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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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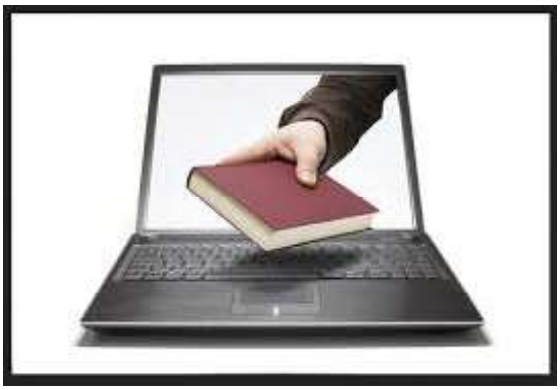

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(Founder : Late Sri G.S. GUPTA)

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PART - 16 AND INDEX 2022(2) 31ST AUGUST 2022

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HELD: Deviations in construction of building are minor, minimal or trivial, or affect public at large or in the public interest or not, or cause public nuisance or hazardous or dangerous to public safety are questions of fact - Required to be considered by the Competent Authority of Corporation before resorting to demolition - Order impugned does not assign any cogent reasons for not accepting the explanation stating that 'not satisfactory', is no consideration at all - Writ petition allowed. **(A.P.) 263**

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HELD: Applications under Order 11, Rule 1 of CPC are filed in interlocutory applications filed under Order 7, Rule 11 of CPC and the scope of enquiry under Order 7, Rule 11 of CPC is to the extent of pleadings contained in the plaint as well as documents annexed therein and the truth or otherwise of the same cannot be gone into at this stage and it will not serve any purpose and the Respondents/Plaintiffs filed application for conducting roving enquiry about the pleadings, which is not permissible under Order 7, Rule 11 of CPC and at this stage, the applications filed under Order 11, Rule 1 of CPC are premature - Before directing discovery of documents, Trial Court is required to satisfy itself that the documents are relevant for the purpose of disposing of the suit or not - A party cannot be permitted to have a roving enquiry to extract information which may or may not be relevant, which goes to show that the impugned order of the trial Court is without application of mind - Civil Revision stands allowed setting aside the impugned order of Trial Court. **(T.S.)** ***146***

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CRIMINAL PROCEDURE CODE, Sec.374 - High Courts are required to give notice to the accused before enhancing sentences. **(SRC)** ***9***

CRIMINAL PROCEDURE CODE, Secs.437 & 439 - INDIAN PENAL CODE, Secs.376(2)(n),417,420,323,384,506, r/w Sec.109 - Regular bail.

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(INDIAN) PENAL CODE, Sec.304-A - Criminal revision against judgment of District & Sessions Judge, where by the learned Judge dismissed the appeal, confirming the conviction and sentence imposed against revision petitioner for the offence punishable u/Sec.304-A of IPC.

HELD: Revisional jurisdiction of High Court is limited and only in case where their appears a manifest illegality or injustice, or orders suffers from any error of law, High Court would be justified in exercising its revisional jurisdiction - No interference is warranted as far as conviction is concerned, but with regard to sentence, it may be noticed that the offence took place in the year 2005 and almost 17 years have passed, the ends of justice will be met if the revision petitioner/accused is sentenced to pay a fine of 5000/- for the offence punishable u/Sec.304-A of IPC in lieu of simple imprisonment for 6 months - Hence, confirming the conviction of revision petitioner /accused for the offence punishable u/Sec. 304-A of IPC and sentence of one year is set aside and accused is sentenced to pay a fine of Rs.5000/-, further the revision petitioner shall also deposit a sum of Rs.10,000, out of which Rs.5000/- shall go to Sanik Welfare Fund and Rs.5000 shall go to Telangana High Court Advocate's Association. **(SRC)** ***10***

--X--

village of Kurnool Mandal and District and after due consideration of such material including the judgment dated 27.10.1969 in O.S. No.43 of 1969 of the learned Subordinate Judge, Kurnool; the Board may, after issuing notices to the petitioners and other persons in occupation of the properties in Sy.No.19 of Dinnedevarapadu village, if satisfied, issue a fresh notification and in accordance with law. Alternatively, the Wakf Board may also consider the advisibility of filing a civil suit for declaration of its title in respect of this property. The maintainability of such suit or grant of relief(s) therein shall be however decided by the appropriate Court before which it is presented, in accordance with law. Since the impugned Gazette notification dated 01.09.2005 is declared unsustainable and is quashed by this judgment, the respondent-Board shall not be authorized to pursue proceedings under the Act against the petitioners, on the assumption that the schedule property is property belonging to the wakf until a formal and lawful declaration of the property being wakf property is re-notified in accordance with law."

4. Admittedly, after quashing the notification dated 01.09.2005 by the Division Bench, a fresh exercise has not been undertaken by the Waqf Board for determining and including the subject land as waqf property. In the absence of any fresh notification declaring the subject property as waqf property in a lawful manner, inclusion of the property in 22-A list is not at all justified and the learned single Judge has rightly held that inclusion of the subject property in 22-A list is not in accordance with law.

5. At this stage, Mr. P. Veera Reddy, learned Senior Counsel would submit that the decision in the impugned judgment of learned single Judge would come in the way of the Waqf Board in exercising the liberty reserved in its favour by the Division Bench in W.P.No.989 of 2007.

6. We are afraid, no such conclusion can be drawn by reading the order passed by the learned single Judge. It is not possible that liberty reserved in favour of the Waqf Board by the Division Bench can be set at naught by a single Bench. The liberty still remains intact in favour of

the Waqf Board and the Board would be entitled to exercise its liberty in accordance with law.

7. Accordingly, both the writ appeals are dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

–X–

2022(2) L.S. 260 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice Venkateswarlu Nimmagadda

Papili Apparao ..Petitioner
Vs.
Papili Appalanaidu ..Respondent

CIVIL PROCEDURE CODE, Or.26, Rule 9 & 13 and Or.20, Rule 18 - Final decree application in pursuance of preliminary decree for partition - Appointment of Advocate Commissioner - Commissioner appointed only purpose a scheme of partition of plaint schedule property - No prejudice caused to the revision petitioner - CRP, dismissed.

Mr.Vangala Sailaja, Advocate for the Petitioner.
Mr.P.Rajasekhar, Advocate for the Respondent.

O R D E R

Assailing the order dated 15.02.2022 passed by the X Additional District Judge, Anakapalle, in I.A.No.1030 of 2018 in O.S.No.323 of 2004, allowing the said application filed by the 1st respondent/plaintiff for appointment of an Advocate Commissioner to partition the suit schedule properties into two equal shares in terms of the preliminary decree dated 09.07.2018 passed in the suit, the petitioner/ 4th defendant preferred this civil revision petition.

2. The 1st respondent filed the suit against respondent Nos.2 to 5 and the petitioner for partition of plaint schedule properties into two equal shares by metes and bounds and for allotment of one such share to him, for determination of future profits and for a direction to them to pay his half share of future profits on a separate application to be filed by him.

i) The 1st respondent and the 2nd respondent are brothers. The 3rd respondent is mother and the 4th respondent is sister of respondent Nos.1 and 2. The petitioner is son and the 5th respondent is daughter of 2nd respondent.

ii) After full-fledged trial and after hearing both sides, the Court below allowed the suit by judgment and preliminary decree dated 09.07.2018. Pursuant to the preliminary decree dated 09.07.2018, the 1st respondent filed an application being 1030 of 2018 under Order XXVI Rule 13 r/ w Section 151 CPC seeking appointment of an Advocate Commissioner to partition the suit schedule properties. The petitioner, the 2nd respondent and the 5th respondent filed counters independently. The Court below allowed the said application by an order dated 15.02.2022 which is under challenge in this civil revision petition.

3. Learned counsel for the petitioner/ 4th defendant would submit that the whole approach of the Court below in passing the impugned order appointing the Advocate Commissioner is without appreciation of

the submissions made on behalf of the petitioner. He would also submit that aggrieved by the judgment and preliminary decree dated 09.07.2018 passed by the Court below in O.S.No.323 of 2004, the petitioner filed A.S.No.1917 of 2018 before this Court along with I.A.No.1 of 2018 seeking stay of all further proceedings pursuant to the preliminary decree. This Court *vide* order dated 28.01.2021 in I.A.No.1 of 2018 in A.S.No.1917 of 2018 directed the Court below to proceed with the final decree proceedings if any, and shall not pass any final decree until further orders, and posted the appeal for final hearing. During pendency of the appeal, the order impugned in the revision petition came to be passed. The learned counsel would contend that the first appeal is a valuable right of appellant and therein all questions of fact and law decided by the trial Court are open for re- consideration. In support of this contention, he relied on the principle of the Hon'ble Supreme Court in ***Malluru Mallappa Vs. Kuruvathappa*** AIR 2020 SC 925. Therefore, he prays to allow the revision petition by setting aside the impugned order.

4. On the other hand, learned counsel for the 1st respondent/plaintiff would submit that in the appeal filed by the petitioner, this Hon'ble Court stayed the actual passing of the final decree and not all further proceedings to be taken in pursuance of the preliminary decree. The Court below did not commit any error in appointing an Advocate Commissioner and therefore, the impugned order warrants no interference by this Court. He would contend that appointment of an Advocate Commissioner is only to propose a scheme for partition of properties covered by the preliminary decree; and that no prejudice can be said to have been caused to the petitioner by ordering appointment of Commissioner. In this regard, he placed reliance on a decision of a learned single Judge of the combined High Court of Andhra Pradesh in ***R. Ramakrishna Reddy Vs. Smt. M. Kamala Devi*** AIR 2004 AP 484. The learned counsel would submit that there are no merits in the revision petition and the same is liable to be dismissed.

5. It is the contention of the petitioner during pendency of the appeal, the impugned order was passed by the Court below, and that the first appeal is a valuable right of the petitioner and therein all questions of fact and law decided by the trial Court are open for re- consideration. In this context, he relied upon a judgment of the Hon'ble Supreme Court in ***Malluru Mallappa Vs. Kuruvathappa***(1 supra) wherein it is held as under:

> "14. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re- hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial Court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all

issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions."

6. The facts in the aforesaid case are that the trial Court dismissed the suit filed by the plaintiff for specific performance of agreement to sell on the grounds that the suit was barred by time and that the plaintiff was not ready and willing to perform his part of the contract. On appeal, the High Court confirmed said decree. The Apex Court allowed the appeal in part setting aside the judgment of the High Court and remanded the matter to the High Court for fresh disposal, holding that the High Court has neither re-appreciated the evidence of the parties nor it has passed a reasoned order. Whereas, in the present case, the 1st respondent filed suit for partition of plaint schedule properties and it was decreed. In the appeal filed by the petitioner, this Court directed the Court below to proceed with the final decree proceedings if any, and shall not pass any final decree until further orders, and the appeal is still pending adjudication. In the considered opinion of this Court, the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case, because the facts in both the cases are quite different from each other.

7. In the decision in ***R. Ramakrishna Reddy Vs. Smt. M. Kamala Devi*** (2 supra) relied on by the learned counsel for the 1st respondent, a learned single Judge of the combined High Court of Andhra Pradesh held thus:

"3. The contention of the learned counsel for the petitioner is that since the order in C.M.P.No.7353 of 2001 stayed the actual passing of the final decree, and not all further proceedings to be taken in pursuance of the preliminary decree, the Court below did not commit any error in appointing a commissioner to make a notional partition of the plaint schedule properties.

5.Stay granted in C.M.P.No.7353 of 2001 in A.S.no.1154 of 2001, is against passing of a final decree only, and so, as rightly observed by the court below, it is not precluded from taking steps which are to be taken before the passing of a final decree. The commissioner is appointed by the Court below only to propose a scheme of partition in terms of the preliminary decree. In suits of partition, a commissioner appointed by Court only proposes a scheme of partition. On the proposal made by the Commissioner, the Court would either draw lots or would itself allot the shares to the parties. So merely because the Court below ordered that the Commissioner shall make a notional partition of schedules A to C and make notional allotment in terms of preliminary decree, it does not mean that the proposal made by the Commissioner would be binding on the parties. In fact that direction

should be taken to mean that the Commissioner was asked to propose a scheme of partition of plaint schedules A to C into 18 shares, and propose which share can be allotted to which of the parties.

6.Since the order under Revision only directs the Commissioner to propose a scheme for partition of the properties covered by the preliminary decree, no prejudice can be said to have been caused to the revision petitioner by that order and so I find no grounds to interfere with the order impugned."

8. The facts in the afore-mentioned judgment and the facts in the present case are identical. Therefore, the judgment relied on by the learned counsel for the 1st respondent is squarely applicable to the facts of the case on hand, for the reason that the Commissioner was appointed by the Court below only to propose a scheme of partition of the plaint schedule properties in terms of preliminary decree which would cause no prejudice to the revision petitioner. In view of the above, this Court finds no merit in the revision petition to interfere with the impugned order and the revision petition is liable to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

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

–X–

2022(2) L.S. 263 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ravi Nath Tilhari

E.V. Rama Rao ..Petitioner

Vs.

The State of A.P. & Ors., ..Respondents

A.P. MUNICIPAL CORPORATION ACT, 1955, Secs.452 & 461- AP BUILDING RULES, 2017, Rule 3 (33) (g) - Provisional Order/Notice giving details of deviations/violations in construction of building – Explanation submitted by the petitioner seeking regularisation – Confirming the said Provisional Order/ Notice without giving reasons stating that explanation 'not satisfactory'.

HELD: Deviations in construction of building are minor, minimal or trivial, or affect public at large or in the public interest or not, or cause public nuisance or hazardous or dangerous to public safety are questions of fact - Required to be considered by the Competent Authority of Corporation before resorting to demolition - Order impugned does not assign any cogent reasons for not accepting the explanation stating that 'not satisfactory', is no consideration at all - Writ petition allowed.

Mr.P. Rajasekhar, Advocate for the Petitioner.

W.P.No.25816/22 Date: 16 -8-2022

GP for Municipal Admn. for R.1
Mr.G. Naresh Kumar, rep. Mr.M.Manohara Reddy for R2 & R3.

J U D G M E N T

Heard Sri P. Rajasekhar, learned counsel for the petitioner, learned GP for Municipal Administration, representing respondent No.1, and Sri G. Naresh Kumar, representing Sri M. Manohara Reddy, learned counsel for respondents No.2 & 3.

2. With the consent of the learned counsels for the parties, the writ petition is being decided at the admission stage without calling for counter affidavit.

3. This writ petition has been filed under Article 226 of the Constitution of India for the following reliefs:

> "…to declare the Notice No.85/1075/ELR//UC2021, dated 12.08.2022 issued by the 2nd respondent confirming the show cause notice dated 12.05.2021 and directed petitioner to bring the construction covered by D.No.23B-5-2/1 situated in Edaravari Street, Revenue Ward No.26, RR Peta, Eluru, West Godavari District into the rule frame within 7 days as illegal, arbitrary, unconstitutional and contrary to the provisions of Andhra Pradesh Municipal Corporation Act, 1995 and consequently command the respondents not to take any coercive steps of demolitions, in any manner, in the interests of justice and pass such other order or orders….."

4. Sri P. Rajasekhar, learned counsel for the petitioner, submits that the petitioner is the absolute owner and is in possession of house site admeasuring 1050 sq.yards covered by D.No.23B-5-2/1 situated in Edaravari street, Revenue Ward No.26, RR Peta, Eluru, West Godavari District. Pursuant to the petitioner's application dated 10.10.2018, the 2nd respondent granted building permission vide Permit No.1075/0339/B/ELR./RRPet/2018, dated 30.10.2018 for construction of G+5 floors and though the petitioner raised only G+4 floors but as per the sanctioned plan. The 2nd respondent issued a provisional order/notice under Section 452 (1) & 461 (1) of A.P.Municipal Corporation Act, 1965, (in short 'MC Act, 1965') and under sections 86, 89 (1&2), 90(1) of A.P.Metropolitan Regional and Urban Development Authority Act, 2016, which Act of 2016, according to the learned counsel for the petitioner has no application, giving details of the deviations / violations identified in the tabular form and asking the petitioner to submit reply as to why the deviations / violations could not be removed / altered or pulled down within specified time, failing which, it will be treated as a continuous and intentional offence and further action will be taken as per the provisions mentioned in the provisional order.

5. The petitioner submitted reply dated 16.07.2021, Ex.P3, acknowledging the show cause notice/provisional order, and submitting that due to some 'Vastu' complaints there is some deviation in the construction and requested in effect and substance that as per the Government norms and the regularization scheme, the

petitioner is willing to pay for regularization of such deviations. The 2nd respondent through its Commissioner passed the impugned order dated 12.08.2022, Ex.P5, confirming the provisional order. Challenging which, the present writ petition is filed.

6. Sri P. Rajasekhar, learned counsel for the petitioner, submits that though the petitioner filed reply to the show cause notice/provisional order, but in the impugned order, in the first paragraph, it is incorrectly mentioned that the petitioner did not submit any reply to the show cause notice, whereas in the last paragraph, it has been mentioned that the reply given is not satisfactory, which as such contains contradictory statements. He further submits that the petitioner's reply, in fact, has not been considered, in as much as the petitioner's prayer for regularization of deviations shown in the show cause notice/provisional order has not been considered at all, but the order merely states that the reply given is not satisfactory which is in fact no consideration and frustrates the purpose of giving the notice and filing of reply.

7. Sri P. Rajasekhar further submits that the deviations as mentioned in the provisional order dated 12.05.2021, are minor in nature which would not affect the public at large and some of the deviations are liable to be regularized under Rule 3 (33) clause (g) of the A.P. Building Rules, 2017 and for the other deviations which as per the provisional order may not be regularized but still cannot be demolished as they do not affect the public at large. He submits that though the petitioner has valid defence/ objections to the provisional order those were not raised in the explanation as the petitioner instead of litigation wanted for regularization of the deviations under the rules, but once such prayer was not even considered the petitioner may be given opportunity to file additional objections to the provisional order to meet the ends of justice.

8. Learned counsel for the petitioner has placed reliance on the judgments in the case of ***Poonamchand v. Greater Hyderabad Municipal Corporation***2012 (1) ALT 524 (S.B) to contend that the rejection of the explanation by cryptic observation defeats the very purpose of issuance of notice, and in the case of ***K. Ashok Kumar v. Greater Hyderabad Municipal Corporation***2013 (2) ALT 517 (S.B) to contend that merely stating that the explanation submitted is not satisfactory, is not sufficient but the order must contain the reasons for the conclusions arrived at. He has further placed reliance in the case of ***ACES, Hyderabad v. Municipal Corporation of Hyderabad***1994 (3) ALT 73 to contend that the Full Bench of this Court issued certain directions/guidelines, as illustrative, to the Corporation, in cases of some deviations in the building construction and set back plan holding that the deviations or violations if are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.

9. Sri G. Naresh Kumar, learned counsel appearing for the respondents, submits that the rules which permit regularization of deviations is not with respect to all kinds of deviations and the set back, but only the deviations to the

extent of 10% maximum and that too with respect to the deviations which are not the front set back. He submits that the petitioner in his reply did not submit anything with respect to the deviations, but only requested for regularization of those deviations whereas any scheme for regularization is presently not prevalent, which scheme for regularization was there in the year 2019.

