiting the tower location of M/s Shree Karthikeya Life Science during the check period. It is also submitted that as per the data of tower location, Accused No.1 is static at a single place for 80% of the times i.e. tower location of his residence cum M/s Shree Karthikeya Life Science and he is not moving to any other location on daily basis at a fixed time.

It is submitted that Accused No.3 is the one who is providing raw-material to Accused No.1. The tower location of Accused No.4 most of the times is found at residence or M/s Shree Karthikeya Life Science. He submits that Accused No.6 is absconding and Accused Nos. 2 and 3 are habitual Alprazolam traffickers who sell Alprazolam to toddy shops for earning easy money. It is submitted that the NCB officials have analyzed more than 26,000 tower locations of the accused and marked them in respective CDRs., wherein it is established that Accused No.1 most of the times is static at tower location and Accused Nos. 2 and 3 are most of the times static at their residence and Accused Nos. 4 and 5 are moving between their residence and M/s Shree Karthikeya Life Science. They found to be in shorter spells in other locations. Further, during the course of investigation, it is established that Accused No.6 is found to be working at M/s Mahasai Laboratories in addition to supervising the illegal work of his brothers - Accused Nos. 2 and 3 and from 14.08.2021, he did not turn up to his work.

Learned Standing Counsel submits that to connect Accused No.1 to the crime that he is in possession and attempted in trafficking the said seized Alprazolam of 3.25 kgs., it is stated that he has been identified by owner and watchman of the residence and both of them confirmed his relation with M/s Shree Karthekeya Life Sciences and with Accused Nos. 4 and 5; he has been identified by Proprietor of M/s Sri Nidhi Pharma and Assistant Manager (warehouse), M/s Sri Yadadri Life Science where M/s Shree Karthikeya Life Science took legitimate business earlier and both of them confirmed that he is related to M/s Shree Karthikeya Life Science and L.W.12 who provided SIM card to him and confirmed that Accused No.1 is running a pharma company in the said premises and Accused No.5 is also related with him. Further, Accused No.1 is found to be calling Accused Nos. 4 and 5 frequently on his mobile number and Accused Nos. 2, 4 and 5 from his other mobile. He submits that as far as Accused No.2 is concerned, he is identified along with Accused Nos. 3 and 6; Accused No.3 is identified by L.W.8 who is proprietor of M/s Narmada Chemicals who sold raw material used for manufacturing

of Alprazolam.

He further submits that Accused No.3 is also found to be buying raw material in the name of Yashwanth Reddy and he is also identified by the proprietor of M/s Sri Sruthi Life Science where he worked till March 2020 which establishes that Accused No.3 had knowledge in procuring raw material. He has been identified along with Accused No.2 and 6 by L.W.13 who is the previous owner of Maruti Swift car bearing Registration No. TS 11 EC 7292 used for trafficking of Alprazolam. As far as Accused No.4 is concerned, learned Standing Counsel submits that analysis shows that he is in regular contact with Accused No.1 most of the time at Shree Karthikeya Life Sciences and as far as Accused No.5 is concerned, car which stands in his name was used for trafficking and he was identified by L.Ws.9 and 10 and majority of the time, he is found to be at Shree Karthikeya Life Sciences.

The learned Standing Counsel summing up his arguments, submits that huge commercial quantity of Alprazolam and Nordazepam was seized and once it is a commercial quantity, the twin conditions of Section 37 of the Act have to be satisfied and the NCB by filing the relevant documents and the scientific data could establish prima facie that the petitioners are actively involved in the offence. When once it is established prima facie by the NCB the involvement of the petitioners, unless and until a finding is given that there are reasonable grounds to believe that they are not guilty of the offence, this Court may not be able to grant bail to the petitioners. He submits that in this type of offences, where huge contraband is involved and when the petitioners fail to satisfy the twin conditions under Section 37 of the NDPS Act, they are not entitled for bail. Further, he submits that there is every likelihood that they may abscond and it would be difficult for the prosecution to conclude the trail. Hence, he opposed the bail.

5. Having heard the learned counsel on either side, perused the material available on record.

6. The contentions of the learned counsel on behalf of the accused appear to be four-fold: 1) the NCB officials have mixed contraband which is contrary to the judgment of the Apex Court in **Mohanlal's case** (cited supra) and it caused prejudice to the accused; 2) the panchanama was conducted within two hours and 2,500 words are written therein which is humanly impossible; 3) basing on the call data, they cannot be arrayed as accused as it can never be taken as preliminary evidence or secondary evidence or substantive evidence; and 4) as there is no prima facie case made out, they do not have to satisfy the twin conditions of Section 37 of the Act and the case has to be considered within the parameters of Section 439 Cr.P.C.

7. In this case, 3.25 kgs. of contraband is seized and as per the FSL report, it contains Alprazolam and Nordazepam. Admittedly, in this case, samples were drawn before the Magistrate but the grievance of the petitioners is that

the NCB officials have seized the bags and mixed the substance therein and taken them to the Magistrate. In the arguments, none of the counsel could point out what is the prejudice caused to the accused. Investigation reveals that admittedly at M/s Shree Kartikeya Life Science along with Alprazolam, Nardazepam was also found which strengthens the case of prosecution. Though two products are found as per the FSL report both of them are commercial quantities and both are notified substances as per the NDPS Act.

8. The Hon'ble Apex Court in **Mohanlal's** case held as under:

> "15. It is manifest from Section 52-A(2) (c) (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the, inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as of true, and (c) to draw representative samples in the presence of magistrate and the certifying the correctness of the list of samples so drawn.
>
> 16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.
>
> 17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above. scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.

Admittedly, in this case, the samples are drawn before the Magistrate. In

the light of the above facts, this Court is not able to appreciate the contention of the learned counsel for the petitioner on the aspect of mixing of samples.

9. The second contention is with regard to the call data. It is argued that it cannot be considered as primary evidence or secondary evidence or substantive evidence. In this, NCB is not solely relying on call data, but they have also placed on record the tower location apart from that they could establish the nexus between all the accused by examining some of the witnesses, which corroborates with the call data and the tower location. Hence, this ground also has no legs to stand.

10. Relying on the judgment of the Apex Court in **Tofan Singh's case**, it is submitted that the confession of co-accused cannot be a basis and the same is inadmissible. The case of the NCB is not based solely on the confession of the accused or on the call data. Apart from that they have other evidence on record to prima facie connect the accused to the alleged crime. Hence the judgment of the Apex Court in **Tofan Singh' case** has no application to the facts of the case.

11. Now dealing with the contention of the learned counsel for NCB with regard to the twin conditions under Section 37 of the NDPS Act, it is appropriate to have a look at the judgment in **State of Kerala Vs. Rajesh** (2007) 7 SCC 798) (Criminal Appeal Nos. 154-157 of 2020 dated 24.01.2020), wherein the Hon'ble Apex Court considered the application moved by the State of Kerala against grant of regular hail to the accused without noticing the mandate of Section 37 (1)(b)(ii) of NDPS Act. The Apex Court held thus:

18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed

20. The scheme of Section 37 reveals that the exercise power to grant bail is not only subject to the limitations contained under Section 439 of the CriC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application: and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates

21. The expression freasonable grounds means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence."

Accordingly, the Apex Court set aside the order passed by the High Court releasing the accused on bail.

12. In light of the law laid down by the Apex Court in the above judgment, the Court while considering the application for bail with reference to Section 37 of NDPS Act is not called upon to record a finding of 'not guilty'. It is for the limited purpose and is confined to the question of releasing the accused on bail and the Court is called upon to see if there are reasonable grounds for believing that the accused is guilty and record its satisfaction about existence of such ground. But the Court shall not consider the matter as if it is pronouncing the judgment of acquittal and recording finding of 'not guilty'. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence basing on the antecedents of the accused.

13. This Court is very much conscious of the fact that when stringent conditions are imposed for grant of bail under Section 37, all other sections under the NDPS Act also have to be implemented strictly. Now certain discrepancies or procedural lapses were pointed out by the petitioners, which, according to this Court, are not of substantial character and they further failed to demonstrate before this Court what is the prejudice caused to the accused. Looking at the menace of this psychotropic substances and the effect it has on the society, stringent condition under Section 37 of the Act has been imposed. The drug menace is increasing multifold ruining the lives of the young generation of this nation. The Apex Court in **Tofan Singh's case** (cited supra), in para 162, held as under:

"The illicit production, distribution, sale and consumption of drugs and psychotropic substances, is a crime of multi-dimensional magnitude, that imposes a staggering burden on the society. In an article "Narcotic Aggression and Operation Counter Attack: published in Mainstream dated 7-3-1992 V.R. Krishna Iyer, J said:

"Religion is opium of the people, but today opium is the religion of the people, and like God, is omnipresent, omnipotent and omniscient. Alas! Opium makes you slowly ill and eventually kills, makes you a new criminal to rob and buy the stuff, tempts you to smuggle at risk to become rich quick, makes you invisible trafficker of psychotropic substances and operator of

a parallel international illilcit currency and sub rosa evangelist mafia culture. Drug business makes you if not killed betimes, the possessor of pleasure, power and empire. What noxious menace is this most inescapable evil that benumbs the soul of student, teacher, doctor, politician, artists and professional, and corrupts innocent millions of youth and promising intellectuals everywhere."

14. A great responsibility is cast upon the investigating agency in conducting the investigation in a meticulous way so that the accused will not escape from the clutches of law. In view of the lopsided investigation, several cases the accused were acquitted and the investigating agency must understand and realize the impact of it on the society. The investigating team shall follow the procedure strictly, else their procedural lapses will enure to the benefit of the accused. The officers shall be imparted special training enlightening them about the specific provisions and non-compliance of the same what are the consequences that entail. There should be periodical training and whenever there are any lapses on the part of the officers, appropriate action shall be initiated. There should be a combined effort from the investigating team, prosecutors and the judiciary in the process of reaching the targeted goals.

