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(Founder : Late Sri G.S. GUPTA)

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SUBJECT - INDEX

A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, Secs.6(a) and 15 and 146 - Writ Petition seeking a Writ of mandamus declaring the action of the 1st respondent in issuing G.O. constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, as illegal and arbitrary - Petitioners are principally responsible for construction of the 3rd respondent temple which was brought under Section 6 (a) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act - As the income of the temple is more than Rs.1.00 crore, it has come under the jurisdiction of the Endowments Department and it is empowered to constitute a Board of Trustees under Section 15 of the Act - 1st respondent issued G.O., constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, under Section 146 of the Act for undertaking the reconstruction work of the temple, without giving any opportunity to the petitioners and the Beeram family who were associated with the temple in many of its activities.

HELD: Renovation Committee, which is a statutory committee, is required to discharge fiduciary duties and it should gain the utmost trust from the public at large, since the Committee would collect donations and contributions from them - As such, the consent and acceptability of the persons interested, the persons already parted with donations/contributions and the devotees is very much required for constitution of the Renovation Committee - This wholesome object can be achieved only after providing an opportunity to them by giving widespread publication or by conducting meetings for selection of the members from the persons interested, existing participants of the renovation works, donors and contributors - Therefore, this Court can safely hold that the concept of Reasonableness was not followed by the 1st respondent who exercised its power under Section 146 of the Act while appointing the present committee - Writ Petition stands allowed and the impugned Order of the 1 st respondent in G.O. stands quashed. **(A.P.)** ***275***

CRIMINAL PROCEDURE CODE, Sec.2(wa) - Whether a ‘victim’ as defined u/ Sec.2(wa) of the Code is entitled to be heard at the stage of adjudication of bail application of an accused - Criminal Appeal challenging an Order passed by the High Court, whereby

respondent No.1-accused has been enlarged on bail in a case under Sections 147, 148, 149, 302, 307, 326 read with Sections 34 and 120-B of the Indian Penal Code as well as Sections 3, 25 and 30 of the Arms Act.

Several farmers had gathered in Lakhimpur Kheri, U.P., to celebrate the birth anniversary of Sardar Bhagat Singh and to protest against the Indian Agricultural Acts - During this gathering, the farmers objected to certain comments made by Mr.Ajay Mishra @ Teni, Union Minister of State for Home - In the course of the meeting, the farmers decided to organise a protest against Mr.Ajay Mishra in his ancestral village - It is alleged that upon gathering knowledge of these events, coupled with the information that the route of the Chief Guest had to be changed because of the protesting farmers, respondent-accused became agitated - He, thereafter, is said to have conspired with his aides and confidants, allegedly drove into the crowd of the returning farmers and hit them with an intention to kill - Resultantly, many farmers and other persons were crushed by the vehicles.

HELD: Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances - It is the solemn duty of a Court to deliver justice before the memory of an injustice eclipses - In the present case, 'victims' have been denied a fair and effective hearing at the time of granting bail to the Respondent - Instead of looking into aspects such as the nature and gravity of the offence; severity of the punishment in the event of conviction; circumstances which are peculiar to the accused or victims; likelihood of the accused fleeing; likelihood of tampering with the evidence and witnesses and the impact that his release may have on the trial and the society at large; the High Court has adopted a myopic view of the evidence on the record and proceeded to decide the case on merits - Neither the right of an accused to seek bail pending trial is expropriated, nor the 'victim' or the State are denuded of their right to oppose such a prayer - In a situation like this, and with a view to balance the competing rights, this Court has been invariably remanding the matter(s) back to the High Court for a fresh consideration - We are also of the considered view that ends of justice would be adequately met by remitting this case to the High Court for a fresh adjudication of the bail application of the respondent-accused, in a fair, impartial and dispassionate manner - Impugned Order stands set aside - Respondent No.1 shall surrender and be taken into custody. **(S.C.)** ***57***

PASSPORTS ACT, Sec.10(d) - Writ Petition seeking a mandamus questioning the action of the 2nd respondent in retaining the Petitioner's passport - Petitioner is the Chairman of a private medical college – Petitioner made an application for renewal of the passport, and a new passport was issued - Petitioner travelled abroad with his new passport and returned to - A show cause notice was issued to the petitioner stating that the respondents received an adverse police verification report against him - At request of respondents, petitioner surrendered his passport.

HELD: Mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. - Even under Section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years - 2nd respondent is directed to immediately give back the passport to the petitioner - If there is any suppression of information, in the opinion of the respondents, is serious and merits action they should give the petitioner a notice, as per the applicable law/regulations etc., considering his explanation and then decide the further course of action - Right to travel abroad is a part of a personal liberty and the right to possess a passport etc., can only be curtailed in accordance with law only and not on the subjective satisfaction of anyone - Writ Petition stands allowed. **(A.P.)** ***272***

(INDIAN) PENAL CODE, Sec. 376 r/w Sec.511 - Judgment passed by Sessions Judge, partly allowing the appeal of the petitioner, maintaining the Judgment, convicting the petitioner for offence under Secs.376 r/w 511 IPC, but reducing the sentence of 5 years R.I as imposed by the Trial Court to 4 years R.I and confirming the remaining portion of the sentence, hence this revision.

HELD: Even if there be any discrepancy with respect to the time of the incident, the same in the view of this Court does not destroy the substratum of the prosecution case - Attempt starts where preparation ends, though it falls short of active commission of the crime - Courts below have concurrently recorded the guilt of the accused for the offence under Section 376 read with Section 511 IPC on due consideration of the evidence on record, which could not be shown to be suffering from any infirmity so as to attract the exercise of revisional jurisdiction - Accused has rightly been convicted under Section 376 read with Section 511 IPC - Criminal revision stands dismissed - Revisionist bail stands cancelled -Trial court is directed to ensure that the revisionist is sent to the prison to serve the remaining period of the sentence. **(A.P.)** ***284***

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31. In State of U.P. v. Satish [(2005) 3 SCC 114 : 2005 SCC (Cri) 642] this Court had stated that (SCC p. 123, para 22) the principle of last seen comes into play

"where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

32. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen."

25. A reading of the above would clearly indicate that the circumstance of last seen by itself cannot inculpate the accused, unless the case is seen in its entirety. When the other two circumstances namely discovery of body at the instance of the accused is found to be doubtful having regard to the inconsistent evidence of P.W.1 and P.W.2 in implicating A.2 and A.3 while P.W.3 and P.W.4 implicating A.1 and A.3, we feel that it may not be safe to convict the accused basing on the theory of last seen, more so, when the accused and the deceased are friends who used to consume alcohol everyday evening.

26. Accordingly, the Criminal Appeal Nos.310 & 326 of 2015, are allowed. The conviction and sentence recorded against the appellants/A.1 to A.3 in the Judgment dated 24.02.2015 in Sessions Case No.352 of 2010 on the file IV Additional District and Sessions Judge, Nellore, for the offences punishable under Section 302 r/w. Section 34, 379 and 201 r/w. Section 34 I.P.C. are set aside and the A.1 to A.3 are acquitted for the said offences. Consequently, the appellants/A.1 to A.3 shall be set at liberty forthwith, if they are not required in any other case or crime. The fine amount, if any, paid by the appellants/A.1 to A.3 shall be refunded to them.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

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2022(1) L.S. 272 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

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

Ganni Bhaskara Rao ..Petitioner
Vs.
The Union of India & Anr., ..Respondents

PASSPORTS ACT, Sec.10(d) - Writ Petition seeking a mandamus questioning the action of the 2nd respondent in retaining the Petitioner's passport - Petitioner is the Chairman of a private medical college – Petitioner made an application for renewal of the passport, and a new passport was issued - Petitioner travelled abroad with his new passport and returned to - A show cause notice was issued to the petitioner stating that the respondents received an adverse police verification report against him - At request of respondents, petitioner surrendered his passport.

HELD: Mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport - Even under Section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years - 2nd respondent is directed to immediately give back the passport to the petitioner - If there is any suppression of information, in the opinion of the respondents, is serious and merits action they should give the petitioner a notice, as per the applicable law/regulations etc., considering his explanation and then decide the further course of action - Right to travel abroad is a part of a personal liberty and the right to possess a passport etc., can only be curtailed in accordance with law only and not on the subjective satisfaction of anyone - Writ Petition stands allowed.

W.P.No.220/2022 Date: 8-4-2022

Mr.K. Chidambaram, Advocates for the Petitioner.
Mr.Krishna Bushan Chowdary, Advocate for the Respondents.

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J U D G M E N T

This Writ Petition is filed seeking a mandamus questioning the action of the 2nd respondent in retaining the petitioner's passport bearing No.Z6412398 vide surrender Certificate dated 01.12.2021.

This Court has heard Sri K.Chidambaram, learned counsel for the petitioner. He points out that the petitioner is the Chairman of a private medical college. He had a passport, which was valid till March, 2022. Thereafter, he made an application for renewal of the passport, and a new passport bearing No.Z6412398 was issued to the petitioner on 03.09.2021. The petitioner travelled abroad with his new passport and returned to India in the month of November, 2021. A show cause notice was issued to the petitioner stating that

the respondents received an adverse police verification report against him. At request of respondents, the petitioner surrendered his passport on 01.12.2021 and the same was acknowledged by the 2nd respondent vide surrender certificate dated 01.12.2021. Learned counsel for the petitioner argues on the basis of case law that the existence of the criminal cases is not a ground to seek surrender of the passport or not to renew the passport. Learned counsel submits that Section 6 of the Passport Act deals with the initial issue of passports and does not deal with the "renewal" of existing passport. He relies upon the judgments of the Karnataka and Delhi High Courts, which are reported in W.P.No.9141 of 2020 of Karnataka High Court and Crl.A.No.686 of 2018 of High Court of Delhi, and the judgment of the Supreme Court of India in Criminal Appeal No.1342 of 2017. Learned counsel argues that in that case before the Hon'ble Supreme Court of India the person was convicted of an offence and the conviction was stayed. Even then the Hon'ble Supreme Court of India held that renewal of a passport cannot be kept pending. Learned counsel, therefore, argues that the respondents cannot retain the renewed passport or demand its surrender only on the ground that there are adverse police cases against the petitioner.

In reply to this Sri Krishna Bushan Chowdary, learned counsel for the 2nd respondent, argues that action taken by the respondents is correct. He points out that there are at least four cases pending trial against the petitioner and the 5th case is under investigation. All of these are listed in paragraph 4 of the counter affidavit. Learned counsel submits that this is a case of suppression of information, since the petitioner did not bring these facts to the notice of the authorities when he sought for renewal. He also argues that the petitioner surrendered his passport. The last submission of the learned counsel is that the passport can be processed only under the GSR 570(E). He draws the attention of this Court to the judgments passed by the coordinate Benches of this Court in W.P.No.17993 of 2021 to argue that similar procedure must be followed.

This Court after hearing both the learned counsel notices that the Hon'ble Supreme Court of India, in Criminal Appeal No.1342 of 2017, was dealing with a person, who was convicted by the Court and his appeal is pending for decision in the Supreme Court. The conviction was however stayed. In those circumstances also it was held that the passport authority cannot refuse the "renewal" of the passport.

This Court also holds that merely because a person is an accused in a case it cannot be said that he cannot "hold" or possess a passport. As per our jurisprudence every person is presumed innocent unless he is proven guilty. Therefore, the mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. Even under Section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years. The use of the conjunction 'and' makes it clear that both the ingredients

must be present. Every conviction is not a ground to impound the passport. If this is the situation post-conviction, in the opinion of this Court, the pendency of a case / cases is not a ground to refuse, renewal or to demand the surrender of a passport.

The second issue here in this case is about the applicability of Section 6(2)(e) of the Passport Act. In the opinion of this Court that section applies to issuance of a fresh passport and not for renewal of a passport. It is also clear from GSR 570(E) which is the Notification relied upon by the learned counsel for the respondents and is referred to in the counter affidavit. This Notification clarifies the procedure to be followed under Section 6 (2) of the Passport Act against a person whom the criminal cases are pending. This notification permits them to approach the Court and the Court can decide the period for which the passport is to be issued. This is clear from a reading of the Notification issued. Clause (a) (i) states if no period is prescribed by the Court the passport should be issued for one year. Clause (a) (ii) states if the order of the Court gives permission to travel abroad for less than a year but has not prescribed the validity period of the passport, then the passport should be for one year. Lastly, Clause (a) (iii) states if the order of the Court permits foreign travel for more than one year but does not specify the validity of the passport, the passport should be issued for the period of travel mentioned in the order. Such a passport can also be renewed on Court orders. Therefore, a reading of GSR 570(E) makes it very clear that to give exception or to exempt applicants from the rigour of Section 6 (2)(f) of the Act, GSR 570(E) has been brought into operation. The issuance of the passport and the period of its validity; the period of travel etc., are thus under the aegis of and control of the Court.

If the present case is examined it is clear that already a passport was issued to the petitioner and on its expiry a fresh passport was reissued. The show cause notice was issued to the petitioner to which he gave reply and thereafter the passport was surrendered as evidenced by the surrender certificate. Thus, this is not a case of “impounding”. If a person convicted of a crime is entitled to seek a renewal as held by the Hon’ble Supreme Court of India, this Court does not find any reason to hold that the petitioner who is only an accused cannot hold a passport. Therefore, the 2nd respondent is directed to immediately give back the passport bearing No. Z6412398 to the petitioner. In the opinion of this Court, the passport cannot be retained only on the ground that there are criminal cases pending.

If the suppression of this information, in the opinion of the respondents, is serious and merits action they should give the petitioner a notice, as per the applicable law / regulations etc., consider his explanation and then decide the further course of action. For the present there shall be an order directing the 2nd respondent to retain the passport mentioned above to the petitioner. A reading of GSR 570(E), which is relied upon by the respondents also makes it clear, even if criminal cases are pending an accused can hold a passport and travel abroad with the permission of

the Court. Therefore, this Court holds that the action of the respondents in seeking the return of the passport on the ground of adverse police report is not correct. Post the landmark decision in **Maneka Gandhi v Union of India and Another (**AIR 1978 SC 597) and later cases upto **Satish Chandra Verma v Union of India and Others (**2019 SCC OnLine SC 2048), the right to travel abroad is a part of a personal liberty and the right to possess a passport etc., can only be curtailed in accordance with law only and not on the subjective satisfaction of anyone. The procedure must also be just, fair and reasonable.

With the above observation the Writ Petition is allowed. There shall be no order as to costs.

Consequently, the Miscellaneous Applications pending, if any, shall also stand closed.

–X–

2022(1) L.S. 275 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Venkateswarlu Nimmagadda

B.V. Rami Reddy & Ors., ..Petitioners
Vs.
The State of A.P., & Ors., ..Respondents

A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, Secs.6(a) and 15 and 146 - Writ Petition seeking a Writ of mandamus declaring the action of the 1st respondent in issuing G.O. constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, as illegal and arbitrary - Petitioners are principally responsible for construction of the 3rd respondent temple which was brought under Section 6 (a) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act - As the income of the temple is more than Rs.1.00 crore, it has come under the jurisdiction of the Endowments Department and it is empowered to constitute a Board of Trustees under Section 15 of the Act - 1st respondent issued G.O., constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, under Section 146 of the Act for undertaking the reconstruction work of the temple, without giving any opportunity to the petitioners and the Beeram family who were associated with the temple in many of its activities.

HELD: Renovation Committee, which is a statutory committee, is required to discharge fiduciary duties and it should gain the utmost trust from the public at large, since the Committee would collect donations and contributions from them - As such, the consent and acceptability of the persons interested, the persons already parted with donations/contributions and the devotees is very much required for

W.P.No.25543/2021 Date: 31-3-2022

constitution of the Renovation Committee - This wholesome object can be achieved only after providing an opportunity to them by giving widespread publication or by conducting meetings for selection of the members from the persons interested, existing participants of the renovation works, donors and contributors - Therefore, this Court can safely hold that the concept of Reasonableness was not followed by the 1st respondent who exercised its power under Section 146 of the Act while appointing the present committee - Writ Petition stands allowed and the impugned Order of the 1 st respondent in G.O. stands quashed.

Mr.M.Vidyasagar, Advocate for the Petitioners.
G.P. for Endowment, Advocate for Respondents 1 & 2.
Mr.G.. Rama Rao, Advocate for 3rd respondent.
Mr.M.Chalapathi Rao, Advocate for the Respondents 4 to 9.

O R D E R

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus declaring the action of the 1st respondent in issuing G.O.Rt.No.645, Revenue (Endowments.II) Department, dated 07.10.2021 constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, as illegal and arbitrary.

2. The case of the petitioners, in brief, is that the petitioners hail from the family of Beeram Chenna Reddy, who was principally responsible for construction of the 3rd respondent temple. The 3rd respondent temple is situated in the land admeasuring Ac.1.80 cents which belongs to Beeram Chenna Reddy and Acs.4.85 cents was also endowed by the son of said Beeram Chenna Reddy. The 3rd respondent temple was brought under Section 6 (a) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act"). As the income of the temple is more than Rs.1.00 crore, it has come under the jurisdiction of the Endowments Department and it is empowered to constitute a Board of Trustees under Section 15 of the Act. The day to day activities and the amounts derived are being looked after by the Executive Officer of the temple. While so, all of a sudden, the 1st respondent issued G.O.Rt.No.645, Revenue (Endowments.II) Department, dated 07.10.2021, constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, under Section 146 of the Act for undertaking the reconstruction work of the temple, without giving any opportunity to the petitioners and the Beeram family who were associated with the temple in many of its activities, though the renovation work was undertaken by the Executive Officer of the temple by taking necessary permissions from the 2nd respondent and it reached the stage of completion. Obviously, no applications were called for from the public in general to be appointed as members of the Renovation Committee and only on a letter given by the 2nd respondent, the Renovation Committee was

constituted. The impugned proceedings do not even satisfy the basic requirement as to whether respondent Nos.4 to 9 possess necessary qualifications under Section 18 of the Act and do not come under the ambit of Section 19 of the Act and do not speak about any enquiry conducted on the members to adjudicate their antecedents. The Renovation Committee was constituted as per the whims and fancies of the 1st respondent and the impugned G.O. was issued at the behest of a local public representative. The impugned G.O. also does not specify the term of the office of the Renovation Committee and it is ex-facie illegal. Hence the writ petition.

3. The 2nd respondent filed a counter affidavit denying the averments made in the writ affidavit and stating that the Beeram family filed W.P.No.9501 of 2010 against the Endowments Department and the said writ petition was disposed of on 27.11.2013 by the learned single Judge extending the interim order already granted on 26.04.2010. The said direction was set aside by the Division Bench of this Court by its order dated 10.12.2013 in W.A.No.1890 of 2013. It is also stated that the 2nd respondent issued a notice calling for applications for constituting the Board of Trustees to the subject temple and in W.P.No.38096 of 2013 filed by one Beeram Janardhana Reddy, this Court suspended the said notice issued by the 2nd respondent. Section 146 of the Act empowers the State Government to constitute a Renovation Committee. The Renovation Committee Rules are not prescribing that applications have to be called for or the publication is to be made for appointment of the members of the Renovation Committee. The power of the Government to appoint a Renovation committee is unfettered and the members to be appointed have to possess the qualifications mentioned under Section 18 of the Act and free from disqualification as specified under Section 19 of the Act. The Assistant Commissioner, Endowments Department, Kurnool in his report dated 07.07.2021 stated that the Garbhalayam works are under progress and only 50% of the works were done and some of the works are yet to be started. He found that there is necessity to provide amenities to the devotees and suggested for appointment of a Renovation Committee with six members for a period of three years. Considering all these aspects, the Renovation Committee was appointed by the 1st respondent. A reasonable and prudent exercise was made in appointing respondent Nos.4 to 9 as members of the Renovation Committee. Rule 3 of the Renovation committee Rules is emphasizing only Section 18 and 19 of the Act i.e., qualification and disqualification of the members. Nowhere the rules are prescribing to follow Section 15 which is intended to invite applications from the general public for appointing them as members to the Committee, which is meant for constitution of Board of Trustees. Section 15 of the Act is no way relevant to constitution of Renovation committee which is done as per Section 146 of the Act. Therefore, the G.O. issued by the 1st respondent cannot be found fault with. In view of the above, the 2nd respondent prays to dismiss the writ petition.

4. Respondent Nos.4 to 9 filed a

counter affidavit reiterating the contentions raised by the 2nd respondent and sought for dismissal of the writ petition and sought for dismissal of the writ petition.

