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SUBJECT INDEX

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ALTERNATIVE REMEDY – Whether alternative remedy of appeal is a bar to file Writ petition when the relevant statutory Rule has been violated while imposing the punishment.

Held: No – Since it is not disputed that without issuance 2nd show cause as provided under Rule 15(10)(i)(b) of the Rules, the impugned order of punishment has been passed, placing reliance on the decision in the case of Whirlpool Corporation as cited (supra) it is the view of this Court that alternate remedy of appeal is not a bar for this Court to interfere with the order of punishment, as the impugned order of punishment has been passed in total non-compliance of the principle of natural justice.

Dr. Sasmita Kumari Padhy V. Veer Surendra Sai University of Technology, Sambalpur & Ors.
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ARBITRATION AND CONCILIATION ACT, 1996 – Section 11(6-A) – The petitioner stated that the dispute is raised with regard to raising contract dated 18th March 2010 and as per clause 12 of the said agreement, the same is required to be decided by an arbitrator and therefore, the court may refer the parties for arbitration – The Opposite Party vociferously submitted that the dispute raised is basically founded upon the cancellation of the power of attorney, which is beyond the scope and purview of raising contract – Whether the High Court exercising Jurisdiction under Section 11 of the Act can enter into the dispute covered under the arbitration agreement.

Held: Yes – Section 11(6-A) of the Act though omitted by an amended Act of 2019 yet occupies the field of valid provision as the effect of the said amended provision has not been notified by the Central Government – In view of the restricted scrutiny in a latter provision introduced by way of Section 11(6-A) of the Act once the Court finds the existence of the arbitral agreement, it should not expand its horizon unless the said amended Act is notified and the provision is taken up from the legislative document – Thus, this Court does not find any justification and/or force in the objection raised by the opposite party.

M/s. Anand Granites Exports Private Limited. V. Prabhudayal Agrawal
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ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 & 37 – Scope of Interference under the section – Whether the High Court, in an appeal under section 37, can re-appreciate evidence or substitute its own view for that of the Arbitrator?

Held : No – What the Arbitral Tribunal has held in the Award has exclusively been its view on the evidence on record and the relevant surrounding facts/factors – The view so taken by the Arbitral Tribunal cannot be said to be wholly perverse or suffering from patent illegality so as to be interfered with – Needless to observe that even if two views are possible, the Court cannot substitute its own view with that of the Arbitral Tribunal.

The Arbitral Tribunal has taken a particular view of the evidence before it. If it were an appeal against the award, the approach of the Court could have been different but, not so while examining the award within the confines of Section 34 of the Act – This Court would hasten to observe in this regard too that even in a regular appeal against a decree of the trial court, the appellate court would not substitute its own views without specifically recording a finding as to the error in the decision under challenge.

M/s. ESSEL Mining and Industries Ltd, (EMIT) & Anr. V. M/s. Ravi Udyog Pvt. Ltd.

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ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34(2A) & 37– Patent Illegality– Which permits setting aside of a domestic award if it is "vitiated by patent illegality appearing on the face of the award" – Whether the award suffered from patent illegality apparent on the face of the record?

Held : No – Arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the 1996 Act as if dealing with an appeal or revision against a decision of any subordinate Court – The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.

Fact of the matter remains that nothing of a patent illegality apparent on the face of the award has been pointed out – The submissions essentially are of indicating some alleged errors on the merits of the case which, as noticed, do not fall within the parameters of Section 37 of the 1996 Act.

M/s. ESSEL Mining and Industries Ltd, (EMIT) & Anr. V. M/s. Ravi Udyog Pvt. Ltd.

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BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 447, 224 r/w Section 142(2) of Negotiable Instruments Act, 1881 – The

petitioner filed the complaint case before the Court of learned JMFC-II, Cuttack who has no jurisdiction – The complaint case ought to have been filed before the Court having jurisdiction at Bhubaneswar as the cheque was deposited by the petitioner in his Bank at Bhubaneswar – The petitioner filed present application U/s. 447 with a prayer to transfer the case to the Court at Bhubaneswar – Whether application U/s. 447 of BNSS is maintainable to transfer the complaint case from the Court at Cuttack to Court at Bhubaneswar.

Held: In view of the said specific provision under section 224 of the BNSS, which is akin to Section 201 of Cr.P.C., this Court is of the view that the present Petitioner, who is the Complainant in 1CC Case No.172 of 2024, instead of filing an application under Section 447 of BNSS before this Court for transfer of proceeding, should have moved appropriate application before the Court of learned JMFC-II, Cuttack for return of the complaint, with proper endorsement, enabling him to re-file the same before the Court having jurisdiction at Bhubaneswar.

In view of the observation made above, the Petitioner, who is the complainant in 1CC Case No.172 of 2024, may move an application before the Court of learned JMFC-II, Cuttack in 1CC Case No.172 of 2024 for return of the complaint enabling him to file the same before the appropriate Court having jurisdiction at Bhubaneswar.

If such an application is moved, learned JMFC-II, Cuttack or the Magistrate, who is in charge of the said Court, shall do well to return the complaint to the Petitioner-Complainant forthwith with proper endorsement, in terms of provision enshrined under section 224(a) of the BNSS, enabling the Petitioner to re-file the said complaint case before the appropriate Court at Bhubaneswar, having jurisdiction to try the said complaint case.

Sangram Keshari Routray V. Hexagon Infrastructures Pvt. Ltd, Cuttack & Anr.

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BHARATIYA NAGARIK SURAKSHA SAHINTA, 2023 – Section 483 – Bail – In the present case the accused persons have not been produced before the Court/Magistrate within 24 hours of their arrest – Plea of violation of section 58 of the Sanhita as well the Right to life & personal liberty as provided under Art. 22(2) of the Constitution raised – In the circumstances above, whether accused persons entitle to be released on bail?

Held: Yes – On a careful conspectus of admitted facts of the time of detention and arrest of the petitioners in this case, which found to be violative of Article 22(2) of the Constitution of India and applying the law laid down by Apex Court in *Subash Sharma* (supra), this Court considers

that since the arrest and detention of the petitioners being infringement of their fundamental right, their further detention in custody should not be enlarged and they be released on bail forthwith.

Jati @ Susanta Rout V. State of Odisha

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BHARATIYA NAGARIK SURAKSHA SAHINTA, 2023 – Section 483(1)(a), (b) – Modification of condition for bail – This case has been filed challenging the imposition of condition i.e. 'to furnish one surety of kin relative', while granting the bail – Bail is the Rule, Jail is the exception, plea raised – Right to life & personal liberty as mandated under Art. 21 of the Constitution is also pleaded – Whether the condition imposed by the learned trial Court is valid under the law?

Held: No – In this case, due to the condition as imposed by the learned trial Court, the petitioner is unable to get out from the jail custody and he is in custody since 29.04.2025 – Time and again, it is being held that bail is the rule, but jail is the exception and an accused should be presumed to be innocent until proven guilty at the trial and Court should not consider a person to be guilty of the crime, unless the same is established in terms of the proof beyond all reasonable doubts – In the aforesaid situation and circumstance and taking into account the precedents referred to above, this Court considers it proper to allow the CRLMA by waiving out the condition of furnishing a surety of kin relative of the petitioner, especially when the petitioner is unable to get out of the jail despite being allowed to go on bail.

Harsha C V. State of Orissa

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CENTRAL CIVIL SERVICES (RECOGNITION OF SERVICE ASSOCIATIONS) RULES, 1993 – Rule 8 – Authority of Executive Director, AIIMS – De-recognition of service associations – Whether the Executive Director was competent to declare de-recognition of FAIIMS.

Held: No – In the present case, the Executive Director invoked Rule 8 and unilaterally declared FAIIMS "de-recognized" – This action, in substance, was beyond the scope of the Executive Director's authority – The power to grant or withdraw recognition lies with the Central Government, not with the head of a local unit or institute.

Faculty Association, AIIMS, Bhubaneswar & Ors. V. Union of India & Ors.

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CENTRAL CIVIL SERVICES (RECOGNITION OF SERVICE ASSOCIATIONS) RULES, 1993 – Recognition – Legal status of FAIIMS – No formal recognition ever granted under the Rules – Doctrine of legitimate expectation invoked on basis of past institutional conduct – Whether such expectation can override explicit statutory provisions?

Held: No – In fact, it was fairly evident that the petitioner Association could not produce any tangible or formal proof of recognition granted under the CCS (RSA) Rules, 1993 – While it sought to rely on past administrative conduct to suggest de facto acceptance, the absence of a statutory recognition order fatally undermines the foundation of its claim – In law, one cannot be 'de-recognized' if one was never recognized in the first place.

The petitioner invokes the doctrine of legitimate expectation, arguing that the Institute's past conduct effectively "acknowledged" FAIIMS – However, a legitimate expectation cannot override clear statutory provisions – There can be no estoppel against a statute.

Faculty Association, AIIMS, Bhubaneswar & Ors. V. Union of India & Ors.

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CIVIL PROCEDURE CODE, 1908 – Section 152 – Amendment of Judgments, decrees or orders – The application of the plaintiff for correction of the schedule Mouza in the judgment & decree has been allowed by the Court below – Challenging such order of correction, present application has been filed – It was pleaded that by applying section 152 of C.P.C the court can correct its own arithmetic & typographical error not the mistake of the parties & such correction cannot be made without the amendment of plaint – On the other hand it was pleaded that if the correction would not be made then it would amount to depriving the plaintiffs the fruits of the decree – Issue raised that, whether the court by applying power U/s. 152 of C.P.C or taking the aid of section 152 can correct the mistake committed by the parties?

Held: Yes – This Court has already held that if the decree in so far as it relates to description of the suit property is left uncorrected it would result it being unenforceable depriving thereby the decree holder from the fruits thereof – As such, the decree can be corrected even without amending the plaint schedule.

This is also a case where the principle "*actus curiae neminem gravabit*' i.e, 'the act of Court shall prejudice no person' would fully apply – It must also be kept in mind that apart from Section 152, the Court has inherent power under Section 151 of CPC which permits it to make such orders as may be necessary for the ends of justice or to prevent

abuse of the process of the Court while exercising the power of the Court under Section 151 of CPC.

Belamati Digal & Anr. V. Pravabati Nayak & Ors.
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CIVIL PROCEDURE CODE, 1908 – Order VI Rule 17 – Amendment of plaint – The defendant objected the proposed amendment on the ground that it will change the nature and character of suit – The learned trial court rejected the proposed amendment – Whether the order of learned trial court should be interfered, when the proposed amendment refused on the ground that the nature and character of the suit would be changed from a tenancy suit to a suit for specific performance of contract.

Held: No – The amendments proposed by the plaintiffs to be incorporated in the plaint to use the word "agreement" and to further execute the sale deed, would definitely affect the nature and character of the suit – Thus in such circumstances, the proposed amendment cannot be permitted to be brought on record.

Venkateswar Educational & Multipurpose Services (VEMS), BBSR & Anr. V. Surya Prakash Pati & Ors.
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CIVIL PROCEDURE CODE, 1908 – Order VI Rule 17 r/w Section 12 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and Rule 3 of the Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020 – On 17.04.2025 the plaintiff/petitioner filed I.A. No.15 of 2025 for amendment of the pleadings – Court fee was not deposited, extension of time was sought for & four week time granted – The period of four week ended on 16.04.2025 – The plaintiff seek further extension of time not for depositing the deficit court fee but to defer such deposit till disposal of the I.A meant for amendment of pleadings – Whether the amendment for plaint is to be allowed when it would cause change in the nature and character of the suit and the result would affect the valuation of the suit.

Held: No – Perusal of the amendments sought for, as indicated above goes to show that the nature and character of the suit from that of a 'money claim arising out of an alleged settlement agreement' changes to a 'suit to secure the plaintiffs claims' in an admiralty suit filed before the Gujarat High Court.

Lack of bona fide in seeking amendment is found as far as the prayer for amendment is concerned – The further finding of this Court is that by bringing proposed amendment the cause of action sought to be

raised would become foreign to the case that was set up in the earlier plaint as 'Gujrat Suit' is introduced in the amendment for the first time without there being any reference in the original plaints and the defendants are not party to the 'Gujrat Suit'.

Accordingly, the I.A. No.15 of 2025 filed by plaintiff seeking amendment of plaint is dismissed.

Alphard Maritime Ltd. V. Ocean Jade (IMO:9660750) & Anr.
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CONSTITUTION OF INDIA, 1950 – Article 19(1)(C) – Right to from Associations – De-recognition of service association under CCS(RSA) Rules, 1993 – Whether denial of recognition amounts to violation of the fundamental right to form associations?

Held: No – The fundamental right to form an association does not entail a right to compel the government to grant that association official recognition or negotiation privileges – In other words, while individuals have freedom to associate, the recognition of that association by the State, which carries with it certain special privileges and obligations, is a matter of government policy and statutory regulation, not a fundamental right.

Faculty Association, AIIMS, Bhubaneswar & Ors. V. Union of India & Ors.
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CONSTITUTION OF INDIA, 1950 – Article 311(1) – The State Government in Health & Family Welfare Department has directed the Dean and Principal of Medical Colleges, along with others to conduct recruitment for remaining vacancies in various posts on the 25th of every month and report to the Health & Family Welfare Department – Further as per the agreement which has been signed by the petitioner indicates that the said agreement has been signed between the "First Party" the Health & Family Welfare Department, Government of Odisha represented through the Dean and Principal and the "Second Party" the appointee – It is also indicated in the agreement that the Health & Family Welfare Department may terminate the agreement and the services of the petitioner/ second party may be terminated by the competent authority that is Health & Family Welfare Department – The Dean and Principal MKCG MCH passed the impugned order of termination against the petitioner – Whether the order of termination is sustainable when the authority does not have the jurisdiction to terminate the service of petitioner.

Held: No – It is settled principle of law, as enumerated under Article 311(1) of the Constitution of India, that it is the Appointing Authority

which has the power to terminate the services of the employee – In the instant case, from the aforesaid analysis, it is clear that the State Government in H&FW Department is the appropriate authority to terminate the service of the Petitioner.

Moreover, there is nothing on record to show that the power to terminate the services of the Petitioner has been expressly delegated by the State Government to the Dean & Principal MKCG MCH – Accordingly, with regard to the third issue at hand, this Court is of the opinion that the Dean & Principal, MKCG MCH did not have the jurisdiction to issue the impugned order of termination dated 29.12.2024 under Annexure-6 to the present Writ Petition.

Dr. Purusottam Swain V. State of Odisha & Ors.

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CONSTITUTION OF INDIA, 1950 – Article 311(2) (b) r/w Sub Rule (ii) of Rule 18 of the Odisha Civil Service (Classification, Control & Appeal) Rule, 1962 – Involvement in criminal case – The petitioner dismissed from service by the Authority in exercise of power conferred under Article 311(2) (b) of the Constitution r/w Sub Rule (ii) of Rule 18 of 1962 Rule – The order of dismissal was affirmed by the Appellate Authority – The Disciplining Authority in the impugned order had not recorded the reasons for its satisfaction that it was not "reasonably practicable" to hold the enquiry contemplated U/A 311 (2) (b) – Whether assigning of reason is essential before passing the order of dismissal of a civil servant in terms of Article 311 (2) (b) of the Constitution.

Held: Yes – There is nothing on record to indicate the reason which impelled the authorities to take recourse to extraordinary measure and dispense with the services of the Petitioner in terms of Article 311 (2) (b) by the impugned order at Annexure-4 – By the selfsame Authority and on the same date i.e. on 17.12.2019. In such view of the matter, this Court is persuaded to hold that in view of the judgments cited above the order of the Disciplinary Authority as well as the Appellate Authority does not stand scrutiny in terms of the law laid down by the Apex Court in the case of Tulsiram Patel (Supra) and followed subsequently in several judgment noted above and the order passed by this Court in the case of State of Orissa & Others Vrs Amulya Kumar Champatiray, 2017 (Supp-II) OLR-107, the impugned order of dismissal at Annexure-4 dated 17.12.2019 passed by the Superintendent of Police, Bhadrak and the Appellate order dated 30.07.2021 at Annexure-7 is liable to be quashed. Accordingly it is so directed.

Jagatpati Hansda V. State of Orissa, Principal Secy, Home Department, Khordha & Ors.

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CONTRACT ACT, 1872 – Sections 10, 146 – The policy issued in favour of the offending truck is a CPM policy and it covers the location Parjang in the district of Dhenkanal – The appellant/ insurance company submitted that the policy being the policy in the nature of CPM , it does not cover 3rd party claim arising out of the motor accident in a public road – Whether the policy taken against the offending vehicle is a lawful contract in terms of the provisions contained under the contract Act.

Held: No – On the face of such status of the vehicle, it is the view of this Court that no policy could have been issued in favour of the offending vehicle by issuing a CPM Policy – Since the offending vehicle is a motor vehicle within the definition of Section 146 of the Motor Vehicle Act, such policy in the nature of CPM Policy could not have been issued in favour of the offending vehicle and the said contract is not a lawful contract.

It is the view of this Court that since the offending vehicle which is not disputed is a Motor Vehicle, no such policy either could have been taken by the owner-Respondent No.5 as CPM Policy, nor such a policy could have been issued by the appellant/insurer.