10. To the aforesaid submission, Sri P.Rajasekhar submits that the scheme for regularization was extended from time to time and even otherwise if the deviations had been timely pointed out by passing provisional order with respect to the constructions raised in 2018-19 the petitioner could have availed the scheme even if prevalent in the year 2019. In any case, the petitioner's explanation for regularization required consideration in view of the statutory provisions of Rule 3 (33)(g) of the Rules which has not been considered.

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

12. So far as the deviations in the constructions of building is concerned, it being a question of fact, as to whether within the permissible percentage to be regularized or not or affecting the public at large or not, cannot be adjudicated in the exercise of writ jurisdiction, at this stage, as it requires consideration by the competent authority taking into account various aspects with due opportunity of hearing to the concerned, at the first stage. The Court, therefore, is not entering into this aspect of the matter.

13. There is no dispute that Rule 3 (33) (g) of the A.P.Building Rules, 2017 provides for regularization of the deviations to certain extent and of certain nature. Even if regularization is not permissible under the rules beyond certain percentage, the competent authority to the extent permissible can grant regularization and passing appropriate order with respect to the percentage beyond permissible limit.

14. The Full Bench of this Court in ***ACES, Hyderabad*** (supra),with respect to the building deviations issued directions in para-36 which is reproduced as under:

> "**36.** Having regard to the rampant, illegal and unauthorised constructions raised in the country as observed in *State of Maharashtra's case* (AIR 1991 SC 1453) (supra) before parting with this case, we would like to formulate the following guidelines to be followed by the respondent in respect of illegal constructions. The guidelines should not be treated as exhaustive but only illustrative and the discretion to be exercised by the Corporation in any given case should not be arbitrary or capricious.
>
> 1)In cases where applications having been duly filed in accordance with law, after fulfilling all requirements, seeking permission to construct buildings and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the construction are not in public interest or cause public nuisance or hazardous or dangerous

to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.

2)whatever is stated in guideline number (1) will also equally apply to the permissions deemed to have been granted under Section 437 of "The Act".

3)If no application has been filed seeking permission and the construction is made without any permission whatsoever, it is open to the Corporation to demolish and pull down or remove the said unauthorised structure in its discretion. Otherwise, having regard to the facts and circumstances of the case, it will be putting a premium on the unauthorised construction. When the Corporation comes to the conclusion, keeping the above guidelines in view, that the construction in question is required to be demolished or pull down, it should follow the procedure indicated below:

(i)The demolition should not be resorted to during festival days declared by the State Government as public holidays excluding Sundays. If the festival day declared by the Government as a public holiday falls on a Sunday, on that Sunday also, the Corporation should not resort to demolition.

(ii)In any case, there should not be any demolition after sun set and before sun rise.

(iii)The Corporation should give notice of demolition as required by the statute fixing the date of demolition. Even on the said date, before actually resorting to the demolition, the Corporation should give reasonable time, depending upon the premises sought to be demolished, for the inmates to withdraw from the premises: If within the time given the inmates do not withdraw, the Corporation may proceed with actual demolition.

These guidelines are laid down in view of the fact that the Corporation is a public authority and its action must be tested on the touchstone of fairness and reasonableness."

15. Whether the deviation in the present case, as per the provisional order are minor, minimal or trivial, or affect public at large or in public interest or not, or cause public nuisance or hazardous or dangerous to public safety including of the residents therein require consideration by the competent authority of the Corporation before resorting to the demolition. In the Full Bench judgment Section 452 of the A.P.Municipal Corporation Act itself was for consideration.

16. However, the petitioner's case for regularization has not been considered at all, which the authority, in view of the explanation submitted, was required to consider.

17. Sri G. Naresh Kumar has fairly admitted that there is no consideration of

the petitioner's explanation on regularization on specific grounds.

18. The Court also finds from the perusal of the impugned order that it contains contradiction on the point of submission of the reply by the petitioner, in as much as in the first paragraph it is stated that the petitioner did not submit any reply, whereas in the second paragraph, it has been stated that the reply given is not satisfactory, and contrary to the provisions and rules, but without discussing as to in what respect and as to how it was contrary to what rules.

19. In ***Poonamchand*** (supra) this Court has held in para-7 as under:

> "7.**A perusal of the impugned notice shows that respondent No. 1 has not dealt with the explanation of the petitioner and has rejected the same with a cryptic observation that the same is not satisfactory and "it may not be considered". In the opinion of this Court, the very purpose of issuing a notice under Section 452(1) of the Act is to give an opportunity to a person, who has constructed the building in an illegal or unauthorised manner, to submit his explanation. It is, therefore, obligatory on the part of respondent No. 1 to consider the explanation.** If satisfactory explanation is offered by the owner of the building, respondent No. 1 shall drop further proceedings. It is only in cases where such explanation is not offered, that respondent No. 1 is not entitled to proceed further. Unless the Commissioner refers to the contents of the explanation and gives reasons for coming to the conclusion that the explanation is not satisfactory, he cannot proceed with further action and issue notice under Section 636 of the Act. Failure to deal with the explanation renders the very purpose of issuing notice nugatory."

20. In ***K. Ashok Kumar*** (supra) this Court held in paras-2 & 3 as Under:

> "2. Section 636 of the Act gives power to the Commissioner to require any construction made without obtaining necessary permission to be removed and in case the person to whom such a direction was issued by the Commissioner ignores or fails to remove any structure within the time specified, the said task will be carried out by the corporation at the expense of the said individual. It is not in dispute that the petitioners have been issued a notice in terms of Section 452 of the Act on 31.7.2012 for which a detailed reply has been filed by the petitioners on 16.8.2012. They raised several objections. **Whether those objections are tenable or otherwise would be decided by the person who is concluding the exercise in accordance with Section 636 of the Act. Whereas the relevant portion of the impugned order reads as under:**
>
> "the reply submitted by you vide reference 3rd cited in response to the

show-cause notice has been examined and the same is not found satisfactory."

"3. To say the least this is most unsatisfactory way of deciding an issue. Every order must contain the reasons for the conclusion arrived thereat. It is the reasons which provide the links to the conclusions. The relevance of those reasons must lend support to the conclusion. **The expressions "found not satisfactory" are reflective of the conclusion but, not the reason. As to why the explanation offered by the petitioners is not satisfactory, forms part of their process of reasoning**."

21. In ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan***(2010) 9 SCC 496 on the point of necessity of giving reasons by a body or authority in support of its decision, the Hon'ble Apex Court summarized the legal position in paragraph-47, which is reproduced as under:

"**47.**Summarising the above discussion, this Court holds:

(a)In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b)A quasi-judicial authority must record reasons in support of its conclusions.

(c)Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d)Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e)Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f)Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g)Reasons facilitate the process of judicial review by superior courts.

(h)The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision- making justifying the principle that reason is the soul of justice.

(i)Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j)Insistence on reason is a requirement for both judicial accountability and transparency.

(k)If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l)Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m)It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* [(1987) 100 Harvard Law Review 731- 37])

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain* [(1994) 19 EHRR 553] EHRR, at 562 para 29 and *Anya* v. *University of Oxford* [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

22. The order impugned does not assign any cogent reason for not accepting the explanation submitted by the petitioner and the same is no consideration at all.

23. For all the aforesaid reasons, the order impugned cannot be sustained.

24. The Writ Petition is allowed. The impugned order dated 12.08.2022 is quashed only on the aforesaid ground.

25. The 2nd respondent shall proceed to pass fresh orders, in accordance with law, after taking into consideration the petitioner's explanation submitted. It shall be open to the petitioner to file additional reply to the notice/provisional order dated 12.05.2021 within a period of two weeks from today. If additional reply is filed, the same shall also be considered by the concerned authority, in accordance with law.

26. The final order shall be passed within a period of two months from the date of production of a copy of this judgment before the authority concerned.

27. No order as to costs.Pending miscellaneous petitions, if any, shall stand closed in consequence.

-- THE END --

21.Before deciding the issues at hand, this Court feels it apposite to discuss the scope of revisional powers conferred under Section 397 to Section 401 of the Cr.P.C. The provisions are extracted below:

> 397. Calling for records to exercise of powers of revision.-
>
> (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
>
> Explanation.-All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.
>
> (2)The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3)If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.
>
> **398. Power to order inquiry.-** On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:
>
> Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.
>
> **399.Sessions Judge's powers of revision.-**(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under subsection (1) of Section 401.
>
> (2)Where any proceeding by way of

revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

(3)Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

401. High Court's powers of revision.-(1) In the case of any proceeding the record of which

has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3)Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4)Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5)Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

The powers of revision under Section 397 of the Cr.P.C. are concurrently vested on both the Sessions Courts and the High Courts. Section 399 of the Cr.P.C. provides that the Sessions Court shall have the same powers of revision as are conferred on the High Court under Section 401 of the Cr.P.C. Therefore, the courts derive the power of revision from Section 397 of the Cr.P.C. r/w Section 401 of the Cr.P.C.

22. Under the revisional powers, the courts are empowered to call for records of any inferior or subordinate criminal court to test the correctness, legality or propriety of any proceeding of such inferior or

subordinate criminal court. The powers of revision are limited and cannot be invoked lightly. The object behind exercising the revisional powers is to set right an error or illegality in the orders passed by the lower courts. The revisional powers under Section 397 r/w 401 of the Cr.P.C. are discretionary and the same shall be exercised to ensure that justice is done and the lower courts do not exceed and abuse the powers vested in them. Interference with the orders of lower courts is warranted only if findings in such orders are illegal, improper, perverse, contrary to the material on record or are grossly erroneous. Further, the revisional power may be exercised only to set right a patent defect to an error of law or jurisdiction.

23. The Supreme Court in ***Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305*** explained the scope of revisional powers under Section 397 and Section 401 of the Cr.P.C. The relevant paragraphs are extracted below:

> 127. Now let us briefly cogitate over the legal issue relating to the revisional and inherent jurisdiction of the High Court to call for the records and examine the records of any proceeding before any inferior criminal court within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and to quash criminal proceeding, deliberate on the legality and correctness of the later part of the order of Justice M.K. Chawla in and by which he has assumed the jurisdiction to initiate suo - motu proceedings, particularly for quashing the first information report and all other connected and allied proceedings arising during the course of
>
> the investigation.
>
> 128. Sections 397, 401 and 482 of the new Code are analogous to Sections 435, 439 and 561-A of the old Code of 1898 except for certain substitutions, omissions and modifications. Under Section 397, the High Court possesses the general power of superintendence over the actions of courts subordinate to it which discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate court.
>
> 129. By virtue of the power under Section 401, the High Court can

examine the proceedings of inferior courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise comes to its knowledge.

130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.

Similarly, the Supreme Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123*** has held that the Magistrate's order can only be interfered by exercising revisional jurisdiction if such order is perverse and is marred by glaring illegalities. The Court therein held that revisional courts are not supposed to act as appellate courts. They only have to satisfy themselves regarding the correctness, legality and propriety of the findings of the lower court which are under challenge. The relevant paragraph is extracted below:

14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with

decision in exercise of their revisional jurisdiction Issue-A:-

24. From the facts it is clear that the order dated 24.03.15 passed by the Magistrate was challenged by the unofficial Respondents herein vide revision petitions Criminal Revision Petition No. 19 of 2015 & Criminal Revision Petition No. 24 of 2015 before the Sessions Court. The Sessions Judge exercising her powers of revision passed a common order dated 15.02.2018 allowing the said revision petitions. It is against the common order dated 15.02.2018 that the present revision petitions are filed by the Petitioners herein.

25. It was contended on behalf of the unofficial Respondents that a revision petition against an order passed in a revision petition is not maintainable. The said argument is misconceived and cannot be accepted by this Court. Section 397(3) makes it clear that a person choosing to file a revision either before the High Court or the Sessions Court cannot prefer another revision. The bar of non-maintainability of a second revision applies only to a person who has already availed the benefit of revision. In other words, if a person had already approached the Sessions Court under Section 397 of the Cr.P.C., he cannot again approach the High Court invoking Section 397 of the Cr.P.C. However, a respondent who is aggrieved by the revisional order passed by the Sessions Court can file a revision petition before High Court.

26. A Full Bench of this Court in In Re: Puritipatti Jega Reddy, (1979) 1 ALT 56 held that the bar of filing another revision petition applies only to a person who had already filed a revision application. The relevant paragraph is extracted below:

9. The language of sub-section (3) of Section 397 contains no ambiguity. If any person has already chosen to file a revision before the High Court or to the Sessions Court under sub- section (1),the same person cannot prefer a further application to the other Court. To put it in other words. Sub-secs. (1) and (3) make it clear that person, aggrieved by any order or proceeding can seek remedy by way of a revision either before the High Court or the Sessions Court. Once he has availed himself of that remedy. he is precluded from approaching the other forum. It is equally manifest from the provisions that Sub- Sec (3) that this bar is limited to the same person who has already chosen to get either to the High Court or to the Sessions Court seeking a remedy and that it does not apply to the other parties or persons. Further the bar contained in sub-section (3) is only against that person who has ready chosen the remedy either before the High Court or before the Sessions Judge. It is not permissible to extent the bar contained under a statute to other Persons or to other fields. It is well established that the bar against seeking a remedy in a Court of Law or against a Court of law rendering justice should be strictly construed. It is noteworthy that sub-Section (1) of Sec, 397 empowers the High Court or the Sessions Court to call for and examine the record of any proceeding before any inferior Court. That is to say, it can exercise this power of calling for and examining the record suo motu also. The language of sub-Section (3). strictly limited

as it is to a person who has chosen to seek the remedy from one of the two courts, cannot be extended to the High Court exercising its powers conferred on it under the provision of the Code. It is patent that the bar contained in sub-section (3) is only against the person who has already chosen his remedy before one of the two forums.To sum up, a revision against a revisional order is not maintainable if both such revision applications were filed by the same person. In the present case, the earlier revision petitions vide Criminal Revision Petition No.19 of 2015 & Criminal Revision Petition No. 24 of 2015 were filed by the unofficial Respondents herein. The present revisions petitions are filed by the Petitioners who are aggrieved by the orders passed in Criminal Revision Petition No.19 of 2015 & Criminal Revision Petition No. 24 of 2015. The revisional petitioners are different in the present case. Therefore, the present revision petitions are maintainable.

27. The unofficial Respondents also contended that the revision petitions are not maintainable by the accused when no process is served on them. According to them, the role of an accused in the trial only beings after the process are issued to them. This Court cannot accept the said contention. Although the accused can participate in the trial after the issue of summons, they can nevertheless file a revision petition under Section 397 if they are aggrieved by any order passed by any criminal court dealing with the said offence. Further, a bare reading of Section 401(2) of the Cr.P.C. clearly indicates that a person has a right to participate in the proceedings and be heard if any order may cause prejudice to him/her.

28. Section 397 r/w 401(2) of the Cr.P.C. does not create a bar that only an accused on whom process are served can file a revision petition. It states that any person or accused can file a revision petition against any order passed by the lower courts if he/she can show that he is aggrieved by such impugned order and such order will cause prejudice. Therefore, according to this Court, the present criminal revisions petitions are maintainable as accused can file a revision petition even if no process are issued to him.

29. This Court has further explained infra that accused is entitled to participate in the proceedings under Section 397 r// w 401(2) of the Cr.P.C in Issue B. Issue-B:-

30. The Petitioners herein contended that the impugned order dated 15.02.2018 passed by the Sessions Court is patently illegal and suffers from legal infirmities as it acted beyond the scope of Sections 397, 398, 399 and 401 of the Cr.P.C. The Petitioners have challenged the legality, propriety and correctness of the impugned order on the grounds that the Sessions Court failed to serve notice on the Petitioners herein and failed to hear them before passing the impugned order; the Sessions Court cannot direct the Magistrate to take cognizance of the offence; the Sessions Court could not have interfered with the Magistrate's order dated 24.03.15 and; the plea of self-defence can be considered at the pre- trial stage.

31.Therefore, to decide whether the

impugned revisional order dated 15.02.2018 suffers from patent illegality and is liable to be set aside, the following issues are to be decided:

> i. Whether the Petitioners herein were entitled to notice and hearing before the impugned order was passed?

32. The unofficial Respondents contended that the Petitioners herein were not entitled to notice and hearing as the accused have no role to play at pre-cognizance stage. Further, cognizance is taken of the offence and not the offender. Therefore, the accused cannot insist for participation in the proceedings in cases where no cognizance is taken and where no process were issued. It was also contended that accused are in no way aggrieved at pre-cognizance stage as they have other alternative remedies like invoking the inherent jurisdiction under Section 482 of the Cr.P.C. or filing a discharge petition. Further, the unofficial Respondents contended that the revision proceedings before the Sessions Court were a continuation of the proceedings which were pending before the Magistrate. Hence, as no notice is required at the pre-cognizance stage, the same also applies to proceedings under revisional jurisdiction before the Sessions Court.

33. On the other hand, the Petitioners herein relying on Manharibhai (Supra) contended that the requirement of issuing notice is mandatory under Section 401(2) of the Cr.P.C. and the proviso to Section 398 of the Cr.P.C.

34. This Court cannot accept the contention of the Respondents. A perusal of Section 401(2) of the Cr.P.C clearly indicates that no order resulting in any prejudice to the accused shall be passed without giving him/her an opportunity of hearing. The Supreme Court in Manharibhai (Supra) had discussed the requirement of issuing notice under Section 401(2) of the Cr.P.C. and held that the accused is not entitled to participate at the pre-cognizance stage where enquiry is conducted under Section 202 of the Cr.P.C. However, if the complaint is dismissed under Section 203 of the Cr.P.C. and a revision is preferred against such dismissal, the accused is entitled for a notice in such revisional proceedings. The relevant paragraphs are extracted below:

> 46. The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/ suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with

the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

XXXXX

48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub- section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203 although it is at preliminary stage- nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the

Code. The stage is not important whether it is pre-process stage or post process stage.

XXXXXX

53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan [(2004) 13 SCC 472 : (2006) 1 SCC (Cri) 345], Raghu Raj Singh Rousha [(2009) 2 SCC 363 : (2009) 1 SCC (Cri) 801] and A.N. Santhanam [(2012) 12 SCC 321 : (2011) 2 JCC 720] . We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.

27

35. Similarly, in ***Bal Manohar Jalan v. Sunil Paswan, (2014) 9 SCC 640*** the Supreme Court considered a similar contention that notice is not required under Section 401(2) of the Cr.P.C. if no process was issued. The Court rejected the contention and held that the dismissal of complaint under Section 203 of the Cr.P.C. results in termination of proceedings. Therefore, if such dismissal is challenged by invoking the revisional jurisdiction, the accused will have a right of hearing and notice under Section 401(2) of the Cr.P.C. The relevant paragraph is extracted below.