5. Heard learned counsel for the petitioners, learned Government Pleader for Endowments appearing for respondent Nos.1 and 2, learned standing counsel for the 3rd respondent, and learned counsel for respondent Nos.4 to 9.

6. Learned counsel for the petitioners contends that the subject Renovation Committee, which was constituted under Section 146 of the Act vide G.O.Rt.No.645 dated 07.10.2021, is also a statutory committee. He further contends that the Renovation Committee has been constituted without any involvement being given to the persons interested and without calling for any applications from the interested persons to be part of the said Committee, even though they parted with the donations and contributions for ongoing renovation works of the subject temple and a major part of the renovation work has already been completed under the supervision of the Executive Officer of the 3rd respondent temple after obtaining necessary plans and permissions for such renovation work and as of now there is no necessity to constitute the Renovation Committee. The learned counsel also contends that as the petitioners' family is a founder's family of the temple, they should have been appointed as members of the Renovation Committee, since they are being involved in the affairs of the 3rd respondent temple for the past few generations. Therefore, on the grounds of non-consideration of the persons who are interested and who parted with the huge donations for the renovation work of the temple and constitution of the Renovation Committee on a mere recommendation of the local public representative without following the procedure as contemplated and required under Sections 18 and 19 of the Act, under which the antecedents, qualifications and eligibility of the proposed members to be appointed should be enquired. In the absence of the fair exercise as stated above, the Renovation Committee is liable to be quashed. In support of his contentions, the learned counsel for the petitioners relied upon a judgment of the combined High Court of Andhra Pradesh at Hyderabad rendered in Pagadala Pratap Vs. State of A.P. (2010 (4) ALT 510 (S.B) wherein this Court set aside the impugned G.O. therein for violation of statutory provisions of the Act 30 of 1987 and the Trustee Rules, on the ground of abdication of duty and non application of mind by the competent authority i.e., the Government by accepting the recommendations made by the Minister of Information and Public Relations for such constitution of the Board of Trustees.

7. On the other hand, learned Government Pleader for the official respondents submits that the power of the 2nd respondent under Section 146 of the Act is unfettered, as such, by exercising his power he constituted the Renovation Committee by following the required procedure under Section 146 of the Act. She contends that no specific procedure for constitution of Renovation Committee is envisaged under the Act 30/1987 and the members, who are appointed in this subject

Committee, are eligible under Section 18 of the Act and not suffered any disqualification as per Section 19 of the Act and after verification of their antecedents, the Committee has been constituted by the 1st respondent. Moreover, no procedure for constitution of the Board of Trustees as envisaged under Rules 6 and 8 of the Renovation Committee Rules, 1987 (for short "the Rules") issued under G.O.Ms.No.649, Revenue (Endowments-I) Dated 30.06.1989 and Section 15 of the Act need be followed. Therefore, publication of notice as well as receipt of applications from the public are not at all necessary and the recommendation of the local representative for appointment of the members of the Committee cannot be vitiated. She relied on a judgment of the combined High Court of Andhra Pradesh rendered in P. Madhubabu Vs. Commissioner of Endowments, Endowments Department, Hyderabad (2012 (5) ALD 445) wherein this Court upheld the constitution of Board of Trustees therein, even though the names of members were recommended by the local representative and the then Minister concerned. As long as the members are eligible under Sections 18 and 19 of the Act, even though they were recommended by public representative, they do not suffer any disability. Hence, in view of the aforesaid judgment, the writ petition is liable to be dismissed.

8. Learned counsel for the unofficial respondents contends that either under Section 146 of the Act or under the Rules, no public notice is required to be issued inviting applications from the persons interested for being appointed as members of the Renovation Committee. As such, the contention of the petitioners that the petitioners as well as other interested persons were not at all considered for constitution of the Renovation Committee, does not arise. He further contends that the 1st respondent is having an unfettered power to constitute the Renovation Committee for carrying out the renovation work of the temple. He further contends that 50% of the renovation work of Garbhalayam only was completed and many other works as enumerated in the proceedings of the 1st respondent denote that they are still pending. As such, there is very much requirement of constitution of the Renovation Committee in the absence of Board of Trustees for completion of the renovation work by collection of donations/ contributions from the public at large. He further contends that mere forwarding the names of the persons concerned for appointment of members of the Renovation Committee by the local public representative would not attract any disqualification for their appointment as members of the Renovation Committee and as contended by the learned Government Pleader, they are all well qualified and eligible for such appointment under Sections 18 and 19 of the Act. He relied upon an unreported judgment of the combined High Court of Andhra Pradesh at Hyderabad in Cheviti Anjaneyulu Vs the State of Telangana (W.P.No.5692 of 2018 dated 08.11.2018) wherein this Court held that the procedure for constitution of Renovation Committee need not be followed as contemplated under Section 15 of the Act and Rules 6 and 8 of the Rules and the Government is having unfettered power under Section 146 of Act

for constitution of the Renovation Committee. He, therefore, prays to dismiss the writ petition.

9. Having heard the learned counsel for the parties, it would be useful to refer to certain provisions of Act 30/1987. Section 146 of the Act 30/1987 deals with constitution of renovation committee as its liability. Sub-sections (1) and (2) of Section 146 of the Act read as under:

> "146. Constitution of Renovation Committee and its liability:-
>
> (1) The Government may constitute a renovation committee to any religious or charitable institution consisting of persons with qualifications prescribed in Section 18 and subject to qualifications specified in Section 19.
>
> (2) The composition of the committee, the term of the office of the members of the committee and other matters relating to the functions of the committee shall be such as may be prescribed.

10. Sub-section (1) of Section 146 of the Act prescribe that the Government would constitute a renovation committee to any religious or charitable institution consisting of persons with qualifications prescribed in Section 18 and subject to disqualifications specified in Section 19. Therefore, even for appointment of a person as member of the renovation committee, he should satisfy the tests laid down in Sections 18 and 19. Section 18 of the Act which deals with qualification of trusteeship prescribed that a person to be appointed as a trustee should have faith in God, possess good conduct, reputation and commands in the locality, should have contributed for construction, renovation or development of any institution or performance, should have sufficient time and interest to attend the affairs of the institution and lastly he should possess any other merit. Section 19 prescribes various conditions for disqualification of a member.

11. The Renovation Committee is to be considered as good as the Board of Trustees in respect of constitution of the Committee, since it is also a statutory committee. The functions and duties of the Renovation Committee are enumerated under Rules 7, 8 and 9 of the Rules. Under Rule 7 of the Rules, the Committee shall have the functions of preparing plans for construction work of the institutions, supervising the works, raising and collecting donations from the worshippers and others for the proposed renovation and construction works of the institution, advising and assisting the Board of Trustees, if any, with constructive suggestions for the proper execution of the works, and deciding as to and in which manner the donations collected have to be spent for the renovation works of the institution. Under Rule 8 of the Rules, the Chairman of the Committee shall carry out the correspondence with the Committee in his name and draw up and issue an appeal to the public and other religious institutions for donations for the renovation work of the institution. Under Rule 9 of the Rules, every member of the Committee is

authorized to collect donations from public for the renovation work of the institution. Having viewed the above Rules, it is the opinion of the Court that the functions and duties of the Renovation Committee indicate that it is nothing but holding the status of fiduciary position and it requires public trust for collection of donations and for utilization of the same, since the entire funds are collected from the public at large.

12. Whereas, the most interested factor is that the note file shows that a Member of the Legislative Assembly of the area had addressed a letter to the Commissioner of Endowments for constitution of a removation committee and suggested the names for being appointed to the renovation committee. Thereupon, proceedings were initiated and the persons, who were recommended by the Member of the Legislative Assembly, had been appointed as renovation committee.

13. Prima facie, the constitution of the Renovation Committee without any opportunity being given to the persons interested and other devotees who are participating in the ongoing renovation works of the 3rd respondent temple, does not meet the requirements of ensuring adequate opportunity being given to all such persons. The procedure set out for constituting a Trust Board for an institution under the Act, requires widespread publicity and opportunity being given to all the persons who are interested to apply for being appointed to the Board of Trustees. The wholesome principle required to be applied even for constitution of a Renovation Committee also. Even though such procedure expressly not contemplated under the Act as well as under the Rules for constitution of the Renovation Committee, but the principle and the procedure adopted for constitution of the Board of Trustees under Section 15 of the Act and Rules 6 and 8 of the Rules are to be followed, since the requirement of procedure and suitability of members are in accordance with Sections 18 and 19 as contemplated to the members of the Board of Trustees.

14. In P. Madhubabu case (2 supra) this Court upheld the constitution of the Board of Trustees consisting of three members and even though there is a recommendation by a public representative, but this Court gave an analogy of reason that out of three members recommended by the local representative, only one member was considered and other two members were picked up by the authority by application of mind. As such, there is no abdication of duty and non-application of mind by the competent authority. The said judgment is not at all applicable to the present case on hand, because in the present case, the members who were recommended by the local public representative all were appointed as members of the Renovation Committee without any omissions or additions and without application of mind.

15. In Cheviti Anjaneyulu case (referred to supra), it is held that the members of the Renovation Committee have been suggested by the Commissioner of Endowments after enquiry and due verification of antecedents of the members of that Committee, whereas in the present

case, the recommendation for appointment of members of the Renovation Committee by a local public representative was taken into consideration without having proper verification and antecedents of the members of the Renovation Committee as required under Sections 18 and 19 of the Act. Moreover, all the persons who were recommended by the local representative were appointed. As such, the judgment relied upon by the learned counsel for the unofficial respondents, is not at all applicable to the case on hand.

16. This Court, after going through Section 146 of the Act as well as the Rules, is of the view that the Renovation Committee, which is a statutory committee, is required to discharge fiduciary duties and it should gain the utmost trust from the public at large, since the Committee would collect donations and contributions from them. As such, the consent and acceptability of the persons interested, the persons already parted with donations/contributions and the devotees is very much required for constitution of the Renovation Committee. This wholesome object can be achieved only after providing an opportunity to them by giving widespread publication or by conducting meetings for selection of the members from the persons interested, existing participants of the renovation works, donors and contributors. Therefore, this Court can safely hold that the concept of Reasonableness was not followed by the 1st respondent who exercised its power under Section 146 of the Act while appointing the present committee.

17. It is observed from the facts of the case that the renovation work of the temple has already started and so many persons and devotees must have donated their hard earned money at the request of the Executive Officer of the 3rd respondent temple, who is supervising the entire renovation work till today, having trust upon him. So, the persons, who are interested and involved in the renovation work of the temple, cannot be deprived of their right to be participated in the renovation works and to be appointed as members of the Renovation Committee. There is an obligation on the part of the official respondents to provide an opportunity to all the persons interested for selection of members of the Renovation Committee It can be held that the present Renovation Committee without providing opportunity to the persons interested and devotees who are participants of the ongoing renovation work, is nothing but against the will and wish of them, since it has been constituted on a mere recommendation of a local representative.

18. For the reasons stated above, this Court is of the opinion that after completion of a major part of the renovation work in respect of the 3rd respondent temple, there is no necessity of constituting the Renovation Committee, more particularly upon the recommendation of the local representative. Therefore, the power exercised by the 1st respondent is against the concept of reasonableness which is a well recognised principle of law of administration. The said principle was observed by the Hon'ble Supreme Court in Smt. Menaka Gandhi Vs. Union of India (AIR 1978 SC 597). The concept of

reasonableness runs like a golden thread through the entire fabric of fundamental rights and finds that this concept of reasonableness is a positive manifestation and expression in the lofty idle of social and economic justice which inspires and animates the constructive principles. So, the concept of reasonableness runs through the totality of Articles 14 and 19 of the Constitution. The said principle was further held by the Hon'ble Apex Court in G.B.Mahajan Vs. Jalgaon Municipal Corporation (1991 AIR 1153) wherein the Hon'ble Supreme Court observed that the reasonableness and administrative law imposed, therefor, to distinguish between proper use and improper use of power. In the present case, the action on the part of the 1st respondent is not in accordance with the concept of reasonableness. Therefore, either failure to exercise proper use of power or improper use of power constitutes unreasonableness. As such, the 1st respondent exercised its power in improper manner and which constitutes unreasonableness.

19. In the facts of the present case, the Executive Officer of the 3rd respondent temple already spent huge amount, which was collected from the participants of the renovation works, devotees of the temple, other individual and residents of the village, who intended to renovate/reconstruct the 3rd respondent temple. But on the recommendation made by the local public representative, the 1st respondent had constituted the Renovation Committee without verifying the antecedents and credentials of the members of the Renovation Committee and without participation of members who are on the job. Hence, the necessity of public trust is very much required to achieve the wholesome object of completion of renovation work of the temple by collecting donations and contributions from the public at large. Moreover, the trust of public should be kept intact even for spending of amount collected so far in a manner and method already prepared and planned by the 3rd respondent and other active participant members. Therefore, the action of the 1st respondent is also against the principle of doctrine of public trust, which is another notable principle of Administrative Law.

20. Accordingly, the Writ Petition is allowed and the impugned order of the 1st respondent in G.O.Rt.No.645, Revenue (Endts.II) Department, dated 07.10.2021, is quashed. There shall be no order as to costs.

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

–X–

2022(1) L.S. 284 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ravi Nath Tilhari

Panditi Lakshmareddy ..Petitioner
Vs.
The State of A.P., ..Respondent

INDIAN PENAL CODE, Sec. 376 r/w Sec.511 - Judgment passed by Sessions Judge, partly allowing the appeal of the petitioner, maintaining the Judgment, convicting the petitioner for offence under Secs.376 r/w 511 IPC, but reducing the sentence of 5 years R.I as imposed by the Trial Court to 4 years R.I and confirming the remaining portion of the sentence, hence this revision.

HELD: Even if there be any discrepancy with respect to the time of the incident, the same in the view of this Court does not destroy the substratum of the prosecution case - Attempt starts where preparation ends, though it falls short of active commission of the crime - Courts below have concurrently recorded the guilt of the accused for the offence under Section 376 read with Section 511 IPC on due consideration of the evidence on record, which could not be shown to be suffering from any infirmity so as to attract the exercise of revisional jurisdiction - Accused has rightly been convicted under Section 376 read with Section 511 IPC - Criminal revision stands dismissed - Revisionist bail stands cancelled -Trial court is directed to ensure that the revisionist is sent to the prison to serve the remaining period of the sentence.

Crl.R.C.No.645/2007 Date: 8-4-2022

Mr.T.S. Rayulu, Advocate, representing Kavitha Gottipati,Advocates for the Petitioner.
Mr.S. Venkata Sai, Special Assistant Public Prosecutor, Advocates for the Respondent..

J U D G M E N T

1. Heard Sri T.S. Rayulu, learned counsel representing Smt Kavitha Gottipati, for the petitioner revisionist and Sri S. Venkata Sai, learned Special Assistant Public Prosecutor for the respondent/State.

2. The criminal revision under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ("Cr.P.C") has been filed challenging the judgment dated 22.03.2007, passed by the X Additional District & Sessions Judge (FTC), Guntur at Narasaraopet, partly allowing the appeal of the petitioner in Crl.A.No.4 of 2005, maintaining the judgment dated 05.10.2004, convicting the petitioner for offence under Sections 376 read with 511 IPC, but reducing the sentence of 5 years R.I as imposed by the Assistant Sessions Judge, Gurazala in S.C.No.160 of 2004 to 4 years R.I and confirming the remaining portion of the sentence.

3. The Sub Inspector of Police, Piduguralla Police Station, filed the charge

sheet against the petitioner-accused stating that on 29.12.2003 at about 12.00 noon when "the victim" along with P.Ws.3 to 5 went to the fields to collect plum fruits (Regu Pallu), the accused with evil intention to commit rape, took the victim towards the red gram field near Daggu Bhavi, threw her down removed Langa and tried to commit rape and when P.Ws.3 to 5 reached there, the accused threatened them with dire consequences. On hearing the hue and cry P.Ws.6 and 7 rushed to the spot, the accused fled away. The accused also slapped the victim, who returned home and informed the same to her mother (PW.8). The victim's father P.W.1, on returning home learnt about the incident and on 29.12.2003 at 9.00 p.m. lodged report to the Police Station.

4. The Sub Inspector of Police, Piduguralla registered case in Crime No.280 of 2003 under Sections 506, 376 read with Section 511 IPC, sent FIR to the Court and the officers concerned and made investigations. He examined the witnesses, recorded their statements, inspected the scene of offence on 30.12.2003 at 10.00 a.m in the presence of the mediators and also prepared rough sketch of the scene. The Investigation Officer (I.O) (PW.10) arrested the accused on 17.01.2004, produced him to the Court and obtained remand. After completion of the investigation the IO filed the charge sheet for the offence punishable under Sections 506, 376 read with 511 IPC.

5. The I Additional Judicial Magistrate First Class, Gurazala, took the case on file under Sections 506(2), 376 r/w 511 IPC against the accused and after complying with the formalities committed the case to the Court of Sessions, Guntur, who made it over to the Court of the Assistant Sessions Judge, Gurazala.

6. In trial, P.Ws.1 to 10 were examined and Exs.P.1 to P.4 were marked for the defence. After closing the prosecution case, the accused was examined under Section 313 Cr.P.C. He did not offer any defence.

7. The learned trial Court convicted the accused for the offence under Section 376 r/w Section 511 IPC and sentenced to undergo RI for five years and pay fine of Rs.1,000/-. In default to undergo Simple Imprisonment SI for two months.

8. The appeal filed by the revisionst-accused was partly allowed in the terms already mentioned above against which this revision has been filed.

9. Sri T.S. Rayulu, learned counsel for revisionst submitted that the prosecution failed to prove the charges beyond reasonable doubt. The conviction has been based on the testimony of child witnesses which are most unreliable. There was inconsistency in the statements of the witnesses P.Ws.2 to 5. Attempt to commit rape is not proved and in any case the punishment imposed is excessive and deserves to be reduced.

10. Sri S. Venkata Sai Nath, learned Special Assistant Public Prosecutor submitted that the conviction can be based on the testimony of child witnesses. There

was no inconsistency in the evidence of the child witnesses which found corroboration from other evidence. The minor discrepancies are of no significance. The offence was proved beyond reasonable doubts. No leniency deserves to be shown in the awarded punishment and the revision deserves dismissal.

11. I have considered the submissions advanced by the learned counsels and perused the material on record.

12. In view of the submissions advanced, the court first proceeds to consider the legal position in respect of the evidentiary value of a child witness testimony.

13. In Ratansinh Dalsukhbhai Nayak vs. State of Gujarat (2004) 1 Supreme Court Cases 64), the Hon'ble Apex Court held as under in paragraphs 6 and 7 reproduced as below:

> "6. Pivotal submission of the appellant is regarding acceptability of PW-11's evidence. Age of the witness during examination was taken to be about 10 years. Indian Evidence Act, 1872 does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer J in Wheeler v. United States (159 U.S. 523). The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.
>
> 7. In Dattu Ramrao Sakhare v. State of Maharashtra (1997 (5) SCC 341) it was held as follows:
>
> "A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored".

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaked and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

14. In Rahey Shyam vs. State of Rajasthan (2014 Law Suit (SC) 120), the same principles were reiterated. Recently, in Hari Om Alias Hero vs. State of Uttar Pradesh (2021) 4 SCC 345), the Hon'ble Apex Court held as under:

"22. At the outset, we must note the perspective from which the evidence of a child witness is to be considered. The caution expressed by this Court in Suryanarayana9 that "corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence" is a well-accepted AIR (1956) SC 441 (1973) 1 SCC 202 (2001) 9 SCC 129 (2010) 12 SCC 324 (2015) 7 SCC 167 principle. While applying said principle to the facts of that case, this Court in Suryanarayana9 observed:-

"5. Admittedly, Bhavya (PW 2), who at the time of occurrence was about four years of age, is the only solitary eyewitness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eyewitness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross- examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony

alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

6. This Court in Panchhi v. State of U.P (1998) 7 SCC 177) held that the evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law (vide Prakash v. State of M.P (1992) 4 SCC 225); Baby Kandayanathil v. State of Kerala (1993 Supp (3) SCC 667); Raja Ram Yadav v. State of Bihar (1996) 9 SCC 287); Dattu Ramrao Sakhare v. State of Maharashtra (1997) 5 SCC 341).

7. To the same effect is the judgment in State of U.P. v. Ashok Dixit (2000)3 SCC 70).

8..............................."