Divisional Manager, United India Insurance Co. Ltd., Cuttack V. Bindhyaben Sahoo & Ors.

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COURT FEES ACT, 1870 – Section 4 – The plaintiff did not deposit the court fee initially determined by it – Extension of time was sought for to deposit the amount, four week time was granted – The period of four week ended on 16.04.2025 – The plaintiff seeks further extension of time without depositing the deficit court fee, to defer such deposit till disposal of the I.A, which meant for amendment of pleadings – Whether the plaint of the plaintiff be accepted without payment of the Court fee?

Held: No. – Concededly the value is itself determined by the plaintiff, therefore, everything remaining same including the claim against the defendant, the value of ad-valorem court fee remains unchanged as was determined on the date of filing of the suit – These observations are made in the context of the fact, that as noted above, extensive arguments have been advanced by both the sides addressing this particular aspect – Now, though the suit is dismissed for the reasons as elaborated above but assuming for the sake of argument that the amendments could have been allowed then the consequence still would be that the court fee would remain unpaid, in deficit, and in the facts and circumstances as well by operation of law the suit has to be dismissed.

Alphard Maritime Ltd. V. Ocean Jade (IMO:9660750) & Anr.

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CRIMINAL PROCEDURE CODE, 1973 – Section 354(3) – The appellant has been convicted for the offences U/s. 302, 307, 325, 458 of IPC – Death sentence imposed – The learned Court has not considered the antecedents, social and economic background, mitigating and extending circumstances while imposing the sentence to death – Whether the punishment imposed by the court can be altered when there is possibility of reformation and rehabilitation of the convict.

Held: Yes.

State of Odisha V. Niranjan Mallik

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CRIMINAL PROCEDURE CODE, 1973 – Section 482 r/w section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 – Offences U/s.376 (2)(n) of IPC – Prayer for quashing of FIR – Compromise between the parties – Whether in view of the compromise between the parties the offence U/s. 376(2)(n) of the penal code can be quashed.

Held: No – The decision in the case of Gian Singh (supra) is of no help to the petitioner for the purpose of quashing the FIR or proceeding with regard to the offence under Section 376(2) (n) of the IPC, as it has been held by the Supreme Court in the said case that an offence like rape cannot be quashed on the ground of compromise – For the same reason, the decision in the case of *Sumit* (supra), cannot be of any help to the petitioner.

I am therefore not impressed by the submission of the learned counsel for the petitioner that the proceedings should be quashed as the victim does not want to proceed with the case – Merely because the victim does not want to proceed against an accused, cannot be a ground for quashing the FIR or proceedings in respect of a case, registered under Section -376(2)(n) of the IPC.

Bikash Behura V. State of Odisha & Anr.

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CRIMINAL PROCEDURE CODE, 1973 – Section 482 r/w section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 – Offences U/Ss.376 (2)(n) & 493 of IPC – Prayer for quashing of FIR – The victim in her statement recorded U/s. 164 of Cr.P.C has stated that, "she was in love with the petitioner & their marriage was to be fixed – On 17.04.2024 they had a quarrel & he blocked her number – She submitted a false case against him – She had done this out of anger –Now she wants to withdraw the case – The case was false & the petitioner had not misbehaved with her" – Whether in view of the statement recorded U/s. 164 of the Cr.P.C the offences under the penal code are attracted against the petitioner?

Held: No – Apart from the fact that even if the allegations in the FIR are accepted to be true, the offences under Sections 376(2)(n) and 493 of the IPC are not made out against the petitioner, the victim has stated in her statement recorded under Section 164 of Cr.P.C. that being annoyed with the petitioner, she had lodged the FIR making false allegations

Bikash Behura V. State of Odisha & Anr.
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CRIMINAL TRIAL – Absence of motive – The condemned prisoner is convicted for commission of offence U/s. 302, 307, 325, 326, 458 of the IPC – Whether absence of motive is fatal to the prosecution case.

Held: No – So far as motive is concerned, absence of same in a case of homicide is immaterial where there are direct evidence of eyewitnesses supported by medical evidences – Motive is a mental factor hidden in a deep recess of the mind.

It is true that failure to unravel the true motivating factor for committing the crime cannot lead to the inference that the Appellant is innocent.

State of Odisha V. Niranjan Mallik
2025 (III) ILR-Cut…… 105

CRIMINAL TRIAL – Circumstantial Evidence – The Appellant faced trial for commission of offences punishable U/s. 302/201 of the IPC – The learned trial Court found the guilty of both the charges and sentenced him to undergo, imprisonment for life U/s. 302 of IPC – The learned trial Court culled out the circumstances borne out of the record against the appellant and held that all the circumstances have been proved against the appellant – The learned counsel for appellant stated that there is no direct evidence and the deceased fell down & died due to head reeling – It is further argued that in view of the pressure caused by the co-villagers on account of puja which was to be observed on the next day, the appellant had to bury the dead body without any intimation to family members of the deceased – Whether in the circumstances above prosecution has proved the case against the appellant, in absence of any direct evidence.

Held: Yes – We are of the humble view that even though there is no direct evidence in the case, but the circumstances available on record if taken together clearly form a complete chain and it excludes every possible hypothesis regarding the innocence of the appellant and it substantiate that the appellant alone is the author of commission of the murder of the deceased and that after committing the murder, he had also buried the dead body of the deceased – The appellant has miserably failed to dislodge the incriminating evidence appearing against him in the

prosecution case and hence, we are of the opinion that his conviction and sentence through the impugned judgment and order does not require any interference by us and resultantly, we find no merit in the appeal which for the said reason is dismissed with the affirmation of appellant's conviction and sentence.

Sadhu Charan Mahanta V. State of Orissa
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CRIMINAL TRIAL – Circumstantial Evidence – The Appellants faced trial for commission of offences punishable U/s. 449/302/363/364/394/ 201/34 of the Penal Code r/w sections 25 & 27 of the Arms Act – The learned trial Court has jotted down three circumstances which relates to DNA test report findings to convict the appellants – After registration of FIR the I.O. and the Scientific Officer seized/collected some materials and forwarded the relevant exhibits to Court for chemical examination by S.F.S.L., Rasulgarh – All total 32 exhibits were forwarded to the Director, S.F.S.L. for necessary examination and opinion – The forwarding report does not indicate that the exhibits were in sealed condition – As per the forwarding report the seizures were made in between 10.10.2017 to 12.10.2017 and the exhibits were forwarded to Court on 14.12.2017, after two months – The Scientific Officer and A.C.E. undertaking examination has not been examined to prove the forwarding report – Whether the DNA profile finding can be admitted as evidence when the forwarding report does not indicate that the material objects were in sealed condition at the time of its production after two months of its seizure and Scientific Officer and A.C.E. undertaking examination has not been examined to prove such report.

Held: No –The learned trial Court in the impugned judgment after noting down the findings in the DNA test report jumped to the conclusion that from the scientific analysis of DNA report, it is crystal clear that both the appellants have the involvement in the murder of deceased Biranchi Nayak and Naba @ Ekalabya Nayak – There is no discussion in the impugned judgment relating to the proper sealing of the exhibits after its seizure, safe custody of the exhibits, absence of any explanation from the side of the prosecution relating to delayed dispatch of the exhibits to Court and the effect of delay when most of the exhibits were produced in unsealed condition.

In view of the foregoing discussions, we are of the view that the DNA test report findings cannot be used against the appellants.

State of Odisha V. Prakash Behera @ Babuli & Nandakishore Sethi @ Ranja
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CRIMINAL TRIAL – Death sentence – Imposition – Whether the death sentence is sustainable when the aggravating and mitigating circumstances have not been taken into consideration.

Held: No.

State of Odisha V. Niranjan Mallik

2025 (III) ILR-Cut…… 105

CUSTOMS ACT, 1962 – Section 130 – The appellant filed the appeal before Tribunal with a plea that the Fe content is to ascertained on the basis of Dry Metric Ton (DMT) and not Wet Metric Ton (WMT) and the test report would reveal that IOF contains more than 58% of Fe in aggregate which was rejected by the Tribunal with categorical finding that the Fe content is to be ascertained on the basis of WMT and not on the basis of DMT – Whether the Fe content in IOF is to be ascertained on the basis of WMT or DMT.

Held: – The Fe content in IOF is to be determined on the basis of WMT and not DMT and in view of a decision having taken in this regard and in absence of any materials forthcoming before us to take a different view, the said point having settled cannot be said to be a debatable one nor it invites any different opinion to be arrived at.

Commissioner of Customs (Preventive), Bhubaneswar V. M/s. Chamong Tee Exports Pvt. Ltd.

2025 (III) ILR-Cut…… 01

DRUGS AND COSMETICS ACT, 1940 – Sections 18(a)(i), 23, 25 & 27(d) – Allegation of manufacture & sale substandard drug – Punishment under Section 27(d) of the Act – The sample was drawn on 22.08.2007 and tested by the State Laboratory – The result was communicated to the petitioner's company vide letter dated 26.07.2008 & received on 05.08.2008 – The petitioner challenged the said report within the statutory period of twenty eight days – The Drug sample having expired on 31.08.2008 could not be referred for re-testing/analysis by the Central Laboratory U/s. 24(4) of the Act – Whether the punishment against the petitioner under section 27(d) of the Act is sustainable when the authority failed to comply with a mandatory statutory requirement before launching the prosecution.

Held: No – This Court cannot blink aside from the irregularities in the functioning of the authorities, who, despite handling a matter directly affecting public health and safety, failed to ensure due compliance with statutory provisions – Such inaction reflects serious lapses in the discharge of official duties – This matter deserves to be brought to the

notice of the authorities at the helm for appropriate departmental action against any officer found responsible.

Coming to the case at hand, as the authority failed to comply with the mandatory provisions before instituting the prosecution, no criminal liability can be ascribed to the Petitioners, and continuation of the proceedings would amount to an abuse of the process of law.

Naveen Bhatia & Ors. V. State of Odisha & Anr.
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HINDU MARRIAGE ACT, 1955 – Section 13(1)(1-a) – The appellant/wife was awarded ₹3,000/- per month towards maintenance by the Judge, Family Court – Appellant challenges the Judgment of learned Judge, Family Court with a prayer for enhancement – Allegation of cruelty was raised on the part of the Respondent/wife – The learned trial Court has not gone into the merit of the case – Whether wife is entitled to receive 25% of the salary of husband for her maintenance.

Held: Yes – Though 25% of the salary of the Respondent in this case, after statutory deductions, would come around Rs.15,000/- to Rs.16,000/-, in our considered opinion, for the time being, the amount that should be paid to the Appellant-wife is @ Rs.10,000/- (Rupees Ten Thousand) per month, and we direct accordingly.

Mamata Behera V. Premananda Behera
2025 (III) ILR-Cut…… 25

HINDU MARRIAGE ACT, 1955 – Section 24 – Pendente lite maintenance – The petitioner is the Opposite Party in C.P. 144 of 2016 – Petitioner filed application U/s. 24 of the Act for interim maintenance – The Learned Judge, Family Court, Sambalpur proceeded to hear the C.P. No.144/2016 on merit without considering the I.A. filed by petitioner for maintenance – Whether the Learned Judge, Family Court should consider/decide the petition filed U/s. 24 of the Act first before adjudicating of the main case i.e. C.P. No.144/2016.

Held: Yes – Taking into consideration the submission made by the learned Counsel for the Petitioner, the order sheet on record, legal provisions enshrined under Section 24 of the Hindu Marriage Act, 1955 and the settled position of law, the learned Judge, Family Court, Sambalpur is directed to take up the hearing in I.A. No.22 of 2024 preferred under Section 24 of the Act, 1955 before proceeding further on merit in C.P. No.144 of 2016 and dispose of the said application within six weeks from the date of production of certified copy of this order.

Meenakshi Hota V. Chinmay Hota
2025 (III) ILR-Cut…… 357

IMMORAL TRAFFIC (PREVENTION) ACT, 1956 – Sections 3, 7 & 18 – Power of Magistrate – The Sub-Divisional Magistrate, Puri in Criminal Miscellaneous Case directed for attachment of hotel/lodge, leased out to the petitioner for a period of three years from the date of the said order – Whether the Magistrate is empowered to close/attach the place/premises used for immoral purpose.

Held: Yes – It can be reasonably inferred from the said report that initiation of a criminal case against the offender stands on a separate footing that of exercise of power by the Magistrate to close/attach the place/premises used for such immoral purposes – Even though the word 'closure' is not appearing in the enabling provision, which contains the word 'attached' yet the spirit and the object has to be born in mind and the interpretative tools are to be set in motion to imbibe within itself such power being eminently present

In the instant case, the Magistrate after issuing the show-cause notice and inviting the reply, which in fact was given, passed an order for closure/attachment for a period of three years, which cannot be said to be excessive or beyond the purview of Section 18(1) of the said Act.

Sanjit Kumar Choudhury V. State of Odisha & Anr.
2025 (III) ILR-Cut…… 07

INDIAN PENAL CODE, 1860 – Section 84 – Plea of insanity – Burden of proof lies upon whom?

Held: The burden of proof is on the accused – The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, at the time or immediately after the offence with reference to his mental condition by production of medical evidence and other relevant factors.

State of Odisha V. Niranjan Mallik
2025 (III) ILR-Cut…… 105

INDIAN PENAL CODE, 1860 – Section 84 – Plea of unsound of mind – The plea of insanity have not been proved – When the plea of insanity had not been proved, it would attract the exception as provided under section 84 of IPC?

Held: No – In the instant case, the act of commission of offences by the convict though lead towards the presumption of unstable mind, but the

same in absence of other supporting materials is not sufficient to arrive the conclusion regarding unsoundness of mind in order to attract the exception as per Section 84 of the IPC – Because in law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act.

State of Odisha V. Niranjan Mallik

2025 (III) ILR-Cut…… 105

INDIAN PENAL CODE, 1860 – Sections 201, 34 – At the presence of the appellants, one katuri and some other articles as per seizure lists under Exts. 1/2, 4, 19 and 21 were stated to have been seized – The prosecution has failed to establish that those articles have got any link with the offence committed – Whether the conviction of the appellants under section 201/34 of IPC is sustainable merely on the basis of seized articles?

Held: No – When the incriminating articles stated to have been seized at the instance of the appellants cannot be used as evidence in the case against the appellants for the reasons assigned, it cannot be said that the appellants have caused disappearance of evidence merely at their instance those were recovered – Thus, the conviction of the appellants under section 201/34 of I.P.C. is not sustainable in the eyes of law

State of Odisha V. Prakash Behera@Babuli & Nandakishore Sethi @ Ranja

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INDIAN PENAL CODE, 1860 – Sections 364/34 – Kidnapping – The appellants are convicted for the offence U/s. 302, 34 of IPC – There is no evidence on record of last seen of two deceased in the company of the appellants or kidnapping of the minor deceased – Whether the conviction of the appellants U/s. 364/34 of IPC is sustainable.

Held: No – The learned trial Court has held that so far as the kidnapping of the minor deceased Naba @ Ekalabya Naik is concerned, from the circumstantial evidence, the prosecution has proved that the said deceased was kidnapped from the lawful custody of his parents and subsequently his murder was committed inside the jungle from where the dead body was found – After careful analysis of the materials on record, we do not find either any direct evidence or circumstantial evidence in that regard – There is no evidence on record like last seen of the two deceased i.e. Tarani Naik or Naba @ Ekalabya Naik in the company of any of the appellants or kidnapping of the minor deceased Naba @ Ekalabya Naik by the appellants – Therefore, the conviction of the appellants under section 364/34 of I.P.C. is totally misconceived.

State of Odisha V. Prakash Behera @ Babuli & Nandakishore Sethi @ Ranja

2025 (III) ILR-Cut…… 42

INFORMATION TECHNOLOGY ACT, 2000 – Sections 78, 80 r/w Odisha Home Department Notification dated 22.09.2017 & dated 18.12.2021 – Petitioner filed the present application for quashing the entire criminal proceeding registered U/s. 465, 469 and 500 of the IPC r/w Section 66(c) of the Information Technology Act, on the ground of lack of territorial jurisdiction – The petitioner urged that the Cyber-Crime P.S. at CID, Crime Branch, Odisha has exclusive jurisdiction to investigate offences under the Information Technology Act throughout the State, thus the local police station had no authority to register or investigate the case – Whether the investigation conducted by the Kumbharpada Police Station suffers from lack of jurisdiction under the Information Technology Act.

Held: No – The provisions (Section 78 & 80) when read together, clearly indicate that the I.T. Act does not divest general police stations of competence to investigate; rather, it conditions such competence by prescribing the minimum rank of the Investigating Officer – Therefore, the jurisdictional bar is not territorial in nature but functional, rooted in the rank of the officer investigating the case.

To summarise, this Court, therefore, comes to considered conclusion that the objection regarding lack of jurisdiction on the part of Kumbharpada P.S. is untenable – The investigation having been carried out by an Inspector of Police, the statutory requirement under Section 78 of the I.T. Act, 2000 stands satisfied – The Notifications of 2004 and 2017, when read in entirety, particularly the expression "concurrent jurisdiction all over the State," as well as the subsequent 2021 Notification and the clarification issued by the CID, CB Cyber Crime P.S., all make it abundantly clear that local police stations are not deprived of competence to investigate cyber offences – The plea of exclusive jurisdiction of CID Cyber Crime P.S. to the exclusion of all other police stations is, therefore, without merit.

