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

Pages:1 to 84

Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

2022 Vol.(2) Date of Publication 30-6-2022 PART - 12

Complaints regarding missing parts should be made within 15days from due date. Thereafter subscriber has to pay the cost of missing parts,

Cost of each Part Rs.150/-

MODE OF CITATION: 2022 (2) L.S

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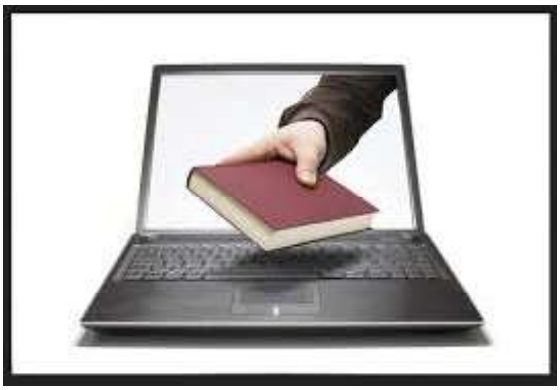

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PART - 12 (30TH JUNE 2022)

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AWARENESS ON HUMAN ORGAN DONATION: A LEGAL STUDY

By
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Donation of an organ or tissue provides an unparalleled opportunity to give someone a second chance of life.

Organ Donation is the gift of an organ to a person with end *stage organ disease and who needs a transplant.*

Introductory

Donation of an organ or tissue provides an unparalleled opportunity to give someone a second chance of life. Your donation is not only giving impact to the life of one person or family, but it is of overall help for the society as a whole.Creating awareness, promotion of organ donation and transplantation activities is a great task. Co-ordination is essential for all activities required for procurement of organs and tissues including medico legal aspects. Allocation, Transportation, Storage and Distribution of Organs and Tissues within all regions in India is a challenging task. The Transplantation of Human Organs (Amendment) Act 2011 has included the component of tissue donation and registration of tissue Banks. It becomes imperative under the changed circumstances to establish National level Tissue Bank to fulfill the demands of tissue transplantation including activities for procurement, storage and fulfil distribution of biomaterials.It is curious to note that the main thrust & objective of establishing the centre is to fill up the gap between 'Demand' and 'Supply' as well as 'Quality Assurance' in the availability of various tissues.

> *Organ transplantation is undertaken only as a lifesaving treatment. It is best for the transplant team to decide whether to go ahead with a live organ donation, keeping in mind the two issues of doing no harm to the donor, and doing good for the recipient. Only the transplant team can decide whether the benefit to the patient is worth the risk faced by the donor. The transplant team takes into account the mortality and morbidity of the donor, though this can be accurately predicted. - NOTTO. www.notto.gov.in.*

National Organ and Tissue Transplant Organization (NOTTO) is a National level organization which has been set up under Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India. It is popularly known as NOTTO. It has been commandable work in respect of activities that are being undertaken to facilitate Organ Transplantation in the safest way in shortest possible time and to collect data to develop and publish National registry. The activities that are being taken by NOTTO at notional level are:

- Lay down policy guidelines and protocols for various functions.
- Network with similar regional and state level organizations.
- All registry data from States and Regions would be compiled and published.
- Creating awareness, promotion of organ donation and transplantation activities.
- Co-ordination from procurement of organs and tissues to transplantation when organ is allocated outside the region.
- Dissemination of information to all concerned organizations, hospitals and individuals.
- Monitoring of transplantation activities in the Regions and States and maintaining data-bank in this regard.
- To assist in data management for organ transplant surveillance & organ transplant and Organ Donor registry.
- Consultancy support on the legal and non-legal aspects of donation and transplantation.
- Coordinate and Organize trainings for various cadre of workers.

Creating awaraness on human organ donation:-

'Organ' means it is a part of the body that performs a specific function: like your Heart, Lungs, Kidney, Liver etc.Tissue means a group of cells performing a particular function in the human body. Examples would be bone, skin, cornea of the eye, heart valve, blood vessels, nerves and tendon etc. There are two types of organ donation:-

i)Living Donor Organ Donation: A person during his life can donate one kidney (the other kidney is capable of maintaining the body functions adequately for the donor), a portion of pancreas (half of the pancreas is adequate for sustaining pancreatic functions) and a part of the liver (the segments of liver will regenerate after a period of time in both recipient and donor).

ii)Deceased Donor Organ Donation: A person can donate multiple organ and tissues

after (brain-stem/cardiac) death. His/her organcontinues to live in another personó body..

What are the tissues that can be donated?
The tissues that can be donated are:
Cornea,
Bone,
Skin,
Heart Valve,
blood vessels,
nerves and tendon etc.

Who can be Donar?
Living Donor: Any person not less than 18 years of age, who voluntarily authorizes the removal of any of his organ and/or tissue, during his or her lifetime, as per prevalent medical practices for therapeutic purposes.

Deceased Donor: Anyone, regardless of age, race or gender can become an organ and tissue donor after his or her Death (Brainstem/Cardiac). Consent of near relative or a person in lawful possession of the dead body is required. If the deceased donor is under the age of 18 years, then the consent required from one of the parent or any near relative authorized by the parents is essential. Medical suitability for donation is determined at the time of death.

Age Limit for Organ Donation:-
Age limit for Organ Donation varies, depending upon whether it is living donation or cadaver donation; for example in living donation, person should be above 18 year of age, and for most of the organs deciding factor is the personó physical condition and not the age. Specialist healthcare professionals decide which organs are suitable case to case. Organs and tissue from people in their 70s and 80s have been transplanted successfully all over the world. In the case of tissues and eyes, age usually does not matter.A deceased donor can generally donate the Organs & Tissues with the age limit of:
Kidneys, liver:up-to 70 years
Heart, lungs:up-to 50 years
Pancreas, Intestine: up-to 60-65 years

Corneas, skin: up-to 100 years
Heart valves: up-to 50 years
Bone: up-to 70 years

Are there any religious objection to donate organs?

As is said by Notto, none of our major religions object to donate organs and tissues, rather they all are promoting and supporting this noble cause. If you have any doubts, you may discuss with your spiritual or religious leader or advisor. As per NATIONAL ORGAN AND TISSUE TRANSPLANT ORGANISATION, in India there is a growing need of Organ and tissue transplant due to large number of organ failure. As there is no organized data available for the required organs, the numbers is only estimates. Every year, following number of persons needs organ/tissue transplant as per organ specified:

Kidney	2,50,000
Liver	80,000
Heart	50,000
Cornea	1,00,000

Pledge to donate organs:

Only few people die in the circumstances where they are able to donate their organs. That is the reason the NOTTO need people to take pledge for Organ Donation and registered them self as potential Donor. For more details, one can visit www.notto.gov.in. Notto guides the people who intend to donate their organs. Blood is taken from all potential donors and tested to rule out transmissible diseases and viruses such as HIV and hepatitis. The family of the potential donor is made aware that this procedure is required.

Having a medical condition does not necessarily prevent a person from becoming an organ or tissue donor. The decision about whether some or all organs or tissue are suitable for transplant is made by a healthcare professional, taking into account your medical history. In very rare cases, the organs of donors with HIV or hepatitis-C have been used to help others with the same conditions. This is only ever carried out when both parties have the condition. All donors have rigorous checks to guard against infection.

The Law on organ donation:

Organ donation for therapeutic purposes is covered under the Transplantation of Human Organs Act (THOA 1994).Whole body donation is covered by the Anatomy Act 1984.Organ and Tissue donation is defined as the act of giving life to others after death by donating his/her organs to the needy suffering from end stage organ failure. Body donation is defined as the act of giving oneó body after death for medical research and education. Those donated cadavers remain a principal teaching tool for anatomists and medical educators teaching gross anatomy.

Medical Education and Research:- Bodies are not accepted for teaching purposes if organs have been donated or if there has been a post-mortem examination. However, if only the corneas are to be donated, a body can be left for research.

The legal position on Organ Donation:-

Organ Transplantation and Donation is permitted by law, and covered under the 'TRANSPLANTATION OF HUMAN ORGANS ACT,1994' , which has allowed organ donation by live and Brain -stem Dead donars. In 2011, amendment of the Act also brought in donation of human tissues, there by calling the Amendment Act 'Transplanation of Human Organs and Tissues Act,2011'.

As per Transplant of Human Organ Act (THOA), buying/ selling of organ in any way is punishable and has significant financial as well judicial punishment. Not only in India, but in any part of world, selling of an organ is not permissible.

What are the Medico-Legal cases?

When an accident victim is brought to a hospital for emergency treatment, an FIR has to be filed by the family in the nearest police station. Such cases are usually called medico-legal cases. Also, any medical treatment (for suicide, assault, poisoning or fall) which needs that the police should be notified becomes a medico-legal case.
The police will conduct an inquest about the incident and take charge of the case. A forensic doctor will examine the patient and will allow or deny organ retrieval.

The police department has to be informed that a patient is brain dead if it is a medico-legal case, but the declaration of brain-stem death is only done by a panel of doctors.

Conclusion:-

Recently, the Andhra Pradesh State Legal Services Authority has taken decision to create awarness to the public in the State of Andhra Pradesh about Human Organ Donation. The donars may appraoch the Legal Services Authorities in the State of Andhra Pradesh for legal awareness about human organ donation and for guidance. People can help in increasing organ donation. People can help by 1) Becoming a donor, and talking to your family about your decision of saving lives of others. 2) Promoting donation by motivating people at work place, in your community, at your place of worship, and in your civic organizations. The Central Government has established a National Human Organs and Tissues Removal & Storage Network named NOTTO, which stands for National Organ and Tissue Transplant Organisation. NOTTO will have five Regional

Networks ROTTO (Regional Organ & Tissue Transplant Organization) and each Region of the country will develop SOTTO (State Organ and Tissue Transplant Organisation) in every State/ UT. Each hospital of the country related to transplant activity, whether as retrieval or transplant, has to link with NOTTO, through ROTTO/SOTTO as a part of National Networking. Government of India has started National Organ and Transplant Program (NOTP), under which patients below poverty line are supported for the cost of transplant as well as cost of immunosuppressant after transplant for one year. Other than this, renal transplant in all public hospitals is subsidized as per Government of India policy.

–X–

Hon'ble Supreme Court in S.L.P.Nos.12594-12595/2016 is sufficient to confer title on Petitioner No.1 for the subject property admeasuring Ac.5-00 in S.No.78/2 (P) of Mangalam Village, Tirupathi Urban Mandal, Chittoor District, thereby, Petitioner No.1 became the owner of the property. For the first time, the respondents raised a contention that the patta granted in favour of Petitioner No.1 by Sri A.D.V. Reddy, Settlement Officer, Nellore and in favour of other claimants cannot be implemented, as the said Settlement Officer played fraud. If really, Sri A.D.V. Reddy, Settlement Officer, Nellore granted any patta contrary to the law or without following rules and provisions of the Andhra Pradesh (Andhra Area) Estates Abolition Act, 1948 and the Rules framed thereunder, nothing prevented the third respondent or any of the other respondents to raise such plea before the learned single Judge or the Division Bench of the High Court or before the Hon'ble Supreme Court. It is not known whether the respondents raised such plea or not. Even assuming for a moment that, without conceding that such plea was raised before the authorities under the Estates Abolition Act and in the writ petitions filed before the learned single Judge and Writ Appeals filed before the Division Bench of the High Court, so also Special Leave Petitions before the Apex Court, such plea was negated and the order passed by Sri A.D.V. Reddy, Settlement Officer, Nellore was confirmed. When once the respondents raised such plea and got rejected, it is not open to the respondents to raise the same contention in the present writ petition about the legality of the patta granted in favour of Petitioner No.1 by Sri A.D.V. Reddy, Settlement Officer, Nellore in the third or fourth round of litigation, since the issue was already decided.

Assuming for a moment that, no such plea was raised before the authorities under the Estates Abolition Act or before the High Court or Hon'ble Supreme Court, the respondents are debarred from raising such issue for the first time in the present petition, by applying the principle of Constructive Res judicata i.e. to Explanation IV to Section 11(a) of the Civil Procedure Code.

Therefore, examining the issue with reference to the plea of irregularities committed by Sri A.D.V. Reddy, Settlement Officer, Nellore in issuing pattas in any angle, more particularly, raising such plea before the authorities and turned down by the authorities and the Court or if failed to raise such contention before the authorities and High Court and the Hon'ble Supreme Court, the respondents are debarred from raising such contention for the first time in the writ petition, in view of the bar under Section 11 of Civil Procedure Code.

One of contention of the parties before this Court is that, the language employed under Section 9 or Section 11 of the Estates Abolition Act, indicates that the authorities are required to pass an order, but not a judgment, but whereas, under Section 11 of Civil Procedure Code, only in case of previous judgment, the principle of res judicata is applicable. It is true that the word "decision" is used in the said sub-

section and not "judgment". The definition of "judgment" given in Section 2 of Civil Procedure Code means the statement given by the Judge on the grounds of a decree or order. The word "decision" is not defined in the Act at one time, a distinction was sought to be made between the word "decision" appearing in Section 64-A of the Estates Abolition Act and the word "judgment" as is used in the Civil Procedure Code. It was held that while the word "judgment" includes the reasons or grounds therefor, the "decision" may not include the reasons or grounds given therefor. Even in the case of judgment, it is now settled that "the previous decision on a matter in issue also operates as res judicata; the reasons for the decision are not res judicata. (vide Mathura Prasad vs. Dossibai (AIR 1971 SC 2355). In view of the decision, therefore, any distinction sought to be made between the two terms "decision" and "judgment" on the ground of reasons would not now be correct. The Legislature had never intended that the reasons or grounds on which a decision proceeds should be binding. It is the issues decided that would be binding upon the parties. The same meaning to the word "decision" is attributed as given to the term "judgment". Section 9 does not contain any provision on the lines of Explanation 4 to Section II, Civil Procedure Code. Even a decision of the Tribunal before whom a ground of attack or defence might and ought to have been raised in an enquiry under Section 9 of the Act is not raised, even then it would be deemed that it was a matter which would be directly and substantially in issue and the decision would operate even in regard to such matters as constructive res judicata and it will be open to the Tribunal to consider such matter again in a separate enquiry under Section 9.

In W.P.No.656 of 1966 dated 02.07.1968, the High Court had an occasion to consider this very question and held that, "There is no warrant for the arguments that under Section 9(6) it is only the decision which is expressly given that is binding. Any judgment given under Section 9(1) read with Section 9(4) is binding upon the parties will not be permitted to dispute its correctness before a Court of law and in the other case, it is binding upon the parties even in a subsequent proceeding before the Tribunal or the Assistant Settlement Officer". The said decision was carried in appeal and the judgment was affirmed by the Division Bench of the High Court vide order in W.A.No.48 of 1970 dated 30.08.1971. Thus, the principles of constructive res judicata can be invoked under Section 9(6) in so far as this Court is concerned is now well settled.

In the instant case also, the order was passed by Sri A.D.V. Reddy, Settlement Officer, Nellore under Section 11 of the Estates Abolition Act, but not a judgment. Even then, the principle of res judicata and constructive res judicata are applicable, in view of the law laid down by the Court in Government of Andhra Pradesh vs. Sri A. Padmanabha Swamy Varu (1973 (1) An.W.R 322). Hence, by applying the principle laid down in the above judgment, it is not open

to the respondents/Government to raise any pleas which were already considered and decided in different rounds of litigation. Even assuming for a moment that, if any such plea was raised, still the respondents are debarred from raising such plea by applying the principle of constructive res judicata, in view of Explanation IV to Section 11 of the Civil Procedure Code. Hence, the contentions whatever raised regarding the validity of the order dated 19.09.1981 passed by Sri A.D.V. Reddy, Settlement Officer, Nellore needs no further consideration for adjudication of the issue before this Court. No order bears a label of its being valid or invalid on its forehead. Any one affected by any such order ought to seek redressal against the same within the period permissible for doing so (vide Board of Trustees of Port of Kandla vs. Hargovind Jasraj and another (2013) 3 SCC 182)

In Smith v. East Elloe Rural District Council (1956) 1 All ER 855). The following are the observations regarding the necessity of recourse to the Court for getting the invalidity of an order established:

> "An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

This must be equally true even where the brand of invalidity is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed put repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."

In Pune Municipal Corporation v. State of Maharashtra and Ors (2007) 5 SCC 211), the Hon'ble Apex Court discussed the need for determination of invalidity of an order for public purposes:

> "36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states:

"The principle must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the Court". "The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void

for one purpose and valid for another, and that it may be void against one person but valid against another."

In view of the principles laid down in the judgments referred supra, it is settled law that, no invalidity be attached on the face of the order. Merely because the order was passed by Sri A.D.V. Reddy, Settlement Officer, Nellore, a casual invalidity cannot be attached to such an order. Apart from that, the Government issued Memo No.486/J2/84-6 dated 25.04.1984 invalidating the orders of Sri A.D.V. Reddy, Settlement Officer, Nellore, directing the District Collectors not to implement the orders passed by Sri A.D.V. Reddy, Settlement Officer, Nellore, who was punished for his misconduct in the departmental enquiry. But, such memo is without notice to Petitioner No.1 and such instructions are not binding on Petitioner No.1. Therefore, Memo No.486/J2/84-6 dated 25.04.1984 whatever issued by the Government without notice to Petitioner No.1 directing the Collectors not to implement the orders of the Settlement Officer, Nellore is illegal, arbitrary and on such basis, the respondents cannot deny the relief to Petitioner No.1.

The Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 is a welfare legislation, intended to acquire the rights of landholders in estates and other settlements, to divest them with all rights and vest all rights in cultivable lands in ryots in accordance with the principles laid down in the Act. Any violation of the provisions of the Act in granting of patta in violation of the provisions of the Act would amount to fraud on the statutes. So as to dispel any such criticism that in the case of implementation of the Act, unscrupulous persons were given patta, the legislature has reserved the power to revise any orders, acts or proceedings of the Assistant Settlement Officer or Settlement Officer in the Directorate. Such exercise of Revisional power under Section 5(2) of the Act is not subject to law of limitation and therefore, it is well settled that, in the absence of any provision prescribing limitation, the authorities have to exercise power within a reasonable time. Therefore, the main reason for vesting of power on the Settlement Officer is only to see that, no fraud be perpetuated. But, in the present facts of the case, the attempts were made by the Government to revise the order of Director of Settlement, ultimately the decision of Director of Settlements was turned down by the High Court and finally the matter was decided by the Supreme Court, now the issue cannot be re-opened by this Court to unsettle the settled decision and rights of the landholder.

When a patta was granted by the Settlement Officer in favour of the ryoth for the ryothi land, it is nothing but conferring title on the ryoth. Therefore, passing an order under Section 11(a) of the Act is only confirmation of the title to the ryothi, thereby he became the owner of the land and entitled to deal with the property as per his wish and will.

Section 11 of the Act is intended only for conversion of title to the ryoth, as defined in the provisions of the Estates Abolition Act. It does not allow the Government to acquire ryothi land and then allot it to grant the same or assign the land thus acquired to anyone, the government chooses. The Settlement Officer is not under obligation to consider the nature or character of the land under Section 15 og the Act when an application under Section 11 of the Act is filed for issue of ryotwari patta. In Venkata Subba Rao vs. State of Andhra Pradesh (1961 (2) An.W.R 329), this Court held that, Section 11 envisages the issue of a ryotwari patta to a ryot in regard to lands which were included in his holding or ought to have been included. But the section does not mention as to who should grant the patta. It is well settled law that enquiry under Section 11 of the Act is only a summary enquiry and the authorities discharging the duties under the Act have no jurisdiction to declare the title to the property. In other words, no finality can be attached to any order passed by the authorities concerned under the Act and at best the said order has to be confined for the purposes of the Act and it cannot be stated that the judgment is in Rem. When a dispute arises between the contesting parties, the civil Court alone is competent to adjudicate the dispute irrespective of the decision of the authorities under Section 11 of the Act. When once ryotwari patta is granted under Section 11(a) of the Act by the Settlement Officer after conducting enquiry, the right of the government to assign the land would automatically cease. (vide Duvvur Raja Gopala Reddy vs. District Collector (2005 (2) ALT 62). Thus, from the law settled by this Court, when once patta is granted, the land will vest on the ryoth, but not on the government and it is final, subject to the revisions.

An identical issue came up for consideration before the High Court of Andhra Pradesh in Neerupaka Rama Krishna vs. Director of Settlements (1999 (4) ALD 55), wherein the Court decided the issue relating to the validity of the patta granted under Section 11 of the Act and obligation of the State Government to implement the same. The facts in the above case before the High Court were that, writ petition questioning the show cause notice dated 28.02.1998 issued by the Director of Settlements in purported exercise of suo motu powers of revision proposing to cancel the order dated 27.05.1962 passed by the Additional Settlement Officer granting ryotwari patta under Section 11 of the Act on the ground that the said order is irregular, held as under:

> "2. On an earlier occasion when the revenue authorities refused to implement the said order dated 27-5-1962, the petitioner herein filed WP No.10773 of 1996 for a direction to implement the said order. The said writ petition was disposed of by this Court on merits by an order dated 16-8-1996 upholding the validity of the order dated 27-5-1962 and the District Collector was directed to implement the same. Pursuant to

the said directions of this Court on instructions from the District Collector, the Mandal Revenue Officer, Venkatagiri implemented the order dated 27-5-1962 on 26-9-1996 by making the necessary changes in the revenue records. The order passed in WP No. 10773 of 1996 had become final as no writ appeal was filed against the same. Despite the said order passed by this Court, the first respondent has issued the impugned show-cause notice dated 28-2-1998.

3. In the face of the categorical findings recorded by this Court in VP No.10773 of 1996 upholding the validity of the order dated 27-5-1962, it docs not admit of any doubt that the first respondent has acted illegally and without jurisdiction in issuing the impugned show-cause notice dated 28-2-1998. The order passed in WP No. 10773 of 1996 clearly operates as res judicata. The learned Government Pleader for Revenue however contends that WP No. 10773 of 1996 was concerned with the issue of Pattadar Pass Book to the petitioner and the same has no bearing on the validity of the order dated 27-5-1962. I am unable to agree with this submission. In the order dated 16-8-1996 passed in WP No.10773 of 1996 this Court has elaborately considered the self-same objections with regard to the truth and validity of the order dated 27-5-1962 and negatived the same and upheld the validity of the order dated 27-5-1962. It was therefore not open to the first respondent to reagitate the same question once again. That apart, there is absolutely no justification for the exercise of suo motu powers of revision by the first respondent after the lapse of more than 36 years. The writ petition is therefore allowed and the impugned show-cause notice is quashed. No costs."

The principle laid down in the above judgment has a direct application to the present facts of the case, since the orders passed by Sri A.D.V. Reddy, Settlement Officer, Nellore attained finality consequent upon dismissal of Special Leave Petitions filed by the Government before the hon'ble Apex Court, against the orders passed by the Division Bench of the High Court of Andhra Pradesh. Even after attaining finality, the petitioner filed another W.P. No.22970 of 2001 seeking a direction to implement the order of the Settlement Officer. This Court passed an order directing the revenue authorities to implement the order passed by the Settlement Officer, Nellore in favour of Petitioner No.1. Despite the order passed by this Court in W.P.No. No.22970 of 2001 the respondents did not implement the order. Thereupon, C.C.No. 378 of 2016 was filed and the order passed by the Settlement Officer, Nellore was implemented by the Tahsildar. But the explanation now offered by the respondents is that, in view of the threat of contempt, the order of the

Settlement Officer, Nellore dated 19.09.1981 is implemented, but not intended to implement the order. The contention of the respondents is nothing but browbeating the orders passed by this Court, including the Apex Court. This attitude of the revenue officials may lead to anarchy in its administration which leads to unsettle the settled rights of the parties and such practice is depreciable.

One of the contentions raised by the learned counsel for the respondents is that, the patta was granted in favour of Petitioner No.1 by the Settlement Officer, Nellore, but as the connected S.R file was already cancelled, the land was resumed to the Government on 30.12.1992. Thus, the land is vested on the government, since it is classified as "Assessed Waste Dry in the adangals and other revenue records. This contention directly amounts to disagreeing with the orders passed by the learned single Judge, Division Bench of the High Court and the Hon'ble Apex Court. Such attitude of the revenue authorities is nothing but harassment of a citizen in all possible ways to deprive Petitioner No.1 from enjoying his property and it is in violation of Article 300-A of the Constitution of India and fundamental right guaranteed under Article 21 of the Constitution of India. Such plea is not open and such contemptuous conduct of the revenue authorities is to be taken note by the courts to punish them appropriately by initiating contempt proceedings for flouting the orders passed by the learned single Judge, Division Bench of the High Court of Andhra Pradesh and Hon'ble Apex Court.

Fortunately, though the proceedings have attained finality in favour of Petitioner No.1 in various round of litigation, he underwent lot of turmoil, since the respondents made him roam around the Courts by filing different petitions. The respondents harassed Petitioner No.1 by abuse of their official position at the instance of third parties who are interested in the land, since the land is forming part of Tirupati Urban Mandal, which is in prime area. As Petitioner No.1 is no more, unless such harassment to Petitioner Nos.2 & 3 is put to an end by passing appropriate order, it would be difficult for the petitioners to enjoy the property as per their wish and will. Inclusion of the property in the adagnal and R.S.R as "Assessed Waste Dry without issuing any notice and without passing any order is another administrative illegality committed by the respondents with an intent to deprive Petitioner No.1 from enjoying his rights over the property, as per the order dated Nil/09/2018 passed by Sri A.D.V. Reddy, Settlement Officer, Nellore under Section 11(a) of the Act.

Though the respondents lost all their cases at all levels up to Supreme Court, the respondents invented a different story that the land is government land and amended the entries in the revenue records and classified the same as "Assessed Waste Dry . But the District Collector is dare enough to make an allegation in the second paragraph of Point No.5 of Page No.4 in the counter affidavit that the connected S.R file is already cancelled and land was resumed to the Government on

30.12.1992. The cancellation of patta by the Government without notice to Petitioner No.1 and resumption of land by the government is a serious illegality. In fact, such plea was not raised before any of the courts, including the Hon'ble Supreme Court in S.L.P. Nos.12594-12595 of 2016 so also before the Division Bench of the High Court in W.A.Nos.1582 and 1644 of 2003. Therefore, it is not open to the respondents to raise such contention by applying the Doctrine of Res Judicata, as discussed in earlier paragraphs.

Curiously, in Paragraph No.9 of the counter affidavit filed by the District Collector, an allegation is made that, in obedience of the orders passed by this Court in W.A.Nos.343 of 2015, 232 of 2012 and 353 of 2012 dated 23.12.2015, all the Government lands were categorized and notified in Annexure under Section 22-A(1)(a), (b), (c), (d), (e). Since the subject land is Assessed Dry Waste, the same is included in the Annexure in terms of the directions issued by the Full Bench of the High Court in the judgments referred above. This strange contention is to be rejected prima facie, as the direction of this Court is only to notify the lands belonging to the government in the annexure under Section 22-(1)(A) of the Registration Act and communicate to the Registrars having jurisdiction over the area, but not directed to notify other land under Section 22-A in the list of prohibited properties from registration. When once a patta was granted in favour of Petitioner No.1 under Section 11(a) of the Act, the government is not entitled to resume the land, since the finding regarding the ryothi land and the person in possession of agricultural land was a ryoth has attained finality in various orders referred above. In Duvvur Raja Gopala Reddy vs. District Collector (referred supra), the Court clarified that, when once ryotwari patta is granted under Section 11(a) of the Act by the Settlement Officer after conducting enquiry, the right of the government to assign the land would automatically cease. Thus, it means that the government has no right over such land and treatment of such land covered by an order under Section 11-A of the Estates Abolition Act cannot be resumed and claimed by the Government to include the property in the list of prohibited properties. Therefore, the atrocious action of the State and it's subordinates is depreciable and unless such conduct of the officials of the State is scuttled at the threshold, the Courts will become prairies to encourage such unscrupulous officials to perpetuate unnecessary litigation and responsible for burdening the judiciary unnecessarily by their illegal acts.

Section 22-A of the Registration Act, 1908, deals with prohibition of registration of certain documents. A bare reading at the section makes it clear that, the prohibition contemplated by clause (c) of sub-section (1) of the section relates to the status of the executants of the document relating to the properties owned by Religious/ Charitable/ Endowment/ Wakf institutions. The said provision of Section 22-A(1)(c) pre-supposes the title of the institution over the land and merely prohibits registration

of the documents executed by those without authority. Therefore under Section 22-A(1)(c) only the persons who can execute the documents of the properties of the institutions be only sent but not a list of properties belonging to such institutions.

In the instant case on record, the reason mentioned by the Joint Collector for inclusion of the property in the list of prohibited properties under the impugned order vide D.Dis.F8/Tpt U/22 Lands/191/18 dated Nil/09/2018 is as follows:

"The Tahsildar, Tirupati has construed that the request of the applicant for deletion of the land in Sy.No.78-2 measuring an extent of Ac.5-00 cents of Mangalam Village in Tirupati Urban Mandal from Section 22-A(1) list cannot be considered, as the land is not sub-divided.

The Revenue Divisional Officer, Tirupati has also recommended that the application of Sri T.C. Rajaratham s/o Chenchu Pillai for deletion of land in Sy.No.78-2P measuring an extent of Ac.5-00 cents of Mangalam Village in Tirupati Urban Mandal from Section 22-A(1) List is liable for rejection.

A perusal of entire order, despite recommendations made by the Tahsildar and Revenue Divisional Officer, Tirupati, for deletion of the subject property from the list of prohibited properties, by considering the Govt. Memo.No.486/J2/84-6 dated 25.04.84 and Govt.Memo.No.395/J2/84-2 dated 28.05.84, the request of Petitioner No.1 was rejected. But, the purport of the memos was not known to the respondents. Even otherwise, when the order of the Settlement Officer, Nellore dated 19.09.1981 is affirmed by the Supreme Court, such memos will not come in the way of Petitioner No.1 to claim title over the property. Therefore, inclusion of the subject property in the list of prohibited properties under Section 22-A(1) without specifying the clause is an illegality. When an application was made by the petitioner according to the procedure prescribed under law, the order passed by the District Collector must disclose the reasons for such conclusion. Procedure of non-disclosure of reasons is against the spirit of the Act and the Rules. On more than one occasion, the Hon'ble Supreme Court and this Court, held that the reasons are the heart beat of any decision.

In H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Department (1979) 4 SCC 642) the Constitution Bench of the Apex Court emphasized the Latin Maxim "cessante ratione legis, cessat lex ipsa" which means, when the reason for a law ceases, the law itself ceases.

In M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors (2008 (5) SCC 281), the Hon'ble Supreme Court testing the correctness of an order passed by the Assistant Commissioner of Sales Tax against the assessment, at Paragraph 10, held that, Reason is the heartbeat of every conclusion. It introduces clarity in an

order and without the same it becomes lifeless.

In Woolcombers of India Ltd. vs. Workers Union (1974) 3 SCC 318) the Hon'ble Apex Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that, a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 of Constitution of India jurisdiction of the Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or wrong.

What an order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:-

(i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order, is based and

(ii) A substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260). Thus, in view of the requirements of an order or judgment referred above, an order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases

to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment writing, which is as follows:

> "(i) Introduction section;
>
> (ii) Setting out of the facts;
>
> (iii) The law and the issues;
>
> (iv) Applying the law to the facts;
>
> (v) Determining the relief; including costs; and
>
> (vi) Finally, the order of the Court."

Keeping in view various principles and observations including the definition of order and judgment, the Apex Court laid down certain guidelines for writing judgments and orders in Joint Commissioner of Income Tax, Surat vs. Saheli Leasing and Industries Limited (2010) 6 SCC 384) para No. 7 of the judgment and they are extracted hereunder:

> "7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-
>
> (a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.
>
> (b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."
>
> (c) The ultimate finished judgment/ order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.
>
> (d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been

considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

Therefore, a judgment or an order shall contain the above seven minimum requirements. When judgment is pronounced without reasoning, it is not a judgment in the eye of law for the reason that the requirement of reasoning by Authority is to convey the mind of the authority while deciding such an issue before the Court. The object of the Rule in making it incumbent upon the authority for determination and to cite reasons for the decision is to focus attention of the authority on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enabling them to know the basis of the decision and if so considered appropriate and so advised, to avail the remedy available. (vide G. Amalorpavam and others v. R.C. Diocese of Madurai and others (2006) 3 SCC 224). From a bare reading of the principle laid down in the above judgment, the requirement of recording of reasons is only to show that the Court had focused concentration on rival contentions and to provide litigant parties an opportunity of understanding the ground upon which the decision is founded. Even if it is an order under the provisions of the Act, still these basic requirements cannot be ignored by authorities. In such case, a judge/authority is required to apply his mind and give focused consideration to rival considerations raised by both parties. Such order or judgment without independent consideration is not legally sustainable since Courts do not act blindly or mechanically and pass orders or judgments. Courts/authorities ought to be cautious and only on being satisfied that there is no fact which needs to be proved despite being in admission, should proceed to pass judgments (vide Balraj Taneja and another v. Sunil Madan and another (AIR 1999 SC 3381). The need for recording of reasons is greater in a case where the order is passed at the original stage, a decision without reasons is like grass without root, the requirement to record reasons is one of the principles of natural justice as well and where a statute required

recording of reasons in support of the order, it must be done by the authorities concerned as held by the Apex Court in S.M. Mukerji v. Union of India (1990 Crl.L.J.2148). The increasing institution of cases in all Courts in India and the resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in the Courts, in the view of Courts, it would neither be permissible nor possible to state as principle of law that while exercising power of judicial review on administrative action and more particularly judgment of Courts in appeal before in High Court, providing of reasons can never be dispensed with. The Doctrine of audi alteram partem has three basic essentials, firstly; a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard, secondly; the concerned authority should follow fair and transparent procedure and lastly; the authority concerned must apply its mind and dispose of the matters by reasoned order or speaking order. This has been uniformly applied by Courts in India and abroad (vide Assistant Commissioner, Commercial Tax v. M/s. Shukla and others (2010) 4 SCC 785).

