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 15-7-2022 PART - 13

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Cost of each Part Rs.150/-

MODE OF CITATION: 2022 (2) L.S

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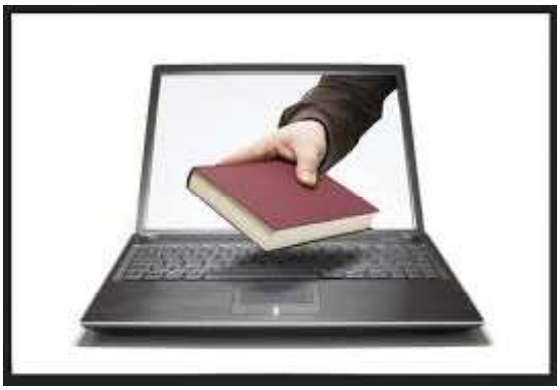

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PART - 13 (15TH JULY 2022)

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HELD: As the defendant No.3 died before filing of the suit, the parties could be brought on record under Order I, Rule 10 of CPC, though not under Order 22, Rule 4 CPC - It is not mere assertion of interference with the possession of the property which gives cause of action to seek relief of perpetual injunction, but on the other hand, as Sec.37(2) of the Act makes abundantly clear that such relief can be granted against the defendant preventing from 'assertion of a right' or from 'the commission of an act' - Therefore, though the decree for permanent injunction is granted in personam, a suit can be laid against the party seeking the decree to enjoining him from assertion of right – No reason to interfere with the impugned Order - Civil Revision Petition stands dismissed. **(A.P.)** ***177***

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It is only in exceptional cases like without there existing any domestic relationship as laid under Section 2(f) of the D.V. Act between the parties, the Petitioner filed D.V. case against them or a Court has already acquitted them of the allegations which are identical to the ones levelled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings - Presence of the Petitioenrs before the Court below has to be dispensed with - Criminal Petition stands disposed of. **(T.S.) 60**

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HELD: Reasons stated for the delay are vague - It is clear that the appellant failed to show sufficient cause to condone the delay of 730 and 873 days in filing the appeals - In view of the dismissal of I.A. in the Appeals, the main M.A.C.M.A. stand dismissed. **(A.P.)** ***180***

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--X--

A trio view on Constitution

Pasapala Syed Mustaq,Advocate
V Addl. District Court, Allagadda.

Precis of this Article:

As we all know India has its own written Constitution. In this piece of article, the author would like to exegesis about the "Constitution" in three limbs. Firstly, What is Consitution, Secondly, why we call Constitution as Constitutional law, and thirdly, the concept of Constitutionalism.

What is the Constitution:

A constitution is a document or text. To which the citizens of India consider as sacred as like the Quaran, bible, Bhagavadgita to the respective religion. And the citizens of India should obey the text. The text is regarded as one of the lengthiest. It is said to be a Supreme document. The preamble of the Constitution says India is a Sovereign, Socialist, Secular, Democratic,Republic and it gives the entire meaning of the Constitution. The said holy text contains the rights and duties to exercise by the people of India. The said rights and duties are said to be fundamental rights and duties enumerated in Part III and Part IV respectively in the text. It givesthe inalienable right to the people, if the person's right got infringed or if the legislation is inconsistent with the said rights then the people of India can invoke Article 32 to the Supreme Court and Article 226 to the respective High Courts to pray to adjudge such act as void. It not only gives the right, duties, to the people but also the three organs of the state.

The draft of the Constitution took almost 2 years, 7 months, and 11 days to complete. Finally, it was adopted on Nov.26,1949, and came into enforcement on Jan.26thof the following year i.e;1950. The draft has passed by resolution and hence codified it as law. We call it "Constitutional Law". The question we all as Indians should ponder is that Whether the citizens of India knew that there is a constitution to which we are subordinate and to obey? The answer to this question would be partly Yes, and partly No. There is a lack of awareness among the people about the Constitution of India. So, there are not courageous enough to question the government about the promises that they gave in the manifesto and about their administration.Questioning the ruling government about its schemes and administration is the right of every citizen of India It's very shame to say that even some political leaders and the authorities do not know about the Constitution. Because these days there are illegal arrests and detentions, restricting to free speech were increasing day by day. If any citizen has made any allegations against the ruling government, the said person will be detained in custody without following the correct procedure by the top cops in the respective district or division by obeying orders from the ruling government but failed to obey the Constitution.

As "Udai Raj Rai" one of the chapters in his book stated that the very existence of a Constitution ensures that the rulers are under an obligation to act in accordance with the

Constitution and not to act according to their whims and fancies[1]. The objective of the text is to give equal freedom, liberty, justice,etc. therefore, the act which is against the

Consitution will defeat the sole purpose of the Constitution. The author hadthe experience to encounter with the students who belong to a non-legal fraternity, had asked them about the Constitution and their rights. Their reply was yes we have studied it till 10th Standard in Social Studies subject but now we are not aware of it, this statements made me shocking. It's not the fault of students but ofthe state which is bound to make them aware of the text and rights of every individual. There is no rule that only the legal fraternity should read the Constitution and question the authority when they fail to do their duty as prescribed in text and respective legislations.While addressing the Plaintium jubilee function of Dr. B.R.Amedkar College of Law,Andhra University the Vice president has quoted one of the quotes from Ambedkar about the Constitution as follows: "Constitution is not a mere lawyers' document, it is a vehicle of Life, and its spirit is always the spirit of Age."[2]

A few takeaways from the speech delivered by "Justice Dr. D.Y. Chandrachud" at Bombay Bar Association on " Why Constitution matters" as follows:

His Lordship stated that Constitution plays individual at his heart to guide the functioning of democratic institutions and it acquires identity through experience, from a combination of aspirations and commitment, that express the nation's past and desire's to transcend that past. It also recognized the diverse identities of Citizens. He further emphasized that, When we jail a cartoonist for seduction, when jail instead of bail is given to the blogger who is a critic of religion, when a mob lynches a person, for food that he/she eats, it is the Constitution that is lynched and finally when we deny a human being, the power of love for reasons of religious,caste, it is the Constitution which made to weep[3].

Constitutional Law:

We call the Constitution as Constitutional law because it is regarded as Superior to all laws of the country. Hence, it is the Law of all the laws. The central or state governments while passing legislation, the said legislation should be consonantwith the Constitution. If it is passed by either government, the next role lies on the Judiciary to check whether the said law which is passed is within the constitutional parameters. To make the amendments to the Constitutional law is harder than the other laws. The case of **Golak Nath vs State of Punjab**[4]held that Law must ordinarily include Constitutional Law. Ordinary law is made by the center and state legislation will be made by exercise legislative power and Constitutional law is made by the exercise of Constituent power and In infamous **Indira Nehru Gandhi vs Raj Narain**[5] held that in a rigid constitution like ours the validity of Constitutional law cannot be challenged but the ordinary law can be challenged on the touchstone of the Constitution. Constitutional law is as much law as ordinary law and further made a remarkable statement that the Constitution cannot consist of a string of isolated dooms. The ordinary legislative power can be used to test whether the law is Constitutional law or not held inthe **State of Karnataka vs Union of India**[6].

Constitutionalism:

The concept of Constitutionalism is very prevalent in India nowadays. Because of the way the government exercising the powers arbitrarily. To limit such arbitrary powers the judiciary should exercise Constitutionalism. The judiciary plays a vital role in limiting

the arbitrary powers of the government. So, it is said that the Judiciary should be independent and impartial to render justice.The authority seems to follow the Rule of Law but they are not and they are violating the Rule of Law. Some authorities were not following the procedure while arresting the person, detaining him in custody, there are law and order problems everywhere, etc. There is no equality in giving protections to the Citizens it is manifest in many states of India where there is Mob lynching to the particular community. The rights and liberties of Citizens are curtailing by the government. "Prof. C. Perry Patterson" of the University of Texas in his Article titled " The Evolution of Constitutionalism" has said about that Constitutionalism is the means which enables man to draft his Constitution, to establish his government, and to organize the powers in such a form that it will affect his safety and happiness further the professor went ahead to say about and said that Rome's Constitutionalism consists of 1. Principle of Checks and Balance 2. The doctrine of popular sovereignty, 3. The principle of higher law or doctrine of natural law or the doctrine of a limited government and American's principle of Constitutionalism are 1. a general law of the land equally applicable to all and affording equal protection to all, 2. It cannot validly operate retrospectively,3. It must be enforced through Courts,4. Legislative power does not include judicial power. Atlast, the professor has quoted"Carl Friedrich" about Constitutionalism as follows; Constitutionalism is probably the greatest achievement of modern civilization, without which little or none of the rest is conceivable, under it, for the first time in the history of man, has a measure of freedom and well being been achieved for the common man[7].India's principle of Constitutionalism is the same as the American's Principle of Constitutionalism. India's constitutional law also applicable equally without any discrimination of caste, creed, and gender. And it also demarcated the powers to its three organs of the state i.e; Executive, Legislature, and Judiciary. One organ cannot overreach another organ. There are is also checks and balances applicable to three organs. One organ can be check over another organ. For instance, the work of the executive and legislature can be a challenge in a Court of law. The Top Courts of India can act as a check to the rest of the organs of the state. " Professor Upendaxi Baxi" in his speech at Nalsar University stated that he is will not accept the word " Constiutitonalism" but he will place C's instead of that word. 1st C- Constitutional text, 2nd C- Constitutional Interpretation, and 3rd C- the ideology and theory of Constitution[8].Following Upendra Baxi, yet another " Prof. M.P. Jain" has lamented about the Constitutionalism in his book Indian Constitutional Law as follows: He says that a country may have a "Constitution but not necessarily Constitutionalism". It means that though a country has a Constitution, there should be Rule of law, separation of law, Independent Judiciary thus we can say that there is Constitutionalism in that country. Furthermore, he says the meaning of Constitutionalism itself says to put the limitation on government. Constitutionalism is the antithesis of arbitrary power and the antithesis to Constitutionalism would be despotism[9].In the year 2007, **I.R.Coelho vs the State of T.N.**[10] held that the principle of Constitutionalism requires control over the exercise of governmental power to ensure that it doesnot destroy the democratic principles upon which it is based and the protection of fundamental constitutional rights through the common law is the main feature of common law Constitutionalism. And the following is yet another one of the notable judgments in the recent past i.e; **Navtej**

Singh Johar vs Union of India[11], where talks about the concept of Transformative Constitutionalism. Para No. 108 & 109 of the judgment says as follows: the concept of Transformative Constitutionalism has its kernel a pledge, promise and thirst to transform the Indian Society to embrace therein in letter and spirit, the ideals of justice, liberty, equality, and fraternity. And also says that the ability of the Constitution to adapt and transform with the changing needs of the time.

Conclusion:

The author would like to conclude by citing "Justice Chandrachud's" statement on Constitution that, Constitution is a living document, it is a document for the future, if the Constitution is not framed for the future, it is doomed to fail[12]. The Constitution will live to give direction to the functioning of the three organs of the state, even if we do not believe in it. The Constitution is said to be transforming these days, so the conceptof transformative Constitutionalism has evolved by recent notable judgments from Top Court. Hence, for a democratic country like India, Constitution and Constitutionalismarea must and we have to obey both to exercise our Inalienable rights without hindrance.

(Footnotes)

1. Udai Raj Rai, Constitutional Law-I, 1st edition,2016. Eastern Book Company(EBC).

2. Press Information Bureau ,Government of India, Vice President's Secretariat, https://pib.gov.in/PressReleseDetailm.aspx?PRID=1643281

3. https://www.youtube.com/watch?v=vr1Dc_-ZKbQ, Lecture by Hon'ble Justice Dr.D.Y. Chandrachud , on Why Constitution Matters.

4. **Golak Nath vs State of Punjab (1967) 2 SCR 762**

5. Indira Nehru Gandhi vs Raj Narain 1975 Supp SCC 1

6. State of Karntaka vs Union of India (1977) 4 SCC 608

7. C. Perry Patterson, The Evolution of Constitutionalism, Minnesota Law Review(Journal of State Bar Association) , Vol.32, April,1948.

8. https://www.youtube.com/watch?v=ju0-27KqZKo, 'Constitutionalism and Identity ', Prof. Upendra Baxi, Nalsar University.

9. M.P.Jain, Indian Constiutional Law, 4th Edition.

10. (2007) 2 SCC 1

11.(2018) 10 SCC 1

12. Supra, note.3

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2022(2) L.S. 177 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

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

Jagarlamudi Padmavathi ..Petitioner
Vs.
Ravim Ramanaiah ..Respondent

CIVIL PROCEDURE CODE, Order 22, Rule 4, r/w Sec.151 - Suit for permanent injunction - Petition was filed to bring on record the legal representatives of the defendant No.3, who died prior to filing of the suit - Civil Revision Petition, against the order in I.A., by which Trial Court allowed the petition under Order 22, Rule 4 of CPC r/w Sec.151 of CPC, to add respondent Nos.5 to 7 as defendants 5 to 7, being legal representatives of deceased respondent/defendant No.3 and to amend the plaint.

HELD: As the defendant No.3 died before filing of the suit, the parties could be brought on record under Order I, Rule 10 of CPC, though not under Order 22, Rule 4 CPC - It is not mere assertion of interference with the possession of the property which gives cause of action to seek relief of perpetual injunction, but on the other hand, as Sec.37(2) of the Act makes abundantly clear that such relief can be granted against the defendant preventing from 'assertion of a right' or from 'the commission of an act' - Therefore, though the decree for permanent injunction is granted in personam, a suit can be laid against the party seeking the decree to enjoining him from assertion of right – No reason to interfere with the impugned Order - Civil Revision Petition stands dismissed.

Mr. Balaji Medamalli, Advocate for the Petitioner.
Mr.Raja Reddy Koneti, Advocate for the Respondent.

O R D E R

In a suit for permanent injunction, a petition was filed to bring on record the legal representatives of the defendant No.3, who died prior to filing of the suit. Thus, this Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree dated 21.12.2017 in I.A.No.2 of 2017 in O.S.No.124 of 2016, on the file of the Senior Civil Judge, Parchur, by which allowed the petition under Order 22, Rule 4 of CPC r/w Section 151 of CPC, to add respondent Nos.5 to 7 therein as defendants 5 to 7, being legal representatives of deceased respondent/ defendant No.3 and to amend the plaint.

2. The contention of the petitioners/ plaintiffs in the petition is that the plaintiffs purchased the suit schedule property in a Court auction conducted in E.P.No.16/1999 in O.S.No.62/1989 and that the defendants were interfering with their peaceful possession and enjoyment and thus they filed suit unaware of the death of defendant

No.3 and later, basing on the endorsement on the summons and notices of the Court, the plaintiffs came to know about the death of defendant No.3 and thus the present petition was filed to bring the legal representatives of deceased defendant No.3.

3. The petition was opposed by filing counters by respondent Nos.5 to 7, who are the proposed parties, stating that the plaintiffs have approached the Court with unclean hands and that since the suit is for permanent injunction, the petitioners should be aware of who is interfering with the possession and enjoyment and thus they filed a false case against these respondents with an intention to harass them and the petition is liable to be dismissed. It is further contended that the petitioners are not aware of the parties and thus surname was wrongly mentioned. It is also stated that they are not necessary parties, though they are the legal heirs of the deceased defendant/respondent No.3. It is further contended that the relief claimed in the present Revision Petition arises only when defendant No.3 dies pending the suit, but not when the death occurred before the institution of the suit.

4. The defendant Nos.1, 2 and 4 and the proposed defendants are represented by the same counsel, as can be seen from the docket proceedings dated 07.04.2017, in which it was recorded that the same counsel has filed vakalat for proposed parties as well.

5. After hearing both parties, the Trial Court allowed the petition and the Trial Court further opined that the proposed parties are the legal heirs of defendant No.3 and therefore they are necessary parties to the suit and to prevent multiplicity of proceedings, their presence is necessary for full and final determination of deceased. The Trial Court rejected the argument that if there is any interference by the proposed defendants, a separate suit can be laid by the plaintiffs. Having aggrieved by such order, the proposed defendant filed a revision petition. The 1st respondent is the plaintiff and respondent Nos.2 to 4 are defendant Nos.1, 2 and 4 respectively. Respondent Nos.2 to 4 are shown as necessary parties.

6. Learned counsel for the revision petitioners submitted that the defendant No.3 died prior to institution of the suit and when there is no cause of action against defendant No.3, the question of bringing the legal heirs of defendant No.3 doesn't arise and more particularly, when there is no cause of action as there is no averment that the proposed parties are also interfering with possession of the suit schedule property. He further contended that in a suit for injunction, the decree is binding on the parties to the suit, that is, decree is in "personam" but not in rem and for all these reasons, they need not be impleaded.

7. Learned counsel for the 1st respondent submitted that permanent injunction can be granted not just when interference in the possession is claimed, but it can be granted against the defendant enjoining from the assertion of right as stated under Section 37(2) of the Specific Relief Act, 1963,(for short 'the Act') and whereas, in the present case, it is not the contention of the proposed parties that they are not claiming or asserting any right over the property through the deceased defendant

No.3 and therefore, there is no force in the contention that they are not necessary parties for want of plea against them that they are also interfering with the possession. However, he further stated that the plea already taken in the plaint is sufficient against the proposed parties as well, since plural word 'defendants' is used in the plaint. For the same reasons, he further submitted that it is incorrect to state that there is no cause of action as against these proposed parties and that to avoid multiplicity of proceedings by filing another suit, they can be impleaded in the present suit.

8. As the defendant No.3 died before filing of the suit, the parties could be brought on record under Order I, Rule 10 of CPC, though not under Order 22, Rule 4 CPC. However, since the provision of law has not been under challenge either before the Trial Court or this Court, it may not be much necessary to dwell into that question. It is sufficient to say that the settled proportion of law is that mere wrong quoting of law is not a ground to reject any relief which otherwise can be granted. It is also not necessary to go into question whether it is necessary to bring legal representative of a defendant who died after institution of a suit for permanent injunction, as the defendant No.3 died before filing of this suit.