48. In a case where the complaint has been dismissed by the Magistrate Under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate Under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain

reading of Sub- section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate Under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate Under Section 203 although it is at preliminary stage nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the

Sessions Judge, by virtue of Section 401(2) of the Code the suspects get the right of hearing before the revisional court although such order was passed without their participation. The right given to "accused" or "the other person" Under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate Under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

36. Coming to the present case, the accused/Petitioners herein were certainly prejudiced as the Magistrate dismissed the protest petitions of the unofficial Respondents. This virtually led to closure of criminal proceedings against the accused/ Petitioners herein. However, the Sessions Court exercising its power under revisions set aside the order of the Magistrate and directed the Magistrate to take cognizance. Such an order passed by the Sessions Court resulted in reviving the criminal proceedings against the Petitioners herein. Therefore, the impugned order caused prejudice to the Petitioners herein as it revived the criminal proceedings against them. The argument of the unofficial Respondents that the Petitioners are not prejudiced and no notice is required cannot be accepted.

ii. Whether it is permissible for the Sessions Court to direct the Magistrate to take cognizance of offence?

37. The Petitioners herein contended that the Sessions Court has limited jurisdiction to only check the legality, propriety and correctness of the order impugned before it. The Sessions Court has no power to direct the Magistrate to take cognizance of the offence. On the other hand, the unofficial Respondents contended that the powers of revision are

wide and the Sessions Court had the power to direct the Magistrate to take cognizance.

38. This Court agrees with the argument advanced by the Petitioners. The revisional court can only examine the legality, correctness and propriety of the orders impugned before it. It cannot exceed the power and go a step further and direct the Magistrate to take cognizance of the offence. It is relevant to note that the power to take cognizance is specifically conferred on the Magistrates under Sections 190 and 200, 201, 202, 203 & 204 of the Cr.P.C.

39. Taking of cognizance is a judicial function and the Magistrate exercising such function has to apply his/her mind over the material available and satisfy himself/herself independently as to whether cognizance can be taken. The power to take cognizance is not vested on a court exercising revisional powers under Section 397 r/w Section 401 of the Cr.P.C.

40. The revisional court can only discuss and highlight the illegality or perversity in the orders impugned before it. It shall remand the matter back to the Magistrate and direct him/her to decide the matter in accordance with the discussion regarding the illegality or perversity. Further, if it reaches the conclusion that a further enquiry is necessary in the matter, it can direct the Magistrate to conduct such enquiry under Section 398 of the Cr.P.C. The revisional courts cannot usurp the power specifically conferred on Magistrates to take cognizance.

41. This Court in Mikkilineni Venkateshwari v. Tummula Nirmala, (2001) SCC Online AP ***1578*** held that a Sessions Court cannot direct the Magistrate to take cognizance. The relevant paragraphs are extracted below:

7. The only contention raised by the learned senior Counsel appearing for the revision petitioners is that while remitting the matter back, the learned Sessions Judge committed error in directing the Court below to take cognizance. In this connection, the learned senior Counsel invited my attention to Section 398 of the Code, which may be excepted hereunder thus:

"398. Power to order inquiry: - On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further enquiry into any complaint which has been dismissed under Section 203 or subsection (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

8. A perusal of the said Section shows that it is open to the Sessions Judge to direct a Magistrate to make further enquiry into any complaint, which has been dismissed under Section 203 of the Code.

Directing the Magistrate under the impugned order by the learned Sessions Judge to take cognizance of the matter is certainly one step forward to the requisite enquiry to be conducted and leaves no discretion to the Magistrate to satisfy himself about the truth or otherwise of the allegations. It becomes almost an empty formality for the Magistrate who has been directed to take cognizance of the offence. While remitting back the matter to the Court of Magistrate, the direction should have been left to consider the case afresh in the light of the observations made, if any inter alia, in the remand order. The contention of the learned senior Counsel in that view of the matter gains significance on bare perusal of the relevant provisions. Therefore, the impugned order requires modification to that extent only. The other conclusions drawn by the learned Sessions Judge in the impugned order are impeccable.

9. In the result, the Criminal Revision case is allowed and the impugned order dated 20-11-2000 passed by the learned Sessions Judge, Krishna Division at Machilipatnam, in Crl. R.P. No. 7 of 2000 is modified by setting aside the direction that the Magistrate shall take congnizance of the complaint while upholding the order of remand for fresh consideration in the light of the observations made by the learned Sessions Judge.

42. A similar view was expressed by the Karnataka High Court in ***Lalajibaishah v. Asalchand Hukmischand Porawal, 1978 SCC Online Kar 128***. The relevant paragraph is extracted below:

8. The learned Sessions Judge has not stopped at pointing out the illegality committed by the Magistrate, but has gone on to assess the evidence of the complainant-respondent-1 and his witness Bhima Shankar, as if he was exercising his appellate powers, and conclude that material was sufficient to disclose an offence under Section 380 IPC, and to make a direction to issue process against the petitioners. The Sessions Judge had no power to do so while exercising his re visional jurisdiction under Section 397 and 398 of the Code. The power that he is empowered to exercise is only to direct further enquiry into the complaint. He cannot direct either the Chief Judl. Magistrate or any subordinate Magistrate, to take cognizance of an offence or offences or to examine any person, or persons or to issue process against any person or persons. But the learned Sessions Judge has done exactly what he is not empowered to do. The only order that the learned Sessions Judge could have passed in this case was to set side the order of dismissal of the complaint on the ground that the learned Magistrate had taken into consideration material not envisaged by Section 203 of the Code, and direct further enquiry into the complaint of respondent-1, by the Magistrate, may be by the Chief Judicial Magistrate. The Chief Judicial Magistrate has all the liberty to decide whether he should take cognizance of the offence or offences or whether he should proceed on, the material already collected viz., the evidence of the complainant and his witness Bhima Shankar, and issue process against the petitioners, or not to do so. Therefore, the order of the Sessions Judge is bad in law to that extent. In the result, this revision petition is allowed and

the order passed by the learned Sessions Judge is modified to the following effect: Therefore, the Sessions Court in the present case could not have directed the Magistrate to take cognizance.

iii. Whether the Sessions Court was justified in interfering with the order dated 24.03.15 passed by the Magistrate dismissing the protest petitions filed by the unofficial Respondents herein?

43. The Petitioners herein contended that the Magistrate's order dated 24.03.2015 was legal and the Sessions Court could not have interfered with the same. At this stage, it is relevant to note that the CBI filed a final report requesting the Magistrate to close the case. The Magistrate issued a notice to the unofficial Respondents herein to file their objections to the final report of the CBI. Therefore, protest petitions were filed by the unofficial Respondents herein.

44. Treating the protest petitions as a private complaint under Section 200 of the Cr.P.C., the Magistrate postponed the issue of process under Section 202 of the Cr.P.C. and examined the unofficial Respondents herein and their witnesses under Section 200 of the Cr.P.C. The Magistrate examined the unofficial Respondents (Mrs. K. Padma and Mrs. Beenitha Pandey) and their witnesses one Mr. Swamy Agnivesh and one Dr. Neelakanteshwar Rao (who conducted the postmortem of Mr. Azad). The statements of Mr. Swamy Agnivesh and Dr. Neelakanteshwar Rao were marked as Ex.C1 and Ex.C2.

45. In her statement Mrs. K. Padma deposed that her husband left their house on 30.06.2010 at around 1:00 pm to board the Gondwana Express to go to Nagpur to meet one Sahdev in relation to the peace talks between the Maoists and the government. But later she came to know through news reports that her husband was killed in an encounter. According to her, Mr. Azad was kidnapped and killed at a point-blank range. Her husband Mr. Azad could not have used fire arms as he has poor eye sight and he has a glass on his left eye.

46. Mrs. Bineeta Pandey also deposed that her husband Mr. Pandey left their home on 30.06.2010 to take a train to Nagpur. He informed her that he will be back on 02.07.2010. She waited but her husband did not return. On 03.07.2010 she recognized her husband's picture in a newspaper and came to know that he was killed in an encounter along with Mr. Azad. According to her, it was a cold-blooded murder and her husband was killed in a close-range firing. He was a journalist and did not know how to use firearms. She alleged that her husband was kidnapped and murdered in a fake encounter.

47. Mr. Swamy Agnivesh also deposed that the killing of Mr. Azad and Mr. Pandey was a fake encounter. He spoke about his involvement in the proposed peace talks between the Maoists and

the government.

48. Dr. Neelakanteshwar Rao deposed about the nature of injuries and said that he differed in opinion with the AIIMS report prepared by one Prof. TD Dogra and others which said that the burnt edges on the

wounds were not caused due to close-range firing. He stated that he could not have expressed his opinion before the AIIMS board constituted under Prof. TD Dogra. He stated that his opinion varies from the opinion of the experts of AIIMS.

49. At this stage, it is relevant to note that while dealing with a complaint under Section 200 or a protest petition, the Magistrate can only rely on the material present before him i.e., the statements of the complainant and the witnesses present. The Magistrate cannot consider any other material available. Further, the Magistrate cannot conduct a mini trail or go on a fact-finding mission to determine whether a prima facie case is made out.

50. This Court in ***M. Ramesh Babu v. State of A.P., (2005) 1 ALT (Cri) 339*** has held as follows:

16. Now, in view of the authoritative pronouncement of the Apex Court in Chandra Deo Singh's case, which is a four Judge Bench Judgment, it is obvious that what is open to the Magistrate which acting under Section 203 is to satisfy himself as to whether or not there is sufficient ground for proceeding and in order to come to such conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under Section 202, or statements made in an investigation under that section, as the case may be, but he is not entitled to rely upon any materials besides this.

Therefore, the Magistrate could have relied upon only on the statements of the unofficial Respondents (Mrs. K. Padma and Mrs. Beenitha Pandey) and their witnesses one Mr. Swamy Agnivesh and one Dr. Neelakanteshwar Rao.

51. After examining the complainants and the two witnesses, the Magistrate dismissed the protest petitions on the ground that no sufficient material is available to make out a prima facie case.

52. The said order dated 24.03.2015 was challenged before the Sessions Court under Section 397 of the Cr.P.C. The Sessions Court set aside the order dated 24.03.2015 on the ground that the deaths of Mr. Azad and Mr. Pandey were alleged to be fake encounters by Mrs. K. Padma, Mrs. Bineeta Pandey, and Mr. Swamy Agnivesh. Further, the Sessions Court only reiterated the statement and Dr. Neelakanteshwar Rao. According to this Court, the Sessions Court with respect to the said statements has not given any reasons as to how the said statements lead to a conclusion that a prima facie case is made out. Further, as far as the said statements are concerned, the Sessions Court did not give any reasons as to how those statements led to arriving at a conclusion which is different than the one arrived at by the Magistrate who dismissed the protest petitions. The Sessions Court should have given reasons as to how the order dated 24.03.2015 passed by the Magistrate does not satisfy the requirement of legality, propriety and correctness in light of the statements of the protest petitioners and their witnesses.

53. Therefore, the Sessions Court was not justified in interfering with the order dated 24.03.2015 as it failed to provide any reasons as to how its conclusion differed

from that of the Magistrate.

iv. Whether the plea of self - defence can be considered at the pre-trial stage by the Magistrate?

It is also relevant to note that the Sessions Court set aside the order dated 24.03.2015 passed by the Magistrate on the ground that the Petitioners herein were involved in the exchange of fire in exercise of self defence. The Sessions Court held that the plea of right of self defence can be decided only during the course of trial and not during the pre-trial stage. This Court cannot accept the view taken by the Sessions Court.

54. The plea of self - defence can also be considered during the pre-trial stage. The Supreme Court in Vadilal Panchal (Supra) held that the plea of self - defence can be considered at the pre-trial stage. The relevant paragraphs are extracted below.

10. Now, in the case before us it is not contended that the learned Presidency Magistrate failed to consider the materials which he had to consider, before passing his order under Section 203 CrPC. As a matter of fact the learned Magistrate fully, fairly and impartially considered these materials. What is contended on behalf of the respondent- complainant is that as a matter of law it was not open to the learned Magistrate to accept the plea of right of self-defence at a stage when all that he had to determine was whether a process should issue or not against the appellant. We are unable to accept this contention as correct. It is manifestly clear from the provisions of Section 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. The section itself makes that clear, and it is not necessary to refer to authorities in support thereof. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the Inquiring Officer says, nor is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of an enquiry under Section 202 and has applied his mind judicially to the materials before him, we think that if would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses - all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions.

11. In support of its view the High Court has relied on some of its earlier decisions:

33 ***Emperor v. Dhondu Bapu Gujar [29 BLR***

713] ; ***Emperor v. J.A. Finan [33 BLR 1182]*** ; and ***Tulsidas Amanmal Karani v. S.F. Billimoria [34 BLR 910]*** . We do not think that any of the aforesaid decisions lays down any such proposition in absolute terms as is contended for on behalf of the respondent. In ***Emperor v. Dhondu Bapu Gujar*** a complaint charging defamation was dismissed by the Magistrate under Section 203 without taking any evidence, on the ground that the accused was protected by Section 499, exception 8. It was held that the order of dismissal was bad. Patkar, J. significantly observed:

"If the Magistrate in this case had taken evidence on behalf of the prosecution and on behalf of the accused, and passed a proper order for discharge, the order of the District Magistrate ordering a further enquiry without giving reasons might have stood on a different footing. We do not think that, under the circumstances of this case, there are adequate grounds for

interfering with the order of the District Magistrate."

12. In ***Emperor v. J.A. Finan*** the accused did not dispute the correctness of the statements made by the complainant, but in justification pleaded the order passed by his superior officer and claimed protection under Sections 76 and 79 of the Indian Penal Code. It is worthy of note that the order of the superior officer was not produced, but that officer very improperly wrote a letter to the Magistrate saying that he had given such an order. In these circumstances, the same learned Judge who decided the earlier case observed:

"It was, therefore, incumbent on the Magistrate to investigate the complaint and to find out whether the allegation of the accused that he was protected by Sections 76 and 79 of the Indian Penal Code was made out by legal evidence before him."

The facts in ***Tulsidas Amanmal Karani v. S.F. Billimoria*** were different, and the question there considered was whether a member of the Bar in India had absolute privilege. That decision has very little bearing on the question now before us.

13. Our attention has also been drawn to a decision of the Lahore High Court where the facts were somewhat similar: ***Gulab Khan, deceased through Karam Khan v. Gulam Muhammad Khan [AIR 1927 (Lahore) 30]*** . In that case also the person complained against took the plea of self-defence, which was accepted. In the High Court an objection was taken to the procedure adopted and it was argued that the order of discharge should be set aside. In dealing with that argument Broadway, J. said:

"Now a Magistrate is empowered to hold an enquiry into a complaint of an offence in order to ascertain whether there is sufficient foundation for it to issue process against the person or persons complained against. In the present case the Magistrate clearly acted in the exercise of these powers under Section 202 of the Criminal Procedure Code. He allowed the complainant to produce such evidence in support of his complaint as he wished to produce, and after a consideration of that evidence came to the conclusion that that evidence was

so wholly worthy of credence as to warrant his taking no further action in the matter."

14. Therefore, none of the aforesaid decisions lay down as an absolute proposition that a plea of self-defence can in no event be considered by the Magistrate in dealing with a complaint under the provisions of Sections 200, 202 and 203 of the Criminal Procedure Code.

55. Similarly, the decision in Vadilal Panchal (Supra) was affirmed by a four judge bech of the Supreme Court in ***Chandra Deo Singh v. Prokash Chandra Bose, (1964) 1 SCR 639***. The relevant paragraphs are extracted below:

12. Reliance is, however, placed by Mr Sethi on the decision of this court in ***Vadilal case [(1961) 1 SCR 1***, at p 9] at p. 10 of the report. What was considered there by this court was whether as a matter of law, it was not open to a Magistrate to accept the plea of the right of private defence at a stage when all that he had to determine was whether process is to issue or not. The learned Judges held that it is competent to a Magistrate to consider such a plea and observed:

"If the Magistrate has not misdirected himself as to the scope of an enquiry under Section 202 and has applied his mind judicially to the materials before him, we think that it would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment, What bearing such a plea has on the case of the complainant and

his witnesses, to what extent they are falsified by the evidence of other witnesses, - all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions."

13. On the basis of these observations it was urged that this court has held that a Magistrate has the power to weigh the evidence adduced at the enquiry. As we read the decision, it does not lay down an inflexible rule but seems to hold that while considering the evidence tendered at the enquiry it is open to the Magistrate to consider whether the accused could have acted in self defence. Fortunately, no such question arises for consideration in this case but we may point out that since the object of an enquiry under Section 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under Section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under Section 202, or statements made in an investigation under that section, as the case may be. He is not entitled to rely upon any material besides this. By "evidence of other witnesses" the learned judges had apparently in mind the statements of persons examined by the police during investigation under Section 202. It is permissible under Section 203 of the Code to consider such evidence along with the statements of the complainant recorded by the Magistrate and decide whether to issue process or dismiss the complaint.....

56. This Court in ***Sun Pharmaceuticals Ltd. v. State of Telangana, 2016 (2) ALT***

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(Cri) 165 (A.P.) held that the pleas of general exceptions can be considered during the pre-trial stage. The relevant paragraph is extracted below:

> 60(ii)(ad). Therefore, general exceptions are part of the definition of every offence contained in IPC, but the burden to prove their existence lies on the accused. It is to say that every offence defined in I.P.C. whether punishable or not from an offence to make out a non-offence within the meaning of general exceptions, as stated in Section 6 IPC, every section has to be read as subject to general exceptions to understand the meaning to say once general exceptions are applicable though the burden for that is on accused, it makes the offence otherwise defined a non-offence is the sum and substance. Thus, the general exceptions and special exceptions have to be understood with reference to Section 6 I.P.C. and further from the above principles defence material can also be considered in finding out prima facie accusation is there or not, not only while taking cognizance and issuance of summons but also from impugning cognizance order without need of putting to the ordeal of trial and to prove in defence with reference to section 105 of Indian Evidence Act. It is thus clear from the expressions supra that defence under general expressions of I.P.C. can be considered at the pre-trial stage from the material on record in ultimately quashing the cognizance proceedings from the very offence makes by the general expressions a non offence if materially is suffice with no need of putting ordeal of trial for consideration.

57. According to this Court, the view of the Sessions Court that the plea of self - defence cannot be considered at the pre-trial stage cannot be accepted. Further, as the Petitioners herein were not heard, the Sessions Court could not have decided whether such a plea was taken or not and whether the Petitioners herein were justified in making such a plea. Therefore, the Sessions Court could not have passed the impugned orders on the ground that plea of self - defence cannot be taken at the pre-trial stage.

Issue- C:-

58. The Petitioners herein contended that the Sessions Court could not have directed the Magistrate to take cognizance in the absence of any sanction from the government as required under Section 197 of the Cr.P.C.

197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

[Explanation.-For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166A, Section 166B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 370, Section 375, Section 376, [Section 376A, Section 376AB, Section 376C, Section 376D, Section 376DA, Section 376 DB] or Section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal

Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of

the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Section 197 of the Cr.P.C provides that a sanction from the concerned government is required to prosecute public servants who are guilty of committing any offence in exercise of his/her public duty. According to the said provision, no cognizance can be taken against such public servants unless a sanction is obtained.

59. The object and scope of the said provision was discussed in detail by the Supreme Court in ***State of H.P. v. M.P. Gupta, (2004) 2 SCC 349***.