Jayanta Kumar Das V. State of Odisha

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INTERPRETATION OF STATUTES – Headnote – Whether the "headnote" of a section can control the substantive provisions contained in the said section of an Act.

Held: No – It admits no ambiguity on a proposition of law that where the provision is plain and simple and does not invite more than one

interpretation, it has to be interpreted in such way and the headnote or the marginal note cannot guide and/or control the said unambiguous provision – The necessity of applying the hayden rules is only to uphold the basic tenet of the said provision in relation to the object and the purpose sought to be achieved but cannot override the plain and simple words used in the said Section nor control the same.

Sanjit Kumar Choudhury V. State of Odisha & Anr.
2025 (III) ILR-Cut…… 07

INTERPRETATION OF STATUTES – Inconsistent stands of party – Whether the inconsistent stands of litigant/party in different proceeding is permissible.

Held: No – A party cannot be permitted to take inconsistent stand at different stages of the proceeding.

Commissioner of Customs (Preventive), Bhubaneswar V. M/s. Chamong Tee Exports Pvt. Ltd.
2025 (III) ILR-Cut…… 01

LAND ACQUISITION ACT, 1894 – Section 4(1) r/w Section 2(f) of the Orissa Public Premises (Eviction of unauthorized occupants) Act, 1972 – The petitioner was unauthorisedly occupying the land even after the notification U/s. 4(1) of the L.A. Act was published – The petitioner and his family members was the record of right holder before the acquisition of land U/s. 4(1) of the Act – Petitioner was not paid adequate compensation for the trees grown on the plot – The Estate officer initiated proceeding U/s. 3 & 4 of the OPP(Eviction of unauthorized Occupants) Act alleging unauthorized occupation of the public premises – Whether the suit land which was recorded in the name of petitioner and his family members before the acquisition U/s. 4(1) of L.A. Act, falls within the definition of "Public Premises" as define under section 2(f) of the OPP (Eviction of unauthorized Occupants) Act.

Held: Yes – After the notification U/s. 4 (1) of the L.A. Act, the case land vested in the State free from all encumbrances – Thus, for all purposes, the case land became public premises within the meaning of section 2(f) of the OPP Act.

Samir Kumar Mohanta V. Executive Engineer, Betnoti Canal Division, Mayurbhanj & Ors.
2025 (III) ILR-Cut…… 88

LIMITATION ACT, 1963 – Section 14 – Period of limitation – Cause of Action – The plaintiff supplied bread (bun) as per the letter dated

03.02.2001starting from 07.03.2001 to 14.12.2001 – The plaintiff claims that he has raised eleven bills amounting to ₹2,64,426/-, the last bill raised on 14.12.2001 – The plaintiff filed a Writ petition on 06/07/2004 – The Writ petition was disposed of on 18.09.2007 with a positive direction to the Defendant No. 2 to consider the case of plaintiff – The claim of the plaintiff was considered and rejected on 22.11.2007 – The suit was filed on 12.11.2010 within three years from the date of rejection i.e. on dated 22.11.2007 – Whether the fresh period of limitation would start running upon disposal of the writ petition or from the rejection order of the authority as directed in the writ petition.
Held : Regardless of the date of arising of the cause of action, this Court still directed defendant No.2 to consider the case of the plaintiff – This amounts to giving rise to a fresh cause of action – Admittedly, the claim of the plaintiff was considered and rejected on 22.11.2007 without citing any reason and the suit was filed on 12.11.2010, i.e. within three years from the date on which the cause of action arose i.e. 22.11.2007 – This Court having entertained the writ application and issued a particular direction, the same cannot be ignored to hold that the original cause of action had revived and along with it the period of limitation that had begun to run since 14.12.2001 – It would be an absurd proposition as it would set at naught the order of this Court – The cause of action as on 14.12.2001 related to non-payment of the plaintiff's dues but the cause of action on 22.11.2007 was rejection of the petitioner's claim upon consideration of the documents supplied by him as directed by this Court – Both cannot be equated with each order – The matter would have been different had the plaintiff not approached this Court within the period of limitation, but having done so, he cannot be denied the benefit of saving of limitation firstly, because of pendency of the writ application for more than three years and secondly, for arising of a new cause of action basing on the order passed by this Court.

M/s. Tasty Food Products V. Secretary, Orissa State Council for Child Welfare & Anr.
2025 (III) ILR-Cut…… 257

MOTOR ACCIDENT– Attendance charges – Enhancement – The counsel claimed that attendance charges should be calculated at par with the loss of income – Whether the attendance charges should be calculated at par with the loss of income.

Held: No – This Court is not persuaded to hold that attendance charges should be at par with the loss of income during treatment as claimed.

Baratam Satya Raju (Dead) & Ors. V. Gian Kaur Chahal & Anr.
2025 (III) ILR-Cut…… 296

MOTOR ACCIDENT – Compensation **–** Consortium – Division – Discussed with reference to case law.

Baratam Satya Raju (Dead) & Ors. V. Gian Kaur Chahal & Anr.
2025 (III) ILR-Cut…… 296

MOTOR ACCIDENT – Compensation – Quantification/ Calculation of the income of a home maker – The learned Tribunal took the monthly income of the deceased home maker as ₹3000/- per month – Whether the monthly income of the home maker can be enhanced.
Held: Yes – This Court is of the considered view that an amount of Rs.6000/- per month as loss of income would subserve the ends of justice – Accordingly, the amount per year comes to Rs.72,000/-.

Baratam Satya Raju (Dead) & Ors. V. Gian Kaur Chahal & Anr.
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MOTOR ACCIDENT – Compensation – The offending Vehicle is a Heavy Motor Vehicle in view of the provisions contained under Section 146 of the M.V. Act – The policy issued against the offending truck is a CPM policy and it cover the location Parjang in the district of Dhenkanal – The learned Tribunal while allowing the claim of the claimants/ Respondent No. 1 to 4 held appellant/company liable to pay compensation amount of ₹45,11,468.25/- with interest payable @6% per annum is payable from the date of application till its realization – Whether in view of this kind of policy i.e. CPM policy issued against the offending vehicle, the appellant/ company is liable to pay the compensation as awarded.

Held: No – Since knowing fully well that the offending vehicle is a Heavy Goods Vehicle and such a policy could not have been issued, the appellant by taking the premium issued the policy in the name and style CPM Policy and Owner-Respondent No.5 on the face of nature of vehicle took the said policy by paying the premium, it is the view of this Court that both the parties cannot take advantage of their own wrong.

It is the view of this Court that the policy so issued by the appellant-company and taken by the Owner-Respondent No.5 being an illegal contract and knowing its repercussion, such a policy was issued as well as taken, both the appellant and Respondent No.5 are equally and severally liable to pay the compensation – For the latches on the part of the appellant and Respondent No.5, Claimants/Respondent Nos.1 to 4 cannot be deprived to get the benefit of the compensation.

Divisional Manager, United India Insurance Co. Ltd., Cuttack V. Bindhyaben Sahoo & Ors.

2025 (III) ILR-Cut…… 337

ODISHA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – Rule 15(3) and 15(10)(i)(b) – Disciplinary Proceeding – Non-compliance of statutory provisions – Petitioner while continuing as an Associate Professor in the Department of computer application, she was directed to take over charges of H.O.D. of the department – Petitioner filed representation with a prayer to regularize the records and documents of the department prior to taking over the charge – Without taking a decision on the request made by the petitioner, she was issued with a show-cause – Petitioner submitted a reply to the show-cause reiterating her prayer to regularize the records and documents of the department – Petitioner prayed for supply of documents – Neither the documents were supplied nor 2nd show cause notice was issued under Rule 15(10)(i)(b) of the Rules – The punishment of compulsory retirement from service was imposed – Whether the punishment of compulsory retirement from service violating the rule 15(10)(i)(b) of the Rule is sustainable.

Held: No – This Court on the face of the decision in the case of *Mohd. Ramzan Khan* as cited (supra), is also of the view that without issuing the 2nd show-cause notice proposing the punishment to be imposed, no order of punishment could have been imposed against the Petitioner – This Court is unable to accept the decisions relied on by the learned counsel appearing for the University with regard to availability of alternative remedy and non-issuance of the 2nd show-cause notice.

Dr. Sasmita Kumari Padhy V. Veer Surendra Sai University of Technology, Sambalpur & Ors.

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ORISSA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – Rule 18 Sub Rule (ii) r/w Article 311 (2) (b) of Constitution of India – The Disciplinary Authority dismissed the petitioner from service being charge sheeted U/s. 376 (1)/ 393/ 417/ 312/ 506 of IPC – The Appellant Authority affirmed the order of Disciplinary Authority – The Authority have not recorded the reason for its satisfaction that it was not reasonably practicable to hold enquiry – Whether the petitioner is entitle to reinstatement when the Authority has not assigned any reason and passed the order of dismissal.

Held: No – Taking into account the nature of allegation, this Court is not persuaded to hold that in the case at hand the reinstatement of the present Petitioner in service can be directed.

Jagatpati Hansda V. State of Orissa, Principal Secy, Home Department, Khordha & Ors.

2025 (III) ILR-Cut…… 289

ODISHA CIVIL SERVICES (REHABILITATION ASSISTANCE) RULES, 1990 – Rules 9(11), 16(1) – The Petitioner's application for compassionate appointment have been rejected on the ground of delay – Whether rejection of such application on the ground of delay is sustainable.

Held: No – No claimant for such appointment would stand benefited by brooking delay, has to be kept in view – It does not behoove a gigantic entity like the State to reject a claim of the kind only on the technical ground of limitation, when the Rules themselves provide for condonation of delay and also dispensing with rigor of the Rule concerned.

The decision on claim for compassionate appointment has to be taken at the earliest & on war footing – Therefore, remand would not do justice. On the contrary, it may generate one more legal battle.

This Writ Petition is allowed; a Writ of Certiorari issues quashing the Office Letter No. 2622 dated 12.04.2024 issued by the District Education Officer, Kalahandi-Opposite Party No.3; a Writ of Mandamus issues to the jurisdictional Opposite Parties to condone the delay & allow the application of the petitioner by issuing appointment order on compassionate ground and report compliance to the Registrar General of this Court within an out limit of eight (8) weeks reckoned from this day.

Kshyana Prabha Naik V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 101

ODISHA FOREST SERVICE, GROUP-A (JUNIOR BRANCH) (RECRUITMENT & CONDITIONS OF SERVICE) RULES, 2013 – Rule 8 – The Opposite Parties disqualified petitioners from participating in the Physical Standard and Endurance Test basing upon faulty blood pressure measurement – Whether the disqualification of the petitioners is sustainable, when there is no such provision in the Rule to do so?

Held: No – This Court is of the considered view that there is no such provision to disqualify a candidate only on the basis of the measurement of blood pressure of such candidates – Therefore, this Court has no hesitation in coming to a conclusion that the Opposite Parties have

committed a gross error of law by not adhering to the terms and conditions of the advertisement as well as the Rules, 2013 and, as such, their conduct can very well be declared as illegal and arbitrary.

Debashis Dash & Ors. V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 267

ODISHA GOVERNMENT LAND SETTLEMENT ACT, 1962 – Section 7A(3) – Suo motu Revision – Principle of Natural Justice – Violation – The suit land had been leased out in favour of the lessee in W.L. case No. 179/1977 – The lease deed executed in favour of the lessee observing the formalities – After expiry of the period of restriction to transfer, the lessee alienated Ac.0.01 decimals to petitioner by executing Registered Sale deed – Proceeding U/s. 7A (3) of the Act was initiated alleging material irregularities in leasing out the case land in favour of the lessee – The Revisional Authority at the time of adjudication of the revision had knowledge about sale of the case land to different persons including the petitioner – Whether the impugned order which was passed by the Revisional Authority in violation of Principle Natural Justice is sustainable in law?

Held: No – The Petitioner, being the purchaser of a parcel of the case land, should have been given an opportunity of hearing at the time of adjudication of the revision. Certainly, the impugned order under Annexure-3 takes away a valuable civil right of the Petitioner without affording him an opportunity of hearing.

Accordingly, the impugned order under Annexure-3 is set aside and the matter is remitted to the Additional District Magistrate, Bhubaneswar for adjudication of Revision Case No.57 of 1998 afresh giving opportunity of hearing to the persons likely to be affected including the Petitioner as well as said Golak Bihari Samantray or persons claiming under him.

Diptish Kumar Das V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 83

ODISHA HINDU RELIGIOUS ENDOWMENT ACT, 1941 – Section 41(e) and Section 74 – The Respondent filed an application U/s. 41(e) of OHRE Act to allow him to perform the 'Chhera Pahanra Seva' on the chariot of Lord Jagannath Jew, Lord Balabhadra Jew and Devi Subhadra on the occasion of Rath Yatra and Bahuda Yatra at Nayagarh – Learned Assistant Commissioner of Endowment allowed & the same also confirmed by the Commissioner in an appeal filed U/s. 44(1) of the Act – Whether the exercise of power conferred under OHRE Act rightly invoked by the learned courts below while dealing with the contentious

issue with proper verification and examination of records followed by an enquiry as contemplated under law.

Held: No – The Court is of the conclusion that the learned Commissioner of Endowments, Odisha, Bhubaneswar, while exercising powers under the OHRE Act, is a court of fact and law, hence, should have exercised the jurisdiction as contemplated under law even directing the appellant to lead evidence or holding an inquiry by himself, the purpose being to ascertain as to who has the rights to perform the chhera pahanra seva during the car festival – A decision on the issue was really needed as it has a serious repercussion since both the sides are at loggerhead claiming each as the real successor of the King of Nayagarh.

Since the learned authorities below failed to exercise the power conferred under the OHRE Act with a detailed inquiry, as it was anticipated, looking at the above facts, the irresistible conclusion of the Court is that the matter needs a remand for a fresh decision considering the fact that the issue is one of customary rights involving the Royal family of Nayagarh notwithstanding any such default of the appellant in O.A. No.12 of 2013, rather, for failing to hold a proper enquiry according to law.

Gajendra Chandra Singh V. Rameswar Prasad Singh & Ors.
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ORISSA PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1972 – Sections 3 & 4 r/w Section 4(1) of Land Acquisition Act – The case land stood recorded in the name of petitioner and his family members before acquisition of land U/s. 4(1) L.A Act – Proceeding U/ss. 3 & 4 of 1972 Act was initiated – Whether proceeding U/s. 3 & 4 of Act is maintainable on the ground of unauthorized occupation of public premises.

Held: Yes – The case land has been acquired by the Government and became public premises after acquisition – The Petitioner had also received compensation for acquisition of the case land – Thus, the proceedings under the OPP Act before the Authorities were maintainable – Non-receipt of adequate compensation for acquisition of the case land cannot be a ground to occupy the property already acquired for public purpose.

Samir Kumar Mohanta V. Executive Engineer, Betnoti Canal Division, Mayurbhanj & Ors.
2025 (III) ILR-Cut…… 88

ORISSA WATER SUPPLY AND SEWERAGE BOARD ACT, 1991 – Section 9 – Appointment by the Board – The Hon'ble Court directed to the Appellant/Board to take decision with regard to creation and sanction of the posts in order to absorb/ regularize the services of the petitioners – Whether the court has the power to give direction to create/sanction the posts.

Held: No – Power to create posts, as already mentioned above, lies with the Board and it is coupled with a duty as well, inasmuch as the legislature has employed the word 'power' in this provision and not the word 'discretion'. Board cannot say such power is its prerogative and a Constitutional Court cannot regulate it – There is nothing like absolute power or prerogative, "limited Government" being one of the basic features of our Constitution – A contra argument counters the rule of law

Orissa Water Supply & Sewerage Board V. Bijay Kumar Samal & Ors.
2025 (III) ILR-Cut…… 92

PARTITION ACT, 1893 – Section 4 – Partition suit by transferee of share in dwelling house – Right of repurchase – Petition for repurchase – Maintainability – Whether petition for repurchase U/s. 4 of the Act is maintainable at the stage of final decree?

Held: Yes – In view of the principles of law enunciated in the ratio of the above decisions of Apex Court and Hon'ble Courts, the learned Additional Civil Judge (Senior Division) Balasore should not have rejected their petition under Section-4 of the Partition Act, 1893 only on the ground that, such petition is not maintainable at the stage of final decree of the suit.

Chaguli Ojha @ Chuguli Ojha & Anr. V. Manoranjan Pradhan & Ors.
2025 (III) ILR-Cut…… 394

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 – Section 14(2) (i) r/w Odisha Development Authorities Act, 1982 – Section 91 (1) – The dispute is related to alternation of the sanctioned plan in respect of the ground floor as there has been no commercial units in that floor and hence complaint was filed before the RERA as per the provision of the Act – The Authority (RERA) concluded that Section 14 would have application, if the project is an ongoing one but it was completed prior to the commencement of the Act, hence the complaint is not maintainable – The said decision of RERA was affirmed by the OREAT in appeal – The petitioner claim that, as no completion certificates has been furnished the project should be treated as ongoing project, complaint is maintainable – Whether the alleged project of the

respondent is an ongoing one or with the issuance of completion certificate prior to the cut-off date, it had been completed and hence not amenable to the Act.