Even otherwise, it is the duty of the Court/authority to state its reasons on each issue by due application of mind, clarity of reasoning and focused consideration; a slipshod consideration or cryptic order or decree without due reflection on issues raised in the matter may render such decree unsustainable and therefore hasty adjudication must be avoided and each and every matter that comes to the Court must be examined with seriousness it deserves, as held by the Supreme Court in Board of Trustees of Martyr Memorial Trust and another v. Union of India and another (2012 (10) SCC 734). From the principles laid down in the above judgments, the impugned order passed by the fourth respondent/Joint Collector is nothing but a slipshod one without focused consideration on the issues raised by petitioners. In such case, the same cannot be sustained, since the order passed by the administrative authorities must disclose the reasons. But the order impugned in the writ petition is bereft of any reasons. Therefore, the same is liable to be set-aside, as it is in violation of principles of natural justice and contrary to law. Accordingly the point is answered in favour of the petitioners and against the respondents.

In the result, writ petition is allowed declaring the action of the third respondent/ District Collector in inclusion of the land to an extent of Ac5-00 in S.No.78/2 (P) of Mangalam village, Tirupathi Urban Mandal, Chittoor District in the list of prohibited properties under Section 22-A(1) of the Registration Act, 1908, by treating the same as Government land as illegal and arbitrary; with the following directions:

(a) The rejection order dated Nil/09/ 2019 passed by the fourth respondent/Joint Collector is declared as illegal, arbitrary and the same is set-aside.

(b) Consequently, the sixth respondent/Tahsildar, Tirupati Urban Mandal is directed to delete the subject land in Sy.No.78/2 (P) to an extent of Ac.5-00 in Mangalam village, Tirupathi Urban Mandal, Chittoor District from the list properties prohibited from registration under Section 22-A(1) of the Registration Act, 1908;

It is needless to mention that, failure to comply with the above order may lead to serious consequences. No costs.

The miscellaneous applications pending if any, shall also stand closed.

–X–

2022(2) L.S. 162 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

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

Sunkara Ganeswara Rao ..Petitioner
Vs.
Sunkara Sarojini ..Respondent

CIVIL PROCEDURE CODE, Or.13, Rule10 - Whether an unmarked document filed in a proceeding in a Court can be called for from its custody for use in another proceeding before the Court - Civil Revision Petition, by the unsuccessful defendants against the Order, passed in I.A to call for the original memorandum of partition, from another Court, for producing the same as evidence.

HELD: Order XIII Rule 10 of the Civil Procedure Code makes it clear that it enables a Court to call for any record from custody of any Court, either on its own motion or on the application of any parties to the suit.

Since the decision on the admissibility of the document in evidence, though in a different petition in the present suit, has become final for not being challenged, no purpose would be served by calling for the document - Impugned Order stands liable to be set aside - Civil Revision Petition stands allowed setting aside the the Order passed in I.A.

Mr.E.V.V.S. Ravi Kumar, Advocate for the Petitioner.

O R D E R

The point mainly fell for consideration in this revision is whether an unmarked document filed in a proceeding in a Court can be called for from its custody for use in another proceeding before the Court.

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful defendants is directed against the order, dated 07.03.2019, of the learned Additional Senior Civil Judge, Eluru,

passed in I.A.No.1723 of 2017 in O.S.No.381 of 2008 filed under Order XIII Rule 10 of the Code of Civil Procedure, 1908 to call for the original memorandum of partition, dated 31.03.1979 from the I Additional District Judge Court, Eluru, for producing the same as evidence on her behalf.

2.Heard Mr. E.V.V.S.Ravi Kumar, learned counsel for the revision petitioners/ defendants and Mr. Mangena Sree Rama Rao, learned counsel for the respondent/ plaintiff. Perused the order impugned in the revision.

3.The facts, in brief, are as follows:

(a)The plaintiff's husband and his three brothers partitioned their properties through an instrument of memorandum of partition, dated 31.03.1979. Its original document was filed in O.S.No.292 of 2008 on the file of the Principal Junior Civil Judge Court, Eluru and the said suit was dismissed on 27.09.2012. Against the judgment and decree passed in O.S.No.292 of 2008, an appeal in A.S.No.17 of 2013 was filed on the file of I Additional District Judge, Eluru. The original

memorandum of partition deed is required to prove the case of the plaintiff in O.S.No.381 of 2008. Hence, the plaintiff filed the present application in I.A.No.1723 of 2017.

(b) The defendants filed counter opposing the said application and contending that the memorandum of partition deed, dated 31.03.1979 is inadmissible in evidence for want of stamp duty and registration. Hence, the plaintiff cannot seek to call for the said document. The plaintiff once filed I.A.No.1565 of 2015 in the present suit seeking permission to file the certified copy of the alleged memorandum of partition deed, dated 31.03.1979. The Court below dismissed the said application, vide order dated 07.02.2017, holding that the said document is inadmissible in evidence. The said order has become final. Hence, the petition is liable to be dismissed.

(c) The Court below, on merits, allowed the petition holding that the respondents are at liberty to raise their objection when the document is tendered for marking, but not at the stage of receiving them. Aggrieved by the same, the defendants are before this Court.

4. The revision petitioner raised the following grounds:

1.The order of the trial Court is contrary to law and suffers from jurisdictional error.

2.The trial Court should have seen that the said partition deed was not marked in the earlier suit and therefore the present application is not maintainable.

3.The trial Court should have seen that PW1 the husband of the plaintiff during the cross-examination categorically admitted that the document partition deed was not marked.

4 The trial Court should have seen that under law an unmarked document cannot be send for as the unmarked document is not part of the record.

5.The other grounds will be urged at the time of arguments."

5.Since it is contended that an unmarked document cannot be called for, for better appreciation, the provision of Order XIII Rule 10 of the Code is excerpted hereunder:

"10. Court may send for papers from its own records or from other Courts

(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit."

The aforesaid provision makes it clear that it enables a Court to call for any record from custody of any Court, either on its own motion or on the application of any parties to the suit and no restriction or condition is imposed as is objected by the revision petitioner. Thus, the contention raised on this ground is not tenable in law.

6.There is no dispute about the fact that the admissibility of the document in evidence has been decided by the Court in I.A.No.1565 of 2015 and the same has been recorded by the Court below also in the impugned order. Yet, taking a lenient view, the Court below observed that inadmissibility of document in evidence is not a ground to dismiss the present application as the same can be looked into when the document is tendered for marking and that the respondents are at liberty to raise their objections when the document is so tendered in evidence. If this petition to call for the document is opposed, for the first time, on the ground of inadmissibility of the document in evidence, Court could have called for the document, deferring its decision on the admissibility of the

document to be taken at the time when the document is tendered in evidence, in the light of Order XIII Rule 10 (3) of the Code. Since the decision on the admissibility of the document in evidence, though in a different petition in the present suit, has become final for not being challenged, no purpose would be served by calling for the document. Thus, the impugned order is liable to be set aside.

7.Accordingly, the Civil Revision Petition is allowed setting aside the the order, dated 07.03.2019, of the learned Additional Senior Civil Judge, Eluru, passed in I.A.No.1723 of 2017 in O.S.No.381 of 2008 and the said petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

–X–

2022(2) L.S. 165 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr. Justice Ninala Jayasurya

Abburi Vara Prasad ..Petitioner
Vs.
Padala Satyanarayana Reddy & Ors., ..Respondents

CIVIL PROCEDURE CODE, Or. 38, Rule 6 - Revision Petition aggrieved by the Orders in I.A. - Petitioner is the defendant in the suit filed by the Respondents/Plaintiffs seeking recovery of an amount - Respondents filed an application in I.A. seeking a direction to the Petitioner to furnish security for the suit amount within the time fixed by the Court, failing which to order conditional attachment of the petition schedule property before Judgment.

HELD: It is not in dispute a conditional attachment Order was passed directing the petitioner to furnish security for the suit amount or to show cause, why the attachment should not be made within 72 hours from the time on receipt of the Order and he failed to comply with the said direction - Thereafter impugned Order allowing the attachment in respect of item No.2 of the petition schedule property before Judgment, while setting aside the ad interim attachment Order was passed.

In such circumstances, the matter squarely falls under Order XXXVIII, Rule 6 of CPC and the Order of the Trial Court is appealable - Present Revision is not maintainable - However, Petitioner is at liberty to pursue appropriate remedies as available in Law.

Mr.Venkateswara Rao Gudapati, Advocates for the Petitioner.
Mr.T.D. Phani Kumar, Advocate for the Respondents.

J U D G M E N T

The present Revision Petition has been preferred aggrieved by the Orders dated 28.10.2021 in I.A.No.117 of 2021 in O.S.No.198 of 2021 on the file of the Court of the VI Additional Senior Civil Judge, Visakhapatnam, Visakhapatnam District.

2. Heard Mr.Venkateswara Rao Gudapati, learned counsel for the petitioner and Mr.T.D.Phani Kumar, learned counsel for the respondents.

3. The petitioner herein is the defendant in the above referred suit filed by the respondents/plaintiffs seeking recovery of an amount of Rs.43,91,880/- from him. In the said suit, the respondents/ plaintiffs filed an application in I.A.No.117 of 2021 under Order XXXVIII, Rule 5 of the Code of Civil Procedure (hereinafter called as "CPC) seeking a direction to the petitioner/defendant to furnish security for the suit amount within the time fixed by the Court, failing which to order conditional attachment of the petition schedule property before Judgment. The petitioner/defendant resisted the said application by filing a detailed counter. The learned Trial Judge after referring to the contentions advanced on behalf of the respective parties and after noting that the direction of the Court dated 07.07.2021 to the petitioner/defendant to furnish security for the suit amount or to show cause why the attachment should not be made within 72 hours from the time of receipt of the Order was not complied with and failed to furnish any security to the suit amount, passed an Order dated 28.10.2021 allowing the attachment in respect of item No.2 of the petition schedule property before Judgment, while setting aside the ad interim attachment Order dated 07.07.2021, in respect of item No.1 of the petition schedule property is concerned. Aggrieved by the said Order, the present Revision came to be filed.

4. Though the learned counsel for the petitioner advanced several contentions, as an issue with regard to maintainability of the Revision Petition was raised, it is deemed appropriate to examine the same instead of delving into the merits of the case. In this regard, it is the contention of the learned counsel for the petitioner that the impugned Order was passed under Order XXXVIII, Rule 5 of CPC and as there is no provision for filing appeal against the said Order, the present Revision is filed and the same is maintainable. Drawing the attention of this Court to the relevant provisions, the learned counsel would submit that Order 43, Rule 1(q) of CPC provides for appeals against an Order passed under Rules 2 and 3 of CPC or Rule 6 of Order XXXVIII of CPC and in the absence of specific provision

providing for appeal against an Order under Order XXXVIII, Rule 5 of CPC, the only remedy available to the petitioner is to file a Revision Petition invoking the powers of this Court under Article 227 of the Constitution of India.

5. The learned counsel without prejudice to the said contention would also submit that even otherwise also the Order under challenge is not sustainable, in as much as, the learned Trial Judge without assigning any reasons, much less, plausible reasons committed material irregularity in coming to the conclusion that the respondents/plaintiffs have categorically established that the petitioner/defendant is about to dispose of item No.2 of the petition schedule property. The learned counsel accordingly submits that the Order under challenge is liable to be set aside and the matter deserves to be remanded back for consideration and passing Orders afresh, in accordance with Law.

6. The learned counsel for the respondents on the other hand submitted that the Order under challenge was passed by the learned Trial Judge, as the petitioner/ defendant failed to comply with the direction dated 07.07.2021. He submits that Order XXXVIII, Rule 6 of CPC empowers the learned Trial Court to pass an order of attachment, as the petitioner/defendant failed to avail the opportunity provided to him, in terms of Order XXXVIII, Rule 5(1)(b) of CPC. While submitting that merely because in the Order under challenge, the specific provision is not mentioned, it cannot be treated that the Order was passed under Order XXXVIII, Rule 5 of CPC and therefore the Revision is maintainable.

7. The learned counsel would also submit that it is only Order XXXVIII, Rule 6 of CPC, which enables the Court to either allow the Order of ad interim attachment or withdraw the attachment, in the event the defendant shows sufficient cause or furnishes the security. He submits that in the present case, the impugned Order of attachment dated 28.10.2021 falls within the powers of the Court under Order XXXVIII, Rule 6 of CPC and therefore an appeal lies against the same.

8. In order to appreciate the contentions of the learned counsel, it may be appropriate to refer to the relevant provisions of Law. Order XXXVIII, Rule 5 of CPC deals with attachment before judgement, which reads as follows:- 5. Where defendant may be called upon to furnish security for production of property.

> (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-
>
> (a) is about to dispose of the whole or any part of his property, or
>
> (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in

the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.\

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.

9. The above provision of Law provides that if the Court is satisfied by an affidavit or otherwise that the defendant with an intent to obstruct or delay the execution of any Decree that may be passed against him is about to dispose of the whole or any part of his property or his about to hold any part of his property from the local limits of the jurisdiction of the Court, it may call upon the defendant within a time fixed by it, either to furnish security or to appear and show cause why he should not furnish security.

10. In the above said provision, the consequences of non-compliance or compliance of the directions issued under Rule 5 of Order XXXVIII of CPC were not contemplated, but Rule 6 of Order XXXVIII of CPC deals with the same, which reads thus:

6. Attachment where cause not shown or security not furnished.

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

11. A conjoint reading of the above provisions of Law would make it clear that though an Order passed by the competent Court refers to Order XXXVIII, Rule 5 of CPC pursuant to an application filed under the said provision, it is traceable to Rule 6 of Order XXXVIII of CPC, even though it is not specifically mentioned in the Order. Non-mentioning of the provision, it is settled Law is not fatal, more particularly, when the power exists. Order XXXVIII, Rule 6 of CPC empowers the competent Court to make an Order of attachment absolute, when there is failure to comply with the directions under Order XXXVIII, Rule 5(1)(b) of CPC.

12. In Union Bank of India, Visakhapatnam vs. M/s Andhra Technocrat Industries (1982) 2 ALT (NRC) 19), a Division Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad had an occasion to examine as to whether an Order dismissing the application under Order XXXVIII, Rule 5 of CPC seeking attachment before Judgment is appealable. It is a case, wherein the Union Bank of India filed a suit for recovery of money against the defendant M/s Andhra Technocrat Industries and moved an application under Order XXXVIII, Rule 5 of CPC for attachment of Rs.3,00,000/- lying with the Director General, Naval Project, Visakhapatnam. The said application was dismissed on contest. Aggrieved by which, the Union Bank of India preferred an appeal under Order 43, Rule 1(q) of CPC. The Division Bench after referring to the relevant provisions of Law at Paras 5 and 6 held as follows:-

> 5. The dominant object of R. 5 is to prevent the decree that may be passed against the defendant from being rendered unfruitful. The provisions of R. 5 can only be invoked when the Court is satisfied at any stage of the suit that the defendant has done or is about to do any act with intent to obstruct or delay execution of any decree that may ultimately be passed against him. The Court may issue, on the application, notice to the defendant to appear and furnish security or show cause why he should not furnish security for the satisfaction of the decree. The Court may also pass by the same order, immediately ordering attachment of the whole or any portion of the property specified by the defendant. Rule 6 contemplates orders of two kinds in an application under R. 5: (1) Where the defendant fails to show cause on an application under R. 5 why he should not furnish security, or fails to furnish the security required. Within the time fixed by the Court, the Court may make an unconditional order of attachment, (2) Where the defendant appears and shows cause or furnishes the required security in pursuance of the notice issued under R. 5 and the specified property or any portion of it has been attached under sub-rule (3) of Rule 5, the Court shall order the attachment to be withdrawn.
>
> 6. Now O. 43, R. 1 (q), C. P. C. makes both these orders under R. 6 appealable. The other orders are not appealable. An order dismissing an application under O.38, Rule 5 is not appealable. An order under Rule 5 merely directing the defendant to furnish security or to appear and show cause why security should not be furnished is not appealable. Only an order allowing an application under Rule 5 and an order withdrawing the attachment made under sub-rule (3) of Rule 5 any cause being shown by the defendant, are appealable.

13. In the said Judgment the Hon'ble Division Bench referred to the views expressed by the Hon'ble High Court of Calcutta in Hara Gobinda Das vs. Bhur and Co., (ILR 1955 (1) Calcutta 478), wherein

it was held that "an Order passed in an application under Order XXXVIII, Rule 5 of CPC is appealable only when it comes under Order XXXVIII, Rule 6 of CPC. Sub-rule (1) of Rule 6, Order XXXVIII covers all cases where the applications under Order XXXVIII, Rule 5 are eventually granted. Sub-rule (2) or Rule 6, Order XXXVIII, however which deals with cases where applications under Order XXXVIII, Rule 5 are dismissed, does not cover all such cases but includes only those cases where a conditional order of attachment is made under Order XXXVIII, Rule 5."

14. In New India Assurance Co. Ltd., vs. M/s Bhagyanagar Ventures Ltd., (AIR 2010 Andhra Pradesh 96) another Division Bench of erstwhile High Court of Andhra Pradesh following the decision of the earlier Division Bench in Union Bank of India's case reiterated the legal position. It was dealing with a matter, wherein on an application filed under Order XXXVIII, Rule 5 of CPC, the Trial Court passed an Order directing the defendant to show cause, why he should not be directed to furnish security. After referring to the relevant provisions of Law and the Forms provided in Appendix-F of CPC, the Hon'ble Division Bench while holding that the appeal is not maintainable, at Para 7 of the Judgment inter alia opined as follows:-

> ".....,there cannot be any doubt that the exercise of power by the Civil Court in the matter of attachment of property and direction to furnish security is in two stages. In the first stage, the defendant is asked to show cause. If after receiving the said show cause notice within the time stipulated in Form No.5 proceedings, the defendant fails to appear before the Court or appears and fails to satisfy the Court, the Court can issue an Order in Form No.7 directing attachment of property. The law contemplates appeal only at the second stage actually attaching the property and not at the stage of show cause notice."