15. It is thus settled in law with respect to the evidence of the child witness that:

(i) Though the child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shacked and moulded, but if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

ii) The evidence of the child witness cannot be discriminated only on the ground that of being a tendered age.

iii) The corroboration of a child witness is not a rule but a measure of caution and prudence,

iv) Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness.

(v) The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence.

(vi) The trial Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath.

(vii) The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs.

viii) While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored.

ix) In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purpose of holding the accused guilty or not.

16. With respect to the commission of the offence by the accused, the victim P.W.2 clearly deposed that on the date and time of the incident, P.Ws.2 to 5 went to collect plum fruits at Dagguvari Bhavi situated at Janapadu road. At about 12.00 noon the accused came and caught hold of her hand. Then the accused took her in the red gram garden situated 2 fields away from the field where they were collecting plum fruits. The accused removed the petty coat of P.W.2 forcibly and attempted to commit rape on her. When P.W.2 raised cries PWs 3 to 5 also came to P.W.2 by raising cries. P.Ws.6 and 7 also came on hearing the cries and on seeing them the accused slapped PW2 and went away stating that he will kill PW 2 if she revealed the incident to any body.

17. The evidence of P.W.2, finds corroboration from the evidence of P.Ws.3 to 5, the child witnesses who categorically deposed that P.W.2 is her elder sister and P.W.1 is their father and that she knows the accused. On the date and time of the offence PWs 2 to 5 went to collect fruits at Dagguvani Bhavi situated at Janapadu road. P.W.4 categorically deposed to have witnessed, while accused removed the petticoat of PW2 and attempted to commit rape on her and on seeing them the accused slapped PW 2 and went away. P.W.5 categorically deposed that the accused took PW 2 to red gram field and tried to commit rape on her and on hearing the cries of PW2, PWs 3 to 5 reached there and witnessed that the accused removed the petty coat of PW 2 and fell on her. The independent witnesses P.W.6 and P.W.7 deposed that they found PW 2 was undressed and they took PW 2 and other children to home.

18. Any discrepancy in the evidence

of the child witnesses P.Ws. 3 to 5 could not be shown out by the learned counsel for the revisionst.

19. In the present case, the evidence of the child witnesses P.Ws. 3 to 5 corroborates the testimony of P.W.2, the victim child aged about 8 years and in Class IV on the date of the incident, which is further corroborated by the evidence of independent witnesses P.Ws.6 and 7 in material particulars.

20. There is no discrepancy with respect to the time of the incident as was sought to be argued by Sri T.S.Rayulu. The F.I.R Ex.P.1 mentions that the offence took place on 29.12.2003 at 12.00 noon. The same is proved from the evidence of the witnesses. In Dilip Kumar Kurmi vs. State of Chhattisgarh (2019 16 SCC 766), which was a case of conviction for the offence under Section 376 IPC, and it was urged that there was discrepancy with regard to the date/month of the incident. The Hon'ble Apex Court observed that the said discrepancy did not go to the root of the matter and did not destroy the substratum of the prosecution case. Here also even if there be any discrepancy with respect to the time of the incident, the same in the view of this Court does not destroy the substratum of the prosecution case. The evidence on record of P.W.2 finds corroboration from the evidence of other witnesses on the fundamental of the prosecution case of attempt to commit rape.

21. There is no argument regarding tutoring of the child witnesses.

22. The court now deals with the submission of the petitioner's counsel that the offence of "attempt to commit rape is not made out.

23. In State of Madhya Pradesh vs. Mahendra Alias Golu (2021 SCC OnLine SC 965), it fell for consideration, whether the offence amounted to attempt to commit rape within the meaning of Section 376(2)(f) read with Section 511 IPC or was it a mere preparation which led to outraging the modesty of the victims. It was held that in every crime, there is first mens rea i.e intention to commit, secondly preparation to commit and thirdly, attempt to commit it. Attempt is the execution of mens rea after preparation. Attempt starts where preparation ends, though it falls short of active commission of the crime. The preparation or attempt to commit the offence will be predominately determined on evaluation of the act and conduct of the accused and as to whether or not the incident tantamounts to trnassgrassing the thin space between preparation and attempt. Attempt itself is punishable offence in view of Section 511 IPC.

24. It is apt to refer paras 11 to 18 of Mahendra Alias Golu (supra) as under:

> "11. It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, "attempt is successful, then the crime is complete. If the attempt fails, the crime is not

complete, but law still punishes the person for attempting the said act. “Attempt is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

12. There is a visible distinction between “preparation and “attempt to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of “preparation consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission o f the offence. Whereas, an “attempt to commit the offence, starts immediately after the completion of preparation. “Attempt is the execution of mens rea after preparation. “Attempt starts where “preparation comes to an end, though it Page | 9 falls short of actual commission of the crime.

13. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an “attempt to commit the principal offence and such “attempt in itself is a punishable offence in view of Section 511 IPC. The “preparation or “attempt to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between `preparation and “attempt . If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

14. Section 511 IPC is a general provision dealing with attempts to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that, “whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both”.

15. It is extremely relevant at this stage to brush up the elementary components of the offence of “Rape under Section 375 IPC, as was in force at the time when the occurrence took place in the instant case. The definition of “Rape , before the 2013 Amendment, used to provide that “A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.— Against her will.

Secondly.— Without her consent.

Thirdly.— xxx xxx xxx

Fourthly.— xxx

Fifthly.— xxx xxx xxx

Sixthly.— With or without her consent, when she is under sixteen years of age.

Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.— Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

16. A plain reading of the above provision spells out that sexual intercourse with a woman below sixteen years, with or without her consent, amounted to “Rape and mere penetration was sufficient to prove such offence. The expression “penetration denotes ingress of male organ into the female parts, however slight it may be. This Court has on numerous occasions explained what “penetration conveys under the unamended Penal Code which was in force at the relevant time. In Aman Kumar (supra), it was summarised that:

“7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see Joseph Lines, IC&K 893).”

17. Even prior thereto, this Court in Madan Lal vs. State of J&K2 opined that the degree of the act of an accused is notably decisive to differentiate between “preparation and “attempt to commit rape. It was held thus:

“12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and

what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with Section 511 IPC. In the facts and circumstances of the present case the offence of an attempt to commit rape by the accused has been clearly established and the High Court rightly convicted him under Section 376 read with Section 511 IPC."

18. The difference between 'attempt and 'preparation in a rape case was again elicited by this Court in Koppula Venkat Rao vs. State of A.P.3, laying down that: "10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in partexecution of a criminal design, amounting to more (2004) 3 SCC 602 Page | 13 than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt".

25. In Chaitu Lal Vs. State of Uttarakhand (2019 LawSuit (SC) 1884), it was pleaded that the actions of the accused did not constitute the offence under Section 511 read with Section 376 IPC, as the accused had not committed any overt act, such as any attempt to undress himself in order to commit the alleged act. The Hon'ble Apex Court held that the attempt to commit an offence begins when the accused commences to do an act with the necessary intention. The Apex Court referred to its earlier judgment in the case Aman Kumar and Anr. v. State of Haryana, (2004) 4 SCC 379) in which it was held that in order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her

part; and in view of the evidence in that case, held that had there been no intervention, the accused would have succeeded in executing his criminal design. The conduct of the accused was indicative of his definite intention to commit the offence.

26. It is apt to refer paras 8 to 11 of Chaitu Lal (supra):

> "8. The counsel of the accused appellant has pleaded that the actions of the accused appellant do not constitute the offence under Section 511 read with Section 376, as the accused appellant had not committed any overt act such as; any attempt to undress himself in order to commit the alleged act. This Court in the case of Aman Kumar and Anr. v. State of Haryana, (2004) 4 SCC 379 held that "11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part…"
>
> 9. The attempt to commit an offence begins when the accused commences to do an act with the necessary intention. In the present case, the accused appellant pounced upon the complainant victim, sat upon her and lifted her petticoat while the complainant victim protested against his advancements and wept. The evidence of the daughter (P.W.2) also reveals that she pleaded with the accused -appellant to spare her mother. In the meantime, hearing such commotion, other villagers intervened and threatened the accused of dire consequences pursuant to which the accused ran away from the scene of occurrence. Here, the evidence of independent witness Sohan Lal (P.W.4) assumes significance in corroborating the events on the date of occurrence, wherein he has averred that at around 10:00 p.m, he heard noise coming from the house of complainant victim, pursuant to which he saw the accused appellant's wife holding his neck coming out from the house of the complainant victim. P.W.4 had also overheard the complainant victim complaining that the accused appellant was quarreling with her.
>
> 10. Herein, although the complainant victim and her daughter were pleading with the accused to let the complainant victim go, the accused appellant did not show any reluctance that he was going to stop from committing the aforesaid offence. Therefore, had there been no intervention, the accused appellant would have succeeded in executing his criminal design. The conduct of the accused in the present case is indicative of his definite intention to

commit the said offence.

> 11. The counsel on behalf of the accused appellant placed reliance upon the case of Tarkeshwar Sahu v. State of Bihar (Now Jharkhand), (2006) 8 SCC 560 to claim the benefit of acquittal for offence under Section 511 read with Section 376 of IPC. But, on careful perusal of the aforesaid decision in the backdrop of facts and circumstances of the present case, both the cases are distinguishable as in the case cited above, it is clearly noted that the accused failed at the stage of preparation of commission of the offence itself. Whereas, in the present case before us the distinguishing fact is the action of the accused appellant in forcibly entering the house of the complainant victim in a drunken state and using criminal force to lift her petticoat despite her repeated resistance."

27. In view of the concurrent findings recorded by both the courts below, based on the evidence on record, as also looking into the evidence on record of P.Ws.2 to 7 this Court finds that the act and conduct of the accused is indicative of his definite intention to commit rape and if there had been no intervention, on the cries of P.W.2 the victim, and if P.Ws. 3 to 5 and 6 to 7 had not reached the spot, the accused would have succeeded in executing his criminal desire.

28. The learned courts below have concurrently recorded the guilt of the accused for the offence under Section 376 read with Section 511 IPC on due consideration of the evidence on record, which could not be shown to be suffering from any infirmity so as to attract the exercise of revisional jurisdiction. The accused has rightly been convicted under Section 376 read with Section 511 IPC.

29. On the point of leniency in punishment, it is apt to refer the judgment in State of Madhya Pradesh vs. Suresh (2019) 14 SCC 151), wherein the Hon'ble Supreme Court held that awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. Paras 11 to 14 reads as under:

> "11. In the case of State of M.P. v. Ganshyam : (2003) 8 SCC 13, relating to the offence punishable under Section 304 Part I IPC , this Court found sentencing for a period of 2 years to be to inadequate and even on the liberal approach, found the custodial sentence of 6 years serving the ends of justice. This Court underscored the principle of proportionality in prescribing liability according to the culpability; and while also indicating the societal angle of sentencing, cautioned that undue sympathy leading to inadequate sentencing would do more harm to the justice system and undermine public confidence in the efficacy of

law. This Court observed, inter alia, as under:

"12. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of Tamil Nadu: (1991) 3 SCC 471.

13. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed

are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCGautha v. State of California: 402 US 183: 28 L Ed 2d 711 (1071) that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished.

17. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

19. Similar view has also been expressed in Ravji v. State of Rajasthan: (1996) 2 SCC 175. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". ......"

(underlining supplied for emphasis)

12. In Alister Anthony Pareira (supra), the allegations against the

appellant had been that while driving a car in drunken condition, he ran over the pavement, killing 7 persons and causing injuries to 8. He was charged for the offences under Sections 304 Part II and 338 IPC; was ultimately convicted by the High Court under Sections 304 Part II, 338 and 337 IPC; and was sentenced to 3 years' rigorous imprisonment with a fine of Rs. 5 lakhs for the offence under Section 304 Part II IPC and to rigorous imprisonment for 1 year and for 6 months respectively for the offences under Section 338 and 337 IPC . Apart from other contentions, one of the pleas before this Court was that in view of fine and compensation already paid and willingness to make further payment as also his age and family circumstances, the appellant may be released on probation or his sentence may be reduced to that already undergone. As regards this plea for modification of sentence, this Court traversed through the principles of penology, as enunciated in several of the past decisions1 and, while observing that the facts and circumstances of the case show 'a despicable aggravated offence warranting punishment proportionate to the crime', this Court found no justification for extending the benefit of probation or for reduction of sentence. On the question of sentencing, this Court re-emphasised as follows:-

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

13. Therefore, awarding of just and adequate punishment to the wrong doer in case of proven crime remains

a part of duty of the Court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrong doer as also of the victim of the crime and the society at large. No strait jacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

14. In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of."

30. In Rahey Shyam vs. State (2019 SCC OnLine All 4962), the High Court of Judicature at Allahabad held that in the matter of awarding punishment multiple factors have to be considered. The law regulates social interests, arbitrates conflicting claims and demands. Security of individuals as well as property of individuals is one of the essential functions of the State. The administration of criminal law justice is a mode to achieve this goal. The inherent cardinal principle of criminal administration of justice is that the punishment imposed on an offender should be adequate so as to serve the purpose of deterrence as well as reformation. It should reflect the crime, the offender has committed and should be proportionate to the gravity of the offence. Sentencing process should be sterned so as to give a message to the offender as well as the person like him roaming free in the society not to indulge in criminal activities but also to give a message to society that an offence if committed, would not go unpunished. The offender should be suitably punished so that society also get a message that if something wrong has been done, one will have to pay for it in proper manner irrespective of time lag.

31. The trial court imposed the sentence of five years R.I which has been reduced by the appellate court to four years R.I. I do not find any reason justification

to take a further lenient view to reduce the sentence for such a heinous offence under Section 376 read with Section 511 IPC committed on the minor girl of about 8 years.

32. For all the aforesaid reasons, I do not find any illegality in the impugned order. The revision lacks merit and deserves to be dismissed.

33. The criminal revision is hereby dismissed.

34. The revisionst is on bail. The bail is cancelled. The trial court is directed to ensure that the revisionst is sent to the prison to serve the remaining period of the sentence as imposed upon him by appellate court.

35. Let a copy of this judgment with the record of the court below be forthwith sent to the court below for compliance.

Consequently, the Miscellaneous Petitions, if any, shall also stand closed.

-- THE END --

21.1. On 03.11.2004 the XIII Additional Chief Judge, City Civil Court, addressed letter to the High Court Registry to grant 3 months to assess the value of the property. In the said letter learned Judge was complaining that advocates to parties were not cooperating. It is interesting to note that the learned Judge records that except advocate for plaintiff no.2 (the appellant herein), other parties or counsel did not appear. The same was registered as CCCA MP No.11963 of 2004. Taking note of the content in the said letter, by order dated 25.11.2004 time was extended by three months.

21.2. Again a letter was written by the XIII Additional Chief Judge, City Civil Court, dated 24.10.2005, seeking extension of time complaining that Advocates to the parties were not attending and not cooperating to ascertain the value of the property. This letter was registered as CCCA MP No.816of 2005. On 06.02.2006, Division Bench directed the lower court to pass orders within a period of one month. In both occasions orders of this Court were passed in the presence of all the parties.

21.3. CCCA MP No.331 of 2006 in CCCA No.329 of 2003 and CCCAMP No. 332 of 2006 in CCCA No. 350 of 2003 were filed by the plaintiff no.2 in the suit (appellant herein) seeking to list the appeals under the caption “for being mentioned” to clarify the effect of the order in paragraph-12 of the judgment. In this clarification petitioner-appellant contended that the value of the property was shown as Rs.4 crores only and the matter was remanded only to pay the required court fee on the said amount. The said applications were dismissed as withdrawn on 01.08.2007.

21.4. After the remand and when suit was pending in the trial Court, between 2006 to 2016, several writ petitions were filed in this court concerning the very same property. These writ petitions were filed either by the appellant or by the plaintiff no.1, but authorized person to depose the affidavits, petitions and to enter appearance is same in all the writ petitions, Sri Raj Kumar Malpani. Few are noted hereunder:

(i) Appellant filed W.P.No.25181 of 2006 against rejection to register the development agreement-cum-GPA dated 27.10.2006 and subsequent sale deed dated 28.10.2006 on Acs.6.00 of land, which is traceable to the settlement arrived between the parties, by the Sub Registrar. The averments in the affidavit in support of the writ petition also disclose that the plaintiff no.1 (in O.S. No. 69 of 2003) executed GPA on 19.09.2005 in favour of the deponent to this application as Managing Director of the plaintiff no.2, (in O.S. No. 69 of 2003) to represent plaintiff no.1 in all legal proceedings. Based on the directions of the Court, those two documents were registered.

(ii) Appellant filed W.P.No.2731 of 2012 seeking direction to respondents not to insist No Objection Certificate from the revenue authorities to apply for construction of commercial complex.

(iii) W.P.No.23132 of 2012 was filed challenging the rejection of No Objection certificate (NOC) for construction of commercial complex by the District Collector.

(iv) Appellant filed W.P.No.11349 of 2014 alleging that there is an attempt made

by the revenue authorities to dispossess the appellant from the suit schedule land.

(v) Appellant filed W.P.No.13158 of 2016 praying to direct the Greater Hyderabad Municipal Corporation to release building plan applied by the appellant to construct commercial complex in the suit schedule land.

(vi) Appellant also filed C.C.No.1344 of 2007 and C.C.No.829 of 2014 alleging non-compliance of the orders of the Court in respective writ petitions. In CC No. 1344 of 2007 by order dated 8.4.2007 this Court gave further directions. In compliance of the directions of this Court in W P No. 25188 of 2006 and CC No. 1344 of 2007 the documents were registered on 27.10.2006 and 28.10.2006.

(vii) In all the writ petitions mentioned above, the narrative is same and issue in one writ petition was flowing into another writ petition. Over all, the litigation process on the writ jurisdiction side, in all the above cases concerns the development activity sought to be taken up by the appellant on the suit schedule property flowing out of compromise dated 8.3.1999 entered into between the parties to the suit which was recorded while disposing of the O.S. No. 69 of 2003 on 3.4.2003.

21.5. Appellant sought to raise a strange plea that after the case was reopened, trial Court ordered notice on 19.12.2009 but no notice was served on the appellant. Taking this submission on its face value, it is not stated how prejudice is caused to him. Dismissal of suit results in dissolving the earlier decree. Therefore, restoration of a suit dismissed for non-prosecution is to the advantage of the plaintiffs. There can be some justification if a defendant complains that on restoration notice was not served but not by plaintiff. Further, if appellant did not receive notice after suit was reopened, it would mean that for him suit was not restored. If that is so and decree granted earlier was dissolved, it is not stated why appellant kept quiet for more than a decade. It is apparent that this assertion is made without sense of responsibility and more intended to divert attention from his lethargy and to gain sympathy by showing as if trial Court committed grave error.

21.6. Appellant further asserts that two different lawyers were engaged by plaintiffs 1 and 2 in the first round of suit and on remand and on reopening Advocate for plaintiff No.2 did not have notice. This is again a misleading statement. As averred in the several writ petitions noted above, plaintiff No.1 executed General Power of Attorney to Sri Raj Kumar Malpani, who is Managing Director/Director of appellant company authorizing him to represent plaintiff No. 1 in all legal proceedings and has been doing so. Thus, plaintiff No.1 and plaintiff No.2 are not separate and in the facts of the case, it cannot be said that both are not abreast of stages of cases in various Courts. Thus, what is asserted is falsehood, a misleading statement.

22. The chronology of dates and events clearly point out that appellant was abreast of happenings in the civil Court. It is also apparent that appellant has been actively, dealing with very same property and pursuing the litigation at various stages in his craving to develop the property. From CCCA MP No.11963 of 2004 taken up by the court based on the letter written by the

XIII Additional Chief Judge, City Civil Court, Hyderabad, dated 03.11.2004 seeking extension of time, it is apparent that his counsel was appearing in the trial Court.

23. On remand, the trial court has taken up the O.S.No.69 of 2003 to determine the Court fee payable by the plaintiffs, the trial Court called for information on the value of the subject property from the Sub-Registrar of Registration Department. The suit underwent several adjournments awaiting report. Holding that plaintiffs were not prosecuting the suit, it was dismissed for default on 13.11.2009 but was restored suo-moto by order dated 19.12.2009. It appears from the docket proceedings of the trial Court, on 01.12.2014 trial Court recorded receiving market value certificate and on request adjourned the suit to 03.12.2014. On 18.12.2014 the Court directed the Superintendent of the Court to fix the court fee. From 30.12.2014 case was adjourned on several occasions to pay court fee. Further, docket proceedings disclose that there was representation on behalf of the appellant. Suit underwent adjournments at the request of plaintiffs on several occasions but from20.02.2015 there was no representation on behalf of the plaintiffs.