10. Prior to examining if the courts below committed any error of law in discharging the accused, it may not be out of place to examine the nature of power exercised by the court under Section 197 of the Code and the extent of protection it affords to public servants, who, apart from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecution. Sections 197(1) and (2) of the Code read as under:

"197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

***

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance, no prosecution can be initiated in a Court of Session under Section 193, as it cannot take cognizance as a court of original jurisdiction, of any offence, unless

the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section

190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

60. Further, in ***N.K. Ganguly v. CBI, (2016) 2 SCC 143*** the Supreme Court has held that it is for the Magistrate to decide whether a sanction under Section 197 of the Cr.P.C. The relevant paragraph is extracted below.

35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.

61. Therefore, from the facts of the case it is clear that the ground of absence of

sanction could not have been urged by the Petitioners herein before the Sessions Court as no notice was served upon them. If the lower court comes to the conclusion that a sanction is required in terms of Section 197 of the Cr.P.C., the Petitioners herein cannot be prosecuted, unless such sanction is obtained.

Conclusion

62. In light of the aforesaid discussion, the impugned order dated 15.02.2018 does not satisfy the test of legality, correctness and propriety as no notice was served upon the Petitioners herein; the Sessions Court could not have directed the Magistrate to take cognizance; the Sessions Court failed to provide any reasons as to how its conclusion differed from the Magistrate while setting aside the order dated 24.03.2015.

63. In result, all the Criminal Revision Cases are allowed as follows:-

i. The impugned common order dated 15.02.2018 passed in Crl.R.P.Nos.19 and 24 of 2015 is set aside. The matter is remanded back to the Judge, Family Court - cum - IV Addl. District and Sessions Judge, Adilabad with a direction to decide the said criminal revision petitions in accordance with law.

ii. It is relevant to note that the alleged incident took place on the intervening night of 01.07.2010 and 02.07.2021. CBI inquiry was ordered on 26.04.2011 and the final report under Section 173(2) of the Cr.P.C. after completion of the investigation was submitted on 06.07.2012. The protest petitions were filed on 06.08.2013 and were dismissed on 24.03.2015. Against the dismissal of the protest petitions revision applications vide Criminal Revision Petition Nos. 19 of 2015 and 24 of 2015 were filed and the same were decided vide order dated 15.02.2018.

iii. Considering the said facts, this Court is of the considered view that a time frame shall be fixed to dispose of the said Criminal Revision Petitions by the Sessions Court. Therefore, the Judge, Family Court - cum - IV Addl. District and Sessions Judge, Adilabad is directed to dispose off the Criminal Revision Petitions within 3 months from the date of receipt of the copy of this order.

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

–X–

2022 (2) L.S. 146 (T.S)

IN THE HIGH COURT OF TELANGANA

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

M/s Omega Development Ventures Pvt.Ltd ..Petitioner

Vs.

Ajay Karan ..Respondent

CIVIL PROCEDURE CODE, Or.11, Rule 1 and Order 7, Rule 11 r/w Sec.151 - It is the case of Petitioner that Suit

was filed seeking cancellation of the registered sale deed fraudulently executed by GPA holder/5th Defendant in favour of the 1st defendant.

HELD: Applications under Order 11, Rule 1 of CPC are filed in interlocutory applications filed under Order 7, Rule 11 of CPC and the scope of enquiry under Order 7, Rule 11 of CPC is to the extent of pleadings contained in the plaint as well as documents annexed therein and the truth or otherwise of the same cannot be gone into at this stage and it will not serve any purpose and the Respondents/Plaintiffs filed application for conducting roving enquiry about the pleadings, which is not permissible under Order 7, Rule 11 of CPC and at this stage, the applications filed under Order 11, Rule 1 of CPC are premature - Before directing discovery of documents, Trial Court is required to satisfy itself that the documents are relevant for the purpose of disposing of the suit or not - A party cannot be permitted to have a roving enquiry to extract information which may or may not be relevant, which goes to show that the impugned order of the trial Court is without application of mind - Civil Revision stands allowed setting aside the impugned order of Trial Court.

Mr.N M Krishnaiah, Advocate for the Petitioner.

Mr.Rakesh Sanghi, Advocate for the Respondent.

C O M M O N O R D ER

Since the issue and the parties in all these Revisions are same, they are being disposed off by Common Order.

2. CRP No.567 of 2022 is filed against orders in I.A.No.156 of 2021 in I.A.No.129 of 2020 in O.S.No.896 of 2020, CRP No.572 of 2022 is filed in I.A.No.158 of 2021 in I.A.No.131 of 2020 in O.S.No.897 of 2020 and CRP No.574 of 2022 is filed in I.A.No.157 of 2021 in I.A.No.127 of 2020 in O.S.No.898 of 2020 vide orders dated 07.02.2022 wherein and whereby the application filed under Order 11, Rule 1 r/w section 151 CPC are allowed.

3. For the sake of convenience, the facts in CRP No.567 of 2022 is taken into consideration. The parties hereinafter will be referred to as arrayed in the interlocutory application.

4. It is the case of the petitioners that the suit OS No.896 of 2020 is filed seeking cancellation of the registered sale deed dated 01.09.2014 fraudulently executed by GPA holder i.e., 5th defendant in favour of the 1st defendant along with consequential relief of delivery of possession. Though the sale deed dated 01.09.2014 was presented for registration, the document was kept pending registration and was ultimately registered by the Sub-Registrar, Narapally on 05.02.2016. The defendants were not disclosing the real nature of the transaction i.e, sale deed dated 01.09.2014. The sale consideration mentioned in the aforesaid sale deed is grossly undervalued and has not find place in the books of the 1st defendant company, as such, the said sale

deed is a fictitious and sham document and the same is non-est and invalid document. The sale consideration mentioned in the registered sale deed is only 5% when compared to the market value. When there is no consideration, the contract would become void as per section 25 of the Contract Act, 1872. It is also stated that the defendant Nos.1 to 4 have filed an application for rejection of plaint and before deciding the said application, it is necessary to know i) whether the 1st defendant actually paid Rs.10,00,000/- to the 5th defendant as recited in the sale deed and ii) Whether the 1st defendant actually not paid Rs.10,00,000/- to the 5th defendant. Therefore, the defendant Nos.1 to 5 have to answer within the mentioned interrogatories for determining the aspect of limitation in the application filed for rejection of plaint as the answer to the interrogatories will determine the true nature of the sale deed dated 01.09.2014.

5. Counter affidavit is filed by the respondents 1 to 4 denying the averments in the affidavit filed in support of this application stating that this application is not necessary to be decided for deciding an application under Order 7, Rule 11 of CPC for rejection of plaint in I.A.No.129 of 2020. The present application is hit by the proviso to Order 11, Rule 1 CPC, which is applicable only to suit proceedings and not to interlocutory proceedings and that interrogatories can be delivered only when they relate to any matters in question in the suit and not otherwise. The interrogatories sought in the present application are irrelevant not only for the suit OS No.896/2020, but more particularly for determination of IA No.129 of 2020, which is filed for rejection of plaint and has to be decided only with reference to the pleadings in the plaint and/or the documents annexed thereto by the plaintiff and that the defence of the defendants is not at all relevant for the purpose of determining such petitions, as such, the present application is misconceived. Though I.A.No.129 of 2020 is filed long back, the petitioners are not coming forward for disposal of the same and in order to procrastinate the same, filed the present application. The application for rejection of plaint has to be decided based upon the averments allegations in the plaint along with the documents filed therewith and no new material can be brought at this stage. The defendants would have to establish a case for rejection of plaint based on the plaint itself and not upon the defense of defendants. If any investigation/enquiry is being conducted by any authority in regard to payment of paltry sale consideration and not paid any sale consideration, the defendants will cooperate with the said authority/investigation, and the petitioners are not entitled to file the present petition and sought for dismissal of the application.

6. The trial Court, after considering the averments in the affidavit and counter affidavit, allowed the application. Aggrieved by the same, present Revision Petition is filed.

7. Heard Sri J.Prabhakar, learned Senior Counsel appearing for Sri N.M.Krishnaiah and Sri K.Sharath, learned counsel for the revision petitioners and Sri Rakesh Sanghi, learned counsel for the respondents/plaintiffs.

8. Sri J.Prabhakar, learned Senior

Counsel and Sri K.Sharath, learned counsel for the revision petitioners submits that an application under Order 7, Rule 11 CPC is admittedly pending before the trial Court and in the said application, the present application is filed, which is not permissible under law. Since the application of rejection of plaint is pending, the question of interrogatories does not apply and more so, it can only apply to suit proceedings, but not to an interlocutory application. He also submits that insofar as interrogatories 1 and 2 are concerned, it is a matter of evidence and interrogatories 3 and 4 are not germane to the suit proceedings and it is for the department concerned to cause an enquiry in different proceedings. In support of their contention, they relied on the judgments reported in the case of ***Lalinda Shipping Inc.Liberia v. The Board of Truestees of the Port of Visakhapatnam, 1986 (2) ALT 648*** and ***Raj Narain v. Smt.Indira Nehru Gandhi, AIR 1972 SC 1302***. They further submit that the plaintiffs cannot fish evidence by way of interrogatories even before the written statement is filed, that too, without there being any pleadings to that effect in the plaint. To support the contention, relied on the judgment reported in the case of ***Bagyalakshmi Ammal v. Srinivasa Reddiar, AIR 1960 Madras 510***.

9. On the other hand, Sri Rakesh Sanghi, learned counsel for the respondents/ plaintiffs submits that the alleged registered sale deed is a void document, as no amount of Rs.10,00,000/- is paid by the 1st defendant to the 5th defendant, and even if it is paid, it is a paultry amount, as such, before deciding an application for rejection of plaint, answering of interrogatories are very much necessary for just and proper adjudication of the suit. He also submits that Order 11, Rule 1 of CPC is applicable to interlocutory applications in view of section 141 of CPC. In support of his contention, he relied on the judgment reported in 2020 (6) ALT 162. He also submits that the purchaser has to pay income tax.

10. In this case, it is to be seen that admittedly, an application under Order 7, Rule 11 for rejection of plaint is pending in I.A.No.129 of 2020 filed by the revision petitioners. The respondents/plaintiffs filed I.A.No.156 of 2021 under Order 11, Rule 1 for interrogatories. For the sake of convenience, Order 11, Rule 1 CPC is extracted hereunder:

> "In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an Order for that purpose:

Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross- examination of a witness.

11. It is clear that this rule in its main

clause does not embody any principle on which the interrogatories can be ordered. The two provisos indicate two rules, viz., (1) no party shall deliver more than one set of interrogatories to same party without an order for that purpose; and 2) the interrogatories that may be administered in oral cross-examination of witness shall be deemed to be irrelevant. Indian courts fairly accepted the rule obtained in England in respect of this procedure under Order 31 of the rules of the Supreme Court. The object of interrogating is twofold;

"first to obtain admissions to facilitate the proof of your own case; secondly, to ascertain, so far as you may, the case of your opponent.

Further, it will save time and money. The decided cases disclose broadly the following principles;

(1) The interrogatories must be confined to the matters which are in issue;

(2) Interrogatories, which relate solely to credit, that is, questions which are only put to test the credibility for witnesses are not allowed. This rule is provided in the second proviso to Order 11, Rule 1 CPC and hence the information that could be obtained in cross-examination of

a witness shall not form an interrogatory:

(3) The interrogatories shall not be oppressive and they should not be allowed if they exceed the legitimate requirements of a particular occasion. They should not put an undue burden on the party interrogated;

(4) The interrogatories must be bonafide, must not be aimed to use for others or at a future litigation;

(5) The interrogatories cannot be made in respect of contents of documents or which may tend to incriminate the material;

(6) The interrogatories shall have a note at the foot if they are administered to more than one person. This is provided in the main clause in Order Rule 1 itself.

The Court has wide discretion in the matter of interrogatories, and such a discretion exercised cannot be called in question unless it is clearly illegal. It is necessary to bear in mind that the rules stated above may overlap but they are intended to know just an outline of opponent's case. One can compel his adversary to disclose the facts on which he intends to rely, but not his evidence. He cannot ask the list of witnesses to be furnished.

The information that can be obtained in document or in cross-examination cannot properly form the subject matter of interrogatories. Hence, it was described in some jurisdiction that interrogatories should not be fishing, that is, they must refer to some definite and existing state of circumstances, and not be put merely in the hope of discovering some case (see Lalinda's case (supra).

12. Questions that may be relevant during cross- examination are not necessarily relevant as interrogatories. The only questions that are relevant as interrogatories are those relating to 'any matters in question.' The interrogatories

served must have reasonably close connection with "matters in question". (See Raj Narain's case supra)

13. No defendant can be compelled to produce any documents or to give inspection of the same for the purpose of facilitating cross-examination, or for enabling the plaintiff to understand the genuineness or purport of the documents relied upon by the defendants for proving his case. It will lead to strange results if such grounds are to be accepted by courts in ordering discovery or inspection, especially when these grounds are not the ones contemplated under the rules, which enable courts to direct discovery or inspection of documents. [(see bhagyalakshmi Ammal's case (supra)].

14. In the instant case, it is the contention of the respondents/plaintiffs that the 5th defendant has not paid the alleged sale consideration of Rs.10.00 lakhs and even if it is paid, the same is less than 5% of the total market value of the suit schedule property, which is not at all consideration in the eye of law and same is void in view of section 25 of the Indian Contract Act. The alleged registered sale deed contains that the amount of Rs.10,00,000/- has been paid and no oral evidence can be lead in respect of the contents of the documents, as such, in all, the plaintiffs having filed the suit, burden lies on them to prove their case, because they are seeking roving enquiry by filing present application.

15. A perusal of the impugned order goes to show that the Trial Court did not consider the question whether the discovery was or was not necessary at the stage of the suit or whether the documents, the production of which was sought were or were not relevant. before directing discovery of documents, the trial Court is required to satisfy itself that whether the documents are relevant for the purpose of disposing of the suit or not. A party cannot be permitted to have a roving enquiry to extract information which may or may not be relevant, which goes to show that the impugned order of the trial Court is without application of mind.

16. The interrogatories submitted by the plaintiff do not conform to matters which are in issue at the present stage of the suit. before proving the case of the plaintiff, he is not supposed to fish out evidence of defence from the defendant. When the defendant is ready to face the trial and subject himself for cross-examination, all the questions given in the interrogatories must be put to him in the cross-examination during the course of trial. The plaintiff has to enter into the box and prove his case first. Further the interrogatories are not only irrelevant but also the questions are such that they are not admissible even to put those questions at the time of cross-examination in the box. When the requirements under Order 11, Rule 1 CPC are not complied with, the trial court ought to have dismissed the petition.

17. Though there is no dispute with regard to the principle laid down ***Super Casettes Industries v. Nandi Chinni Kumar [2020 (6) ALT 162]*** stating that in view of section 141 of CPC, the procedure which is to be adopted in a regular suit, as far as possible, has to be followed while dealing

with interlocutory matters also subject to certain exceptions. No doubt, as per section 141 of CPC, which is applicable for the suits is also applicable for interlocutory applications, but in the present case, the applications under Order 11, Rule 1 of CPC are filed in interlocutory applications filed under Order 7, Rule 11 of CPC and the scope of enquiry under Order 7, Rule 11 of CPC is to the extent of pleadings contained in the plaint as well as documents annexed therein and the truth or otherwise of the same cannot be gone into at this stage and it will not serve any purpose and the respondents/plaintiffs filed application for conducting roving enquiry about the pleadings, which is not permissible under Order 7, Rule 11 of CPC and at this stage, the applications filed under Order 11, Rule 1 of CPC are premature.

18. Though the learned counsel for the respondents/plaintiffs have relied upon several judgments on different aspects, the same are not applicable to the facts and circumstances of the case on hand.

19. It is pertinent to note here that Chapter VI of the Indian Evidence Act, deals with the exclusion of oral by documentary evidence, especially Section 93 of the Act, wherein it provides for exclusion of evidence or amend ambiguous document when the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects. Section 94 of the Act also provides for exclusion of evidence against application of document to existing facts when the language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts. In the instant case, even according to the learned counsel for the respondents/ plaintiffs, there is no challenge to the language used in the subject registered document except the amount. As per Section 99 of the Act, persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document, however, in this case, the plaintiffs/respondents sought to answer interrogatories by the revision petitioners/defendants 1 to 4, who are parties to the subject registered sale deed.

20. In view of foregoing discussion, all the civil revision petitions are allowed setting aside the impugned order dated 07.02.2022.

There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

-- THE END --

(a) the original object of the public trust has failed:

(b) the trust property is not being properly managed or administered; or

(c) the direction of the court is necessary for the administration of the public trust; he may, after giving the working trustee an opportunity to be heard direct such trustee to apply to court for directions within the time specified by the Registrar.

(2) If the trustee so directed fails to make an application as required, or if there is no trustee of the public trust or if for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the court.

27. Courts power to hear application- (1) On receipt of such application the court shall make or cause to be made such inquiry into the case as it deems fit and pass such orders thereon as it may consider appropriate.

(2) While exercising the power under sub-section (1) the court shall, among other powers, have power to make an order for:-

(a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trust property;

(e) directing how the funds of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of the trust or the object for which the trust was created;

(f) issuing any directions as the nature of the case may require.

(3) Any order passed by the court under sub-section

(2) shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court.

(4) No suit relating to a public trust under section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall be entertained by any court on any matter in respect of which an application can be made under section 26.' (emphasis added)

Under sub-Section (2) of Section 26, the Registrar can himself make an application to the Court seeking the exercise of powers under Section 27. On such an application being made and after holding an inquiry, the Court has the power to remove the Trustees of the Trust or to issue directions as provided in Section 27.

48. In the present case, all the alienations made by the Trustees of Khasgi Trust except alienation made in favour of the appellant in Civil Appeal arising out of Special Leave Petition (C) No.19063 of 2021, have been made without complying with the mandatory requirement of obtaining the previous sanction as required by sub-Section (1) of Section 14.

49. We may note here that there are no proceedings filed for specifically challenging the validity of stated alienations

made by the Trustees. The impugned judgment of the Division Bench arises out of three proceedings. Two out of three are writ petitions filed by the Trustees. The first one was filed for challenging the impugned order of the Collector and the second one was filed seeking directions regarding entering the names of the Trustees in revenue records in respect of the Trust properties. The third proceeding is the Public Interest Litigation, in which there is a prayer for issuing a writ of mandamus to direct inquiry through CBI. Therefore, there was no occasion for the Division Bench to declare that the sale transactions are void especially when the purchasers were not before the High Court. Nevertheless, it is necessary for the Registrar to exercise powers under Section 22 and call for necessary records pertaining to the alienations made by the Trustees. Thereafter, the Registrar shall exercise powers under Section 23 and decide whether any loss was caused to the Public Trust as a result of alienations and if any loss was found to have been caused, he shall quantify the amount in accordance with sub-Section (2) of Section 23. He may also consider of invoking sub-section (1) or (2) of Section 26 as observed above, if found necessary.

LEGALITY OF THE ORDER OF THE COLLECTOR (Question e)

50. We may note here that the order of the Collector which was impugned before the High Court was passed without giving an opportunity of being heard to the Trustees of the Khasgi Trust and the purchasers. A show cause notice was issued to the Trustees by the Registrar on the basis of the complaint of the Member of the Parliament. Though the Trustees replied to the notice, even the reply was not considered by the Collector. Only on this ground, the said order ought to be set aside. As a matter of fact, the Collector had no jurisdiction to decide the issues of title as well as mismanagement of the affairs of a Public Trust. For the same reason, even the report of the Commissioner dated 24th May 2012 and the report of the Principal Secretary to the Chief Minister dated 2nd November 2012 are without jurisdiction. The reports have been made in breach of the principles of natural justice without affording an opportunity of being heard to the Trustees.