9. The main contention of the revision petitioners is that they are not necessary parties as there is no assertion against them that they are interfering with the possession of the suit schedule property. As rightly contended by the learned counsel for the 1st respondent, it is not mere assertion of interference with the possession of the property which gives cause of action to seek relief of perpetual injunction, but on the other hand, as Section 37(2) of the Act makes abundantly clear that such relief can be granted against the defendant preventing from 'assertion of a right' or from 'the commission of an act'. Therefore, though the decree for permanent injunction is granted in personam, a suit can be laid against the party seeking the decree to enjoining him from assertion of right. As such, there is no bar to implead the proposed parties on the contention that there is no plea against them about the interference with the possession. It may also be added that 'commission of an act' is most commonly pleaded in the form of 'interference with the possession' in suits for permanent injunction. Merely because it is a common plea taken, it is not the only ground to seek the relief of perpetual injunction as can be seen from the above referred provision. Their relationship with the 3rd defendant is not in dispute. So, they are her legal representatives stepping into her shoes on her death and they are necessary parties to the suit. Though the Trial Court has not exhaustively dealt with these aspects, the ultimate conclusion permitting them to be impleaded cannot be set aside. Thus, this Court does not see any reason to interfere with the impugned order.

10. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

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2022(2) L.S. 180 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Battu Devanand

Regional Manager ..Petitioner
Vs.
Nilapala Nageswaramma ..Respondent

MOTOR VEHICLES ACT - M.A.C.M.A.filed by the Appellant/ A.P.S.R.T.C. seeking to set aside the Order and decree passed in M.V.O.P., before Motor Vehicle Accidents Claims Tribunal - Along with the appeals, appellant filed I.A. seeking to condone the delay of 730 days and 873 days respectively in preferring the appeals.

HELD: Reasons stated for the delay are vague - It is clear that the appellant failed to show sufficient cause to condone the delay of 730 and 873 days in filing the appeals - In view of the dismissal of I.A. in the Appeals, the main M.A.C.M.A. stand dismissed.

Mr.Solomon Raju Manchala for APSRTC, Advocate for the Petitioner.

C O M M O N J U D G M E N T

1. M.A.C.M.A.Nos.32 and 33 of 2022 have been filed by the appellant/A.P.S.R.T.C. seeking to set aside the order and decree passed in M.V.O.P.Nos.57 and 71 of 2017 on the file of the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-III Additional District Judge, Bhimavaram, dated 30.7.2019.

2. Along with the appeals, the appellant filed I.A.No.1 of 2022 in both the appeals seeking to condone the delay of 730 days and 873 days respectively in preferring the appeals.

3. In I.A.No.1 of 2022 in M.A.C.M.A.No.32 of 2022, the petitioner is A.P.S.R.T.C./appellant and the respondent Nos.1 and 2 are the petitioners/claimants in M.V.O.P.No.57 of 2017.

4. In I.A.No.1 of 2022 in M.A.C.M.A.No.33 of 2022, the petitioner is A.P.S.R.T.C./appellant and the respondent Nos.1 to 3 are the petitioners/claimants in M.V.O.P.No.71 of 2017. The parties hereinafter will be referred to as arrayed in the MVOP.

5. Heard the learned counsel for the petitioner. Perused the material available on record.

6. Brief facts of the case are that:

i) In the first case, the claimants filed M.V.O.P.No.57 of 2017 on the file of the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-III Additional District Judge, Bhimavaram, claiming compensation of Rs.7,00,000/- for the death of the deceased i.e., Nilapala Baburao, who died in a motor accident that took place on 19.10.2016. The 1st claimant

is the wife and the 2nd claimant is the son of the deceased.

ii) In the second case, the claimants filed M.V.O.P.No.71 of 2017 on the file of the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-III Additional District Judge, Bhimavaram, claiming compensation of Rs.4,00,000/- for the death of the deceased i.e., Nilapala Baburao, who died in a motor accident that took place on 19.10.2016. The 1st claimant is the second wife and the 2nd and 3rd claimants are the daughters of the deceased.

iii) The Tribunal, after hearing both sides and upon appreciation of the oral and documentary evidence available on record, was pleased to allow the claim applications in part awarding compensation of Rs.7,99,000/- along with interest @ 9% per annum from the date of petition to till the date of payment with proportionate costs.

iv) The Tribunal held that respondent No.2 is directed to deposit the amount of compensation with proportionate costs and subsequent interest within two months from the date of the order to the credit of the matter. The Tribunal held that from the half share of amount of Rs.3,99,500/-, an amount of Rs.2,50,000/- with entire proportionate costs + proportionate subsequent interest thereon, including half share in the amount of loss of consortium shall be apportioned to the 1st petitioner in O.P.No.57 of 2017 and the same shall be released to her without depositing the same or part of the same in any Bank. The Tribunal held that balance amount of Rs.1,49,500/- with proportionate interest thereon shall be apportioned to 2nd petitioner in O.P.No.57 of 2017 and the same shall be released to him without depositing the same or part of the same in any Bank. The Tribunal further held that from the half share of amount of Rs.3,99,500/-, an amount of Rs.2,00,000/- with entire proportionate costs + proportionate subsequent interest thereon, including half share in the amount of loss of consortium shall be apportioned to 1st petitioner in O.P.No.71 of 2017 and the same shall be released to her without depositing the same or part of the same in any Bank. The Tribunal further held that from balance amount of Rs.1,99,500/-, an amount of Rs.1,00,000/- with proportionate interest thereon shall be apportioned to 2nd petitioner in O.P.No.71 of 2017 and the same shall be released to her without depositing the same or part of the same in any Bank. The Tribunal further held that the balance amount of Rs.99,500/- with proportionate interest thereon shall be apportioned to 3rd petitioner in O.P.No.71/2017 and the same shall be released to her without depositing the same or part of the same in any Bank and that the fee of the Advocate

for petitioners is fixed at Rs.10,000/-, which shall be divided equally in favour of petitioners in both the claim petitions.

7. Against the decree and award, dated 30.7.2019 in M.V.O.P.Nos.57 and 71 of 2017 passed by the Tribunal, the A.P.S.R.T.C/appellant, who is the 2nd respondent therein, filed the present appeals. Along with the appeals, the appellant filed I.A.No.1 of 2022 in both the appeals seeking to condone the delay of 730 days and 873 days respectively in filing the appeals.

8. In the affidavits filed along with I.A.No.1 of 2022 in both the appeals, the reasons stated by the appellant at para No.6 for the delay occurred in filing the appeals is extracted as under:-

> Para No.6 in I.A.No.1 of 2022 in M.A.C.M.A.No.32 of 2022: "I further humbly submit that after disposal of the claim petition filed by respondents 1 and 2 herein, our Panel Advocate informed us that the matter was allowed above the claim amount. Later, our counsel applied for certified copies and after going through the order and decree informed us that we have a good case and advised us to file an appeal. The certified copies were made ready as on 30.09.2019. Due to Covid-19 there is country wide lock down. Since there are two claim petitions arising out of the same accident, it took some time for the Management to take a decision for filing appeal. Thus there is a delay in filing the appeal which is neither willful nor wanton. A separate petition is filed to condone the delay in filing the appeal."

Para No.6 in I.A.No.1 of 2022 in M.A.C.M.A.No.33 of 2022: "I further humbly submit that after disposal of the claim petition filed by respondents 1 to 3 herein, our Panel Advocate informed us that the matter was allowed. Later, our counsel applied for certified copies and after going through the order and decree informed us that we have a good case and advised us to file an appeal. By the time, the Management took a decision to file an appeal, due to Covid-19 there is country wide lock down. In the meanwhile, there was change of standing counsels. Due to the same, it took some time for us to hand over the files to him. Thus there is a delay which is neither willful nor wanton. If the delay is not condoned, we will be put to irreparable loss and injury. A separate petition to condone the delay is filed. Thus the present appeal is filed."

9. Upon perusal of the above averments, in the considered opinion of the Court, the said affidavits are filed in a routine manner and the reasons stated for the delay are vague. It is clear that the appellant failed to show sufficient cause to condone the delay of 730 and 873 days in filing the appeals.

10. It is to be noted that the Tribunal, while passing the decree and award, dated 30.7.2019, directed the 2nd respondent therein (i.e.) A.P.S.R.T.C./ appellant to deposit the award amount along with interest

and costs within two months. But, till date the said amount is not deposited in the Tribunal below.

11. Upon perusal of the certified copy of the decree and award, dated 30.7.2019 in M.V.O.P.Nos.57 and 71 of 2017 issued by the Tribunal, it appears that the petitioner made application for certified copy on 01.08.2019 and 17.4.2021, respectively. The Tribunal delivered the certified copies on 30.09.2019 and 30.4.2021. The present appeals are filed on 29.12.2021. As such, it is clear that from the date of delivering the certified copy of the decree and award (i.e.) on 30.09.2019 in M.V.O.P.No.57 of 2017, the petitioner did not choose to file appeal till 29.12.2021 (i.e.,) for a period of more than two years. In M.V.O.P.No.71 of 2017, application for certified copy is not filed for more than 20 months. After delivering order on 30.4.2021 also, appeal is not filed for seven months. As seen from these factual aspects, there is a delay of 730 and 873 days in filing the appeals in the High Court against the decree and award of the Tribunal below.

12. As per admitted facts of the case, the accident occurred on 19.10.2016 wherein the husband of the 1st claimant in both the cases and father of the 2nd claimant and father of 2nd and 3rd claimants in both the cases died. The deceased was aged about 60 years at the time of accident. He is the sole breadwinner of the family. The claim applications were filed before the Tribunal below in the year 2017. The Tribunal passed award on 30.7.2019. Though the Tribunal awarded compensation on appreciation of the entire oral and documentary evidence available on record and after hearing both sides, the claimants could not get the compensation amount till date. Though the Tribunal directed the respondent No.2 therein to deposit the awarded compensation amount into the Court within two months from the date of award, it was not deposited till date. In view of the same, the claimants would have suffered irreparable loss and hardships due to sudden demise of the breadwinner of the family and there might be no support to sustain themselves. They did not get any benefit out of the decree and award passed by the Tribunal for all these years, due to action of the A.P.S.R.T.C. in not depositing the award amount within the time stipulated as directed by the Tribunal below.

13. The Motor Vehicles Act enacted to provide for expeditious relief to the victims of accident. The intention of the Parliament to enact the Motor Vehicles Act is to provide just and reasonable compensation for the victims and to protect their substantive rights. The loss or damage caused to the victims and their families has to be compensated within a reasonable time to entitle the victims to come out of the grief.

14. In the present case, the breadwinner of the family died in a motor vehicle accident on 19.10.2016. But, till date even after 5 years, the claimants/ victims did not get any compensation from the wrongdoers, who are responsible for the accident and who are liable to pay the compensation as determined by the Tribunal.

15. The reasons mentioned in the affidavit which were already extracted as above, clearly establish that there was abnormal delay in filing appeals and there is no proper explanation, as to why such huge delay had occurred. Though it was stated by the petitioner that the delay was neither willful nor wanton, but due to the reasons stated in the affidavits, the fact remains that due to Covid and administrative reasons, the A.P.S.R.T.C. could not prefer appeals in time by following due procedure as provided under law. Filing these appeals with a delay of 730 and 873 days without showing any sufficient cause is nothing but abusing the process of law and it will affect the interest of the claimants who are not in a position to get single rupee from the A.P.S.R.T.C./appellant even after 2½ years after passing order in favour of the claimants by the Tribunal on 30.7.2019. In the considered opinion of this Court, there is no sufficient cause shown by the petitioner/ appellant to condone the delay of 730 and 873 days in filing appeals and as such I.A.No.1 of 2022 in both the appeals is liable to be dismissed.

16. The view of this Court is fortified by the law laid down by the Hon'ble Apex Court in the following rulings:

17. In the case of Balwant Singh (died) v. Jagdish Singh (2010) 8 SCC 685: (2010) 3 SCC (Civ) 537) wherein the Hon'ble Apex Court held as hereunder:

> "25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.
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> 26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

18. In the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai (2012) 5 SCC 157: (2012) 3 SCC (Civ) 24) wherein the Hon'ble Apex Court held as hereunder:

> "23. What needs to be emphasised

is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

19. In the case of Brahampal @ Sammay and another vs. National Insurance Company (2021) 6 Supreme Court Cases 512) wherein the Hon'ble Apex Court held as hereunder:

The Court in the abovementioned cases, highlighted upon the importance introducing the concept of "reasonableness" while giving the clause "sufficient cause" a liberal interpretation. In furtherance of the same, this Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and the same is attributable to the party's inaction and negligence, the Courts have to take a strict approach so as to protect the substantial rights of the parties.

Undoubtedly, the statute has granted the Courts with discretionary powers to condone the delay, however at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of "sufficient cause". Although there exists no strait jacket formula for the Courts to condone delay, but the Courts must not only take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that, the Courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this Court shall refrain from exercising the aforesaid discretionary relief.

20. In the case of Office of Chief Post Master General and others vs. Living Media India Ltd. and another (2012 LawSuit (SC) 124) the Hon'ble Supreme Court while dealing with a petition filed for condonation of delay of 427 days after considering various decisions of the Hon'ble Supreme Court, observed as extracted hereunder:

> 12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.
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> 13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

21. In another case of The State of Madhya Pradesh and others vs. Bherulal

(2020 SCC OnLine SC 849), the Hon'ble Supreme Court of India while dealing with an application to condone the delay of 663 days, came down heavily, while dismissing the said application in as extracted hereunder:

> 6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.
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> 7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.
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> 8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner- State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

22. The Hon'ble Supreme Court in the case of Postmaster General and others vs. Living Media India Ltd. and another (1992 (3) SCC 563) wherein it is held as hereunder:

> "28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are

of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

23. The Hon'ble Supreme Court of India while dealing with an application to condone the delay of 916 days caused in preferring an appeal in case of University of Delhi vs. Union of India (UOI) and others (2020(1) ALT 230) held as hereunder:

20. From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation. In the case of Katiji (Supra) the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted

against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 per cent.

21. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the appellant is public body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law.

24. By following the proposition of law of the Hon'ble Apex Court, this High Court in Tahsildar, Mangalagiri Mandal vs. Mangalagiri Pattana Padmasali Bahutama Sangham, Rep. by its President, Mandru Venkateswara Rao and another (2021) 2 ALD 57), dismissed the application filed seeking condonation of delay of 1016 days holding that there is no sufficient cause for the condonation of such a huge delay.

25. This High Court in the case of M/s. Shriram General Insurance Company Limited vs. Gubbala Harish and others in M.A.C.M.A.No.440 of 2021 dismissed the application filed seeking condonation of delay of 1977 days holding that there is no sufficient cause for the condonation of such a huge delay.

26. This High Court in the case of M/s. Shriram General Insurance Company Limited vs. Papaganti Anusha and others in M.A.C.M.A.No.445 of 2021, dismissed the application filed seeking condonation of delay of 652 days holding that there is no sufficient cause for the condonation of such a huge delay.

27. This High Court in the case of The Oriental Insurance Company Limited vs. Magapu Venkata Lakshmi and others in M.A.C.M.A.No.4 of 2022, dismissed the application filed seeking condonation of delay of 867 days holding that there is no sufficient cause for the condonation of such a huge delay.

28. For the above mentioned reasons, this Court holds that there is no any "sufficient cause" for the condonation of delay of 730 and 873 days in filing the appeals.

29. Accordingly, I.A.No.1 of 2022 in both the appeals is hereby dismissed. 29. In view of the dismissal of I.A.No.1 of 2022 in both the appeals, the main M.A.C.M.A. Nos.32 and 33 of 2022 shall stand dismissed.

30. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in these appeals shall stand closed.

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2022(2) L.S. 190 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Venkateswarlu Nimmagadda

Tanneeru Koteswri & Ors., ..Petitioner
Vs.
V. Sridevi & Anr., ..Respondent

MOTOR VEHICLES ACT, Secs. 163-A, 140 & 141 - Appeal filed by the Claimants aggrieved by the award passed in M.V.O.P. on the file of Motor Vehicles Accidents Claims Tribunal.

HELD: Award of the Tribunal should be modified in view of the law laid down by the Hon'ble Apex Court in *Sarla Verma v. Delhi Transport Corporation, 2009 (6) SCC 121* wherein, Hon'ble Apex Court specifically observed that where the Claimants are more than two, the deduction in respect of personal expenses should be restricted to 1/4th of the monthly salary of the deceased - Since the deceased is aged about 34 years, appropriate multiplier should be applied is '17' - Fit case to enhance the compensation - Appeal stands allowed enhancing the compensation from Rs.2,97,000/- to Rs.7,68,500/- with interest at the rate of 9% per annum.

G.V. S. Mehar kumar, Advocate, for the Petitioners.

C. V. bhaskar Reddy, Advocate for the Respondents

M.A.C.M.A.NO.925/2014. Date:24.06.2022.

J U D G M E N T

Heard learned counsel for the appellants and learned counsel for the respondents.

2.The present appeal is filed by the claimants aggrieved by the award and decree dated 28.10.2011 passed in m.V.O.p.No.974 of 2009 on the file of the Chairman, motor Vehicles Accidents Claims tribunal-cum-VI Additional District judge, guntur (for short, 'the tribunal').

3.It is the case of the appellants that they filed m.V.O.p.No.974 of 2009, under Sections 163-A, 140 and 141 of the motor Vehicles Act (for short, 'the Act') read with Rules 455 and 476 of the A.p. motor Vehicles Rules claiming compensation of Rs.4,00,000/- for the death of tanneeru Vijaya bhaskar (hereinafter referred to as 'the deceased'), who died in a motor vehicle accident occurred on 22.06.2009 near Naidu buildings, Srisailam Road, macherla, due to rash and negligent driving of driver of DCm TATA (turbo) Lorry bearing No.AP-04-X-6404 belonging to the 1st respondent herein. the said vehicle was insured with the 2nd respondent. the 1st appellant is wife, 2nd appellant is son, 3rd appellant is daughter, 4th appellant is son, 5th appellant is mother and 6th appellant is father of the deceased.