Held: – Without elaborating further, the conclusion of the Court is that issuance of completion certificate in respect of a flat is essential and if the same has not been obtained by the promoter or developer in respect of a project ongoing at the time of the commencement of the Act, for such a lapse, a complaint is entertainable by the RERA.

Kalpana Sahoo V. Metro Builders Ltd. & Anr.
2025 (III) ILR-Cut…… 234

REGISTRATION ACT, 1908 r/w Orissa Amendment – Sections 22-A, 68 – Superintendent power of the District Registrar – Whether the District Registrar has the power to direct Sub-Registrar not to register a document presented for registration?

Held: No – When, the propositions of law has already been clarified in the ratio of the above decisions interpreting Section 68 of the Registration Act, 1908 that, Section 68 of The Registration Act confers power upon the Registrar only for exercising his/her superintendence and control over the Sub-registrars and the said power is purely administrative in nature, therefore, the Registrar cannot in exercise of his power under Section 68 of the Registration Act, 1908 direct any Sub-registrar not to register any document in respect of any property presented for registration, if the said document complies all the statutory requirements and formalities of the Registration Act and Rules making the same fit for registration.

Sabita Agrawala V. State of Odisha, Secretary, Revenue & Disaster Management, Bhubaneswar & Ors.
2025 (III) ILR-Cut…… 389

SCHEDULE CASTES AND SCHEDULE TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3(1) (x) & 3(1) (xv) r/w Section 506 of IPC – Offence under the sections – Prove of the offences – Caste status of the informant – Whether caste status of the informant rests solely upon oral testimony without any documentary proof?

Held: No – A careful reading of both the aforesaid judgments reveals that the principle laid down is consistent and unequivocal, in prosecutions under the Act of 1989, the caste status of the victim is an essential ingredient of all the offence under the Act and must be proved by cogent and reliable evidence, preferably through a certificate issued by the

competent authority. Mere oral assertions, unaccompanied by any such documentary proof, cannot be treated as sufficient to establish this foundational fact. In both *Prahalad* (supra) and *Chalaniya Dheemar* (supra), the Hon'ble Madhya Pradesh High Court held that in the absence of such proof, the charge under the provisions of the Act cannot be sustained, even if other aspects of the prosecution case are otherwise proved.

Ajay Kumar Singh V. State of Orissa
2025 (III) ILR-Cut…… 383

SERVICE JURISPRUDENCE – Appointment – Petitioners have qualified in the written test for the post of Forest Ranger and Assistant Conservator of Forest – Petitioners appeared for Physical Standard Test – It has been pleaded that although the petitioners fulfilled the Physical Standard prescribed in the Rule but they were disqualified from participating in the test – Such disqualification is based on a faulty blood pressure measurement done by digital instruments violating the conditions in the advertisement and Rule 8 of the Recruitment Rule – Whether the conduct of the opposite parties in disqualifying the petitioners is valid in law.

Held: No – In the ultimate analysis of the factual as well as legal position, this Court is of the view that the Opposite Parties have not followed the rules while disqualifying the Petitioners – As such, the decision to disqualify the Petitioners from the recruitment test and preventing them from participating further in the physical endurance test (walking test) is absolutely illegal and, as such, the same is hereby quashed.

Debashis Dash & Ors. V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 267

SERVICE JURISPRUDENCE – Regularization – This intra-court appeal has been filed wherein the direction of the Hon'ble single bench regularising/absorbing the services of respondents has been assailed – The Appellant in the statement of objections has admitted the engagement of respondents – Requisite qualifications of respondents is not disputed – The Appellant/Board has also admits that 32 ministerial post with various designation are available and one of the employees has been regularized – Whether the direction of the Hon'ble single bench is liable to be interfered with?

Held: No – We decline indulgence in the matter.

It hardly needs to be stated that there is Preambular Socialistic Pattern prescribed by the Constitution itself and therefore such an instrumentality cannot take up a stand that runs contrary to the same, apart from being bereft of elements of justice & fair play – After all, a Statutory Body like the Appellant-Board cannot run its ordained functions as East India Company of bygone era.

Orissa Water Supply & Sewerage Board V. Bijay Kumar Samal & Ors.
2025 (III) ILR-Cut…… 92

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2025 (III) ILR-CUT-1

COMMISSIONER OF CUSTOMS (PREVENTIVE), BHUBANESWAR
V.
M/s. CHAMONG TEE EXPORTS PVT. LTD.

[OTAPL NO. 42 & 31 OF 2025]

31 JULY 2025

[HARISH TANDON, C.J., & MANASH RANJAN PATHAK, J.]

Issues for Consideration

1. Whether the Fe content in IOF is to be ascertained on the basis of WMT or DMT.

2. Whether the inconsistent stands of litigant/party in different proceeding is permissible.

Headnotes

(A) CUSTOMS ACT, 1962 – Section 130 – The appellant filed the appeal before Tribunal with a plea that the Fe content is to ascertained on the basis of Dry Metric Ton (DMT) and not Wet Metric Ton (WMT) and the test report would reveal that IOF contains more than 58% of Fe in aggregate which was rejected by the Tribunal with categorical finding that the Fe content is to be ascertained on the basis of WMT and not on the basis of DMT – Whether the Fe content in IOF is to be ascertained on the basis of WMT or DMT.

Held: – The Fe content in IOF is to be determined on the basis of WMT and not DMT and in view of a decision having taken in this regard and in absence of any materials forthcoming before us to take a different view, the said point having settled cannot be said to be a debatable one nor it invites any different opinion to be arrived at. (Para 12)

(B) INTERPRETATION OF STATUTES – Inconsistent stands of party – Whether the inconsistent stands of litigant/party in different proceeding is permissible.

Held: No – A party cannot be permitted to take inconsistent stand at different stages of the proceeding.

(Para 14)

Citations Reference

Santosh Hazari v. Purushottam Tiwari (Dead) By LRs, **2001 (3) SCC 179;** Commissioner of Customs (Preventive), Bhubaneswar v. Kai International Pvt. Ltd., **(2025) 29 Centax 178 (Ori)**, Dwijendra Narayan Roy v. Joges Chandra De, **AIR 1924 Calcutta 600 – referred to.**

List of Acts

Constitution of India, 1950; Customs Act, 1962

Keywords

Inconsistent stand; Substantial question of law; Proposition of law; Custom duty

Case Arising From

Assailing the judgment and order dated 30th August 2024 passed by the Customs, Excise and Services Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata.

Appearances for Parties

For Appellant(s) : Mr. Tushar Kanti Satapathy, Sr. S.C.

For Respondent(s) : Mr. Abhratosh Majumdar, Sr. Adv.,
Mr. Rahul Khatian & Mr. Raj Kumar Jena.

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. The appellant has filed an appeal under Section 130 of the Customs Act, 1962 assailing the judgment and order dated 30th August 2024 passed by the Customs, Excise and Services Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata whereby and where under, the demand raised by the appellant upon issuing the show cause notices alleging that there has been a conscious avoidance of the customs duty by splitting one consignment into different components, was rejected.

2. The counsel for the appellant advanced his argument raising an issue which according to him involves a substantial question of law.

3. In order to ascertain whether the points so urged comes within the periphery of the "substantial question of law", the genesis of the dispute is required to adumbrated as discerned from the records.

4. The respondent herein exported the iron ore fines (IOF) under the cover of 13 shipping bills to different overseas buyers depicting the value and quantity of the said iron ore fines. The revenue authorities, on the basis of DRI investigation found that 5 consignments of high grade iron ore fines containing more than 58% of the iron (Fe) by splitting them into 7 shipping bills of high grade iron ores which attracts the customs duty @ 30% and discharged their obligations upon payment of the same, but 6 shipping bills of iron ore fines which contain less than 58% of Fe being exempted from the customs duty under law, no duty was paid and, therefore, they have undervalued such 5 consignments with an intend to evade the custom duty.

5. 2 show cause notices were issued demanding the differential custom duty on the basis of a test report of the independent testing agency inviting the respondent to file the reply thereto. The respondent took a defence that the said demand in unsustainable as the Fe content is required to be determined on the basis of Wet Metric Ton (WMT) and not on the basis of Dry Metric Ton (DMT). It was the specific stand of the respondent that it has been held by several High Courts that Fe content has to be evaluated on the basis of WMT and not DMT and, therefore, the stand of the revenue authority is not sustainable.

6. The adjudicating authority dropped the demand of the revenue with categorical finding that the Fe content of the aggregate/consolidated consignment exported through a single vessel was less than 58% on WMT basis, but imposed certain penalties on the respondent company and its authorised person. Since the demand of differential amount of custom duty was rejected by the adjudicating authority, the department preferred an appeal before the Tribunal, wherein the respondent also filed the cross objection challenging imposition of the penalty.

7. A stand was taken by the appellant in the appeal filed before the Tribunal that the respondent intentionally split 5 consignments of high grade iron ore fines containing more than 58% Fe into several shipping bills, some of which contains more than 58% Fe, where the custom duty @ 30% was discharged, but did not pay the custom duty by undervaluing the consignment on the premise that it contains less than 58% of Fe, which does not attract the custom duty in law. A further plea was taken by the appellant that the Fe content is to ascertained on the basis of DMT and not WMT and the test report would reveal that IOF contains more than 58% of Fe in aggregate which was rejected by the Tribunal with categorical finding that the Fe content is to be ascertained on the basis of WMT and not on the basis of DMT.

8. The challenge is made in the instant appeal reiterating the stand that the testing report reveals that the said consignment being the subject matter of the dispute, contains more than 58% of Fe on DMT basis and, therefore, the finding of the Tribunal that it has to be done on WMT basis is unsustainable.

9. Before we proceed to delve into the aforesaid points, we find it prudent to recapitulate the position of law in pursuit to ascertain the substantial question of law involved in an appeal filed before this Court. We are conscious that a mere question of law may not necessarily be a substantial question of law, and, therefore, it is ardent duty of the High Court to ascertain the same and admit the appeal upon formulation thereof. The expression “substantial question of law” has not been defined in the said act or in any other statute containing such expression. The prefix of the words ‘substantial’ before the expression “question of law” must be of such character having bearing on a substance having essential, real and nexus to the issues involved therein, in contradiction with the technical, inconsequential issues or merely on academic.

10. In pursuit of determining the question to come within the ambit of substantial question of law, the point must be debatable or there is possibility of taking a different decision or the opinion and above all where the Court feels that the said point or the question may invite the alternative views to be taken. The point which is settled by a catena of decisions of the coordinate Bench or of a higher Court cannot come within the folds of substantial question of law. The proper test for determining whether the question of law raised in a case can be regarded as a substantial question of law is highlighted in a judgment of the apex Court in ***Santosh Hazari v. Purushottam Tiwari (Dead) By LRs***, reported in ***2001 (3) SCC 179*** in the following paragraphs:

> *"14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.*
>
> *15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the*

trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact (See Madhusudan Das Vs. Smt. Narayani Bai & Ors., AIR 1983 SC 114). The rule is __ and it is nothing more than a rule of practice __ that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.(See Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one."

11. Such being the proposition of law relating to the involvement of a substantial question of law, the point urged before us whether the Fe content in IOF is to be ascertained on the basis of WMT or DMT involves a substantial question of law, our attention was drawn to a coordinate Bench decision of this Court in the case of ***Commissioner of Customs (Preventive), Bhubaneswar v. Kai International Pvt. Ltd***., reported in ***(2025) 29 Centax 178 (Ori)***. In the said judgment the identical issue was raised whether Fe content in IOF has to be ascertained on the basis of WMT or DMT and the coordinate Bench answered the same in the following:

"12. We accept respondent's contentions upon reliance on Dwijendra Narain Roy (supra). So far as V.M. Salgaocar and Brother Pvt. Ltd. (supra) is concerned, one of the views taken by the Division Bench of the Bombay High Court says, it is not correct for revenue to contend that the dry method which is being used for the purpose of trade and commerce be made applicable for purpose of determination of its classifications for the purposes of levy of export duty of raw iron ore in its natural form. Disclosed in the appeal is circular dated 17th February, 2012, paragraph-3 in which is reproduced below.

"3. In light of the observation by the Apex Court that export duty is chargeable according to Fe contents, and to maintain uniformity all over the custom houses, it is clarified that for the purpose of charging of export duty the assessment of iron ore for determination of Fe contents shall be made on Wet Metric Ton (WMT) basis which in

other words mean deducting the weight of impurities (inclusive of moisture) out of the total weight/Gross Weight to arrive at Net Fe contents."

12. From the above quoted observations of the coordinate bench, it is exposit that the Fe content in IOF is to be determined on the basis of WMT and not DMT and in view of a decision having taken in this regard and in absence of any materials forthcoming before us to take a different view, the said point having settled cannot be said to be a debatable one nor it invites any different opinion to be arrived at. The comity of the judicial discipline demands the uniformity in a proposition of law and the judgment of the coordinate Bench of a Court binds the other coordinate Bench. The only course opens to the later coordinate Bench, in the event of dissent to refer the matter to the Chief Justice to constitute a larger Bench.

13. As indicated above, we do not find any material forthcoming to take a different view and, therefore, the judicial discipline demands the adherence of the judgment rendered by the coordinate Bench at an earlier point of time. We thus do not find that the contention of the appellant that Fe content in IOF is to require to be determined on the basis of DMT and not WMT is sustainable.

14. We further find that the appellant has taken a different stand in the instant appeal what he took before the Tribunal. A party cannot be permitted to take inconsistent stand at different stages of the proceeding. The plea taken before the Tribunal is sought to be varicated at the stage of the instant appeal, which in our opinion is not permissible. The enlightening observations rendered in the case of ***Dwijendra Narayan Roy v. Joges Chandra De***, reported in AIR 1924 Calcutta 600 can be gainfully applied in this regard, wherein it is held:

> *".....It is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent : Bhaja Choudhury v. Chuni Lal (45); Giris v. Bepin (46); Bama Charan v. Nimai Mandal (47). This wholesome doctrine applies not only to the successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided that the second suit grows out of the judgment in the first. ... ..."* *(emphasis supplied)*

15. In view of the discussions made hereinabove, we do not find that the instant appeals involve substantial question of law under Section 130 of the Customs Act, 1962. The appeals are dismissed. There shall be no orders as to costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Appeals dismissed.

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2025 (III) ILR-CUT-7

SANJIT KUMAR CHOUDHURY
V.
STATE OF ODISHA & ANR.

[W.P.(CRL.) NO. 34 OF 2025]

11 AUGUST 2025

[HARISH TANDON, C.J., & MURAHARI SRI RAMAN, J.]

Issues for Consideration

1. Whether the "head note" of a section can control the substantive provisions contained in the said section of an Act.

2. Whether the Magistrate is empowered to close/attach the place/ premises used for immoral purpose.

Headnotes

(A) INTERPRETATION OF STATUTES – Headnote – Whether the "headnote" of a section can control the substantive provisions contained in the said section of an Act.

Held: No – It admits no ambiguity on a proposition of law that where the provision is plain and simple and does not invite more than one interpretation, it has to be interpreted in such way and the headnote or the marginal note cannot guide and/or control the said unambiguous provision – The necessity of applying the hayden rules is only to uphold the basic tenet of the said provision in relation to the object and the purpose sought to be achieved but cannot override the plain and simple words used in the said Section nor control the same. (Para 10)

(B) IMMORAL TRAFFIC (PREVENTION) ACT, 1956 – Sections 3, 7 & 18 – Power of Magistrate – The Sub-Divisional Magistrate, Puri in Criminal Miscellaneous Case directed for attachment of hotel/lodge, leased out to the petitioner for a period of three years from the date of the said order – Whether the Magistrate is empowered to close/attach the place/premises used for immoral purpose.

Held: Yes – It can be reasonably inferred from the said report that initiation of a criminal case against the offender stands on a separate footing that of exercise of power by the Magistrate to close/attach the place/premises used for such immoral purposes – Even though the word 'closure' is not appearing in the enabling provision, which contains the word 'attached' yet the spirit

and the object has to be born in mind and the interpretative tools are to be set in motion to imbibe within itself such power being eminently present.

(Para 14)

In the instant case, the Magistrate after issuing the show-cause notice and inviting the reply, which in fact was given, passed an order for closure/attachment for a period of three years, which cannot be said to be excessive or beyond the purview of Section 18(1) of the said Act. (Para 16)

Citations Reference

Gaurav Jain v. Union of India, **(1997) 8 SCC 114;** Chitan J. Vaswani v. State of West Bengal, **(1975) 2 SCC 829;** Union of India v. National Federation of the Blind, **(2013) 10 SCC 772;** A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. MST. Ram Kali, ETC**, AIR 1968 SC 1 – referred to.**

List of Acts

Immoral Traffic (Prevention) Act, 1956.