VALIDITY OF THE DIRECTION TO HOLD INQUIRY THROUGH ECONOMIC OFFENCES WING (Question f)

51. There was no warrant to direct inquiry through the Economic Offences Wing of the State Government as there is no finding that there was mens rea on the part of the Trustees. No finding has been recorded by the High Court based on material that the alienation made by the Trustees has resulted in causing loss to the Trust and that the entire sale consideration being diverted for personal use. It is noticed from the record placed before us that the entire consideration received from the purchasers has been credited to the account of the Trust. The allegation of misappropriation can be gone into only by the Authorities under the Public Trusts Act. Moreover, the direction issued by the High Court proceeds on the erroneous assumption that the Trustees have made misappropriation of the Government properties. There is no offence registered against the Trustees. Hence, Economic Offences Wing cannot be directed to hold an inquiry or investigation in connection with the subject matter of this proceeding.

In other words, the direction given by the High Court vide the impugned Judgment in that regard will have to be held to be non est in law. Though the said direction is unwarranted, as observed earlier, the Registrar will have to initiate necessary proceedings under the Public Trusts Act and carry them to a logical conclusion.

MAINTAINABILITY OF WRIT PETITIONS (Question g)

52. A contention was raised that only one Trustee had filed writ petitions before the Learned Single Judge for challenging the impugned order of the Collector and seeking other reliefs. The contention is that he was not authorized by the other Trustees to file the proceedings of writ petitions. The impugned order of the Collector purports to decide the issue of Title of the Trust properties by holding that the properties in Part 'B' of the Schedule to the Trust Deed are vested in the State Government. Even assuming that there was no express authority given to the writ petitioner in the form of a resolution of the Board of Trustees to file the writ petitions, even an individual Trustee was entitled to take proceedings for questioning such orders, which adversely affect the Trust and /or its beneficiaries. On the contrary, it is the duty of every Trustee to take such action of challenging an order holding that the properties held by the Trust are not the Trust properties. Moreover, none of the Trustees has come forward to challenge the authority of Trustee Shri S.C. Malhotra who had filed writ petitions and further proceedings. There was also a direction issued to the Economic Offences Wing to hold an inquiry about the misappropriation of the Trust property by the Trustees. Every Trustee was affected by the said direction. Therefore, in the facts of the case, the objection raised to the maintainability of the petition filed by one of the Trustees cannot be sustained.

CONCLUDING PART

53. In view of the discussions made above, the impugned judgment of the Division Bench cannot be sustained in toto. However, the view taken by the Division Bench that the Khasgi Trust is governed by the Public Trusts Act and no alienation of the Trust properties could be made without complying with Section 14 thereof, will have to be affirmed. Even the order of the learned Single Judge cannot be sustained as he has virtually directed the rewriting of the Trust Deed.

54. There are submissions canvassed across the Bar about the locus of the applicant in I.A.No.124266 of 2020 filed in Civil Appeals arising out of Special Leave Petition (C) Nos.12241-42 of 2020. It is not necessary for us to go into the said question finally. We leave the said question open to be decided in appropriate proceedings.

55. As far as Civil Appeal arising out of Special Leave Petition (C) No.19063 of 2021 is concerned, the alienation was made by the Trustees in favour of the appellant after obtaining the previous sanction of the Registrar by the order dated 16th October 1997. Therefore, the Registrar will have to make an inquiry limited to the question whether compliance of the conditions incorporated under the said order has been made by the Trustees. If there is a non-compliance, the Registrar will have to invoke the provisions of the Public Trusts Act for taking necessary action.

56. Therefore, the appeals must

succeed in part and we pass the following order:-

a. We hold that the Khasgi (Devi Ahilyabai Holkar Charities) Trust, Indore, is a Public Trust governed by the provisions of the Madhya Pradesh Public Trusts Act, 1951;

b. We, therefore, direct the Trustees to get the Khasgi Trust registered under the Public Trusts Act by making the necessary application within a period of one month from today;

c. We hold that the properties described in Part 'B' of the Schedule to the Trust Deed, are properties of the said Public Trust. However, alienation of the said properties can be made only by taking recourse to Section 14 of the Public Trusts Act;

d. We hold that the Supplementary Trust Deed dated 08th March 1972 is valid. But, the Trustees of the Khasgi Trust shall be entitled to alienate the Trust Property only after complying with Section 14 of the Public Trusts Act;

e. We hold that the direction issued by the High Court to Economic Offences Wing of the State Government to hold an inquiry was not warranted;

f. We direct the Registrar under the Public Trusts Act, having jurisdiction over Khasgi Trust, to call for the record of the Trust relating to all the alienations made by the Trustees. After holding an inquiry as contemplated by Section 23, the Registrar after giving an opportunity of being heard to all concerned shall determine whether by virtue of the alienations made by the Trustees, any loss was caused to the Public Trust. If according to him any such loss was caused to the Public Trust, he shall decide and quantify the amount liable to be paid by the concerned Trustees to the Khasgi Trust.

g. After holding an inquiry as aforesaid, if found necessary, he may invoke the power of making an application to the Court under sub-Section (2) of Section 26.The Registrar may take such other action and initiate such other proceedings which are warranted by law;

h. However, as regards the alienation made in favour of Shri Gajanan Maharaj Sansthan the appellant in Civil Appeal arising out of Special Leave Petition No.19063 of 2021, after calling for the record, the Registrar will hold an inquiry limited to the issue whether the alienation was made only after complying with the conditions incorporated in the order dated 16th October 1997. If he finds after holding an inquiry that compliance was not made with any of the conditions, he shall initiate appropriate proceedings in accordance with the Public Trusts Act;

i. Subject to the above directions, the impugned judgment of the Division Bench as well as the impugned judgment and orders dated 28th November 2013 of the Learned Single Judge of the Madhya Pradesh High Court, are set aside.

j. Civil Appeals are partly allowed in the above terms

-- THE END --

2022 (2) S.R.C. 19 (Supreme Court)

N.V. Ramana,CJI. S.Madhusudhan
Krishna Murari,J. Reddy
Hima Kohli,J Vs.
C.A.No.5503-04/22 V.Narayana Reddy
Date:18-8-2022 & Ors.,

CIVIL PROCEDURE CODE, Sec.114 and Or.XL VII, Rule 1 - REVIEW - An erroneous decision of a Court cannot be corrected by exercising review jurisdiction, but can only be corrected by the Supreme Court.

–X–

2022 (2) S.R.C. 20 (Supreme Court)

Hemant Gupta,J. M/s.Chausan Builders
Vikarn Nath, J. Raibareli
C..A.No. /22 Vs.
Date:16-8-2022 State of U.P & Ors.,

BLACKLISTING FROM THE PANEL OF CONTRACT - One cannot be blocklisted for life - The order of blocklisting to the extent that it has not specified the period cannot be sustained.

–X–

2022 (2) S.R.C. 21 (Supreme Court)

Hemant Gupta,J. H.S. Deekshit
Vikarn Nath, J. Vs.
S.L.ANo.2177/22 M/s.Metropoli Overseas
Date:16-8-2022 Ltd.,

CIVIL PROCEDURE CODE, Or.7, Rule 11 - REJECTION OF PLAINT - Avernments in the plaint alone are to be examined while considering an application under Or.7, Rule 11.

–X–

2022 (2) S.R.C. 22 (Supreme Court)

Dr.Dhananjaya Y.Chud.J Gaganand
A.S.Boppanna. Bhurance
Crl.A.No.1229/22 Vs.
Date:12-8-2022 Laxmi Chand Gyal

NEGOTIABLE INSTRUMENTS ACT, Sec.138 - Cheque bounce - Complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque is not maintainable.

–X–

2022 (2) S.R.C. 23 (High Court of A.P.)

Ravi Cheemalapati Jatoth Aditya Rathod
Crl.P.No.5704/22 Vs.
Date:12-8-2022 State of A.P.

CRIMINAL PROCEDURE CODE, Secs.437 & 439 - INDIAN PENAL CODE, Secs.376(2)(n),417,420,323,384,506, r/w Sec.109 - Regular bail.

When *de facto* complainant is willing stayed and had relationship, if the relationship is not work out, the same cannot be a ground for lodging an FIR for the offence u/Sec.376(2)(n) of IPC.

–X–

2022 (2) S.R.C. 24 (Supreme Court)

B.R.Gavai, J. Radheyshyam & Anr.,
Pamidighantam Vs.
Sri Narasimha, J. State of Rajasthan
Crl.A.No.1248/22
Date:12-8-2022

CRIMINAL PROCEDURE CODE, Sec.374 - High Courts are required to give notice to the accused before enhancing sentences.

–X–

2022 (2) S.R.C. 25 (Supreme Court)

B.R.Gavai, J. Khem @ Khem Chandra
Pamidighantam etc.
Sri Narasimha, J. Vs.
Crl.A.Nos.1200-02/22 State of U.P.
Date:10-8-2022

CORROBORATION - Some

corroboration is necessary when an ocular testimony false into category of "neither wholly reliable nor wholly un reliable".

–X–

2022 (2) S.R.C. 26 (High Court of T.S.)

G.Sri Devi J. P.Nagaraju
Crl.R.C.No.1731/2008 Vs.
Date:22-3-2022 State of A.P.

(INDIAN) PENAL CODE, Sec.304-A - Criminal revision against judgment of District & Sessions Judge, where by the learned Judge dismissed the appeal, confirming the conviction and sentence imposed against revision petitioner for the offence punishable u/Sec.304-A of IPC.

HELD: Revisional jurisdiction of High Court is limited and only in case where their appears a manifest illegality or injustice, or orders suffers from any error of law, High Court would be justified in exercising its revisional jurisdiction - No interference is warranted as far as conviction is concerned, but with regard to sentence, it may be noticed that the offence took place in the year 2005 and almost 17 years have passed, the ends of justice will be met if the revision petitioner/accused is sentenced to pay a fine of 5000/- for the offence punishable u/Sec.304-A of IPC in lieu of simple imprisonment for 6 months - Hence, confirming the conviction of revision petitioner /accused for the offence punishable u/Sec. 304-A of IPC and sentence of one year is set aside and accused is sentenced to pay a fine of Rs.5000/-, further the revision petitioner shall also deposit a sum of Rs.10,000, out of which Rs.5000/- shall go to Sanik Welfare Fund and Rs.5000 shall go to Telangana High Court Advocate's Association.

–X–

2022 (2) S.R.C. 27 (High Court of A.P.)

K.Vijayalakshmi J. M.Srinivasa Rao
W.P.No.986/2021 Vs.
Date:19-1-2021 State of A.P.

A.P. STATE PUBLIC DISTRIBUTION SYSTEM(CONTROL),ORDER,2008 - SUSPENSION OF AUTHORIZATION - Petitioner/F.P. shop dealer questioned the inaction of respondent not supplying essential commodities to his shop even after expiry of 90 days from date of suspension, in view of judgment of High Court of A.P. in A. Neelima vs.Joint Collector,Kurnool (1996(1)APLJ 285).

HELD: What is reasonable period of suspension will vary from case to case depending upon various factors, though more often than not, a period of 90 days should ordinarily be sufficient to conclude the enquiry - The Control Order does not specify any time limit - In view of judgments of Division Bench, there is no stipulation regarding completion of enquiry within a period of 90 days, hence it cannot be contended that, merely because, the enquiry could not be completed within a period of 90 days, the suspension order has to be set aside and the petitioner is entitled for supply of essential commodities - Period within which enquiry has to be completed will depend upon facts of each case and co-operation of the dealer.

-- THE END --

Law Summary

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

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SUBJECT - INDEX

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

---Petitioner is a founder family member of the 3rd respondent/Temple - Temple had been registered under the Endowments Act and owns a land which fetches an income of about Rs.1 lakh per annum - Case of the petitioner that on account of the said registration, there are various liabilities cast on the temple, by way of making payments to the Endowments Department, which are taking away income of the temple - Petitioner contended that temples which have an income of less than Rs.5 lakhs are exempt from all the regulations set out in the Endowments Act including the payment of various contributions to the Endowments Department.

HELD: There is every need for the State Government to reconsider it s decision of granting exemption to only those temples having an annual income of less than Rs. 2 lakhs and to increase the limit to Rs.5 lakhs - Writ Petition stands disposed of with a direction to the State Government to consider the grant of exemption to temples having an annual income of less than Rs.5 lakhs from the provisions of the Act including the requirement to pay the mandatory contributions, in the light of the directions of the Hon'ble Supreme court in Sri Divi Kodandarama Sarma and others vs.State of Andhra Pradesh &others (1997) 6 SCC 189 - This exercise shall be conducted within a period of four months from the date of receipt of this Order. ***45***

A.P.MUNICIPAL CORPORATION ACT, 1955:

---Secs.452 & 461- AP BUILDING RULES, 2017, Rule 3 (33) (g) - Provisional Order/ Notice giving details of deviations/violations in construction of building – Explanation submitted by the petitioner seeking regularisation – Confirming the said Provisional Order/Notice without giving reasons stating that explanation 'not satisfactory'.

HELD: Deviations in construction of building are minor, minimal or trivial, or affect public at large or in the public interest or not, or cause public nuisance or hazardous or dangerous to public safety are questions of fact - Required to be considered by the Competent Authority of Corporation before resorting to demolition - Order impugned does not assign any cogent reasons for not accepting the explanation stating that 'not satisfactory', is no consideration at all - Writ petition allowed. ***263***

A.P. PANCHAYAT RAJ ACT, 1994:

---Sec.58 (1), 98 & 103 and G.O.Ms.188, Dt.21-7-2011 - Whether Section 58 would vest all Gramakantam lands in the Gram Panchayath - Tiled house was in the possession of the Petitioners - Disputed Ac.0.06 cents of land was classified as Gramakantam land in the resettlement register - 5th respondent contended Mahila Mandali is being run in the village and the said land was proposed to be used for construction of library.

HELD: Notices issued on Petitioner only called upon to vacate the premises and did not give opportunity of hearing - Disciplinary action is said to have been initiated against Panchayat Secretary and extension authority, on account of these deficiencies - Demolition of the tiled house

of Petitioner was in clear violation of all safe guards given in the act and rules - It is admitted case of both sides that Petitioner has been in long standing possession of the tiled house since 1960, viewed either from the stand point of Sec.58(1) of Panchayat Raj Act or from the stand point of decided cases, occupied Grama Kantha land is not property of Gram Panchayat to invoke the provisions of either Sec.98 or 103 of the A.P. Panchayat Raj Act or the mechanism under G.O.Ms.No.188, Dt.21-7-2011 – Accordingly the demolition of tiled house in the possession of Petitioner is clearly beyond the authority of the 5th respondent and it is violation of both procedural and substantive law - Petitioner would be entitled to restore back to the same position as was obtaining prior to the demolition - 5th respondent shall bare the entire cost of reconstruction house of the Petitioner and also 5th Respondent directed to return all the material taken away from the tiled house. ***95***

A.P. POLICE STANDING ORDERS:

---- Batch of Writ Petitions filed questioning the opening and continuation of rowdy sheets against the Petitioners.

HELD: Standing Orders of A.P. Police Manual/A.P. Police Standing Orders to the extent of opening/continuation of Rowdy Sheet, Suspect Sheet, History Sheet etc., and on that basis the surveillance of the individual (in terms of Chapter 37 of the above said Standing Orders) are void - All the rowdy sheets opened in this batch of Writ Petitions are directed to be closed immediately - Police cannot open or continue a rowdy sheet or collect data pertaining to a person without the sanction of "law" - Collection of personal data and its usage for prevention of crimes also can only be in accordance with a "law" which crosses the thresholds mentioned in the Constitution of India and the various judgments, Since 'privacy' is now a Fundamental Right as per Part- III of the Constitution of India - It is reiterated that the police cannot (under the existing orders) indulge in night visits; domiciliary visits to the houses of a suspect or accused - They cannot take or demand the photographs, fingerprints etc., except under the procedure established by a 'law' and if the conditions laid down are satisfied.

Accused or suspects cannot be summoned or called to the Police Station or anywhere else either during festivals/ elections/ weekends etc. - They cannot be made to wait at the Police Stations for any reason or seek permission to leave the local jurisdiction - Writ Petitions allowed. ***195***

ARBITRATION AND CONCILIATION ACT, 1996:

--Sec.9 – INDIAN STAMP ACT, Sec.35 - Single Judge refused to refer the matter and appoint Arbitrator on the ground that the agreement is not properly stamped.

HELD: Clause pertaining to settlement of disputes by Arbitration contained in substantive agreement can be taken into consideration even to decide an application under Section 9 of the Arbitration and Conciliation Act leaving it open to the Arbitration Tribunal to record a finding, if any, on the clause, its admissibility due to failure to pay stamp duty on the substantive document - In view of Apex Court Judgment, Order under challenge cannot be interfered on the ground that the substantive agreement is not stamped - Appeal stands liable to be dismissed. ***79***

CIVIL PROCEDURE CODE:

---Secs.144 & 151 - Revision Petition against

an Order in E.A. - Petitioner/Decree holder filed a suit seeking a decree for delivery of possession of the suit schedule properties - Suit was decreed against the respondent and other defendants - Petitioner filed E.P. seeking delivery of items of the suit schedule properties and the same was allowed - Pursuant to which, items were delivered to the Petitioner/decree holder.

In the meanwhile, Respondent filed an application seeking to set aside the ex parte decree and the same was allowed - Thereafter, he filed E.A. seeking to re-deliver possession of items to him - Court below allowed the application with a direction to the Petitioner to re-deliver possession of items - Aggrieved by the said Order, instant Revision Petition was preferred by the Petitioner/decree holder.

HELD: Impugned Order pursuant to the application filed under Section 144 of CPC would amount to a decree and therefore, an appeal has to be filed against the same in terms of Sec.96 of CPC - Revision Petition stands disposed of, leaving it open to the Revision Petitioner to avail the appeal remedy as provided under Law.

233

---Order 7 Rule 11 - Civil Revision Petition by the Petitioner/Defendant challenging the Order passed in I.A., whereby application for rejection of the plaint was dismissed - Respondents/plaintiffs filed Commercial Suit against the petitioner for dissolution of the partnership firm and consequently to partition the properties belonging to the partnership firm – Petitioner filed an application under Order 7 Rule 11 CPC praying for rejection of the plaint, contending that suit is not maintainable under law as there is no cause of action to file the suit since partnership deed clearly spells out that if any dispute arises out of the partnership, same shall be resolved on applying the provisions under Arbitration Act.

HELD: Defendant was mis-conducting the management of the business to the detriment of the firm as a part of the property was let out to the third party without knowledge and consent of the respondent/plaintiff; and therefore, the suit for rendition of the accounts and for dissolution of the partnership was within limitation.