15. In the present case, it is not in dispute a conditional attachment Order was passed on 07.07.2021 directing the petitioner/defendant to furnish security for the suit amount or to show cause, why the attachment should not be made within 72 hours from the time on receipt of the Order and he failed to comply with the said direction. Thereafter the impugned Order dated 28.10.2021 was passed. In such circumstances, the matter squarely falls under Order XXXVIII, Rule 6 of CPC and the Order of the Trial Court is appealable, in the light of the authoritative pronouncements of the Hon'ble Division Benches referred to supra.

16. For the foregoing reasons, this Court is inclined to hold that the present Revision is not maintainable. However, the petitioner is at liberty to pursue appropriate remedies as available in Law. It is made clear that this Court has not examined the merits or otherwise of the Order under challenge, except maintainability of Revision Petition against the same, and in the event, the petitioner avails the other legal remedies, the observations if any, made by this Court would not come in the way of the competent

Court in deciding the matter independently. The Registry is directed to return the original copies of the Order and other documents to the petitioner to enable him to present before the appropriate Court.

17. The Civil Revision Petition is accordingly, dismissed with the above directions. No Order as to costs.

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

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2022(2) L.S. 171 (A.P.) (D.B.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr. Justice
Ahsanuddin Amanullah &
The Hon'ble Mr. Justice
Tarlada Rajasekhar Rao

Reliance General Insurance
Co. Ltd., & Ors., ..Petitioners

Vs.

Bhupathi Sujatha
& Ors., ..Respondents

MOTOR VEHICLES ACT, 1988 and ANDHRA PRADESH MOTOR VEHICLE RULES, 1989 - Judgement arising from MACMA and Cross Objection - An award has been passed to the tune of INR 49,30,000/- in favour of the respondents Nos.1 to 4, the family members of the deceased in the accident, who was a passenger in the car, against the appellant company.

HELD: Interest would accrue on the entire amount awarded by Tribunal, to be payable from the date of filing of the Claim petition/application - Rate of interest awarded by the Tribunal of 7.5% per annum, is reasonably sufficient in the attendant facts - Award impugned is modified only to the extent that the compensation amount stands enhanced to INR 52,40,256/-from INR 49,30,000/-.

Mr.G. Ramachandra Reddy, D. Ravi Kiran, Advocates for the Appellants.
Mr.M. Chalapathi Rao, Advocates for the Respondents: 1 to 4,
Mr.Venkata Rama Rao Kota, Advocates.
For the Cross Objectors: Venkata Rama Rao Kota, Advocates for R5 and R.6.

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

The instant judgement governs both MACMA No.2717 of 2018 and Cross Objection No.17 of 2022. For ease of reference, the parties are hereinafter referred to as arrayed in MACMA No.2717 of 2018, filed by the insurance company. Heard Mr. D. Ravi Kiran, learned counsel for the appellant and Mr. Venkata Rama Rao Kota, learned counsel on behalf of the respondents no.1 to 4 in MACMA No.2717 of 2018.

2. MACMA No.2717 of 2018 is preferred against the order dated 30.05.2018 passed by the learned Motor Vehicle

Accident Claims Tribunal-cum-II Additional District Court, Guntur, Andhra Pradesh (hereinafter referred to as the 'Tribunal') in M.V.O.P.No.1455 of 2012. Vide the said order, an award has been passed under the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') and the Andhra Pradesh Motor Vehicle Rules, 1989, awarding INR 49,30,000/- in favour of the respondents no.1 to 4, the family members of one of the deceased in the accident, who was a passenger in the car, against the appellant company.

3. Learned counsel for the appellant submitted that without sufficient evidence to indicate that the incident in question was an accident, the Tribunal awarded the amount, which is unjustified. In support of his contention, it was pointed out that the lorry, which was parked and which was dashed into by the Toyota Qualis vehicle (hereinafter referred to as 'Qualis') on which the deceased was travelling, was on the margin of the road and thus, it was the negligence of the driver of the Qualis, which resulted in the accident and thus, there being contributory negligence on the part of the driver of the vehicle, in which the deceased was travelling, the quantum of compensation awarded should have been less. It was submitted that only on the basis of the deposition of the driver of the vehicle in which the deceased was travelling, the impugned award has been passed without definite evidence to show that the lorry was parked in the middle of the road.

4. At this juncture, when the Court put a categorical query to learned counsel for the appellant as to whether there was any other point which the Court should consider, learned counsel for the appellant submitted that the only objection taken in the appeal [MACMA No.2717 of 2018] is with regard to the contributory negligence of the driver of the Qualis, as noted supra, as alleged by the appellant company.

5. Per contra, learned counsel for the respondents no.1 to 4 submitted that the Tribunal had been very meticulous and careful in arriving at the finding that there was no contributory negligence and that the appellant company, which was the insurer of the lorry, was liable to pay the awarded amount. He further submitted that the First Information Report (hereinafter referred to as the 'FIR') filed by the wife of the deceased viz. respondent no.1, alleged that the offending vehicle i.e. the lorry was stationed in the middle of the road without any indicators, parking lights or other precautionary measures and the negligence was on the part of the lorry driver as also the fact that the lorry was parked in the middle of the road. Learned counsel drew the attention of the Court to the relevant portions of the impugned award, which would indicate that besides the evidence of the Qualis driver, who was the sole eye-witness to the unfortunate incident, there was also corroborative material in the Chargesheet (pursuant to the FIR referred to above) to indicate that there was no contributory negligence by the Qualis driver, and it was the negligence of the lorry driver alone.

6. Having anxiously considered the facts and circumstances as also the submissions of the learned counsel for the

parties, this Court does not find any cogent ground to necessitate or warrant interference in the matter.

7. The sole point canvassed to show that there was contributory negligence on the part of the driver of the Qualis, which was the vehicle in which the deceased was travelling, is that the offending lorry was parked on/at the edge of the road. This stand was denied on facts by the testimony of PW 2 (the driver of the Qualis) read with Ex.A6, which is the Chargesheet which states that the accident took place due to the negligent act of the driver of the offending lorry, who had stationed the said vehicle in the middle of the road without any indicators, parking lights or any other precautions. Thus, there was evidence on record before the Tribunal, which was not countered, as no other evidence was brought to indicate that the offending vehicle was parked at the margin of the road. The aforesaid, in our considered view, clearly establishes that the offending lorry was parked in the middle of the road without any indicators, parking lights or 11 any other precautions. Moreover, PW2's evidence reveals that it was also drizzling and the time was about 5.00 AM IST, factors which sufficiently indicate that the accident took place without negligence on the part of the driver of the Qualis, wherein the deceased was a passenger. We profitably reproduce the following passage from the judgment of the High Court of Australia in Astley v Aus Trust Ltd., (1999) 73 ALJR 403:

> 'A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property.'
>
> (emphasis supplied)

8. The aforenoted extract from Astley (supra) has been quoted approvingly by the Hon'ble Supreme Court in Pramodkumar Rasikbhai Javeri v Karmasey Kunvargi Tak, (2002) 6 SCC 455. Furthermore, contributory negligence has to be proved, or, to say so, at the very least, shown by adducing evidence, and in the absence thereof,

contributory negligence and liability flowing therefrom cannot be fastened onto a party [See Syed Sadiq v United India Insurance Co. Ltd., (2014) 2 SCC 735]. The Court called upon learned counsel for the appellant as to whether there was any contest on the quantum awarded by the Tribunal. The learned counsel for the appellant, in all fairness, submitted that the quantum had been arrived at using the formula laid down in Sarla Verma v Delhi Transport Corporation, 2009 ACJ 1298 (SC).

9. In view of the discussions made hereinabove, MACMA No.2717 of 2018, is dismissed. Miscellaneous Applications pending, if any, in MACMA No.2717 of 2018 stand closed.

10. From the record, it transpires that while granting stay of operation of the impugned award dated 30.05.2018 in M.V.O.P.No.1455 of 2012 (passed by the Tribunal), on 10.10.2018, this Court had ordered the appellant to deposit 50% of the compensation awarded within six weeks from that date before the Tribunal. It is not in dispute that the same was done. We shall deal with its disbursal while deciding the Cross Objection, which follows below.

11. Cross Objection No.17 of 2022 has been filed on behalf of the respondents no.1 to 4 seeking, inter alia, enhancement of the awarded amount from INR 49,30,000/- to INR 52,40,256/- with interest @ 12% per annum from the date of filing of the claim petition till the date of payment, as also costs.

12. It was contended by learned counsel for respondents no.1 to 4 that meagre interest at 7.5% has been awarded which is unreasonable and at least 12% should have been granted in view of the claim petition seeking 18% interest per annum. Learned counsel submitted that even while adopting the formula, an amount of INR 30,000/- had been deducted from the gross salary towards income tax payable by the deceased taking the same at 10%, which is erroneous in law and incorrect on facts. It was submitted that the total income of the deceased during the relevant period 2010-2011 was assessed at INR 3,00,000/-, and after deduction of GPF and ESI contribution totalling INR 12,360/-, the net income of the deceased would be INR 2,87,640/- for which the applicable income tax rate for the said year exempted INR 1,60,000/-. As such, it was submitted that the taxable income of the deceased would come down to INR 1,27,640/- and 10% of the same would be INR 12,764/-. Learned counsel submitted that the balance annual income should have been taken as (3,00,000 - 12,764 i.e.) INR 2,87,236/- and considering the age of the deceased, 50% is required to be added towards future prospects, which would then take the amount to INR 4,30,854/- and deducting ¼th towards personal expenses, the balance would come to INR 3,23,141/-. Learned counsel submitted that once the same is multiplied by 16, as per the applicable formula, the amount touches Rs.51,70,256/-. He urged that the Tribunal had awarded INR 40,000/- towards loss of consortium, INR 15,000/- towards loss of estate and INR 15,000/- towards funeral expenses. In this scenario, learned counsel pressed that the respondents no.1 to 4 are entitled to INR 52,40,256/-, whereas only

a lesser amount of INR 40,30,000/- was awarded by the Tribunal.

13. In support of his contention, learned counsel referred to the decision in Kirti v Oriental Insurance Company Limited, (2021) 2 SCC 166, wherein the compensation of INR 22,00,000/- awarded by the Delhi High Court was increased to INR 33,20,000/- payable within two months along with interest at 9% per annum from the date of filing of the accident report. Reliance was further placed on National Insurance Company Limited v Birender and Ors., Civil Appeal Nos.242-243 of 2020 decided on 13.01.2020, as also R Valli v Tamil Nadu State Transport Corporation Ltd., 2022 LawSuit (SC) 161. He also cited Pappu Deo Yadav v Naresh Kumar, AIR 2020 SC 4424, wherein, besides increasing the amount qua future prospects, interest was also enhanced from 9% per annum to 12% per annum, by the Hon'ble Supreme Court.

14. Moreover, learned counsel sought to place reliance on National Insurance Company Limited v Sureshbhai @ Sureshchandra Maganbhai Parmar, 2006 LawSuit (Guj) 911, rendered by a Division Bench of the Gujarat High Court; Oriental Insurance Co. Ltd. v Nirmala, AIR 2007 Ker 103 delivered by a Division Bench of the Kerala High Court, and; Bhaskar Alias Bhaskar Devaram Bangad v R. K. Srinivasan, 2000 LawSuit (Kar) 199, by a Division Bench of the Karnataka High Court.

15. Learned counsel for the appellant, opposing the cross-objection, submitted that as per Section 171 of the Act, simple interest is to be awarded in addition to the compensation amount, which ought to have been 5% or 6% per annum, but in the present case, the interest awarded is 7.5% per annum, which itself is high. He placed reliance on the view of the Hon'ble Supreme Court expressed in Benson George v Reliance General Insurance Co. Ltd., 2022 LawSuit (SC) 230, where the rate of interest awarded by the Tribunal, being 9% per annum from the 15 date of filing of the claim petition till the date of realization was reduced to 6% per annum. It was further contended that the cross-objectors are not entitled to claim interest under the head 'future prospects' as it is probable income to be received in future. In this regard, learned counsel for the appellants cited the decision of a Single Judge of the Gauhati High Court in Oriental Insurance Co. Ltd. v Champabati Ray, 2019 LawSuit (Gau) 689.

16. Having examined the matter from various angles, this Court is of the opinion that the cross objection is fit to be allowed in the interest of justice.

17. Be it noted that the formula applied by the Tribunal for arriving at the quantum of compensation is in conformity with Sarla Verma (supra), which was affirmed in Reshma Kumari v Madan Mohan, (2013) 9 SCC 65. Both Sarla Verma (supra) and Reshma Kumari (supra) were affirmed by the 5-Judge Bench of the Hon'ble Supreme Court in National Insurance Company Ltd. v Pranay Sethi, (2017) 16 SCC 680.

18. Thus, the limited bone of contention falls down to whether the 10% flat reduction on the head of tax is justified

in view of the fact that, the deduction should have been INR 12,764/- and not INR 25,000/-, as computed by the Tribunal. Thus, by the same formula, and by only correcting the figures taken therein, the total amount of compensation payable to the cross-objectors would come to INR 52,40,256/-. This calculation, per se, has not been disputed by the appellant. Further, apropos the rate of interest awarded by the Tribunal of 7.5% per annum, upon due consideration, We find the same to be reasonably sufficient in the attendant facts. Thus, the claim for enhancement of interest by the cross-objectors, and for reduction thereof by the appellant, both are rejected. Further, the contention advanced that future prospects should not carry interest is also noted to be rejected for the reason that the said amount determined by the Tribunal is with reference to the date on which the claim petition was filed. Thus, the interest on the same cannot be denied merely on the assumption that it is accruable in future, as it is quantified with reference to the date of filing of the application for compensation. The Court finds that the decisions relied upon by the learned counsel for the respondents no.1 to 4 are apposite, inasmuch as interest would accrue on the entire amount awarded by the Tribunal, to be payable from the date of filing of the claim petition/application.

19. In view of the foreging analysis, the award impugned is modified only to the extent that the compensation amount stands enhanced to INR 52,40,256/- from INR 49,30,000/-. Rest of the award shall stand as is. As noted supra, 50% of the amount awarded by the Tribunal has already been deposited by the appellant. The remainder, i.e., INR 52,40,256/- minus the amount already deposited, along with interest shall be deposited by the appellant within six weeks from the date of the order before the Tribunal.

20. Thereafter, the respondents no.1 to 4 shall be at liberty to withdraw the amount from the Tribunal. We do not propose any order as to costs. Cross Objection No.17 of 2022 is also disposed of. As a sequel thereto, pending Miscellaneous Applications, if any, in Cross Objection No.17 of 2022 do not subsist for consideration.

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2022 (2) L.S. 23 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Dr. Justice Radha Rani

M/s. A.G.Holy Water Pvt. Ltd. Hoogly ..Petitioner

Vs.

State of A.P. ..Respondents

NEGOTIABLE INSTRUMENTS ACT, Secs.138 and 142 - CRIMINAL PROCEDURE CODE, Sec.482 - Petition is filed by accused to quash the proceedings in CC - Respondent No.2 lodged a complaint against the petitioner-accused under N.I. Act.

HELD: A proprietary concern is different from a Private Limited company - Respondent-complainant failed to show the relationship between a company incorporated under the Companies Act and a Proprietary concern - Cheque was issued by the Proprietor and had to be drawn by the Proprietor on the account maintained by him with the Banker for the payment of the money in discharge, in whole or in part of any debt or liability and for the default committed by him, Company cannot be made as an accused and the action in respect of criminal act or a quasi criminal provision has to be strictly construed with the provisions under Section 138 of NI Act alleged to have been violated - Petition stands allowed quashing the proceedings against the Petitioner in CC.

Mr.Bankatlal Mandhani, Advocate for the Petitioner.

Public Prosecutor (TG) for Respondent.

O R D E R

This petition is filed by the petitioner-accused under section 482 Cr.P.C. to quash the proceedings in CC No.150 of 2013 (old CC No.747 of 2012) on the file of VIII Special Magistrate Erramanzil, Hyderabad.

2. The respondent No.2 lodged a complaint before VIII Additional Chief Metropolitan Magistrate Hyderabad against the petitioner-accused under Section 138 and 142 of Negotiable Instruments Act (for short 'NI Act') alleging that the complainant was in the business of transporting industrial goods to various places throughout India. The accused being one of its customers approached the complainant for transporting Poultry equipments. As per the orders of the accused, the complainant transported the poultry equipments from AP Poultry equipments, Kukatpally, Hyderabad to AG Holy water Pvt. Ltd., Hooghly on 7-4-2012. The accused issued cheque bearing No.014786 dated 16-5-2012 for Rs.20,000/- drawn on ICICI Bank Ltd, Rishra Branch, Hooghly, West Bengal. The complainant presented the cheque on 18-5-2012. The cheque was dishonoured for the reason

Crl.P.No.13467/2013 Date: 15-12-2021

"funds insufficient" vide Bankers Memo dated 12-6-2012. The complainant issued a legal notice dated 2-7- 2012. Having received the notice, the accused neither gave any reply nor paid the amount as demanded. Hence, filed the private complaint. The VIII Additional Chief Metropolitan Magistrate, Hyderabad had taken cognizance of the case for the offence under Section 138 of NI Act on 2-11-2012 and issued summons to accused.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent No.2-complainant.