4.Learned counsel for the appellants contended that the tribunal erred in awarding medical expenses of Rs.45,000/- against the claim of the appellants as Rs.1,30,000/-. Similarly, the tribunal also erred in restricting the claim amount, though it came

to a conclusion that the appellants are entitled for an amount of Rs.6,88,500/- under the head of general damages, due to claim of the appellants is Rs.2,45,000/- only, restricting the amount awarded under this head upto Rs.2,45,000/-, which is also against the judgment rendered by the Hon'ble Apex Court in ***Nagappa v. gurudayal Singh and others, (2003) 2 SCC 274*** wherein it is held at paragraph Nos.13, 16, 19, 20 and 21 as under:

> "13. Hence, as stated earlier, it is for the tribunal to determine just compensation from the evidence which is brought on record despite the fact that the claimant has not precisely stated the amount of damages of compensation which he is entitled to. If the evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that the claimant has restricted his claim. form 63 of the karnataka motor Vehicles Rules, 1989, which is for filing an application for compensation, does not provide that the claimant should specify his claim amount. It inter alia provides that he should mention his monthly income as well as the nature of injury sustained and medical certificates.
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> 16. from the aforesaid observations it cannot be held that there is a bar for the Claims tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.
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> 19. the aforesaid decision of the bombay High Court was relied upon and referred to by the Orissa High Court in ***mulla md. Abdul Wahid v. Abdul Rahim (1994 ACj 348 (Ori)*** and g.b.pattanaik, j. (as he then was) observed that the expression "just compensation" would obviously mean what is fair, moderate and reasonable and awarded in the proved circumstances of a particular case and the expression 'which appears to it to be just" vests a wide discretion in the tribunal in the matter of determining of compensation. thereafter, the Court referred to the decision in ***Sheikhupura transport Co.Ltd v. Northern India transport Insurance Co. ((1971) 1 SCC 785)*** and held that the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture, and if this is so, then it will be unreasonable to expect the party to state precisely the amount of damages or compensation that it would be entitled to. the Court also held that there are no fetters on the power of the tribunal to award

compensation in excess of the amount which is claimed in the application.

20. Similarly, the High Court of punjab and Haryana in ***Devki Nandan bangur v. State of Haryana (1995) ACj 1288 (p&H)***) observed that the grant of just and fair compensation is the statutory responsibility of the court and if, on the facts, the court finds that the claimant is entitled to higher compensation, the court should allow the claimant to amend his prayer and allow proper compensation.

21. for the reasons discussed above, in our view, under the mV Act, there is no restriction that the tribunal/ court cannot award compensation amount exceeding the claimed amount. the function of the tribunal/ court is to award "just" compensation which is reasonable on the basis of evidence produced on record. further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the mV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

5. He further contended that the other finding of the tribunal that the minors are not entitled for any compensation is also against the settled principles of law and object of the provisions of the Act. Hence, in view of the judgment stated above, the awarded amount can be enhanced if the appellants are entitled even more than the claim amount. In view of the settled principles, the award passed by the tribunal shall be modified and to be awarded as per their entitlement even if it is more than the claim of the appellants and out of the said awarded amount, the minors can be also entitled equal shares on par with other appellants.

6.Learned counsel for the 2nd respondent appeared and contended that the tribunal, after considering all the aspects put forth before it, passed the award as per the claim of the appellants only and they cannot be entitled for more than the amount claimed by them under the head of general damages. therefore, the present appeal is liable to be dismissed.

7.The tribunal, after considering the evidence and material available on record, passed the award dated 28.10.2011, wherein it awarded an amount of Rs.45,000/- under the head 'medical expenses' against the claim of Rs.1,30,000/- since the deceased underwent treatment after suffering injuries and thereafter, he succumbed to death. Similarly, the appellants claimed Rs.10,000/- under the head 'funeral expenses' but the tribunal awarded an amount of Rs.2,000/- under this head and the appellants also claimed Rs.15,000/- under the head 'loss

of consortium' but the tribunal awarded an amount of Rs.5,000/- only under this head. finally, in total, under the head 'special damages' the tribunal awarded an amount of Rs.52,000/- against the claim of Rs.1,55,000/-. the tribunal, as per the evidence of pW.1 and salary certificate of the deceased, taken into consideration the income of the deceased as Rs.4,500/- per month. It is observed by the tribunal that the post-mortem report and inquest report, which are marked as Exs.A.4 and A.5, shown the age of the deceased as '34' years. therefore, the tribunal, by considering the age of the deceased, applied the appropriate multiplier '17'. the tribunal awarded an amount of Rs.2,29,500/- under the head 'general damages'. therefore, the total amount awarded by the tribunal is Rs.2,81,500/-. It is also observed by the tribunal that in view of the monthly salary of the deceased, if 3/4th multiplier is applied instead of 1/4th, the appellants are entitled to an amount of Rs.6,88,500/- under the head 'general damages' but since the claim of the appellants is only Rs.2,45,000/-, the amount to be awarded is also restricted to the claim of Rs.2,45,000/- only. but in view of the order dated 24.09.2012 in I.A.No.832 of 2012, which was allowed amending the claim, the award amount was enhanced to the tune of Rs.2,97,000/- and also awarded interest at the rate of 7.5% per annum. the tribunal further directed respondent Nos.1 and 2 to deposit the said amount within 30 days from the date of the order and appellant Nos.1, 5 and 6 are entitled to withdraw an amount of Rs.50,000/- each upon deposit of amount by respondent Nos.1 and 2 and the rest of the claim is dismissed. the tribunal also observed that appellant Nos.2 to 4, who are minors, are not entitled for any compensation, which is against object of the Act.

8.Having considered the contentions of the learned counsel for the appellants as well as 2nd respondent, this Court is of the view that the award of the tribunal should be modified in view of the law laid down by the Hon'ble Apex Court in ***Sarla Verma v. Delhi transport Corporation, 2009 (6) SCC 121*** wherein the Hon'ble Apex Court specifically observed that where the claimants are more than two, the deduction in respect of personal expenses should be restricted to 1/4th of the monthly salary of the deceased. If this principle is applied, the contribution of the deceased to the family members comes to Rs.3,375/- per month and per annum, it comes to Rs.40,500/-. Since the deceased is aged about 34 years, appropriate multiplier should be applied is '17'. If '17' multiplier is applied, the amount to be awarded under the head 'general damages' is comes to Rs.6,88,500/-. the said entitlement of amount is more than the claim of the appellants. though the appellants/claimants claimed Rs.4,00,000/- towards compensation, in view of the law laid down by the Hon'ble Apex Court in Nagappa's case (supra 1), just and reasonable compensation can be awarded.

9.In view of the reasons and circumstances stated above, it is a fit case to enhance the compensation from Rs.2,45,000/- to Rs.6,88,500/- under the

head of general damages. medical expenses can be enhanced from Rs.45,000/- to 50% of the claimed amount of Rs.1,30,000/- i.e., Rs.65,000/-; loss of consortium can be enhanced from Rs.5,000/-to Rs.10,000/- and funeral expenses can be enhanced from Rs.2,000/- to 5,000/-. therefore, the appellants will be entitled to the total compensation, which is as follows:—

General damages	Rs.6,88,500/-
Medical expenses	Rs. 65,000/-
Loss of consortium	Rs. 10,000/-
Funeral expenses	Rs. 5,000/-
Total:	Rs.7,68,500/-

10.Thus, in all, the appellants are entitled to a total compensation of Rs.7,68,500/- with interest at the rate of 9% per annum from the date of petition till the date of realisation.

11.Accordingly, the Appeal is allowed enhancing the compensation from Rs.2,97,000/- to Rs.7,68,500/- with interest at the rate of 9% per annum from the date of petition till the date of realisation and both the respondents are jointly and severally liable to pay the compensation. there shall be no order as to costs.

12. Consequently, miscellaneous petitions, if any, pending in this Appeal shall stand closed.

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2022 (2) L.S. 35 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Dr.Justice
Chillakur Sumalatha

Gone Narasimha Reddy ..Petitioner
Vs.
Gone Bala Reddy & Ors., ..Respondents

CIVIL PROCEDURE CODE - LIMITATION ACT, Sec.5 -Suit for partition and separate possession - Revision petition, challenging the dismissal of I.A. filed before the trial Court seeking to condone the delay of 790 days in filing a petition to set aside the exparte decree that was passed against revision Petitioner/Defendant No.2. – Petitioner contended that after filing of the suit, a family settlement was arrived and during the family settlement the 1st respondent/Plaintiff stated that he would withdraw the suit and having believed the words of 1st respondent, the revision petitioner did not pursue the matter and, thereafter, came to know that the 1st Respondent/Plaintiff proceeded with the matter and the suit was ultimately decreed.

HELD: Delay is not very short - Established proposition of law is that when the delay is inordinate, there is every requirement on the part of the applicant, who seeks to condone the said delay, to satisfy the Court with cogent and convincing reasons that the said delay is due to sufficient cause and based on genuine ground - No such cause or ground which can be termed to be a sufficient cause - Revision petition stands dismissed.

Mr.O.Manohar Reddy, Advocate for the Petitioner
M.Radha Krishna for P.Subba Rao, Advocate for the Respondent.

O R D E R

Heard the submission of Sri O.Manohar Reddy, Advocate who argued on behalf of the revision petitioner, and also heard the submission of Sri M.Radha Krishna, Advocate, who argued on behalf of Sri P.Subba Rao, learned counsel on record for respondent No.1. No representation on behalf of other respondents.

2. Challenge in this revision petition is the order that is rendered by the Court of III Additional District Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.764 of 2014 in O.S.No.519 of 2008, dated 14.10.2016.

3. The revision petitioner herein is the defendant No.2 to the suit. He filed an interlocutory application vide I.A.No.764 of 2014 under Section 5 of the Limitation Act seeking the Court to condone the delay of 790 days in filing a petition to set aside the exparte decree that was passed against him. The said Interlocutory Application stood dismissed vide order dated, 14.10.2016. Aggrieved by the same, the revision

petitioner is before this Court.

4. Submitting his contentions at length in respect of the merits of the case, learned counsel for the revision petitioner contended that the order of the Court below is erroneous and the Court below was under an obligation to condone the delay, but it did not do so even when sufficient cause was shown and the property involved is a prime property of Ac.7.00 and odd and the attitude of the Court below has resulted in grave injustice to the revision petitioner and, therefore, the revision petitioner is before this Court.

5. The learned counsel further submitted that the suit is for partition and separate possession of the suit schedule property. The revision petitioner and the plaintiff to the suit are related to each other and, indeed, after filing of the suit, a family settlement was arrived at between both of them in the presence of elders and during the family settlement the 1st respondent/ plaintiff made a statement that the suit was filed under the pressure of his family members and that he would withdraw the suit and having believed the words of 1st respondent, the revision petitioner did not pursue the matter and, thereafter, he came to know that the 1st respondent/plaintiff proceeded with the matter and the suit was ultimately decreed. The learned counsel further submitted that in case the delay is not condoned, the revision petitioner would be put to severe loss and hardship and though the real facts were projected before Court below, the Court passed an adverse order. Stating that there is every obligation on part of the trial Court to dispose of the suit on merits and passing of exparte decree is not justifiable, learned counsel for the revision petitioner relied upon the decision of the Hon'ble Apex Court in a case between *Robin Thapa vs. Rohit Dora, reported in Civil Appeal No.4507 of 2019 (Arising out of S.L.P. (C) No.35428 of 2017),* wherein the Hon'ble Apex Court at para 8 of the order held as follows:

> Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the Plaintiff or the Defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

6. A perusal of the affidavit filed by the revision petitioner for condonation of delay goes to show that after filing of the suit, the elders and villagers advised the revision petitioner and defendant Nos.1 and 2 to the suit not to create litigation and the plaintiff to the suit admitted before them that he filed the suit due to the pressure from his family members and that he would withdraw the suit and, therefore, he was under an impression that the plaintiff would withdraw the suit as per his promise. It is also narrated that in the first week of February, 2014 the revision petitioner came to know about passing of an exparte decree and again he approached the elders and revealed the said fact and that the plaintiff appeared before the elders and expressed his inability for not pressing the above suit. Thus, the version of the revision petitioner for non-pursuing of suit is due to the promise made by the plaintiff to the suit that he would withdraw the suit.

7. Learned counsel for the revision petitioner, as earlier narrated, made a submission that the revision petitioner should not be put to loss as he was not at fault.

8. Making his submission, learned counsel for respondent No.1, who is the plaintiff to the suit, brought to the notice of this Court the copies of the certified copies that are filed by the revision petitioner herein before this Court. Referring to the said copies, learned counsel for respondent No.1 submits that when the judgment was rendered on 29.03.2012, the revision petitioner filed a copy application on the very next day i.e., on 30.03.2012 and the certified copy was delivered on 25.04.2012. Learned counsel for respondent No.1 also submitted that to obtain a certified copy of the decree, copy application was filed on 30.03.2012 by the revision petitioner, however, he obtained the certified copy of the decree on 25.04.2012. By brining to the notice of the Court the aforementioned fact, the learned counsel submits the narration of the revision petitioner, in the affidavit filed in support of this petition, that he came to know about passing of exparte decree in the month of February, 2014 is false and, therefore, the relief sought for cannot be granted.

9. The learned counsel also submitted that when false plea is taken and the Court is misled, the relief sought for by the party could not be granted. In this regard, the learned counsel for respondent No.1 relied upon a decision of the Hon'ble Apex Court in a case between *Balwanth Singh (dead) vs. Jagdish Singh and Others reported in (2010) 8 Supreme Court Cases 685*, wherein the Hon'ble Apex Court, making observation with regard to the factual scenario of the said case and the averments in the affidavit filed in support of the petition therein, at para 9 held as follows :

> It is clear form a bare reading of the above paragraph that the applicants were totally callous about pursuing their appeal. They have acted irresponsibly and even with negligence. Besides this, they have not approached the Court with clean hands. The applicant, who seeks aid of the Court for exercising its discretionary power for condoning the delay, is expected to state correct facts and not state lies before the Court. Approaching the Court with unclean hands itself is a ground for rejection of such application."

10. Making a statement that the certified copies that were referred to by the learned counsel for respondent No.1/plaintiff were not obtained by the revision petitioner herein, the learned counsel for the revision petitioner submitted that application for obtaining the certified copies might have been filed by the other defendants i.e., defendants Nos.3 and 4 to the suit and the revision petitioner herein might have obtained those certified copies from those parties. Such an averment is not made in the affidavit filed in support of the petition. That apart, even if the contention of learned counsel for the revision petitioner in that regard is presumed to be true and correct, that statement would patently go to show that the revision petitioner, who is the second defendant to the suit, was in touch with the other defendants i.e., defendants Nos.3

and 4, who were pursuing the matter. Therefore, nothing might have prevented the revision petitioner/defendant No.2 to contact those defendants to verify and to ascertain whether the suit was withdrawn or not pressed by the plaintiff.

11. When the order, which is under challenge, is gone through, this Court finds that the learned Judge of the trial Court had gone through the stand taken by the parties to the proceedings, discussed at length with regard to the law involved and came to a just conclusion. The delay is not very short. The delay is 790 days. The established proposition of law is that when the delay is inordinate, there is every requirement on the part of the applicant, who seeks to condone the said delay, to satisfy the Court with cogent and convincing reasons that the said delay is due to sufficient cause and based on genuine ground. This Court does not find projection of such a cause or ground which can be termed to be a sufficient cause. Consequently, this Court does not find any abnormality or infirmity in the impugned order. Therefore, this Court concludes that the revision petition lacks merits and deserves dismissal.

12. Resultantly, the revision petition is dismissed. No costs.

13. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

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2022 (2) L.S. 38 (T.S)

IN THE HIGH COURT OF TELANGANA

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

Sumana Paruchuri ..Petitioner

Vs.

Jakka Vinod Kumar Reddy ..Respondent

CRIMINAL PROCEDURE CODE, Sec.482 - COMPANIES ACT, 2013, Sec.447 - Petitions are filed to quash the proceedings in C.C. - Petitioners are A1/Father and A2/Daughter.

HELD: As per Sec.212(6) of the Companies Act, 2013, there is a bar for taking cognizance of the case for the offence u/Sec.447 of the Companies Act - Fit case to exercise the inherent powers u/Sec.482Cr.P.C. to quash the complaint - Filing of the complaint after twenty years alleging fabrication from the year 2002 onwards would only show that it was filed with a malafide intention to take revenge against Petitioner - Criminal Petition stand allowed by quashing the proceedings against the Petitioners in C.C.

T.Jayant Jaisoorya, Advocate for the Petitioner.
Mogili Anaveni, Advocate for the Respondent.

C O M M O N O R D E R

Both these petitions are filed by the petitioners under Section 482 of the Code of Criminal Procedure to quash the proceedings in C.C. No. 31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad. The petitioners are accused No. 1 and 2 in C.C. No. 31 of 2021 and they are none other than father and daughter respectively by relation. Since the subject matter in both the petitions is one and the same, I am inclined to dispose of both the petitions by this Common Order.

2. The case of the petitioners in brief was that, the petitioner in Criminal Petition No.8025 of 2021 was the estranged wife of respondent No.1 and daughter of respondent No.2. The respondent No.1, through his General Power of Attorney Holder, lodged a private complaint against her and the respondent No.2 before the VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad, for the offences under Sections 447, 448 and 451 of the Companies Act 2013, and Sections 628 and 629A of the Companies Act 1956 and Sections 405, 415, 420, 425, 464, 468, 471 and 120(B) of the Indian Penal Code.

2.1 As per the complaint, the complainant i.e. respondent No.1 and his brother late Mr. Jakka Venkatram Reddy incorporated a Company under the name and style of M/s Peregrine Agro Private Ltd., on 17.01.1997 under the provisions of the Companies Act. At the time of incorporation, the Company had an authorized share capital of Rs.10,00,000/- divided into 1,00,000 shares of Rs.10/- each. The complainant and his brother late Mr. Jakka Venkatram Reddy were promoters/directors and each of them held 99% equity shares of the Company. On 13.03.1997, a huge tract of land was purchased in the name of the Company at Bonthavaripalli revenue village through three registered sale deeds. The complainant and his brother contributed an amount of Rs.6,30,000/- from their family savings towards purchase of the said land, which was reflected in the books of account as Share Capital Money of the Company for the financial year 1996-97. The complainant's brother late Mr. Jakka Venkatram Reddy was looking after the affairs of the Company. The name of the Company thereafter was changed to Peregrine Aids Remedies Private Ltd., Accused No.1 was having a marital discord with her husband Mr. Srinivas Paruchuri right from the time they were living together in USA, which culminated in several legal proceedings between them in India, and eventually on 14.08.2007, she got divorce from Mr. Srinivas Parchuri.