Keywords

Closure; Attachment; Eviction; Immoral traffic; Power of Magistrate; Head note; Interpretation of statutes; Marginal note; Plain & simple meaning; Object of the Statute

Case Arising From

Order dated 27th March, 2025 passed by the Sub-Divisional Magistrate, Puri in Criminal Miscellaneous Case No.128 of 2025.

Appearances for Parties

For Petitioner : Mr. Devashis Panda & Mr. A. Mehta
For Opp. Parties : Mr. Sanjay Rath, A.S.C

Judgment/Order

Judgment

HARISH TANDON, C.J.

> *"Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and cooperation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning children, excluding good foundation of life for them, is a crime against humanity. The children cannot wait till tomorrow; they grow everyday; along with them grows their sense of awareness about the surroundings."*
>
> —reminded in the judgment rendered in ***Gaurav Jain v. Union of India*** reported in ***(1997) 8 SCC 114***.

1. The prelude to the Immoral Traffic (Prevention) Act, 1956 is required to be recapitulated for the purpose of interpreting the various provisions including the powers of the authorities to pass an order for attachment/the closure of the place/hotel as the order passed by the Magistrate is a subject matter of challenge in the instant writ petition.

2. The statement and object underlying the incorporation of the law relating to prevention of immoral trafficking of the girls/children sees its birth in the year 1950 when the Government of India ratified an International Convention for Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others. Though certain legislations were in existence in several States but the uniformity and the certainty in this regard was felt far cry and in pursuit of preventing and/or protecting the girls or the children from immoral trafficking, it was felt necessary to bring a central legislation. The Central Government enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956, being obligated in pursuance of an International Convention as a ratifying State and signatory at the New York Convention held on 9th May, 1950.

2.1. The primary object was to prevent commercialization of the vice and trafficking among women and girls but later on, it was felt that there are certain lacunae and inadequacies in implementing the Act and the amendments were brought, which not only changes the nomenclature of the Act as Immoral Traffic (Prevention) Act, 1956 but also radical changes have been brought in the different provisions not only to keep the same in tune with the international standards but also to protect the women and the girls of the country and to bring the stringent provisions to provide for certain minimum standards for correctional treatment and the rehabilitation of the victims. The major object and the purpose of bring such legislation is not only to prevent immoral traffic but also to provide a protective umbrella to such victims and the perpetrator of an offence to be dealt with in such manner so as to percolate a strong message in the society that the women and the children are not exploited nor to be treated as commodities of easy virtue.

3. With such broad object and the purpose behind the said legislation, the Court must adopt an interpretative tool while construing several provisions, more particularly Section 18 in the instant case, which appears to have been drafted in somewhat obscure manner, which is also felt by the apex Court in ***Chitan J. Vaswani v. State of West Bengal*** reported in ***(1975) 2 SCC 829*** in the following:

> *"7. Section 18(1) proprio vigore applies only to brothels within the vicious distance of 200 yards of specified types of public institutions. No criminal prosecution or conviction is necessary for taking action under Section 18(1). Strictly speaking, this is not a punitive provision but a preventive one. This power vested in the Magistrate is calculated to ensure moral hygiene in the locality which is particularly sensitive. If one may say so, it is a moral scavenging operation, or a fumigation process whereby the dangerous visitations may be totally inhibited by a legally enforced closure. So far as we are concerned, the Isias Bar is not shown to be within the offending distance and*

Section 18(1) cannot therefore apply. Indeed the Magistrate and the High Court have proceeded to exercise powers under Section 18(2) and the entire controversy before us is as to the real import of that provision. By way of aside, we may say that plausible submissions were urged by Shri D. Mukherjee, supported by the language of Section 18(2). Had the drafting been more careful and lucid, the argument would have been obviated. This Court has, more than once, pointed out that lack of legislative simplicity has led to interpretative complexity. The home truth that legislation is for the people and must, therefore, be plain enough has hardly been realised by our lawmakers. Judges, looking at statutes, are forced to play a linguistic game guessing at the general legislative purpose and straining at semantics. In the present case we have had to reach the conclusion against the appellants by broadening the dimensions of Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] importing a "context-purpose" teleological approach. There are many canons of statutory construction, but the golden rule is that there are no golden rules — if we may borrow a Shavian epigram."

4. The present writ petition originated from an order dated 27th March, 2025 passed by the Sub-Divisional Magistrate, Puri in Criminal Miscellaneous Case No.128 of 2025 directing the attachment of the hotel/lodge, leased out to the petitioner, for a period of three years from the date of the said order.

5. The writ petitioner pleaded innocence of committing any immoral trafficking and, in fact, running the said hotel/lodge in a decent and proper manner as a citizen who respects law. The petitioner claimed right in respect of the said lodge/hotel as a lessee and felt aggrieved by the said order passed by the Magistrate for an offence or the violation of several provisions of the said Act, which was committed by the erstwhile lessee. The pleading revealed that the said lodge was earlier leased out to one Chandrakant Pujari and a police case No.23 of 2025 was initiated against him having allegedly found to have indulged in immoral trafficking of women and also a girl, who did not attain the majority as on the date when the raid was conducted by the police authorities. The lease granted to the said offender was cancelled and the petitioner was granted the lease by the owner of the said hotel/lodge, but was served with a show-cause notice as to why the said hotel/lodge be not sealed and/or closed. The reply to the show-cause was given pleading ignorance and/or having not committed any such offence, but the impugned order was passed attaching the said hotel/lodge having a resulted effect of the closure thereof for a period of three years under Section 18 of the Act.

6. The shelter is taken under Section 18 of the Act containing the headnote "Closure of brothel and eviction of offenders from the premises" that the power of the Magistrate to pass an order should be strictly within the purview of sub-Section (1) of Section 18 of the said Act, which does not contemplate the closure or attachment of the premises/property.

7. Before we proceed, it would be profitable to quote Section 18, which runs thus:

*"**18. Closure of brothel and eviction of offenders from the premises.**—(1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place*

or any portion thereof within a distance of two hundred meters of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders-

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion;

(b) directing that before letting it out during the period of one year, or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate:

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A Court convicting a person of any offence under section 3 or section 7 may pass order under sub-section (1), without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the Magistrate or Court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any Court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be:

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial Court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a Magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly."

8. It is sought to be contented that though the headnote exposits the closure of the brothel or the eviction of offenders from the premises but the authority cannot pass an order for closure nor can transgress the boundaries therefrom in the event the order to be passed under the said Section is specified in the said provision.

9. What is sought to be projected before the Court is that the headnote cannot control the substantive provisions contained in the said Section and in the event the nature of the order is specified therein, the authorities cannot usurp power to pass an order as the headnote provides for closure thereof.

10. It admits no ambiguity on a proposition of law that where the provision is plain and simple and does not invite more than one interpretation, it has to be interpreted in such way and the headnote or the marginal note cannot guide and/or control the said unambiguous provision. The necessity of applying the hayden rules is only to uphold the basic tenet of the said provision in relation to the object and the purpose sought to be achieved but cannot override the plain and simple words used in the said Section nor control the same as held in ***Union of India v. National Federation of the Blind*** reported in ***(2013) 10 SCC 772*** in the following:

> *"45. It is clear that when the provision is plainly worded and unambiguous, it has to be interpreted in such a way that the court must avoid the danger of a prior determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. While interpreting the provisions, the court only interprets the law and cannot legislate it. It is the function of the legislature to amend, modify or repeal it, if deemed necessary.*
>
> *46. The heading of a section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. However, when the section is clear and unambiguous, there is no need to traverse beyond those words, hence, the headings or marginal notes cannot control the meaning of the body of the section. Therefore, the contention of Respondent 1 herein that the heading of Section 33 of the Act is "Reservation of posts" will not play a crucial role, when the section is clear and unambiguous."*

11. Even Justice Krishna Iyer (as His Lordship the then) was in ***Chitan J. Vaswani*** (supra) noticed an ambiguity in drafting the legislation, more particularly Section 18(1) of the Act in the following:

> *"xxxxx. Indeed the Magistrate and the High Court have proceeded to exercise powers under Section 18(2) and the entire controversy before us is as to the real import of that provision. By way of aside, we may say that plausible submissions were urged by Shri D. Mukherjee, supported by the language of Section 18(2). Had the drafting been more careful and lucid, the argument would have been obviated. This Court has, more than once, pointed out that lack of legislative simplicity has led to interpretative complexity. The home truth that legislation is for the people and must, therefore, be plain enough has hardly been realised by our lawmakers. Judges, looking at statutes, are forced to play a linguistic game guessing at the general legislative purpose and straining at semantics. In the present case we have had to reach the conclusion against the appellants by broadening the dimensions of Heydon case [(1584) 3 Co Rep 7a : 76 ER*

> *637] importing a "context-purpose" teleological approach. There are many canons of statutory construction, but the golden rule is that there are no golden rules — if we may borrow a Shavian epigram."*

12. Section 18(1) of the Act though contained a word 'closure' in the headnote but also contained the word 'attachment' within the provision but restricted the nature of the order to be passed under the aforesaid provision as evident in clause (a) and (b) therefrom. Taking the clue from the same, it is vociferously contended by the petitioner that the order impugned in the instant writ petition for attachment and/or closure of the hotel/lodge for a period of three years is patently illegal as the Magistrate has transgressed the boundaries put forth therein.

13. The Five-Judge Bench of the Supreme Court in ***A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. MST. Ram Kali, ETC*** reported in ***AIR 1968 SC 1*** was considering the question concerning the powers of the Magistrate under Section 18 of the Act in juxtaposition with the proceedings initiated under Sections 3 and 7 thereof. A distinction was made between Sections 3 and 7 in one hand and Section 18 on the other that the former Sections are applicable to a person on the other hand, the later Section concerns about the premises/the place in the following:

> *"12. The attachment contemplated by that section can enure only for a period of one year. Under these circumstances evidently the legislature thought that a regular trial and an appeal against the order of the Magistrate is not called for. In these cases it is unnecessary for us to spell out the scope of the expression "hearing" found in Section 18. It is necessary to remember that Sections 3 and 7 deal with persons guilty of offences whereas Section 18 deals with the premises mentioned therein. It is not correct to say that the set of facts to be proved in prosecutions under Sections 3 or 7 and in proceedings under Section 18 are identical. In the former the prosecution to succeed has to establish either the intention or knowledge referred to therein but in the latter they are not necessary ingredients. Section 18 provides for two classes of cases namely, (1) those coming either under Section 3 or 7 as well as under Section 18 and (2) those coming only under Section 18. They are two distinct classes of cases — a classification which has reasonable relationship with the object sought to be achieved and therefore falls outside the rule laid down by this Court in Answar Ali Sarkar case.(AIR 152 SC 75)"*

14. The law enunciated in the above report exposes the line of distinction between the power of the Magistrate to punish a person committing an offence under the said Act and power to attach or close the premises/place used and utilized for improper use forbidden under the said Act. It can be reasonably inferred from the said report that initiation of a criminal case against the offender stands on a separate footing that of exercise of power by the Magistrate to close/attach the place/premises used for such immoral purposes. Even though the word 'closure' is not appearing in the enabling provision, which contains the word 'attached' yet the spirit and the object has to be born in mind and the interpretative tools are to be set in motion to imbibe within itself such power being eminently present. The observation of the apex Court in ***Chitan J. Vaswani*** (supra) can be gainfully applied

where it is held that there is no fetter on the part of the Magistrate to pass an order for closing down the obnoxious place of prostitution without going through the detailed process of a criminal prosecution in the following:

> *"12. This Court in Sub-Divisional Magistrate v. Ram Kali [AIR 1968 SC 1] held that Section 18(1) deals with one class and Section 18(2) relates to another class. Section 18(1) is a summary procedure for closing down obnoxious places of prostitution, without going through the detailed process of a criminal prosecution. It is a quick-acting defensive mechanism, calculated to extinguish the brothel and promote immediate moral sanitation, having regard to the social susceptibility of places like shrines, schools, hostels, hospitals and the like. Section 18(2) on the other hand, operates only where persons have been convicted of offences under Section 3 or Section 7. Thus the place is found to be put to prostitutional use in a criminal trial. It stands to reason that if the purpose of extirpating the commercial vice from that venue were to be successful, the occupier must be expelled therefrom. This is precisely what has been done in the present case. Section 18(2) operates not merely on places within the offending distance of 200 yards but in all places where the activity of prostitution has been conducted."*

15. The facts emerged from the pleading relates to a rescue of a minor from the said hotel/lodge, who was forced in prostitution and was taken to different places along with her sister. The child, who did not attain majority, is not expected to gain such experience in any civilized society before the attainment of majority and the case has been registered under the several provisions of the penal statute which is still at the investigation stage. It is really a disturbing state of the fact that a minor is indulged into prostitution and the place to promote the same cannot be closed or attached under Section 18 (1) of the said Act. The period of three years in case the place is used for such act is provided in the said statute itself, which cannot be said to be immune from being attached and/or closed by the competent authority.

16. In the instant case, the Magistrate after issuing the show-cause notice and inviting the reply, which in fact was given, passed an order for closure/attachment for a period of three years, which cannot be said to be excessive or beyond the purview of Section 18(1) of the said Act.

17. We, thus, do not find any infirmity in the said order. The writ petition is accordingly dismissed. No order as to costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition Dismissed.

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2025 (III) ILR-CUT-15

M/s. ANAND GRANITES EXPORTS PRIVATE LTD.
V.
PRABHUDAYAL AGRAWAL

[ARBP NO. 01 OF 2025]

26 AUGUST 2025

[HARISH TANDON, C.J.]

Issue for Consideration

Whether the High Court exercising Jurisdiction under Section 11 of the Act can enter into the dispute covered under the arbitration agreement.

Headnotes

ARBITRATION AND CONCILIATION ACT, 1996 – Section 11(6-A) – The petitioner stated that the dispute is raised with regard to raising contract dated 18th March 2010 and as per clause 12 of the said agreement, the same is required to be decided by an arbitrator and therefore, the court may refer the parties for arbitration – The Opposite Party vociferously submitted that the dispute raised is basically founded upon the cancellation of the power of attorney, which is beyond the scope and purview of raising contract – Whether the High Court exercising Jurisdiction under Section 11 of the Act can enter into the dispute covered under the arbitration agreement.

Held: Yes – Section 11(6-A) of the Act though omitted by an amended Act of 2019 yet occupies the field of valid provision as the effect of the said amended provision has not been notified by the Central Government – In view of the restricted scrutiny in a latter provision introduced by way of Section 11(6-A) of the Act once the Court finds the existence of the arbitral agreement, it should not expand its horizon unless the said amended Act is notified and the provision is taken up from the legislative document – Thus, this Court does not find any justification and/or force in the objection raised by the opposite party. (Para 26)

Citations Reference

Goqii Technologies (P) Ltd. vs. Sokrati Technologies Pvt. Ltd., **(2025) 2 SCC 192;** Ameet Lalchand Shah and others Vs. Rishabh Enterprises, **(2018) 15 SCC 678;** Inox Wind Limited vs. Thermocables Limited, **(2018) 2 SCC 519;** SBI General Insurance Company Limited vs. Krish Spinning, **2024 SCC OnLine SC 1754;** M/s. KSS KSSIIPL Consortium vs. M/s. Gail (India) Limited, **(2015) 4 SCC 210;** Duro Felguera S.A. vs. Gangavaram Port Ltd., **(2017) 9 SCC 729;** Cox and Kings Limited vs. SAP India (P) Limited and

another, **(2024) 4 SCC 1;** SBP and Co. v. Patel Engineering Limited, **(2005) 8 SCC 618 – referred to.**

List of Acts

Arbitration and Conciliation Act, 1996.

Keywords

Arbitration agreement; Dispute covered under arbitration agreement; Territorial Jurisdiction; Principle of competence; Appointment of arbitrator

Case Arising From

Arbitration clause contained in the raising contract dated 18th March 2010.

Appearances for Parties

For Petitioner : Mr. Gautam Misra, Sr. Adv.
Mr. J.R. Deo

For Opp. Party : Mr. Vaibhav Shukla

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. An application under Section 11 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act') filed by the petitioner is resisted by the opposite party primarily on the premise that the dispute raised in the notice invoking arbitration clause contained in the raising contact dated 18th March, 2010 is beyond the purview of the arbitration agreement/arbitration clause contained therein.

2. Undeniably, the opposite party was granted mining lease for an area covering 262.27 acres of land situated in Tantra (Khata No.35), Rangua (Khata No.31) and Bandhal (Khata Nos.30 and 39) under Bonai Sub-Division of Sundargarh district in the State of Odisha on the basis of a mining lease deed dated 25th January, 2002. Previous to entering into the said raising contract dated 18th March, 2010, a similar contract was entered into between the opposite party and one M/s. Gayatri Mining Pvt. Limited on 14th August, 2009 but that could not materialize and subsequently, the opposite party cancelled the said previous contract and approached the petitioner to operate and run the said mine on the terms and conditions embodied in the raising contract dated 18th March, 2010. Indubitably, the said raising contract dated 18th March, 2010 contains an arbitration agreement/ clause in the event any disputes arise between the parties thereto in relation to or touching upon any of the terms and conditions embodied therein. Simultaneously, a tripartite agreement of the even date was also executed between the parties hereto and the said M/s. Gayatri Mining Private Limited for discharge of several statutory dues including the dues of the said M/s. Gayatri Mining Private Limited to the tune

of Rs.14.00 crores. The validity of the said raising contract dated 18th March, 2010 was agreed till the ultimate end of the mining lease which includes renewal and/or revival period or till the complete exhaustion of the detected mineral deposited in the schedule land, whichever is earlier.