15. Prima facie, this Court feels that NCB officials could connect the accused to the alleged crime and the accused could not satisfy the conditions under Section 37 of the NDPS Act, as such they are not entitled for bail.

16. The Criminal Petitions are accordingly, dismissed.

–X–

## 2022 (1) L.S. 142 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Dr.Justice
G. Radha Rani

Satish Goel ..Petitioner

Vs.

The State of Telangana ..Respondent

**IMMORAL TRAFFIC (PREVENTION) ACT, Sections 3, 4 and 5 - Petition under Section 482 Cr.P.C. to quash the proceedings in S.C.**

**Held - Mere presence of the persons in the brothel house during the time of raid, indicating that they were the customers, who had gone to the said spot would not give rise to any criminal liability against the said persons - Petitioner was alleged to be a customer to the brothel house, even if the allegations in the charge sheet is considered as true, it is considered not a fit case to allow the prosecution to continue against the petitioner as none of the provisions of Immoral Traffic (Prevention) Act would attract against**

**him - Criminal Petition stands allowed quashing the proceedings in S.C.**

Mr.Chukuri Yadagiri, Advocate for the Petitioner.
Public Prosecutor (TG) for Resondent.

**O R D E R**

1. This petition is filed by the petitoner-A3 under Section 482 Cr.P.C. to quash the proceedings in S.C. No.80 of 2017 on the file of I-Assistant Sessions Judge, Ranga Reddy District at L.B. Nagar.

2. The case of the prosecution in brief was that on 01.06.2016 at 5.00 PM, the Inspector of Police, Uppal, conducted raid on Flat No.201, Rajya Laxmi Apartments, Sharada Nagar, Ramanathapur, Uppal, Ranga Reddy District and found 3 male and 2 female persons indulging in prostitution and caught them red-handedly. On interrogation, A1 confessed that he had done BAMS & BPT and started the massage centre at the above flat, but as he failed to earn profits, started prostitution business to earn easy money with the help of the women and was conducting brothel house in the name of massage centre. Basing on the above confession, police brought A1 and the other two customers and registered a suo motu case in Crime No.429 of 2016 for the offences under Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act,1956 (for short 'the Act') and Sections 370 and 371-A IPC. During the course of investigation, police arrested A1 and A2 and served notice under Section 41-A Cr.P.C. to A3.

3. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor.

4. Learned counsel for the petitioner submitted that the petitioner was aged 60 years and that he was suffering with multiple deceases like Myasthenia, Hypertension, Hypothyroid since 2000 and had been continuously getting treatments since then. Doctors advised him to go for physiotherapy treatment. As per the advice of the doctors, he went to Kerala Ayurvedic massage centre at Ramanthapur for the purpose of getting treatment. Meanwhile, Uppal police came to the spot and enquired the petitioner regarding his presence. The petitioner produced the relevant medical reports. Satisfied with the explanation given by the petitioner and after perusing the medical reports, the police asked him to go away. But all of a sudden, the petitioner was served with a notice under Section 41-A Cr.P.C. by the Uppal police. Though the petitioner gave a suitable reply, summons were issued to him by the court of the III Metropolitan Magistrate, Cyberabad, Ranga Reddy District at L.B. Nagar. He engaged a counsel and thereafter the case was committed to the Sessions Court and made over to the I-Assistant Sessions Judge, Ranga Reddy District and numbered as SC No.80 of 2017. The respondent filed a false and fictitious case against the petitioner only to harass him. The petitioner was innocent and would suffer great prejudice, if he was asked to face prosecution and

relied upon the judgments of the High Court of Andhra Pradesh in **Padala Venkata Sai Rama Reddy v. The State of Andhra Pradesh rep.by its Public Prosecutor (CDJ 2021 APHC 378)** and of the High Court of Bombay at Aurangabad in **Mohammad Juned Mohammad Rauf @ Mohammad Juned Maruf Mohammad Rauf v. State of Maharashtra (CDJ 2020 BHC 1156).**

5. Learned Assistant Public Prosecutor reported to decide the petition on merits.

6. Perused the record. As per the charge sheet filed by the police, the petitioner was shown as a customer, who visited the said place for the sake of prostitution. The merits of his contention that he visited the said place for physiotherapy, is a matter to be appreciated during the course of trial. However, as per the judgments of the High Court of Andhra Pradesh and of the High Court of Bombay, Aurangabad Bench, the legal position whether a customer, who visits a brothel house, is liable for prosecution or not is no more res integra. The above High Courts, referring to the judgments in **Z.Lourdiah Naidu v. State of A.P. (2013(2) ALD (Cri) 393)** and **Goenka Sajan Kumar v. The State of A.P. (2015 (1) ALT (Cri) 85 (A.P.)** and of the Karnataka High Court in the case of **Sri Roopendra Singh v. State of Karnataka (Crl.P. No.312 of 2020, dated 20.01.2021)** and of the Bombay High Court referring to its earlier judgments in **Eimm Abdulamir Jassem Al-Allaf v. State of Maharashtra (Criminal Writ Petition No.564 of 2018); Shashank Yashdeep Khanna v. The State of Maharashtra (Application No.1081 of 2018)** and **Derek Eliias Machado and Ors., v. The State of Maharashtra (Criminal Application No.1039 of 2018,** decided on **01.11.2018)**, observed that mere presence of the persons in the spot during the time of raid, indicating that they were the customers, who had gone to the said spot, would not give rise to any criminal liability against the said persons. None of the Sections speak about punishment to the customer of a brothel house. Admittedly, the customers would not fall under the provisions of Sections 3 to 7 of the Act and observed that continuation of criminal proceedings against the customers would amount to abuse of process of Court and quashed the petitions.

7. As the said observations are also applicable to the facts of the present case and the petitioner was alleged to be a customer to the brothel house, even if the allegations in the charge sheet is considered as true, it is considered not a fit case to allow the prosecution to continue against the petitioner as none of the provisions would attract against him for the offences alleged against him.

8. In the result, the Criminal Petition is allowed quashing the proceedings in S.C. No.80 of 2017 on the file of I-Assistant Sessions Judge, Ranga Reddy District at L.B. Nagar against the petitioner – A3.

Miscellaneous petitions pending, if any, shall stand closed.

–X–

## 2022 (1) L.S. 145 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
K. Lakshman

A. Ramakrishna Reddy & Anr., ..Petitioners

Vs.

The State of Telangana, & Anr., ..Respondents

**TELANGANA PUBLIC SECURITY ACT, Sec.8(2) - Petition to quash the Criminal proceedings - W.P. to quash the above said crime proceedings and to issue a consequential direction to all the respondents to release the seized book titled "Sayudha Shanthi Swapnam' written on her husband - Allegations against the petitioners are that they have undertaken printing of a book titled 'Sayudha Shanthi Swapnam' and the said book conveys banned Maoist ideology.**

**HELD: Police without conducting any enquiry, without verifying the contents of the said book, came to a conclusion that it has objectionable contents, searched and seized the Navya Printers in an arbitrary and illegal manner - Authorities must have cogent reasons before taking an action - Respondents in the present case, without following the procedure under the Act, and without considering the fact that the publisher Navya Printers has been in business since 1991 had seized their machinery and material within a matter of one and half hour - Conduct of the respondents was arbitrary, illegal and in violation of the procedure laid down under the Act and also the Cr.P.C - Respondents/Police are directed to return and hand over the seized material to the Petitioners under proper acknowledgment.**

Mr.Nandigam Krishna Rao, D. Suresh Kumar, Advocate for the Petitioners.
Mr.Khaja Vizarath Ali, Asst. Public Prosecutor, S. Rama Mohana Rao Asst. Government Pleader, Advocates for the Respondents: R1.

**C O M M O N O R D E R**

1. Since the lis involved in both the matters is the same, they were heard together and are disposed of by way of this Common Order.

2. Crl.P.No.659 of 2022 is filed to quash the proceedings in Cr.No.439 of 2021 of Amberpet Police Station. The petitioners are A.1 and A.2 in the said crime. The offence alleged against them is under Section 8(2) of the Telangana Public Security Act, 1992 (for short, 'the Act').

3. W.P.No.6479 of 2022 is filed by the wife of Akkiraju Hara Gopal @ Ramakrishna @ RK to quash the above said crime and to issue a consequential direction to all the respondents to release

the seized book titled "Sayudha Shanthi Swapnam' written on her husband, by handing over all the 1000 seized copies to her and also direct the respondents not to obstruct the petitioner in conducting the Book Release Meeting.

4. Heard Sri D. Suresh Kumar, learned counsel for the petitioner in W.P.No.6479 of 2022 and Sri Nandigam Krishna Rao, learned counsel for the petitioners in Crl.P.No.659 of 2022, Sri S.Rama Mohan Rao, learned Assistant Government Pleader for Home, and Sri Khaja Vizarath Ali, learned Asst. Public Prosecutor. Perused the record.

**5. Brief facts of the case**:

i) The 1st petitioner in is proprietor of Navya Printers. The 2nd petitioner is his wife.

ii) The allegations against the petitioners are that they have undertaken printing of a book titled 'Sayudha Shanthi Swapnam' with the photos of Akkiraju Hara Gopal @ Ramakrishna @ RK and the said book conveys banned Maoist ideology.

iii) The printing of the said book was undertaken on the request of the wife of Akkiraju Hara Gopal @ Ramakrishna @ RK, who is the petitioner in W.P.No.6479 of 2022, free of cost and out of sympathy for the banned Maoist party. The Police have also seized the following items:

1. 513 imposed Books (tied 10 bundles, each bundle contains 50 books and one bundle of 13 books).

2. 1000 copies of title of books.

3. 487 approximately not imposed books and in loose forms.

4. 25 Aluminium Printing Sheets.