4. The learned counsel for the petitioner submitted that no cheque was issued by the accused company to the complainant, the cheque enclosed along with the complaint did not belong to the accused company, the Magistrate taking cognizance of the case and issuing process to the accused was a sheer abuse of process of law, the Magistrate without applying his judicious mind, mechanically taken cognizance of the case, as such the same was liable to be set aside by dismissing the complaint and prayed to quash the proceedings.

5. The learned counsel for the respondent No.2-complainant contended that the petitioner had not denied the consignment receipts nor denied that they were not having any account, the address mentioned in the cause title and the legal notice were one and the same, the goods were booked and received by the petitioner and signed by him, the points raised by the petitioner whether he was the drawer of the cheque or not were triable issues. Inspite of receiving notice, no reply was given by the petitioner and prayed to dismiss the petition.

6. Perused the record. The complaint was filed against M/s.AG Holy Water Pvt. Ltd., represented by its Amrit Ganga, having its office at 162/1A, TG Road, SRMC Complex, Sasmal Para Baidyabati, Hoogly 712222. The invoice was issued by AP Poultry Equipments,

Kukatpally. The cheque was issued by the Proprietor for Amrit Ganga for Rs.20,000/-. The legal notice was issued to M/s.AG Holy Water Pvt. Ltd. The relation between M/s.AG Holy Water Pvt. Ltd. and Amrit Ganga was not stated by the respondent-complainant in his complaint. When the cheque was issued by the Proprietor of Amrit Ganga, why the legal notice was issued to M/s.AG Holy Water Pvt. Ltd., and why the private complaint was filed against M/s.AG Holy Water Pvt. Ltd. was not explained by the respondent-complainant. A proprietary concern is different from a Private Limited company. Filing the complaint showing both the names of M/s.AG Holy Water Pvt. Ltd., represented by its Amrit Ganga as accused, is not maintainable. The person who received the Poultry Equipment on 7-4- 2012 and the person who issued the cheque though were one and the same, the legal notice was not issued to the said person but was received and acknowledged by the director of M/s.AG Holy Water Pvt Ltd. The invoice is addressed to M/s AG Holy Water Pvt. Ltd., and signed by the person who received the Poultry Equipment on 7-4- 2012 and issued the cheque on 16-5-2012. Both the

legal notice and the complaint were filed on the address found in the invoice. They were received by the director of M/s.AG Holy Water Pvt. Ltd., who was not the same person who issued the cheque.

7. The learned counsel for the petitioner relied upon the Judgment of Hon'ble Apex Court in **P.J.Agro Tech Limited & Ors v. Water Base Limited** (2010) 12 SCC 146 wherein it was held that:

> "13. From a reading of the said Section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque.

14. In the instant case, the cheque which had been dishonoured may have been issued by the Respondent No.11 for discharging the dues of the Appellant No.1 Company and its Directors to the Respondent No.1 Company and the Respondent Company may have a good case against the Appellant No.1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The Appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by the Respondent No.11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence."

8. Having regard to the same, as the respondent-complainant failed to show the relation/connection between M/s. AG Holy Water Pvt. Ltd., which was a company incorporated under the Companies Act and Amrit Ganga, a Proprietary concern and the cheque was issued by the Proprietor of Amrit Ganga and had to be drawn by the Proprietor on the account maintained by him with the Banker for the payment of the money in discharge, in whole or in part of any debt or liability and for the default committed by him, M/s. AG Holy Water Pvt. Ltd., cannot be made as an accused and the action in respect of criminal act or a quasi criminal provision has to be strictly construed with the provisions under Section 138 of NI Act alleged to have been violated, the continuation of proceedings against M/s. AG Holy Water Pvt. Ltd., is considered as an abuse of process of law and hence, liable to be quashed.

9. In the result, the petition is allowed quashing the proceedings against the petitioner-accused in CC No.150 of 2013 on the file of VIII Special Magistrate Erramanzil, Hyderabad.

Miscellaneous petitions pending, if any, shall stand closed.

–X–

2022 (2) L.S. 26 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Dr. Justice Radha Rani

Siva Kumar Gade ..Petitioner

Vs.

K. Balaram Prasad ..Respondent

NEGOTIABLE INSTRUMENTS ACT, Sec.138 - CRIMINAL PROCEDURE CODE, Sec.482 - Petition by A4 to quash the proceedings against him in CC - 1st Respondent, complainant filed a complaint under N.I. Act.

HELD: A1 is the Company shown as represented by its Managing Director-A2 - Cheque filed by the Petitioner would disclose that it was issued by A2 in the capacity of the Managing Director of A1 company - Complaint or the documents filed would not disclose that the Petitioner was neither the Director of the company nor issued the cheque on behalf of A1 - No specific averments were made by the 1st respondent as to how and in what manner the petitioner was responsible for the affairs of the company and the role played by him - Criminal Petition stands allowed quashing the proceedings in CC.

Mr.Sai Gangadhar Chamarty, Advocate for the Petitioner.

Public Prosecutor for Respondent.

Crlp.No.5928/13 Date: 9-12-2021

O R D E R

This petition is filed by the petitioner – A4 under Section 482 Cr.P.C. to quash the proceedings against him in CC No.329 of 2012 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad.

2.The 1st respondent – complainant filed a complaint before the XVII Additional Chief Metropolitan Magistrate, Hyderabad under Sections 138 of the Negotiable Instruments Act (for short 'NI Act') stating that he was a Post Graduate with MBA Finance. A2 to A6, being the Managing Director and Directors of M/s.Serene Global Services (A1), lured the complainant that he would acquire expertise by passing the SAP examination and that on successful completion of the examination, he would be provided with excellent job opportunities induced the complainant to join A1 company. A1 company entered into a service agreement and appointed him as "Associated Software Engineer". While appointing the complainant, the accused imposed a condition to execute a Service Agreement Bond of Rs.2,00,000/- with a condition that the complainant would be provided training to get SAP certification. As per the service agreement, the complainant paid the said deposit of Rs.2,00,000/- through demand draft bearing No.138001 dated 08.02.2011. After absorbing the complainant in the company, he was paid meagre emoluments for a few months. Thereafter, A1 failed to pay

anyemoluments to the complainant and failed to put the complainant to the SAP certification examination. Thereafter, A2 to A6 started avoiding the complainant. The complainant and 10 to 20 other victims expressed their doubts about A1 company and demanded for refund of security deposit. Finally, A2 on behalf of A1 company at the instance of A3 to A6 issued a cheque bearing No.053799 dated 16.01.2012 for Rs.2,00,000/- drawn on Indian Bank, Moosapet Branch, Hyderabad under his signature. When the complainant presented the said cheque, the same was returned with an endorsement "Funds Insufficient." As such, the complainant issued a legal notice to the accused on 02.02.2012. As the accused failed to clear off the liability of the cheque amount, the complainant filed the complaint.

3.Heard the learned counsel for the petitioner. There is no representation by the learned counsel for the 1st respondent – complainant.

4.The learned counsel for the petitioner submitted that the petitioner was neither a Director nor drawer of the cheque to initiate proceedings against him under Section 138 of the NI Act. There was no averment in the complaint as to the role of the petitioner except describing him as a Director. The learned Magistrate could not take cognizance of the offence under Section 138 of the NI Act unless the ingredients of Section 141 and 142 of the NI Act and the averments that the liability of the person in the transaction was made out specifically as held by the Hon'ble Supreme Court in **National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another** 2010 (3) SCC 330 and prayed to quash the proceedings against the petitioner in CC No.329 of 2012 on the file of XVI Additional Chief Metropolitan Magistrate, Hyderabad.

5.Perused the record.

6.The complaint was filed under Sections 138 of the NI Act against A1 to A6. A1 is the Company shown as represented by its Managing Director Gade Manikumar – A2. The cheque filed by the petitioner would disclose that it was issued by A2 in the capacity of the Managing Director of A1 company. Thus, the complaint or the documents filed would not disclose that the petitioner was neither the Director of the company nor issued the cheque on behalf of A1. The copy of the Engagement Agreement (Bond) filed by the petitioner would disclose that it was entered by A2 on behalf of the company with the complainant. The name of the petitioner was not found anywhere in the said bond. Nowhere in the complaint, it was mentioned that the petitioner was responsible for the affairs of the company or that he issued the cheque.

7.The Hon'ble Apex Court in **National Small Industries Corporation Limited** case (supra) held that not every person connected with the company, but only those in-charge of and responsible for conduct of business of the company at the time of

commission of offence were vicariously liable. It was further held:

> "It is very clear from Section 141 of the Act that what is required is that the person who is sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time the offence was committed, in charge of, and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in- charge of and responsible for the conduct of the business of the company at the time of commission of the offence will be liable for criminal action. If a Director of a Company who was not in- charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.

Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner co-accused was in-charge of or was responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

For fastening the criminal liability, there is no presumption that every Director knows about the transaction. Vicarious liability on the part of a person must be pleaded and not inferred.

The person sought to be made liable should be in- charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.

A company, though a legal entity, can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in-charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct of the business of the company.

A combined reading of Sections 5 and 291 of Companies Act, 1956 with the

definitions in Section 2(24), (26), (30), (31) and

(45) of that Act show that the persons specified in Section 5 are considered to be the persons who are responsible to the company for the conduct of the business of the company. But if the accused is not one of such persons then merely by stating that "he was in charge of the business of the company" or by stating that "he was in charge of the day-to-day management of the company" or by stating that "he was in charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. For making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should

be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under Section 141(2) of the Act."

8.Hence, considering the above citation and as no specific averments were made by the 1st respondent – complainant as to how and in what manner the petitioner was responsible for the affairs of the company and the role played by him, it is considered fit to quash the proceedings against the petitioner – A4.

9.In the result, the Criminal Petition is allowed quashing the proceedings in CC No.329 of 2012 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad against the petitioner – A4.

Miscellaneous petitions pending, if any, shall stand closed.

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2022 (2) L.S. 29 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Smt.Justice
P. Sree Sudha

Ramasingh Lalithabai ..Petitioner

Vs.

Khaja Shoukar Ali ..Respondents

CIVIL PROCEDURE CODE - PERMANENT INJUNCTION - Appeal directed against the judgment and decree passed in A.S. allowing the appeal and setting aside the judgment and decree passed in O.S. - O.S. was filed by plaintiff seeking permanent injunction restraining the defendants and their men from interfering with her peaceful possession and enjoyment over a Plot.

HELD: Trial Court in its judgment observed that the plaintiff is the absolute owner of the plaint schedule property and she purchased the same under Ex.A1 registered sale deed - Appellate

Court in its judgment observed that the plaintiff purchased the suit schedule plot under Ex.A1 registered sale deed but in Ex.A1 it was not mentioned how the vendors became owners of the suit plot - Basis for their ownership and title is not there in Ex.A1.

Plaintiff filed suit for injunction sixteen years after execution of Ex.A1 and it is for her to file any relevant documents to prove the possession as on the date of filing of the suit, but she failed to do so - As such, appellate Court rightly allowed the appeal filed by the defendants by setting aside the judgment and decree passed by the trial Court - No reason to interfere with the findings of the appellate Court and accordingly Second Appeal stands dismissed.

Mr.T. Prasanna Kumar, Advocate for the Petitioner.

Mr.K. Srinivas, Advocate for the Respondent.

J U D G M E N T

1. This appeal is directed against the judgment and decree dated 16.02.2010 passed by the learned Principal District Judge at Nalgonda, in A.S.No.65 of 2007 allowing the appeal and setting aside the judgment and decree dated 08.10.2007 passed in O.S.No.60 of 1997 on the file of the learned Junior Senior Civil Judge at Devarakonda.

2. O.S.No.60 of 1997 was filed by Ramsingh Lalithabai - plaintiff seeking permanent injunction restraining the defendants and their men from interfering with her peaceful possession and enjoyment over an extent of 161.3 square yards bearing Plot No.3, Block No.14, situated at Deverakonda proper. The plaintiff in the plaint would submit that she purchased an extent of 161.3 square yards of open land measuring 22 square yards from East to West and seven yards one feet from North to South square yards and the said land is bounded by the vendors open place on Eastern and Southern sides, PWD Road on Western side and nine feet width road on Northern side. She got the above open place from its owners Syed Jafar Ali and Syed Manzoorr Ahmed of Devarakonda through registered sale deed bearing Document No.729 of 1981 for a valuable consideration of Rs.1,700/- and that the vendors delivered possession to the plaintiff and she is in continuous possession of the suit land for some years by erecting a temporary hut and later due to the business of her husband, they shifted to Halya. The plaintiff would also state that the defendants are strangers to the suit schedule land and that taking advantage of her absence, the defendants planted some stones by saying that the suit schedule land is a passage to go to their lands. She would also state that immediately after knowing the above situation, she along with her husband came to Devarakonda and placed the matter before the elders and on their advice the defendants removed the planted stones. But, again they came to the suit schedule land on

15.07.1997, and therefore, as it is difficult for her to safeguard possession from the clutches of the defendants, she filed the suit for injunction.

3. In the written statement filed by the defendants *inter alia* contending that they disputed the boundaries, denied the purchase of suit schedule land from Syed Jafar Ali and also the registered sale deed. They would further state that they are the own brothers. The second defendant purchased Ac.1.10 guntas out of Sy.No.399 of Deverakonda and was in possession of the property and he obtained civil Court Decree in O.S.No.54 of 1983 dated 31.01.1983. He got occupancy certificate issued by the Revenue Divisional Officer, Miryalguda on 1702.1992. They would further assert that Syed Suleman was having interest over Ac.1.10 guntas in Sy.No.399 and in fact this survey number comprises of Ac.3.00 guntas and that the plaintiff has not acquired any right or title in the suit schedule land and that the boundaries of the suit schedule property are not properly described, and thus, suit is liable to be dismissed.

4. While admitting this second appeal, the following substantial questions of law are framed.

(a) Whether the lower appellate Court is justified in discarding Ex.A.1 registered sale deed dated 08.06.1981.

(b) Whether the lower appellate Court has misappropriated the evidence brought on record in reversing the judgment of the trial Court.

(c) Whether the suit for declaration of title based on adverse possession is maintainable in respect of the alleged Inam land.

5. In support of her contentions, the plaintiff examined herself as

P.W.1 and M.D.Sadique was examined as P.W.2 on her behalf. The second defendant was examined himself as D.W.2 and one Maddimadugu Daya Ratnam was examined as D.W.2. Exs.A.1 to A.8 were marked on behalf of the plaintiff and Exs.B.1 to B.7 were marked on behalf of the defendants.

6. Considering the oral and documentary evidence adduced by both the parties, the trial Court decreed the suit with costs in favour of the plaintiff and defendants are restrained from interfering with plaintiff's peaceful possession and enjoyment over the plaint schedule property. Aggrieved by the said judgment, the defendants in the suit preferred an appeal. In the appeal, the appellate Court allowed the appeal and the judgment of the trial Court was set aside by observing that it is for the plaintiff to establish her possession over the plaint schedule property as on the date of filing of the suit by cogent and convincing evidence and she has to stand on her own legs and she cannot take advantage of the weaknesses of the defendants' evidence and that the trial Court misdirected and came to a wrong

conclusion. Aggrieved by the same, the plaintiff preferred this Second Appeal.

7. For the sake of convenience, the parties hereinafter are referred to as arrayed in the suit.

8. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

9. The trial Court in its judgment observed that the plaintiff is the absolute owner of the plaint schedule property and she purchased the same from Syed Jafar Ali and Sayed Manjoor Ahmed under Ex.A1 registered sale deed dated 08.06.1981. At the time of filing the suit, the plaint schedule property is a vacant place and there would be no documentary proof to establish the possession of the owner over a vacant space except the sale deed. As such the plaintiff by producing Ex.A1 established her incidental title and possession over the plaint schedule property and her evidence is also corroborated by the independent evidence of P.W.2. The present suit is filed only for injunction simpliciter. The trial Court further observed that defendants relied upon the consent decree obtained in O.S.No.54 of 1983 under Ex.B3. Ex.B3 is the plaint filed by the second defendant against Syed Suleman claiming title by adverse possession over the entire extent of Ac.1.10 guntas. As the defendant admitted the averments of plaint in the written statement, consent decree was passed. Defendant Nos.1 to 3 in the written statement filed in the present suit though stated that they purchased Ac.1.10 guntas in Sy.No.399 from its original owner Syed Suleman, they did not produce any document in support of their contention. Though the second defendant in the cross-examination admitted that he is having the document, he failed to produce the same, but he filed the sketch under Ex.B4, occupancy certificate under Ex.B5, pattedar pass book and title deed issued by the revenue authorities under Exs.B6 and B7 and also stated that the revenue officials mutated his name in the revenue records basing on the above documents. Ex.B3 is not binding on the plaintiff as she is not a party to the suit O.S.No.54 of 1983. It was also observed that the second defendant in the written statement submitted that he paid land revenue and obtained pahanies in his favour, but did not produce the same before the Court for the reasons best known to him. Except Ex.B3 consent decree, there is no other material for the second defendant to claim title and possession over the plaint schedule property, and accordingly granted injunction in favour of the plaintiff. The appellate Court in its judgment observed that the plaintiff purchased the suit schedule plot from Sayed Jaffar Ali and Syed Manjur Ahmed in the year 1981 as per Ex.A1 registered sale deed for an amount of Rs.1,700/-, but in Ex.A1 it was not mentioned how the vendors became owners of the suit plot. The basis for their ownership and title is not there in Ex.A1. P.W.1 in her cross-examination deposed that at the time of purchase the entire land was divided into plots and only after issuance of lay out she purchased the land, but

she has not filed any lay out copy in the suit to substantiate her version. P.W.1 further deposed that she did not make any enquiries with regard to the ownership of the vendors before purchasing the plot. It was suggested to her that Ex.A1 has no connection with Sy.No.399 and this survey number is not at all mentioned in Ex.A1 sale deed. Perusal of Ex.A1 clearly shows that no survey number was mentioned in it. She further admitted that there is no material on record to show what is the survey number in Ex.A1 and what is the basis for the title of her vendors in respect of the suit schedule plot. Ex.A1 sale deed is dated 08.06.1981, but she filed the suit in the year 1997 i.e. after sixteen years. There is no document in favour of the plaintiff to prove her possession as on the date of filing the suit.