24. On 09.03.2015 after recording, ‘No representation, Court fee not paid, no further time will be granted’, Court adjourned the suit to 30.03.2015. On 30.03.2015, docket proceedings read as, “No representation by plaintiff till evening hours. Hence, the right of the plaintiff is forfeited. Defendants arguments request time – 07.04.2015”. Even after value of the suit schedule property was determined, the plaintiffs did not evince interest in paying the Court fee. It is thus apparent that plaintiffs were not cooperating with the Court. Having no other go, the trial court forfeited the right of plaintiffs by order dated 30.3.2015. As Court fee was not paid, by judgment dated 28.4.2015 the trial Court dismissed the suit.

25. The compromise petitions filed in the suit disclose that on 03.12.1998 plaintiff no.1 and plaintiff no.2 entered into agreement in respect of suit property. In terms thereof, plaintiff no.2 agreed to pay Rs.60,00,000/- (Rupees sixty lacks) to plaintiff no.1 to construct 40,000 square feet commercial building on 3000 square yards and to get the dispute between plaintiff no.1 and defendants settled. In terms thereof, plaintiff no.2 stepped into the shoes of plaintiff no.1. The terms of compromise also disclose that Acs.6.00 of land demarcated in green colour in the map would be the absolute property of plaintiff no.2, subject to terms of agreement with plaintiff no.1 and the defendants would be the absolute owners and possessors of balance Acs.16.00 of land shown in yellow and red colours in the map. It is thus apparent that the appellant herein is beneficiary of compromise decree entered between the plaintiffs and defendants in O.S.No.69 of 2003. It cannot be assumed that appellant was not conscious that his interest flowing out of compromise recorded in O.S. No. 69 of 2003 get extinguished, if Court fee is not paid.

26. At this stage, it is necessary to consider the decisions cited by learned senior counsel for appellant to contend that delay in paying Court fee can have no impact on the decree already passed in the suit. We note hereunder the summary of said decisions:

26.1. In the case of **Mannan Lal v. Chhotaka Bibi**, (1970) 1 SCC 769)the appeal in question was a Special Appeal granted by certificate and its maintainability with regards to the U.P. Act abolishing such appeals. It was also noted in the judgment that the deficiency in court fees was made good later.

26.2. In **Manoharan v. Sivarajan** (supra), Court held that the High Court ought to have taken a more compassionate view in light of the appellants inability to pay balance court fees due to financial constraints while refusing to condone delay in filing of application. This has no bearing on the matter in hand as appellant has not taken any such specific stance of financial constraint.

26.3. In **A.Nawab John** (supra), the Court held that the power to condone delay in payment of court fee, although discretionary, is conditional upon an acceptable explanation for such delay in payment.

27. Though suit was decreed recording the compromise, the trial Court having noticed that in terms of the compromise memo valuation of the suit increased, observed that difference of Court fee is required to be paid. In the appeals preferred against the judgment and decree of the trial Court this issue was also raised before this Court. This Court having affirmed the decision of the trial Court on reasons for judgment and decree, remanded the matter to the trial Court for determination of appropriate value of the suit schedule property and court fee payable by the plaintiffs.

28. Being a party to the appeal suit, the scope of remand is known to the appellant. It is useful to extract paragraph-72 of the judgment in CCCA No.329 of 2003 and batch. It reads as under:

> "72. Finally, it is the arguments of the appellants that the plaintiffs did not pay the court fee and hence the judgment and decree cannot be passed. It is true that in the decree itself, the trial court with regard to payment of court fee held as follows:
>
> "It is hereby directed to pay the court fee if any required to pay".
>
> Therefore, it goes to show that the said judgment will have the binding effect only on payment of the court fee. As the trial Court in its decree did not assess the value of the property relating to compromise and payment of court fee thereon, the matter is remanded to the trial court with a direction to assess the value of the property relating to compromise and the court fee payable thereon within a period of three months from the date of receipt of a copy of this order. On such assessment, the respective parties are directed to pay the same within a period of two months thereafter in the court below.

29. As seen from paragraph-72 of the judgment of this Court in the appeals, this Court held that the judgment of the trial Court will have binding effect only on payment of Court fee. It cannot be said that appellant was not aware of the consequences of not prosecuting the suit on remand in order to

secure benefits of compromise decree. No right accrues to him to deal with Acs.6.00 covered by compromise unless the court fee was paid. Therefore, it is his responsibility and in his own interest to ensure that appropriate value of the suit schedule property was determined and court fee was paid thereon within the time stipulated by the Division Bench of this Court. Further, as seen from CCCA MP No.331 of 2006 and CCCA MP No.332 of 2006, which were filed to take up CCCA No.329 of 2003 and CCCA No.350 of 2003 as 'for being mentioned' the appellant was conscious that the plaintiffs were required to pay high amount of court fee and therefore was praying to restrict the valuation of the property.

30. Further, from the operative direction of the Division Bench, after the determination of the valuation, the plaintiffs were required to pay court fee within a period of two months. From the docket proceeding sheet before the trial Court filed by the plaintiffs, it is noticed that by 01.12.2014, market value was determined. Thus, from 01.12.2014 plaintiffs were required to pay court fee within two months. Even after expiry of two months from that date, trial Court accommodated the plaintiffs till 30.03.2015 i.e., for four months. No application was filed before this Court seeking extension of time for payment of court fee nor Court fee was paid within the time granted by the trial Court.

31. It is apparent that even though adequate time was available and trial Court accommodated, for the reasons best known, the plaintiffs did not choose to pay the court fee. Further, Section 11 of the Andhra Pradesh Court Fees and Suit Valuation Act, 1956 the plaint is liable to be rejected if the deficit fee is not paid. In the facts of this case, the decisions relied by the senior counsel for the appellant do not come to his rescue.

32. Furthermore, even after he received summons in another suit on 02.05.2019 he kept quiet for about 17 months before instituting this appeal. In paragraph-10 he vaguely avers that he approached his Advocate and instructed him to apply for docket proceedings and was under bona fide impression that his Advocate was pursuing the matter but to his utter shock and surprise there was no progress and fed up with the inaction of the Advocate, he applied for docket proceedings on 08.09.2020 and then instituted the appeal. The pleadings in paragraph 10 are very vague. He has not stated as to who was his Advocate, when he approached his Advocate and how he was pursuing with the Advocate and why he kept quiet for more than an year after informing the Advocate to secure the certified copies. Having regard to delay of 17 months even from 2.5.2019 appellant owes a responsibility to explain to the court how he was prosecuting his legal remedies even from the date of alleged knowledge to show his bona fides.

33. Thus, the conduct of the appellant would clearly show he was only watching from the side lines and not intending to prosecute the litigation as a bona fide person in asserting his right before the trial Court after the remand and after the suit was dismissed. More so, all through he was prosecuting the litigation before this Court on the appellate side and under Article 226 of the Constitution of India and with various

statutory authorities concerning the very same property.

34. We see no merit on reliance on Order XLI Rule 26-A of CPC. Except in three contingencies mentioned in order XLI Rule 26-A of CPC covered by Rules 23, 23-A and 25, Civil Procedure Code do not envisage notice to the plaintiff on remand. The case is not covered by those three contingencies. In no other circumstance of remand, Civil Procedure Code envisages notice to parties. More particularly in payment of appropriate Court fee. It is the duty of plaintiffs to pay proper court fee. Therefore, plaintiffs were required to persuade the trial court to determine the value of the property and to fix the court fee and pay the court fee as assessed. Shelter under this provision is resorted only to cover up his conduct. At any rate, this plea is not available to appellant as he was represented by a counsel before the trial Court after remand. Thus, what is contended amounts to speaking falsehood and suppressing true and correct facts.

35. Further, the Appeal suit was disposed of in the presence of parties to the suit. The Appellant was aware of reason for remand. He being the plaintiff No.2 he is also aware of his duty to pay additional Court fee.

36. In this background, it cannot be said that appellant was not aware of the proceedings pending before the trial Court and the orders passed therein even before the suit was finally decreed. Since 24.8.2005, the day on which Supreme Court dismissed the review petitions till filing of this appeal, appellant was watching the progress of litigation from the side lines. The assertion of the appellant that he was not aware till the summons were received in O.S.No.293 of 2019 is only a lame excuse.

37. A litigant knocking the doors of justice is expected to be fair and frank in his pleadings. Should disclose all relevant facts which constitute cause of action on the issue raised and relief sought and leave it to the Court to decide. Should not mislead the Court or suppress true facts deliberately to gain undue advantage. Burden is heavy on the litigant who seeks equity/ discretionary jurisdiction of the Court. Litigant cannot play 'hide and seek', 'pick and choose' the facts he likes to disclose and to suppress/keep back/conceal other facts which are germane to plea urged in the case.

38. It is apt to note the view expressed by Hon'ble Supreme Court in **K.D.Sharma Vs Steel Authority of India Limited** (2008) 12 SCC 481)and **Dalip Singh Vs State of Uttar Pradesh** (2010) 2 SCC 114)**.**

38.1. In paragraphs 36, 37 and 39 of **K.D.Sharma,** the Supreme Court affirmed the view of the Kings Bench of United Kingdom in **R Vs Kingston Income Tax Commissioner**, in the context of prerogative writ. They read,

> 36……. **If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you**

have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs. Viscount Reading, C.J. observed: (KB pp. 495-96)

"…. Where an ex parte application has been made to this Court for a rule nisi or other process, **if the Court conies to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits.** This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. **But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further front the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.**”

38.2. In **Dalip Singh**, the Supreme Court noted the trend in litigation that was sweeping across the country even by the year 2010. It has noted,

"1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth and “ahimsa” (nonviolence), Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the Courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. **In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals.** In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and **it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of with tainted hands, is not entitled**

to any relief, interim or final." (emphasis supplied)

39. There is deliberate suppression of facts. Statements are made to mislead the Court to believe as if injustice is inflicted on him. The assertion of the appellant is not bona fide. Appellant resorted to speak falsehood. He was neither fair nor frank. His hands are tainted, he abused the process of Court, for selfish ends. There is no iota of doubt that appellant deceived the Court. The actions of appellant amounts to polluting the stream of justice. As held by the Hon'ble Supreme Court in **Esha Bhattacharjee** (supra) the conduct, behaviour and attitude relating to inaction/ negligence by the appellant disentitle him to seek discretionary relief.

40. Further, it is the appellants assertion that a substantive right has been created and vested in the appellant by virtue of the compromise and it cannot be nullified merely due to the delay in payment of court fee. To appreciate this submission, it is important to note here paragraph 72 of the Division Bench order of this Court in CCCAs disposed of on 12.4.2004. While remanding the matter back to the trial court, this Court specifically observed, 'Therefore it goes to show that the said judgment will have the binding effect only on the payment of the court fee…'. This conclusively points to the fact that no right accrues to the appellant from the trial Court decree, substantive or otherwise unless proper court fee is paid.

41. The issue of prejudice to other side is also a crucial factor to be looked into while considering the application to condone the delay. Though, appellant's interest in the property and subsequent claim to acquire the land is traceable to the compromise entered on 08.03.1999 which was the basis to grant decree dated 03.04.2003 in O.S.No.69 of 2003, appellant did not evince interest to prosecute the suit on remand for determination of valuation of the suit schedule land and to pay the court fee. He allowed the proceedings before the trial court to drag-on, did not cooperate with the court for early payment of court fee and did not appear in the case when his presence was required the most. Even after the dismissal of the suit he took his own time to prosecute appeal remedy. By his conduct, he allowed the rights crystallize in favour of the 1st respondent. Accepting the plea of appellant would mean reopening the healed wound after six years and protracting the litigation. For his lethargy, the Court can not cause hardship to the opponent. More so, when the appellant to blame for the present state of affairs.

42. For all the afore stated reasons this application is liable to be dismissed. It is accordingly dismissed. Consequently, CCCA No. 66 of 2020 stands dismissed. No costs. Miscellaneous Applications, if any pending stand closed.

-- THE END --

2022 (1) L.S. 57 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Chief Justice of India
N.V. Ramana
The Hon'ble Mr.Justice
Surya Kant &
The Hon'ble Ms.Justice
Hima Kohli

Jagjeet Singh & Ors., ..Petitioners
Vs.
Ashish Mishra @
Monu & Anr., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.2(wa) - Whether a 'victim' as defined u/Sec.2(wa) of the Code is entitled to be heard at the stage of adjudication of bail application of an accused - Criminal Appeal challenging an Order passed by the High Court, whereby respondent No.1-accused has been enlarged on bail in a case under Sections 147, 148, 149, 302, 307, 326 read with Sections 34 and 120-B of the Indian Penal Code as well as Sections 3, 25 and 30 of the Arms Act.

Several farmers had gathered in Lakhimpur Kheri, U.P., to celebrate the birth anniversary of Sardar Bhagat Singh and to protest against the Indian Agricultural Acts - During this gathering, the farmers objected to certain comments made by Mr.Ajay Mishra @ Teni, Union Minister of State for Home - In the course of the meeting, the farmers decided to organise a protest against Mr.Ajay Mishra in his ancestral village - It is alleged that upon gathering knowledge of these events, coupled with the information that the route of the Chief Guest had to be changed because of the protesting farmers, respondent-accused became agitated - He, thereafter, is said to have conspired with his aides and confidants, allegedly drove into the crowd of the returning farmers and hit them with an intention to kill - Resultantly, many farmers and other persons were crushed by the vehicles.

HELD: Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances - It is the solemn duty of a Court to deliver justice before the memory of an injustice eclipses - In the present case, 'victims' have been denied a fair and effective hearing at the time of granting bail to the Respondent - Instead of looking into aspects such as the nature and gravity of the offence; severity of the punishment in the event of conviction; circumstances which are peculiar to the accused or victims; likelihood of the accused fleeing; likelihood of tampering with the evidence and witnesses and the impact that his release may have on the trial and the society at large; the High Court has adopted a myopic view of the evidence on the record and proceeded to decide the case on merits - Neither the right of an accused to seek bail pending trial is expropriated, nor the 'victim' or the State are denuded of their right to oppose such a prayer - In a situation like this, and with a view to balance the competing rights, this Court has been

Crl.A.No.632/2022 Date: 18-4-2022

invariably remanding the matter(s) back to the High Court for a fresh consideration - We are also of the considered view that ends of justice would be adequately met by remitting this case to the High Court for a fresh adjudication of the bail application of the respondent-accused, in a fair, impartial and dispassionate manner - Impugned Order stands set aside - Respondent No.1 shall surrender and be taken into custody.

J U D G M E N T

(per the Hon'ble Mr.Justice Surya Kant)

Leave Granted.

2. The challenge is laid to an order dated 10.02.2022 passed by the High Court of Judicature at Allahabad, Lucknow bench, whereby Respondent No.1 (hereinafter" RespondentAccused"), has been enlarged on bail in a case under Sections 147, 148, 149, 302, 307, 326 read with Sections 34 and 120B of the Indian Penal Code, 1860 (hereinafter "IPC"), as well as Sections 3, 25 and 30 of the Arms Act, 1959.

FACTS

3. In brief, it is alleged that several farmers had gathered in the Khairaitya village in Lakhimpur Kheri District on 29.09.2021, to celebrate the birth anniversary of Sardar Bhagat Singh and to protest against the Indian Agricultural Acts of 2020. During this gathering, the farmers objected to certain comments made by Mr. Ajay Mishra @ Teni, Union Minister of State for Home. In the course of the meeting, the farmers decided to organise a protest against Mr. Ajay Mishra in his ancestral village on 03.10.2021. Various farmers' organisations issued appeals to their members and supporters to participate in the demonstration, and pamphlets were also distributed.

4. On 03.10.2021, an annual Dangal (wrestling) competition was being organised by Ashish Mishra @ Monu, i.e., Respondent-Accused. The program was to be attended by Mr. Ajay Mishra, as well as Mr. Keshav Prasad Maurya, Deputy Chief Minister of the State of Uttar Pradesh, for whom a helipad was constructed in the playground of Maharaja Agrasen Inter College, Tikonia. A crowd of farmers started gathering near the helipad in the morning of 03.10.2021. The route of the Chief Guest was thus changed to take him by road. But the changed road route was also passing in front of the Maharaja Agrasen Inter College, where the protesting farmers had been gathering in large numbers. This led the authorities to take recourse to yet another alternative way to reach the Dangal venue.

5. In the meantime, some supporters of Respondent No.1, who were travelling by a car to the Dangal venue, were statedly attacked by certain farmers. The mirrors of their vehicle(s) were smashed. A hoarding board that displayed pictures of Mr. Ajay Mishra and the Respondent-Accused was also damaged. It is alleged that upon gathering knowledge of these events, coupled with the information that the route of the Chief Guest had to be changed because of the protesting farmers, Respondent-Accused became agitated. He, thereafter, is said to have conspired with his aides and confidants, and decided to teach the protesting farmers a lesson. Respondent No.1 and his aides, armed with

weapons, left the Dangal venue in a Mahindra Thar SUV, a Fortuner vehicle and a Scorpio vehicle, and drove towards the farmers' protest site.

6. When the farmers were returning to their homes after their protest was over, Respondent-Accused along with his associates who were in the aforesaid three vehicles, allegedly drove into the crowd of the returning farmers and hit them with an intention to kill. Resultantly, many farmers and other persons were crushed by the vehicles. The Thar vehicle was eventually stopped. Respondent No.1 and his co-accused Sumit Jaiswal then stepped out of the Thar and escaped by running towards a nearby sugarcane field while taking cover by firing their weapons.

7. As a consequence of this incident, four farmers, one journalist, the driver of the Thar Vehicle-Hariom, and two others, were killed. Nearly ten farmers suffered major and minor injuries.

8. In the early hours of 04.10.2021, FIR no. 219 of 2021 was registered on the complaint of the Appellant No.1, i.e, Jagjeet Singh, at Police Station Tikonia against Respondent No.1 and 1520 unknown persons, for causing the death of four farmers. It was alleged that Respondent No.1 along with his accomplices drove into the crowd of protesting farmers and crushed them. It was further alleged that one Sukhvinder Singh died on the spot due to a fire arm injury. Another FIR (FIR No. 220 of 2021 was registered under Sections 147, 323, 324, 336 and 302 of the IPC) was registered by Sumit Jaiswal against unknown persons and protesting farmers for having killed four persons, including the journalist Raman Kashyap, the driver of the Thar vehicle-Hariom and two other supporters of the Respondent-Accused.

9. Meanwhile, a PIL was filed in this Court expressing serious concerns regarding the fairness of the investigation into the incidents of 03.10.2021. This Court, on 17.11.2021, reconstituted the SIT and new members were inducted to carry out the investigation. Justice (Retd.) Rakesh Kumar Jain, a former Judge of the Punjab and Haryana High Court, was appointed to monitor the investigation. The reconstituted SIT filed a chargesheet on 03.01.2022, wherein, the Respondent-Accused was found to be the main perpetrator of the events that took place on 03.10.2021.

10. The Accused-Respondent moved an application for bail before the High Court of Judicature at Allahabad, Lucknow Bench. Vide the impugned order dated 10.02.2022 (corrected on 14.02.2022), the High Court allowed the application and granted regular bail to the Respondent-Accused. The relief was primarily granted on four counts. Firstly, the Court held that the primary allegation against the Respondent-Accused was of firing his weapon and causing gunshot injuries, but neither the inquest reports nor the injury reports revealed any firearm injury, therefore, the High Court opined that the present case was one of "accident by hitting with the vehicle". Secondly, the allegation that he provoked the driver of the car could not be sustained since the driver along with two others, who were in the vehicle, were killed by the protesters. Thirdly, it was noted that the Respondent-Accused had joined the investigation. Fourthly, the charge sheet had been filed.

11. Discontented with the order of the High Court, the aggrieved 'victims' are

before us.