3. In order to facilitate the smooth and continuous extraction of the minerals from the said mining lease which is commonly known as Tantra Bauxite Mines, a power of attorney was also executed in favour of an employee of the petitioner on 10th May, 2010 wherein clause 36 thereof provides that the same is irrevocable and cannot be revoked at the sweet will of the opposite party. Apropos the same, several affidavits were also executed and affirmed by the opposite party so that the period of mining lease can be renewed and/or extended to be transferred in favour of the petitioner and it appears from the documents annexed and from the stand of the parties that considerable amount of money was also paid both to the statutory authorities and also to a 3rd party in discharge of the obligation imposed upon the opposite party.

4. Amidst the aforesaid action and/or steps being taken, the Government of Odisha adopted a policy to enhance the tenure of lease to 50 years subject to fulfillment of the terms and conditions incorporated therein and to avail such opportunity, the petitioner engaged M/s. Earth and Environment Consultancy Services, a service provider to process the application for renewal and/or extension of lease and also to have clearances from various departments upon payment of the statutory dues.

5. It is a specific stand of the petitioner that despite having complied with all the statutory impositions including deposit of the statutory amount, the opposite party was putting an obstacle and in fact, resiled from the said raising contract and thus, the dispute arose between the parties in relation thereto. The litigations were also ensued by the opposite party by approaching the civil Court touching upon the cancellation of the irrevocable power of attorney, which is pending.

6. Perceiving the dispute having arisen touching upon the respective obligations of the parties to the proceeding, the arbitration agreement/arbitration clause contained in the said agreement provides for an amicable resolution which was, in fact, resorted to. The said arbitration agreement/arbitration clause postulates that in the event the amicable resolution to a dispute fails, the parties may invoke the arbitration clause for determination of the said dispute by an arbitrator. Interestingly, the notice invoking arbitration was issued on 04.02.2023 seeking concurrence on the appointment of the arbitrator; the same was replied by the opposite party through an e-mail contending that he is unable to recollect of having signed any such raising agreement and called upon the petitioner to send the fully scanned copy of the said raising agreement dated 18th March, 2010 for his knowledge. The said e-mail reply was duly responded to by the petitioner on 10th February, 2023 showing their concern on the content of the said e-mail and to refresh the memory of the opposite party also forwarded the copy of the agreement. The opposite party replied to such

letter on 2nd March, 2023 taking a specific stand that the approach has already been made to Court and the matter being subjudice, it is not possible for the opposite party to concur on the arbitration. It was further indicated in the said letter that the dispute does not come within the periphery of the arbitration agreement.

7. Since the opposite party denied to agree on the arbitrators named in the letter invoking the arbitration agreement/clause, the petitioner was advised to move the High Court of Judicature at Madras as the part of the cause of action has arisen within the territorial jurisdiction of the said High Court, which was registered as ARB. O.P. (Com. Div.) No.215/23 and O.A. No.364 of 2023. The opposite party took a stand that the High Court at Madras had no territorial jurisdiction as the cause of action pleaded in the said application had not arisen within the territorial limits of the said High Court. The said High Court ultimately held that entire cause of action has arisen either within the jurisdiction of this High Court or the High Court at Andhra Pradesh and rejected the said application filed by the petitioner on the ground of the jurisdiction on 16th August, 2023. The said order is annexed to the application wherefrom it revealed that an application under Section 9 of the said Act was also taken out by the petitioner and both the applications were decided by the said common order dated 16th August, 2023.

8. The present application is taken out by the petitioner as this Court has the territorial jurisdiction in relation to a cause of action arisen between the parties and the opposite party is resisting the said application on the ground indicated in the opening paragraph of the instant judgment.

9. Both the counsels appearing for the respective parties made their oral submissions and also filed the written note of submission in support of their respective stands and relied upon the several judgments of the apex Court in support thereof.

10. Mr. Gautam Misra, learned Senior Advocate appearing for the petitioner has strenuously argued that the disputes so raised is in relation to a raising contract dated 18th March, 2010 and in view of clause 12 of the said agreement, the same is required to be decided by an arbitrator and, therefore, the Court may refer the parties to arbitration for determination thereof. Mr. Misra would submit that Section 11(6-A) of the Act restricts the scrutiny and/or determination to the existence of an arbitration agreement and, therefore, whether the dispute is sustainable or not cannot be decided at the stage of appointment of the arbitrator. He fervently submits that the moment the Court finds the *prima facie* existence of an arbitration agreement, application for appointment of the receiver is required to be allowed. Placing reliance upon the judgment of the apex Court in the case of ***Goqii Technologies (P) Ltd. vs. Sokrati Technologies Pvt. Ltd.*** reported in ***(2025) 2 SCC 192***, Mr. Misra further submits that the ancillary agreement or connected agreements executed by the parties in furtherance of the main agreement which contains an arbitration clause and if the dispute has cropped up, it would be decided by invoking the arbitration clause and placed reliance upon a judgment of the apex Court in the case of ***Ameet***

Lalchand Shah and others Vs. Rishabh Enterprises reported in ***(2018) 15 SCC 678***. Mr. Misra, further submits that the arbitration agreement/clause shall be regarded to have incorporated in the subsequent agreement if the reference of the contract/agreement containing the arbitration clause can be seen and placed reliance upon a judgment of the apex Court in case of ***Inox Wind Limited vs. Thermocables Limited*** reported in ***(2018) 2 SCC 519***. Lastly, it is submitted that the High Court in exercise of power under Section 11 of the Act, restricts the determination and/or scrutiny only to the arbitration agreement and not into the validity and/or frivolity of the dispute as held in ***SBI General Insurance Company Limited vs. Krish Spinning*** reported in ***2024 SCC OnLine SC 1754***.

11. On the other hand, the counsel for the opposite party submits that the Court exercising powers under Section 11 of the Act should confine its scrutiny within the four corners of an agreement containing an arbitration clause and disputes arising therefrom and placed reliance upon the judgment of the apex Court in the case of ***M/s. KSS KSSIIPL Consortium vs. M/s. Gail (India) Limited*** reported in ***(2015) 4 SCC 210,*** it is vociferously submitted that the dispute raised in an application invoking the arbitration clause is basically founded upon the cancellation of the power of attorney executed in favour of the agent by the opposite party, which is beyond the scope and purview of the raising contract dated 18th March, 2010. The counsel for the opposite party strenuously argues that the disputes raised by the petitioner is untenable in view of the raising agreement dated 18th March, 2010 and there is no fetter on the part of the Court to enter into the nature of the dispute with the limited scrutiny whether it comes within the purview of the arbitration agreement/clause and placed reliance upon a judgment of the apex Court in the case of ***Duro Felguera S.A. vs. Gangavaram Port Ltd.*** reported in ***(2017) 9 SCC 729***. To sum up, it is contended that the disputes raised by the petitioner is beyond the scope and purview of the raising agreement dated 18th March, 2010 and, therefore, it is not obligatory on the part of the High Court to appoint the arbitrator by invoking the arbitration agreement/clause contained in the raising contract dated 18th March, 2010.

12. On the conspectus of the facts and the submissions advanced by the respective counsels, the first and foremost point emerged therefrom relates to the scope and jurisdiction exercised by the High Court for appointment of the arbitrator under Section 11(6) of the Act.

13. The arbitration agreement is defined under Section 7 of the Act to mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a legal relationship, whether contractual or not. It would be apposite to quote the said provision, which reads thus:

> "7. **Arbitration agreement.—** (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have

arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication 1 [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

14. On the meaningful reading of the provision as mentioned hereinabove, the definition ascribed to arbitration agreement is of wide import. Apart from a conventional way of execution of an agreement as known in common parlance, such agreement can also be perceived in the form of an arbitration clause in the contract. It further engulfed the exchange of letters, telex, telegrams and other means of telecommunication, recording the agreement and can also be construed from the pleadings, if the existence of the arbitration agreement is not denied by the other. The arbitration agreement can also be presumed or be treated in existence by way of a reference in a contract to a document containing an arbitration clause in specified eventualities.

15. Section 11 of the Act contains an exhaustive provision relating to appointment of an arbitrator by the authority/Court mentioned therein. Sub-section (6) of Section 11 postulates that in the event the procedure for appointing an arbitrator is agreed upon by the parties and in the event a party fails to act thereupon or to reach an agreement expected from them or to perform any functions entrusted upon them, the appointment, if any, can be made on an application by any party. The cumulative effect of the provisions contained in Sections 7 and 11 of the Act is that once the parties have entered into a contract which is legally enforceable, agreeing upon the determination of the dispute that has arisen or to be arisen to be decided by the private fora; in the event such dispute crops up, if the party fails to appoint the arbitrator mutually, no fetter can be seen on the part of the High Court to appoint the arbitrator.

16. Of late, the question invariably comes before the Court for determination is whether the High Court exercising jurisdiction under Section 11 of the Act can enter into the existence of a dispute or a dispute covered under the arbitration agreement even for recording the *prima facie* finding which in this case appears to have been projected by the opposite party. The reliance is placed upon the decision of the apex

Court in the case of ***KSS KSSIIPL Consortium*** *(supra)* wherein it is held that the Court before appointing an arbitrator will have to decide on the existence of an arbitrable dispute/enforceable claim of the parties to the contract in the following:

> **"9.** There can be no manner of doubt that before exercising the power under Section 11(6) of the Arbitration Act to make appointment of an arbitrator the Court will have to decide on the existence of an arbitrable dispute/enforceable claim by and between the parties to the contract. The existence of a claim and denial thereof giving rise to a dispute is required to be determined on the basis of what the parties had agreed upon as embodied in the terms of the contract and only for the purpose of a decision on the question of arbitrability and nothing beyond. It is from the aforesaid standpoint that the issues raised in the present proceedings will have to be considered."

17. In ***M/s. Gail (India) Limited*** *(supra)* a tender was floated for pipeline laying and terminal works for Dabhol-Bangalore Pipeline project and two companies, one of foreign origin and one of India constituted a consortium to participate in the said tender and in the event the work is awarded those have to be undertaken on the basis of the terms and conditions mentioned therein. Since one of the constituents of consortium failed to provide engineering inputs and were indulged in frequent modifications with respect to drawing, extra work and delays in providing free issue materials, the compensatory claim in the form of extended stay compensation was made, which gave rise to a dispute within one of the several agreements entered into by and between the parties. In the backdrop of the above, the Court found that if the dispute has arisen from a contract and claim of compensation is made, it gives rise to arbitral dispute and proceeded to appoint the arbitrator for resolution. While considering the nature of the claim, the Court held that there is no fetter on the part of the Court exercising power under Section 11(6) of the Act to decide the existence of an arbitral dispute and/or enforceable claim, which would always be tentative.

18. The larger Bench Coram of the Supreme Court in ***Cox and Kings Limited vs. SAP India (P) Limited and another,*** reported in ***(2024) 4 SCC 1*** was basically deciding a reference whether the doctrine of group of companies, a modern theory which conventionally runs counter to the notion of an arbitration law, has any manner of applicability in the jurisprudence of the Indian arbitration though sees its origin a century ago, but was embraced by some and dissented by others. The larger Bench was posed with a challenge to figure out whether there can be any reconciliation between the group of companies doctrine vis-a-vis, the well settled legal principles of corporate law and the contract law. Though the reference was limited as it appeared from the narration of the facts discerned therefrom, yet the Court in pursuit of answering the said reference also took into consideration, which in my opinion, was inevitable and would set the standard of the determination at the referral stage in the perspective of Sections 8 and 11 of the said Act.

19. The Constitution Bench of the Supreme Court in the case of ***SBP and Co. v. Patel Engineering Limited*** reported in ***(2005) 8 SCC 618*** held that it is imperative

on the part of the Chief Justice or the designated Judge not only to determine the jurisdiction to entertain the request but shall also determine the existence of a valid arbitration agreement existence of live claim etc. The larger Bench noticed the amendment having brought in the year 2015 by introducing Section 11 (6-A) of the Act, wherein the High Court and/or Supreme Court while exercising the powers under Sub-Sections 4, 5 or 6 shall confine to the examination of the existence of an arbitration agreement notwithstanding any judgment, decree or order of any Court. Though the said amended section impliedly whittle down the proposition laid down in the **SBP and Co.** (*supra*) where the existence of a dispute or a live claim including the validity of the agreement was also conferred upon the Court under Section 11 but the said section was subsequently omitted in the year 2009 by the Parliament when Arbitration And Conciliation (Amendment) Act, 2019 was passed, but the operation and effect of the said amended act has not been notified as yet, as a resultant affect the said amended provision still continued to hold the field.

20. The larger Bench was conscious on the principle of competence-competence as well known in the parlance of arbitration law emanating from Section 16 of the said Act. The said section empowers the arbitral tribunal to rule its own jurisdiction including the existence or validity of the arbitration agreement and it does not create any fetter on the part of arbitral tribunal to decide the same as a preliminary issue. The enlightening observation of the larger Bench is quoted as under:

> "**163.** Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [*Uttarakhand Purv Sainik Kalyan Nigam Ltd.* v. *Northern Coal Field Ltd.*, (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal."

21. Although the judgment of the larger Bench rendered in ***Cox and Kings*** (*supra*) was not taken into consideration in a subsequent judgment rendered in case of ***Goqii Technologies (P) Ltd.*** *(supra)*, but the observation as quoted above was restated and reapplied in the following:

> **"19.** The scope of inquiry under Section 11 of the 1996 Act is limited to ascertaining the prima facie existence of an arbitration agreement. In the present case, the High Court exceeded this limited scope by undertaking a detailed examination of the factual matrix. The High Court erroneously proceeded to assess the auditor's report in detail and dismissed [*Goqii Technologies (P) Ltd.* v. *Sokrati Technologies (P) Ltd.*, 2024 SCC OnLine Bom 3530] the arbitration application. In our view, such an approach does not give effect to the legislative intent behind the 2015 Amendment to the 1996 Act which limited the judicial scrutiny at the stage of

Section 11 solely to the prima facie determination of the existence of an arbitration agreement.

20. As observed in *Krish Spg.* [*SBI General Insurance Co. Ltd.* v. *Krish Spg.*, (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754 : 2024 INSC 532] , frivolity in litigation too is an aspect which the referral court should not decide at the stage of Section 11 as the arbitrator is equally, if not more, competent to adjudicate the same.

21. Before we conclude, we must clarify that the limited jurisdiction of the referral courts under Section 11 must not be misused by parties in order to force other parties to the arbitration agreement to participate in a time consuming and costly arbitration process. This is possible in instances, including but not limited to, where the claimant canvasses the adjudication of non-existent and mala fide claims through arbitration.

22. With a view to balance the limited scope of judicial interference of the referral courts with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration. Having said that, it is clarified that the aforesaid is not to be construed as a determination of the merits of the matter before us, which the Arbitral Tribunal will rightfully be equipped to determine.

E. *Conclusion*

23. The existence of the arbitration agreement in Clause 18.12 of the MSA has not been disputed by the respondent. The question whether there exists a valid dispute to be referred to arbitration can be addressed by the Arbitral Tribunal as a preliminary issue."

22. An argument was advanced dissenting one sentence or paragraph from the later invoking the arbitration clause that the dispute revolves around a non-signatory to an agreement which contains an arbitration clause and in this prospective whether the doctrine of Group of Companies can be applied. Several judgments were referred to but the larger Bench in ***Cox and Kings*** *(supra)* in an unequivocal terms held that such doctrine may have its application in the event non-signatory have a positive, direct and substantial involvement in the negotiation, performance or termination of a contract. It is further held that the incidental involvement is insufficient to bind a non-signatory and such doctrine does not extend to the non-signatory merely because they are the members of the same Group of Companies.

23. On a factual matrix, we find a patent distinction in this regard for a reason that none of the parties to the proceedings have included the non-signatory of an agreement dated 18th March, 2010. The opposite party construed the letter invoking the arbitration where it is asserted that the said opposite party has created an obstacle in renewal and/or extension of the lease despite an irrevocable power of attorney having executed in favour of the employee of the company as the said dispute is beyond the scope of the said agreement containing arbitration clause. It

would not be proper course for the High Court at the stage of Section 11 of the said Act to dissect the claim raising a dispute but must confine its scrutiny on the existence of an arbitration clause. The moment the Court found that there exists an arbitration clause between the parties which is not denied, it must leave the question of arbitrability of the dispute to the arbitral tribunal, who is competent to decide its own jurisdiction.

24. Letter dated 4th February, 2023 invoking the arbitration clause contains various allegations constituting a dispute between the parties which includes the huge loss suffered by the companies because of the conduct of the opposite party in clear violation of the terms and conditions of the said raising contract dated 18th March, 2010. Astonishingly, despite having received such letter the opposite party while sending email categorically asserted that he does not recollect having signed any such raising agreement and demanded such agreement to be forwarded to him for his knowledge. Though the said agreement was forwarded by the petitioner vide letter dated 10th February, 2023 but the same was responded on 2nd March, 2023 claiming that the issues are not part of the subject agreement and there is already a civil suit pending relating to the cancellation of the power of attorney and, therefore, the matter being subjudice, there cannot be a parallel trial by an arbitrator.