If an application is filed under Section 8 of the Arbitration Act, the Court on being satisfied with the pre-conditions shall refer the parties to the arbitration and shall reject the plaint under Order 7 Rule 11 (d) CPC as barred by law - But, If no application is filed as per Section 8, and there is no prayer to refer the parties to arbitration, existence of the arbitration clause would not be a ground to reject the plaint under Order 7 Rule 11 CPC - Court below did not commit any illegality in not rejecting the plaint on the plea of the petitioner/defendant that there was an arbitration clause - In view of the specific prayer for dissolution of the partnership firm and also for rendition of the accounts made by the respondent in the plaint, merely because the plaintiff also prayed for partition of the properties of partnership firm and to pay the sum to the plaintiff as per his share, the plaint cannot be rejected on this ground at the stage of under Order 7 Rule 11 CPC - Civil Revision Petition stands dismissed.

53

---Or.13, Rule10 - Whether an unmarked document filed in a proceeding in a Court can be called for from its custody for use in another proceeding before the Court -

Civil Revision Petition, by the unsuccessful defendants against the Order, passed in I.A to call for the original memorandum of partition, from another Court, for producing the same as evidence.

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

Since the decision on the admissibility of the document in evidence, though in a different petition in the present suit, has become final for not being challenged, no purpose would be served by calling for the document - Impugned Order stands liable to be set aside - Civil Revision Petition stands allowed setting aside the the Order passed in I.A. ***162***

---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. ***177***

---Or.26, Rule 9 & 13 and Or.20, Rule 18 - Final decree application in pursuance of preliminary decree for partition - Appointment of Advocate Commissioner - Commissioner appointed only purpose a scheme of partition of plaint schedule property - No prejudice caused to the revision petitioner - CRP, dismissed. **260**

---Or.38, Rl.5 - ATTACHMENT BEFORE JUDGMENT - Respondent/Plaintiff filed a suit for recovery against Petitioner/Defendant - Along with the suit, he filed I.A. seeking attachment of the schedule property before Judgment - By an Order, Petitioner/ Defendant was prohibited and restrained until further Orders from transferring or changing the petition schedule property on the ground that he failed to furnish security within 72 hours from the date of issuance of notice calling upon him to furnish security.

HELD: Order of the attachment was passed on the very same without giving sufficient opportunity to the petitioner to respond to the notice calling upon him to furnish sufficient security as required under Order XXXVIII, Rule 5(1)(b) of CPC - Order is not sustainable in terms of the Order XXXVIII, Rule 5 (4) of CPC, as there is no compliance with Sub-rule (1)(b) of the said Rule - Trial Court also failed to record its

satisfaction before passing the order of attachment as required - Order under revision suffers from material irregularity and warrants - Civil Revision Petition stands allowed - Order passed in I.A. stands set aside. ***33***

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

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

In such circumstances, the matter squarely falls under Order XXXVIII, Rule 6 of CPC and the Order of the Trial Court is appealable - Present Revision is not maintainable - However, Petitioner is at liberty to pursue appropriate remedies as available in Law. ***165***

CRIMINAL PROCEDURE CODE:

---Sec.125 - Criminal Revision case was filed by husband u/Sec.397 and 401 of the Code of Criminal Procedure, 1973 against the Order in M.C. passed by Family Court.

HELD: Purpose and object of Section 125 of Cr.P.C., is to provide immediate relief to an applicant - An application under Section 125 of Cr.P.C is predicated on two conditions i.e., (1) husband has sufficient means and (2) neglects to maintain his wife, who is unable to maintain herself - Court below has not committed any error in coming to the conclusion that the Petitioner is the legally wedded wife of Respondent and also granting maintenance of Rs.2,000/- per month - No valid grounds to interfere in the Order of the Court below and hence the Revision stands dismissed. ***251***

---Sec.125 - Petitioner is the legally wedded wife of the respondent No.1 - Petitioner, along with her son filed a petition to direct the respondent/husband to pay Rs.2000/- per month - Respondent No.1 pleaded talaq, vide Talaqnama upon the petitioner as per Muslim Law and that the Talaqnama was sent to the petitioner vide registered post which was received back with remarks “Refused” – Trial Court allowed the Maintenance petition, granting monthly maintenance @ Rs.800/- each to the petitioner (wife) as also to the son - Respondent No.1 filed Criminal Revision Petition whereby, Sessions Judge, partly allowed the Revision setting aside the part of the Trial Court judgment whereby, maintenance was granted to the petitioner, but maintaining the grant of maintenance to the son.

HELD: Even the divorced muslim woman is entitled for maintenance u/Sec.125 of Cr.P.C for her whole life so long as she does not remarry and her right to maintenance against the husband is not restricted to the period of Iddat only -

Pronouncement of talaq as per the Mahomedan law, with due observance of required time gap amongst three pronouncements has not been proved by any evidence, oral or documentary - Pre-condition of arbitration for reconciliation by two arbiters, one each from family of the wife and the husband respectively, could not be established to have been followed - Registered letter sent to the wife was received back with endorsement of "refusal - Respondent not having adduced any other evidence, except the endorsement on the registered envelop, failed to prove the service of the registered envelop as also the talaqnama on the Petitioner – Petitioner's application for maintenance under Sec.125 Cr.P.C was maintainable and was rightly allowed by the Magistrate - Judgment passed by the Revisional Court stands set aside and the Judgment of the Trial Court stands revived/restored. ***6***

---Secs.437 and 439 - INDIAN PENAL CODE, Secs.341, 143, 144, 147, 148, 151, 336, 435, 188 r/w Sec.149 - PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984, Secs. 3 and 4 - POLICE ACT, 1861, Sec.32 - Regular bail.

HELD: Initially Petitioners' names are not reflected in the crimes, but on the basis of the confession statement of one of the arrested accused, the Petitioners' were implicated - No material to show that the Petitioners have damaged any property - Petitioners shall scrupulously comply with the above conditions and breach of any of the conditions of bail will be viewed seriously and bail automatically gets cancelled without any further Order of this Court - Criminal Petitions stands allowed. ***239***

(INDIAN) EVIDENCE ACT:

---Sec.45 - Revision Petition assailing the Order passed in I.A, by which the Trial Court dismissed the petition filed by the plaintiff to send the Will, to an expert for opinion of the disputed signature.

HELD: Without assigning any reasons, and merely on the ground of gap of time, the relief sought cannot be declined at the threshold - It is for the expert concerned to conclude about desirability of the standard signature for comparison with the disputed signature - Trial Court is in error in declining the relief, just on the ground of long time gap without assigning any other reason(s) regarding the fitness or otherwise of the standard signature - Civil Revision Petition stands allowed setting aside the Order, passed in I.A. - Consequently, I.A. stands allowed subject to the condition that the Petitioner shall make a deposit of Rs.5,000/- before the Trial Court to meet the expenses towards obtaining the opinion of an expert within one week from the date of receipt of a copy of this Order. ***1***

---Sec.63 - Civil Revision Petition filed questioning the Order in I.A.No. in O.S. - Petitioner is the Defendant and the Respondent is the Plaintiff in O.S. – Suit was filed for recovery of money under a suit promissory note - At the time of filing the suit, the Respondent filed Certified Copy of the Promissory Note stating that he will produce the original at the time of the trial - Thereafter, the trial Court was pleased to mark the Certified Copy of the promissory note on behalf of the respondent, which is inadmissible in evidence - Challenging the same, Petitioner filed I.A. for rejection of Ex.A.1-Promissory Note, - Trial Court dismissed the said application.

HELD:Sec.63 of the Indian Evidence Act permits Certified Copies of the

documents to be exhibited as secondary evidence - Petitioner did not raise any objection at the time of marking the said document -Trial Court in its Order rightly held that when the document under Ex.A.1 is a certified copy of the original document and when the original could not be produced by the respondent immediately as it was filed in another Court - Merely because the Petitioner has filed the Certified Copy of the Original Promissory Note before the Court, it cannot be said that it is liable to be rejected -Therefore, Petitioner is not entitled for the relief to reject the Ex.A.1 from the record - Civil Revision Petition stands dismissed. ***248***

HINDU MARRIAGE ACT:

---Sec.13(1)(i) - **INDIAN EVIDENCE ACT,** Sec.65-B - Petitioner/Husband of the 1st Respondent filed O.P, seeking annulment of marriage on the ground of adultery - As the documents filed by Petitioner along with main O.P. were not marked, Petitioner filed an application in I.A. to recall him and to mark the documents as exhibits.

Subsequently, at the time of marking the documents,Trial Court by the impugned docket Order held that the Petitioner is not entitled to recall himself and to mark the documents mentioned in I.A. holding that in order to receive the photographs with C.D and e-mail online copy, the Petitioner has to establish the requirement contemplated under Sec.65-B of the Indian Evidence Act.

HELD: Electronic records cannot be admitted in evidence unless mandatory requirements of Sec,65-B of the Evidence Act are satisfied - Documents i.e., Photographs with C.D and e-mail online copy are not accompanied by the Certificate in terms of Section 65-B(4) of the Evidence Act, an opportunity should have been afforded to the Petitioner - Trial Judge went wrong in opining that the Petitioner failed to establish the mode of acquisition of the Photographs with C.D etc., even before marking the documents - Order under Revision is set aside and the matter is remitted to Trial Court for passing appropriate Orders after affording opportunity to the Petitioner to fulfil the conditions as contemplated under Section 65-B(4) of the Evidence Act - Revision Petition stands allowed. ***225***

LAND ACQUISITION ACT, 1894:

---Secs.11-A and 12(2) – Respondent/Govt. acquired Petitioners land and passed an award of compensation without due process of law.

HELD: Entire proceedings for acquisition lapsed and passing of award after lapse of land acquisition proceedings is a nullity and without jurisdiction - Impugned award stands liable to be set aside - Writ Petition stands allowed and respondents are directed not to interfere with the possession of Petitioner with regard to the subject land. **118**

MOTOR VEHICLES ACT, 1988 and ANDHRA PRADESH MOTOR VEHICLE RULES, 1989:

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

HELD: Interest would accrue on the entire amount awarded by Tribunal, to be payable from the date of filing of the Claim petition/application - Rate of interest

awarded by the Tribunal of 7.5% per annum, is reasonably sufficient in the attendant facts - Award impugned is modified only to the extent that the compensation amount stands enhanced to INR 52,40,256/-from INR 49,30,000/-. ***171***

---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. ***180***

---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. ***190***

NEGOTIABLE INSTRUMENTS ACT:

---Sec.148 - Challenging the impugned orders passed in Crl.M.P. in Criminal Appeal on before the Sessions Judge, whereby while suspending the execution of sentence of imprisonment imposed against the petitioner, lower appellate Court has ordered the revision petitioner to deposit 20% of the compensation amount in terms of N.I. Act.

HELD - Newly inserted provision u/ Sec.148 of the N.I. Act mandates that notwithstanding anything contained in the Criminal Procedure Code, in an appeal preferred against conviction u/Sec.138 of the N.I. Act, the appellate Court may order the appellant to deposit a sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court - Since the appeals under these revisions are preferred in the year 2022 after the amendment came into force in the year 2018, in view of the dictum laid down by the Apex Court, amended provision of Sec.148 of the N.I. Act squarely applies to the said appeals - As it is ordained that minimum sum of 20% is to be ordered to be deposited and as it is a statutory mandate, no discretion is left with Court to order to deposit less than 20% of the compensation amount - Appellate Court has rightly ordered to deposit 20% of the compensation amount - Impugned orders of the Appellate Court to deposit 20% of the compensation amount in terms of Sec.148 of the N.I. Act are perfectly sustainable under law and they warrant no interference in these Criminal Revision Cases - Criminal Revision Cases stand dismissed. ***38***

PASSPORT ACT, 1967:

---Sec.6(2)(f) & 10(3), Rule 5 and Form-EA(P)2 of Schedule-III - RENEWAL OF

PASSPORT – Rejection of Renewal of Passport on ground that Petitioner was involved in two criminal cases, which are pending before concerned Courts.

HELD: Petitioner directed to approach concerned Criminal Courts and seek NOC, for renewal of his Passport - Concerned Court shall consider his application and pass appropriate Orders and may impose suitable conditions, if needed. ***113***

REGISTRATION ACT, 1908,

---Sec.22-A(1)(e) – A.P. (ANDHRA AREA) ESTATES (ABILITION AND CONVERSION INTO RYOTWARI) ACT, 1948, Sec.11(a) – Petitioners land was included in the list of properties prohibited for registration – Long standing harassment of Government meted out to the petitioner, depriving him from enjoying land, though the litigation attained finality in the Hon'ble Supreme Court lead to filing of present Writ Petition, declaring the action of the third respondent in including land from the list of properties prohibited from registration under Section 22-A(1) of the Registration Act, by treating the same as Government land, despite granting patta under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, in favour of Petitioner.

HELD: Order passed by the administrative authorities must disclose the reasons - But the Order impugned in the Writ Petition is bereft of any reasons - Therefore, the same is liable to be set-aside, as it is in violation of principles of natural justice and contrary to law - Writ Petition stands allowed declaring the action of the third respondent/District Collector in inclusion of the land in the list of prohibited properties under Section 22-A(1) of the Registration Act, by treating the same as Government land as illegal and arbitrary. **141**

---Sec.22-A - Writ Appeals by Andhra Pradesh State Waqf Board against the common order passed in W.P. whereby, Writ Petitions were allowed, and it was held that the inclusion of lands involved in the writ petitions in Section 22-A list i.e., the list of prohibited properties, is contrary to law and it was directed that Respondent No.5/District Registrar, to receive and register the documents presented by the Writ Petitioners.

HELD: After quashing the notification dated 01.09.2005 by the Division Bench, a fresh exercise has not been undertaken by the Waqf Board for determining and including the subject land as waqf property - In the absence of any fresh notification declaring the subject property as waqf property in a lawful manner, inclusion of the property in 22-A list is not at all justified - It was rightly held by Single Judge that inclusion of the subject property in 22-A list is not in accordance with law - Writ Appeals stand dismissed. ***257***

---Sec.22A(1)(a) - Petitioner firm seeks a mandamus declaring the action of respondents 2 to 4 in including the land of in the prohibitory list u/Sec.22A(1)(a) of the Registration Act, showing it as a Forest land and consequential action of Sub-Registrar/8th Respondent in refusing to register and release the Sale Deeds as arbitrary, illegal and consequentially direct the Respondents to delete the aforesaid property from the prohibitory list and release the Sale Deeds.

HELD: Petitioner filed application before the District Collector for deletion of the subject property from the prohibited list, but it appears no action has been taken

– Petitioner's are directed to file a fresh application within three (3) weeks before 2nd respondent/District Collector seeking to delete the subject land from the prohibited list of properties u/Sec.22A(1)(a) of the Registration Act, in which case, the 2nd respondent shall conduct an enquiry by affording an opportunity of hearing to the Petitioner's, and all other concerned, pass an appropriate Order in accordance with governing law and rules expeditiously in three (3) months and subject to result of the Order, 8th respondent shall act upon the Sale Deeds presented by the Petitioner and their vendor. ***242***

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (SARFAESI ACT):

---Sec.13(2) – Bank published sale notice and same was questioned by Petitioner before Debts Recovery Tribunal and sale notice was set aside by Debts Recovery Tribunal, prior to setting aside impugned sale notice, without awaiting the results of Debts Recovery Tribunal, the respondent Bank had taken steps for sale of scheduled properties, hence Petitioner filed instant Writ Petition challenging the Bank action - Respondent/Bank contended that Writ Petition is not maintainable since successful bidders are not made parties.

HELD: Bank authorities failed to follow the procedure as contemplated under Rule 9(1) of the Rules and when a new property is included in sale notice, then automatically the Respondent/Bank have to follow the procedure under the Act from the stage of Sec.13(2) of SARFAESI Act, but the Respondent/Bank, without following such procedure, straight away issued impugned sale notice by including a new property, which is illegal, and contrary to the mandatory provisions of the act - Sale notice stands liable to be set aside, when once sale notice is set aside, the auction proceedings pursuant to the said sale notice becomes null and void – Writ Petition stands allowed, however the Respondent/Bank is at liberty, to proceed further in accordance with the provisions of SARFAESI Act. ***103***

STAMP ACT:

---Article 49-A of Schedule 1-A - Plaintiff filed a suit for cancellation of registered non-possessory agreement of sale-cum general power of attorney, executed by defendants 1 and 2 in favour of 3rd defendant alleging fraud and collusion - During trial, when the 3rd defendant was intending to mark the money voucher issued by the defendants 1 and 2, Plaintiff raised an objection for marking the same as exhibit on the ground that it is neither a mere money voucher nor a receipt, but was a deed of conveyance and is liable to be registered and necessary stamp duty and penalty are to be collected and therefore, the said document cannot be admitted in evidence.

Trial Court held that the document which is styled as money voucher, requires registration as possession is delivered by virtue of that document and it cannot be admitted in evidence unless stamp duty and penalty are paid - Hence, instant revision by the Plaintiff.

HELD: A document can be objected to be received in evidence mainly on two grounds; such as want of registration and want of payment of proper stamp duty - Since both these aspects are governed

by two separate enactments, mere compliance of provisions of one of such Acts is not enough - To make a document fit for receipt in evidence, the provisions of the Stamp Act are also to be complied with - As such, since in the present case, the document requires stamp duty and penalty with reference to Article 49 A of Schedule 1A of the Stamp Act.

In the present case, document requires stamp duty and penalty with reference to Article 49-A of Schedule 1A of the Stamp Act, as it was held to be a document of agreement of sale with possession by subsequent act in continuation of the earlier agreement of sale without possession, unless such condition of payment of proper stamp duty with penalty is complied with, the document cannot be received in evidence - On such payment, the document cannot be objected to be received in evidence for collateral purpose - Civil Revision stands dismissed. ***217***

WORKMEN'S COMPENSATION ACT, 1923:

---Sec.30 - Civil Miscellaneous by the legal heirs of the deceased wherein the claim petition was dismissed by the Commissioner for Workmen Compensation Act and Assistant Commissioner of Labour.

HELD: Despite the documentary evidence, Commissioner Workmen has erroneously dismissed the claim application - When evidence is in existence, there is no impediment or hindrance to award compensation, if the claimant able to establishes employer and employee relationship in between the parties – Matter remanded back to the Commissioner for Workmen Compensation Act and Assistant Commissioner of Labour - Civil Miscellaneous Appeal stands allowed. ***254***

--X--

Law Summary

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

2022 (2)

(Vol.106)

TELANGANA HIGH COURT

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SUBJECT - INDEX

A.P.ASSIGNED LAND (PROHIBITION OF TRANSFERS) ACT, 1977:

---Writ petition impugning the proceedings of Respondent No.2 as confirmed by Respondent No.1 as illegal and in violation of principles of natural of justice.

HELD: Authorities implementing the provisions of the 1977 Act must record a finding that there was an assignment by the Government to a landless poor person under the Rules for the time being a condition prohibiting alienation; and that such “assigned land” was alienated by such assignee, in contravention of Section 3 of

the 1977 Act - Writ petition stands allowed and the impugned proceedings of the 2nd Respondent as confirmed by Respondent No.1 in his proceedings stand quashed. ***91***

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. ***70***

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. ***35***

---PERMANENT INJUNCTION - Appeal directed against the judgment and decree passed in A.S. allowing the appeal and setting aside the judgment and decree

passed in O.S. - O.S. was filed by plaintiff seeking permanent injunction restraining the defendants and their men from interfering with her peaceful possession and enjoyment over a Plot.