CONTENTIONS

12. Shri Dushyant Dave, learned Senior Counsel on behalf of the Appellants vehemently contended that the High Court had erred in overlooking several important aspects, and instead placed undue weightage on issues such as the absence of any fire arm injury. Relying upon the decision of this in Court in the case of Mahipal v. Rajesh Kumar & Anr. ((2020) 2 SCC 118 ¶ 12 & 13), it was canvassed that the High Court had disregarded well-established principles that govern the Court's discretion at the time of granting bail. It was further pressed that the bail order was passed in a mechanical manner with non-application of mind, rendering it illegal and liable to be set aside. The learned Senior Counsel also pointed out that during the course of the online proceedings, counsel for the Complainant/victims were disconnected, and were not heard by the High Court. It was stated that their application for rehearing the bail application was also not considered by the High Court. Learned Senior Counsel also drew our attention to FIR No. 46 of 2022, which was filed by one Diljot Singh, a witness to the incident of 03.10.2021. The said witness therein claimed that on 10.03.2022, he was threatened and attacked by the supporters of the Respondent-Accused. Alternatively, emphasis was placed on judgment of this Court in Alister Anthony Pariera v. State of Maharashtra ((2012) 2 SCC 648 ¶ 47), to highlight that if an act of rash and negligent driving was preceded by real intention on the part of the wrong doer to cause death, then a charge under section 302 IPC may be attracted.

13. On the other hand, Shri Ranjit Kumar, learned Senior Counsel appearing on behalf of the Respondent No.1, vigorously defended the judgment of the High Court. It was submitted that given the allegations made in FIR No. 219 of 2021, the High Court was bound to prima facie consider the issue of bullet injuries. He further asserted that the Respondent-Accused was never in the Thar vehicle and was instead at the Dangal venue. Lastly, learned Senior Counsel argued that in the event that this Court was to set aside the impugned order and cancel the bail, the Respondent accused would be left without any remedy and it would be nearly impossible for him to be released on bail till the conclusion of trial.

14. Shri Mahesh Jethmalani, learned Senior Counsel appearing for Respondent No.2, i.e., State of Uttar Pradesh, at the outset argued that a bail hearing should not be converted into a mini trail. He urged that the Court ought to consider three basic parameters at the time of deciding bail(i) the possibility of tampering with evidence; (ii) whether the accused would be a flight risk; & (iii) the nature of the offense. With respect to the first consideration, it was highlighted that the State Government, under the ambit of the Witness Protection Scheme, 2018, had provided adequate security, including armed personnel, to all the 'victims' and witnesses. It was explained that the State was regularly following up with the witnesses and that the possibility of the accused tampering with any witness, was narrow. Learned Senior Counsel further submitted that given the local roots of the Respondent-Accused, he could not be considered as a flight risk. Shri Jethmalani, however, stated that the nature of the offense in the present case was grave. He clarified that the State had vehemently opposed the

bail application before the High Court and in no manner, does it deviate from its previous stand.

ANALYSIS

15. Having heard learned Senior Counsels for the parties at considerable length, we find that the following questions fall for our consideration:

A. Whether a 'victim' as defined under Section 2(wa) of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C.") is entitled to be heard at the stage of adjudication of bail application of an accused?

B. Whether the High Court overlooked the relevant considerations while passing the impugned order granting bail to the Respondent-Accused?; and

C. If so, whether the High Court's order dated 10.02.2022 is palpably illegal and warrants interference by this Court?

A. Victim's right to be heard:

16. Until recently, criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim' — the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish 'crime' had surreptitiously turned its back on the 'victim', the jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.

17. Internationally, the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985, which was adopted vide the United Nations General Assembly Resolution 40/34, was a landmark in boosting the pro-victim movement. The Declaration defined a 'victim' as someone who has suffered harm, physical or mental injury, emotional suffering, economic loss, impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within a State, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the 'victim'. Other international bodies, such as the European Union, also took great strides in granting and protecting the rights of 'victims' through various Covenants (The position of a victim in the framework of Criminal Law and Procedure, Council of Europe Committee of Ministers to Member States, 1985; Strengthening victim's right in the EU communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Reasons, European Union, 2011; Proposal for a Directive of the European Parliament and of the Council establishing "Minimum Standards on the Rights, Support and Protection of Victims of Crime, European Union, 2011.).

18. Amongst other nations, the United States of America had also made two enactments on the subject i.e. (i) The Victims of Crime Act, 1984 under which legal assistance is granted to the crime-

victims; and (ii) The Victims' Rights and Restitution Act of 1990. This was followed by meaningful amendments, repeal and insertion of new provisions in both the Statutes through an Act passed by the House of Representatives as well as the Senate. In Australia, the Legislature has enacted South Australia Victims of Crime Act, 2001. While in Canada there is the Canadian Victims Bill of Rights. Most of these legislations have defined the 'victim' of a crime liberally and have conferred varied rights on such victims.

19. On the domestic front, recent amendments to the Cr.P.C. have recognised a victim's rights in the Indian criminal justice system. The genesis of such rights lies in the 154th Report of the Law Commission of India, wherein, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost confidence of the people in the criminal justice system. The Committee recommended the rights of the victim or his/her legal representative "to be impleaded as a party in every criminal proceeding where the charges punishable with seven years' imprisonment or more".

20. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State's expense. The victim's right to participate in criminal trial and his/her right to know the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted the Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a 'victim' under Section 2 (wa) but also statutorily recognised various rights of such victims at different stages of trial.

21. It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression 'victim' which "means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir"

22. This Court, in Mallikarjun Kodagali (Dead) v. State of Karnataka & Ors ((2019) 2 SCC 752, ¶ 3 & 8), while dealing with questions regarding a victim's right to file an appeal under section 372 of Cr.P.C, observed that there was need to give adequate representation to victims in criminal proceedings. The Court therein affirmed the victim's right to file an appeal against an order of acquittal. In Mallikarjun Kodagali, though the Court was primarily concerned with a different legal issue, it will be fruitful in the present context to take note of some of the observations made therein:

"3. What follows in a trial is often secondary victimisation through repeated appearances in court in

a hostile or a semihostile environment in the courtroom. Till sometime back, secondary victimisation was in the form of aggressive and intimidating cross-examination, but a more humane interpretation of the provisions of the Evidence Act, 1872 has made the trial a little less uncomfortable for the victim of an offence, particularly the victim of a sexual crime. In this regard, the judiciary has been proactive in ensuring that the rights of victims are addressed, but a lot more needs to be done. Today, the rights of an accused far outweigh the rights of the victim of an offence in many respects. There needs to be some balancing of the concerns and equalising their rights so that the criminal proceedings are fair to both. [Girish Kumar Suneja v. CBI, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202]……

Xxx

8. The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard."

(Emphasis Supplied)

23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of 'State' in the proceedings, therefore, does not tantamount to according a hearing to a 'victim' of the crime.

24. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/ her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/ informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony.

25. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that; First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal,

is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

26. Adverting to the case at hand, we are constrained to express our disappointment with the manner in which the High Court has failed to acknowledge the right of the victims. It is worth mentioning that, the complainant in FIR No. 219 of 2021, as well as the present Appellants, are close relatives of the farmers who have lost their lives in the incident dated 03.10.2021. The specific stance taken by learned Senior Counsel for the Appellants that the Counsel for the 'victims' had got disconnected from the online proceedings and could not make effective submissions before the High Court has not been controverted by the Respondents. Thereafter, an application seeking a rehearing on the ground that the 'victims' could not participate in the proceedings was also moved but it appears that the same was not considered by the High Court while granting bail to the Respondent-Accused.

27. We, therefore, answer question (A) in the affirmative, and hold that in the present case, the 'victims' have been denied a fair and effective hearing at the time of granting bail to the Respondent-Accused.

B. Whether the High Court overlooked relevant considerations:

28. We may, at the outset, clarify that power to grant bail under Section 439 of Cr.P.C., is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court or the Sessions Court must grant bail after the application of a judicial mind, following well-established principles, and not in a cryptic or mechanical manner.

29. Ordinarily, this Court would be slow in interfering with any order wherein bail has been granted by the Court below. However, if it is found that such an order is illegal or perverse (Puran v. Rambilas & Anr., (2001) 6 SCC 338, ¶10), or is founded upon irrelevant materials adding vulnerability to the order granting bail (Narendra K. Amin (Dr.) v. State of Gujarat & Anr., (2008) 13 SCC 584, ¶ 25), an appellate Court will be well within its ambit in setting aside the same and cancelling the bail. This position of law has been consistently reiterated, including in the case of Kanwar Singh Meena v. State of Rajasthan ((2012) 12 SCC 180, ¶ 10), wherein this Court set aside the bail granted to the accused on the premise that relevant considerations and prima facie material against the accused were ignored. It was held that:

"10….Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous

examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial.…The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

(Emphasis Supplied)

30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr. ((2010) 14 SCC 496, ¶ 9 & 10), after taking into account several precedents, elucidated the following:

"9…However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

(Emphasis Supplied)

31. The Court in Prasanta Kumar Sarkar went on to note:

"10. It is manifest that if the High

Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

"13. … Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."

(Emphasis Supplied)

32. The aforestated principles have been affirmed and restated in a number of subsequent decisions, including in the recent judgments of Neeru Yadav v. State of U.P. & Anr. ((2014) 16 SCC 508, ¶ 11), Anil Kumar Yadav v. State (NCT of Delhi) & Anr., ((2018) 12 SCC 129, ¶ 17 & 18) and Mahipal v. Rajesh Kumar & Anr. ((2020) 2 SCC 118, ¶ 13).

33. Before dealing with the case at hand, we may, at the cost of repetition, emphasise that a Court while deciding an application for bail, should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage. While a Court may examine prima facie issues, including any reasonable grounds whether the accused committed an offence or the severity of the offence itself, an extensive consideration of merits which has the potential to prejudice either the case of the prosecution or the defence, is undesirable. It is thus deemed appropriate to outrightly clarify that neither have we considered the merits of the case nor are we inclined to comment on the evidence collected by the SIT in the present case.

34. We may now briefly note the holding of the High Court as is manifest from paragraph 25 of the impugned order which reads as follows: "Considering the facts and circumstances of the case in toto, it is evidence that as per the F.I.R., role of firing was assigned to the applicant for killing the protestors, but during the course of investigation, no such firearm injuries were found either on the body of any of the deceased or on the body of any injured person. Thereafter, the prosecution alleged that the applicant provoked the driver of the vehicle for crushing the protestors, however, the driver along with two others, who were in the vehicle, has been killed by the protestors. It is further evidence that during the course of investigation, notice was issued to the applicant and he appeared before the Investigation Officer. It is also evidence that charge sheet has already been filed. In such circumstances, this Court is of the view that the applicant is entitled to be released on bail."

35. We find ourselves in agreement with the learned Senior Counsel for the Appellants that the High Court has completely lost sight of the principles enumerated above, which conventionally govern a Court's discretion when deciding the question whether or not to grant bail. Instead of looking into aspects such as the nature and gravity of the offence; severity of the punishment in the event of conviction; circumstances which are peculiar to the

accused or victims; likelihood of the accused fleeing; likelihood of tampering with the evidence and witnesses and the impact that his release may have on the trial and the society at large; the High Court has adopted a myopic view of the evidence on the record and proceeded to decide the case on merits.

36. The High Court has taken into account several irrelevant considerations, whilst simultaneously ignoring judicial precedents and established parameters for grant of bail. It has been ruled on numerous occasions that a F.I.R. cannot be treated as an encyclopaedia of events. While the allegations in the F.I.R., that the accused used his firearm and the subsequent post mortem and injury reports may have some limited bearing, there was no legal necessity to give undue weightage to the same. Moreover, the observations on merits of a case when the trial has yet to commence, are likely to have an impact on the outcome of the trial proceedings.

37. Keeping all these factors cumulatively in mind, we have no difficulty in answering question (B) also in the affirmative. It is held that the order under challenge does not conform to the relevant considerations.

C. Whether interference is warranted by this Court:

38. As a natural and consequential corollary to the findings under questions (A) & (B) above, the impugned order of the High Court dated 10.2.2022 (as corrected on 14.2.2022) cannot be sustained and has to be set aside. Ordered accordingly.

39. As a sequel thereto, bail bonds of the respondent/accused are cancelled and he is directed to surrender within a week.

40. Having held so, we cannot be oblivious to what has been urged on behalf of the Respondent-Accused that cancellation of bail by this Court is likely to be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution (See Union of India v. K.A. Najeeb, (2021) 3 SCC 713, ¶ 15 & 17).

41. We are, thus, of the view that this Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims' right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Respondent-Accused of his legitimate right to seek enlargement on bail on relevant

considerations.

42. We are thus inclined to allay the apprehension in the mind of learned Senior Counsel for the Respondent-Accused that the cancellation of bail by this Court shall amount to denial bail to the Respondent-Accused till conclusion of the trial.

43. This Court is tasked with ensuring that neither the right of an accused to seek bail pending trial is expropriated, nor the 'victim' or the State are denuded of their right to oppose such a prayer. In a situation like this, and with a view to balance the competing rights, this Court has been invariably remanding the matter(s) back to the High Court for a fresh consideration. (Naresh Pal Singh v. Raj Karan and Anr, (1999) 9 SCC 104, ¶2; Brij Nandan Jaiswal v. Munna alias Munna Jaiswal & Anr, (2009) 1 SCC 678, ¶ 12 & 13; Hari Om Yadav v. Dinesh Singh Jaat & Anr, 2013 SCC Online SC 610, ¶ 6.) We are also of the considered view that ends of justice would be adequately met by remitting this case to the High Court for a fresh adjudication of the bail application of the Respondent-Accused, in a fair, impartial and dispassionate manner, and keeping in view the settled parameters which have been elaborated in paragraphs 30 & 31 of this order.

44. Needless to say that the bail application shall be decided on merits and after giving adequate opportunity of hearing to the victims as well. If the victims are unable to engage the services of a private counsel, it shall be obligatory upon the High Court to provide them a legal aid counsel with adequate experience in criminal law, at the State's expense.

45. Lastly, in furtherance of the order of this court dated 26.10.2021 in Writ Petition (Criminal) No. 426/2021, and keeping in mind the allegations of the Appellants with respect to the incident dated 10.03.2022, we deem it appropriate to observe that if the aforestated incident, has happened in the manner as alleged, the same should serve as an awakening call to the State authorities to reinforce adequate protection for the life, liberty, and properties of the eye/injured witnesses, as well as for the families of the deceased.

CONCLUSION

46. We set aside the impugned order dated 10.02.2022 (corrected on 14.2.2022) and remit the matter back to the High Court. Respondent No.1 shall surrender and be taken into custody as already directed in paragraph 39 above. We have not expressed any opinion either on facts or merits, and all questions of law are left open for the High Court to consider and decide. The High Court shall decide the bail application afresh expeditiously, and preferably within a period of three months. The appeal is disposed of in the above terms

-- THE END --

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SUBJECT - INDEX

A.P. ASSIGNED LANDS (PROHIBITION OF TRANSFERS) ACT - REGISTRATION ACT:

--- Writ appeal against the Order passed in Writ Petition, directing Respondent Nos.2 and 3 to consider the Writ petitioner's representation and delete the subject land from the prohibited property list - Subject land, which was part of the assigned land, was mortgaged to the bank by the original assignee in the course of a loan transaction and when the original assignee committed default in repayment of loan amount, the subject land was sold in public auction and such sale was confirmed and subsequently, the respondent/Writ petitioner purchased the same from the auction purchaser under a registered sale deed.

HELD: When mortgage of an assigned land in favour of a co-operative society registered or deemed to have been registered under the Act of 1964 does not amount to alienation, in terms of explanation to Section 2(1) of the Act of 1977, mortgage of the subject land in favour of the bank, which is a co-operative society under the provisions of the Act of 1964, cannot be considered as illegal - Once the mortgage in favour of the bank is considered as legal and valid, the consequences provided for recovery of mortgage money would follow, including sale of mortgaged property by the bank, and in such circumstance, the land would lose the character of assigned land – Sec.6 of the Act of 1977 exempts application of the said Act to the assigned lands held on mortgage by the State or Central Government, any local authority, a co-operative society, a scheduled bank or such other financial institution owned, controlled or managed by a State Government or the Central Government - Bar under Section 3(2) of the Act of 1977 would not apply to the subject land - No error in the Order of the learned single Judge - Writ appeal stands dismissed.

82

A.P. CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT:

---Secs.6(a) and 15 and 146 - Writ Petition seeking a Writ of mandamus declaring the action of the 1st respondent in issuing G.O. constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, as illegal and arbitrary - Petitioners are principally responsible for construction of the 3rd respondent temple which was brought under Section 6 (a) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act - As the income of the temple is more than Rs.1.00 crore, it has come under the jurisdiction of the Endowments Department and it is empowered to constitute a Board of Trustees under Section 15 of the Act - 1st respondent issued G.O., constituting a Renovation Committee to the 3rd respondent temple by appointing respondent Nos.4 to 9 as its members, under Section 146 of the Act for undertaking the reconstruction work of the temple, without giving any opportunity to the petitioners and the Beeram family who were associated with the temple in many of its activities.

HELD: Renovation Committee, which is a statutory committee, is required to discharge fiduciary duties and it should gain the utmost trust from the public at large, since the Committee would collect donations and contributions from them - As such, the consent and acceptability of the persons interested, the persons already parted with donations/contributions and the

devotees is very much required for constitution of the Renovation Committee - This wholesome object can be achieved only after providing an opportunity to them by giving widespread publication or by conducting meetings for selection of the members from the persons interested, existing participants of the renovation works, donors and contributors - Therefore, this Court can safely hold that the concept of Reasonableness was not followed by the 1st respondent who exercised its power under Section 146 of the Act while appointing the present committee - Writ Petition stands allowed and the impugned Order of the 1 st respondent in G.O. stands quashed. ***275***

--- Writ Petitions - Whether the Petitioner-Sabha can be registered under the Endowments Act, 1987 and brought within the control and regulation of the Endowments Department and its officers under the provisions of the Act.

HELD: Any religious or charitable institution would be governed and regulated by the Endowment Law applicable to the State in which the head quarters of the said institution is situated - In the event of such an institution holding properties, even extensive properties, in any other State, the law applicable to the institution would remain the Endowment law applicable in the State in which it is situated - Since the Petitioner-Sabha is situated in the State of Tamilnadu, the provisions of the Endowments Act, would not apply to the Petitioner and the registration of the Petitioner, under the provisions of the Endowments Act, 1966 or the Endowments Act, 1987 is not permissible and stands set aside - Authorities under the Endowments Act, 1987 cannot interfere with the activities of the Petitioner. ***137***

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. ***209***

A.P. SOCIETIES REGISTRATION ACT,2001:

---Sec.9 - Petitioners are President, Vice-President and Treasurer of Society – Writ petition aggrieved by the action of the 2nd respondent in acknowledging and approving the minutes of a meeting conducted by the unofficial respondents and at the same time rejecting the proceedings of the meeting conducted by the petitioners.

HELD: Writ Petition stands partially allowed – Registrar has no power either to “accept” or to “reject” an annual list filed under Section 9 of the Act - He can only acknowledge its receipt and file the same - A Mandamus is issued against the acceptance of one list while rejecting the other - Since there are seriously disputed questions on fact and law in this Writ Petition, this Court is not entering into those areas - Endorsements given by the Registrar (as accepted / rejected) are set aside - Registrar cannot be a party to the dispute before the Arbitrator - The lists filed by both the parties are directed to be kept in the record of the 2nd respondent/Registrar. ***59***

ARBITRATION AND CONCILIATION ACT:

---Sec.8 - Petitioner filed a written statement and took the defence that the suit was not maintainable before the Civil Court because of the existence of Arbitration clause in the MOU arrived between the parties - Trial Court by a common Order dismissed both I.A.'s preferred by the Petitioner's for referring the dispute to an arbitrator and decide the preliminary issue respectively - Aggrieved by the same, Petitioners preferred present revision petitions.

HELD - Existence of the arbitration clause has been raised only in the written statement filed by the petitioner - However, Petitioner did not seek reference to arbitration - It sought dismissal of the suit on the ground that there is an arbitration clause in the agreement - This stand is not in accordance with requirements of Sec.8 which is a provision for seeking reference to arbitration rather than dismissal of the suit - Petitioner, participated in the suit and trial wherein the witnesses of the respondent have been examined and cross-examined - It is only at the stage of producing it's witnesses that the Petitioner has sought to file the present application under Section 8 – In the said circumstances, the conduct of the petitioner reveals that it has subjected itself to the jurisdiction of the Court and waived it's right to seek reference of the dispute to arbitration – Civil revision petitions stand dismissed. ***33***

CIVIL PROCEDURE CODE:

---Secs. 64(1) and 100 - Appellant instituted E.A. against the Respondent No.1/Decree-holder and the Respondent No.2/Judgment-debtor - E.P. was filed in execution of the decree in the suit and mode of execution sought was by sale of the E.P. schedule property – Appellant had purchased schedule property from the sister of Second Respondent – First respondent got E.P. schedule property attached before judgment in I.A.