5. (Left Blank).

6. (Left Blank).

7. Two Dell desktop Computers and two CPUs.

8. 1 DVR.

9. MSME Certificate.

10. One pen drive.

11. Two Bill Books.

iv) Thus, the allegation against the petitioners in Crl. P. No. 659 of 2022 is that they have committed the offences under Section 8(2) of the Act.

6. **CONTENTIONS OF LEARNED COUNSEL FOR THE PETITOENRS IN CRL.P.No.659 OF 2022**:

i) The contents of the complaint dated 12.11.2021 lacks the ingredients of the Section 8(2) of the Act.

ii) No notification mandated under Section 9(2) of the Act was issued.

iii) The 2nd respondent has not followed the procedure laid down under the Cr.P.C. while conducting the search.

iv) Though the impugned notification

was said to have been issued on 12.11.2021 issued by the Asst. Commissioner of Police, Hyderabad, there was no mention about the same in the complaint dated 12.11.2021 and the counter affidavit filed by the Police in Crl.M.P. No.962 of 2021 in Crime No.439 of 2021 filed by the petitioners under Section 457 of Cr.P.C. seeking interim custody of the seized material.

v) Further, the issuance of the impugned notification dated 12.11.2021 was also not mentioned in the search warrant issued under Section 165 of Cr.P.C. by the Asst. Commissioner of Police, Hyderabad.

vi) The entire action of the 2nd respondent in registering the said crime conducting search and seizing the above said material is in violation of the procedure laid down under law.

vii) The said book is printed by the petitioners on the request of the Smt.K.Sirisha W/o Akkiraju Hara Gopal @ Ramakrishna @ RK in the memory of her husband.

viii) The book contains articles, reports, editorials, letters and interviews which were already published and telecasted.

ix) The book does not contain any objectionable content.

ix) The 2nd respondent seized the said books without examining its contents and without reaching the conclusion that the content is objectionable.

x) The respondents have also seized the entire printing press where 44 workmen have been working. Thus, the entire printing press came to a standstill.

xi) With the said submissions, he sought to quash the proceedings in the subject crime against the petitioners.

7. **CONTENTIONS OF LEARNED COUNSEL FOR THE PETITOENR IN W.P.NO.6479 OF 2022**:

i) The police have conducted search and seized the material without following the due procedure laid down under the law and the contents of the complaint lacks the ingredients of the offence alleged against the accused therein.

ii) There is no objectionable content in the said book.

iii) Seizing of the printing press, the books and material is in violation of the Articles 14 and 19 of the Constitution of India.

iv) Placed reliance on the principle laid down by the three Judge Bench of High Court of the then Andhra Pradesh in **P. Venkatshwarlu Vs. State of Andhra Pradesh (**1982 (2) APLJ (HC) 275).

v) With the said submissions, he sought to quash the proceedings in the subject crime and to release the seized material and hand over the 1000 seized copies of the book to the petitioner and also issue a direction to respondents-Police not to obstruct the petitioner in conducting

the book release meeting.

8. **CONTENTIONS OF LEARNED PUBLIC PROSECUTOR**:

i) 2nd respondent has followed the procedure laid down under law, more particularly under the Cr.P.C. while conducting search and seizing the property.

ii) The 2nd respondent had received credible information that the petitioners/ accused have been undertaking printing of a book which contains objectionable contents with a photo of Akkiraju Hara Gopal @ Ramakrishna @ RK who is a Politbureau /Central Committee Member of Moist Party, a banned organization. Publication of the said book will have a bad impact on the society, more particularly on the youth.

iii) The Investigating Officer has recorded the statements of 14 witnesses and the investigation is still pending.

iv) Therefore, there is no illegality in registering the subject crime and conducting search and seizing the material.

v) Placing reliance on the principle laid down by the Apex Court in **M/s Neeharika Infrastructure Pvt.Ltd. Vs. State of Maharashtra (**2021 SCC OnLine SC 315)**,** learned Asst. Public Prosecutor would submit that quashing the FIR at the initial stage is not warranted.

9. **CONTENTIONS OF LEARNED ASST.GOVT.PLEADER FOR HOME**:

i) Referring to the written instructions of the Inspector of Police, Amberpet Police Station, Hyderabad, learned Asst.Govt.Pleader would submit that 2nd respondent in Writ Petition i.e. Commissioner of Police, Hyderabad City had issued notification in L&O/ LO2/0076-I/2021, dated 12.11.2021 notifying Navya Printers situated at Amberpet.

ii) The Additional Inspector of Police, Amberpet Police Station had obtained search proceedings under Section 165 of Cr.P.C. dated 12.11.2021 from Assistant Commissioner of Police, Malakpet Division, Hyderabad and he has conducted search and seizure and prepared panchanama.

iii) There is no irregularity and illegality in the same. With the said submissions, he sought to dismiss the present writ petition.

10. **CONSIDERATION BY THE COURT**:

i) Despite granting time, more particularly 7 adjournments, the respondents/Police in the writ petition have not filed any counter affidavit. However, Sri S. Rama Mohan, learned Asst. Govt. Pleader for Home, has submitted written instructions of Inspector of Police, Amberpet Police Station along with the notification dated 12.11.2021 issued by the Asst. Commissioner of Police, Hyderabad, memo dated 14.02.2022, search proceedings under Section 165 of the Cr.P.C. dated 12.11.2021, panchanama dated 12.11.2021, and also notice dated 12.11.2021 under Section 41-A of Cr.P.C., along with the

statements of the witnesses recorded under Section 161 of the Cr.P.C.

ii) Perusal of the record including complaint, panchanama, search proceedings and statements of the witnesses recorded under Section 161 of Cr.P.C. would reveal the following sequence of events:-

a. According to Sri T. Sridhar, Detective Inspector of Police, Amberpet Police Station, he had received credible information on 12.11.2021 at 17:00 hours.

b. In the search proceedings issued under Section 165 of Cr.P.C. dated 12.11.2021, it was mentioned that on the same day at 17:15 hours, the said Detective Inspector of Police, Amberpet Police Station had placed the information before the Assistant Commissioner of Police that Navya Printers, Amberpet, is printing books which promotes banned Maoist ideology and is attracting youth towards Maoism.

c. The subject FIR mentions that on 12.11.2021 at 21:00 hours, police, P.S. Amberpet have received complaint from T. Sridhar, Additional Inspector of Police, Amberpet Police Station.

d. In the statements recorded under Section 161 of the Cr.P.C. the said T. Sridhar, Detective Inspector of Police, has mentioned that he had addressed a letter to the Tahsildar to send two mediators to conduct search and accordingly the Tahsildar had sent two Government officials of his office namely Kothapally Srikanth, Senior Assistant and Muthyala Badrinath VRO.

e. The confession statement and panchanama, mentions that the search was conducted at 18:30 hours on 12.11.2021. The above said two witnesses stated that they went to Amberpet Police Station and met Sri T.Sridhar, Detective Inspector, Amberpet Police Station, who informed about printing of books in Navya Printers.

iii) Thus, the entire controversy revolves around the printing of book titled “Sayudha Shanthi Swapnam”.

iv) The offence alleged against the accused is under Section 8(2) of the Act. In view of the same, certain relevant provisions of the said Act are extracted below:-

> “Section 2(d) of the Act:- ‘Notification’ means a notification published in the Telangana Gazette and the word ‘notified’ shall be construed accordingly.
>
> Section 2(e) of the Act:- ‘Unlawful activity’ in relation to an individual or association n means activity:-
>
> (i) which constitutes a danger or menace to public order, peace and tranquility; or
>
> (ii) which has interfered or tends to interfere with the maintenance of public order; or
>
> (iii) which interfered or tends to interfere with the administration of

law or its established institutions and personnel; or

(iv) of indulging in or propagating acts of violence, terrorism, vandalism or other acts generating fear and apprehension in the public or indulging in or encouraging the use of fire arms, explosives and other devices or disrupting communications by rail or road; or

(v) of encouraging or preaching disobedience to established law and its institutions; or

(vi) of collecting money or goods forcibly to carry out any one or more of the unlawful activities mentioned above;

Section 2(f) of the Act:- 'Unlawful Association' means any association which indulges in or has for its object or abets or assists or gives aid, succour or encouragement, directly or indirectly, through any medium, device or otherwise to, any unlawful activity.

Section 8(2) of the Act:- Whoever manages or assists in the management of an unlawful association or promotes or assists in promoting a meeting of any such association or of any members thereof, or in any way assists, abets or aids the unlawful activities of any such association through whatever manner or whatever medium or device shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Section 9(1) of the Act:- The Government or in any area for which a Commissioner of Police is appointed, the Commissioner of Police and elsewhere the District Magistrate, may notify any place which in its opinion or his opinion is used for the activities of an unlawful association. Such Officer shall be known as the Competent Authority.

Section 9(2) of the Act:- (2) When any place is notified under subsection (1), the Competent Authority or any officer authorised in this behalf power to notify and take possession of places used for the purpose of unlawful activities, in writing by him may take possession of the notified place and evict there from any person found therein, and shall forthwith make a report of the taking possession to the Government:"

v) It is to be noted that Section 9 grants power to the State Government/ Commissioner of Police/District Magistrate to notify and take possession of any place, which in his/her opinion is used for the purpose of committing unlawful activities. Issuing notification and forming an opinion are essential ingredients to be complied with before taking action under Section 9 of the Act.

vi) It is also relevant to note that

the terms 'notify' and 'notified' used in Section 9 shall be interpreted in light of the definition of the word 'notification' as provided under Section 2(d) of the Act. Therefore, the terms 'notify' and 'notified' means a notification published in the Telangana Gazette.

vii) In the written instructions dated 21.02.2021, the Inspector of Police, Amberpet Police Station, has stated that a notification in terms of Section 9(1) was issued on 12.11.2021 and he has also enclosed a copy of the said notification.

viii) Sri Nandigam Krishna Rao, and Sri D.Suresh Kumar, learned counsel for the petitioners in both the writ petition and criminal petition have contended that the Commissioner of Police has not issued the notification dated 12.11.2021 in terms of Section 9 of the Act and it was created only to cover up the illegal action of conducting search and seizure. Therefore, to appreciate the contention of the petitioners, it is apposite to extract the impugned notification dated 12.11.2021:

GOVERNMENT OF TELANGANA
Police Department)

**No.L&O/L02/0076-1/2021**

Office of the Commissioner of Police,
Hyderabad City.