25. The conjoint reading of the correspondences exchanged between the parties manifestly leads to an inescapable conclusion that the opposite party has not denied the existence of an arbitration clause in a raising agreement dated 18th March, 2010. In view of the law pronounced in ***Goqii Technologies (P) Ltd.*** *(supra)* the moment the High Court finds the existence of an arbitration agreement whether the dispute raised by the petitioner is touching upon the contract or arising therefrom or in relation thereto, can be decided by an arbitral tribunal under the theory of competence-competence. Section 16 of the Act is not squeezed to the extent that once the parties are referred to arbitration; the question of arbitral dispute cannot be decided by the arbitral tribunal. Section 16 is exposit that despite the parties having referred to arbitral tribunal, the arbitral tribunal can decide its own jurisdiction and as a preliminary issue may take a decision whether the disputes are covered under the said arbitration agreement or not.

26. Section 11(6-A) of the Act though omitted by an amended Act of 2019 yet occupies the field of valid provision as the effect of the said amended provision has not been notified by the Central Government. In view of the restricted scrutiny in a latter provision introduced by way of Section 11(6-A) of the Act once the Court finds the existence of the arbitral agreement, it should not expand its horizon unless the said amended Act is notified and the provision is taken up from the legislative document. Thus, this Court does not find any justification and/or force in the objection raised by the opposite party.

27. ***Mr. Justice B.P. Das, Former Judge*** of this Court is hereby appointed as a sole Arbitrator, who shall decide the dispute between the parties immediately upon communication of the instant judgment and determine the dispute raised by the

parties. The arbitration shall take place under the aegis of the High Court of Orissa Arbitration Centre. Remuneration of the Arbitrator shall be equally paid by the parties as per the 4th Schedule appended to the said Act. The Arbitrator shall make efforts to adhere the time limit set forth in Section 29A of the said Act.

28. The arbitration petition is disposed of accordingly. A copy of this judgment be communicated to the learned Arbitrator forthwith.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Arbitration petition disposed of.

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2025 (III) ILR-CUT-25

MAMATA BEHERA
V.
PREMANANDA BEHERA

[MATA NO. 320 OF 2024]

08 AUGUST 2025

[MANASH RANJAN PATHAK, J. & MRUGANKA SEKHAR SAHOO, J.]

Issue for Consideration

Whether wife is entitled to receive 25% of the salary of husband for her maintenance.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 13(1)(1-a) – The appellant/wife was awarded ₹3,000/- per month towards maintenance by the Judge, Family Court – Appellant challenges the Judgment of learned Judge, Family Court with a prayer for enhancement – Allegation of cruelty was raised on the part of the Respondent/wife – The learned trial Court has not gone into the merit of the case – Whether wife is entitled to receive 25% of the salary of husband for her maintenance.

Held: Yes – Though 25% of the salary of the Respondent in this case, after statutory deductions, would come around Rs.15,000/- to Rs.16,000/-, in our considered opinion, for the time being, the amount that should be paid to the Appellant-wife is @ Rs.10,000/- (Rupees Ten Thousand) per month, and we direct accordingly. (Para 14)

Citations Reference

Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy**, AIR 2017 SC 2383 = (2017) 14 SCC 200;** Swapna Rani Sahoo vs. Niranjan Sahoo, **(MATA No.167 of 2015) AIR 2020 Orissa 184 = 2020 (III) ILR-CUT-266 – referred to.**

List of Acts

Hindu Marriage Act, 1955.

Keywords

Matrimonial dispute; Cruelty; Maintenance; 25% of the salary of husband; Quantum of maintenance; Enhancement of maintenance

Case Arising From

Judgment & order dated 27.06.2024 passed by Judge, Family Court, Cuttack in C.P. No.736 of 2021.

Appearances for Parties

For Appellant : Mr. S.K. Baral, Mr. S.R. Pradhan, Mr. L.R. Das, J. Sahoo and S.R. Acharya.

For Respondent : Mr. Debajyoti Chatterjee, Mr. B.N. Tripathy and Mr. B. Tripathy

Judgment/Order

Judgment

MRUGANKA SEKHAR SAHOO, J.

1. As directed by us on 01.07.2025, the parties are present in person before this Court along with their minor daughter from the marriage, who is aged about 10 years, studying in Class-VI in Guru Nanak Public School, Sikharpur, Cuttack.

2. The parties were spoken in the language they understand. The Appellant-wife was spoken to by this Court in Odia, whereas the Respondent-husband, who is working as Asst. Sub-Inspector of Police in Vigilance Department, Odisha, was spoken to by the Court both in Odia and English. The girl child was also spoken to by the Court in English and Odia, as she understands both the languages.

3. The Appellant-wife narrated her plight that how she stays alone at Keonjhar about 180 kilometers away from Cuttack. She is being given Rs.3,000/- (Rupees Three Thousand) only per month by the Respondent-husband, which is also indicated in the judgment of the learned Judge, Family Court dated 27.06.2024 passed in D.V. Misc. Case No.207 of 2021. She expresses her helplessness and tells before the Court that it is almost impossible on her part to keep her body and soul intact with such a meager amount of Rs.3000/- paid to her every month.

We find, apart from this amount she is receiving, at her level of education and understanding, she has nothing to say regarding the merits of the appeal that has been filed by her.

4. The Respondent-husband while addressing the Court did not address the Appellant-wife in the language which is expected of a person working as a Govt. Servant in a disciplined force. It was not expected of him to address the lady in the language he did much-less before a Court and, that too, by a person like him serving in Police Department under the State.

5. The small girl child stated certain incidents that happened, as she remembers, attributed to her mother when she was aged about 6 years. Her recollections are negative and laced with apparent dislike for her mother and unusual for a child of her age to form such extreme opinion. However, on being asked by Court where she was studying when she was 6 years of age, which was her school, who was her class-teacher, etc., somehow she could not recollect the same properly. She otherwise seems to be good, studying well and stays with her grand-mother and father (Respondent) at Cuttack.

6. We have nothing more to say regarding the highly opinionated version of the small child; but we record the above in order to reflect upon the attitude of the Respondent and his family as far as they treat the Appellant who was the wife and has begotten a child. It is hoped that the child is given good education both informal and formal and a better environment as far as her home is concerned, and she does not outlive her innocence at such an early age to the extent that she speaks ill about her mother, for reasons not difficult to guess nor far to seek.

7. Now, coming to the merits of the appeal, learned counsel for the parties are heard at some length.

8. The judgment of the learned Court, as far as the reasoning is concerned, is evidently based on the fact that the Appellant-wife, who was the Respondent in the divorce proceeding under Section 13 of the Hindu Marriage Act, 1955, filed by the Respondent-husband, i.e. C.P. No.736 of 2021, by order dated 16.01.2024 was precluded from filing her written-statement, as the written-statement was not filed by her in time. Thereafter, though the learned Judge, Family Court has analyzed the case law at paragraph-6(i) of the judgment, but has not written even one sentence analyzing the evidence adduced by the Respondent husband as the petitioner in the said case. The learned trial court proceeded on an erroneous impression that the pleadings of the Petitioner, evidence adduced, statements made on behalf of the PWs, if there were any, are not to be analyzed before granting a decree of divorce by applying the parameters as specified in Section 13 (1) (1-a), and in the case at hand the alleged ground was cruelty on part of the Respondent-wife.

9. The judgment completely falls short of the standard of proof that is to be applied by the Court, i.e. preponderance of probability as far as civil cases are concerned and, more so, when serious allegations of cruelty are made by the

Petitioner. The onus and burden of proving cruelty was on the petitioner who is the respondent here in this case. Since the learned trial court has not gone into or evaluated any iota of evidence, we are also not in a position whether the facts alleged were proved or disproved, as envisaged under the Indian Evidence Act (since repealed and substituted by the Bharatiya Sakshya Adhiniyam).

10. Mr. Chatterjee, learned counsel for the Respondent, taking a fair stand, more so when there is no material evidence on record relied upon by the trial court, does not proceed further to defend the judgment and decree that was granted ex parte.

11. In response to the effectual fervent prayer made by the Appellant in person regarding enhancement of the monthly maintenance amount and also urged by learned counsel Mr. Baral on her behalf, Mr. Chatterjee, learned counsel for the Respondent produces the Pay-Slip of the Respondent issued by the Director General & Inspector General of Police, Vigilance, Odisha. Copy of the said Pay-Slip is kept on record.

12. Learned counsel for the Appellant Mr. Baral relies on the decision of the Apex Court in the case of ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy, AIR 2017 SC 2383 = (2017) 14 SCC 200***. He also relies on the decision of the co-ordinate Bench of Orissa High Court in ***Swapna Rani Sahoo vs. Niranjan Sahoo, (MATA No.167 of 2015) AIR 2020 Orissa 184 = 2020 (III) ILR-CUT-266***, to submit that at least 25% of the salary of the husband should be given to the wife for her maintenance.

13. From the Pay-Slip it is apparent that, out of the gross amount of salary of Rs.77835/- per month, an amount of Rs.32,027/- is being deducted by the Respondent Mr. Behera. It is told to us that three of them (Mr. Behera, his mother and daughter) are living in Cuttack city, at their standard of living they are managing with the rest of the amount, i.e. Rs.45,808/-. On being asked, Mr. Behera (the Respondent) states that there is no mandate on him to deduct Rs.25,000/- and to park the amount in his GPF account. Evidently, the deductions shown in the Pay Slip is much more at the option of the Respondent than it is actually required, as deductions like professional tax, income tax, etc., and other mandated deductions. In our considered opinion, the financial choices of an individual cannot stand in the way for awarding maintenance amount reasonably which can be awarded from the income of a party to the litigation, i.e. the husband in this case.

14. Though 25% of the salary of the Respondent in this case, after statutory deductions, would come around Rs.15,000/- to Rs.16,000/-, in our considered opinion, for the time being, the amount that should be paid to the Appellant-wife is @ Rs.10,000/- (Rupees Ten Thousand) per month, and we direct accordingly.

15. In such view of the above discussions, the judgment and decree dated 27.06.2024 passed in C.P. No.736 of 2021 is set aside, and C.P. No.736 of 2021 is

restored to file to be undertaken for fresh adjudication expeditiously by the Court that may be assigned by the learned District Judge, Cuttack, for which the records of C.P. No.736 of 2021 shall be placed before the learned District Judge, Cuttack within a period of two weeks hence. Registry shall intimate the learned District Judge, Cuttack with a copy of this judgment. Parties shall also have the liberty to produce the website copy of this judgment before the learned District Judge, Cuttack to assign the matter to any appropriate court.

16. We also contemplated and discussed with the learned counsel appearing for the parties, whether the matter can be taken up at Keonjhar, i.e. the place of residence of the Appellant-wife; but the learned counsel Mr. Lok Ranjan Das, who is appearing along with Mr. Baral, learned counsel in the present case for the Appellant, assures us that the case will be prosecuted with due diligence when the proceeding resumes before the court of the learned Judge, Family Court, Cuttack or any Court of jurisdiction that may be assigned by the learned District Judge. If the appellant requires any legal aid, same shall be provided by the District Legal Services Authority and the learned Presiding Judge shall ensure the same.

17. Further, since it is admitted before this Court by the Respondent husband that he stays separate from the Appellant-wife, and after setting aside of the judgment and decree dated 27.06.2024 granting divorce, the marital status has been restored to the Appellant, the Respondent husband shall pay a monthly amount of Rs.10,000/- (Rupees Ten Thousand) to the Appellant-wife towards maintenance, which shall include Rs.3,000/- (Rupees Three Thousand) per month awarded earlier in D.V. Misc. Case No.207 of 2021. The total amount of Rs.10,000/- (Ten Thousand) per month shall be deducted from the salary of the Respondent to be credited at source by the Drawing & Disbursing Officer or the Banker where the salary amount is deposited. The amount as directed, shall be paid to the Appellant-wife, i.e. Mamata Behera, State Bank of India, Anandapur Branch, SB A/c. No. 41658213642, IFSC : SBIN 0001086. A copy of this order shall be forwarded by the Registry of this Court to the Director General of Police (Vigilance) to instruct his office accordingly for making the arrangement for crediting the amount to the account of the appellant-wife.

18. The quantum of monthly maintenance now fixed at Rs.10,000/- shall abide by the further orders for enhancement that would be made by the learned Judge, Family Court, Cuttack in appropriate proceeding, if it is filed on behalf of the Appellant as permissible under law. It is clarified that, regarding enhancement of quantum of maintenance to be granted, the learned trial court shall have the freedom to decide if any application is filed.

19. In view of the remand directed by us, the Civil Proceeding goes back to the stage of filing of written statement by the Respondent in the C.P. (who is the Appellant herein). The learned counsel for her shall do well to take steps in filing the written statement at the earliest within four weeks. The C.P. shall proceed further from the stage it is remanded back.

20. We hasten to add that we have not expressed any opinion on the merits and contentions of the parties to the suit that would be the subject matter of adjudication by the learned trial court. We also clarify that either of the parties to the suit have the complete autonomy to decide at their level whether the matter will be proceeded further or not.

Personal appearances of the parties are dispensed with.

We put on record our appreciation of the learned counsels for both the parties, i.e. Mr. D. Chatterjee appearing for the Respondent and Mr. S.K. Baral appearing for the Appellant, for the assistance they have rendered to this Court in arriving at a just conclusion and also assisting the parties to achieve the result in the litigation.

21. The appeal is allowed in terms of the detailed orders above. Costs payable to the Appellant is reluctantly made easy.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Appeal allowed.

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2025 (III) ILR-CUT-30

SADHU CHARAN MAHANTA
V.
STATE OF ORISSA

[JCRLA NO. 61 OF 2006]

17 JUNE 2025

[S.K. SAHOO, J. & SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether the prosecution has proved the circumstances against appellant in absence of any direct evidence.

Headnotes

CRIMINAL TRIAL – Circumstantial Evidence – The Appellant faced trial for commission of offences punishable U/s. 302/201 of the IPC – The learned trial Court found the guilty of both the charges and sentenced him to undergo, imprisonment for life U/s. 302 of IPC – The learned trial Court culled out the circumstances borne out of the record against the appellant and held that all the circumstances have been proved against the appellant – The learned counsel for appellant stated that there is no direct evidence and the deceased fell down & died due to head reeling

– It is further argued that in view of the pressure caused by the co-villagers on account of puja which was to be observed on the next day, the appellant had to bury the dead body without any intimation to family members of the deceased – Whether in the circumstances above prosecution has proved the case against the appellant, in absence of any direct evidence.

Held: Yes – We are of the humble view that even though there is no direct evidence in the case, but the circumstances available on record if taken together clearly form a complete chain and it excludes every possible hypothesis regarding the innocence of the appellant and it substantiate that the appellant alone is the author of commission of the murder of the deceased and that after committing the murder, he had also buried the dead body of the deceased – The appellant has miserably failed to dislodge the incriminating evidence appearing against him in the prosecution case and hence, we are of the opinion that his conviction and sentence through the impugned judgment and order does not require any interference by us and resultantly, we find no merit in the appeal which for the said reason is dismissed with the affirmation of appellant's conviction and sentence.

(Para 11)

Citations Reference

Sharad Birdhichand Sarda -Vrs.- State of Maharashtra, **(1984) 4 Supreme Court Cases 116 – referred to.**

List of Acts

Indian Penal Code, 1860; Evidence Act, 1872.

Keywords

Circumstantial Evidence; Homicidal death; Burden of proof, False defence plea, Motive, Concealment of evidence.

Case Arising From

The judgment and order dated 12.05.2006 passed by the Sessions Judge, Mayurbhanj, Baripada in Sessions Trial Case No.133 of 2005.

Appearances for Parties

For Appellant : Mr. Sanjit Kumar Das, (OHCLSC)
For Respondent : Mr. Sarat Kumar Pradhan, A.S.C.

Judgment/Order

Judgment

BY THE BENCH

The appellant Sadhu Charan Mahanta faced trial in the Court of learned Sessions Judge, Mayurbhanj, Baripada in Sessions Trial Case No.133 of 2005 for commission of offences punishable under sections 302/201 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that during the intervening night of 05/06.04.2005, he committed murder of his wife Kuni @ Basanti Mahanta (hereinafter 'the deceased') in his house situated at village Batapalasa and having reason to believe that the murder had taken place, he caused the evidence of the said offence to disappear by burying the dead body of the deceased on the river bank of 'Budhi Nai' with intention to screen himself from the commission of offences.

The learned trial Court vide impugned judgment and order dated 12.05.2006 found the appellant guilty of both the charges and sentenced him to undergo imprisonment for life under section 302 of I.P.C. and to undergo rigorous imprisonment for four years under section 201 of the I.P.C. and both the sentences of imprisonment were directed to run concurrently.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.')(Ext.2) lodged by Bhuban Mohan Mahanta (P.W.3), in short, is that the deceased was his younger sister and there was love affair between the appellant and the deceased and they got married about twelve to thirteen years prior to the death of the deceased. The appellant was working as a Gramrakhi under Karanjia Police Station and the appellant and the deceased were having two children, the son was aged about six years and the daughter was about four years.