10. Learned counsel for the defendants would argue that O.S.No.54 of 1983 was filed by Khaja Asif Ali against one Syed Suleman seeking declaration of title and rectification of wrong entries in record of rights in respect of the suit schedule property i.e. Ac.1.10 guntas in Sy.No.399 measuring Ac.3.00 guntas situated at Deverakonda. The plaintiff would state that he is the owner and possessor of the suit schedule property and he is in possession and enjoyment by paying land revenue for more than 12 years and that he perfected title by adverse possession over the suit schedule property. He would further contend that the defendanttherein interfered with his possession on 02.01.1993 and as such he filed the suit for declaration. The said suit was filed on 27.01.1983. The defendant filed his written statement on 31.01.1983 and admitted the averments made in the plaint. He specifically admitted that the plaintiff is the owner and possessor of the suit land and he is cultivating the same and enjoying the fruits there from and also paying land revenue regularly and that the defendant has no manner of right whatsoever over the suit schedule property and that due to some misunderstandings he interfered with the possession of the plaintiff and that he has no objection if the name of the plaintiff is entered in the revenue records as owner and possessor by duly deleting his name. Accordingly, a consent decree was passed on 31.08.1983 declaring that the plaintiff is the owner and possessor of the suit schedule property.

11. The appellant herein would contend that whether title by adverse possession is maintainable in Inam land for declaration of title and so also whether occupancy rights certificate under A.P. (TA) Abolition of Inams Act can be granted in respect of urban/ residential/non- agricultural property as substantial question of law. But, as it is a suit for injunction those issues need not be decided in this appeal.

12. In the case on hand, the consent decree is pertaining to the year 1983, but the sale deed under Ex.A1 was much prior to the said decree i.e. 08.06.1981 and that the plaintiff filed suit after 16 years. Though the plaintiff stated that she stayed in the suit schedule land for some years and then

shifted her family to Haliya, she has not filed any document to prove her possession of the suit schedule land. In Ex.A1 the survey number is not mentioned and it was executed by the son of Syed Suleman in favour of the plaintiff. Though consent decree was passed in the year 1983, Ex.A1 was executed in the year 1981 two years prior to the passing of consent decree. It was also stated that the plaint schedule property belongs to Hasan Ali, father of Syed Suleman. It was not stated anywhere whether the son of Syed Suleman executed sale deed in favour of plaintiff with the consent of his father. It is also not brought on record whether Syed Suleman is having knowledge about the execution of Ex.A1 by his son prior to the filing of the written statement in the consent decree. No doubt, perusal of Ex.A1 shows that it was executed in favour of the plaintiff on receiving the total consideration and possession was also handed over to the plaintiff. The details of the boundaries are mentioned, but the survey number is not mentioned anywhere. Except Ex.A1 the plaintiff has not filed any other document to establish her possession. The plaintiff herself stated that she stayed in the said place only for some years and thereafter she along with her husband shifted to Haliya. When she came to know that defendants are trying to trespass into the land, she along with her husband came and settled the matter with the intervention of the elders. Even afterwards when again defendants entered into the land, she filed the suit for injunction. Admittedly, the plaintiff filed suit for injunction sixteen years after execution of Ex.A1 and it is for her to file any relevant documents to prove the possession as on the date of filing of the suit, but she failed to do so. As such, the appellate Court rightly allowed the appeal filed by the defendants by setting aside the judgment and decree passed by the trial Court.

13. For the foregoing discussion, this Court finds no reason to interfere with the findings of the appellate Court and accordingly this Second Appeal is dismissed. However, there shall be no order as to costs.

14. Pending miscellaneous petitions, if any, shall also stand dismissed in the light of this final judgment.

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17. The main issue arising in this appeal for our consideration is whether the High Court was justified in exercising jurisdiction under Section 439(1) of the Code of Criminal Procedure (for short "Cr.P.C") for grant of regular bail in the facts of the present case.

18. Before adverting to the facts of the case, it is important to understand the extent of the power of the High Court to grant bail and the factors determining nature and gravity of the crime in order to grant bail to accuse concerned. As rightly stated by Justice V.R. Krishna Iyer "the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process".

ANALYSIS

A. Principles governing grant of bail

19. Section 439 of the Cr.P.C is the guiding principle for adjudicating a Regular Bail Application wherein Court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case.

20. In **Prahlad Singh Bhati Vs. NCT of Delhi And Another (**(2001) 4 SCC 280**),** a two-Judge Bench of this Court stated the principles which are to be considered while granting bail which are as follows :-

"8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

21. As reiterated by the two-Judge Bench of this Court in **Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another (**(2010) 14 SCC 496), it is well-settled that 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.

22. The decision in **Prasanta(Supra)** has been consistently followed by this Court in **Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu And Another (**(2012) 9 SCC 446), **Ranjit Singh Vs. State of Madhya Pradesh And Others (**(2013) 16 SCC 797), **Neeru Yadav Vs. State of Uttar Pradesh And Another (**(2014) 16 SCC 508), **Virupakshappa Gouda And Another Vs. State of Karnataka And Another (**(2017) 5 SCC 406)**, State of Orissa Vs. Mahimananda Mishra (**(2018) 10 SCC 516)**.**

23. In a recent pronouncement of this Court in the case of **'Y' Vs. State of Rajasthan & Anr. (**Criminal Appeal No. 649 of 2022 decided on 19.04.2022)authored by one of us (Hon'ble N.V. Ramana, CJI), it has been observed as under :-

"22. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances" have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.

23. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of **Mahipal (Supra),** this Court observed as follows:-

25. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. **Judges are duty-bound to explain the basis on which they have arrived at a conclusion."**

(emphasis supplied)

24. For grant or denial of bail, the "nature of crime" has a huge relevancy. The key consideration which govern the grant of bail were elucidated in the judgment of this Court in **Ram Govind Upadhyay Vs. Sudarshan Singh (**(2002) 3 SCC 598)**,** wherein it has been observed as under: -

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

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

25. Similarly, the parameters to be taken into consideration for grant of bail by the courts has been described in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav And Another (**(2004) 7 SCC 528)as under : -

"11. The law in regard to grant or refusal of bail is very well-settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) prima facie satisfaction of the court in support of the charge."

B. Recording of reasons for grant of bail by the High Court of the Sessions Court

26. The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations.

27. A two-Judge Bench of this Court in **Ramesh Bhavan Rathod (Supra)** held that the duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court, is exercised in a judicious manner. The operative portion of the judgment reads as under :-

"35. We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties "do not press for a further reasoned order". The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application under Section 439 of Cr.P.C would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. **But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail**. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the "respective parties do not press for further reasoned order". If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.

36. **Grant of bail under Section 439 of the Cr.P.C is a matter involving the exercise of judicial discretion**. Judicial discretion in granting or refusing bail – as in the case of any other discretion which is vested in a court as a judicial institution – is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice."

28. Similarly, this Court in **Ram Govind Upadhyay (Supra),** observed that

"3. Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. **Order for Bail bereft of any cogent reason cannot be sustained.** Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

29. A two-Judge Bench of this Court in **Mahipal Vs. Rajesh Kumar Alias Polia And Another (**(2020) 2 SCC 118)observed

"14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."

C. Cancellation of Bail

30. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two-Judge Bench of this

Court in **Dolat Ram And Others Vs. State of Haryana (**(1995) 1 SCC 349)laid down the grounds for cancellation of bail which are :-

(i) interference or attempt to interfere with the due course of administration of Justice

(ii) evasion or attempt to evade the due course of justice

(iii) abuse of the concession granted to the accused in any manner

(iv) Possibility of accused absconding

(v) Likelihood of/actual misuse of bail

(vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

d) Where bail has been granted on untenable grounds.

e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

32. In **Neeru Yadav Vs. State of Uttar Pradesh And Another (**(2014) 16 SCC 508), the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under :-

"12…It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation

have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. **If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court"**

33. This Court in **Mahipal (Supra)** held that: -

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

34. A two-Judge Bench of this Court in **Prakash Kadam And Others Vs. Ram Prasad Vishwanath Gupta And Another (**(2011) 6 SCC 189)held that:-

"18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. that factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

35. Coming to the present case at hand, the Respondent No.2/Accused was arrested on 13.01.2021 subsequent to which, he had applied for regular bail before the Sessions Court which was rejected on the ground that he is named in the FIR on the basis of the information provided by the deceased himself and that the same has been clarified after perusal of the documents/ forms that the bullet was shot by the Respondent No. 2/Accused himself. Being aggrieved by the same, Respondent No.2/ Accused filed an application under Section 439 Cr.P.C before the High Court seeking regular bail. The High Court vide its impugned order granted bail to the Respondent No.2/Accused without considering the relevant facts and

circumstances.

36. A bare perusal of the impugned order reveals that the High Court has failed to take into consideration the following:-

* Respondent No.2/Accused has been named in the FIR bearing Crime Case No. 16/2021 lodged under Sections 302 and 34 IPC and was the main assailant who had a weapon in his hand.

* The main role of Respondent No.2/ Accused was that he opened fire at the deceased due to which the bullet hit his right cheek and made its exit through the other side.

* The deceased succumbed to his injuries on 14.01.2021

* Respondent No.2/Accused had the intention to murder the deceased as there was previous enmity between him and the deceased with regard to some land which Respondent No.2 threatened to grab.

* On being asked about the incident by the Appellant/Informant's mother, the deceased replied "Ratipal ka dusra number ka ladka aur ram asre ka putra Sushil Yadav ne pull par gaadi rukwakar goli maar di hai or unke sath 2 ladke aur the". On re-clarifying, the deceased replied **"Ratipal ka dusra number ka ladka matlab Harjeet Yadav".**

* Respondent No.2/accused has clearly been named by the deceased and he was actively involved in opening fire which caused the death of the deceased. Ø Respondent No. 2/Accused's statement was recorded by the then IO under Section 161 Cr.P.C in which he admitted to having committed the offence.

* Respondent No. 2 has a criminal history and several criminal matters have been lodged against him:

(1) Case Crime no. 016/2021 u/s 302/34 IPC

(2) Case Crime no. 020/2021 u/s 25 of the Arms Act

(3) Proceedings of 110G on 05.11.2021

(4) Beat Information (G.D No. 33) dated 18.12.2021

(5) Beat Information (G.D. No. 44) dated 19.12.2021

37. There is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. This Court does not, normally interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with basic principles laid down in a catena of judgments by this Court.

38. However having said that, in the case at hand, it is manifestly incorrect on the part of the High Court to have granted bail to the Respondent No.2/Accused without taking into consideration the relevant facts and circumstances and appropriate evidence which proves that the Respondent No.2/Accused has been charged with a serious offence.

39. Grant of bail to the Respondent No.2/Accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of the Respondent No.2/Accused, nature of crime, material evidences available, involvement of Respondent No.2/Accused in the said crime and recovery of weapon from his possession.

40. Having considered the aforesaid facts of the present case in juxtaposition with the judgments referred to above, we are of the opinion that the impugned order passed by the High Court is not liable to be sustained and is hereby set aside. The bail bonds of Respondent No.2/Accused stand cancelled and he is hereby directed to surrender within one week from the date of passing of this order, failing which, the concerned police authorities shall take him into custody.

41. It is however clarified that observations made hereinabove are limited to our consideration of the issue of cancellation of bail, as raised by the appellant. They shall not come in the way of final adjudication before the trial Court. At the cost of repetition, it is stated that the trial Court is to consider the matter pending before it, uninfluenced by any of the observations made, strictly on the basis of evidence that shall be brought on record. This order shall also not preclude the Respondent No. 2/Accused from applying afresh for bail at a later stage, if any, new circumstances are brought to light.

42. As a result, appeal stands allowed.

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2022 (2) L.S. 69 (S.C)

IIN THE SUPREME COURT
OF INDIA

Present:
The Hon'ble Mr.Justice
Uday Umesh Lalit &
The Hon'ble Mr.Justice
Vineet Saran

Ravinder Singh @ Kaku ..Petitioner
Vs.
State of Punjab ..Respondent

(INDIAN) PENAL CODE, Sec.302 r/w Sec.120-B - INDIAN EVIDENCE ACT, Secs.65-A and 65-B - Whether the call records produced by the prosecution would be admissible under Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied - Appeal against the judgment of High Court - Trial Court convicted all the three accused and sentenced them to death for the offence punishable u/Sec.302, r/w 120B IPC and

Crl.A.Nos.1307,1308-1311/19 Date:4-5-22

rigorous imprisonment for 10 years and fine of Rs.5000/each for the offence punishable under Section 364 IPC - Aggrieved by the Trial Court order, present appellant filed a criminal appeal before the High Court - High Court, vide its judgment acquitted (A1) and (A3) and partly allowed the appeal filed by (A2) setting aside the death penalty, sentenced him to undergo rigorous imprisonment for 20 years under Section 302 IPC.

HELD: Electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law - Oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law - When a conviction is based solely on circumstantial evidence, such evidence and the chain of circumstances must be conclusive enough to sustain a conviction - Criminal Appeal stands allowed and the impugned order of the High Court is set aside to the extent that it convicts A2 under section 302 and 364 of the Indian Penal Code - Hence, the conviction of A2 is set aside - However, the acquittal of A1 and A3 by the impugned order is upheld.

J U D G M E N T

(per the Hon'ble Mr.Justice Vineet Saran)

. These appeals arise out of the judgment dated 22.02.2011 passed by the High Court of Punjab & Haryana in a case in which two children namely; Aman Kumar and Om, aged about 10 years and 6 years respectively were kidnapped and murdered. There were three accused namely; Anita @Arti (mother of the children) (A1); Ravinder Singh @ Kaku (A2) and Ranjit Kumar Gupta (A3). The Trial Court convicted all the three accused and sentenced them to death for the offence punishable under Section 302 read with 120B IPC and rigorous imprisonment for 10 years and fine of Rs.5000/each for the offence punishable under Section 364 IPC.

2. Being aggrieved by the Trial Court order, the present appellant filed a criminal appeal before the High Court of Punjab and Haryana, which got tagged along with the criminal appeals filed by the other co-accused persons.

3. The High Court, vide judgment dated 22.02.2011, acquitted Anita @Arti (A1) and Ranjit Kumar Gupta (A3) and partly allowed the appeal filed by Ravinder Singh @ Kaku (A2) and while setting-aside the death penalty, sentenced him to undergo rigorous imprisonment for 20 years under Section 302 IPC.

4. The facts leading to the present case are dealt with in paragraphs 2,3 and 4 of the judgment dated 25.05.2010 of the Trial Court, which are reproduced below:

"2. Tersely put, on 24.09.2009, complainant Rakesh Kumar son of Khushal Chand, resident of Nanak Nagri, Moga moved application to the Station House

Officer (SHO), Police Station City1. Moga regarding missing of his two sons namely Aman Kumar and Om, aged about 10 years and 6 years respectively. He submitted in the application that on 24.09.2009, both of his sons had gone for tuition as usual near their house. Usually, they used to return from tuition at about 6 p.m. But on that day, they did not return to their house till 9 p.m. He (complainant) along with his neighbours searched for them. It is further submitted that two days prior to the occurrence, his wife had a dispute with Ranjit Kumar Gupta (Accused) and his wife Sanju. And Sanju threatened the complainant and his wife to take care of their children and, therefore, they had suspicion that their children might have been abducted by Ranjit Kumar Gupta and his wife Sanju. On the basis of such application of the complainant, report No. 23 dated 24.09.2009 was made in the Roznamcha. The matter was entrusted to S.I. Subhash Chander for investigation and on the basis of his report, F.I.R under Sections 364/506/ 120B IPC was registered against Ranjit Kumar Gupta and his wife Sanju.

3. On 25.09.2009, in the morning, dead bodies of both the children were found from the paddy field of Bhagwan Singh son of Piara Singh, resident of Purana Moga, which were handed over to their relatives for getting the autopsy conducted from Civil Hospital, Moga. And Section 302 IPC was added. During investigation, on the basis of statements of Krishan Lal, son of Shiv Lal Bansal, resident of Nanak Nagri, Moga and Amarjit Singh, son of Jai Singh, resident of Mehme Wala, Moga, Ravinder Singh alias Kaku and Anita alias Arti also nominated as accused. The accused were arrested on 27.09.2009. However, during investigation, accused Sanju was found innocent. After completion of entire investigation, accused Anita alias Arti, Ravinder Singh alias Kaku and Ranjit Kumar Gupta were challenged to face trial in this case under Sections 302/364/506 read with Section 120B IPC. And Sanju, wife of Ranjit Kumar Gupta (accused) was placed in column No.2 of report under Section 173 Cr.P.C.