Date: 12-11-2021

**NOTIFICATION**

WHEREAS, reports have been received that **Navya Printers located at premises No.2- 3-655/C/20, GHMC Dumping Yard Road, Durga Nagar, Amberpet** is printing books with banned Maoist ideology and attracting youth towards Maoism and that proprietor of Navya Printers Mr. A. Ramakrishna Reddy assists and promotes unlawful activities by printing such Maoist Ideology Books:

WHEREAS, it is considered desirable to take speedy and immediate steps to control such acts, as such uncontrolled acts may cause disturbance to maintenance of Law & Order & public tranquility.

Therefore, in exercise of the powers conferred upon me under sub-section (1) of section (9) of the Telangana Public Security Act, 1992 (Act No.21 of 1992) I, Anjani Kumar, IPS, Commissioner of Police, Hyderabad City, do hereby pass this written order and notify that, Navya Printers located at premises No.2-3-655/C/20, GHMC Dumping Yard Road, Durga Nagar, Amberpet is being used for unlawful activities and instruct

Sri T. Sridhar, Detective Inspector of Amberpet PS to take the possession of the said premises.

(Anjani Kumar, IPS)
Commissioner of Police,
Hyderabad City

To
The Station House Officer, Amberpet PS.
Sri T. Sridhar, Detective Inspector, Amberpet PS.

ix) There is force in the contention of the petitioners that the impugned notification dated 12.11.2021 was not issued in terms of Section 9 of the Act. As stated above, under Section 2(d) of the Act, a notification issued under the Act shall be published in the Telangana Gazette. A bare perusal of the impugned notification shows that it was not published in the Telangana Gazette.

x) Further, Section 9 of the Act mandates that action taking of possession of the place should be based on the opinion of the authority issuing the notification. It is trite law that formation of opinion should be based on reasons which are to be stated. In other words, the grounds of forming an opinion are to be disclosed. The requirement of stating the grounds on which an opinion is formed is part of the due process and acts as a safeguard against arbitrary action of the State.

xi) In the present case, the impugned notification dated 12.11.2021 only states that Nyaya Printers were publishing books which promote Maoist ideology and will disturb maintenance of law & order and public tranquility. The impugned notification dated 12.11.2021 fails to state the reasons behind such opinion. Nothing has been stated to show that how the publication of the subject books will disturb law & order.

xii) Dealing with a similar notification under Section 95 of the Cr.P.C., a Full Bench of the Gujrat High Court in **Manishi Jani v. State of Gujarat (**AIR 2010 Guj. 30 (FB) referring to the various decisions of the Supreme Court has held as follows:

> **10. Language of the opening portion of the notification denotes that it has come to the notice of the Government of Gujarat about publication of the book. Government have therefore noticed only about the publication of the Book and not what the book contains. Rest of the paragraphs of the notification have to be understood in light of**

**the above-mentioned paragraph. If so understood, it is difficult to believe that the author of the notification has really read or comprehended what the author of the book has to say. Notification further says that contents of the books are 'highly objectionable and against the national interest' and in what manner the contents are objectionable and against the national interest, is not discernible from the text of the notification. Further, it is stated that contents of the books are 'misleading to the public and are against public tranquility and against interests of the State'. Notification is silent as to how the contents of the books would affect and disturb public tranquility or interest of the State. No opinion has been expressed by the State in the notification. Lack of opinion means lack of thinking. Lack of thinking means lack of understanding. Remember, the State is dealing with the fundamental rights of its citizens and therefore, great amount of caution, prudence and care is expected**. Further, notification refers to Section 153A and 153B of IPC. Nothing is discernible from the notification as to how the contents of the book would promote enmity between different groups on the grounds of religion, race, place of birth, residence, language etc., and result ill-feeling amongst them. Law is settled that when the Government is exercising the powers under Section 95 of the Cr.P.C., the government has to form an opinion and those opinion will give rise to the grounds and grounds have to be stated in the notification issued in exercise of the powers under Section 95 of the Cr.P.C.

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13. Apex Court in the case of Narayan Das Indurkhya v. The State of M.P. AIR 1972 SC 2086 had occasion to examine the legality of the order of the Government issued under Section 5 of the Criminal Law Amendment Act (Act of XXIII of 1961) forfeiting the copies of a book published by the appellant. Contention was raised that the order did not disclose the grounds of the opinion formed by the State Government. Apex Court held that there is a considerable body of statutory provisions which enable the State to curtail the liberty of the subject in the interest of the security of the State or forfeit books and documents when in the opinion of the Government they promote class hatred, religions intolerance, disaffection against the State etc**. In all such cases, instances the State Government has to give the ground of its opinion. Ground**

**must be distinguished from opinion. Grounds of the opinion must mean the conclusion of facts on which the opinion is based and there can be no conclusion of fact which has no reference to or is not ex facie based on any fact. Same is the view taken by the Apex Court in the case of The State of Utter Pradesh v. Lalai Singh Yadav AIR 1977 SC 202.** That case was relating to forfeiture of a book captioned Ramayan: A True Reading' in English and its translation in Hindi. View of the Government was that the book was sacrilegiously, outrageously objectionable, being 'deliberately and maliciously intended to outrage the religious feelings of a class of citizens of India. Notification contained an appendix setting out in tabular form the particulars of the relevant pages and lines in the English and Hindi versions which presumably, were the materials which were regarded as scandalzing. Court examined whether the notification fulfills statutory requirements. Upholding the judgment of the High Court, the Apex Court concluded that where there a statutory duty to speak, silence is lethal sin for a good reason disclosed by the scheme of the fascicules of sections. Court held, Section 99C enables the aggrieved party to apply to the High Court to set aside the prohibitory order and the Court has to examine the grounds of Government given in the order and may affirm or upset it. It was held Court cannot make a roving enquiry beyond the grounds set forth in the order. Reference may also be made to the decision of the Full Bench (Jaipur Bench) of Rajasthan High Court in the case of Virendra Bandhu v. State of Rajasthan AIR 1980 Rajasthan 241, where the Full Bench of Rajasthan High Court has examined the scope of Section 95 of Cr.P.C. and other related provisions and the Court held that total absence of grounds for the opinion of the Government in the order of forfeiture would render such an order invalid and void. Similar view is taken by the Allahabad High Court in the case of Lalai Singh Yadav v. State of U.P. : 1971 Cri.L.J. 1519. Full Bench of Delhi High Court in the case of The Trustee of Safdar Hashmi Memorial Trust v. Govt of NCT of Delhi 2001 Cri.L.J. has also taken the same view. Special Bench of Bombay High Court in the case of Varsha Publications Pvt. Ltd and Anr. v. State of Maharashtra and Ors. 1983 Cri.L.J. 1446 has also taken the similar view.

xiii) Further, the Supreme Court in **Harnam Das v. State of Uttar Pradesh** (1962) 2 SCR 487) has held that an opinion cannot be formed without considering or examining or knowing the material. In other words, an opinion can be formed only after the relevant material is examined by the

authority. The relevant portion is extracted below:

> "17. What then is to happen when the Government did not state the grounds of its opinion ? In such a case if the High Court upheld the order, it may be that it would have done so for reasons which the Government did not have in contemplation at all. If the High Court did that, it would really have made an order of forfeiture itself and not upheld such an order made by the Government. This, as already stated, the High Court has no power to do under s. 99D. It seems clear to us, therefore, that in such a case the High Court must set aside the order under s. 99D, for it cannot then be satisfied that the grounds given by the Government justified the order**. You cannot be satisfied about a thing which you do not know. This is the view that was taken in Arun Ranjan Ghose v. State of West Bengal MANU/WB/0338/1955 : 59 C.W.N. 495 and we are in complete agreement with it. The present is a case of this kind. We think that it was the duty of the High Court under s. 99D to set aside the order of forfeiture made in this case.**

xiv) As stated above, the impugned notification fails to provide any grounds behind the conclusion that Maoist ideology was being promoted. The impugned notification dated 12.11.2021 does not even mention the names of the books published which promote maoist ideology, let alone the relevant parts of the books which promote such ideology. The Commissioner without examining the material cannot come to a conclusion that the books being published to promote maoist ideology. Merely because reports are received that books promoting maoist ideology are being published is not a ground to take action under Section 9 of the Act, unless the content of such books are examined and the grounds for forming the opinion is recorded. Therefore, the impugned notification dated 12.11.2021 was not issued in terms of Section 9 of the Act.

xv) At this juncture, it is relevant to discuss Section 165 of the Cr.P.C. under which search was conducted by the respondents. The same is extracted as follows:-

> "165. Search by police officer.
>
> (1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place with the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may,

after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub- section (1), shall, if practicable, conduct the search in person."

xvi) As stated above, the subject crime was registered at 21:00 hours on 12.11.2021. In the search proceedings dated 12.11.2021, it is stated that the Additional Inspector of Police, had approached the Asst. Commissioner of Police, Malakpet at 17:15 hours. Therefore, at the time of issuance of search proceedings under Section 165 of Cr.P.C. dated 12.11.2021, the subject crime was not registered. Thus, search conducted by the Police and seizure is in violation of the procedure laid down under Section 165 of Cr.P.C.