Appellant contended that sale of the property purchased by him from the sister of the second respondent in Court auction is proper, since it exclusively belonged to his vendor – Appellant further contended before the executing Court that the second respondent and his vendor had entered into a relinquishment deed whereby his vendor was given the property, which is subject matter of sale in the execution petition - First respondent/Decree-holder questioned the alleged sale and contended that sale deed in favour of the appellant was obtained from his vendor when this property was under attachment and therefore cannot bind his rights.

HELD: Purchase of the property by the appellant was subsequent to attachment so effected - In view of Section 64(1) CPC, the sale in favour of the appellant stands void - Sec.64(1) CPC is not of such nature, that considers whether the person against whom an order of attachment of property was issued, has a subsisting right or interest to it or not - Attachment so effected operates against the property - Dismissal of the claim petition of the appellant by the Executing Court is proper - No substantial questions of law in terms of Section 100 CPC to consider - Second appeal stands dismissed confirming the decree and judgment of the lower appellate Court. ***41***

---Sec.103 - TRANSFER OF PROPERTY ACT, Sec.52 - Second Appeal against the decree and judgment in A.S. - Suit was dismissed by the trial Court - A.S was preferred thereupon, by the respondent and decree and judgment of the trial Court was reversed - Defendants are the appellants - The 1st appellant died during pendency

of the suit - Second appeal by the Legal Representatives of the original defendants.

HELD: When material on record is sufficient, this Court in second appeal in exercise of powers under Section 103 CPC, determine an issue necessary for its disposal that has not been properly determined by the lower appellate Court including the trial Court - Nature of judgment in the appeal devoid of discussion relating to title claimed by the respondent and highly irregular and improper appreciation of evidence on record relating to possession by both the Courts below, which are on the verge of perversity are impelling this Court to consider the fact situation once again, in exercise of its power under Section 103 CPC - Findings recorded by the appellate Court in respect of title claimed by the respondent to the suit site and findings recorded by both the Courts below relating to its possession require interference - Second appeal stands allowed setting aside the decree and judgment in A.S, and the decree of the trial Court in O.S. dismissing the suit is upheld and restored. ***178***

---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. ***203***

---Order VII, Rule 11 C.P.C. - Plaintiff filed O.S. against 20 defendants - Plaintiff claims that defendants 1 and 2 in the said suit had brought into existence a fake and forged agreement of sale - After the filing of the suit, defendants 5 to 8 moved I.A.'s under Order VII Rule 11 C.P.C., for rejection of the plaint, which were dismissed by the trial Court - Hence, instant Civil Revision.

HELD: No cause of action had been made out against the Petitioners - Applications under Order VII Rule 11 have not been appreciated properly by the trial Court - Civil Revision stands allowed - Plaint stands rejected to the extent of Petitioners/ Defendant 5 to 8. ***149***

--Sec.104 r/w. Or.43(1)(r) - Civil Miscellaneous Appeal under Sec.104 r/w. Or.43(1)(r) of Code has been filed by the Appellants/Plaintiffs challenging the judgment and order, in I.A. by which their application for grant of temporary injunction under Order 39 Rules 1 and 2 CPC was rejected - Appellants filed a suit for partition of immovable properties and for mesne profits and for declaration of title over B-schedule immovable property and for consequential permanent injunction - Suit was instituted on 27.07.2016, along with I.A. for grant of temporary injunction was also filed with respect to B-schedule property.

HELD: Grant of injunction is a discretionary relief and exercise thereof is subject to the court satisfying that—

(1) There is a serious disputed question to be tried in the suit and that

an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant;

(2) Irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

Unfortunately, Court below has not adverted to the documents filed by the appellants/plaintiffs at least prima facie - Order in I.A. stands set aside and the matter is remanded to the court below for consideration afresh of I.A., in accordance with law, after affording opportunity of hearing to all the parties concerned - Appeal as allowed in part. **126**

----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. ***211***

---Order 14, Rules 1 and 2 - Order 41 Rule 11 & 33 and Section 100 - Appellant laid the suit for declaration of her right, title and interest to the plaint schedule property, which is a house and to evict the respondents there from as well as recovery of rent or damages - Trial Court dismissed the suit and the decree and judgment of the trial Court were confirmed in the appeal – Aggrieved thereby, present Second Appeal is preferred by the Appellant/Plaintiff.

HELD - It is the duty of the trial Court to pronounce judgment on all issues in terms of Order 14, Rule 2 C.P.C. but it was not done - It is rather painful particularly when the matter is being considered in the second appeal in terms of Section 100 C.P.C, to direct to remand this matter to the trial Court, it is but, necessary - Matter to be remitted to the trial Court for fresh consideration and determination on all the issues including the issues now directed to be framed relating to wills - When the dispute is predominantly based on (Will) such claims, the trial Court could have settled appropriate issues, calling upon the parties to lead evidence thereon –1st appellate Court had an opportunity to correct the situation by invoking its powers to determine in terms of Order 41, Rule 33 C.P.C and if necessary to remand the matter or call for findings from the trial Court, upon settling appropriate issues for determination with reference to these two Wills for consideration in the appeal, but did not do so.

Interference in this second appeal is warranted setting aside the decrees and judgments of both the Courts below - Second Appeal stands allowed. ***13***

---Or.34, Rule 11 - USURIOUS LOANS ACT, 1918 - Appeal against Judgment and preliminary Decree passed by the Trial Court - Plaintiff filed a suit for recovery of some amount - 1st defendant and her husband

had borrowed a sum of money from the plaintiff - Money was to be repaid with interest @ 30% p.a. compounded on a yearly basis - As security for repayment of the money, Defendants created a mortgage, in favour of the Plaintiff, on the plaint schedule property - Thereafter, the 1st Defendant and her husband repaid a certain sum of towards part payment of principal and interest and thereafter, defaulted in repayment of the debt - 1st defendant sold the mortgaged suit schedule property to the 2nd defendant - After purchasing the property, 2nd defendant called on the plaintiff to bring the title deeds of the plaint schedule property and receive the remaining debt amount from the 2nd defendant - 2nd defendant did not make any payment despite the Plaintiff having approached the 2nd defendant, for receiving the said payment, promised by the 2nd defendant - As the defendants had not paid the amount due to the Plaintiff, he filed suit, against the 1st and 2nd defendants for recovery - 2nd defendant passed away during the pendency of the suit and his legal heirs, defendants 3 to 6 were impleaded as Defendants in the suit.

HELD: Even in cases where the rate of interest is fixed in the contract, it would be open to the Court to vary the rate of contract from the date of the suit till the date of recovery of the amount - Contractual rate of interest is 30% p.a compounded annually and contract was drawn up in the year 1992 and the suit has been filed in the year 1997 - Permitting the said rate of interest would result in the debt being multiplied - Keeping in view the passage of time since the suit has been filed, it would be appropriate to reduce the interest rate substantially – A rate of 14% p.a., compounded annually, would be equitable and fair to both sides - Judgment and preliminary Decree under appeal is modified to the extent of calculating and collecting interest at the rate of 14% per annum, compounded annually, from the date of the filing of the suit till payment - Appeal stands partly allowed. **258**

---Or.43, Rl.1 – TRANSFER OF PROPERTY ACT, Sec.52 - Whether, Sec.52 of the TRANSFER OF PROPERTY ACT operates as a bar to the grant of temporary injunction under Order 39 Rules 1 and 2 CPC - C.M. Appeals, challenging the judgment and order, passed in I.A. under Order 39 Rules 1 and 2, whereby, I.A. was allowed granting interim injunction restraining the respondents from executing or creating any registered document of alienation or encumbrance in respect of schedule property pending disposal of the suit.

HELD: Sec.52 of T.P. Act, although provides protection to the parties from transfers pendent lite, in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of prima facie, balance of convenience and causing irreparable loss or injury in his favour - Distinction between Sec.52 of T.P. Act and Or.39, Rl. 1 and 2 CPC, is that an Order of temporary injunction is of pre-emptive nature restraining the act of alienation by party to the suit where there is such a danger, whereas Sec.52 of T.P. Act comes into play after the alienation takes place during pendency of the suit – No illegality in the Order passed by the Court below granting temporary injunction in favour of the Plaintiff/Respondent - Appellate court will not re-assess the material and seek

to reach a conclusion different from the one reached by the Court below if the one reached by that Court was reasonably possible on the material – C.M. Appeals stand dismissed. ***104***

COMMERCIAL COURTS ACT, 2015:

---Sec.2(1)(c)(vi) - Whether the dispute raised between the parties in the suit is a "Commercial Dispute" within the meaning and definition of Act - Civil revision petition arises against the order in I.A. dismissing the application for return of the plaint - Petitioner contends that the dispute is relating to the construction of a residential building and the transaction between the parties is not a "commercial transaction" to attract the provisions of the Commercial Courts Act and as such sought for return of the plaint.

HELD: Contents of the plaint show that the transactions reflect building and development of a residential project - Dispute thereof is a commercial dispute within the meaning of Section 2(1)(c)(vi) of the Commercial Courts Act - Since the value of suit is above the specified value under the Act as on the date of institution of the suit, the Court below/the commercial court has got jurisdiction to proceed with the matter pending before it - Civil Revision Petition stands dismissed. ***47***

CONSTITUTION OF INDIA:

--- WRIT OF MANDAMUS - Petitioner before this Court entered into an agreement of sale with regard to subject land - A suit, for specific performance was filed for enforcement of the agreement, wherein, I.A. was filed and the Court granted a temporary injunction restraining the defendant in the suit from alienating subject land - Injunction was extended till further orders - Ex parte decree was passed in favour of the petitioner – Thereafter, trial Court "closed" the interim application - An application was filed to set aside the ex parte decree and also an application to bring on record the legal representatives of the deceased defendant - Ex parte decree was set aside and the legal representatives were also brought on record - It transpires that the ex parte decree was set aside - Later, three sale deeds were executed by the Legal Representatives in favour of the unofficial respondents herein.

HELD: An injunction can be confirmed, discharged, varied or set aside - There is no specific provision available in the CPC for "closing" an interim application - In the case on hand, the trial Judge closed the application - When a suit is restored to file, the parties must be put in the same position they would have been prior to the restoration - When a suit is either restored to file or an ex parte decree is set aside, the Court should also decide about the existing interim orders - Trial Court or other Courts granting orders should ensure that when a suit is restored to file or when an ex parte decree is set aside etc., a specific order should be passed on the interim order if any that was existing earlier - A greater duty is cast on the learned counsels for parties to bring this to the notice of the Court - Official respondents also not to register any sale deeds with regard to property covered by the suit till a final decision is taken in O.S. in the lower Court – Writ Petition stands allowed. ***157***

CRIMINAL PROCEDURE CODE:

---Secs.340 and 195 - CIVIL PROCEDURE CODE, Sec.151 - Respondent filed O.S. against the petitioner herein for permanent injunction restraining the petitioner from interfering with the peaceful possession of the suit schedule property by the respondent herein - Case of the petitioner was that he

had never executed any deed of sale and the document produced by the respondent was a fabricated document - Thereupon, the petitioner had moved I.A. under Section 340 of Criminal Procedure Code r/w Section 151 of Civil Procedure Code to conduct an enquiry into this issue and to forward a complaint to the appropriate Magistrate having jurisdiction for prosecution under Section 195 of Cr.P.C - This application was dismissed by the trial Court - Aggrieved by the said Order of dismissal, the petitioner preferred present revision petition.

HELD: Once a complaint has been made before the Court, it would be open to the Court to conduct a preliminary enquiry under Section 340 of Cr.P.C. to arrive at a conclusion, as to whether the said complaint requires further enquiry and whether it should be sent to criminal Court of appropriate jurisdiction for further investigation and prosecution - In the present case, trial Court refused to go into this at all and has taken the view that the application moved by the petitioner should be taken up only after issues had been framed and a decision had been taken on the question of whether document has been fabricated or not - Since that exercise has not been carried out by the trial Court, it is necessary that the order is set aside and I.A. is remanded back to the trial Court to take a decision in the light of the observations of this Court. ***79***

---Sec.482 - Petition seeking quashing of the First Information Report instituted under Section 353 of the Indian Penal Code - Allegation that on a piece of land on which the erstwhile High Court of Andhra Pradesh, had directed for maintenance of status quo - When the officials on knowing that some unknown persons had erected a six-feet statue of Dr. B.R. Ambedkar on a one-foot cement block, for ensuring compliance of the order, reached the site in question, the petitioner is said to have reached the spot and objected to such action by the officials - On the said allegation, the FIR came to be instituted.

HELD: Court finds that the statements of all five officials do not even have a whisper of any gesture and/or the alleged specific overt acts of petitioner which may give an impression that petitioner was about to commit assault - Hence, there is no specific instance of assault or use of criminal force on any public servant attributed to petitioner - Even otherwise, merely a bald allegation that petitioner objected to further action in purported implementation of order of High Court - High Court while exercising its power under Section 482 of Cr.P.C. to quash FIR instituted against second respondent-accused should have applied following two tests: i) whether allegations made in complaint, prima facie constitute an offence; and ii) whether allegations are so improbable that a prudent man would not arrive at the conclusion that there is sufficient ground to proceed with the complaint - Petitioner alone could obstruct three officials in presence of a total of five officials is improbable - Criminal petition stands allowed and FIR is accordingly, quashed. ***120***

Sec.482 - (INDIAN) PENAL CODE, Sec.500 - Criminal Petition to quash the proceedings in C.C. - Respondent/Complainant in C.C. filed complaint seeking to punish the Petitioners herein for the offence punishable under Section 500 (Defamation) of the IPC, on the ground that they have made defamatory statement in the counter filed by 2nd petitioner, in I.A. in O.S.

HELD: Alleged defamatory

statement was made only in a counter filed in a Court of law but not made it available to the general public, it cannot be said that there is a publication which is main element to see whether the offence of defamation is made out or not - Imputations in the counter, would not in any way amount to per se defamatory - Even in the complaint, there is no averment that other persons read the counter - Complaint instituted by the 2nd respondent against the petitioners does not call for any further action in the nature of issuance of process under Section 204 of the Code of Criminal Procedure, because there is neither any averment nor any evidence showing that any defamatory material was published - Criminal Petition stands allowed quashing the proceedings in C.C. ***166***

ENVIRONMENT, FORESTS, SCIENCE AND TECHNOLOGY (ENVIRONMENT) DEPARTMENT: ---G.O.Ms.No.80 - Writ Petition against the Notice issued by the 3rd respondent/ Tahsildar directing the Petitioner to shut down the brick kiln within 30 days - Notice was issued on the ground that the petitioner had violated the guidelines for establishment of brick kilns, issued under G.O.Ms.No.80.

HELD: Notice has been issued without giving any opportunity to the Petitioner to set-forth her case and would have to be treated as a violation of principles of natural justice - Writ Petition stands allowed setting aside the impugned proceedings with a further direction that the said notice shall be treated as a show cause notice with liberty to the Petitioner to file her objections before the 3rd Respondent, within a period of four weeks - 3rd Respondent shall consider the objections filed by the Petitioner and pass Orders containing reasons after giving the Petitioner an opportunity of hearing. ***215***

(INDIAN) EVIDENCE ACT:

---Sec. 45 - Civil Revision Petition preferred by Petitioner/Defendant aggrieved by Orders passed in I.A. in Suit - Respondent/Plaintiff filed the suit seeking Specific Performance of an Agreement of Sale - In the written statement a plea was taken that the Agreement of Sale was fabricated by forging the signatures of the Petitioner and her husband - After the completion of the Respondent's/Plaintiff's arguments in the said suit and when the matter came up for Petitioner's/defendant's arguments, I.A. was filed by the under Section 45 of the Indian Evidence Act R/w Section 151 of the Code of Civil Procedure seeking a direction to send Ex.A.1 agreement of sale and the papers on which the signatures of the petitioner would be taken in open Court and other documents containing her signatures i.e., the suit summons, vakalat, postal acknowledgement, written statement etc., to the Government Handwriting Expert for comparison of the said signatures and to give expert's opinion – Trial Court dismissed the I.A. - Hence, the present Civil Revision Petition.

HELD: Direction sought, for referring the documents to expert for opinion for comparison of signatures cannot be granted in the light of the expression of this Court in P.Padmanabhaiah vs. G.Srinivasa Rao - There is no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the record by wasting the time and money of the parties – Civil Revision stands dismissed. ***254***

GUARDIANS AND WARDS ACT:

--- Secs.7 & 8 - LEGAL SERVICES AUTHORITIES ACT,1987, Sec.20 -

Petitioner is challenging the award passed in Pre Litigation Case passed by Lok Adalat Bench - Petitioner worked as an Assistant Line Man in A.P.Transoco and was married with Padmaja, daughter of the respondents 2 and 3, and out of their wedlock, the respondents 4 and 5 were born, who are minors and studying in junior classes - Padmaja committed suicide and the respondents 2 and 3 lodged FIR under Section 304-B Indian Penal Code (IPC) against the petitioner, but petitioner was acquitted by the Sessions Judge - Minor children respondents 4 and 5 filed P.L.C. through respondents 2 and 3, before the 1st respondent the District Legal Services Authority (Lok Adalat Bench) against the Petitioner and the Petitioner's superior officers, in which the respondents 2 and 3 and their relatives and followers pressurized and threatened the Petitioner to settle the issue - Consequently under pressure and threat the petitioner signed illegal and improper settlement - Lok Adalat, passed the award on 02.11.2017, on such settlement with as many as eleven conditions

HELD: Award of the Lok Adalat passed on the settlement can be challenged only by way of filing writ petition under Article 226/227 of the Constitution of India, on limited grounds and when writ petition is filed it is for the writ court to decide whether any sufficient ground is made out or not for quashment of the Lok Adalat award - Lack of inherent jurisdiction in Lok Adalat, is one of the limited grounds to challenge its award.

No application for appointment of the guardian - Application was only for maintenance - In view of Sections 7 and 8 of the Guardians and Wards Act, no order for appointment of a guardian can be passed without an application by the proposed guardian which application must comply with the conditions of Section 10 - Matter for appointment of guardian was not the subject matter before the Lok Adalat - Lok Adalat was not presided over by the District Judge/Additional District Judge - No award could be passed on the basis of the settlement or compromise between the parties for appointment of guardian - Signing of the settlement is admitted by the Petitioner - Whether there was threat or compulsion is a disputed question of fact which cannot be gone into in the Writ proceedings - Impugned award of the Lok Adalat only to the extent of appointment of guardian of respondents 4 and 5 is hereby quashed - Petitioner is the natural guardian being father of the minor respondents 4 and 5 - However, the parties are at liberty, if so require, to seek the remedy for appointment of guardianship of the minors, or for their custody, before competent Court of law - Writ Petition stands allowed in part. ***225***

HINDU MARRIAGE ACT,

---Sec.14 - Marriage between the Petitioner/ Husband and Respondent/Wife approached the Family Court, for grant of divorce, by way of mutual consent - As the mandatory period of one year before presentation of the application for divorce, had not been completed, the petitioner moved I.A. under the proviso to Sec.14(1) of the Hindu Marriage Act, on the ground of exceptional hardship to the petitioner - Application was dismissed by the trial Court and aggrieved by the same, present Civil Revision Petition preferred.

HELD: Proviso to Sec.14, permits an application for divorce, to be made, with the leave of the Court, where exceptional hardship to the petitioner or exceptional depravity on the part of the respondent is made out before the Court – Bar for obtaining

the leave of the Court has been set very high - Such leave can be granted only where a petitioner is able to show that the petitioner would face exceptional hardship in continuing the marriage or where the petitioner is able to demonstrate that the respondent has behaved with such exceptional depravity that continuation of the marriage would be extremely detrimental to the petitioner.