2.2 In June 2002, accused No.1 came back from USA and stayed as a tenant in a portion of the building constructed in plot No.974, road No.49, Jubilee Hills, Hyderabad, which was owned by the family of the complainant. The complainant was divorced and living in the same building with his mother and minor daughter from his first marriage. Around 2010, the complainant's brother Mr. Jakka Venkatram Reddy was diagnosed with colon cancer and started

undergoing treatment. Since the brother of the complainant was critically ill, and the complainant was busy, the affairs of the Company were getting neglected. Accused No.1 induced the complainant to induct her as a Director in the Company and promised to look after the Company. Believing her representation, the complainant agreed to induct her as an additional director in the Company. For the said purpose, accused No.1 asked the complainant to sign on various documents including blank sheets of papers on the ground that several documents might need his signature and she did not want complainant to be disturbed frequently. Believing her representation, the complainant and his brother signed on all the documents presented before them by accused No.1 in good faith. On false representation accused No.1 also obtained digital signature of the complainant.

2.3 Since the brother of the complainant was totally bed ridden due to cancer, he resigned as a Director of the Company on 22.10.2010. In the meanwhile, the complainant and accused No.1 got married on 25.06.2011. Accused No.1 was appointed as Director of the Company on 30.09.2011. The complainant's brother expired on 13.11.2013 due to cancer. The marriage between the complainant and accused No.1 never worked out and totally broke down irreparably. Since 2014, the complainant and accused No.1 were living separately. The complainant on observing that original title deeds of his properties at Bangalore were missing, filed a police complaint before the Police Station Jubilee Hills, Hyderabad, on 03.01.2015 and got a public notice published in the Newspapers dated 05.01.2015. The accused No.1, the brother of accused No.1 Mr. Nekkanti Madhukar and three others made an illegal attempt to trespass into the property of the complainant at Bangalore on 01.04.2015. As such, the complainant filed a complaint vide Crime No.121 of 2015 for criminal trespass on 01.04.2015. The complainant filed a civil suit for injunction vide O.S. No.499 of 2015 before the III Additional Civil Judge, Bangalore Rural, against accused No.1, her brother and three others. Accused No.1 in her written statement claimed that the original documents of title pertaining to the complainant's property were in her custody. The complainant came to know that accused No.1 had intentionally stolen the important documents from the custody of the complainant. For the purpose of building up sports career of his daughter Miss J. Vaishnavi Reddy (from his previous marriage) in Badminton, who was World No.2 in Junior Badminton representing India, on 17.02.2016 the complainant shifted to Thailand with his daughter and mother. He came to India to depose his evidence as PW.4 in O.S. No.499 of 2015 on 17.10.2019. The matter was adjourned to 18.11.2019 for his cross-examination. In anticipation that the complainant would come back for cross-examination, accused No.1 on 14.11.2019, filed a false criminal complaint against the complainant, his mother and his sister-in-law before the Police Station, Jubilee Hills, Hyderabad. The police registered the same as Crime No.742 of 2019 under Sections 406, 420 and 120-B IPC.

2.4 The relationship between the complainant and accused No.1 got

worsened. The complainant was out of India most of the time. To his shock, he learned that accused No.1 illegally made major changes in the management and shareholding of the Company. On enquiry with the Registrar of the Companies, the complainant came to know that accused No.1 in active conspiracy and in collusion with her father i.e. accused No.2 (petitioner in Criminal petition No.8024 of 2021) had forged, fabricated and manipulated documents, Forms, Annual Reports and various other financial documents of the Company. Accused Nos. 1 and 2 forged and fabricated the Board Resolutions and various other statutory documents and Forms and uploaded the same on the website of the ROC. The website was showing that accused No.1 was issued 63,000 shares of the Company way back in the year 2000, when she was not even in India, to render the complainant a minority shareholder and to illegally usurp the management of the Company. Accused No.1 illegally appointed her father as an Additional Director on 09.10.2014 and thereafter as a Director of the Company on 30.09.2015.

2.5 The complainant initiated divorce proceedings vide O.P. No.202 of 2020 against accused No.1 before the Family Court, Hyderabad. The complainant had not attended Annual General Body Meetings and alleged Board Meetings held on 22.06.2016, 06.09.2016, 22.11.2016, 15.01.2017, 24.03.2017, 25.06.2017, 05.09.2017, 12.12.2017 and 03.03.2018. He was not in India on all the said dates. However, in the Annual Returns, it was shown that he had attended the aforesaid Board Meetings, which were ex facie false. The said documents and returns were only signed by accused No.1. The complainant was not even sent a notice with regard to the said meetings. Accused Nos. 1 and 2 falsified records and played fraud not only with the complainant but also with the Registrar of the Companies. They were involved in various irregularities and violated statutory provisions and committed the offences of cheating, forgery, criminal breach of trust, criminal misappropriation, fraud using forged documents as genuine etc. The entire exercise was undertaken by accused Nos. 1 and 2 to usurp the property.

2.6 The petitioner in Criminal Petition No.8025 of 2021 filed a complaint which was registered as Crime No.488 of 2020 in Police Station, Jubilee Hills, against the respondent No.1 for the offences under Sections 498-A and 506 IPC, SectionSs4 and 6 of Dowry Prohibition Act 1961, and Section 30 of Arms Act alleging that the respondent No.1 had threatened her with a gun. She further contended that the complaint against her would amount to an abuse of the process of the Court, which was evident from the multiple proceedings initiated by respondent No.1 before multiple forums for the same cause of action. She contended that the respondent No.1 filed O.S. No. 499 of 2015 before the III Additional Civil Judge, Bangalore Rural and he got registered Crime No.131 of 2015 dated 01.04.2015 making allegations of trespass into the property. He filed Company Petition No.431/HDB/2020 before the National Company Law Tribunal, Hyderabad, under Sections 59, 241, 242 and 245 of Companies Act 2013, seeking declaration that allotment of 63,000 equity shares in

favour of the petitioner as void, illegal and arbitrary; and to direct the Registrar of Companies to prosecute the petitioner and respondent No.2 for "fraud and cheating."

3. The learned counsel for the petitioners contended that the Company (PARPL) was not arrayed as an accused though the allegations were made against the Company that the Company had forged, fabricated and manipulated the documents, forms, Annual Reports of PARPL and uploaded in the ROC website and was alleged that 63,000 shares of PARPL were issued illegally to render the respondent No.1 a minority shareholder and to usurp the management of PARPL.

3.1 He further contended that as respondent No.1 failed to array PARPL as a party to the proceedings, as such, the Economic Offences Court could not pass any orders in relation to allegations of forgery and fabricated documents being uploaded to the ROC website.

3.2 He further contended that Economic Offences Court was barred from taking cognizance of complaint under Section 447 of the Companies Act 2013, in view of section 212(6) of the Companies Act, as the complaint was to be made in writing by the Director, Serious Fraud Investigation Office or any officer of the Central Government authorized by a general or special order in writing in that behalf by that Government, as per the above provision.

3.3 He further contended that respondent No.1 was merely a private party, and no complaint was made by the Serious Fraud Investigation Office or any officer of the Central Government. He further contended that the dispute in the present complaint was being dealt with by the National Company Law Tribunal in Company Petition No.431/HDB/2020, and the Economic Offences Court by taking cognizance and initiating parallel investigation on the same issue, gave rise to concurrent proceedings in different forums.

3.4 He further contended that the allegations made out in the complaint even if taken on their face value, would not prima facie constitute any offence or make out a case against the petitioners and prayed to quash the proceedings in C.C.No. 31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad.

4. The respondent No.1 filed counter affidavit contending that the petitioner had concealed the fact that the cognizance of the complaint was taken as per the orders of this Court in Criminal Petition No.222 of 2021 though it was well within his knowledge as the copy of the order was served on the advocate on record on 22.10.2021, which was on record. The doctrine of comity or amity of Courts would demand that Courts would take a consistent and uniform approach towards administration of justice by taking adequate care to ensure elimination of conflicting orders. He contended that as per Section 439(2) of the Companies Act 2013, the complaint could be made by the Registrar, a shareholder (or a member) of the Company, or of a person authorized by the Central Government. The complaint was made by the respondent No.1 in the capacity of a

shareholder as per the Companies (Amendment) Act 2017, which came into force vide Gazette Notification dated 03.01.2018. The petitioner in Criminal Petition No.8025 of 2021 was taking contradictory stands before different Courts/ Forums for her self-serving purposes. On one occasion, in the police complaint lodged by the petitioner against the respondent No.1, and his mother, the petitioner levelled grave allegations and claimed that their relationship was very bad and that she was beaten up, threatened, illtreated, and all the said atrocities were committed upon her for dowry, which her father was forced to arrange. However, on the other hand, before the National Company Law Tribunal she claimed that their mutual relationship was so good and the respondent No.1 was so benevolent to make her father a Director of the Company. The stands taken by the petitioner were diagonally opposite to each other. On oath before a Court of Law, the petitioner deposed that she came to India in June 2002 and met respondent No.1 for the first time in August 2002, which would completely falsify her claim of having purchased 63,000 equity shares in the Company on 01.03.2000 by paying cash of Rs.6,30,000/-, which would show that her entire claim was bogus and fraudulent.

4.1 The respondent No.1 further contended that he was not acquainted with the petitioner or any of her family members before August 2002. The petitioner had not filed any document or any communication (e-mail or phone) or any receipt of cash payment for having purchased a Company by paying cash in the year 2000. She was estopped by principle of election from blowing hot and cold before different Courts. The petitioner and respondent No.2 (petitioner in Criminal Petition No. 8024 of 2021) colluded together to cause undue gain to themselves at the cost of respondent No.1 and the Company and resorted to criminal acts of forgery, fabrication, cheating, fraud etc. They mismanaged the affairs of the Company and uploaded Board Resolutions on the website of Ministry of Corporate Affairs. She issued 63,000 shares of the Company to herself to render the respondent No.1 a minority shareholder and to illegally usurp the management and properties of the Company. She illegally appointed her father as an Additional Director on 09.10.2014 and thereafter as a Director on 30.09.2015. The entire conspiracy was engineered with the sole purpose of ousting the respondent No.1 from any involvement in the affairs of the Company.

4.2 The respondent No.1 further contended that the petitioner illegally and dishonestly misused the blank signed papers obtained by her from him and his late brother to show that she had bought 63,000 shares of the Company in the year 2000 in an alleged Board Meeting on 01.03.2000. The petitioner got created an agreement of sale dated 14.08.2004 as executed between M/s. Peregrine Aids Remedies Private Ltd., and M/s. Tanushree Enterprises Private Ltd., (the petitioner and her former husband Mr. Srinivas Paruchuri were Directors of the said Company) pertaining to purchase of property admeasuring Ac.186.46 cents of dry land owned by M/s Peregrine Agro Private Ltd., for a sum of Rs.3,74,00,000/-. Indeed if the petitioner had become 99% shareholder in

M/s Peregrine Agro Private Ltd., on 01.03.2000, there was no reason or occasion to purchase the same land in which she was Director, which would expose falsity of her claim. The said transaction was subject of Crime No.143 of 2006 dated 06.10.2006 at Police Station, Central Crime Station, Hyderabad, lodged by Mr. Srinivas Paruchuri (former husband of the petitioner) for the offences under Sections 409, 420, 506, 120-B IPC. The police after investigation filed a final report before the XII Additional Chief Metropolitan Magistrate, Hyderabad, on 29.09.2006 as civil in nature. The final report was accepted by the Court and closed the case.

4.3 The respondent No.1 further contended that he filed a complaint against the petitioner with the Registrar of Companies, upon which, a notice was issued to the petitioner and in her reply to the said complaint, the petitioner admitted that she had no knowledge of E-filing various forms pertaining to the statutory compliances of the Company and her Secretary and staff had filed the returns and committed error. Thus, the petitioner attributed all the shortcomings, falsifications etc., upon her Auditors, while the Chartered Accountant claimed otherwise. He finally prayed to dismiss the petition.

5. Heard learned Counsel for the petitioner Sri T. Jayant Jaisurya, and Sri Diljit Singh Ahluwalia representing Smt. Avula Krishnaveni, Counsel on record for respondent No.1.

6. The petitioner was alleged to have committed the offences under Sections 447, 448 and 451 of the Companies Act, 2013, Sections 628 and 629-A of the Companies Act, 1956 and Sections 405, 415, 420, 425, 464, 468, 471 and 120-B IPC. The Economic Offences Court had not taken cognizance of the offences under Sections 628 and 629A of the Companies Act, 1956. Hence, the said offences are not a matter of consideration in these petitions.

7. Section 447 of the Companies Act, 2013 deals with punishment for fraud. It reads as follows:

"**447. Punishment for fraud:—**

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever

is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both."

Section 448 of the Companies Act, 2013 is punishment for false statement. It reads as follows:

"**448. Punishment for false statement:-**

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447."

Likewise Section 451 of the Companies Act, 2013 deals with punishment in case of repeated default. It reads as follows:

"**Section 451. Punishment in case of repeated default:**

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence."

8. A reading of the provisions of the Companies Act, 2013 would show that Chapter XXIX prescribes punishment for offences such as fraud, false statement, false evidence and withholding of property under Sections 447, 448, 449 and 452. The punishment for fraud involving an amount of atleast Rs.10,00,000/- or 1% of the turnover of the company, is imprisonment for a term which may extend to 10 years. The offence of fraud in relation to the affairs of a company is considered to be a grave offence.

9. Chapter XIV of the Companies Act, 2013 deals with inspection, enquiry and investigation. Under Section 210 of the Companies Act, 2013 investigation into the affairs of the company can be undertaken. Section 211 contemplates establishment of Serious Fraud Investigation Office (SFIO), which is to be headed by a Director and consists of experts with ability, integrity and experience in fields like Banking, corporate affairs, taxation, forensic audit, capital market, information technology, law or such other fields. Section 212 of the Companies Act, 2013 empowers the Central Government to assign the investigation into

the affairs of a company to SFIO. Upon such assignment, the Director of SFIO may designate such number of Inspectors under Sub-section (1) and shall cause the affairs of the company be investigated by an Investigating Officer under sub-Section (4). On completion of investigation, the SFIO is to submit the investigation report to the Central Government. The report under Sub-Section (12) may lead to further follow up actions. On receipt of the said Investigation Report, the Central Government may direct SFIO to initiate prosecution against the company.

10. The contention of the learned counsel for the petitioner was that there was a bar of taking cognizance of the offence under Section 212 (6) of the Companies Act, 2013 in the absence of complaint from the Central Government. Under Section 212 (6) of the Companies Act, 2013, the Economic Offences Court could take cognizance of the offences under Section 447 of the Companies Act, 2013 only by a complaint filed in writing by the Director, SFIO or to any of the Officer of the Central Government authorized in writing in that behalf by that Government. The Economic Offences Court took cognizance of the complaint even though it was not made by the categories of persons prescribed under Section 212 (6) of the Companies Act, 2013 hence, the same was not maintainable.

11. The contention of the learned counsel for the respondent No.1 was that Section 212 of the Companies Act, 2013 was applicable only to the investigation into the affairs of the company by SFIO and the assignment of the same by the Central Government. Under Section 439 of the Companies Act, 2013, the Court could take cognizance of any offence including Section 447 so long as the SFIO had not been assigned the investigation by the Central Government under Section 212 of the Companies Act, 2013.

12. In view of the rival contentions of the learned counsel for both the parties, it is considered necessary to extract the provisions under Section 212 and 439 of the Companies Act, 2013.

13. Section 212 of the Companies Act, 2013 reads as under:

> "**Section 212: Investigation into affairs of Company by Serious Fraud Investigation Office:-**
>
> (1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—
>
> (a) on receipt of a report of the Registrar or inspector under section 208;
>
> (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
>
> (c) in the public interest; or
>
> (d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the

said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud

Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in subsection (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(8) If any officer not below the rank of Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in subsection (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The officer authorised under sub-section (8) shall, immediately after arrest of such person under such subsection], forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the

company or any other person directly or indirectly connected with the affairs of the company.

(14A) Where the report under sub-section (11) or subsection (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law."

14. Section 439 of the Companies Act, 2013 reads as under:

"**Section 439. Offences to be non-cognizable:-**

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (*6*) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(2) No court shall take cognizance

of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder, or a member of the company, or of a person authorised by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and nonpayment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(*3*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (*2*) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(*4*) The provisions of sub-section (*2*) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

Explanation.—The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (*2*)."

15. Under Chapter XXVIII of the Companies Act, 2013 establishment of Special Courts and the offences triable by Special Courts are prescribed under Sections 435 and 436 of the Companies Act, 2013. The act gives a comprehensive procedure as to who has to conduct the investigation and how the investigation has to be conducted and deal with the procedure, powers as well as form. A specialized Investigating Agency is established which is empowered to investigate the offences. The offences under Companies Act, 2013 are deemed to be cognizable, except the offences covered under Section 447 (punishment for fraud). The complainants under the Companies Act are restricted to include only Registrar of Companies, a shareholder/member of the company or any person authorized by the Central Government or any person authorized by the Securities and Exchange Board of India. The Special Court shall take cognizance only on the complaint of persons/authorities mentioned under Section 439 of the Companies Act, 2013.

16. As seen from Section 212 (6) of the Companies Act, 2013, it provides a safeguard against frivolous complaints and ensures that a prosecution for fraud can only be launched after due investigation. Learned counsel for the respondent No.1 contended that the respondent No.1 was entitled to file complaint as a shareholder of the company under Section 439 (2) of the Companies Act, 2013. But, an exception

is carved out under Section 439 (1) itself that every offence under the Act except the offences referred to in sub-section (6) of Section 212 of the Act shall be deemed to be non-cognizable. As such, Section 439 of the Companies Act, 2013 is not applicable to offences covered under Section 447 of the said Act. The contention of the learned counsel for the respondent No.1 was that under Section 439 of the Companies Act, 2013, the Court can take cognizance of any offence including Section 447 of the Act so long as the SFIO had not been assigned investigation by the Central Government under Section 212 of the Act. But the heading of Section 439 of the Act itself would read as "offences to be non-cognizable". Hence, cognizance of the offence under Section 447 of the Act could not have been taken by the trial Court on a private complaint, as it is a cognizable offence.