xvii) It is also relevant to note that issuance of notification dated 12.11.2021 under Section 9 of the Act was not mentioned in any of the proceedings issued by the respondent authorities.

xviii) The issuance of the impugned notification dated 12.11.2021 was never mentioned in the complaint dated 12.11.2021; search proceedings dated 12.11.2021 issued under Section 165 of Cr.P.C. by the Asst. Commissioner of Police, Malakpet Division, Hyderabad; counter affidavit dated 29.11.2021 filed by the respondents/police in Crl.M.P.No.962 of 2021 in Cr.No.439 of 2021 filed by the A.1 seeking interim custody of the seized material. It is before this Court that the respondents, for the first time, have filed a copy of the said notification dated 12.11.2021.

xix) According to this Court, it is highly improbable that the impugned notification was issued on 12.11.2021. If the notification was issued on 12.11.2021, it would have been mentioned by the respondent authorities in any of the proceedings issued by them, as it was the notification based on which action of search and seizure was undertaken. Learned Asst. Public Prosecutor and Learned Asst. Government Pleader failed to show why the details of the impugned notification were not mentioned in earlier proceedings and the complaint. Therefore, according to this Court, the impugned notification was issued as an afterthought and was certainly not issued on 12.11.2021.

xx) Further, it is relevant to discuss the entire sequence of events which resulted in the search and seizure. According to the respondents, information was received by the 2nd respondent/de facto-complainant at 17:00 hours and he informed the same to the Commissioner of Police, Hyderabad, which is at Basheerbagh, Hyderabad and obtained the impugned notification dated 12.112021. At the same time, he also informed about the receipt of information

to the Asst. Commissioner of Police, Malakpet Division and obtained search proceedings under Section 165 of the Cr.P.C. Immediately, after obtaining the search proceedings, a letter was addressed to the Tahsildar, Amberpet, with a request to send two mediators. The said mediators reached the Amberpet Police Station after which they were briefed by the 2nd respondent and the search was conducted and panchanama was recorded by 18.30 hours.

xxi) Thus, entire proceedings were completed within one hour thirty minutes i.e., from 17.00 hours to 18.30 hours on 12.11.2021. According to this Court, the entire action of the respondents/Police in conducting search and seizure is highly improbable.

xxii) With regard to Cr. No. 439 of 2021, it is relevant to note that the accused therein was charged Section 8(2) of the Act. The allegation against the accused is that he published the said book on the request of the petitioner in W.P.No.6479 of 2021. A person is punishable under Section 8(2) of the Act, if he/she manages or assists or promotes any unlawful association or its members or aids in commission of such unlawful activity by such unlawful association. As stated above, the respondents have failed to show how publishing of the subject books is aiding or promoting any unlawful association or unlawful activity. Prima facie, no offence under Section 8(2) of the Act is made out.

xxiii) It is also relevant to note that the punishment prescribed for the offence is below seven years. Therefore, the Investigating Officer has already served notice under Section 41-A of Cr.P.C. and recorded statements of 14 witnesses. The Investigation is pending. Even then, the respondents-Police had conducted search and seized the material in hasty manner and in utter violation of the procedure laid down under the Act and Cr.P.C.

xxiv) In light of the aforesaid events, the entire conduct of the respondents reeks of arbitrary conduct. Such arbitrary action restricting an individual's liberty and free speech is nothing but abuse of process and the same falls within the parameters laid down by the Apex Court in **State of Haryana Vs. Bhajanlal (**AIR 1992 SC 604**),** which are extracted below:-

"….

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/ complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognized to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/ FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C.. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C. only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

xxv) Therefore, viewed from

any angle, the proceedings in the subject crime are liable to be quashed and are accordingly quashed. During the course of hearing, learned Asst. Govt. Pleader for Home opposing the release of seized material would submit that the petitioners/ Accused have filed an application under Section 451 r/w 457 of Cr.P.C. seeking interim custody of the material seized vide Crl.M.P.No.962 of 2021 in Cr.No.439 of 2021 and the same was dismissed by the learned IV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad dated 14.12.2021. The petitioner No.1/accused No.1 in Crl.P.No.659 of 2022 has not challenged the said order. Therefore, they are not entitled for interim custody of the seized material. Perusal of the said order would reveal that the Court below has dismissed the said application on the ground that the Police have not deposited the above said material. Therefore, the said contention of the learned Asst. Govt. Pleader is not sustainable.

xxvi) Given that the whole issue revolves around publication of books, it is necessary to examine the issue in light of Article 19 of the Constitution of India. Freedom of speech and expression is one of the basic human rights. The right of freely expressing one's own views and opinions without arbitrary interference of the state is recognised under Article 19. The restrictions on free speech should be interpreted narrowly and restricted to the grounds under Article 19(2). The rights of authors and publishers under Article 19 cannot be restricted merely on a speculation that law & order problems will arise. It is the duty of the state to maintain law & order and only in exceptional cases free speech is to be restricted.

xxvi) The right of artistic freedom stems from Article 19 and the same is important for a democratic nation like India. In the context of books and its banning, the Supreme Court in **N. Radhakrishnan v. Union of India** (2018) 9 SCC 725) has held as follows:

> "33. It would usher in a perilous situation, if the constitutional courts, for the asking or on the basis of some allegation pertaining to scandalous effect, obstruct free speech, expression, creativity and imagination. It would lead to a state of intellectual repression of literary freedom. When we say so, we are absolutely alive to the fact that the said right is not absolute but any restriction imposed thereon has to be extremely narrow and within the reasonable parameters as delineated by Article 19(2) of the Constitution. Here, we may remind ourselves of the expression used by George Orwell. It is free thinking and intellectual cowardice. Creative writing is contrary to intellectual cowardice and intellectual pusillanimity.
>
> 37. If books are banned on such allegations, there can be no creativity. Such interference by constitutional courts will cause the death of Article

True it is, the freedom enjoyed by an author is not absolute, but before imposition of any restriction, the duty of the Court is to see whether there is really something that comes within the ambit and sweep of Article 19(2) of the Constitution. At that time, the Court should remember what has been said in S. Rangarajan v. P. Jagjivan Ram and Ors. (1989) 2 SCC 574 wherein, while interpreting Article 19(2), this Court borrowed from the American test of clear and present danger and observed:

45. ... Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a power keg".

xxvii) In the present case, the petitioner in W.P.No.6479 of 2022 is wife of Akkiraju Hara Gopal @ Ramakrishna @ RK. According to the petitioner, her husband died on 14.10.2021 due to ill-health and she came to know about the death of her husband through print and electronic media. He was the state leader of Peoples War Party. Her husband led his team of Peoples War Party when Y.S.Rajasekhar Reddy was Chief Minister and was involved in peace talks between Naxalites and the Government in the year 2004. During the said talks, her husband was known in every household due to coverage of the peace talks by print and electronic media. She wanted to respect her husband who throughout his life was engaged to work for the cause of people. She wanted to inspire people through his memories. She became a Member of Amarula Bandhu Mithrula Sangham (ABMS). With all the friends and relatives on behalf of ABMS, they held RK memorial meeting on 24.10.2021 at their native place Alakurapadu village of Prakasam District in Andhra Pradesh and about thousand people attended to the said meeting despite police surveillance. There was a proposal to bring out a book on RK with memories on him and articles by him. In the said meeting, a call was given to send songs, poetry and memories of Akkiraju Hara Gopal @ Ramakrishna @ RK and his articles, interviews and the statements given in the newspapers to collect and compile them in a book. As her husband led the peace talks between the Government and naxalites, they wanted to name the book as "Sayudha Santhi Swapnam". They wanted to publish the said book in Hyderabad by holding book release meeting on 14.11.2021 at Sundaraiah Vijnana Kendram.

xxviii) According to her, there is no objectionable content in the book. The said

book contains articles, interviews and statements given by her husband in the newspapers. The Police without conducting any enquiry, without verifying the contents of the said book, came to a conclusion that it has objectionable contents, searched and seized the Navya Printers in an arbitrary and illegal manner.

xxix) As stated above, the respondents without verifying the content of the book, seized its copies. According to the petitioners, the book contains articles, interviews, editorials and statements etc., of Akkiraju Hara Gopal @ Ramakrishna @ RK which were already published. The authorities must have cogent reasons before taking an action. The respondents in the present case, without following the procedure under the Act, and without considering the fact that the publisher Navya Printers has been in business since 1991 had seized their machinery and material within a matter of one and half hour. The conduct of the respondents is arbitrary, illegal and in violation of the procedure laid down under the Act and also the Cr.P.C.

xxx) At the cost of repetition, this Court is emphasizing that the offences under the Act are serious in nature. The said fact is clear from Section 12, according to which every revision petition shall only lie before the High Court and shall be heard by a bench of three judges. Therefore, legislative intent is very clear with regard to seriousness of the offence.

xxxi) The Commissioner of Police, Hyderabad city, a Senior Police Officer is expected to go through the provisions of the Act before issuing the impugned notification dated 12.01.2021, which has oppressive and penal consequences. Without publishing the same in the Gazette as mandated, he has allowed his subordinates to proceed with the search and seizure of the material in utter violation of procedure laid down under the Act and also Cr.P.C.

xxxii) During the course of arguments, Sri Nandigam Krishna Rao, learned counsel for the petitioners in Crl.P.No.659 of 2022, contended that the Commissioner of Police had committed perjury as he did not issue the impugned Notification on 12.11.2021. A person is said to commit perjury if the following elements are satisfied:

a) That the declarant took an oath to testify truthfully;

b) That the declarant willfully made a false statement contrary to their oath;

c) That the declarant believed the statement to be untrue;

d) That the statement relates to a material fact. In the present case, none of the above elements are attracted and, therefore, no perjury is made out.