4. On commitment of the case to this Court, charge under Sections 302/ 364/120B IPC was framed against accused Anita alias Arti, Ravinder Singh alias Kaku and Ranjit Kumar Gupta, to which they pleaded not guilty and claimed trial".

5. The High Court opined that the prosecution had established the motive of the offence committed by A2, which was his determination to eliminate the school going children of Rakesh Kumar (PW5) and A1 because he was madly in love with A1. The High Court further held that the prosecution's attempt to rope in A1 in the crime of murder was not successful as their only witness against A1 i.e. PW10 [Krishan Lal, who accompanied PW5 while searching for the deceased kids] turned hostile. However, against A2 and A3, it was held that the prosecution has partially established the last seen theory through the testimonies of PW6 and PW7. The High Court further rejected the evidence of PW13 which was in the nature of extra judicial confession of A2 and A3.

6. As far as A2 i.e. the present

appellant is concerned, the High Court, while upholding his conviction held that:

"As regards the second accused, it is evident that PW12 who raided his house, arrested him on 27.09.2009 and recovered the mobile phone bearing sim card No. 9781956918. A school bag and a rope also were recovered from the field based on the disclosure statement given by him. DW1 had been fielded by A2 to bat his cause. In the face of the credible evidence as to the arrest of A2 by PW12 on 27.09.2009 during the raid of his house, the evidence of DW1 does not seem to be trustworthy. The arrest of second accused and the recovery effected based on his disclosure statement lend corroboration to the case of the prosecution as against the second accused.

..

At the initial stage the first accused Anita was not at all suspected. Later on she was arrested from her house on 27.09.2009 and from her custody the mobile phone bearing sim cards No. 9592851851 and 9914505216 were recovered. The recovery of those mobile phones and the relevant call details Ex.D41 to Ex.D44 would support the case of the prosecution that A2 had a close intimacy with A1 which culminated in the unfortunate occurrence.

As far as the second accused is concerned, the motive part of the case has been established by the prosecution. Through the first limb of the last seen theory as regards the second accused projected through PW10 Krishan Lal by the prosecution failed, the prosecution could establish the second limb of the last seen theory through PW6 Amarjit Singh and PW7 Gurnaib Singh. His arrest and recovery of the material objects also would support the case of the prosecution as against him. The failure to establish the extra judicial confession alleged to have been given by the second accused to PW13 Goverdhan Lal does not affect the case of the prosecution as against him. It is to be noted that arrest of A2 and the recovery of material objects from his person and also at his instance were established. ..

A2 is convicted only based on the circumstantial evidence produced by the prosecution. The infatuation he had with A1 had completely blinded his sense of proportion and ultimately he had committed the cruel murder of the children of PW5 Rakesh Kumar. The murder of the children as such had not been committed in a diabolic or monstrous manner. Both the children had been strangulated to death by A2. A2 was just 25/26 years old at the time when he committed the crime. The crime was committed propelled by sexual urge at the young age on account of infatuation towards a women. Reformation is possible during the long years of his imprisonment in jail. Further, if the second accused having spent his prime time in jail comes out after 20 years, he may not be a menace to the society."

7. Challenging his conviction and sentence of 20 years, the present appellant Ravinder Kumar @ Kaku filed Criminal Appeal No. 1307 of 2019 @ SLP (Crl.) 9431 of 2011, which shall be treated by us as the lead appeal/petition.

8. The case of the prosecution herein

has remained that the Trial Court and the High Court have rightly convicted A2 since the prosecution could successfully establish that there was a motive for the murder. It is contented that the call details produced relating to the phone used by A1 and A2 have established that they shared an intimate relationship, which became the root cause of offence committed herein. It is further submitted that the last seen theory, the arrest of the accused, the recovery of material objects and the call details produced, would conclusively establish the guilt of the accused persons in conspiring the murder of the children of PW5.

9. We have heard learned counsel for the parties at length and have perused the record.

10. The conviction of A2 is based only upon circumstantial evidence. Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This court has consistently held in a long line of cases [See Hukam Singh v. State of Rajasthan AIR (1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa @ Krishnappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh @ Dalbir Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890)] that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has been observed that:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

[Emphasis supplied]

11. Upon thorough application of the above settled law on the facts of the present case, we hold that the circumstantial evidence against the present appellant i.e. A2 does not conclusively establish the guilt of A2 in committing the murder of the deceased children. The last seen theory, the arrest of the accused, the recovery of

material objects and the call details produced, do not conclusively complete the chain of evidence and do not establish the fact that A2 committed the murder of the children of PW5. Additionally, the argument of the Respondent that the call details produced relating to the phone used by A1 and A2 have established that they shared an intimate relationship and that this relationship became the root cause of offence is also unworthy of acceptance.

12. The High Court fell in grave error when it fallaciously drew dubious inferences from the details of the call records of A1 and A2 that were produced before them. The High Court inferred from the call details of A2 and A1 that they shared an abnormally close intimate relation. The court further inferred from this, that unless they had been madly in love with each other, such chatting for hours would not have taken place. The High Court eventually observed that:

"We have to infer that the unusual attraction of A2 towards A1 had completely blinded his senses, which ultimately caused the death of minor children. It is quite probable that A2 would have through that the minor children had been a hurdle for his close proximity with A1"

[Emphasis supplied]

The above inferences were drawn by the High Court through erroneous extrapolation of the facts, and in our considered opinion, such conjectures could not have been the ground for conviction of A2. Moreover, the High Court itself observed that "there is no direct evidence to establish that A1 and A2 had developed illicit intimacy" and in spite of this observation, the court erroneously inferred that the murder was caused as an outcome of this alleged illicit intimacy between A1 and A2.

13. When a conviction is based solely on circumstantial evidence, such evidence and the chain of circumstances must be conclusive enough to sustain a conviction. In the present case, the learned counsel of the appellant has argued that conviction of A2 could not just be upheld solely on the ground that the prosecution has established a motive via the call records. However, we hold that not only is such conviction not possible on the present scattered and incoherent pieces of evidence, but that the prosecution has not even established the motive of the crime beyond reasonable doubt. In the present case, the fact that A1 and A2 talked on call, only proves that they shared a close relationship. However, what these records do not prove, is that the murder was somehow in furtherance of this alleged proximity between A1 and A2. The High Court's inference in this regard was a mere dubious conclusion that was drawn in absence of any cogent or concrete evidence. The High Court itself based its inferences on mere probability when it held that "It is quite probable that A2 would have through that the minor children had been a hurdle for his close proximity with A1". Moreover, the prosecution has also failed to establish by evidence the supposed objective of these murders and what was it that was sought to be achieved by such an act. The court observed that the act of A2 was inspired by the desire

to "exclusively possess" A1. However, it seems improbable that A2 would murder the minor children of PW5 and A1 to increase or protect his intimacy to A1 rather than eliminate the husband of A1 himself. Hence, the inference drawn by the High Court from the information of call details presented before them suffers from infirmity and cannot be upheld, especially in light of the fact that there is admittedly no direct evidence to establish such alleged intimacy and that the entire conviction of A2 is based on mere circumstantial evidence. We cannot uphold a conviction which is based upon a probability of infatuation of A2, which in turn is based on an alleged intimacy between him and A1, which has admittedly not been established by any direct evidence.

14. In the context of the Prosecution's Last Seen Theory, it is imperative to examine the evidence of PW6 and PW7, since the prosecution claims to have established the theory against A2 on the testimonies of these two witnesses. In essence, the prosecution tried to establish the first limb of its Last Seen Theory against A1 through PW10, claiming that A2 and A3 used to visit the house of A1 and hence all three colluded to commit the murder of the minor children. However, the High Court rightly rejected this limb of the theory and held that since the entire attempt to rope A1 in as an accused was based on the testimony of PW10 and he himself had turned hostile and had come up with a self-contradictory version of his testimony, no portion of his evidence could be relied upon.

15. However, where the High Court has erred is that it held that the second limb of the prosecution's Last Seen Theory stands duly established against A2 and A3 through the evidence of PW6 and PW7. PW6 (Amarjit Singh) is the farm servant of PW7 (Gurnaib Singh) who claims to have seen A2 and A3 along with the deceased children of PW5. PW6 deposed that though he was present when the police was conducting inquest on the dead bodies, he chose not to disclose the fact of the presence of A2 and A3 to the police. Rather, PW6 shared this information with PW7 and thereafter both of them proceeded to inform the police about the presence of A2 and A3. However, the High Court erred in not appreciating the numerous contradictions and inconsistencies that the evidence of PW6 and PW7 entail. These contradictions and inconsistencies assume capital important in light of the fact that the entire conviction of A2 is based merely on circumstantial evidence, and they also render the evidence non-conclusive to establish the guilt of A2.

16. In the context of the abovementioned contradictions and inconsistencies, the following must be noted: Firstly, W6 deposed that when he saw A2 in the field with the two children, he went ahead and made inquiries from him, to which A2 responded that his associate has gone to answer the call of nature. PW6 gives no reason in his deposition as to why he went ahead and asked such questions from A2. The need and rational of such line of inquiry is missing from his testimony and the same appears to be cooked up. Secondly, PW6 did not immediately disclose the fact to the police that he had earlier seen A2 and A3 with the deceased children.

More importantly, the story of the prosecution is that the accused were arrested on 27.09.2009. However, PW6 said in his testimony said that "the accused were present in the CIA staff when I visited there on 25.09.2009". When the prosecution itself says that the police arrested the accused on 27.09.2009, it is not understood that how could they have been present in the CIA staff on 25.09.2009. Moreover, PW7 in his testimony stated that when he reached the CIA Staff, A2 and A1 were not present there and he did not ask the police if the accused persons were arrested. Such material contradictions regarding the arrest of the accused persons make it difficult to believe the evidence of PA6 and PW7. Thirdly, PW6 explicitly stated that he and PW7 came to condole the death of the kids to PW5 and that PW5 and PW7 had previous relations with each other. On the contrary, PW7 in his testimony explicitly states that he had no acquaintance with the complainant (PW5) and that he and PW6 did not go to condole the death of the kids of PW5. Lastly, the testimonies of PW6 and PW7 also differ on the question of when did they reach the police station to report. PW7 deposed that he and PW6 reached the CIA Staff at 6 PM and remained there only for 2 hours i.e. they left by 8 PM. However, contradicting this, PW6 clearly states that he reached the CIA Staff along with PW7 at 9 PM.

17. In a case where the conviction is solely based on circumstantial evidence, such inconsistencies in the testimonies of the important witnesses cannot be ignored to uphold the conviction of A2, especially in light of the fact that the High Court has already erred in extrapolating the facts to infer a dubious conclusion regarding the existence of a motive that is rooted in conjectures and probabilities.

18. With respect to the extra judicial confessions, suffice it to say that the attempt of the respondent herein to rely on that is untenable since the High Court has taken note of the inconsistencies in the evidence of PW13 Goverdhan Lal and has rightly rejected his evidence "in toto". We uphold the judgment of the High Court to the extent that it rejects the testimony of PW13 and finds the theory of extra judicial confession of A2 and A3 to be unnatural.

19. The last piece of evidence against A2 remains the alleged recovery of the school bag at the instance of the disclosure statement given by A2. However, similar to the other evidence against A2, this also suffers from the same inconsistencies and incoherence that makes it difficult for the such evidence to support the conviction of A2. In this context, it is imperative to understand that there were two bags involved in the entire offence, which belonged to the two deceased children. The learned counsel for the respondent has contended that the recovery of one of such bags was at the instance of the disclosure statement given by A2. The High Court also has supported its conviction of A2 on this piece of evidence. However, where the High Court has erred is that it analysed this evidence in isolation with the other testimonies. However, when the claim of the prosecution is examined in the entire context of the other testimonies and evidence, it becomes apparent that even this evidence of Recovery is not free

from contradictions and inconsistencies. For instance, PW6 categorically mentions in his deposition that he observed "two bags" near the dead bodies of the children when he arrived the next day at the place of the unfortunate incident. He further said that he saw those two bags in court also. This contradiction is also supported by the Testimony of PW5 i.e. father of the deceased children himself, who explicitly states that "The belongings of the children i.e. clothes, bags and chapels were recovered from the spot." He further went on to testify in great detail that "The bags contained exercise books, books, geometry box etc. I bought the bags from the market. I identified both the bags and belongings on 30.09.2009 in the police station". Hence, it is not understood that when both the bags were recovered beside the dead bodies itself on the day of the inquest by police, then how could a bag be recovered at the instance of the disclosure statement of A2. Moreover, to add to the inconsistency, PW9 in his testimony states that "when I had gone to my field, I found dead bodies of two children in my field. Nothing else was lying by their side." Although the prosecutions maintains that the second bag was recovered at the instance of A2, the statement of the Investigating Officer (PW12) itself contradicts the stand of the prosecution. PW12 stated in his testimony that "one school bag of Aman Kumar deceased containing books and geometry box etc. was lifted from the spot.". As for the second bag, PW12 deposed that "Thereafter on 29.09.2009, accused Ranjit Kumar[A3] suffered disclosure statement that one school bag was kept concealed by him in the fields of paddy along with the rope which only he knew and he could get the same recovered." These contradictions and inconsistencies in the testimonies of PW6, PW5, PW9 and PW12 make the story of the prosecution weak and non-conclusive to hold and establish the guilt of A2, especially in light of the fact that there is virtually no direct evidence to link A2 to the commission of the offence.

20. Lastly, this appeal also raised an important substantive question of law that whether the call records produced by the prosecution would be admissible under section 65A and 65B of the Indian Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied with as contemplated under the Act. The uncertainty of whether Anvar P.V. vs P.K. Basheer & Ors [(2014) 10 SCC 473] occupies the filed in this area of law or whether Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 lays down the correct law in this regard has now been conclusively settled by this court by a judgment dated 14/07/2020 in **Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal [(2020) 7 SCC 1]** wherein the court has held that:

"We may reiterate, therefore, that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. (supra), and incorrectly "clarified" in Shafhi Mohammed (supra). **Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.** Indeed, the hallowed principle in Taylor v. Taylor (1876)

1 Ch.D 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose.

Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. **In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4).**"

21. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, Oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law.

22. To conclude, the tripod stand of Motive, Last Seen Theory and Recovery, that supported the conviction of A2 according to the High Court, is found to be non-conclusive and the evidence supporting the conviction of A2 is marred with inconsistencies and contradictions, thereby making it impossible to sustain a conviction solely on such circumstantial evidence.

23. Accordingly, the appeal filed by the appellant Ravinder Singh (A2) i.e. Criminal Appeal No.1307 of 2019 is allowed and the impugned order of the High Court is set aside to the extent that it convicts A2 under section 302 and 364 of the Indian Penal Code. Hence, the conviction of A2 is set aside. However, the acquittal of A1 and A3 by the impugned order is upheld. Accordingly, the appeals filed by the Respondent/State against the impugned order challenging the acquittal of A1 and A3 i.e. Criminal Appeal Nos. 13081311 of 2019 are dismissed. Therefore, we direct that a copy of this order be communicated to the relevant jail authorities and the appellant i.e. Ravinder Singh (A2) be immediately set at liberty, unless his detention is required in any other case. No order as to costs.

–X–

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IIN THE SUPREME COURT
OF INDIA

Present:
The Hon'ble Mr.Justice
M.R. Shah &
The Hon'ble Mrs.Justice
B.V. Nagarathna

State Bank of India & Anr., ..Petitioner
Vs.
K.S. Vishwanath ..Respondent

SERVICE LAWS - Aggrieved with the impugned judgment passed by the High Court in Writ Appeal by which the High Court has dismissed the said Writ Appeal preferred by the Appellant – Employer –SBI and has confirmed the judgment and order passed by Single Judge setting aside the order of dismissal passed by the Disciplinary Authority and directing the Bank to pay to the delinquent officer consequential benefits without back wages, the appellant SBI – employer has preferred the present appeal.

HELD: High Court has erred in re-appreciating the entire evidence on record and thereafter interfering with the findings of fact recorded by the Enquiry Officer and accepted by the disciplinary authority - The fact that the criminal Court acquitted the Respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment - Standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries - Impugned judgment and order passed by the Division Bench of the High Court dismissing the appeal and not interfering with the judgment and order passed by the Single Judge which interfered with the order of punishment imposed by the Disciplinary Authority dismissing the Respondent from service and the judgment and order passed by the Single Judge are hereby quashed and set aside - Order passed by the Management dismissing the Respondent on proved charge and misconduct is restored - Appeal stands accordingly allowed.