17. Under Section 206 of the Companies Act, 2013, the Registrar of Companies based on the information received by him, seek for explanation, call for production of document and conduct enquiry. If the Registrar is satisfied on the basis of information available with him, or furnished to him or on a representation made to him by any person that the business of a company is being carried out not in compliance with the provisions of the Act, he can proceed with enquiry. If the enquiry conducted by the Registrar discloses material for further investigation, he, under Section 210 of the Companies Act, 2013 can report to the Central Government to conduct investigation into the affairs of the company. If the Central Government considers the allegations as true and considering the gravity of the offence that the matter was fit to be investigated by the SFIO, directs the matter to be investigated by the SFIO under Section 212 of the Companies Act, 2013. The Investigating Officers who were having better investigation skills in forensic auditing, corporate affairs and capital market would conduct investigation. If the complainant is aggrieved, he should have resorted to the procedure as contemplated under the Act. The Registrar of Companies is a competent person to call for the records, conduct an enquiry and to arrive at an opinion. If there is any material, he would submit a report to the Government for investigation by SFIO. If SFIO is able to collect material sufficient to prosecute then it would file charge sheet after taking necessary sanctions from the Central Government. If the contention of the complainant that any shareholder can file a complaint for fraud is accepted, it would open flood gates for any person commencing criminal proceedings merely by filing a complaint. There were several companies with millions of shareholders. The condition prescribed under Section 212(6) of the Act is a safeguard against frivolous criminal complaints. As such, I do not find any merit in the contention of the learned counsel for the respondent No.1 that a private complaint for fraud is maintainable before the Special Court.

17. The learned counsel for the petitioner contended that in similar circumstances, where cognizance would require a prior procedure in the form of a complaint in writing from the Government or the Court, the Hon'ble Apex Court held that:

> "Such a procedure was mandatory and if the Court takes cognizance without following the procedure, it would be without jurisdiction."

18. He further contended that a similar procedure was prescribed under Section 195 Cr.P.C., which would require that certain offences under IPC could only be taken cognizance of "on the complaint in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate." The Hon'ble Apex Court in **Bheema Razu Prasad v. State, represented by DSP, CBI/SPE/ ACU-II (2021 SCC OnLine 210)** held that:

> "It is well settled that Section 195(1)(b) creates a bar against taking cognizance of offences against the administration of justice for the purpose of guarding against baseless or vindictive prosecutions by private parties. The provisions of this Section imply that the Court is the only appropriate authority which is entitled to raise grievance in relation to perjury, forgery of documents produced before the Court, and other offences which interfere with the effective dispensation of justice by the Court. Hence, it for the Court to exercise its discretion and consider the suitability of making a complaint for such offences."

19. He also relied upon the judgment of the Hon'ble Apex Court in **Gopala Krishna Menon v. D. Raja Reddy and another (1983) 4 SCC 240)** on the same aspect that in the absence of a complaint in writing by the Civil Court, where the forged receipt had been produced, taking cognizance of the offence would be bad in law and the prosecution not maintainable on the basis of a private complaint.

20. Learned counsel for the respondent No.1 relied upon the judgment of this Court in Crl.P. Nos.24634 and 24655 of 2017 dated 03.04.2019 and contended that the Court did not find fault with the Special Court taking cognizance of the offence under Section 447 on a private complaint. But a perusal of the said judgment would disclose that the Court had not considered the provisions under Section 212 (6) of the Companies Act, 2013 while considering the cognizance orders for the offences punishable under Sections 447 and 448 of the Companies Act, 2013. Section 212(6) of the Companies Act, 2013 does not appear to have been brought to the notice of the Court.

21. Since the punishment for the offence under Section 448 of the Companies Act, 2013 was also under Section 447 of the Act, it was covered by the bar of taking cognizance under Section 212(6) of the Act.

22. Section 451 of the Companies Act, 2013 would reveal that it would apply for repeated defaults and subsequent convictions. Since the petitioner had not been convicted earlier, subsequent conviction under Section 451 of the Companies Act, 2013 would not apply.

23. Thus, the petitioner could not be prosecuted for the offences under Sections 447, 448 and 451 of the Companies Act, 2013 due to bar of cognizance under Section

212(6) of the Companies Act, when a complaint was not given in writing by the Director, SFIO or any Officer of the Central Government authorized in that behalf by the said Government.

24. The learned counsel for the petitioner contended that the Economic Offences Court would not have jurisdiction to take cognizance of the complaint if the offences under the Companies Act were not made out and relied upon Section 436(2) of the Companies Act. Section 436(2) of the Companies Act, 2013 reads as follows:

> "**436: Offences triable by Special Courts:—**
>
> (1) xxxx
>
> (2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial."

25. Section 436 (2) of the Act begins with the phrase "when trying an offence under this Act". It would show that if no offence under the Act was made out, the Economic Offences Court would not have the jurisdiction to try the case with regard to other offences.

26. He further contended that the company PARPL not being arrayed as an accused, was a sufficient ground for quashing the petition. He contended that in the complaint, the complainant's main allegation was that PARPL made defective filings with the Registrar of Companies, however, the complainant did not array the company PARPL as an accused alongside the petitioners. Since the filings were made by the PARPL, the failure of the complainant to make the company as a party was fatal to the complaint. The prosecution for fraud under Section 447 of the Companies Act, 2013 must relate to the Companies in the first instance and relied upon the judgments of the High Court of Delhi in **Vikas Agarwal v. Senior Fraud Investigation Office (Crl.M.C. 647/2017 decided on 06.02.2019)**, of the Hon'ble Apex Court in **Sharat Kumar Sanghi v. Sangita Rane (2015 (12) SCC 781)** and of the High Court of A.P. in **N. Gopinath v. The State of Andhra Pradesh and others (Crl.P. No.315 of 2021 decided on 22.03.2022).** The High Court of Delhi in **Vikas Agarwal**'s case (3 supra) held that:

> "…the definition of fraud provided in the explanation to Section 447 of the Companies Act, 2013 makes it clear that the prosecution is to relate to the companies in the first instance and also to other persons who have in any manner connived in commission of the offence to gain undue advantage."

27. **In Sharat Kumar Sanghi**'s case (4 supra), the Hon'ble Apex Court held that:

> "11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a party. Therefore, the allegations have to be restricted to the Managing Director. As we have noted earlier, allegations

> are vague and in fact, principally the allegations are against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened on certain statutes."

28. In **N. Gopinath**'s case (5 supra), the High Court of A.P. by extracting the ratio of the judgment in **Sharat Kumar Sanghi**'s case held that:

> "As per the ratio decided by the Hon'ble Apex Court reported in Sharad Kumar Sanghi vs Sangita Rane [2015 (12) SCC 781] it is clear that once a transaction is made with the company, the company being a legal entity, unless and until the company is made as co-accused, the complaint is not maintainable."

29. The contention of the learned counsel for the respondent No.1 was that the accused were arrayed in their individual capacity and not in their representative capacity. Only in cases wherein individuals were arrayed in the representative capacity, the company was made as an accused and during the course of enquiry or trial, if it appears from the evidence that the company had committed offences, the Special Court had power under Section 319 Cr.P.C. to proceed against it.

30. However, considering the allegations made by the complainantrespondent No.1 about the annual reports of the company being uploaded in the Registrar of Companies website by fabricating the documents and the allegations that about 63,000 shares of PARPL were issued illegally to render the respondent No.1 a minority shareholder, to usurp the management of PARPL, it is considered that the Company is a necessary party to the proceedings and there is no merit in the contention of the learned counsel for the respondent No.1 in the said regard.

31. The learned Counsel for the petitioner also contended that the dispute in the present complaint was being dealt by the National Company Law Tribunal in Company petition No.431/HDB/2020 and filed a copy of the said petition. A reading of the said petition would disclose that the respondent No.1 had filed a petition before the National Company Law Tribunal on the same fact about allocating 63,000 equity shares to the petitioner by the Company and contended that no Board Meeting was held as alleged nor any consideration was passed towards alleged allotment of shares to the petitioner, thus, Economic Offences Court taking cognizance of the offence would amount to initiating parallel investigation on the same issue and would give a scope of giving rise to concurrent findings in different forums. The contention of the learned counsel for the respondent No.1 was that pendency of civil proceedings was not a bar to initiate criminal proceedings as long as the ingredients of the offence were made out, even during the pendency of the case before NCLT, the Registrar of Companies itself advised respondent No.1 to approach the competent court for seeking appropriate relief regarding allegations if forgery and fabrication of documents, as

such, the complainant filed to present the complaint.

32. The jurisdiction of the Special Courts and NCLT are specific. The cases in which imprisonment is provided for two years or more is to be tried by a Special Court and contravention of provisions related to laws guaranteed etc., for the purpose of subscriptions for any shares in the company or in its holding company, matters pertaining to failure to distribute dividends and matters related to fraud including repayment of any debt comes under the jurisdiction of the Special Courts, whereas the matters pertaining to mis-management and relating to compromise or arrangements with creditors and members, calls action by members or depositors, rectification of Register of Members, confirmation of reduction of share capital by the company and calling of Annual General Meeting or other meeting of the members in case of default in holding General Meeting comes under the purview of the National Company Law Tribunal. Pendency of civil proceedings is no bar to initiate criminal proceedings as long as the ingredients of the offences were made out and the conditions therein were also satisfied.

33. The learned counsel for the petitioner contended that the allegations in the present complaint would reveal that it was civil dispute being cloaked as a criminal offence only to abuse the process of Court and relied upon the judgments of the Hon'ble Apex Court in **R.K. Vijayasarathy v. Sudha Seetharam (2019 (16) SCC 739)** and **Indian Oil Corporation v. NEPC India Ltd. (2006 (6) SCC 736)**.

34. In **R.K. Vijayasarathy**'s case (6 supra) it was held that:

> "The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court."

35. In **Indian Oil Corporation**'s case (7 supra), the Hon'ble Apex Court held that:

> "While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should

be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed:

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

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

36. The learned counsel for the respondent No.1, on the other hand, relied upon the judgment of the Hon'ble Apex Court in **Kamal Shivaji Pokarnekar v. The State of Maharashtra and others (MANU/SC/0180/2019),** wherein it was held that:

> "…The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

37. Learned counsel for the petitioner also contended that there was no application of judicial mind by the Economic Offences Court while taking cognizance of the offences under Section 447 of the Companies Act, 2013 despite the bar under Section 212 (6) of the Act. The cognizance order did not provide any reasons for taking cognizance of the impugned complaint and relied upon the judgments of the Hon'ble Apex Court in **Mehmood Ul Rehman v. Khazir Mohammad Tunda (20015 (12) SCC 420)**, wherein it was held that:

> "23. Having gone through the order passed by the Magistrate, we are

satisfied that there is no indication of the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC there must be sufficient indication of the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate."

38. He further relied upon the judgment of the Hon'ble Apex Court in **Pepsi Foods Ltd. v. Special Judicial Magistrate (1998 (5) SCC 749),** wherein it was held that:

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

39. He further relied upon the judgment of the Hon'ble Apex Court in **Inder Mohan Goswami v. State of Uttaranchal (2007 (12) SCC 1)**, wherein it was held that:

"While exercising the said power court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused."

40. The Hon'ble Apex Court in **State**

of Haryana and Ors. v. Ch. Bhajan Lal and ors. (1992 AIR 604) had enunciated the principles for use of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. and gave a list of myriad kinds of cases wherein such power should be exercised:

> "(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
>
> (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
>
> (3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
>
> (4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
>
> (5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
>
> (6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
>
> (7) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

41. Considering point No.(6) in **Bhajan Lal**'s case, wherein it was stated that when there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, continuance of the proceedings would amount to an abuse of process of law and in the present case also, as per Section 212(6) of the Companies Act, 2013, there is a bar for taking cognizance of the case for the offence under Section 447 of the Companies Act 2013, it is considered fit to exercise the

inherent powers under Section 482 Cr.P.C. to quash the complaint.

42. The record also would disclose that both the petitioner in Crl.P. No.8025 of 2021 and the respondent No.1 (complainant) initiated civil proceedings against each other. The record also would disclose that the Annual Returns were filed by the Company from 2002-2014 and the said returns were also signed by the complainant showing the shareholding of the petitioner in PARPL company. The complainant did not choose to dispute the said Annual Returns and kept quiet for more than a decade. The filing of the complaint after twenty years alleging fabrication from the year 2002 onwards would only show that it was filed with a malafide intention to take revenge against the petitioner. As per point No.(7) in paragraph – 102 of the **Bhajan Lal**'s case also, it was stated that where a criminal proceeding was manifestly attended with malafides or where the proceedings were maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, it can be quashed, it is considered fit to allow the petitions on the said ground also.

43. Another contention of the learned Counsel for the respondent No.1 was that the Economic Offences Court had taken cognizance as per the direction of this Court in Criminal petition No. 222 of 2021 and the said fact was suppressed by the learned counsel for the petitioners. A perusal of the order of this Court in Criminal Petition No.222 of 2021 would disclose that it considered only the aspect that whether a private complaint could be maintained by a Power of Attorney holder, but did not consider the contents of the complaint whether they would make out the ingredients of the offences which were alleged against the petitioner. As such, the said order is not a bar in considering the maintainability of this petition.

44. Hence, for the reasons stated above, it is considered fit to quash the proceedings against the petitioners in C.C. No.31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad.

45. In the result, the Criminal Petition Nos.8024 and 8025 of 2021 are allowed by quashing the proceedings against the petitioners in C.C. No. 31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum- Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad.

Miscellaneous Petitions pending, if any, shall stand closed.

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2022 (2) L.S. 60 (T.S)

IN THE HIGH COURT OF TELANGANA

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

Namburi Venkateshwara Rao ..Petitioner
Vs.
The State of Telangana ..Respondent

CRIMINAL PROCEDURE CODE, Sec482 - PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, Sec.12 - Criminal Petition to quash the proceedings in D.V.C. - Petitioners/in-laws herein are Respondent Nos.2 & 3 in DVC proceedings.

HELD: Since the remedies under D.V Act are Civil remedies, the Magistrate in view of his powers u/Sec.28(2) of D.V Act shall issue notice to the parties for their first appearance and shall not insist for the attendance of the parties for every hearing - Quash petitions u/Sec.482 Cr.P.C. on the plea that the petitioners are unnecessarily arrayed as parties are not maintainable.

It is only in exceptional cases like without there existing any domestic relationship as laid under Section 2(f) of the D.V. Act between the parties, the Petitioner filed D.V. case against them or a Court has already acquitted them of the allegations which are identical to the ones levelled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings - Presence of the Petitioenrs before the Court below has to be dispensed with - Criminal Petition stands disposed of.

Crl.P.No.1061/2022. Date: 04.02.2022

Mr.Sandeep Kumar Bodla, Advocate or the Petitioner.
Public Prosecutor TG, Advocate for the Respondent.

O R D E R

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short Code') to quash the proceedings in D.V.C. No.11 of 2019 on the file of III Additional Judicial Magistrate of First Class at Khammam. The petitioners herein are respondent Nos.2 & 3 in the said DVC. The said DVC is filed by respondent No.2 under section 12 of the Protection of Women From Domestic Violence Act, 2005 (for short Act, 2005') against the petitioners seeking various reliefs.

2.Heard Sri Sandeep Kumar Bodla, learned counsel for the petitioners and the learned Assistant Public Prosecutor appearing on behalf of respondent No.1 - State. Perused the record.

3.The learned counsel for the petitioners would submit that respondent No.2 has filed D.V.C. case five years after her deserting A1's company as a counter blast to FCOP No.147 of 2015 filed by A1 against her for divorce. The contents of the petition filed under Section 12 of the Act, 2005 do not make out any prima facie case against the petitioners herein. Respondent

No.2 has implicated the petitioners in the above case and in Crime No.136 of 2017 of Wyra P.S., Khammam District, with an intention to harass them and she is misusing and abusing the process of Court. In view of the same, he sought to quash the proceedings in the said DVC by dispensing with their presence before the trial Court.

4.On the other hand, the learned Assistant Public Prosecutor would submit that there are specific allegations made against the petitioners by respondent No.2 in the complaint filed under Section 12 of the Act, 2005 about the harassment, both physically and mentally meted out to respondent No.2 by the petitioners in relation to additional dowry and that the petitioners shall co-operate in concluding the trial before the Court below. In view of the same, he sought to dismiss the present petition.

5.Perusal of the record would reveal that petitioners herein are in-laws of Respondent No.2. The allegation alleged against the petitioners is that they harassed respondent No.2, both physically and mentally for additional dowry. In view of the same, prima facie, there are specific allegations made against the petitioners and the same have to be decided only after inquiry.

6. In this regard, it is apt to refer to the decision rendered by a learned Single Judge of High Court of Judicature for the States of Telangana and Andhra Pradesh in ***Giduthuri Kesari Kumar v. State of Telangana 2015 (2) ALD (Crl.) 470 (AP)***, which is as under:

"14) To sum up the findings:

i) Since the remedies under D.V Act are civil remedies, the Magistrate in view of his powers under Section 28(2) of D.V Act shall issue notice to the parties for their first appearance and shall not insist for the attendance of the parties for every hearing and in case of non- appearance of the parties despite receiving notices, can conduct enquiry and pass exparte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstance require that he can insist the presence of the parties even by adopting coercive measures.

ii)In view of the remedies which are in civil nature and enquiry is not a trial of criminal case, the quash petitions under Section 482 Cr.P.C. on the plea that the petitioners are unnecessarily arrayed as parties are not maintainable. It is only in exceptional cases like without there existing any domestic relationship as laid under Section 2(f) of the D.V. Act between the parties, the petitioner filed D.V. case against them or a competent Court has already acquitted them of the allegations which are identical to the ones levelled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of Court."

7.The contention of petitioners herein, in-laws of Respondent No.2, is that it would

be difficult for them to attend the Court on each date of hearing can be considered and, accordingly their presence before the Court below in the above DVC has to be dispensed with.

8.In view of the above discussion and the observations made by the learned Single Judge in the aforesaid decision, the present Criminal Petition is disposed of, dispensing with appearance of petitioners herein - respondent Nos.2 & 3 in D.V.C. No.11 of 2019 on the file of III Additional Judicial Magistrate of First Class at Khammam.

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

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2022 (2) L.S. 62 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Justice
G. Sri Devi

Punnam Mahendra Reddy ..Petitioner
Vs.
Manda Illaiah ..Respondent

MOTOR VEHICLES ACT, Sec.166 - Appeal by the Claimant/Appellant aggrieved by the award passed in O.P. before Motor Accident Claims Tribunal - Whether the compensation awarded by the Tribunal is just and equitable.

HELD: Though the Tribunal has awarded a sum of Rs.60,000/- towards pain and suffering but while clarifying the same, it seems that the Tribunal has awarded the said amount for the three fractures sustained by the claimant and not under the head of pain and suffering - M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,91,000/- to Rs.2,36,000/- - Enhanced amount shall carry interest @ 7.5% per annum from the date of award.