11. **CONCLUSION**:

In view of the above discussion, both the petitions viz., W.P.No.6479 and 2022 and Crl.P.No.659 of 2022 are allowed

as under:

(i) The entire action of respondent police in conducting search and seizure of Navya Printers is illegal and contrary to the procedure laid down under the Act and the Cr.P.C.

(ii) The proceedings in Cr.No.439 of 2021 of Amberpet Police Station are hereby quashed against the petitioners in Crl.P.No.659 of 2022.

(iii) Respondents - Police are directed to unseal 'Navya Printers' and permit the petitioners/accused Nos.1 and 2 in Crl.P.No.659 of 2022 to operate the said press without creating any problem.

(iv) The respondents - Police are directed to return and hand over the seized material in Cr.No.439 of 2021 of Amebrpet Police Station, to the petitioners in the above said Criminal Petition and also to the petitioner in Writ Petition under proper acknowledgment.

As a sequel, miscellaneous petitions, if any, pending in both the petitions shall stand closed.

–X–

## 2022 (1) L.S. 162 (T.S)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
K. Lakshman

Mohammed Abdul Muqeet
Aman & Ors., ..Petitioners

Vs.

The State of Telangana,
& Anr., ..Respondents

**MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, Sec.4 - INDIAN PENAL CODE, Sec.498 - DOWRY PROHIBITION ACT, Secs.3 & 4 - Petition to quash the Criminal proceedings – Petitioner Nos.1, 2, and 3 are respectively the husband, father-in-law, mother-in-law of Respondent No.2/Wife - Petitioner No.1 issued a legal notice to Respondent No.2 to join the matrimonial company of PetitionerNo.1 only after she gets treated for her 'quarrelsome attitude' – Thereafter, Respondent No.2 filed a complaint under Section 498 of the Indian Penal Code, and Sections 3 & 4 of the Dowry Prohibition Act - Petitioner No.1 sent another legal notice to Respondent No.2 and pronounced Talaq and divorced to Respondent No. 2 - Respondent No.2 filed a complaint alleging that the Petitioner No.1 conspiring with Petitioner Nos.2 & 3, issued notice and, had pronounced triple talaq which is prohibited and**

Crl.P.No.8404/2021 Date: 8-3-2022

**punishable under the Muslim Women (Protection of Rights on Marriage) Act.**

**HELD: Difference between talaq-eahsan and talaq-e-biddat is that, in the former the divorce can be revoked and is not final till the completion of iddat period, in the latter the divorce is instant and irrevocable - Petitioner No.1 clearly mentioned pronounced a single talaq in his notice - Though severing of marital ties had an instantaneous effect, it did not have an irrevocable effect - Ties were severed by Petitioner No.1 as it is a requirement under talaq-e-ahsan to not have any conjugal relations till the iddat period - Therefore, the contents of the complaint lacks the ingredients of the offence under Sec.4 of the Muslim Women (Protection of Rights on Marriage) Act - Criminal proceedings stand quashed and Criminal Petition stands allowed.**

Mr.Naseeb Afshan, Advocates for the Petitioners.
Public Prosecutor, Advocate for the Respondents: R1.
P. Shiv Kumar, Advocate for the Respondents: R2.

**J U D G M E N T**

. The present criminal petition is filed to quash the proceedings in Cr. No. 237 of 2021 pending on the file of P.S. Shahinayat Gunj.

2. Heard Ms. Naseeb Afshan, learned counsel for the Petitioners, Mr. P. Shiv Kumar, learned counsel for Respondent No. 2 and learned Public Prosecutor for Respondent No. 1.

3. Facts of the case

i) Petitioner Nos.1, 2, and 3 are respectively the husband, father-in-law, mother-in-law of Respondent No.2. The Petitioner No.1 and Respondent No.2 got married on 06.06.2014 in Hyderabad. Disputes arose between the parties and Respondent No.2 alleged that she was driven out of her marital house on 20.07.2021.

ii) On 26.08.2021, the Petitioner No. 1 through his counsel issued a legal notice to Respondent No. 2. In the said notice, it was stated that Respondent No. 2 can join the matrimonial company of Petitioner No. 1 only after she gets treated for her 'quarrelsome attitude'.

iii) On 27.10.2021, Respondent No. 2 had filed a complaint with the P.S. Banjara Hills alleging offences under Section 498 of the Indian Penal Code, 1860 and Sections 3 & 4 of the Dowry Prohibition Act, 1961. The said complaint was registered as Cr. No. 787 of 2021.

iv) After registration of Cr. No. 787 of 2021, on 29.10.2021, Petitioner No. 1 through his counsel sent another legal notice to Respondent No. 2. In the said notice, it was stated that Petitioner No. 1, in the presence of witnesses, had pronounced Talaq and divorced Respondent No. 2 on 27.10.2021.

v) On 05.11.2021, Respondent No.

2 filed a complaint with the P.S. ShahinayatGunj alleging that the Petitioner No. 1 conspiring with Petitioner Nos. 2 & 3, vide notice dated 29.10.2021, had pronounced triple talaq which is prohibited and punishable under the Muslim Women (Protection of Rights on Marriage) Act, 2019 (hereinafter 'the Act, 2019). The said complaint dated 05.11.2021 was registered as Cr. No. 237 of 2021 and the same is challenged in the present criminal petition.

4. Contentions of the Petitioners

i) Under Muslim personal law, there are three forms of divorces i.e., talaq-e-ahsan, talaq-e-hasan, and talaq-e-biddat. Section 2 (c) r/w Section 3 of the Act, 2019 only prohibit talaq-e-biddat or any other form of talaq which has an effect of irrevocable and instantaneous divorce.

ii) In the legal notice dated 05.11.2021, Petitioner No. 1 had only pronounced talaq which is talaq-e-ahsan. In talaq-e-ahsan, divorce can be revoked within three months if any conciliation is reached between the husband and the wife.

iii) The legal notice dated 05.11.2021 pronounced a single talaq. Respondent No. 2 instead of going for a reconciliation or mediation within the iddat period had registered a criminal case against Petitioner No. 1. Therefore, the ingredients of Sections 3& 4 of the Act, 2019 are not satisfied.

iv) Respondent No. 2 is a resident of Shaikpet area and received the notice dated 26.08.2021 at Shaikpet. Further, in Cr. No. 787 of 2021 she showed her addressed as Shaikpet. However, she filed Cr. No. 237 of 2021 at P.S. ShahinayatGunj. Therefore, P.S. ShahinayatGunj has no territorial jurisdiction to register the case and investigate it.

v) In light of the arguments, it was prayed that in Cr. No. 237 of 2021 pending on the file of P.S. ShahinayatGunj should be quashed.

5. Contentions of Respondent No. 2

i) The notice dated 05.11.2021 clearly states that Petitioner No. 1 herein had divorced Respondent No. 2 severed all his marital ties with her. This clearly indicates that the divorce was irrevocable and instantaneous. Therefore, the ingredients of Sections 3 & 4 of the Act, 2019 are satisfied and the Petitioners are liable to be punished.

ii) P.S. ShahinayatGunj had jurisdiction to register Respondent No. 2's complaint. She was residing at her uncle's residence which falls within P.S. ShahinayatGunj's jurisdiction.

iii) Further, in cases of matrimonial offences, an FIR can be registered at a place where the wife resides and the police are bound to register the FIR, irrespective of the territorial jurisdiction. Reliance was placed on Satvinder Kaur v. State (Govt. of NCT of Delhi) (1999) 8 SCC 728) and Rupali Devi v. State of Uttar Pradesh (2019) 5 SCC 384).

iv) In light of the arguments, it was prayed that in Cr. No. 237 of 2021 should

not be quashed.

6. Findings of the Court

i) In view of the above referred rival contentions, to decide the lis in the present criminal petition, it is relevant to discuss the relevant provisions of the Code of Criminal Procedure (hereinafter 'Cr.P.C.') dealing with registration of FIRs and the same are extracted below:

> "154. Information in cognizable cases.— (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:
>
> Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:
>
> Provided further that- (a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;
>
> (b) the recording of such information shall be videographed;
>
> (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.
>
> (2) A copy of the information as recorded under sub-section (1)shall be given forthwith, free of cost, to the informant.
>
> (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection

(1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."

"155. Information as to non-cognizable cases and investigation of such cases.— (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

"156. Police officer's power to investigate cognizable case.— (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

ii) It is relevant to note that Section 154 of the Cr.P.C. provides for the registration of FIR where the information discloses commission of a cognizable offence. Whereas Section 155 of the Cr.P.C. deals with the registration of FIR where the information received discloses a non-cognizable offence.

iii) A bare reading and comparing of Section 154(1) of the Cr.P.C. and Section 155(1) of the Cr.P.C. indicates that the phrase 'within the limits of such station of a non-cognizable offence' is absent in the former section. That is to say that, a non-cognizable offence can be registered only by an officer of the police station having territorial jurisdiction. In other words, in cases of non-cognizable offences, the police can register the FIR only if such offences were committed within its jurisdiction.

iv) On the other hand, according to Section 154(1) of the Cr.P.C., any police station which receives information regarding commission of a cognizable offence shall register the FIR. The requirement of territorial jurisdiction is not applicable to police officers where the information discloses commission of cognizable offences.

v) Further, Section 156 of the Cr.P.C. deals with the powers of police officers to investigate cases where cognizable offences are said to be committed. Section 156(2) of the Cr.P.C. clearly states that the investigation of a cognizable offence by a police officer cannot be called into question on the ground that he is not empowered. This means that police officer's investigation cannot be called into question on the ground of lack of territorial jurisdiction.

vi) A co-joint reading of Section 154(1) and Section 156(2) of the Cr.P.C. indicates that any police officer, irrespective of the territorial jurisdiction, can register an FIR and investigate, if information regarding commission of cognizable offence is received. In RasiklalDalpatram Thakkar v. State of Gujarat (2010)1SCC 1), the Supreme Court held that the investigation into a cognizable offence cannot be called into question on the ground of lack of territorial jurisdiction.