It is the case of the petitioner, before the trial Court, that there were various disputes including a criminal complaint filed against the petitioner and the same had been resolved - Such a ground cannot be treated as a case of exceptional hardship - Civil Revision Petition stands dismissed. ***86***

HINDU SUCCESSION ACT, 1956: - G.O.Ms.No.145, Revenue (SER.II) Department, Dt.24-4-2015 issued by Govt. of A.P. - FAMILY MEMBER CERTIFICATE - Petitioners applied for issuance of Family member certificate through Mee Seva to respondents - Application was rejected - Petitioner contended that respondent No.4/ Village Revenue Officer is not competent to issue an endorsement of rejection of petition and only Tahsildar is competent in term of G.O.Ms.No.145 and hence the said endorsement is illegal and requested to issue a direction.

Respondent contended petiti-oners/ appellants has not come under the category of Class-I legal heirs of deceased as per Hindu Succession Act.

HELD: The question is about competency of VRO to issue an endorsement, examination of competency is suffice to decide the real contravercy involved - According Cl.(i) of G.O.Ms.No.145, the Tahsildar shall issue family member certificate, provided there is no written objection from any other member of the family - Cl.(i) itself is sufficent to decide in competency of VRO to hold that VRO is incompetent, since Tahsildar alone shall issue Family member certificate - Hence VRO is in competent to issue such an endorsement in term of G.O.Ms. No.145, on this ground alone, the endorsement impugned in writ petition is liable to set aside and matter is to be remanded back to Tahsildar to follow procedure prescribed in G.O.Mos.No.145 and process the application of the petitioners. **101**

LEGAL SERVICES AUTHORITIES ACT:

--- - Writ Petition preferred against the award passed in LokAdalat case - Petitioner/ Husband filed a petition for restitution of conjugal rights - 2nd respondent/Wife alleged to have brought into existence a collusive sale deed dated in favour of the 3rd respondent - 2nd respondent further filed O.S. showing the petitioner as 1st defendant and the 3rd respondent as 2nd defendant seeking cancellation of the registered sale deed executed by her in favour of the 3rd respondent - Pursuant to which, an Award came to be passed and the same is now under challenge before this Court on the ground of fraud, and violative of the provisions of Legal Services Authorities Act and principles of natural justice.

Whether the Legal Services Authority was right in recording the compromise between the parties without the writ petitioner being made as a party to the proceedings.

HELD: We have come across cases where parties are either impersonated or at times signatures of the parties being forged or parties before the Civil Court are not made parties before the Lok Adalat

which is leading to multiplicity of litigations - Under those circumstances, we intend to issue certain directions:

(a) We, hereby direct the members of Lok Adalat, more particularly, the Subordinate Officers dealing with the Lok Adalat cases to verify the documents of the suit or at least the plaint copy to find out as to whether all the parties before the Civil Court are made parties before the Lok Adalat.

(b) Photographs of the parties may also be taken at the time of passing of the award, with signature of the parties on the photographs, so as to avoid impersonation.

(c) Legal Services authorities, at all levels, are directed to maintain the record of disposed off cases, namely the applications filed, photographs along with the application, documents, if any, filed along with the application and the award passed, at least for a period of three years from the date of award.

(d) The members or member of the Lok Adalat shall find out from the parties as to pendency of any other proceedings in respect of the subject property between the parties in any other Court and orders if any passed, the same shall also be recorded in the order/award.

(e) The members of the Lok Adalat shall verify if the compromise/settlement is between all the parties and if it finds that it is not between all but some of the parties, it shall consider if such compromise may have adverse affect on the party who has not entered into compromise, if it so affects award shall not be passed based on such compromise.

(f) If all the parties before the Civil court are parties before the Lok Adalat, but during the pendency of the proceedings before the Lok Adalat, any application is filed or request is made to delete the name of any of the parties as not being necessary or proper party or being a formal party and non contesting party, the Lok Adalat shall before acceding to such request shall provide opportunity to such party before deletion of his/her name and shall also consider the impact of the award based on compromise/settlement between the parties other than the party sought to be deleted on the rights of the party sought to be deleted or alleged as proforma and non-contesting party.

Writ Petition stands allowed - Order under challenge is accordingly set aside and the matter is remanded back to Civil Court. ***88***

MOTOR VEHICLES ACT:

---Sec.166 - Appeal challenging the decree and award, in M.V.O.P. passed by the Chairman, Motor Accidents Claims Tribunal-cum- Addl. District Judge - Tribunal below held that Petitioners failed to establish their entitlement to ask for compensation from any of the respondents and accordingly, dismissed the claim petition by its decree and award - Aggrieved by the same, Petitioners filed the present appeal.

HELD: Parliament with its wisdom deleted the sub-section to Section 166 of the Motor Vehicles Act which stipulates limitation to file the claim petition considering the pathetic condition of the victims and their family members - Courts have to show some liberal approach, while deciding the claim petitions filed under Motor Vehicles Act - Courts have to keep in mind that the victims and their dependents have to come out from the hardships being faced by them due to sudden demise of the bread earner of the family, instead of rejecting the claims on technical grounds.

Finding of the Tribunal below that

the Petitioners failed to establish the claim is live and surviving claim is unsustainable - Appellants are entitled for total compensation amount of Rs.10,33,900/- with interest @ 6% per annum and proportionate costs - Compensation amount shall carry interest @ 6% per annum from the date of claim application to till the date of realization - Respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the Appellants.

216

PASSPORTS ACT:

---Sec.10(d) - Writ Petition seeking a mandamus questioning the action of the 2nd respondent in retaining the Petitioner's passport - Petitioner is the Chairman of a private medical college – Petitioner made an application for renewal of the passport, and a new passport was issued - Petitioner travelled abroad with his new passport and returned to - A show cause notice was issued to the petitioner stating that the respondents received an adverse police verification report against him - At request of respondents, petitioner surrendered his passport.

HELD: Mere fact that a criminal case is pending against the person is not a ground to conclude that he cannot possess or hold a passport. - Even under Section 10 (d) of the Passports Act, the passport can be impounded only if the holder has been convicted of an offence involving "moral turpitude" to imprisonment of not less than two years - 2nd respondent is directed to immediately give back the passport to the petitioner - If there is any suppression of information, in the opinion of the respondents, is serious and merits action they should give the petitioner a notice, as per the applicable law/regulations etc., considering his explanation and then decide the further course of action - Right to travel abroad is a part of a personal liberty and the right to possess a passport etc., can only be curtailed in accordance with law only and not on the subjective satisfaction of anyone - Writ Petition stands allowed.

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(INDIAN) PENAL CODE:

---Secs. 302 r/w Sections 34, 379 and 201 r/w. Sec.34 - A.1 to A.3 in Sessions Case preferred instant appeal against the Judgment of the Sessions Court, whereby, A1 to A3 were guilty of all the charges – It was alleged that A.1 beat deceased with a stick on the head while A.2 and A.3 tried a rope around the neck of the deceased.

HELD: Investigating Officer, in his evidence admits that though he claims to have taken the signatures of the accused and mediators on the property seized by him, he did not mention the same in the mediators report and affixing slips on the properties - As the mandatory requirement as contemplated in Criminal Rules of Practice is not followed and as there is a doubt with regard to the seizure of gold ornaments, the same cannot be accepted as proved

When the two circumstances namely extra-judicial confession leading to discovery of body and the recovery of articles from A.1 are not proved beyond doubt, the only circumstance namely the accused being last seen with the company of the deceased may not be sufficient to convict the accused - Circumstance of last seen by itself cannot inculpate the accused, unless the case is seen in its entirety - Not safe to convict the accused basing on the theory of last seen, when the accused and the deceased are friends who used to consume alcohol everyday evening - Criminal stands allowed - Conviction and

sentence recorded against the Appellants/ A.1 to A.3 in the Judgment of Sessions Case stand set aside. ***262***

---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. ***195***

---Secs.353, 341, 506, 188 R/w. 149 - Criminal Petition is filed to quash the proceedings in C.C

HELD: Allegation mentioned in the charge sheet that the complainant and other public servants were assaulted and restrained from discharging their official duties, is absolutely an improvement for the reason that the same does not find place either in the First Information Report or in the statement of the complainant recorded under Section 161 Cr.P.C - Criminal Petition stands allowed, quashing the proceedings in C.C. ***163***

---Sec. 376 r/w Sec.511 - Judgment passed by Sessions Judge, partly allowing the appeal of the petitioner, maintaining the Judgment, convicting the petitioner for offence under Secs.376 r/w 511 IPC, but reducing the sentence of 5 years R.I as imposed by the Trial Court to 4 years R.I and confirming the remaining portion of the sentence, hence this revision.

HELD: Even if there be any discrepancy with respect to the time of the incident, the same in the view of this Court does not destroy the substratum of the prosecution case - Attempt starts where preparation ends, though it falls short of active commission of the crime - Courts below have concurrently recorded the guilt of the accused for the offence under Section 376 read with Section 511 IPC on due consideration of the evidence on record, which could not be shown to be suffering from any infirmity so as to attract the exercise of revisional jurisdiction - Accused has rightly been convicted under Section 376 read with Section 511 IPC - Criminal revision stands dismissed - Revisionist bail stands cancelled -Trial court is directed to ensure that the revisionist is sent to the prison to serve the remaining period of the sentence. ***284***

---Secs.376, 342, 417 and 420 and Sec.109 r/w Secs. 376 and 342 read with 34 - Appellant No.1 and Appellant No.2 were found guilty by Sessions Court - I.A. was filed to permit the 2nd respondent to compromise the matter with the Accused Nos.1 and 2.

HELD – Contention that it was a case of love affair and there was a promise to marry and therefore it is not a case of rape, cannot be accepted at this stage considering the point in issue to set aside the conviction on mere settlement between

the parties, in view of the clear finding of guilt and conviction for the offences u/s 376 IPC recorded by the trial Court - Such a plea would require consideration and can only be done while deciding the appeal on merits - On the basis of the compromise/ settlement between the appellants and the respondent No.2, the Order of conviction cannot be set aside nor the appellants can be acquitted of the offences for which there is conviction, by allowing the appeal on any settlement - I.A. stands to be rejected. **21**

---Sec.498-A r/w.34 – CRIMINAL PROCEDURE CODE, Sec.482 - Petitioners/ Accused Nos.3 and 5, preferred petition for quashing of C.C.

HELD: No specific overtact has been narrated in the complaint indicating any criminal involvement of the petitioners - Continuance of criminal proceedings against the petitioners would be an abuse of the process of the Court - Similarly situated accused have already been granted such relief - Criminal Petition stands allowed and the entire criminal proceedings insofar as it relates to the Petitioners/Accused Nos.3 and 5, are quashed. ***147***

SPECIFIC RELIEF ACT:,

---Sec.34 - CIVIL PROCEDURE CODE, Sec.100 - Suit for declaration of right and title for consequential relief of permanent injunction and alternatively for possession after evicting the deceased respondent therefrom and for profits.

HELD - As rightly observed by both the Courts below, no evidence was placed at the trial by the appellants to establish that they continued to be in effective possession and enjoyment of the entire suit land - It was never the case of the appellants in the plaint that the respondent was in occupation of a part of the suit lands, asserting right or otherwise and that she should be evicted therefrom - Their claim for permanent injunction, based on possession, right and title were considered by both the Courts below appropriately and inferences were drawn rejecting her claim - No substantial questions of law requiring interference of this Court with the judgment of the appellate Court that concurred with the findings recorded by the trial Court - Second appeal stands dismissed. ***1***

(INDIAN) STAMP ACT:

---Article 47-A of Schedule-1 A - Petitioners filed O.S. against the respondent seeking specific performance of agreement of sale - In the course of the case, an issue had arisen as to Whether the suit for agreement to sell has to be impounded for payment of stamp duty and penalty by treating the said document as a document of sale, under Explanation-1 to Article 47-A of Schedule-1 A of the Indian Stamp Act -Trial Court had held that the document is chargeable as a sale under Explanation-1 to Article 47-A of Schedule-1 A - Aggrieved by the order of Trial Court, Petitioners preferred present Civil revision petition.

HELD: Any agreement of sale which evidences delivery of possession by virtue of the said agreement of sale or any document which even records that delivery of possession had been done even before the execution of the agreement of sale has been executed, would both fall within the ambit of Article 47-A of Schedule-1 A of the Indian Stamp Act - Civil Revision stands dismissed. **(A.P.)** ***173***

--*X*--

Law Summary

(Founder: Late Sri.G.S.GUPTA)

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TELANGANA HIGH COURT

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CIVIL PROCEDURE CODE:

& - A.P. COURT FEES AND SUIT VALUATION ACT, Sec.11 - Application filed to condone the delay of 1691 days in preferring appeal against the Judgment and Decree in O.S.

HELD: Even though adequate time was available and trial Court accommodated, for the reasons best known, the plaintiffs did not choose to pay the court fee - Further, as per Section 11 of the Andhra Pradesh Court Fees and Suit Valuation Act, the plaint is liable to be rejected if the deficit fee is not paid - It is the duty of plaintiffs to pay proper court fee - Plaintiffs were required to persuade the trial Court to determine the value of the property and to fix the court fee and pay the court fee as assessed - Statements are made to mislead the Court to believe as if injustice is inflicted on him - Application is liable to be dismissed. ***192***

---Or.VI, Rul.17 r/w Sec.151 - Civil Revision, assailing the Order in I.A. filed under CPC, filed by the Petitioners/Plaintiffs for amendment of the plaint schedule property – Trial Court permitted amendment of pleadings.

HELD: Unless the party takes prompt steps, mere action cannot be accepted in filing a petition for amendment of pleadings after the commencement of trial - Plaintiffs are not entitled for amendment of boundaries drastically changing the extent and location of the suit schedule property from that one mentioned in the plaint schedule at the time of filing the suit - A grave mistake was committed by the Court below in considering the application for amendment of the boundaries and there was no due diligence on the part of the plaintiffs in making such an application for amendment of the boundaries of plaint schedule at a belated stage after conclusion of the trial when the suit was posted for arguments - Civil Revision Petition stands allowed setting aside the impugned order in IA. ***111***

---Or.14, Rule 5 - DRAFT ISSUES - Suit for injunction - Petitioner raised dispute about the title of respondent, it is the duty of the Court to frame issue, but Court below has not framed the issue of title.

Petitioner filed an application for framing an additional issue, but Court below dismissed without considering proper perspective - Application filed for framing of additional issue after two years of framing issues by the Court below and even at the time of filing application, drarft issues are not filed.

HELD: File draft issues before framing issues by the Courts, after pleadings are completed, which will assist the trial Courts in deciding the lis as expeditiously as possible and will save some time - Revision is dismissed. ***20***

---Or. XV-A, r/w Sec.151 - Civil Revision Petition, assailing the Order in IA in OS - Application in IA was filed by the plaintiff to direct the defendant to pay arrears of rent and mesne profits from the date of suit till the date of delivery of vacant possession.

HELD: Jural relationship is admitted in the written statement, there is no specific denial of the plaint averments - When the suit is filed for recovery of possession and recovery of arrears of rent, mesne profits, considering the scheme of Order XV-A of CPC, and request of the plaintiff, in view of admitted jural relationship of landlord and tenant, such direction to pay the admitted arrears and to continue to deposit the amount which becomes payable during pendency of proceedings is necessary - If the defendant commits default in making such payments/deposits, the Court shall strike of the defence and the plaintiff is also entitled to withdraw the said amount after deposit - Court below failed to appreciate the facts of the case, in conformity with the Legislative intention under Order-XV-A, Rules-1 & 2 CPC - Matter is remanded back to the trial Court for fresh disposal - Trial Court shall ascertain the arrears of rent, monthly rents and fix the time schedule for payment of arrears of rent and monthly rents regularly in terms of Order XV-A of CPC - Civil Revision stands allowed - Order impugned in IA stands set aside. ***171***

---Or.22, Rule 1 and Or.1 & Rule 10 - Proposed parties filed IA in lower Court to implead them as Defendant Nos.3 to 6 in suit was dismissed for default consequential IA under Or.9, Rule 9 of CPC also dismissed - After dismissal of said IAs the proposed party again filed IA under Or.22, Rule 4 CPC to permit them to come on records and same was dismissed for default - Hence this CMA is filed.

HELD: The original suit is filed by plaintiff for specific performance of suit agreement of sale and that deceased defendant No.1 is being represented by his widow as defendannt no.2, and that if she is not entitled to represent the estate of deceased defendant no.1, the plaintiff would suffer - In such circmstances in view of dispute relationship of proposed parties with deceased defendant no.1, the plaintiff cannot be compelled to fight against proposed parties - Hence Court did not find any irregularity committed by the Court below - In the result CMA is dismissed. ***118***

---Order 41, Rule 17 - Second Appeal against the dismissal of the Appeal Suit on merits, in the absence of the appellant's counsel, whereby, the judgment and decree in O.S passed by the Junior Civil Judge, was confirmed.

HELD: First appellate Court has got power to dismiss the appeal when there is no representation from the appellant or his counsel - Appellate Court can dismiss the appeal for default when there is no representation from the appellant or his counsel and the explanation to Order 41, Rule 17 of C.P.C clearly shows that it has got no power to dismiss the appeal on

merits - Second Appeal stands allowed setting aside the judgment and decree in A.S. passed by the lower appellate Court and Appeal Suit is restored to its original file. ***48***

CONSTITUTION OF INDIA:

---Art.243K(1) - Writ Appeal against the Order passed in the Writ Petition - Appellant herein filed the Writ Petition to declare the impugned Notification issued by the 1st respondent as illegal and contrary to the provisions of the Telangana Panchayat Raj Act and the Telangana Panchayat Raj (Conduct of Elections) Rules, and set aside the said Notification and confirm the declaration of Appellant's election as Member of Mandal Parishad Territorial Constituency (MPTC), as valid.

HELD - State Election Commission is well within power to declare the subject election as void in exercise of its powers under Article 243K(1) of the Constitution of India, and also Rule 6 of the Rules - As discussed above, a criminal case was also registered against the Appellant and there is a specific allegation of offering of bribe by the Appellant to the 7threspondent for withdrawal of the nomination - No error in the impugned Order and it does not require interference by this Court under Clause 15 of Letters Patent – Writ Appeal stands dismissed. ***1***

CRIMINAL PROCEDURE CODE:

---Sec.41-A - After issuance of notice u/Sec.41-A of Cr.P.C, Police cannot arrest without Magistrate's permission.

HELD: This Court has already directed the Director General of Police to frame guidelines with regard to issuance of acknowledgment in the cases where accused appears before the police under Section 41-A Cr.P.C., and the same cannot be at the whims and fancies of the police - If the accused feels that the police failed to follow the procedure under Section 41-A Cr.P.C. or the guidelines of the Apex Court in Arnesh Kumar's case, they could as well come before this Court by filing contempt petition against the concerned police officer with relevant material to substantiate their allegations, but on this basis, they cannot seek anticipatory bail - It is appropriate to mention that after issuance of notice under Section 41-A Cr.P.C., if the police feels that the accused has to be arrested, without obtaining the permission from the Magistrate concerned, they cannot arrest the accused - Criminal Petition is disposed of, directing the police concerned to follow the procedure as contemplated under Section 41-A Cr.P.C., and the guidelines formulated by the Apex Court in Arnesh Kumar's case ***116***

---Sec.482 - Criminal Petition to quash the proceedings against the Petitioners/ Accused Nos.1 to 4 - Offences alleged against them are under Sections - 420, 406, 467, 468, 471 and 506 read with 34 of IPC.

HELD: Disputes between Petitioners and respondent No.2 are Civil in nature - Allegations made by respondent No.2 in complaint are also issues covered in suit filed by him in Court below - He

had filed counters in the I.As. and written statement in suit contending that his signatures were forged - Court below will frame issues in said suit including the issue of forgery - Petitioner No.1 and respondent No.2 had to wait for outcome of said suit - Instead of waiting till outcome of the suit, respondent No.2 has lodged the complaint - Proceedings in Crime cannot go on and, therefore, same are liable to be quashed - Criminal Petition stands allowed. ***55***

HINDU MARRIAGE ACT:

Sec.13(1)(ia) - LIMITATION ACT, Sec.5 - Petitioner/Husband preferred Civil Revision assailing the Orders in I.A. in HMOP - Petitioner has filed HMOP under Act seeking divorce, wherein, an ex parte decree was passed - Immediately on receipt of notice from the Court in divorce O.P., wife along with her well-wishers and parents went to the house of the husband, a panchayat was held, wherein, the husband having satisfied, agreed to withdraw the OP and requested the wife to stay with her father, who was sick - It was only that when her father died while taking treatment and when she informed the husband, she has come to know about the ex parte divorce decree.