K. Rajitha, Advocate for the Petitioner,

J U D G M E N T

This appeal is filed by the appellant-claimant aggrieved by the award and decree, dated 30.04.2008 passed in O.P.No.502 of 2006 on the file of the Chairman, Motor Accident Claims Tribunal- cum-II Additional District Judge, Warangal (for short, the Tribunal).

2 For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3.The claimant filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.3,00,000/- for the injuries sustained by him in a motor vehicle accident. It is stated that on 01.10.2005, the claimant and one Adireddy engaged a Trolley Auto bearing No.AP 36 V 7246 in order to transport Oil Engine to Mandaripet and when the said auto reached at the outskirts of Ogulapur Village, near

M.A.C.M.A.No3786/2009. Date:03.02.2022.

Doon Residential School, a Tractor-cum-Trailer bearing No.AP 36 V 6362 driven by its driver in a rash and negligent manner with high speed and dashed the Trolley Auto in which the claimant and another were traveling. As a result of which, the claimant has sustained grievous injuries, he was shifted to Jaya Hospital, Hanamkonda and from there he was shifted to NIMS Hospital, Hyderabad, where he took treatment as inpatient. The claimant filed aforesaid O.P. against respondent Nos.1 and 2, being owner and insurer of the aforesaid Tractor Trailer, respectively, claiming compensation of Rs.3,00,000/- for the injuries sustained by him.

4.Before the Tribunal, the 1st respondent remained ex parte and the 2nd respondent also filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition. Basing on the above pleadings, the following issues are framed before the Tribunal:-

1)Whether the accident took place due to rash and negligent driving of driver of Tractor bearing No.AP 36 V 6362?

2)Whether the petitioner is entitled for compensation, if so, what amount and from whom?

3)To what relief?

5.During trial, on behalf of the claimant, P.Ws.1 to 3 were examined and got marked Exs.A1 to A.18. On behalf of the respondents, neither oral nor documentary evidence was adduced.

6.After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of driver of the Tractor-Trailer and accordingly, awarded total compensation of Rs.1,91,000/- with interest @ 7.5% per annum. Being not satisfied with the said amount, the claimant filed the present appeal seeking enhancement of compensation.

7.Heard both sides and perused the record.

8.The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged either by the owner or insurer of the vehicle.

9.The short question that arises for consideration is “whether the compensation awarded by the Tribunal is just and equitable”?

10.A perusal of the findings arrived at by the Tribunal while answering issue No.2 with regard to quantum of compensation would show that the Tribunal awarded a sum of Rs.60,000/- towards pain and suffering (Rs.30,000/- for the fracture of both bones of left leg, Rs.15,000/- for the fracture of clavicle and Rs.15,000/- for the fracture of pubic rami); Rs.45,000/- towards permanent partial disability, Rs.35,000/- towards hospital charges; Rs.25,000/- towards medical expenses, extra nourishment and attendant charges; Rs.17,000/- towards transportation charges and Rs.9,000/- towards loss of earnings for a period of three months and thus in all

the Tribunal awarded a sum of Rs.1,91,000.00. Though the Tribunal has awarded a sum of Rs.60,000/- towards pain and suffering but while clarifying the same, it seems that the Tribunal has awarded the said amount for the three fractures sustained by the claimant and not under the head of pain and suffering. Thus, looking into the nature of injuries sustained by the claimant, this Court deems it fit to award a sum of Rs.45,000/- towards pain and suffering. The learned Counsel for the claimant has vehemently argued that though the claimant has sustained 45% of disability but the Tribunal did not award any amount. A perusal of the award passed by the Tribunal clearly transpires that the Tribunal after considering all the aspects, has rightly awarded a sum of Rs.45,000/- towards permanent partial disability sustained by the claimant, which needs no interference.

11.In the result, the M.A.C.M.A. is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,91,000/- to Rs.2,36,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of award i.e., 30.04.2008 till the date of realization. There shall be no order as to costs.

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

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2022 (2) L.S. 64 (T.S)

IN THE HIGH COURT OF TELANGANA

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

D.Radhamma & Ors., ..Petitioners
Vs.
The State of A.P. & Anr., ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 - (INDIAN) PENAL CODE, Sec.498-A - DOWRY PROHIBITION ACT, Secs.3&4 - Petitioners/ A1 to A5 preferred instant petition to quash the proceedings in Crime.

HELD: Complaint would disclose that she made specific allegations against all the Petitioners - Allegations made against the Petitioners and the truth of the same could be known only after a full-fledged trial and this Court cannot make a roving enquiry on the allegations made against the Petitioners in this petition - Criminal Petition stands dismissed - However, the presence of the Petitioners No.1, 4 and 5 is dispensed with before the trial court except on the dates as and when their presence is specifically required.

Mr.C Raghu, Advocate for the Petitioners.
Public Prosecutor TG, for the Respondents.

O R D E R

This petition is filed by the

 Crl.P.No.9187/2013. Date: 04.02.2022

petitioners-A1 to A5 under Section 482 Cr.P.C. to quash the proceedings in Crime No.243 of 2013 on the file of Uppal Police Station, Cyberabad, registered against the petitioners for the offences under Sections 498-A IPC and sections 3 and 4 of the Dowry Prohibition Act (for short 'DP Act').

2.The case of the petitioners in brief was that the 2nd respondent lodged a report against them on 16.04.2013 at 5.00 PM alleging that she was married with the son of the 1st petitioner in the year 1999. At the time of marriage, her parents gave Rs.4,85,000/- towards dowry, 5 tulas of gold and 50 tulas of silver, a Bajaj Chetak Vehicle and other household articles to her in-laws. She was blessed with two children, a female and a male child. While she was carrying pregnancy, through medical tests, it was disclosed that she and her husband were infected with HIV. Her husband died on 24.01.2013 due to HIV. Later her in-laws started harassing her physically and mentally and necked her out of the house. Basing on the report, the above crime was registered by the police of Uppal for the above offences.

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

4.Learned counsel for the petitioners submitted that as per the 2nd respondent, she and her husband were residing separately since 2002 at Uppal. The complaint had been filed two months after the demise of her husband. The complaint was frivolous in nature and was filed only with an intention to harass the petitioners and to settle a property, which was purchased in the joint names of the 2nd petitioner - A2 and the husband of the 2nd respondent. Later the husband of the 2nd respondent executed a Release Deed on payment of Rs.5,88,000/-. Though these facts were brought to the notice of the 2nd respondent, she was reluctant to accept the same and was insisting that the entire property should be given to her after the demise of her husband. Since the 2nd petitioner had not agreed for the same, she filed present complaint only with an intention to intimidate the petitioners to give the said property. As such, the complaint was nothing but an abuse of process of

law and therefore, liable to be quashed.

5.Learned Assistant Public Prosecutor submitted that there were specific allegations against the petitioners in the complaint for harassing the 2nd respondent and prayed to dismiss the petition.

6.Perused the record. The complaint would disclose that she made specific allegations against all the petitioners that her mother-in- law Radhamma, brothers-in-law Venkatesh and Nomuraju, sisters-in-law Shankuntala, Vijayalakshmi and her co-sisters Rajeswari and Vijaya bet her by closing her mouth with a cloth after the death of her husband and harassing her to die and stating that if she died, the property would come to them. For their beatings, blood oozed from her body and she sustained injuries, they tried to kill her. She escaped from their hands and reached

Uppal Police Station. On coming to know about the same, her brothers came to the police station and taken her to the hospital. She stated that her life was under threat in their hands and prayed to protect her and her children and the properties belonging to her from the hands of the petitioners.

7.Considering the allegations made against the petitioners and the truth of the same could be known only after a full-fledged trial and this Court cannot make a roving enquiry on the allegations made against the petitioners in this petition, it is considered fit to dismiss the petition. However, the presence of the petitioners No.1, 4 and 5 can be dispensed with before the trial court expect on the dates as and when their presence is specifically required.

8.In the result, the Criminal Petition is dismissed. However, the presence of the petitioners No.1, 4 and 5 is dispensed with before the trial court expect on the dates as and when their presence is specifically required.

Miscellaneous petitions pending, if any, shall stand closed.

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2022 (2) L.S. 66 (T.S)

IN THE HIGH COURT OF TELANGANA

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

Bachalakuri Praveen ..Petitioner
Vs.
The State of Telangana ..Respondents

CRIMINAL PROCEDURE CODE, Sec.482 - Criminal Petition to quash the proceedings in Sessions Case, on the file of Sessions Court - Petitioner is sole accused in the said Session Case and offences alleged against him are u/Secs. 376 (2) (n) and 506 of IPC and Sec.5 (1) read with 6 of the Protection of Children from Sexual Offences Act, 2012.

HELD: Offences alleged against the Petitioner are serious in nature and will have impact on the society -Not inclined to quash the proceedings in crime merely on the ground that the parties have entered into compromise and Petitioner got married the victim girl and living together - Criminal Petition stands dismissed.

Mr. Rapolu Bhaskar, Advocate for the Petitioner.
Public Prosecutor(TG) for Respondent.

Crl.P.No.8496/2021 along with
I.A. Nos. 1 & 2 of 2022 Date: 3-2-2022

C O M M O N O R D E R

The present Criminal Petition is filed under Section - 482 of the Code of Civil Procedure, 1973, to quash the proceedings in S.C. No.1079 of 2021 on the file of Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District at L.B. Nagar. The petitioner herein is sole accused in the said S.C. The offences alleged against him are under Sections - 376 (2) (n) and 506 of IPC and Section - 5 (1) read with 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. Heard Mr. Raoplu Bhaskar, learned counsel for the petitioner - accused, Ms. Damera Srilatha, learned counsel for respondent No.2 - *de facto* complainant, and learned Assistant Public Prosecutor appearing on behalf of respondent No.1 - State.

3. Learned counsel for the petitioner would submit that the petitioner innocent of the offences alleged against him and the contents of the charge sheet lack the ingredients of the offences alleged. He would further submit that the petitioner marred the victim on 01.07.2021 after becoming major and joined the company of petitioner and both of them are leading marital life. Accordingly, respondent No.2 - *de facto* complainant, mother of the victim, has entered into compromise with the petitioner and has approached this Court by filing I.A. Nos.1 and 2 of 2022 to permit her to enter into compromise and to record the same by quashing the proceedings in the above S.C. against the petitioner.

4. The learned counsel for respondent No.2, on instructions, would submit that respondent No.2 has no objection to quash the proceedings against the petitioner herein in view of compromise entered between the petitioner and respondent No.2.

5. On the other hand, learned Assistant Public Prosecutor by referring to the principle laid down by the Apex Court in **The State of Madhya Pradesh v. Laxmi Narayan (**2019 (5) SCC 403) would submit that there are serious allegations against the petitioner and that the act of commission of offence by the accused is also specifically mentioned in the complaint. The offences under Section 376 (2) (n) of IPC and Section - 5 (1) of the POCSO Act are against society and, therefore, on the ground of compromise by the parties out of Court, proceedings cannot be quashed. He would further submit that the Investigating Officer having collected the material and having recorded the statements of witnesses including respondent No.2 and the victim, filed the charge sheet. If the petitioner is innocent of the offences alleged against him, he can prove the same during trial, but not at this stage and accordingly he sought to dismiss the present petition.

6. Perusal of the contents of the charge sheet would reveal that *de facto* complainant is mother of the victim. She gave complaint with the Police of Chaitanyapuri Police Station, who in turn, registered a case in Crime No.43 of 2021 and took up investigation. During the course of investigation, the Investigating Officer examined the parents of the victim as LWs.1 and 2 and the victim as LW.3. The Investigating Officer has also sent the victim

for medical examination and also obtained the report from the Forensic Science Laboratory. The charge sheet would further reveal that the petitioner is working as Home Guard at CAR Head Quarters, Amberpet, Hyderabad. In the year 2019, he got acquaintance with the minor victim girl at Dwarakapuram. Taking advantage of the said acquaintance, he had given his mobile number to the minor girl victim and used to her frequently. On 05.06.2019, the petitioner called the victim to his house on the occasion of her birthday and sexually exploited her. Thereafter also, he visited the house of the victim gril and sexually exploited her. In the year 2019, the victim girl conceived pregnancy and got aborted by consuming pills. When the victim girl asked him to get marry, the petitioner denied the same. Then, she informed the same to her parents which led to lodging the complaint with the police. Thus, the petitioner has committed the aforesaid offences. With the aforesaid contents, the police filed the charge sheet and the same was taken on file vide S.C. 1079 of 2021 for the aforesaid offences against the petitioner.

7. While so, the petitioner got married the victim after her attaining majority and both of them are leading marital life. In cview of the same, respondent No.2 has decided to withdraw her complaint and pursuant to the same, she filed I.A. Nos.1 and 2 of 2022 seeking permission to record compromise and to compound the offences in pursuance of the said compromise by quashing proceedings against the petitioner in the aforesaid case.

8. In the affidavit accompanied by the aforesaid petitions, respondent No.2 herein has stated about her lodging the aforesaid complaint with police. She further stated that during pendency of the said case the petitioner married the victim girl and both of them are leading marital life. In view of the same and at the intervention of elders and well-wishers, respondent No.2 has decided to withdraw her complaint. Both the parties have also filed a joint memo to that effect. The said joint memo is placed on record.

9. In view of the above said submissions and considering the fact that case was registered for the aforesaid offences, it is relevant to refer to the parameters laid down by the Apex Court in **Laxmi Narayan (supra)** which are as under:

> "i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;
>
> ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such

offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/ delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/ compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

10. As discussed supra, there are serious allegations against the petitioner. He being Home Guard has exploited the victim girl sexually. The offences under Section - 376 (2) (n) of IPC and Section - 5 of the POCSO Act are serious offences

and will have impact on the society.

11. In view of the above discussion and considering the parameters laid down by the Apex Court in **Laxmi Narayan (supra)** and also considering the fact that the offences alleged against the petitioner are serious in nature and will have impact on the society, this Court is not inclined to quash the proceedings in the aforesaid crime merely on the ground that the parties have entered into compromise and petitioner got married the victim girl and living together.

12. In view of the aforesaid discussion, I.A. Nos.1 and 2 of 2022 are dismissed. Consequently, the present Criminal Petition is also dismissed.

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

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2022 (2) L.S. 70 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
A. Rajasheker Reddy

P.Raghurama Rao died
per LRs. 2 to 4 ..Petitioners

Vs.

The State of Telangana ..Respondent

A.P.(T.A)ABOLITION OF INAMS ACT, 1955 - Writ Petitions assailing the Order passed by the Revenue Divisional Officer, whereby, it is held that Writ Petitioners are not entitled to the subject land as their predecessor's vendors were never in possession of the said land as on the date of vesting.

HELD: Power of review is not inherent in nature unless explicitly provided in the given statute - In the instant case, since rehearing of the case by the present Revenue Divisional Officer which is already been settled by his predecessor in office, amounts to reviewing of the previous RDO's decision even when no such power of review is provided under the Act - Availability of alternate remedy is not a bar in entertaining a Writ under Article 226 of the Constitution of India - Availability of alternative remedy does not operate as a bar, where a Writ petition is filed for enforcement of fundamental rights or where there has been violation of principles of natural justice or where the Order or proceedings are wholly without jurisdiction or the vires of the Act are challenged - Therefore, this Court can certainly entertain the Writ petitions even though there exist alternate remedy under Section 24 of the Inams Act, as impugned Order suffers from patent illegality - Impugned Order passed by the RDO stands set aside, to the extent property of Writ Petitioners only - Writ Petitions stand allowed.

Mr.O. Manoher Reddy, Advocate for the Petitioner.

The Advocate General (TG) Advocate for Respondent.

C O M M O N O R D E R

Since the issue involved in all these writ petitions and the relief claimed also is one and the same, they are being heard together and disposed of by way of this Common Order.

2. All these Writ Petitions are filed assailing the order dated 28.08.2018 passed by the Revenue Divisional Officer, Sangareddy Division, Sangareddy District vide Proceeding No. A3/3000/2007 wherein and whereby it is held that writ petitioners are not entitled to the land in Sy.Nos.134 & 135, situated at Eedulanagulapally Village, Ramachandrapuram Mandal Sangareddy District (Formerly Medak District) as their predecessor's vendors were never in possession of the said land as on the date of vesting i.e., 01.11.1973 under the provisions of the Inams Act, 1955.

3. The petitioners in W.P.Nos. 34455, 34464, 35416 and 37030 of 2018 claims to have purchased the subject lands through registered sale deeds from one Mr.D. Pratap Chander Reddy, in Sy.Nos.134 & 135, who in turn purchased the total extent of Ac.101.07 gts from their vendor and predecessor- in–title i.e., Thana Electric Supply Company Limited vide registered sale deed No. 14050 of 2004 dated 20.12.2004 and the said vendor purchased the entire extent of Ac.101.07 gts from the original pattadar one Mr.Wajid Ali and also from recognized protected tenants having 38-E certificates issued by Revenue Divisional Officer in year 1975 to 1982.

4. In W.P No. 34520 of 2018, petitioner claims to have purchased Ac. 21 gts of the said land from M/s Pragathi Tulti Tec Pvt Ltd vide three registered sale deeds dated 12.06.2013 being document bearing No. 13228/2013, 13229/2013, 13230/2013. Petitioner's Vendor i.e. M/s Pragathi Tulti Tec Pvt Ltd purchased the said land from ORC Holders viz. Sri Mohd. Ibrahim S/o. Shaikh Ahmed, Sri Pyta Mallaiah s/o Venkaiah and Sri Cheera Shivaam S/o Lakmaiah.

5. Petitioner in W.P. No. 35639 of 2018 claims to have purchased the said land admeasuring Ac.5.00 gts comprised in Sy. No.134/4 vide registered sale deed document bearing no. 22070/2015 dated 12.11.2015 from Sri. V. Sunil. Further, in W.P. No. 37090 of 2018, Petitioners claim to have purchased the said lands in Sy. No. 135 of Edulanagulapally Village, Ramachandrapuram Mandal, Sangareddy District from Mascon Engineers Private Limited.