> "25. The various decisions cited by Mr. Syed, and in particular the decision in Satvinder Kaur's case (supra) provide an insight into the views held by the Supreme Court on the accepted position that theInvestigating Officer was entitled to transfer an investigation to a Police Station having jurisdiction to conduct the same. The said question is not in issue before us and as indicated hereinbefore, we are only required to consider whether the Investigating Officer in respect of an investigation undertaken under Section 156(3) Cr.P.C. can file a report stating that he had no jurisdiction to investigate into the complaint as the entire cause of action had arisen outside his jurisdiction despite there being material available to the contrary. The answer, in our view, is in the negative and we are of the firm view that the powers vested in the Investigating Authorities, under Section 156(1) Cr.P.C., did not restrict the jurisdiction of the Investigating Agency to investigate into a complaint even if it did not have territorial jurisdiction to do so. Unlike as in other cases, it was for the Court to decide whether it had jurisdiction to entertain the complaint as and when the entire facts were placed before it.

(emphasis supplied)"

vii) In the present case, Section 7 of the Act, 2019 clearly states that offences under the Act, 2019 are cognizable. Therefore, P.S. ShahinayatGunj was duty bound to register Respondent No.2's complaint under Section 154(1) of the Cr.P.C. and investigate the same under Section 156 of the Cr.P.C. P.S. Shahiniyat Gunj during the course of the investigation may decide whether they had territorial jurisdiction or not and refer the complaint to police station having jurisdiction.

viii) Therefore, according to this Court, P.S. Shahinayat Gunj had jurisdiction to register Cr. No. 237 of 2021. The contention of the Petitioners that P.S. Shahinayat Gunj has no territorial jurisdiction is unsustainable.

7. The next question falls for consideration is as to whether contents of the complaint constitute the offence under Section - 4 of the Act, 2019?

i) To decide the same, it is necessary to decide whether Petitioner No. 1 had pronounced talaq-e-biddat which is punishable under the Act, 2019. Before deciding the issue involved, it is pertinent to discuss the types of divorces which can be pronounced by a husband under Muslim Personal law. According to Mulla's Principles of Mahomedan Law, divorce under the Muslim Personal law is classified as talaq-e-sunnat and talaq-e-biddat. talaq-e-suunat is further classified as talaq-e-ahasan and talaq-e-hasan. The same was referred in ShayaraBano v. Union of India (2017) 9 SCC 1).

ii) In talaq-e-hasan, the husband has to pronounce talaq during three successive tuhrs(period between two menstrual cycles). The first talaq is pronounced during a tuhr, followed by a second pronouncement during the successive tuhr and finally, the third pronounced during the third successive tuhr. During the periods of three tuhrs, for the divorce to operate, the parties should refrain from marital intercourse. This type of divorce can be revoked at any time before the third pronouncement is made. Revocation can be done by resuming conjugal relations like cohabitation, marital relations, etc. Once the third pronouncement is made, the divorce becomes absolute and irrevocable.

iii) Talaq-e-ahsan consists of single pronouncement of divorce during a tuhr. After this single pronouncement, the iddat period (90 days period or three menstrual cycles) starts to run during which the parties shall not have any marital intercourse. This type of divorce or talaq is revocable and is revoked when the parties have resumed cohabitation or intimacy or settled their marital differences during the iddat period. If the parties fail to cohabit or settle their differences during the subsistence of the iddat period, the divorce becomes absolute, final and irrevocable.

iv) In talaq-e-biddat,three pronouncements of divorce are made during a single tuhr. These three pronouncements are made at once. Once the three pronouncements are made, the divorce instantly becomes final, absolute and irrevocable. In talaq-e-biddat, the parties

have no chance of reaching a settlement or reconciliation.

v) It is relevant to note that the practice of talaq-e-biddat was before the Supreme Court in ShayaraBano4. The Supreme Court with 3:2 majority set aside the practice of talaq-e-biddat, inter alia, on the ground of manifest arbitrariness. Subsequently, the Act, 2019 was enacted making the pronouncement of talaq-e-biddat punishable.

vi) At this juncture, it is relevant to discuss the provisions of the Act, 2019 which punish the practice of talaq-e-biddat. The relevant provisions are extracted below:

"Section 2(c)

"talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

Section 3 - Talaq to be void and illegal.

Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Section 4 - Punishment for pronouncing talaq.

Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine."

vii) A bare perusal of the above provisions indicates that talaq-e-biddat along with any other form of talaq having instantaneous and irrevocable pronounced by a husband under Muslim Personal Law is illegal and void. It is necessary that such divorce has to be instantaneous and irrevocable. Further, Section 3 covers pronouncement in any manner which includes serving notice, as is seen in the present case.

viii) Therefore, to decide the issue at hand this Court has to see whether the legal notice dated 29.10.2021 had an effect of instantaneous and irrevocable divorce. The relevant portion of the legal notice dated 29.10.2021, relied and interpreted by the counsels, is extracted below:

"Now my client is totally vexed with your behavior and actions and has pronounced Single Talaq/ One time to you in the presence of two competent witnesses on 27th of October, 2021. (emphasis added)

Hence take notice that you have been divorce by your husband by the pronouncing Talaq for one time and severed all his marital ties with you. (emphasis added)

The Mahar amount of Rs 51, 000/ (Rupees Fifty One Thousand Only) is being sent to you by way of money order. An amount of RS 15, 000/- (Rupees Fifteen Thousand Only) is sent to you through money order as Iddat period maintenance."

ix) Referring to the above portion of the notice dated 29.10.2021, it was contended on behalf of Respondent No. 2 that the notice stated that the Petitioner No. 1 had 'severed all his marital ties', this has an instantaneous and irrevocable effect of divorce. Therefore, it falls within the scope of Section 2(c) r/w Section 3 of the Act, 2019.

x) However, learned counsel for the Petitioners contended that the notice clearly stated that only single talaq was pronounced which is nothing but talaq e-ahsan. Further, it was contended that the Petitioner No. 1 had severed all his marital ties under talaq-e-ahsan. However, the divorce could be revoked before the expiry of iddat period.

xi) This Court agrees with the arguments advanced by the Petitioners and cannot accept the contention of respondent No.2 that Petitioner No. 1 had pronounced talaq-e-biddat. As mentioned above, the difference between talaq-eahsan and talaq-e-biddat is that, in the former the divorce can be revoked and is not final till the completion of iddat period, in the latter the divorce is instant and irrevocable.

xii) The notice dated 29.10.2021 clearly mentioned that Petitioner No. 1 pronounced a single talaq. Though severing of marital ties had an instantaneous effect, it did not have an irrevocable effect. Ties were severed by Petitioner No. 1 as it is a requirement under talaq-e-ahsan to not have any conjugal relations till the iddat period. The divorce was revocable as the parties could have mended the marital ties or reconcile their differences or resume normal marital life by resuming their conjugal relationship before the expiry of iddat period. Therefore, no irrevocable talaq was pronounced by Petitioner No. 1. Therefore, the contents of the complaint lacks the ingredients of the offence under Section - 4 of the Act, 2019.

xiii) Since no talaq-e-biddat was pronounced, no question of conspiracy of Petitioner Nos. 2 & 3 arises.

8. Conclusion

In light of the aforesaid, the proceedings in Cr. No. 237 of 2021 are quashed. The present Criminal Petition is accordingly allowed.

As a sequel, miscellaneous petitions, if any, pending in the criminal petition shall stand closed.

–X–

04.10.2009 and he lodged FIR on 19.07.2012 i.e. after 2 years 9½ months of the alleged incident and the Police has filed charge sheet on 04.12.2012 after a period of three years of the alleged incident, on which basis, the Magistrate has taken cognizance of the offence against the petitioners on 04.12.2012 which was barred by limitation, therefore, the trial Court as well as Revisional Court have committed error of law in rejecting the plea taken by the petitioners regarding maintainability of the prosecution on the ground of limitation."

In challenge to the order aforesaid, it has been argued that the proposition of the High Court, in proceeding on the basis of date of taking cognizance for the purpose of limitation, is not in conformity with law and runs directly contrary to the principles laid down by the Constitution Bench of this Court in the case of Sarah Mathew v. Institute of Cardio Vascular Diseases by its director Dr. K.M. Cherian & Ors.: (2014) 2 SCC 62. In counter, it has been argued on behalf of the respondent that the High Court has rightly held that the prosecution was not maintainable when the Magistrate took cognizance of the alleged incident on 04.12.2012 inasmuch as the date of offence was alleged by the complainant to be 04.10.2009. A decision of this Court in the case of State of Punjab v. Sarwan Singh: (1981) 3 SCC 34 is relied upon. It has also been attempted to be argued that the decision in the case of Sarah Mathew (supra) requires reconsideration because several aspects relating to the purpose of Chapter XXXVI CrPC have not been taken into consideration and this Court has not comprehensively dealt with the provisions relating to the bar of limitation.

Having heard learned counsel for the parties and having perused the material placed on record, we have not an iota of doubt that the impugned order of the High Court deserves to be set aside, for it proceeds squarely contrary to the law declared by the Constitution Bench of this Court in Sarah Mathew's case (supra).

In Sarah Mathew, the Constitution Bench of this Court examined two questions thus:

3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

3.2. (ii) Which of the two cases i.e. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121] or Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] (which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]), lays down the correct law?

The Constitution Bench answered the

aforesaid questions as follows: -

51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559] which is followed in Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394] lays down the correct law. Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646] will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.

(emphasis supplied)

Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009.

In rather over-zealous, if not over-adventurous, attempt to support the order of the High Court, learned counsel for the contesting respondents has attempted to submit that Sarah Mathew's case requires reconsideration on the ground that some of the factors related with Chapter XXXVI CrPC have not been considered by this Court. Such an attempt has only been noted to be rejected.