HELD: Trial Court in its judgment observed that the plaintiff is the absolute owner of the plaint schedule property and she purchased the same under Ex.A1 registered sale deed - Appellate Court in its judgment observed that the plaintiff purchased the suit schedule plot under Ex.A1 registered sale deed but in Ex.A1 it was not mentioned how the vendors became owners of the suit plot - Basis for their ownership and title is not there in Ex.A1.

Plaintiff filed suit for injunction sixteen years after execution of Ex.A1 and it is for her to file any relevant documents to prove the possession as on the date of filing of the suit, but she failed to do so - As such, appellate Court rightly allowed the appeal filed by the defendants by setting aside the judgment and decree passed by the trial Court - No reason to interfere with the findings of the appellate Court and accordingly Second Appeal stands dismissed. ***29***

---Sec.2(2) and Sec.96 - Petitioner/Plaintiff filed OS seeking to grant decree of permanent injunction restraining the defendants, from interfering with the peaceful possession and enjoyment over the suit schedule property - Respondents/ Defendants filed IA under Order VII Rule 11 of Code of Civil Procedure praying to reject the plaint - Trial Court, allowed the said IA with costs and rejected the plaint - Challenging the said Order and Decree, the Petitioner/Plaintiff filed present revision.

HELD: Once plaint is rejected decree ensues and it is a decree as defined under section 2(2) of CPC - Against the Judgment and Decree, remedy is only in the form of an appeal under section 96 of CPC and revision is not maintainable - Revision stands dismissed - However, this Order does not come in the way of Petitioner working out his remedies as available to him. ***5***

---Sec.151 - TRANSFER OF PROPERTY ACT, Sec.53-A - Aggrieved by the Order passed in C.M.A. present Civil Revision is filed.

HELD: In the absence of any cogent and convincing evidence to substantiate the pleadings of the Petitioner that he was put in physical possession of the subject lands, merely because the Petitioner has performed some pooja at the site, it cannot be construed that the Petitioner is in physical possession of the subject property - This Court does not find any wrong or perverse with the Order passed by the trial Court or the appellate Court which warrants any interference by this Court in the present Civil Revision. ***113***

---Or.8, Rule 1A(3) - Civil Revision Petition by Petitioners/third parties assailing the

orders passed in E.A.which was filed by the Decree holder/Plaintiff, to permit the Decree holder/Plaintiff for reception of the documents and for marking the same through DW-1 – Trial Court has allowed the application in E.A. permitting the Decree holder/Plaintiff to file the documents through DW-1 - Assailing the said orders, the Claimant/3rd party has filed this Civil Revision.

HELD: Enquiry in the claim petition was concluded, at the belated stage the Decree holder has filed the present application to recall DW-1 for marking certain documents and for reception of documents for the purpose of exhibiting the same through DW-1 - Deserves no consideration at this belated stage and stands liable to be dismissed - Civil Revision stands allowed - Order impugned in E.A.No.257 of 2019 in E.A. is hereby set aside. **101**

---Or.11, Rule 1 and Order 7, Rule 11 r/w Sec.151 - It is the case of Petitioner that Suit was filed seeking cancellation of the registered sale deed fraudulently executed by GPA holder/5th Defendant in favour of the 1st defendant.

HELD: Applications under Order 11, Rule 1 of CPC are filed in interlocutory applications filed under Order 7, Rule 11 of CPC and the scope of enquiry under Order 7, Rule 11 of CPC is to the extent of pleadings contained in the plaint as well as documents annexed therein and the truth or otherwise of the same cannot be gone into at this stage and it will not serve any purpose and the Respondents/Plaintiffs filed application for conducting roving enquiry about the pleadings, which is not permissible under Order 7, Rule 11 of CPC and at this stage, the applications filed under Order 11, Rule 1 of CPC are premature - Before directing discovery of documents, Trial Court is required to satisfy itself that the documents are relevant for the purpose of disposing of the suit or not - A party cannot be permitted to have a roving enquiry to extract information which may or may not be relevant, which goes to show that the impugned order of the trial Court is without application of mind - Civil Revision stands allowed setting aside the impugned order of Trial Court. ***146***

CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS:

---Rules 188 & 199 - Petitioner herein, third party to the suit, had filed an application under Rule 188 (2) of the Civil Rules of Practice, seeking certified copies of original documents which were returned to the party on her application filed on the condition of substituting the original documents with certified copies- Petitioner herein, had filed Copy Application to furnish copies of the said certified copies - Trial Court rejected on the ground that the certified copies are not the exhibited documents, hence, application was refused.

HELD: If at all the Court wants to furnish the documents, it should furnish to the party in accordance with the provisions of Sec.76 of Evidence Act read with Rule 199 of the Civil Rules of Practice

- Ordinarily copies of copies are not to be treated as 'secondary evidence' unless such copies are again compared with the original, the said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act.

A copy means a document prepared from the original which is an accurate or "true copy" of the original - In the present case, Originals were returned to the Plaintiff on filing of an Application after substituting by its certified copies on record - Based on the above mentioned Copy Application filed by the Petitioner if the Court below has delivered the copy, it will not come under the definition of certified copy - Court below is justified in refusing the Application filed by the Petitioner seeking copies of certified copies – Civil Revision stands dismissed. ***9***

CRIMINAL PROCEDURE CODE:

---Sec.311 - Criminal Petition to quash the order passed before Metropolitan Sessions Court, in Crl.M.P., whereby, petition to recall PWs.1, 3, 7 and 9 to 13 for their further cross-examination was partly allowed to the extent of recalling PWs.10 and 11 as they were not all cross-examined by the counsel for the accused – Other witnesses were not allowed to recall as counsel for the Petitioner/Accused was neither absent nor sick when PWs.1, 3, 7, 9 and 12 were crossexamined.

HELD:In Mannan Shaikh v. State of West Bengal, (2014) 13 SCC 59, Apex Court categorically held that power to recall the witness is to be exercised with circumspection and only with the object of arriving at a just decision of the case and the same should not prejudice the accused and should not permit to fill up the lacuna by the prosecution - No error in the impugned order passed by the Court below warranting Interference by this Court - Criminal Petitions stand dismissed. ***106***

---Sec.439 - Criminal Petition is filed seeking to set aside the order made in Crl.M.P. whereby, Petitioner/Accused No.1 was not permitted to travel abroad/United States of America to pursue his employment.

HELD: Order passed in Crl.M.P. before Trial Court is set aside and Petitioner is permitted to travel abroad to pursue his employment for a period of six months subject to Petitioner executing a personal bond for a sum of Rs.1,00,000/- before the trial Court and offering bank guarantee/FDR for the said amount before his departure - If Petitioner fails to return to India within the stipulated time, the personal bond and bank guarantee/FDR offered by the Petitioner shall stand forfeited in favour of State Government without any notice - However, LOC if any issued against the Petitioner, his passport in relation to the subject crime, shall be kept in abeyance for a period of six months. ***111***

---Sec.451 r/w Sec.482 - INDIAN PENAL CODE, Secs.498-A, 406, 506 - DOWRY PROHIBITION ACT, Secs.4 and 6 - Criminal Petition is filed seeking to set aside the Order passed in C.C., where under the

Petition filed by the Petitioner for return of his passport was dismissed by the trial Court.

HELD: Mere pendency of criminal proceedings shall not disentitle the Petitioner/A1 to go to abroad - Impugned Order stands set aside and Petitioner is permitted to travel abroad to pursue his employment for a period of six months from today subject to petitioner executing a personal bond for a sum of Rs.1,00,000/- before the trial Court and offering bank guarantee/FDR for the said amount before his departure - If Petitioner fails to return to India within the stipulated time, the personal bond and bank guarantee/FDR offered by the Petitioner shall stand forfeited in favour of State Government without any notice - However, LOC if any issued against the Petitioner, his passport in relation to the subject crime, shall be kept in abeyance. ***109***

---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. ***38***

---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. ***66***

---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. ***64***

---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. **60**

---Sec.482 - PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, Sec.12 - Criminal Petition filed to quash the proceedings in D.V.C. before Trial Court by Respondent No.2.

HELD: Petitioners are aged parents of R.1, therefore, it is difficult for them to attend the Court on each date of hearing - Even the allegations made in the complaint against the petitioners are general in nature - Criminal Petition stands disposed of, dispensing with personal appearance of petitioners in D.V.C. proceedings before the Trial Court. **1**

(INDIAN) EVIDENCE ACT:

---Sec.45 - Civil Revision Petition by Petitioners/ Defendants, assailing the Orders in I.A. in O.S. which was filed, praying to send all necessary documents to the expert for opinion on the ground that the registered sale deed document was forged and not executed - Trial Court has dismissed the said application on the ground that the application was filed at belated stage after completion of the trial, though the suit was filed in the year 2009, no steps were taken for seven years.

HELD: Evidence on both sides is closed, at the time of arguments, present application is filed - Fefendant have filed this application for referring the disputed document with the signatures of husband of first defendant to the handwriting expert without making the contemporaneous signatures of him late available - On the other hand, Material evidence of PW.1 and the contents of other documents are available on record to decide the said issue - Civil Revision Petition stands dismissed confirming the order impugned in I.A. ***102***

----Sec.65 - Trial Court by its Order I.A. allowed the application holding that the documents in question though photocopies,

can be received and marked provided the contents of the photocopies are the true extract of the original copies and there is no requirement of compliance of section 65 of the Indian Evidence Act.

HELD: Defendant No.1 has not stated as to how he secured photocopies without disclosing the availability of the originals and from whom he secured the said photocopies - There is no averment of tracing the transactions by any other means - In the absence of the assertion by defendant No.1 on how he secured the copies and based on vague averment in the affidavit, the trial Court could not have allowed the application filed by the petitioner - Documents relied upon by defendant No.1 are not in compliance with Sec.65 of the Indian Evidence Act, and therefore the trial Court erred in accepting the application and granting the relief - It is not sustainable - Civil revision petition stands allowed - Order passed by the trial Court in I.A. stands set aside. ***3***

LIMITATION ACT:

---Sec.5 – Seeking to condone the delay of 1246 days - Suit for specific performance of agreement of sale - Summons were not served upon the Defendant but Trial Court decreed the suit ex-parte - Defendant moved an application under Section 5 of Limitation Act to condone the delay for setting aside the ex-parte decree, but the Court dismissed the application - Hence instant Revision.

HELD: Address mentioned at different points by the respondent/ plaintiff itself demonstrates the fraud played for getting an ex-parte decree - After all the purpose of Courts of law is to render substantial justice by giving due opportunity to both parties to exhibit their respective stands - Making the revision petitioner to suffer under an ex-parte decree passed would be unjustifiable - Revision petition stands allowed - Order rendered by the Trail Court in I.A. stands set aside.

17

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.

62

NEGOTIABLE INSTRUMENTS ACT:

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

HELD: A proprietary concern is different from a Private Limited company - Respondent-complainant failed to show the relationship between a company incorporated under the Companies Act and a Proprietary concern - Cheque was issued by the Proprietor and had to be drawn by the Proprietor on the account maintained by him with the Banker for the payment of the money in discharge, in whole or in part of any debt or liability and for the default committed by him, Company cannot be made as an accused and the action in respect of criminal act or a quasi criminal provision has to be strictly construed with the provisions under Section 138 of NI Act alleged to have been violated - Petition stands allowed quashing the proceedings against the Petitioner in CC. ***23***

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

HELD: A1 is the Company shown as represented by its Managing Director-A2 - Cheque filed by the Petitioner would disclose that it was issued by A2 in the capacity of the Managing Director of A1 company - Complaint or the documents filed would not disclose that the Petitioner was neither the Director of the company nor issued the cheque on behalf of A1 - No specific averments were made by the 1st respondent as to how and in what manner the petitioner was responsible for the affairs of the company and the role played by him - Criminal Petition stands allowed quashing the proceedings in CC. ***26***

(INDIAN) PENAL CODE:

---Secs.148, 307, 149 and 147 - ARMS ACT, 1959, Secs.25(1)(b) and 27- CRIMINAL PROCEDURE CODE, Secs.397 to 401 - Petitioners are the accused police officers who were part of a combing operation which resulted in the deaths of two - Trial Court dismissed the protest petitions vide a common order - Sessions Court set aside the order passed by Trial Court and directed to take cognizance of the offence.

HELD: Revisional Court can only examine the legality, correctness and propriety of the Oders impugned before it - It cannot exceed the power and go a step further and direct the Magistrate to take cognizance of the offence - It is relevant to note that the power to take cognizance is specifically conferred on the Magistrates under Sections 190 and 200, 201, 202, 203 & 204 of the Cr.P.C. - Impugned Order does not satisfy the test of legality, correctness as no notice was served upon the Petitioners - Sessions Court could not have directed the trial Court to take cognizance - Criminal Revision stands allowed. ***118***

---Sec.304 Part-II - Appellant aggrieved by the conviction and sentenced to undergo rigorous imprisonment for a period of five years vide judgment in S.C. preferred present appeal - Altogether three accused were tried for the offence under Section 302 IPC, however, the learned Sessions Judge acquitted A2 and A3 of the offence under

Section 302 of IPC.

HELD: Approach of the Sessions Judge in concluding that the charge u/Sec.302 IPC had to be framed though the police had ruled out that the deceased was murdered, appears to be misconceived and contrary to the record and evidence collected during investigation - Assumptions, presumptions and fanciful thinking cannot be made basis to arrive at conclusions in a criminal case - Any injuries found on the deceased have to be explained by the prosecution and in absence of such explanation, the Accused cannot be suspected or asked to explain.

Benefit of doubt has to be extended to the Appellant and accordingly, the conviction of Accused under Section 304- Part-II IPC stands set aside and Criminal Appeal stands allowed. ***87***

(INDIAN) STAMP ACT:

---Sec.33 & 35 and Article 31 – TELANGANA BUILDINGS(LEASE, RENT AND EVICTION) CONTROL ACT, 1960, Sec.22 - Revision petitioner filed R.C. on the file of Rent Controller, for eviction, which was allowed - Aggrieved thereby, respondents preferred an Appeal - During the course of hearing before the rent controller, the original lease deed/Ex.P-3 was marked subject to objection of the respondents - Whereas, the objection neither recorded nor considered while adjudicating the petition - However, the document was insufficiently stamped - Excluding the document, appellate court allowed the appeal – Hence, instant Revision.

HELD: Respondent had objected for marking the Suit document and this aspect was answered in the appeal, by discarding the document as it is inadmissible - Impugned Order in R.C.A. on the file of the Chief Judge, Small Causes Court, stands set aside and the matter is remanded with a direction to examine the insufficiency of stamp duty on the document/ Ex.P-3 to take up the recourse as contemplated in the Indian Stamp Act - On validation of the document, the parties shall be given opportunity to contest and pass an appropriate Order on merits, as per law. **19**

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Law Summary

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

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SUPREME COURT REPORTS

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CRIMINAL PROCEDURE CODE:

---Sec.439(1) - Whether High Court was justified in exercising jurisdiction for grant of regular bail - Appeal against the Judgment passed by the High Court in Bail Application filed by Respondent No.2 - Accused with a prayer to release him on bail for offences registered under Sections 302 and 34 of the Indian Penal Code during pendency of trial - By the said judgment, the High Court granted bail to Respondent No.2/Accused on furnishing a personal bond and two sureties.

HELD:Grant of bail to the Respondent No.2/Accused only on the basis of parity shows that the impugned Order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable - High Court has not taken into consideration the criminal history of the Respondent No.2/Accused, nature of crime, material evidences available, involvement of Respondent No.2/Accused in the crime and recovery of weapon from his possession - Impugned Order passed by the High Court is not liable to be sustained and stands set aside - Bail bonds of Respondent No.2/Accused stand cancelled and he is directed to surrender within one week. ***57***

NEGOTIABLE INSTRUMENTS ACT:

---Sec.138 - Issues raised in this appeal by the appellant, challenging his conviction under Section 138 read with Section 141 of the Act, are covered by the decisions of this Court on the aspects of (i) vicarious criminal liability of a partner; and (ii) whether a partner can be convicted and held to be vicariously liable when the partnership firm is not an accused tried for the primary/ substantive offence.

HELD: Appellant cannot be convicted merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan - Firm has not been made an accused or even summoned to be tried for the offence - Provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm - Unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) of Section 141 would not be liable and

convicted as vicariously liable -Sec.141 of the N.I. Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Sec.141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished - However, such vicarious liability arises only when the company or firm commits the offence as the primary offender - Appeal stands set aside and the appellant's conviction under Sec.138 read with Sec.141 of the N.I. Act - Impugned Judgment of the High Court confirming the conviction and Order of sentence passed by the Sessions Court, and the Order of conviction passed by the Judicial Magistrate First Class stand set aside - Appellant stands acquitted. ***1***

(INDIAN) PENAL CODE:

---Secs. 143, 147, 148, 427, 452 & 302 R/w.49 - Convictions confirmed and acquittals reversed at the hands of Division Bench of the High Court are under challenge.

HELD: Appellate forum cannot change the conclusion arrived by the Trial Court by substituting its views - High Court has adopted the principle of preponderance of probability as could be applicable to the civil cases to the case on hand when more scrutiny is warranted for reversing an Order of acquittal - Conviction rendered by the High Court against the Appellants in Criminal Appeal stands set aside - Consequently, appeals filed by accused are allowed by setting aside the Judgment rendered by the High Court and restoring the acquittal rendered by the Trial Court. ***33***

---Sec.302 r/w Sec.120-B - INDIAN EVIDENCE ACT, Secs.65-A and 65-B - Whether the call records produced by the prosecution would be admissible under Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied - Appeal against the judgment of High Court - Trial Court convicted all the three accused and sentenced them to death for the offence punishable u/Sec.302, r/w 120B IPC and rigorous imprisonment for 10 years and fine of Rs.5000/each for the offence punishable under Section 364 IPC - Aggrieved by the Trial Court order, present appellant filed a criminal appeal before the High Court - High Court, vide its judgment acquitted (A1) and (A3) and partly allowed the appeal filed by (A2) setting aside the death penalty, sentenced him to undergo rigorous imprisonment for 20 years under Section 302 IPC.

HELD: Electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law - Oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law - When a conviction is based solely on circumstantial evidence, such evidence and the chain of circumstances must be conclusive enough to sustain a conviction - Criminal Appeal stands allowed and the impugned order of the High Court is set aside to the extent that it convicts A2 under section 302 and 364 of the Indian Penal Code - Hence, the conviction of A2 is set aside - However, the acquittal of A1 and A3 by the impugned order is upheld. ***69***

PUBLIC TRUSTS ACT:

---- Appeals against the common judgment and order passed by a Division Bench of High Court - Alienations were made by the Trustees in relation to at least six properties.

HELD: Alienation of the properties can be made only by taking recourse to Sec.14 of the Public Trusts Act - A Trust property cannot be alienated unless it is for the benefit of the Trust and/or its beneficiaries - The Trustees are not expected to deal with the Trust property, as if it is their private property - It is the legal obligation of the Trustees to administer the Trust and to give effect to the objects of the Trust.