6. For the sake of convenience, the facts in W.P.No.34464 of 2018 are considered for disposal of these writ petitions, which are as follows:

> It is the case of the petitioner that he is the owner of an extent of Acs.05.00 of land in Sy. Nos. 135/20 (Old No. 135/1 and 135/2) of Edulanagulapally Village, Ramachandrapuram Revenue Mandal, Medak District, having purchased the same from his vendor viz., Mr. Pratap Chander Reddy, vide

registered Sale Deed dated 21.12.2004 bearing Document No.14226 of 2004, who in turn purchased an extent of Ac. 101.07 Guntas from his vendor and predecessor-in-title, viz., Thana Electric Supply Company Limited, under a Registered Sale Deed Document No. 14050 of 2004 dated 20.12.2004. The said Thana Electric Supply Company Limited originally purchased the entire extent of Ac. 101.07 Guntas of land from the original Pattadar, one Mr. Wajid Ali and also from the recognized protected tenants having 38-E Certificates issued by the Revenue Divisional Officer under sixteen sale deeds way back in the year 1982.

7. That in the year 1996, issue relating to forcible eviction of protected tenants in Sy.No. 134 & 135 of Edulanagulapally Village was raised on the floor of Legislative Assembly by a member representing Narsapur constituency. Pursuant to which, the matter was referred to a House Committee, which was constituted to look into various alleged irregularities in connection with lands situated in different districts and to suggest remedial measures. The House Committee recommended certain remedial measures by issuing Occupancy Rights Certificates (ORCs) to the occupants of the land under the provisions of the Inams Abolition Act, besides protecting the interests of purchasers.

8. On the basis of the recommendations of the House Committee, the Government issued Memo No.11977/ Assn. V.1/97-20, dated 07.03.2001 directing the Joint Collector, Medak District, to take necessary immediate action as per the Rules under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short 'the Act'). The Government issued another Memo No.11977/Assm. V.1/97-25 on 23.07.2002 directing the Joint Collector to take action after conducting thorough enquiry basing on the records. Pursuant to the directions of the Government, the Joint Collector issued notices under Section 10 of the Act to determine the status of inamdars and occupants of Survey Nos. 134 and 135 and notices were also published in newspaper i.e., in Eenadu daily dated 06.06.2003, calling for claims and objections, if any, from inamdars, occupants and other interested parties.

9. Pursuant thereto, the Joint Collector passed orders on 07.07.2003 holding that the provisions of the Act do not preclude him from exercising inherent powers. The Joint Collector also held that though a notification was issued in G.O.Ms.No.1122, Revenue, dated 20.08.1975 authorising the Revenue Divisional Officers to discharge the functions of the Collector under Section 2(1)(a) of the Inams Abolition Act in their respective divisions, subsequent to said G.O.Ms.No.1122, the Government had issued another G.O.Ms.No.818, Revenue (Ser.I) Department dated 06.09.1990 reserving the subject 'Inams Abolition Act' to the Joint Collectors and that vide a subsequent further G.O.Ms.No.699 dated 13.07.1994, the Government had also conferred powers on the Joint Collector to

adjudicate on the matters under the Act and thus concluded that the entire extent of land in survey Nos.134 and 135 of Edulanagulpalli Village is a Maqta (Inam) Land and ordered for cancellation of 38-E Certificates, pattadar passbooks and title deeds, issued in favour of protected tenants. Consequently, the Joint Collector remanded the matter to the Revenue Divisional Officer to conduct de novo enquiry in respect of issuance of Occupancy Rights Certificates to the eligible persons under the provisions of the Inams Abolition Act with respect to their occupation as on stipulated date viz. 01.11.1973. The Joint Collector also ordered that the land which is found to be not under the occupation of any persons as on the crucial date, would vest with the Government and shall be recorded as 'Kharij Khata' in the revenue records. As a consequence, the Mandal Revenue Officer, Ramachandrapuram, was directed to resume the lands purchased from the Inamdars/protected tenants and also the other unoccupied lands including the irrigation sources, nalas etc., till finalisation of the case by the Revenue Divisional Officer to protect the said land from encroachments/ grabbing and directed for sending of compliance report by 30.07.2003.

10. Aggrieved by the orders passed by the Joint Collector, said M/s.Tana Electric Supply Company Limited had filed W.P.No.16451 of 2003 before this Court and obtained interim orders staying resumption of land. However, having found that their rights will not be jeopardized on account of impugned orders of the Joint Collector, Tana Electric Supply Company Limited had withdrawn the W.P.No.16451 of 2003 on 09.09.2004 and participated in the de novo enquiry conducted by the Revenue Divisional Officer pursuant to a letter dated nil.08.2004 issued by the Joint Collector. Thereafter, pursuant to the orders of the Joint Collector, the Revenue Divisional Officer, Sangareddy conducted de novo enquiry and found that the petitioner's vendor's vendor i.e., Thana Electric Supply Company Limited has got physical possession over their land and also found that Thana Electric Supply Company Limited was also successor-ininterest of the said lands by virtue of continuous physical possession from 01.11.1973 to till date as is evident through Revenue Records and Registered Sale Deeds, as such, having been satisfied with said company's eligibility, had granted Occupancy Rights vide Proceedings No. B3/Inams/3070/2002 dated 16.09.2004 by confirming the right and title of his vendor's vendor, Thana Electric Supply Company Limited to the said lands totaling to Ac.101. 07 guntas by fixing a premium of Rs.9,813/- payable to the Government, the same is paid by Thana Electric Supply Company Limited to the Government and their name has been recorded in the revenue records as holder of Occupancy Rights by issue of final Patta Certificates. Meanwhile, a suit for specific performance in O.S.No. 41 of 2003 was filed by his vendor, Mr.D.Pratap Chander Reddy on the file of District Judge, Medak District at Sangareddy against said Thana Electric Supply Company Limited as it had failed to comply with the agreement of sale. The suit was decreed on 28.06.2004 and as said Tana Electric Supply Company Limited failed to execute sale deed in terms of the decree, the Court below executed a sale deed dated

20.12.2004 in favour of his vendor, D.Pratap Chander Reddy, who in turn executed a sale deed on 21.12.2004 in his favour for an extent of Ac.5.00.

11. While that being so, a show cause notice dated 28.02.2007 was issued by the Joint Collector, Sangareddy to Thana Electric Supply Company Limited on the ground that they were not in physical possession and enjoyment of the said lands on the crucial date 01.11.1973. The Joint Collector having been satisfied with the documentary proof produced by petitioner's vendor's vendor, Thana Electric Supply Company Limited, had withdrawn/dropped the Show Cause Notice dated 28.02.2007 vide orders in Proceedings No. F3/2085/ 2007-3 dated 21.07.2008. Subsequently, supplementary sethwar got implemented vide Memo No. G/1968/2013 dated 21.08.2013 with the approval of Joint Collector, Medak District, whereby said extent of Ac.5.00 Guntas of land of petitioner was given a new Survey by Number i.e. Sy.No.135/20 and the same was incorporated and implemented in revenue records. While that being so, the orders dated 07.07.2003 passed by the Joint Collector was challenged by one M.Jangaiah and 25 others vide W.P.No.16885/2003; one Mr.ShamshabadSattaiah and others vide W.P.No. 18182/2003 and one Mr. Wajid Ali Kamil vide W.P.No.33100/2011 mainly on the ground that the original authority under the Andhra Pradesh (Telangana Area) Abolition of Inams Act is the Revenue Divisional Officer, who alone has jurisdiction to decide the nature of the land and thereafter to determine the persons eligible for Occupancy Rights Certificates, if the land is held to be an Inam land. All three writ petitions were disposed of vide a common order dated 12.06.2017. Said order was passed in view of the consent given by petitioners' counsel and the Government Pleader for relegating the matter to the Revenue Divisional Officer on a wrong representation that the orders passed by the Joint Collector dated 07-07-2003 are invalid since he has no power to take up the case under Section 10 of the Act of 1955. The said representation and consent given by the Government Pleader is without written instructions of the Government since, as per the facts on record, the Government represented by the Government Pleader had filed a Counter affidavit sworn to by the Joint Collector in W.P.No.18182/2003 wherein it was specifically pleaded that the Joint Collector has power to take up the case U/s. 10 of the Act of 1955. Action was initiated as per the directions of the Government and as such, the same is according to the Rules as well as within the purview of Law.

12. The petitioner came to know about the orders dated 12.06.2017 passed in above referred writ petitions only around 05.10.2017 when a Public Notice dated 21.09.2017 published in EENADU Telugu Daily on 24.09.2017 was brought to his notice that pursuant to orders passed by the Hon'ble High Court in Writ Petition Nos. 16885 of 2003, 18182 of 2003 and 33100 of 2011, an enquiry would be conducted by the Revenue Divisional Officer, Sangareddy for the purpose of determining whether the lands in Sy. Nos. 134 and 135 are Inam Lands or not and in case said lands are determined as Inam Lands to identify persons eligible for issuance of Occupancy Rights

Certificates. Since, the said public notice had specifically stated that the representation shall have to be made within 15 days of the publication, the petitioner submitted a representation dated 07.10.2017 to the Revenue Divisional Officer, setting out the facts about his ownership and right to his lands. The petitioner was not a party to above writ petitions, in which common order was passed on 12.06.2016. As the said order was not passed on merits, he preferred Writ Appeal Nos. 1642 of 2017; 1645 of 2017 and 1647 of 2017 along with leave petitions before the Hon'ble High Court challenging said common order, which are pending consideration. Thereafter, the Revenue Divisional Officer served a notice dated 07.11.2017 informing the petitioner that a hearing date is fixed on 25.11.2017 at his office. The petitioner submitted a reply dated 24.11.2017 bringing to his notice that he had challenged the common order dated 12.06.2017 passed in the writ petition no. 18182 of 2003 and others by filing Writ Appeals and Leave Petitions before this Court which are pending and requested him to drop the proceedings in respect of his land as predecessors-in-interest had already subjected themselves to de novo enquiry by the Revenue Divisional Officer way back in the year 2003/2004.

13. Without appreciating the facts placed before him and without giving an opportunity of hearing, the Revenue Divisional Officer passed an order dated 28.08.2018, which is arbitrary, patently illegal, without jurisdiction and contrary to the provisions of the Act, 1955 besides being against principles of equality and fairness in administrative action as enshrined Article 14 of the Constitution of India and also against principles of natural justice and is liable to be quashed.

14. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the writ petition stating that writ petition is neither maintainable in law nor on facts and the same is liable to be dismissed. Since the petitioner submitted detailed explanation to the notice issued on 24.09.2017 and having submitted to the jurisdiction of the authority, he cannot bypass the remedy of filing appeal and file the present writ petition. The issue in the writ petition is connected to the land in Sy. No. 134 admeasuring Ac. 43.30 gts and Sy.No.135 admeasuring Ac.716.16 gts situated at Eedulanagulapally Village, Ramachandrapuram Mandal Sangareddy District (Formerly Medak District) Telangana State. During the year 1975, the Additional RDO (Land Reforms), Sangareddy has issued 38-E certificates to the protected tenants in Sy. No. 134 to an extent of Ac. 39.25 gts and in Sy. No. 135 to an extent of Ac. 233.00 gts and same were implemented in Faisal patti for the year 1976- 77 and brought to Pahani for the year 1980-81. When the then MLA Narsapur raised the issue of forcible eviction in the subject land, in the A.P.Legislative Assembly, the Government had constituted a House Committee to look into the irregularities and finally referred the issue to the Joint Collector, Medak at Sangareddy to decide the matter after conducting enquiry. The Joint Collector, had taken up the case under Section 10 of the Act of 1955 and passed orders on 07.07.2003 in Case No.F1/4480/2000 declaring the classification of the land as Inam land and cancelled the 38-E certificates issued earlier

and remanded the matter to the RDO to conduct denovo enquiry with respect to issue of ORCs to the eligible persons under the provisions of Act of 1955 with respect to their occupation as on 01.11.1973. Aggrieved by the orders of the Joint Collector, Writ Petition Nos.18182/2003, 16885/2003 & 33100/2011 have been filed before this Court, which were disposed of by way of common orders dated 12.06.2017 with a direction to the Revenue Divisional Officer, Sangareddy to decide whether the subject land is Inam land or not and if it is held to be the Inam land, to decide the persons entitled for Occupancy Rights Certificates as on the relevant date.

15. As per the directions of the Hon'ble High Court, dated 12.06.2017, the then Revenue Divisional Officer, Sangareddy enquired the matter in detail duly issuing notices, hearing the claims and objections and passed orders vide No. A3/3000/2017, Dated: 28.08.2018 deciding the classification of the land as Inam Land. Aggrieved by the orders of the Revenue Divisional Officer, Sangareddy dated 28.08.2018 this writ petition is filed claiming an extent of Ac. 5.00 gts of land in Sy. No. 135 of Eedulanagulapally Village of Ramachandrapuram Mandal.

16. It is submitted that as per the records, vendor of petitioner has never been in possession, as such, not eligible for Occupancy Right Certificates as per the provisions of Inams Act, 1955, hence, they were not having any right or title over the land. On verification of the Revenue Divisional Officer, Sangareddy file bearing No. B3/ Inams/3070/2002, the writ petitioners vendor's vendor i.e., M/s Thana Electric Supply Company Ltd., has not submitted any documentary evidence in support of possession of their vendor on the date of vesting I.e., 01.11.1973. The revenue record i.e., Pahani for the year 1973-74 of Eedulanagulapally Village, which is relevant to verify the possession as on 1.11.1973, and unless it is shown by the petitioner that they were in possession no rights accrues to the petitioners.

17. The then Revenue Divisional Officer, Sangareddy has failed to verify the relevant revenue record and erred in determination of the actual occupants as on the date of vesting. The predecessors of the petitioner have not established their rights as successors in interest. The sellers who executed the registered documents in favour of the Thana Electric Supply Company Ltd., have not been recorded as protected tenants, as such, they are not eligible for issue of ORCs. As the sellers are not eligible for ORCs, the subsequent transactions will not have any validity. Petitioner's predecessors have not produced any documentary evidence in support of his claim that, the sellers were in possession as on the date of vesting i.e., 01.11.1973 as contemplated in the Act of 1955. M/s Tana Electric Supply Company Ltd., are not occupants as on the date of vesting as per provisions of Act of 1955. The petitioner's predecessors have not acquired proper rights from their vendor as rightful owner of the subject matter lands, as such, they cannot transfer any valid title to the petitioners herein.

18. In response to the notice issued by the Revenue Divisional Officer, Sangareddy, petitioner herein along with

others have filed a representation/ objection through his counsel on 09.10.2017 and the petitioner Counsel also attended enquiry on 25.11.2017 before the Revenue Divisional Officer, Sangareddy and submitted their explanation. After examining the explanation of the petitioner and on verifying the records the Revenue Divisional Officer, Prathima Aharam Sangareddy has passed orders dated 28.08.2018 in case No. A3/3000/2017 declaring that, the Writ petitioner is not eligible for issue of ORC and sought for dismissal of the writ petition.

19. Reply affidavit is filed by the petitioner to the counter affidavit filed by the 3rd respondent denying the averments in the counter affidavit and reiterated the averments in the affidavit filed in support of the writ petition. The issue with regard to lack of jurisdiction was raised before the Revenue Divisional Officer and said aspect was not considered and that once an issue with regard to jurisdiction is raised, the question of submitting to the jurisdiction does not arise. The present writ petition is filed challenging the order dated 28.08.2018 passed by the third respondent, inter alia, on the ground that it amounts to reviewing the earlier proceedings No. B3/ Inams/3070/2002 dated 16.09.2004 passed by his predecessor-in-office.

20. Heard Sri O.Manoher Reddy, learned counsel for the petitioner in W.P.Nos.34455, 35416 of 2018, Sri D.Prakash Reddy, learned Senior Counsel for Sri L.Prasad Rao, learned counsel for the petitioner in W.P.Nos.34464, 37030 & 37090 of 2018, Sri Ravinuthala V.S.R learned counsel for implead petitioners/respondents in I.A.No.2 of 2021 in W.P.No.34455 of 2018, Sri S.V.S.Chowdary, learned counsel for the petitioner in W.P.No.34520 of 2018, K.Venugopal Reddy, learned counsel for the petitioner in W.P.No.35639 of 2018, and learned Government Pleader for Revenue appearing for the official respondents.

21. Sri D.Prakash Reddy, learned Senior Counsel for Sri L.Prasad Rao, learned counsel for the petitioners in W.P.Nos.34464, 37030 & 37090 of 2018 and Sri O.Manoher Reddy, learned counsel for the petitioners in W.P.No.34455 & 35416 of 2018, while reiterating the averments in the affidavit and the rejoinder to the counter affidavit of the 3rd respondent, submits that once the earlier Revenue Divisional Officer has exercised the power under Section 10 of the Act of 1955 in favour of writ petitioners, the present RDO has no power of review the same. He also submits that before passing the impugned order dated 28.08.2018, no opportunity of personal hearing was afforded to the petitioners, which is against principles of natural justice. He also submits that the petitioners are not parties to W.P.Nos.18182 & 16885 of 2003 and W.P.No.33100 of 2011, in which the said consent order dated 12.06.2017 was passed. As the said order was not passed on merits, some of them have preferred Writ Appeal Nos.1642 of 2017; 1645 of 2017 and 1647 of 2017 along with leave petitions before the Hon'ble Division Bench challenging said consent order, which are pending for consideration, as such, any orders in those writ petitions will

be applicable to interse parties but not to the writ petitioners.

22. Learned counsel for the writ petitioner in W.P No. 34464 of 2018 relied on the Apex court decision in **Union of India vs. Hira Lal and others** (1996) 10 SCC 574), where it was held that a concession made by the Government Advocate on the question of law could not be said to be binding upon the Government, the said principle was reiterated by the Hon'ble Supreme Court in the matter of **B.S.Bajwa and Another vs. State of Punjab and others** (1998) 2 SCC 523) and again in the matter of **State of Rajasthan and Another vs. Surendra Mohnot and others** (2014) 14 SCC 77).

23. Learned counsel for the writ petitioners also submits that without appreciating the facts placed and without giving an opportunity of hearing, the Revenue Divisional Officer passed an order dated 28.08.2018. Though, the Revenue Divisional Officer states in his order that he has heard all the persons who attended the hearing, it was perfunctory at best as he could not have possibly heard all the claimants on a single day.

24. Learned counsel for the writ petitioners in W.P. No. 34455 of 2018, 34464 of 2018, 35416 of 2018, 37030 of 2018 further submits that, the Revenue Divisional Officer has failed to appreciate that the Joint Collector issued a show cause notice in the year 2007 seeking to have the ORCs issued in favour of the petitioners' predecessor-ininterest cancelled and withdrew the show cause notice vide orders in Proceedings No. F3/2085/2007-3 dated 21.07.2008. Therefore, when all these proceedings attained finality, the present RDO could not have once again exercised powers under Section 10 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act as he is not vested with power to review the order passed by the earlier RDO.