Respondent/Wife filed an application under Section 5 of the Limitation Act, to condone the delay of 270 days along with interlocutory application vide I.A. under Or.IX, Rule 13 of CPC to set aside the ex parte judgment and decree of divorce in HMOP –Trial Court, condoned the delay of 270 days in filling the application under Order IX Rule 13 CPC.

HELD: There cannot be any straight-jacket formula of universal application to condone the delay and “sufficient cause” under Section 5 of the Limitation Act is only a question of fact and the Court has to exercise its judicious discretion to meet the ends of justice - Though under Section 15 of the Hindu Marriage Act, a divorced person is entitled to marry again after expiry of appeal time, that by itself does not make the application filed either under Section 5 of the Limitation Act or under Order IX Rule 13 of CPC, infructuous - In the present case, the respondent-wife was able to explain the delay of 270 days stating believing the words of her husband she stayed back with her father who was bed-ridden and that she was totally occupied in looking-after her father and only after his death, when she informed the fact to her husband, she came to know about the ex parte decree of divorce - Civil revision petition is dismissed. ***105***

IMMORAL TRAFFIC (PRE-VENTION) 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. ***142***

LAND ACQUISITION ACT:

---- Appeal challenging the Order and decree in O.P whereby, the market value fixed by the Land Acquisition Officer for the acquired lands belonging to the respondents was enhanced - Lands were acquired for excavation of canal.

HELD: Findings of the reference Court with regard to enhancement of market value is confirmed - Amount granted by the reference Court in the form of 12% additional interest from the date of taking possession (prior to the notification) is modified to that of granting 12% additional market value under Section 23(1-A) of the Act from the date of notification till the date of Award on the market value fixed under Section 23(1) of the Act - Grant of benefits under Section 34 of the Act by the Appellant/Land Acquisition Officer or under Section 28 by the reference Court from the date of taking possession which is prior to the notification is modified by directing to pay such interest from the date on which the Government gets right to take notional possession either under Section 17 or under Section 16 of the Act - Respondents/Claimants are entitled for such interest from the date of Award till the date of deposit - Respondents are also entitled to additional interest @ 15% per annum on compensation i.e., market value, additional market value and solatium towards rent/damages for use and occupation of the land from the date of possession (prior to the valid notification) still the date of passing of Award – Appeal stands partly allowed. ***179***

MOTOR VEHICLES ACT:

---Sec.166 - Appeal is preferred National Insurance Company Limited, questioning the Order and decree of the Motor Vehicle Accidents Claims Tribunal-cum-Principal District Judge - After considering the oral and documentary evidence, Tribunal came to the conclusion that the accident occurred due to negligent parking of the lorry by its driver and awarded total compensation of Rs.24,71,500/- together with interest @ 6% per annum from the date of petition till the date of realization payable by the respondents 1 and 2 jointly and severally.

HELD: No reason to interfere with the finding of the Tribunal that the accident occurred due to the negligent parking of the driver of the Lorry in the middle of the road without indicator lights - At the time of his death, the deceased was running a Wine Shop and he was 27 years - When the deceased was a bachelor, the age of the deceased has to be considered while determining the multiplier and not the age of the mother, therefore the Tribunal has rightly adopted the multiplier as '17'

For the year 2012-2013, the income of the deceased was shown only

Rs.1,89,700/- per annum from other sources and Rs.1,00,000/- towards agriculture income - Though the income tax returns shows the entire amount of Rs.2,89,700/-, Rs.1.00 lakh which was shown as agriculture income is not a loss to the dependents - Tribunal ought to have considered the said fact and ought to have shown the loss of income at Rs.1,90,000/- instead of Rs.2,89,000 M.A.C.M.A. is disposed of and the compensation amount awarded by the Tribunal is reduced from Rs.24,71,500 to Rs.24,55,500. ***174***

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 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. ***162***

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. ***131***

NEGOTIABLE INSTRUMENTS ACT:

---Sec.138 - Criminal Petition by the Accused Nos.5, 7, 8 and 9 to quash the proceedings in C.C. - Allegation that the complainant is a wholesale dealer in gold and jewellery business - A1 is the Jewellery Shop and A3 to A9 are the Directors of A1 company.

HELD: Mere assurance of payment or selection of jewellery cannot be the basis to rope in the Petitioners - Mere verbatim reproduction of the words contained in Sec.141 of the Negotiable Instruments Act without any specific role attributed to each of the petitioners in the A1 company, cannot be the basis to prosecute the Petitioners, as the same would be unjust and result in abuse of process of law - Complaint, where no specific role is attributed to the Director Accused, is liable to be quashed - Criminal Petition stands allowed and the proceedings in CC., against the Petitioners/ Accused Nos.5, 7, 8 and 9, are hereby quashed. ***78***

---Sec.138 - Criminal Petition is filed to quash the proceedings in C.C., wherein the Petitioner is arrayed as A2 - Case of the Complainant/Respondent No.2 that A1/ Company owes the complainant a sum, were issued by A1/company towards discharge of its liability - A2 is the Vice President of A1/company.

HELD: It is not in dispute that the petitioner accused No.2 was shown in cause title as Vice President, but there is no averment in the entire complaint that all the accused are responsible for day to day affairs of the Company - Basic reading of the complaint would not prima facie disclose commission of any offence, so as to prosecute the petitioner for the offence under Sec.138 read with 141 of the Act - Court exercising equitable jurisdiction may decline to grant relief to the party if he or she approaches the Court with unclean hands - However, such suppression should be of material facts - In the instant case dismissal of discharge petition cannot be considered to be a material fact - Criminal petition stands allowed quashing the proceedings in C.C. ***82***

(INDIAN) PENAL CODE:

---Secs.405, 406, 409, 430, 120-B read with Section 34 – CRIMINAL PROCEDURE CODE - QUASH PETITION - Respondent No.1 is the complainant in C.C. to prosecute the Petitioners/Accused – Allegation that A1 company, its Directors and some of its officers in conspiracy with one another and with a common intention have unlawfully caused financial loss to the complainant company by indulging in acts of cheating and breach of trust.

HELD: Merely because A3 is the Chairperson, she cannot be prosecuted as no specific role is attributed to her in the instant complaint - As against A12 and

A13, though there is an allegation of misrepresentation and assurance of payment, the same cannot be a ground to prosecute them since it is not the assurance of payment for which the accused are being prosecuted - Vicarious liability of the Chairman, Managing Director, Directors and Officers in-charge of a company under criminal law cannot be presumed unless the statute specifically provides for the same - For instance, for the offence under Section 138 of the Negotiable Instruments Act, the vicarious liability is provided for under Section 141 of the Act and such similar provision is not available for the offences under the Indian Penal Code.

No material on record nor any case is made out to proceed against the Petitioners - In the event any evidence is let in by the complainant showing complicity of the petitioners during trial, Complainant is always entitled to proceed against the Petitioners by filing an application under Section 319 Cr.P.C - Criminal petitions are allowed and the proceedings in C.C. are quashed. ***88***

---Sec.417 -Appeal is preferred by the Appellant/Accused aggrieved by the conviction and sentence recorded by the Special Sessions Court imposing a sentence to suffer simple imprisonment for a period of six months under the Act.

HELD: Evidence of P.W.2 would clearly disclose the deception played by the accused - He developed the acquaintance with the P.W.2, made marriage proposal to her and thereafter they started living together as husband and wife - Accused made a promise that he would marry her and she believed his version and accepted him - He suppressed the fact of his having a wife and children - Prosecution proved its case beyond all reasonable doubt against the accused for the offence under Section 417 IPC - Appeal stands dismissed confirming the conviction and sentence recorded against the Appellant/Accused vide judgment by the Special Sessions Judge - Appellant is directed to surrender before the trial court forthwith to serve the sentence of imprisonment passed against him **.69**

---Sec.498-A and 302 - Criminal appeal against the judgment of Sessions Court, whereby the Appellant/Accused was convicted for the offence punishable under Sections 498-A and 302 IPC - Appellant has been sentenced to undergo life imprisonment and to pay a fine of Rs.500/- with a default clause to undergo three months simple imprisonment for the offence punishable under Section 302 IPC, he has also been sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.100/- with a default clause to undergo simple imprisonment for one month for the offence punishable under Section 498-A IPC

HELD: In the present case, Dying Declaration is the sole basis for convicting the Appellant/Accused - Deceased was in a fit state of mind, the Dying Declaration is true and voluntary as it was recorded by the Magistrate and the Doctor has certified that the deceased was in a fit state

of mind at the time of giving statement and therefore there is no reason to discard the Dying Declaration - Trial Court was justified in convicting the Appellant - No reason to set aside the judgment of conviction - Criminal Appeal stands dismissed. ***121***

PREVENTION OF FOOD ADULTERATION ACT,

---Section 16(1)(a)(i),7(i) & 2(ia)(m) - State has preferred present appeal against the acquittal of the accused.

HELD: Delay of about 11 months in according opportunity to accused for getting sample analyzed through Central Food Laboratory under Section 13(2) of the Act - Condition of sweets, which were seized might have become so worse that they could not be subjected for analysis, even if they were sent - Lacunae in the case of prosecution - Trial Court has rightly acquitted accused extending benefit of doubt - Judgment of trial Court does not suffer from any infirmity – Criminal Appeal stands dismissed. ***50***

PREVENTION OF CORRUPTION ACT, 1988:

---Secs.7 & 13(1)(d) - Criminal Appeal by the Appellant/Accused aggrieved by the conviction under the Act - During the pendency of the appeal, appellant died and his wife was brought on record as his legal representative to continue appeal.

HELD: Prosecution must establish the foundational facts of demand and acceptance before calling for the explanation of the accused as to how the amount was found in his possession and as it failed to establish the fact of demand itself due to complainant turning hostile and could not examine the accompanying witness due to his death and not able to prove its case - Conviction of the accused for offence under Section 13(1)(d)(i) of Act is considered as not proper and liable to be set aside – Criminal Appeal stands allowed setting aside conviction and sentence. ***58***

SUPPRESSING TRUE FACTS:

---- Writ Petition to declare the action of the 3rd respondent in rejecting the complaint lodged by the petitioner as illegal and issue consequential direction to the respondent Nos.2 and 3 to remove the illegal constructions carried out by the respondent Nos.4 and 5 on the portion of the road.

HELD: Petitioner herein is pursuing parallel proceedings and has approached the Court below and this Court by suppression of facts and thus, he is not entitled to any relief - 3rd respondent, on conducting enquiry, gave an opportunity to both the petitioner and the unofficial respondents, and passed the Order specifically mentioning that the complaint lodged by the petitioner is not genuine - Petitioner failed to establish any ground to interfere with the said proceedings - Writ Petition stands dismissed. ***43***

TELANGANA PROTECTION OF DEPOSITORS OF FINANCIAL ESTABLISHMENT RULES, 1999:

---- G.O.Ms.No.99, dated 05.09.2018 issued by the State of Telangana amending Rule

5(2) of the Financial Establishment Rules.

Amending Rule5(2) validating with retrospective effect in respect of all prosecutions launched under the provisions of the Telangana Protection of Depositors of Financial Establishment Act, 1999 to the effect of empowering any Police Officer not below the rank of Inspector of Police to launch prosecution under the Act No.17 of 1999 and the Rules framed thereunder.

Petitioners' contention is that amendment, which has been made with retrospective effect, is arbitrary, illegal and ultra vires the Act No.17 of 1999 offending Article 21 of the Constitution of India.

HELD: In the considered opinion of this Court, the plea canvassed by the petitioners is ill-founded and the amendment does not violate the rights guaranteed to the petitioners under the Constitution of India either under Article 20(1) or under Article 21 of the Constitution of India - Petitioners are persons who have allegedly fraudulently siphoned public money who have allegedly cheated depositors and are trying to find out technical flaws that too in respect of pre-trial stage to ensure that trial does not proceed. - Amendment is neither arbitrary nor discriminatory and it is an amendment in procedural law and therefore, this Court does not find any reason to interfere with amendment and question of declaring it as ultra vires does not arise - In light of aforesaid, writ petitions are dismissed. ***22***

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. ***145***

WAQF ACT:

---Sec.3(r) - Civil Revision Petition seeking to quash of Order passed by the Telangana State Waqf Tribunal in I.A., whereby, Order

VII, Rule 11 application preferred by the Petitioners/defendants was dismissed – Respondent/Plaintiff has instituted a suit seeking a decree against the defendants to restrain them perpetually from interfering with the schedule mosque.

HELD - "Waqf" would mean permanent dedication by any person of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes a "Waqf by user" - It is not necessary that deed of Waqf is essential to create a Waqf - Schedule mosque is a 'Waqf by user' as defined under Section 3(r) of the Act – It cannot be said that the plaint does not ex facie disclose any cause of action for institution of thesuit or that the suit is barred under the Act - Civil Revision Petition is dismissed. ***13***

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Law Summary

(Founder: Late Sri.G.S.GUPTA)

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CIVIL PROCEDURE CODE:

--- - Appeal aggrieved by the judgment of the High Court, dismissing the application filed by the Appellant under Sections 152 and 153 read with Section 151 of the Code of Civil Procedure, seeking modification of the judgment.

HELD: Even assuming there is a mistake, a consent decree cannot be modified/altered unless the mistake is a patent or obvious mistake - Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/misunderstanding by a party to the consent decree - We are unable to agree with the Appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding - Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding – Appeal stands dismissed. **14**

CRIMINAL PROCEDURE CODE:

---Sec.2(wa) - Whether a 'victim' as defined u/Sec.2(wa) of the Code is entitled to be heard at the stage of adjudication of bail application of an accused - Criminal Appeal challenging an Order passed by the High Court, whereby respondent No.1-accused has been enlarged on bail in a case under Sections 147, 148, 149, 302, 307, 326 read with Sections 34 and 120-B of the Indian Penal Code as well as Sections 3, 25 and 30 of the Arms Act.

Several farmers had gathered in Lakhimpur Kheri, U.P., to celebrate the birth anniversary of Sardar Bhagat Singh and to protest against the Indian Agricultural Acts - During this gathering, the farmers objected to certain comments made by Mr.Ajay Mishra @ Teni, Union Minister of State for Home - In the course of the meeting, the farmers decided to organise a protest against Mr.Ajay Mishra in his ancestral village - It is alleged that upon gathering knowledge of these events, coupled with the information that the route of the Chief

Guest had to be changed because of the protesting farmers, respondent-accused became agitated - He, thereafter, is said to have conspired with his aides and confidants, allegedly drove into the crowd of the returning farmers and hit them with an intention to kill - Resultantly, many farmers and other persons were crushed by the vehicles.

HELD: Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances - It is the solemn duty of a Court to deliver justice before the memory of an injustice eclipses - In the present case, 'victims' have been denied a fair and effective hearing at the time of granting bail to the Respondent - Instead of looking into aspects such as the nature and gravity of the offence; severity of the punishment in the event of conviction; circumstances which are peculiar to the accused or victims; likelihood of the accused fleeing; likelihood of tampering with the evidence and witnesses and the impact that his release may have on the trial and the society at large; the High Court has adopted a myopic view of the evidence on the record and proceeded to decide the case on merits - Neither the right of an accused to seek bail pending trial is expropriated, nor the 'victim' or the State are denuded of their right to oppose such a prayer - In a situation like this, and with a view to balance the competing rights, this Court has been invariably remanding the matter(s) back to the High Court for a fresh consideration - We are also of the considered view that ends of justice would be adequately met by remitting this case to the High Court for a fresh adjudication of the bail application of the respondent-accused, in a fair, impartial and dispassionate manner - Impugned Order stands set aside - Respondent No.1 shall surrender and be taken into custody. ***57***

---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. ***52***

---Sec.156(3) - Judicial Magistrate is required to be conscious of the consequences while passing an order u/Sec.156(3) Cr.P.C. ***1***

---Secs.156(3) and 482 - Appeals challenging judgments and orders, passed by the High Court, thereby dismissing the criminal petitions filed by the present appellants under Section 482 of the Code of Criminal Procedure - Complaint under Section 156(3) CrPC filed after a period of one and half years from the date of filing of written statement - Complainants are defendants in civil suits with regard to the same transactions.

HELD: When the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) of the Cr.P.C - With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. - Ulterior motive of harassing the accused - Continuation of the present proceedings would amount to nothing but an abuse of process of law - Appeals stand allowed and the judgments of the High Court set aside, consequently FIR's stand quashed. ***23***

---Sec.438 - Petition seeking bail to the Petitioner/A.1 in the event of his arrest in connection with Crime, registered for the offences punishable under Sections 406, 420 read with Section 34 IPC.

---Sec.482 - Appeal against the judgment passed by the High Court in Criminal Writ Petition, filed by the Appellants under Section 482 of the Code of Criminal Procedure challenging the FIR implicating the Appellants for offences under Sections 341, 323, 379, 354, 498A read with Section 34 of the Indian Penal Code.

HELD: False implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law - In the absence of any specific role attributed to the Accused/ Appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial - General and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial - Criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged - Impugned order passed by the High Court stands set aside - Impugned F.I.R. against the Appellants stands quashed - Appeal stands allowed. ***29***

(INDIAN) PENAL CODE,

---Secs. 147, 148, 324, 326, 307, 427 and 302 read with 149 - Appeal against the acquittal of Accused by the High Court.

HELD: Delay of seven hours cannot be said to be fatal to the prosecution case - Even the FIR was sent to the Magistrate within 24 hours, as required under the provisions of the Cr.P.C - Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded - High Court has unnecessarily given weightage to some minor contradictions - High Court has committed a grave error in reversing the judgment and order passed by the trial Court convicting Accused - Criminal Appeal preferred by the original complainant and Criminal Appeal preferred by the State, challenging the impugned judgment and order acquitting Accused are allowed and the impugned judgment acquitting Accused for the offences under Sections 148 & 302 IPC quashed and set aside - Judgment passed by the trial Court convicting Accused stands restored. ***37***

---Sec.304-B - Demand of money for construction of a house is a dowry demand to attract offence u/Sec. 304-B of the Indian Penal Code. ***3***

---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.

51

---Sec.468 - 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 - A decision of the Constitution Bench of this Court cannot be questioned on certain suggestions about different interpretation of the provisions under consideration - Appeal stands allowed and the impugned Order stands set aside.

47

---Sec.420 - Appeal against the dismissal of a Criminal Petition filed before the High Court for quashing the charge-sheet.

HELD: Neither the FIR nor the charge-sheet contain any reference to the essential requirements underlying Section 420 - Continuation of the prosecution against the appellant would amount to an abuse of the process where a civil dispute is sought to be given the colour of a criminal wrong doing - Appeal stands allowed quashing the charge-sheet and impugned judgment and order of the Single Judge of the High Court stands set aside. ***45***

(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.

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.

53

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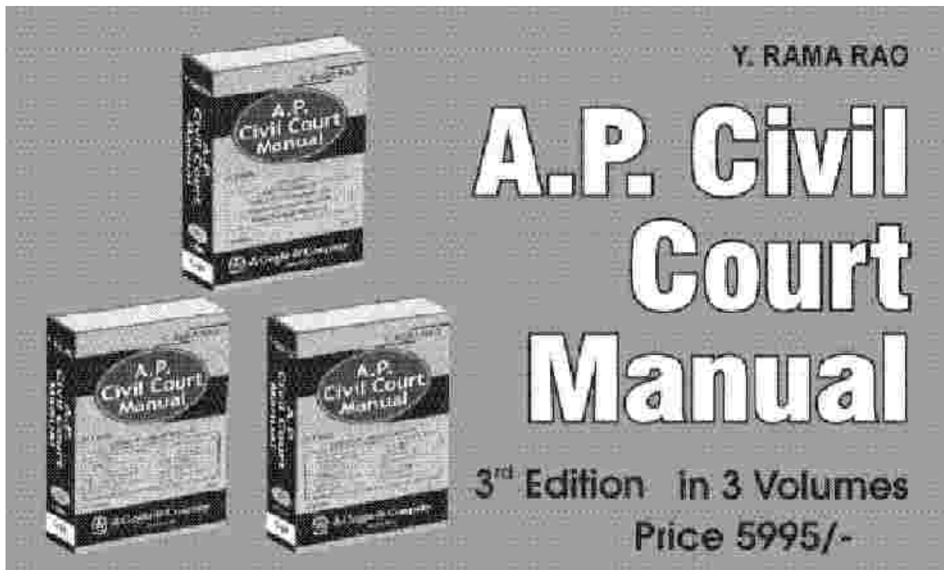

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