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

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.03.2021 passed by the High Court of Karnataka at Bengaluru in Writ Appeal No.4220 of 2011 by which the High Court has dismissed the said Writ Appeal No.4220 of 2011 preferred by the appellant – employer – SBI and has confirmed the judgment and order passed by 1 the learned Single Judge setting aside the order of dismissal passed by the Disciplinary Authority and directing the Bank to pay to the delinquent officer consequential benefits without back wages, the appellant SBI – employer has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under: That the respondent herein the delinquent officer was working as a Deputy Manager (Cash) at SSI Peenya II Stage Branch of the SBI Bank at Bangalore from 14.03.1996 onwards. That there was a requirement of Rs.10 lakhs which was required to be collected from Peenya Industrial Estate Branch of the Bank. That on the basis of one forged letter dated 06.08.1996, the delinquent officer withdrew Rs.10 lakhs fraudulently. The delinquent officer produced a false letter dated 06.08.1996 at Peenya Industrial Estate Branch and withdrew the aforesaid amount of Rs.10 lakhs which remained unaccounted at the SSI Branch. The letter dated 06.08.1996 was purported to have been signed by one A.R. Balasubramanian, the AGM of the SSI Branch. He denied his signature found on the letter dated 06.08.1996. Subsequently on tallying the account it was found that Rs.10 lakhs was withdrawn from Peenya Industrial Estate Branch which was to be deposited at SSI Branch had not been accounted for and the said amount had not been deposited with the SSI Branch. Thereafter the local Head Officer submitted a complaint to the CBI on 10.11.1998, based on which the FIR was registered. The aforesaid FIR was registered after the preliminary investigation was held on 18.09.1998. It was found that the fraud has been committed by the insider, who was well aware of the procedure for cash remittance as well as with the signature of the Branch Manager of SSI Branch. The respondent – delinquent officer was placed under suspension. Thereafter a departmental enquiry was initiated against the delinquent officer and he was charged with the chargesheet as under:

"(i) On 6th August, 1996, you got prepared a set of fraudulent cash remittance documented and by producing the same at Peenya Industrial Estate Branch, Bangalore made the officials threat believe them to be genuine and part with Rs.10 Lacs as cash remittance to SSI Peenya II stage Branch and you failed to account for the same in the books of SSI Peenya II Stage Branch.

(ii) You have made substantial investments in Kisan Vikas Patra and Special Term Deposits with SBI Staff Cooperative Credit Society, Bangalore during the period 23.09.1998 to 08.06.1988 and you failed to make proper disclosures of the same in the Assets & Liabilities Statements submitted by you.

Your act stated at (i) above has resulted in the Bank incurring an undue loss of Rs.10 Lacs."

2.1 Before the Enquiry Officer, 41 documents and 9 witnesses were produced by the management to prove the charges. After considering the statements/ depositions of management witnesses PW1 to PW7 the Enquiry Officer submitted his report holding charge no.1 as proved and charge no.2 as partly proved. The Appointing Authority agreed with the findings of the Enquiry Officer and imposed the penalty of dismissal from services which came to be confirmed by the Appellate Authority.

2.2 Thereafter the respondent – delinquent officer filed a writ petition before

the learned Single Judge of the High Court. By the time the writ petition came to be disposed of, the respondent – delinquent officer attained the age of superannuation. By judgment and order dated 22.03.2011 the learned Single Judge set aside the order of punishment and directed the Bank to give all the consequential benefits to the original writ petitioners except back wages as in the meantime he attained the age of superannuation.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge setting aside the order of punishment imposed by the appointing authority, the Bank filed the present Writ Appeal No.4220 of 2011 before the Division Bench of the High Court. The delinquent officer also filed Writ Appeal No.4599 of 2011 against the denial of back wages. Both the writ appeals came to be heard, decided and disposed of by a common impugned judgment and order. By the common impugned judgment and order the Division Bench of the High Court has dismissed both the appeals, one preferred by the appellant – management and another preferred by the delinquent officer.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court in dismissing the Writ Appeal No.4220 of 2011 and confirming the judgment and order passed by the learned Single Judge setting aside the punishment imposed by the appointing authority, the Bank – employer has preferred the present appeal.

3. Shri Sanjay Kapoor, learned counsel appearing on behalf of the Bank has vehemently submitted that in the facts and circumstances of the case, both, the learned Single Judge as well as the Division Bench have materially erred in interfering with the findings recorded by the Enquiry Officer which were on appreciation of evidence on record, both documentary as well as oral.

3.1 It is submitted that during the enquiry the Management examined in all 9 witnesses and produced on record 41 documents to prove the charges. That the management witnesses were primarily employees of the Bank who were also cross-examined during the course of enquiry. It is submitted that in the present case PW2 and PW3, the Cash Officer and the Accountant confirmed the practice adopted by the Branch seeking remittance, as also the fact that the respondent on the relevant date had come with one more person whom he introduced as the Cashier of the Branch. By examining the aforesaid witnesses, the management has established and proved that voucher and remittance/cash was given to the respondent inside the vault.

3.1.1 It is submitted that by examining the witness namely, the Branch Manager PW4, the management has proved that the Branch Manager whose alleged signature was found on the alleged letter was in fact not of his and that he confirmed that the letter allegedly bearing his signature seeking remittance of Rs.10 lakhs was not signed by him at all. He explained the normal practice during the course of his evidence.

3.1.2 It is submitted that PW5 and PW6 confirmed that it was the respondent – delinquent officer who had come to the Branch with another person with cash remittance and he was a witness to the said incident.

3.1.3 It is further submitted by Shri Kapoor, learned counsel appearing for the Branch Manager that even the management has been successful in establishing and proving that it was respondent – delinquent officer who got prepared the fraudulent letter. Further, PW7 proprietor of the photo stating shop confirmed that it was the respondent who had come for typing the fraudulent letter and she got typed the same in her shop. It is submitted that she also identified the respondent in the enquiry.

3.2 It is contended by learned counsel appearing on behalf of the appellant – Bank that despite the aforesaid clinching evidence placed on record the High Court has erred in holding that the bank has not been able to prove the complicity of the respondent in the alleged offence. It is urged that while setting aside the order of punishment the learned Single Judge acted beyond the scope and ambit of the writ jurisdiction and the power of the judicial review conferred on a constitutional court.

3.3 Relying upon the decision of this Court in the case of State of **Karnataka vs. N. Ganga Raj reported in (2020) 3 SCC 423**, it is submitted by Shri Kapoor, learned counsel appearing on behalf of the appellant – Bank that in the said decision this Court observed and held that the power of Judicial Review conferred on a constitutional court is not that of an appellate authority but is confined only to the decision-making process. It is submitted that as held, under Articles 226/227 of the Constitution of India, the High Court shall not reappreciate the evidence, interfering with the conclusions in the enquiry, go into the adequacy or reliability of the evidence or correct the error of fact however grave it may be.

3.4 It is contended that the High Court has committed a grave error in interfering with the findings recorded by the Enquiry Officer and setting aside the order of punishment imposed by the appointing authority.

4. While opposing the present appeal learned counsel appearing on behalf of the respondent – delinquent officer has made the following submissions:

(i) That the respondent herein had an unblemished record from his joining as a clerk till the date of alleged incident in his career of long 28 years and had even got two promotions;

(ii) That the entire amount of Rs.10 lakhs was allegedly paid to one Shri M.N. Kiran and not to the respondent – delinquent officer;

(iii) Initially the Local Head Officer of the Branch directed one Shri M.R. Srinath, AGM to investigate the matter. Shri Srinath investigated the matter and found that there was no involvement of any officer from the SSI Peenya II Branch and completely

absolved the delinquent officer. It is submitted that it was observed that the style of the letter requesting the remittance resembles the usual style adopted by the delinquent officer. That it is observed that that none of the documents at the SSI Peenya Branch was tampered with which is indicative of noninvolvement of staff of the SSI Peenya Branch;

(iv) That in the criminal proceedings investigated by the CBI, the delinquent officer has been acquitted by the competent criminal court. That the learned Single Judge specifically observed and held that the enquiry was vitiated due to the violation of principles of natural justice;

(v) The enquiry officer held the respondent guilty on mere surmises and conjectures.

(vi) The enquiry officer erred in relying on the deposition of PW7, who claimed to be the manager of the photocopying shop;

(vii) That the manager failed to prove that document/letter dated 06.08.1996 was prepared by the respondent delinquent officer.

(viii) Therefore, once the preparation of document was itself doubtful from the evidence of PW7 there is no question of forging the signatures on the said documents by the respondent;

(ix) That therefore, the entire allegation is made on falsehood which has not been proved by any evidence.

4.1 Relying upon the decision of this Court in the case of **Nand Kishore Prasad vs. State of Bihar & Others, AIR 1978 SC 1277**, it is submitted that as held by this Court the domestic tribunals are quasi-judicial in character. Therefore, the minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence i.e. cogent material which with some degree of definiteness points to the guilt of the delinquent in respect of charges against him.

4.2 Relying upon the decision of this Court in the case of **Rajinder Kumar Kindra vs. Delhi Administration, (1984) 4 SCC 635**, it is submitted that a quasijudicial tribunal which records findings based on no legal evidence, then the findings are either ipsedixit or based on conjectures and surmises. The enquiry suffers from the additional infirmity of nonapplication of mind and stands vitiated.

4.3 On judicial review, it is submitted that if there is procedural violation and violation of principles of natural justice, the courts are justified to set aside such administrative action and in many a case may possibly direct a denovo enquiry. It is submitted that however, in the present case the delinquent officer has attained the age of superannuation, he cannot be burdened with the fresh enquiry and the courts have to set aside the said administrative action itself. It is submitted that therefore as such the respondent was required to be reinstated with full back wages. That instead the High Court has denied the back wages to the respondent

– delinquent officer. Therefore, the impugned judgment and orders passed by the High Court are not required to be interfered with by this Court in exercise of powers conferred under Article 136 of the Constitution of India.

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

5. In rejoinder learned counsel appearing on behalf of the appellant – Bank has pointed out that in view of the judgment and order passed by the learned Single Judge confirmed by the Division Bench, the respondent – delinquent officer would get Rs.25.61 lakhs towards terminal benefits and arrears of pension etc. and thereafter Rs.20,502/per month towards pension, which would amount to granting premium to dishonesty.

6. We have heard learned counsel for the parties at length.

7. At the outset, it is required to be noted that in the departmental enquiry against the delinquent officer by the disciplinary authority it was alleged that he got prepared a set of fraudulent cash remittance document and by producing the same at Peenya Industrial Estate Branch, Bangalore made the officials believe them to be genuine and part with Rs.10 Lacs as cash remittance to SSI Peenya II Stage Branch and after receiving the same cash he failed to account for the same in the books of SSI Peenya II Stage Branch. To prove the aforesaid charge the management as such examined 9 witnesses and produced 41 documents. The aforesaid charge has been held to be proved by the Enquiry Officer on appreciation of the entire evidence on record including the deposition of the management witnesses examined as PW1 to PW7. On considering the enquiry report and the findings recorded by the Enquiry Officer it appears that the management has been able to establish and prove the complicity of the delinquent officer and has been successful in proving that;

(i) The delinquent officer prepared the fraudulent letter dated 06.08.1996 (by examining PW7) who at the letter requesting for remittance resembles the style/writing of the delinquent officer (PW1);

(ii) It was the respondent – delinquent officer who had come with one more person whom he introduced as a new cashier and the delinquent officer submitted the voucher and that the remittance/cash was given to him inside the vault (by examining PW2 and PW3);

(iii) The Branch Manager confirmed that the letter allegedly bearing his signature seeking remittance of Rs.10 lakhs was not signed by him (PW4);

(iv) And that it was the respondent – delinquent officer who went to the Branch with another person for cash remittance and that the cash remittance was paid to the respondent – delinquent officer.

The aforesaid findings recorded by the Enquiry Officer were on the appreciation of evidence on record, both documentary as well as oral. Despite the above, the High Court has observed and held that the

management had failed to prove the complicity of the delinquent officer in the alleged offence.

7.1 From the aforesaid, it can be seen that the management has been able to prove the complete chain of events which led to the conclusion that it was the delinquent officer who prepared the false letter dated 06.08.1996; he went to the Branch for withdrawing the cash along with the fraudulent letter; that it was he who took the cash/remittance of Rs.10 lakhs and thereafter the said amount was not deposited with the SSI Peenya II Stage Branch.

Then, what else was required to be established and proved by the Management to prove the complicity of the delinquent officer?

7.2 From the impugned judgment and order passed by the High Court it appears that the High Court has dealt with and considered the writ petition under Articles 226/227 of the Constitution of India challenging the decision of the Bank/ Management dismissing the delinquent officer as if the High Court was exercising the powers of the Appellate Authority. The High Court in exercise of powers under Articles 226/227 of the Constitution of India has reappreciated the evidence on record which otherwise is not permissible as held by this Court in a catena of decisions.

7.3 Recently in the case of **Nand Kishore Prasad (Supra)** after considering other decisions of this Court on judicial review and the power of the High Court in a departmental enquiry and interference with the findings recorded in the departmental enquiry, it is observed and held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is further observed and held that the High Court is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. It is further observed that if there is some evidence, that the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition under Article 226 of the Constitution of India to review/reappreciate the evidence and to arrive at an independent finding on the evidence. In paragraphs 9 to 14, this Court had considered other decisions on the power of the High Court on judicial review on the decisions taken by the Disciplinary Authority as under:

"9. In *State of A.P.* v. *S. Sree Rama Rao* [*State of A.P.* v. *S. Sree Rama Rao*, AIR 1963 SC 1723] , a threeJudge Bench of this Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. The Court held as under : (AIR pp. 172627, para 7)

"7. … The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

10. In *B.C. Chaturvedi* v. *Union of India* [*B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , again a threeJudge Bench of this Court has held that power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. It was held as under : (SCC pp. 75960, paras 1213)

"*12*. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding,

and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India* v. *H.C. Goel* [*Union of India* v. *H.C. Goel*, (1964) 4 SCR 718 : AIR 1964 SC 364] , this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

11. In *High Court of Bombay* v. *Shashikant S. Patil* [*High Court of Bombay* v. *Shashikant S. Patil*, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] , this Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under : (SCC p. 423, para 16)

"*16*. The Division Bench [*Shashikant S. Patil* v. *High Court of Bombay*, 1998 SCC OnLine Bom 97 : (2000) 1 LLN 160] of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

12. In State Bank *of Bikaner & Jaipur* v. *Nemi Chand Nalwaya* [*State Bank of Bikaner & Jaipur* v. *Nemi Chand Nalwaya*, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence,

the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under : (SCC pp. 58788, paras 7 & 10)

"*7*. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide *B.C. Chaturvedi* v. *Union of India* [*B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , *Union of India* v. *G. Ganayutham* [*Union of India* v. *G. Ganayutham*, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806] and *Bank of India* v. *Degala Suryanarayana* [*Bank of India* v. *Degala Suryanarayana*, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] , *High Court of Bombay* v. *Shashikant S. Patil* [*High Court of Bombay* v. *Shashikant S. Patil*, (2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

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10. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him."

13. In another judgment reported as *Union of India* v. *P. Gunasekaran* [*Union of India* v. *P. Gunasekaran*, (2015) 2 SCC 610 : (2015) 1 SCC (L&S) 554] , this Court held that while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when

the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

"*13*. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(*i*) reappreciate the evidence;

(*ii*) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(*iii*) go into the adequacy of the evidence;

(*iv*) go into the reliability of the evidence;

(*v*) interfere, if there be some legal evidence on which findings can be based.

(*vi*) correct the error of fact however grave it may appear to be;

(*vii*) go into the proportionality of punishment unless it shocks its conscience."

14. On the other hand the learned counsel for the respondent relies upon the judgment reported as *Allahabad Bank* v. *Krishna Narayan Tewari* [*Allahabad Bank* v. *Krishna Narayan Tewari*, (2017) 2 SCC 308 : (2017) 1 SCC (L&S) 335] , wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the writ court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The inquiry officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct."

That thereafter this Court has observed and held in paragraph 7, 8 and 15 as under:

"7. The disciplinary authority has taken into consideration the evidence led before the IO to return a finding that the charges levelled against the respondent stand proved.

8. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.

xxx xxx xxx

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government

was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. We may notice that the said judgment has not noticed the larger Bench judgments in *S. Sree Rama Rao* [*State of A.P.* v. *S. Sree Rama Rao*, AIR 1963 SC 1723] and *B.C. Chaturvedi* [*B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law."

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has committed a grave error in interfering with the order passed by the disciplinary authority dismissing the respondent – delinquent officer from service. The High Court has erred in reappreciating the entire evidence on record and thereafter interfering with the findings of fact recorded by the Enquiry Officer and accepted by the disciplinary authority. By interfering with the findings recorded by the Enquiry Officer which as such were on appreciation of evidence on record, the order passed by the High Court suffers from patent illegality. From the findings recorded by the Enquiry Officer recorded hereinabove, it cannot be said that there was no evidence at all which may reasonably support the conclusion that the Delinquent officer is guilty of the charge.

9. Now so far as the submission on behalf of the respondent – delinquent officer that as he has been acquitted in a criminal court and therefore, he cannot be held guilty in a disciplinary proceeding is concerned, the aforesaid has no substance. From the judgment and order passed by the criminal court it appears that he has been given the benefit of doubt. Even otherwise the standard of proof which is required in a criminal case and that of the disciplinary proceedings is different. The fact that the criminal court acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. As held by this Court in a catena of decisions the standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings 27

10. Now the next question which is posed for consideration is whether in the facts and circumstances of the case the appointing authority was justified in dismissing the delinquent officer from service is concerned looking to the seriousness of the charge proved of misappropriating the sum of Rs.10 lakhs and not depositing the same with the Bank, it cannot be said that the order of dismissal can be said to be disproportionate to the charge and misconduct held to be proved. At this stage even the modus operandi adopted by the delinquent officer also deserves the consideration.

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

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

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