25. Learned counsel for the writ petitioners further submits that, their fundamental rights are violated by the arbitrary and whimsical decision of RDO to grant Occupancy Rights Certificates in favour of only Section 3-8E certificate holders by treating them a separate class while overlooking the mountain of evidence available on record in favour of the petitioners predecessors-in-interest and other similarly placed persons.

26. On the other hand, Sri Harinder Pershad, learned Special Government Pleader appearing for official respondents submits that when once the petitioners subjected to jurisdiction of RDO, now, they cannot challenge in a different forum ignoring the appeal remedy under Section 24 of the Act. In support of his contention, he relied on the judgment reported **in Embassy Hotels Private Limited v. M/s.Gajaraj & Co., [2015 (14) SCC page 316]**. He also submits that the private respondents before the RDO are not parties to the writ petition. He also submits that, as seen from the registered documents, M/s Thana Electric Supply Company Ltd., Vendor's Vendor of writ petitioners in W.P. No. 34455 of 2018, 34464 of 2018, 35416 of 2018, 37030 of

2018 has purchased an extent of Ac. 0.28 gts., in Sy. No. 134 and Ac. 100.19 gts., in Sy. No. 135 of Eedulanagulapally Village from various persons through (16) registered documents and as per the registered documents, the land in Sy. No.135 was sold as patta land without having any valid title and rights to the seller since the nature of the land in Sy. No. 134 & 135 of Eedulanagulapally Village is decided as "Inam Land". He further submits that in order to determine the grant of ORC it is important to determine the possession from the date of vesting i.e. 01.11.1973 as per the section 7(1) of the Act and since Petitioners did not provide any relevant document i.e. Pahani for the year 1973-74,to prove the physical possession of their vendor's predecessors therefore it is clear that the earlier RDO has failed to verify the relevant revenue records and erred in determination of the actual occupants as on the date of vesting. He also submits that since sellers of the land in Sy. No. 134 & 135 situated at Eedulanagulapally Village, Ramachandrapuram Mandal Sangareddy District (formerly Medak District) are not recorded as protected tenants, therefore they were not eligible for the ORC and since such sellers were not eligible for ORC, hence the subsequent transactions will not have any validity.

27. In view of above rival contentions of both parties, the points that arise for consideration are:

1. Whether the common consent order passed by this Court dated 12.06.2016 in Writ Petitions i.e. W.P. No. 18182 of 2003, 16885 of 2003, 33100 of 2011 is binding even to those who were not arrayed as party in any of the said writ petitions?

2. Whether Revenue Divisional Officer is empowered under the Act to review the order passed by the previous RDO?

28. This Court, on 03.10.2018 passed interim order in W.P.Nos.34455, 34464, 34520, 35416 and 35639 of 2018 suspending the impugned order dated 28.08.2018 passed by the RDO. The concluding portion of the said order reads as follow:

"Having regard to the above circumstances, there shall be Interim suspension of the order dated 28.08.2018 passed by the Revenue Divisional Officer In proceedings No.A3/3000/2017,"

Thereafter respondent Nos.5-8 (Pragati Corporation) in W.P. No. 34455 of 2018 filed an application and prayed to vacate the interim order dated 03.10.2018 to the extent of the respondent nos. 5 to 8 pending disposal of the case.

29. POINT Nos.1 and 2:

Before adverting to the issue straight away, it is relevant to know the genesis of the litigation in these writ petitions. In these cases, it is to be seen that in the year 1996, when the issues relating to forcible eviction of protected tenants in Sy.Nos.134 & 135 of Edulanagulapally village was raised on the floor of the

Legislative Assembly, a House Committee was constituted by the State Legislative Assembly to look into various issues relating to illegal sale of Government land and Bhoodan land in certain villages of Medak, Ranga Reddy and Nalgonda Districts. After examining the nature of the said land, the House Committee submitted a report dated 21.07.1999 concluding that the subject land as "Partly Inam and Partly Patta". In the said report the issue relating to forcible eviction of protected tenants in Sy.Nos.134 and 135 of Edulanagulapalli village was also examined and the House Committee opined that several people had purchased the said land and the interests of such purchasers and persons in possession should be protected. Pursuant to which, the Government issued a Memo dated 07.03.2001 directing the Joint Collector, Medak District to issue necessary instructions as per rules. Another Memo dated 23.07.2002 came to be issued by the Government in the year 2002, directing the Joint Collector to take action after conducting thorough enquiry basing on the records. Pursuant thereto, the Joint Collector issued notices under Section 10 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, to all interested persons for determining the status of Inamdars and occupants of Sy.Nos.134 and 135, paper publications also came to be issued in this regard in prominent newspapers. Various parties including the vendors of the petitioners filed their counters/objections questioning the jurisdiction of the Joint Collector. By an order dated 07.07.2003, the Joint Collector while holding that he has power and jurisdiction to adjudicate the matters under Inams Abolition Act, also held that the land in Sy.Nos.134 and 135 of Edulanagulapalli Village is an Inam land and ordered cancellation of Section 38-E certificates issued in favour of the protected tenants. He also cancelled the pattadar passbooks and title deeds issued in relation to the said land. He directed the Revenue Divisional Officer to conduct a de novo enquiry in respect of this matter and issue ORCs to the eligible persons under the provisions of the Act of 1955 with respect to their occupation as on 01.11.1973 and accordingly, the Mandal Revenue Officer, Ramachandrapuram was directed to resume the said land, till finalization of the case by the Revenue Divisional Officer to protect the said land from encroachments and also directed for sending of compliance report by 30.07.2003.

30. While things stood thus, the vendor's vendor of the petitioners in W.P. No. 34455 of 2018 & 34464 of 2018, 35416 of 2018, 37030 of 2018 i.e., Tana Electric Supply Company Limited, who purchased the said property, by way of registered sale deeds, filed W.P.No.16451 of 2003 against the action of Joint Collector and got an interim order in his favour with respect to the resumption of the said land. However, subsequently, the said writ petition was withdrawn with a liberty to participate in de novo enquiry conducted by the Revenue Divisional Officer. In the said enquiry, the Revenue Divisional Officer after considering the documentary evidence adduced by the party therein i.e., Thana Electric Supply

Company Limited, categorically held that vendor's vendor of the petitioner has got physical possession of the land Ac.101.07 gts as on the date of vesting i.e., 01.11.1973 having purchased the same from the legal representatives of Inamdars. The then Revenue Divisional Officer in his proceedings also held that Thana Electric Supply Company Limited is successor in interest of the said lands and thereafter issued Occupancy Rights Certificates vide proceedings dated 16.09.2004 in respect of land to an extent of Acs.101.07 guntas in Sy.Nos.134 and 135 of Edulanagulapaly Village of Ramachandrapur Mandal by collecting premium amount of Rs.9,813/- in favour of M/s.Thana Electric Supply Company Limited. The issue attained finality in the year 2004, since the sale deeds executed in the year 2004 in favour of the petitioners in these writ petitions, by the Court, through a decree in a suit filed by the predecessor in title of the petitioners.

31. It is pertinent to note here that after issuing ORCs in favour of M/s.Thana Electric Supply Company Limited, again in the year 2007, the Joint Collector, Sangareddy issued another show cause notice dated 28.02.2007 to the vendor's vendor i.e., M/s.Thana Electric Supply Company Limited stating that the said corporation was not in physical possession of the said land as on the date of vesting i.e. 01.11.1973. However, on being satisfied with the material produced by M/s.Thana Electric Supply Company Limited, the Joint Collector dropped the show cause notice dated 28.02.2007 vide proceedings dated 21.07.2007, wherein it is observed as follows:

> "Consequent on such application public notice was issued by the RDO Sangareddy incorporating the names of all interested persons and the same was published in Gram Panchayath and also proclaimed by beat of tom tom. The MRO, Ramchandrapuram through report No:B/3761/2002, dated 09.08.2004 available at page No:1561 of RDO Sangareddy file No:B3/Inams/3070/02 has reported that as on the date of vesting i.e., 01.11.1973 Sri Mir Muzayad Ali, Inamdar was in possession of the lands in Sy.No:134 and 135 of Edulanagulapally (V) and that M/s.Thana Elecricals Pvt., Ltd., purchased the lands through registered documents executed by the legal heirs of the said Inamdar.
>
> The Government Pleader opined that after having examined the matter with reference to the back ground history of the land and recommendations of the House Committee the ORC granted by the RDO Sangareddy in favour of the respondent in Sy.No.134 and 35 is in order and there are no justifiable reasons to interfere with the ORC granted to the respondent herein.
>
> In the light of the above facts, I drop the show cause notice issued on 28.02.2007."

In view of the above, the Joint Collector has confirmed the rights, possession and title of the vendor's vendor of the petitioners in the year 2007 itself.

32. While things stood thus, some of the persons, who were aggrieved by the orders passed by the Joint Collector on 07.07.2003, challenged the same by filing W.P.Nos.16885 of 2003, 18182 of 2003 and 33100 of 2011, which were disposed of by way of common order dated 12.06.2017.

33. A perusal of the order passed by the learned Single Judge of this Court dated 12.06.2017 in the above writ petitions goes to show that the learned counsel appearing for both sides gave consent for relegating the matter to Revenue Divisional Officer on the ground that the order of Joint Collector dated 07.07.2003 is invalid and he has no power to take up the case under Section 10 of the Act of 1955. In the said common order, it is observed as follows:

> "After hearing the learned counsel for the petitioners, the learned Government Pleader submitted that the second respondent ought not to have exercised the jurisdiction in a matter of this nature as the power has to be exercised by the Revenue Divisional Officer under the provisions of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. He also submitted that the cancellation of 38-E certificates by the second respondent in the present proceedings is not proper."

However, the said finding of the learned Single Judge and the so-called consent given by the then Government Pleader before the learned Single Judge goes against the averments in the counter affidavit filed by the 2nd respondent therein i.e., Joint Collector. In the 5th paragraph of the counter affidavit filed by him, it is stated as follows:

> "5. It is not correct to say that the Joint Collector has no power to take up the case Under Section 10 of the A.P.(TA) Abolition of Inams Act, 1955. It is to submit that as per clause (a) of sub-section1 of section 2of the A.P.(T.A) Abolition of Inams Act, 1995, the Collector means the Collector of a District and includes any other officer not below the rank of a Deputy Collector who may be authorized by the Government by notification in the official gazette to discharge the functions of a Collector under the Act. This does not preclude the inherent powers vested with the Collectors i.e., Joint Collectors to enquire into the status of land u/s 10 of the A.P.(T.A) Abolition of Inams Act, 1955. As the Collectors are over burdened with multifarious official duties, a notification was issued by the Government of A.P in G.O Ms.No.1122 Revenue dated 20.08.1975 authorizing the Revenue Divisional Officers to discharge the functions of the Collectors under section 2(1) of the Act in their respective revenue divisions. Further,

the Government in G.O.Ms.No.818 Revenue (Ser.I) Department dated 06.09.1990 reserved the subject 'The A.P.(T.A) Abolition of Inams Act, 1955', to the Joint Collectors. In G.O.Ms.No.699 Revenue (J.A) Dept. dt: 13.07.1994 the Government given suo-moto powers to the Collectors while amending the A.P(T.A) Abolition of Inams Rules, 1975. Further, section 37 of the Inam Abolition Act specifies that, the Government may, as occasion may require, do anything which appears to them necessary for the purpose of removing the difficulty. As such the authorizing the Revenue Divisional Officers to discharge the functions of the Collectors does not mean that the Collectors have no jurisdiction under Section 10 of the Act and were precluded is not correct and they can function as and when necessity arises. In the instant case, action was initiated as per the directions of the Government and as empowered by the Act and as such, the action initiated is according to the rules as well as within the purview of Law."

34. A perusal of the counter affidavit along with the relevant GOs issued, it is crystal clear that the Joint Collector was empowered to exercise power under Section 10 of the Act of 1955. Therefore, it is cleared by the two successive notifications that, although RDO was authorized to conduct the said proceedings vide notification dated 20.08.1975, but it cannot be inferred from this that the said notification bars the jurisdiction of Joint Collector to initiate the proceedings in question.

35. In spite of specific pleading in the counter affidavit by the Joint Collector about his jurisdiction/competency to conduct enquiry under Section of the Act, it is not known as to why the Government Pleader made submissions contrary to the averments in the counter affidavit filed by the Joint Collector. He ought not to have submitted contrary to the counter affidavit filed by the then Joint Collector in W.P.No.18182 of 2003. That apart, none of the writ petitioners in these writ petitions are parties to the aforesaid writ petitions, wherein consent was given by the Government Pleader for relegating the present RDO to decide the issue.

36. Pursuant to the said consent order passed by the learned Single Judge on 12.06.2017 in W.P.No.18182 of the Revenue Divisional Officer issued public notice dated 21.09.2017 published in Eenadu Telugu Daily on 24.09.2017 to the concerned persons. On receiving the notice from the said RDO, in the second round of enquiry, the petitioners herein submitted suitable replies stating various factual and legal aspects. Thereafter, RDO passed the impugned order dated 28.08.2018 directing the Tahasildar to take over possession of the balance land into the Government custody under the cover of panchanama except the land to an extent of Ac.230.07 gts covered in W.P.No. 5417 of 2014 and report compliance.

37. As already observed supra, in respect of the very same subject property, the then Revenue Divisional Officer recognised the subject lands as Inam Lands and recognized the previous owners' of the said lands as possessor and successors-in-interest to the said property on the date of vesting i.e. 01.11.1973 under the provisions of the Inams Act, 1955 and granted Occupancy Rights Certificates vide proceedings dated 16.09.2004, which attained finality.

38. Next issue that falls for consideration is in regard to the binding effect of the said consent order passed by the learned Single Judge on those parties, who are not arrayed in the writ petitions. As already observed supra, the counter presented by the Joint Collector and the mutual consent achieved by the petitioners and government pleader is contradictory.

39. It is pertinent to mention that the basic principle of doctrine of natural justice cannot be ignored and hence, no order should be passed behind the back of a person who is to be adversely affected by the order. **In J.S. Yadav v. State of U.P. and Another** (2011) 6 SCC 570), in Paragraph 31 it is held under:

> "No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person are terminated and Another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner-plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner-plaintiff."

Further, in **H.C. Kulwant Singh v. H.C. Daya Ram** (2015) 3 SCC 177), the Hon'ble Apex Court observed as follows:

> "… if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice."

In view of the principles laid down

in the foresaid decisions, the said consent order is not binding on the writ petitioners in these writ petitions, for the reasons that the writ petitioners in these writ petitions were not arrayed as parties to the litigation in the earlier writ petitions, basing on which the impugned order was passed by the RDO. Therefore the said order was not passed with common consent but with the specific consent of the writ petitioners in W.P.Nos.16885 of 2003, 18182 of 2003 and 33100 of 2011. Similarly, the consent provided by the Government Pleader is contradictory to the counter presented by the Joint Collector in the said writ petitions which prima facie shows ignorance on the part of the then Government Pleader.

40. It is vehemently contended by the learned counsel for the petitioners that the Revenue Divisional Officer cannot review the decision of his predecessor in office. Before coming to the conclusion it is pertinent to note the decision of Hon'ble Apex Court in the case of **Dr. (Smt.) Kunkesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) & Others (**1987 AIR 2186), where it is held as follows:

> "It is now well established that a quasijudicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction."

Further, in **Patel NarshiThakershi And Ors. vs Shri Pradyumansinghji, AIR 1970 SC 1273,** the Hon'ble Apex Court held as follows:

> "It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

In view of the principle laid down in the aforesaid judgments, it is therefore settled that the power of review is not inherent in nature unless explicitly provided in the given statute. In the instant case, since rehearing of the case by the present Revenue Divisional Officer which is already been settled by his predecessor in office, amounts to reviewing of the previous RDO's decision even when no such power of review is provided under the Act. That apart, no provision of law is brought to the notice of this Court to show that the RDO can review his predecessor's decision, as such, impugned order is patently illegal, without jurisdiction and opposed to all cannons of law.

41. It is next contended by the learned Special Government Pleader for the official respondents that the petitioners have not made necessary affected parties, as such, this writ petition is liable to be dismissed on this ground alone. It is to be seen that the impugned order is challenged by the petitioner to the extent of it's property alone

and not in respect of property of others, as such, it is not necessary to add all the affected parties to this litigation in which the petitioner has no interest, as such, the contention of the learned Special Government Pleader that the writ petition is liable to be dismissed for non joinder of necessary parties, does not merit consideration.

42. A perusal of the vacate petitions as well as the implead petitions filed in support of the application goes to show that the implead petitioners/vacate petitioners are only seeking clarification/modification of the interim order granted on 03.10.2018 in the writ petition restricting their prayer to the extent of the land of the writ petitioner and for vacating the interim order regarding other extents belongs to the respondents 5 to 11, which goes to show that the implead petitioners/vacate petitioners are not claiming the land belong to the petitioners, as such, they are not proper and necessary parties to these writ petitions. More so, the prayer of the writ petitioner is allowed to the extent of its share only.

43. By virtue of orders dated 04.06.2021 in I.A.No.3 of 2018 in W.P.No.35416 of 2018, even though respondents 5 to 16 were impleaded, since they claim rights over the subject property by instituting a partition suit in OS No.124 of 2018 before the X Additional Chief Judge, City Civil Court, Hyderabad, they can pursue their remedies in the said suit.

44. It is finally contended by the learned Special Government Pleader for the official respondents that the petitioners having approached the RDO by giving detailed explanation to the notice issued on 14.09.2017, he cannot approach this Court by way of these writ petitions, since they are having remedy under Section 24 of the Act against the impugned proceedings in these writ petitions.

45. It is settled principle of law that availability of alternate remedy is not a bar in entertaining a writ under Article 226 of the Constitution of India. In **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai reported in [1998 (8) SCC 1],** the Hon'ble Supreme Court held that the availability of alternative remedy does not operate as a bar where a writ petition is filed for enforcement of fundamental rights or where there has been violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of the Act are challenged. Therefore, this Court can certainly entertain the writ petitions even though there exist alternate remedy under Section 24 of the Act of 1955, as impugned order suffers from patent illegality as held above.

In view of above facts and circumstances, the impugned order passed by the RDO dated 28.08.2018 is liable to be set aside and accordingly set aside, to the extent property of writ petitioners only. Accordingly, Writ Petitions are allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

–X–

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

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

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