Direction issued by the High Court to Economic Offences Wing of the State Government to hold an inquiry was not warranted - Registrar under the Public Trusts Act, having jurisdiction over Trust, to call for the record of the Trust relating to all the alienations made by the Trustees - Appeals allowed in part. ***91***

REGISTRATION ACT:

---Sec.32(c) - Whether the invocation of the Writ jurisdiction of the High Court by the appellant was right, especially when civil suits at the instance of third parties are pending and when the appellant had already been directed by this Court, in proceedings arising under Sec.145 of the Code of Criminal Procedure, to move the civil Court - Appeals challenging the Judgment of the Division Bench of the High Court, reversing the judgment of a Single Judge, by which the Single Judge held that registration of a sale deed by the Registering Authority to be null and void. **87**

HELD - If a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the civil court - But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted - There is and there can be no dispute about the fact that while the Registering Officer under the Registration Act, may not be competent to examine whether the executant of a document has any right, title or interest over the property which is the subject matter of the document presented for registration, he is obliged to strictly comply with the mandate of law contained in the various provisions of the Act.

In cases where a document is presented for registration by the agent, (i) of the executant; or (ii) of the claimant; or (iii) of the representative or assign of the executant or claimant, the same cannot be accepted for registration unless the agent is duly authorized by a PoA executed and authenticated in the manner provided in the Act - Section 34(3)(c) imposes an obligation on the Registering Officer to satisfy himself about the right of a person appearing as a representative, assign or agent - Appeals stands allowed, and impugned order of the Division Bench is set aside and the Order of the learned single Judge stands restored. ***12***

SERVICE LAWS:

- Aggrieved with the impugned judgment passed by the High Court in Writ Appeal

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

HELD: High Court has erred in re-appreciating the entire evidence on record and thereafter interfering with the findings of fact recorded by the Enquiry Officer and accepted by the disciplinary authority - The fact that the criminal Court acquitted the Respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment - Standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries - Impugned judgment and order passed by the Division Bench of the High Court dismissing the appeal and not interfering with the judgment and order passed by the Single Judge which interfered with the order of punishment imposed by the Disciplinary Authority dismissing the Respondent from service and the judgment and order passed by the Single Judge are hereby quashed and set aside - Order passed by the Management dismissing the Respondent on proved charge and misconduct is restored - Appeal stands accordingly allowed. **79**

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Law Summary

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

2022 (2)
(Vol.106)

SUMMARY RECENT CASES (SRC)

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A.P. STATE PUBLIC DISTRIBUTION SYSTEM(CONTROL),ORDER,2008 - SUSPENSION OF AUTHORIZATION: - --Petitioner/F.P. shop dealer questioned the inaction of respondent not supplying essential commodities to his shop even after expiry of 90 days from date of suspension, in view of judgment of High Court of A.P. in A. Neelima vs.Joint Collector,Kurnool (1996(1)APLJ 285).

HELD: What is reasonable period of suspension will vary from case to case depending upon various factors, though more often than not, a period of 90 days should ordinarily be sufficient to conclude the enquiry - The Control Order does not specify any time limit - In view of judgments of Division Bench, there is no stipulation regarding completion of enquiry within a period of 90 days, hence it cannot be

contended that, merely because, the enquiry could not be completed within a period of 90 days, the suspension order has to be set aside and the petitioner is entitled for supply of essential commodities - Period within which enquiry has to be completed will depend upon facts of each case and co-operation of the dealer. ***10***

ARBITRATION AND CONCILIATION ACT,1996:

---Secs.7 & 11(6) - An arbitration agreement should disclose a determination and obligation on behalf of parties to refer dispute arbitration. **2**

BLACKLISTING FROM THE PANEL OF CONTRACT:

---One cannot be blocklisted for life - The order of blocklisting to the extent that it has not specified the period cannot be sustained. ***9***

CIVIL PROCEDURE CODE:

---Sec.11 - Res Judicata.

HELD: Dedication of a property as religious endowment does not require an express dedication or document, and can be inferred from the circumstances - When the suit was dismissed for technical reasons, which decision is not an adjudication on merits of the dispute that would operate as res judicata on the merits of the matter - To succeed and establish a prayer for res judicata, the party taking the said prayer must place on record a copy of the pleadings and the judgments passed, including the appellate judgment which has attained finality - In the present case, Appellant did not place any on record - Appeals stand dismissed by upholding the judgment of the High Court affirming the decree of declaration passed by trial court. **3**

---Sec.114 and Or.XL VII, Rule 1 - REVIEW - An erroneous decision of a Court cannot be corrected by exercising review jurisdiction, but can only be corrected by the Supreme Court. ***9***

---Sec.151 - In lower Court petitioner (defendant) filed I.A to permit him to file fresh written statement to conduct denova trial in suit, the lower Court dismissed the said I.A. and direct both parties are at liberty to adduce their evidence if any on the additional issue i.e., whether the transfer of endorsement is true, valid and binding on the plaintiff - The present Civil Revision Petition filed that the lower Court failed to appreciate that what ever the proceedings done in earlier Court before transfer of the matter or not binding on the present Court and trial Court has erred in dismissing the application and not following the principles laid in the Judgment reported in AIR 2006 SC 646 and the petitioner(defendant) pray his entitle to filed fresh written statement and to lead evidence in the suit.

Originally respondent (plaintiff) has filed suit at Bantumalli, petitioner (defendant) filed I.A. to return the plaint on the ground that the Court has no territorial jurisdiction to entertain the same and that application was allowed and suit was return for presentation before the appropriate Court and when the suit was transmission and renumbered the petitioner (defendant) filed I.A that he may be given an opportunity to file fresh written statement and denova trial has to be conducted.

HELD: The suit is filed for recovery of money, whether defendant resisted or

not the Court has got jurisdiction to try the case, admittedly as the defendant is living at Warangal has got terrotorial jurisdiction, accordingly, considering the request of defendant, as the plaintiff did not resist the same it was allowed and it is not the case that the Bantumalli Court has no pecuniary jurisdiction and it is only at the request of defendant that he is residing at Warangal and considering his request and allowed I.A, as such the trial Court has distinguished the facts of the present case, hence no irregularity or informity in orders of lower Court - In the result Civil Revision Petition is dismissed. **6**

---Or.6, Rule 17, r/w Sec.151 - AMENDMENT OF PLAINT - Civil Revision petition filed against orders of trial Court for permitting plaintiff to amend plaint by introducing new paragraphs 3(A) to (H) and 5(a).

Petitioner/defendant contended the plaintiff filed petition under Or.6, Rule 17 at belated stage after cross examinaton of P.W.1.

Respondent/plaintiff contended he failed to mention the source of their title in respect of the properties purchased by them, accordingly it is felt essential to introduce the proposed amendments.

HELD: The proposed amendment shows that the plaintiff intended to narrate the source of their title in respect of schedle property from 1955 onwards, the defendant have resisted amendment stating that proposed amendment is only an afterthought after defendant have filed their written statement, it is true that original pleadings are silent with reference to the title, the plaintiff are trying to bring new facts on to the record after the trial commenced at the time of cross examination of P.W.1 and the plaintiffs petition silent about due diligence on the part of plaintiff and it is not their case that despite exercise of due diligence they could not plead all these facts in the plaint when the original suit was filed or at least before settlement of issue or before commencement of trial - Therefore, when the facts of present case are tested on the touch stone of principles laid down by the apex Court, the answer is in negative, hence the plaintiffs are not entitled for amendment of plaint at a belated stage, which would change the nature of the suit and the cause of action causing prejudice to other side, in the result, CRP, is allowed and the orders of lower Court are here by set aside. **5**

---Or.7, Rule 11 - REJECTION OF PLAINT - Avernments in the plaint alone are to be examined while considering an application under Or.7, Rule 11. **9**

---Or.21, Rule 66 - Civil Revision Petition filed by JDR Nos.3 & 4 assailing the notice in Form No.28 in EP case on the ground that trial Court failed to appreciate that JDR are not the owner of the said premises and that they are only tenants and also failed to consider that the respondent/DHR have failed to file the encumbrannce certificate and also trial Court has also failed to consider that respondent/DHR has failed to file the sale paper showing that the petitioners/ JDRs are the owner of the said property.

HELD: It may, instead of approaching the executing Court and raising all objections, the petitioners/JDRs have approached High Court by filing revision petition and raising all those objections which they were supposed to raise before executing Court, hence the approach of petitioners/JDRs is unwarranted, not entitled for any relief at the stage, accordingly CRP

is dismissed with liberty to the JDRs to raise all such objections before executing Court. 7

CONTEMPT OF COURT ACT, 1971:

---Sec.20 - LIMITATION ACT, 1963 - Contempt petition filed with 389 days delay - Limitation Act being in applicable to the contempt proceedings, canot be entertain and it stands rejected. **5**

CORROBORATION:

---Some corroboration is necessary when an ocular testimony false into category of "neither wholly reliable nor wholly un reliable". ***9***

COURT FEE:

---Petitioner had filed a suit for specific performance of contract of sale and for possession - Whether the Petitioner/Plaintiff has to pay the Court fee on the entire extent of land admeasuring Acs.03-32 guntas as agreed under agreement of sale or on Acs.02-16 guntas as claimed by the Plaintiff.

HELD: A judicial Order not supported by any reason is a nullity - Judicial function cannot be delegated to the office of the District Court - Plaint must be in respect of which the performance was due to Plaintiff from the Defendant and in respect of which the Plaintiff could claim specific performance and that the suit had to be valued only on the basis of the relief prayed for in the Plaint and that the Court fee payable would be on the basis of that valuation - Petitioner has to pay only on the extent of Acs.02-16 guntas, but not on the entire land mentioned in the agreement of sale - Court below is directed to number the suit on payment of Court fee on the land admeasuring Acs.02-16 guntas - Civil Revision Petition stands allowed - Registry is directed to return the originals of both C.F.R. Noto the learned counsel for the petitioner under due acknowledgment - Parties and the lower Judiciary will have to carefully scrutinize the pleadings mentioned in the plaint to arrive at a correct conclusion for payment of Court fee aspect. **3**

CRIMINAL PROCEDURE CODE, 1973:

---Secs.41(1) and 41-A - In the event of any arrest being made of the applicants, the Investigation Officer shall ensure adherence to the provisions of Sec.41(1) and 41-A.

It is essential to observe that the said provisions come in to play at the time of arrest of a person and the requirement of calling up a person to appear befoe the Police Officer on his having credible information or where there is a reasonable suspicion of that person having committed a cognizance offence.

This is so as no arrest should be made because it is lawful for the police officer to do so as the Police Officer has to justify to the arrest apart from his power to do so as laid down in *Siddharm Satlingappa Mhetre vs. State of Maharashtra* (on the verdict of the Hon'ble Supreme Court on 2-12-2020 in Crl.Appeal No.2271/ 2010). ***1***

---Sec.374 - High Courts are required to give notice to the accused before enhancing sentences. *9*

---Secs.437 & 439 - INDIAN PENAL CODE, Secs.376(2)(n),417,420,323,384,506, r/w Sec.109 - Regular bail.

When *de facto* complainant is willing stayed and had relationship, if the relationship is not work out, the same cannot be a ground for lodging an FIR for the offence u/Sec.376(2)(n) of IPC. ***9***

---Sec.482 - A High Court has inherent power u/Sec.482 to recall a judgment/order which was passed without hearing a person prejudicially affected by it. ***2***

---Sec.482 - (INDIAN) PENAL CODE, Secs. 120-B, 420, 423,406, 506, r/w Sec.34 - Petitioners/accused Nos.11 to 15 seeking quash of criminal proceedings against them.

The case of 2nd respondent that the petitiones are sold schedule property and enter sale cum GPA and received advance amount by the petitioners/accused - 2nd respondent further contended that he came to know a civil case was pending before City Civil Court in respect of schedule property and further contended petitioners/ accused have suppressed above the pendency of civil case and entering into GPA and the 2nd respondent alleged that the petitioner/accused have played fraud on them by suppressing the material facts therefore 2nd respondent filed complaint against petitioners accused.

Petitioner/accused contended that there is inordinate dely in filing the complainant, the transactions are pertaining to the year 2008 and present complaint is filed in the year 2013.

HELD: When the property was already sold, the subsequent GPA was executed by petitioners/accused with 2nd respondent would clearly indicate the criminal intention of the parties, the allegations clearly reveal that false representation was made on the basis of property was not sold and free from all encumbrances, when GPA was entered and petitioners received advance of sale consideration and the further contention of petitioners that offences are barred by limitation has no force at this stage and the said aspect wold be gone into by the learned Magistrate at the time of cognizance of the offence after completion of investigation and filing of final report, in the result criminal petition is dismissed. **7**

---Sec.482 - INDIAN PENAL CODE, Secs.489 (A) and 406, r/w Sec.34 - DOWRY PROHIBITION ACT, Sec.3(1) - A1 and A2 parties filed quash petition.

HELD: In matrimonial dispute, entire, family cannot be implicated based on Omni Bus allegations - Merely because A1 happens to be the son of petitioners, the entire family members cannot be clothed with criminal liability, particularly when the husband and wife are residing separately - The petitioners have been unnecessarily implicated in a matrimonial disputes between A1 and the de facto complainant, merely because the petitioners were the parents of A1 - Such view of the matter, even the entire allegations taken on it face value would not constitute any offence as against the petitioners, therefore, the criminal proceedings against the petitioners (parents) herein namely A2 and A3 alone stand quashed. **2**

---Sec.482 - PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, Secs.12,17,18,19, 20 & 22 - Criminal Petition to quash the proceedings in DVC - Petitioners are respondent nos.2 to 7 in the DVC proceedings.

HELD: Contention of petitioners that it would be difficult for them to attend Court on each date of hearing can be considered and, accordingly their presence befoe the Court below in the above DVC has to be dispensed - Criminal petition stands disposed of, dispensing with appearance of petitioner nos.1 to 6/respondent nos.2 to 7 in DVC. **8**

GUARDIAN AND WARDS ACT, 1890:

---Sec.10 - HINDU ADOPTION AND MAINTENANCE ACT, 1956, Sec.6 - Mother who remarries after the death of the biological father can decide the surname of the child and include it in her new family.

Relief for which no prayer or pleading was made should be granted. **2**

HINDU SUCCESSION ACT, 1956:

---Section 14(1) – Appeal against the Judgment by the High Court of in Civil First Appeal, filed by the Appellants under Section 96 read with Order 41 of CPC, whereby High Court while allowing the said First Appeal has set aside the Judgment and decree passed by the Trial Court, and has dismissed the Suit filed by the Plaintiff/ Predecessor of the present Appellants, against the Defendant no. 1/ Predecessor of the present Respondent Nos.1 to 3 and others.

HELD: Where a Hindu widow is found to be in exclusive settled legal possession of the HUF property, that itself would create a presumption that such property was earmarked for realization of her pre-existing right of maintenance, more particularly when the surviving co-parcener did not earmark any alternative property for recognizing her pre-existing right of maintenance - Words "possessed by" used in Section 14(1) are of the widest possible amplitude and include the state of owning a property, even though the Hindu woman is not in actual or physical possession of the same - Possession of the widow, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title - Hindu woman's right to maintenance is a tangible right against the property which flows from the spiritual relationship between the husband and wife - Such right was recognized and enjoined under the Shastric Hindu Law - It was not and is not an empty formality or an illusory claim being conceded as a matter of grace and generosity – Appeal stands dismissed. **4**

INSOLVENCY AND BANKUPTICY CODE, 2016:

---Sec.62 - SECURITSATION AND RECONSTRUCTION OF FINALCIAL ASSETS AND ENFORCE-MENT OF SECURITY INTEREST ACT, 2002 (SARFAESI ACT), Sec.13(2) - The entries in book of account/balance sheet of a company can be treated as acknowledgment of liability in respect of debt payable to a financial creditor. ***1***

NEGOTIABLE INSTRUMENTS ACT:

---Sec.138 - Cheque bounce - Complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque is not maintainable. ***9***

---Sec.141 - It is not necessary to make an avernment that a Managing Director or Joint Managing Directors were incharge of and responsible for the conduct of the businesses of a Company to make them accused under Act. **1**

(INDIAN) PENAL CODE:

---Sec.304-A - Criminal revision against judgment of District & Sessions Judge, where by the learned Judge dismissed the appeal, confirming the conviction and sentence imposed against revision petitioner for the offence punishable u/Sec.304-A of IPC.

HELD: Revisional jurisdiction of High Court is limited and only in case where their appears a manifest illegality or injustice, or orders suffers from any error of law, High Court would be justified in exercising its revisional jurisdiction - No interference is warranted as far as conviction is concerned, but with regard to sentence, it may be noticed that the offence took place in the year 2005 and almost 17 years have passed, the ends of justice will be met if the revision petitioner/accused is sentenced to pay a fine of 5000/- for the offence punishable u/Sec.304-A of IPC in lieu of simple imprisonment for 6 months - Hence, confirming the conviction of revision petitioner /accused for the offence punishable u/Sec. 304-A of IPC and sentence of one year is set aside and accused is sentenced to pay a fine of Rs.5000/-, further the revision petitioner shall also deposit a sum of Rs.10,000, out of which Rs.5000/- shall go to Sanik Welfare Fund and Rs.5000 shall go to Telangana High Court Advocate's Association. ***10***

---Secs.354-A and 366-A - PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012, (POCSO Act), Sec.12 - Lower Court convicted appellant u/Sec.366 of IPC, hence the present appeal.

HELD: The victim girl was not a minor and provisions of POCSO Act did not attract and question of kidnapping or abducting does not arise when the evidence itself disclose that the victim girl on her own went to Tirupati and came back, there is not even a whisper for any kind of force or compulsion under which victim girl went along with appellant, and victim girl was not a child, having acquitted the appellant for the offence under POCSO Act and also having found that there was no outraging of modesty of victim girl, the trial Court ought to have acquitted the appellant and as scene from the evidence none of the ingredients of Sec.366 of IPC are made out and for the said reason, the appellant is liable to be acquitted of the charge u/ Sec.366 IPC and accordingly, acquitted. **7**

SERVICE LAWS:

---Compassionate appointment - Whether the scheme/rules in force on the date of death of the government servant would apply or the scheme/rules in force on the date of consideration of the application on compassionate grounds would apply - Aggrieved with the impugned Judgment passed by the High Court, by which it has dismissed the Writ Petition preferred by the Appellant and has refused to direct the State authorities to appoint the Appellant on compassionate ground - Father of Appellant was working as an Assistant Sub-Inspector in the Excise Department - He passed away while in service. On the death of his father, Appellant applied for his appointment as a Junior Clerk - Before any further Order appointing the appellant on compassionate ground under the 1990 Rules came to be passed, the 1990 Rules came to be replaced by the new 2020 Rules.

HELD: A family of a deceased employee may be placed in a position of financial hardship upon the untimely death

of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such Applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

No fault or delay or negligence on the part of the Appellant at all - For no reason, his Application was kept pending and/or no order was passed - There was a delay on the part of the Department/ Authorities, the Appellant should not be made to suffer - Appellant has become a victim of the delay and/or inaction on the part of the Department/Authorities - Impugned Judgment passed by the High Court stands quashed and set aside -Respondents are directed to consider the case of the Appellant for appointment on compassionate grounds under the 1990 Rules as per his original application - However, it is observed that the appellant shall be entitled to all the benefits from the date of his appointment only. **3**

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