A decision of the Constitution Bench of this Court cannot be questioned on certain suggestions about different interpretation of the provisions under consideration. It remains trite that the binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced, was actually decided therein (Vide Somawanti & Ors. v. The State of Punjab & Ors.: AIR 1963 SC 151 (para 22).). This is apart from the fact that a bare reading of the decision in Sarah Mathew (supra) would make it clear that every relevant aspect concerning Chapter XXXVI CrPC has been dilated upon by the Constitution Bench in necessary details. As a necessary corollary, the submissions made with reference to other decision of this Court, which proceeded on its own facts, are of no avail to the respondents. Thus, the submissions made on behalf of the contesting respondents stand rejected in absolute terms.

For what has been observed and discussed hereinabove, this appeal is allowed. The impugned order dated 06.03.2019 is set aside and the petition filed before the High Court, being Miscellaneous Criminal Case No. 26287 of 2018, is dismissed.

The Trial Magistrate shall now proceed with the trial expeditiously and for that matter, it is also provided that if any other attempt is made on part of the accused-respondents to delay or obstruct the trial, the Magistrate would be free to adopt such coercive proceedings as may be necessary, including cancellation of bail granted to the accused-respondents or putting monetary conditions on them, equivalent to the present value of the property involved in the matter.

The parties through their respective counsel shall stand at notice to appear before the Judicial Magistrate, First Class, Khachrod, District Ujjain on 01.04.2022.

–X–

## 2022 (1) L.S. 51 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Sanjiv Khanna &
The Hon'ble Mr.Justice
Bela M. Trivedi

Neetu Singh & Ors., ..Petitioners
Vs.
State of U.P. ..Respondent

**INDIAN PENAL CODE, Secs.403 and 415 - Failure to pay rent may have civil consequences, but is not a penal offence under the Indian Penal Code - Mandatory legal requirements for the offence of cheating under Section 415 and that of misappropriation under Section 403 IPC are missing - Appeal, allowed.**

**O R D E R**

Leave granted.

Heard the learned counsel for the parties.

We are of the opinion that no criminal offence is made out, even if we accept the factual assertions made in the complaint, which was registered as the First Information Report. Failure to pay rent may have civil consequences, but is not a penal offence under the Indian Penal Code, 1860 (for short, "IPC"). Mandatory legal requirements for

the offence of cheating under Section 415 and that of misappropriation under Section 403 IPC are missing.

In view of the aforesaid position, the First Information Report is quashed.

On the question being put to the counsel for the appellants, it has been stated that the appellants have vacated the property. Learned counsel for the respondent No.3 disputes this statement, and states that the appellants have not handed over physical vacant possession of the property to respondent No.3.

Be that as it may, in view of the statement made by the learned counsel for the appellants, respondent No.3 is at liberty to enter into possession of the property without violating any law.

Learned counsel for respondent No.3 states that there are huge arrears of rent which have to be recovered. It will be open to respondent No.3 to take recourse to such civil remedy as is available to him in law.

Recording the above, the impugned order is set aside and the appeal is allowed quashing the First Information Report. The question when the appellant vacated the property and arrears of rent, etc. are left open to be decided in civil proceedings. All pending applications are also disposed of.

–X–

## 2022 (1) L.S. 52 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Ajay Rastogi &
The Hon'ble Mr.Justice
Abhay S. Oka

Jagdish Shrivastav ..Petitioners
Vs.
State of Maharashtra & Anr., ..Respondents

**CRIMINAL PROCEDURE CODE, Sec.41-A - Petitioner, after rejection of the Anticipatory Bail Application by the High Court, approached this Court for seeking pre-arrest bail – After filing the present Petition, investigating Officer, without serving Section 41(A) Cr.P.C Notice took the Petitioner in to custody.**

**HELD: Since the petitioners have now been in custody, liberty is granted to file regular bail application - If such an application is filed, it is expected from the Trial Court to take note of non-compliance of Section 41(A) Cr.P.C and dispose of the application for post-arrest bail, if any, filed by the petitioners within a reasonable time as expeditiously as possible - After the matter being instituted before this Court, Police Officer over stepped by taking the petitioners into custody without compliance of Section 41(A) Cr.P.C.**

Petition(s) for SLP(Crl.)
No(s). 1758/2022 Date:11-3-2022

**O R D E R**

Learned counsel for the petitioners informed this Court that after rejection of their Anticipatory Bail Application by the High Court by an Order dated 13th January, 2021, they immediately approached this Court for seeking pre-arrest bail.

Counsel for the petitioners submits that no notice under Section 41(A) Cr.P.C was ever served and after this fact came to the notice of the Investigating officer that SLPs have been preferred by the petitioners for seeking pre-arrest bail, he approached them and took the petitioners into custody on 8th March, 2022.

Since the petitioners have now been in custody, it may not be appropriate for this Court to pass further orders but at the same time, we grant them liberty to file regular bail application.

If such an application is filed, it is expected from the Trial Court to take note of non-compliance of Section 41(A) Cr.P.C and dispose of the application for post-arrest bail, if any, filed by the petitioners within a reasonable time as expeditiously as possible.

We deprecate such practice of the Police Officer in overstepping after the matter being instituted in this Court and taking the petitioners into custody without compliance of Section 41(A) Cr.P.C. and keeping in view the judgment of this Court in *Arnesh Kumar vs. State of Bihar & Anr.* (2014) 8 SCC 273.

The Special Leave Petitions are disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of.

**--X--**

## 2022 (1) L.S. 53 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Hemant Gupta &
The Hon'ble Mr.Justice
V. Ramasubramanian

Swaminathan & Ors., ..Petitioners
Vs.
Alankamony (Dead) througyh
L.Rs. ..Respondents

**INDIAN SUCCESSION ACT,1925, Secs.263, 276, 278 and 299 - Challenge in the present appeals is to an Order, whereby an appeal under Section 299 of the Indian Succession Act, filed by the brother of the testator for revocation of Letters of Administration was allowed.**

C.A.Nos.798-799/13 Date: 9-3-2022

**HELD: As per Section 263, the grant of Letters of Administration may be revoked for "just cause" - Explanation (a) under Section 263 states that just cause shall be deemed to exist where the proceedings were defective in substance - Illustration (ii) under Section 263 deals with a case where "the grant was made without citing parties who ought to have been cited" - High Court was right in holding that a just cause existed for revoking the grant - No error in the Order of the High Court warranting our interference - Appeals stand dismissed.**

**O R D E R**

1. The challenge in the present appeals is to an order dated 05.11.2008 whereby an appeal under Section 299 of the Indian Succession Act, 1925 (for short, 'the Act') filed by the brother of the testator for revocation of Letters of Administration dated 09.03.2002 was allowed.

2. The appellants sought Letters of Administration of a registered Will deed dated 23.08.1991 said to have been executed by one by Tnkappan Nadar in favour of the appellant – brother of the testator and his two sons. After the grant of Letters of Administration, another brother of testator filed an application for revocation of the Letters of Administration on the ground that all the legal heirs were not impleaded in the proceedings for the grant of Letters of Administration. The Civil Court dismissed the application for revocation but the order was set aside in appeal. Aggrieved, the legatee is in appeal before this Court.

1. Drawing our attention to the difference in the language employed between Section 276 and Section 278, the learned counsel for the appellants contended that what was filed by the appellants was a petition under Section 276(1) and that therefore, the requirement to make a mention about the details of the family and other relatives of the deceased, contained in Section 278(1) cannot be imported into Section 276. According to the learned counsel, the petition filed by the appellants was one for the grant of Letters of Administration with the Will annexed. It was not a petition filed under Section 278(1).

2. In order to appreciate the above contention, it is necessary to present Section 276(1) and Section 278(1) in a table as follows:-

| Section 276 | Section 278 |
|---|---|
| 276. Petition for probate.—(1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—<br>(a)the time of the testator's death,<br>(b)that the writing annexed is his last Will and testament,<br>(c)that it was duly executed,<br>(d)the amount of assets which are likely to come to the petitioner's hands, and<br>(e)when the application is for probate, that the petitioner is the executor named in the Will.<br><br>(2)…<br>(3)… | 278. Petition for letters of **administration.—**(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—(a)the time and place of the deceased's death;(b)the family or other relatives of the deceased, and their respective residences;(c) the right in which the petitioner claims;(d) the amount of assets which are likely to come to the petitioner's hands;(e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and(f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.<br>(2) … |

5. But unfortunately for the appellants, the catch is not to be found in the distinction between Section 276 and Section 278. It is to be found in Section 263 which reads as follows:-

> 263. Revocation or annulment for just cause. —The grant of probate or letters of administration may be revoked or annulled for just cause.
>
> Explanation. —Just cause shall be deemed to exist where—
>
> (a)the proceedings to obtain the grant were defective in substance; or
>
> (b)the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
>
> (c)the grant was obtained by means of an untrue allegation of a fact

essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d)the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The Will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a latter Will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

6. As per Section 263, the grant of Letters of Administration may be revoked for “just cause”. Explanation (a) under Section 263 states that just cause shall be deemed to exist where the proceedings were defective in substance. Illustration (ii) under Section 263 deals with a case where “the grant was made without citing parties who ought to have been cited”.

7. It may be of interest to note that some of the colonial statutes contain Illustrations which form part of the statutes themselves. The Indian Succession Act, 1925 is one such enactment.

8.. Therefore, the High Court was right in holding that a just cause existed for revoking the grant. Hence, we do not find any error in the order of the High Court warranting our interference. Therefore the appeals are dismissed.

9. Pending applications(s), if any, also stand disposed of.

–X–

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Printed, Published and owned by **Smt.Alapati Sunitha,**

Printed at: Law Summary Off-Set Printers,Santhapeta Ext., Ongole - 523001, Prakasam District. (AP)

Editor: **A.R.K. Murthy,** Advocate.