It is the further prosecution case as per the F.I.R. that the deceased was regularly coming to the house of her brother (P.W.3) and complaining against the appellant that he was insisting for a second marriage and over this issue, there used to be quarrel between the appellant and the deceased as the deceased was not agreeable to such an alliance and proposal of the appellant. It is further stated that the deceased had come to the house of P.W.3 during the Makar festival and stayed there for about four days and during that period, she disclosed before P.W.3 that the appellant was assaulting her.

It is the further prosecution case as per the F.I.R. that on 08.04.2005 at about 9 o'clock in the morning, while P.W.3 was in his house, his cousin brother informed him that the appellant after committing the murder of the deceased, had concealed the dead body somewhere. Receiving such intimation, P.W.3 came to the village of the appellant and there he found that the inquiry relating to the death of the deceased had already commenced and the police was interrogating the appellant. The appellant disclosed before the police about burying the dead body of the deceased in the river bed. Accordingly, the police along with the Magistrate, villagers and the family members of the appellant so also the informant (P.W.3) went to the place of burial where the body was disinterred from the burial place.

Inquest over the dead body was held in presence of the witnesses and it was sent to S.D. Hospital, Karanjia for post-mortem examination. P.W.3 came to know from the relatives and others that there was a quarrel between the appellant and the deceased in the night of Tuesday and the appellant killed the deceased by strangulating her and thereafter buried the dead body to conceal the evidence and to cause disappearance of the evidence.

On receipt of the written report presented by P.W.3, Karanjia P.S. Case No.59 dated 08.04.2005 was registered under sections 498(A)/302/201 of the I.P.C. by P.W.9 Gurubari Hembram, W.S.I., Karanjia Police Station in absence of the I.I.C.

Prior to the registration of the F.I.R., it appears that P.W.9 received a written report vide Ext.8 from P.W.1, Alekh Chandra Mahanta and registered Karanjia P.S. U.D. Case No.09 dated 08.04.2005 and took up inquiry. During the course of inquiry, she prepared the spot map and sent requisition to the Sub-Collector, Karanjia, to depute an Executive Magistrate to remain present at the time of holding inquest over the dead body of the deceased. The appellant disclosed in presence of the villagers and the Executive Magistrate that he had killed the deceased and buried the dead body in the river bed of 'Budhi Nai' near his village and thereafter P.W.9 along with the Executive Magistrate, Karanjia and the villagers went to the spot where at the instance of the appellant, the dead body of the deceased was disinterred by digging earth. P.W.9 held inquest over the dead body in the presence of the witnesses and also the Executive Magistrate and prepared inquest report vide Ext.1. The dead body was identified by the appellant, his brother and the villagers and it was sent to S.D. Hospital, Karanjia for post-mortem examination.

After registration of the case on the basis of written report presented by P.W.3, P.W.9 took up investigation of the case, arrested the appellant on 08.04.2005 and at the instance of the appellant, three napkins were seized from his house as per seizure list Ext.11. P.W.9 also seized torn sarees and one saya of the deceased from the house of the appellant as per seizure list Ext.12. On 09.04.2005, she handed over the charge of investigation to P.W.8, the I.I.C. of Karanjia Police Station.

During the course of investigation, P.W.8 examined the witnesses, sent the appellant to S.D. Hospital, Karanjia for medical examination and collection of his nail clippings and blood sample. P.W.8 received the injury report, blood sample and nail clippings etc. of the appellant from the hospital through the Havildar and seized the same as per seizure list Ext.5 and forwarded the appellant to the Court. He received the post mortem report, examined the witnesses, sent the seized properties to S.F.S.L., Rasulgarh, Bhubaneswar through S.D.J.M., Karanjia and also received the chemical examiner report marked as Ext.7. On completion of investigation, P.W.8 submitted chargesheet under sections 498(A)/302/201 of I.P.C. on 19.06.2005 against the appellant.

Framing of Charges:

3. After submission of the charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charges against the appellant as aforesaid and since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

Prosecution Witnesses, Exhibits and Material Objects:

4. During the course of the trial, in order to prove its case, the prosecution has examined as many as nine witnesses.

P.W.1 Alekh Chandra Mahanta is the elder brother of the appellant. He deposed that the appellant along with the deceased and their children were living in a separate house by the time of the occurrence. He further stated that about one year back at about 7 p.m. to 8 p.m., when he returned to his house from the weekly market, the appellant came and told him that the deceased had died. He advised the appellant to call some persons of their village for cremation of the dead body of the deceased, however the appellant told him that he had already buried the dead body of the deceased in the river bed of 'Budhi Nai'. On being advised by the co-villagers, P.W.1 came to Karanjia Police Station and reported the matter to the police. He further stated that at times there used to be quarrel between the appellant and the deceased.

P.W.2 Khetra Mohan Mahanta is a co-villager of the appellant before whom the appellant had confessed that he had buried the dead body of the deceased in the river bed of 'Budhi Nai'. He stated to have advised the appellant as well as P.W.1 to report the matter before police.

P.W.3 Bhuban Mohan Mahanta is the brother of the deceased and he is the informant in this case. He stated that about twelve to thirteen years back, the appellant had married the deceased in Baripada Court and after seven to eight years of the marriage, dispute arose between the deceased and the appellant as the appellant was insisting to marry for the second time. He came to know about such dispute from the deceased when she came to his house during Makar Festival. He further stated that he received a telephone call and came to know that the deceased had been killed on Tuesday and her dead body had been concealed somewhere. Thereafter, he went to the village Batapalasa on the same day and found that police were inquiring about the death of the deceased and on being asked by the police, the appellant told to have buried the dead body of the deceased in the river bed of Budhi Nai. He further stated that the appellant by digging the earth brought out the dead body of the deceased.

P.W.4 Kasturi Mahanta is the wife of P.W.1. She stated that there was dispute between the appellant and the deceased, as the appellant wanted to marry another girl and for such dispute, a panchayati was convened in the village.

P.W.5 Trilochan Mahanta is a co-villager of P.W.1. He stated that prior to three months of the death of the deceased, there was dispute between the appellant

and the deceased. He further stated that the appellant had disclosed before him that the deceased had died and he had buried her dead body. He further stated that at the instance of the appellant, the dead body was disinterred from its burial place in the river bed and it was identified to be that of the deceased. He further stated regarding the seizure of the wearing apparels of the deceased and one napkin from the house of the appellant and the preparation of seizure list by police in that respect.

P.W.6 Basudev Nayak was working as a Revenue Officer-cum-Executive Magistrate, Karanjia. He stated about the confession of the appellant regarding the killing of his wife in the night and burying her dead body in the river bed of 'Budhi Nai' and about the inquest held over the dead body of the deceased by the police after it was disinterred by digging earth.

P.W.7 Ashis Ranjan Mahanty was working as a Specialist in O & G., S.D. Hospital, Karanjia, who conducted the post-mortem examination over the dead body of the deceased. He stated that the cause of death was due to asphyxia due to throttling. He proved the post mortem report marked as Ext.3.

P.W.8 Nrusingha Charan Swain was working as the I.I.C. of Karanjia Police Station and P.W.9 Gurubari Hembram was working as W.S.I. of Karanjia Police Station and they are the Investigating Officers of the case.

The prosecution exhibited twelve documents. Ext.1 is the inquest report, Ext.2 is the written report (F.I.R.), Ext.3 is the post mortem examination report, Ext.4 is the requisition for collection of nail clippings and blood sample of the appellant, Ext.5 is the seizure list, Ext.6 is the forwarding letter of M.Os. to S.F.S.L., Rasulgarh, Bhubaneswar, Ext.7 is the C.E. report, Ext.8 is the written report of Karanjia U.D. Case No. 19/05, Ext.9 is the spot map, Ext.10 is the dead body chalan, Exts.11 & 12 are the seizure lists.

Defence Plea:

5. The defence plea of the appellant is that he was the Grama rakhi in Karanjia police station and on the date of occurrence, he was on duty at village Saralapada, Panasapal and Tentuliposi and he returned back home in the night at about 9 o'clock and found the deceased was lying on a cot and he came to know from his children that the deceased fell down and since the deceased was very weak and used to fall sick every time and he found that the deceased was not responding to his call, he got confirmed that she had died. Since on the next day, Puja was going to be observed in the village, the villagers told him to cremate the dead body immediately otherwise the villagers would not be able to celebrate the Puja and would also face immense difficulty. Accordingly, the appellant stated to have buried the dead body hurriedly.

The son of the appellant and the deceased, namely, Jayakrushna Mahanta was examined as D.W.1 in support of the defence plea.

Findings of the Trial Court:

6. The learned trial Court after assessing the oral as well as the documentary evidence on record, came to hold that in view of the evidence of P.W.3, P.W.6 and P.W.9 as well as the doctor (P.W.7), the prosecution has successfully established that the deceased died a homicidal death. The learned trial Court culled out the circumstances borne out of the record against the appellant, which are as follows:-

(i) the deceased was living with the appellant by the time of the occurrence;

(ii) there were quarrels and disputes between the appellant and the deceased as the appellant wanted to marry for the second time and for the same, panchayati was held in the village few months prior to the occurrence;

(iii) the appellant buried the dead body of the deceased in the night of 05/06.04.05 in the river bed of 'Budhi Nai' near his village without informing anybody about the death of the deceased;

(iv) in the night of 07.04.05, the appellant for the first time disclosed about the death of the deceased before P.Ws.1, 2, 4, 5 & others and also admitted before them to have buried the dead body of the deceased in the river bed of 'Budhi Nai';

(v) The appellant on 08.04.05 made a confession before P.W.6, police and the villagers that he killed the deceased in the night of 05.04.05 and buried her dead body in the river bed of 'Budhi Nai';

(vi) The appellant brought out the dead body of the deceased by digging earth in the river bed of 'Budhi Nai' before P.W.6 and others;

(vii) P.W.7 who conducted post mortem examination over the dead body of the deceased on police requisition, opined that the cause of death was asphyxia due to throttling and time since death was within 36 hours to 4 days at the time of post mortem examination.

The learned trial Court has held that all the circumstances have been proved against the appellant. The learned trial Court disbelieved the evidence of D.W.1 as his evidence runs contrary to the evidence of the doctor (P.W.7) in as much as the evidence of D.W.1 is that his mother fell down due to head reeling and died, which was disbelieved in view of the evidence of the doctor (P.W.7) which shows that the cause of death of the deceased was due to asphyxia on account of throttling. The learned trial Court also took into account the statement of the appellant made in the accused statement where he has admitted to have brought out the dead body of the deceased by digging the earth and held that since the appellant has buried the dead body of the deceased hurriedly in the river bed of 'Budhi Nai' near his village without informing anybody in the village and even not reporting the matter to the police being a Grama rakhi, such conduct of the appellant has strengthened the prosecution case. The learned trial Court held that the appellant committed the murder of the deceased in his house in the intervening night of 05/06.04.2005 at village Batapalasa and accordingly found him guilty under sections 302/201 of I.P.C.

Contentions of the Parties:

7. Mr. Sanjit Kumar Das, learned counsel appearing for the appellant argued that the evidence of D.W.1 should not have been disbelieved as he was the son of the appellant and the deceased and was present in the house when the occurrence had allegedly taken place and that he has specifically stated that the deceased fell down due to head reeling and died. The learned counsel further argued that in view of the pressure caused by the co-villagers to bury the dead body on account of Puja which was to be observed on the next day, the appellant had to bury the dead body without any intimation to the family members of the deceased as there was no time. Learned counsel for the appellant urged that in view of the available materials on record, it cannot be said that the chain of circumstances is so complete that it unerringly points towards the guilt of the appellant and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Sarat Kumar Pradhan, learned Additional Standing Counsel appearing for the State of Odisha, on the other hand, argued that the learned trial Court has rightly culled out seven circumstances appearing on record against the appellant and on each of the circumstances, number of witnesses have deposed to against the appellant and the circumstances, if taken together, completes the sequential chain. The learned counsel further argued that the evidence of D.W.1, the son of the appellant and the deceased that there was head reeling of the deceased for which she fell down and died has been rightly disbelieved by the learned trial Court in view of the evidence of the doctor, who conducted the post mortem examination and found that the thyroid cartilage was broken and cause of death was due to asphyxia due to throttling, which was sufficient in ordinary course of nature to cause death. The learned counsel further argued that the plea of the appellant that he was on duty in other villages has not been proved by producing any oral or any documentary evidence and even no suggestion was given to the two investigating officers of Karanjia Police Station i.e. P.Ws.8 & 9 in that regard. The learned counsel urged that when the deceased was in the house of the appellant and she met a homicidal death as per the evidence of the doctor (P.W.7) and the appellant admittedly buried the dead body of the deceased without intimating anyone and at his instance, the dead body was recovered from the place of burial and the appellant had given false declarations before the co-villagers regarding the cause of death of the deceased, the chain is complete and therefore, there is no infirmity in the impugned judgment and the appeal should be dismissed.

Whether the deceased met with a homicidal death i.e. Circumstance no.(vii)?:

8. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine the available materials on record as to how far the prosecution has successfully proved that the deceased met with a homicidal death.

At the outset, it appears from the evidence of P.W.1 that when the appellant was asked about the cause of death of the deceased in presence of the others, he stated that the deceased might have died by taking medicine or by

committing suicide. Similarly, the son of the appellant and the deceased being examined as D.W.1 has stated that his mother (deceased) fell down in the house due to her head reeling and thereafter died. This evidence adduced by D.W.1, and as was disclosed by the appellant before P.W.1 and others so also the plea taken by the appellant in his statement recorded under section 313 of Cr.P.C. regarding the cause of death of the deceased is falsified by the evidence of P.W.7, who conducted the post-mortem examination over the dead body of the deceased on 08.04.2005 in S.D. Hospital, Karanjia and found the following external injuries:-

(i) The dead body was swollen with blisters seen at places;

(ii) Rigor mortis was absent on all four limbs;

(iii) Tongue protruded and frothy discharge seen at nose and mouth;

(iv) Vagina and anus protruded;

(v) Post mortem abrasion seen over legs;

(vi) Face was deeply cyanosed;

(vii) Left sternocleidomastoid muscle was torn in its middle part with extravasation of blood;

(viii) Projections of thyroid cartilage were found broken;

(ix) Larynx was oedematous and hyperaemic;

(x) Both lungs were congested and oedematous;

(xi) Right chamber of heart was filled with blood and left chamber was empty.

The doctor has opined that the cause of death was due to asphyxia on account of throttling and the time since death was within 36 hours to four days of the post-mortem examination and that asphyxia due to throttling is sufficient in the ordinary course of nature to cause death. The doctor has proved the post-mortem report marked as Ext.3. In the cross-examination, the defence has brought out that all the symptoms found in the dead body could not be caused in any other mode of death due to asphyxia.

Thus, the evidence of the doctor (P.W.7) has remained unchallenged. In view of the evidence of P.W.7 coupled with the inquest report vide Ext.1 which was conducted in the presence of the Magistrate and the post-mortem report findings vide Ext.3, we are of the humble view that the learned trial Court is quite justified in holding that the prosecution has successfully proved that the deceased met with a homicidal death. Thus, the circumstance no.(vii) has been proved by the prosecution.

Other circumstances against appellant:

9. The circumstance no.(i) is that the deceased was living with the appellant by the time of occurrence. P.Ws.1, 2, 3 and 4 have deposed in that respect and in fact, the appellant has not challenged this evidence.

So far as circumstance no.(ii) is concerned, the evidence of P.Ws.3 and 4 are very material. P.W.3, the informant who is also the brother of the deceased has stated that after seven to eight years of marriage, a dispute arose between the appellant and the deceased as the appellant wanted to marry for the second time as the deceased was unable to see properly due to her poor eyesight. He further stated that during Makar festival, the deceased had come to his house and told him about such dispute. P.W.4 has also stated that six months prior to the death of the deceased there was a dispute between the appellant and the deceased as the appellant wanted to marry another girl and for such dispute, there was a pachayati in the village. Nothing could be elicited from the sustained cross-examination of these two witnesses to disbelieve their evidence. Therefore, it can be said that the circumstance no.(ii) has been proved by the prosecution and according to the prosecution, this circumstance also proves the motive behind the commission of the crime.

The circumstance no.(iii) regarding the appellant burring the dead body of the deceased in the river bed of Budhi Nai without giving any intimation to anybody, the appellant has taken a plea in the accused statement that the day when he buried the dead body was a day prior when a Puja was going to be observed in the village and some of the co-villagers pursued him to cremate the dead body otherwise the villagers would face difficulty in observing the Puja. No villagers have been examined in support of such plea who allegedly pursued the appellant to bury the dead body. In view of the evidence of P.W.3, the informant, it is very clear that no information has been given by the appellant to the family members of the deceased either about the death of the deceased or in getting their consent to bury the dead body. Therefore, the circumstance no.(iii) has been established by the prosecution successfully.

So far as the circumstances nos. (iv), (v) and (vi) are concerned, the evidence of P.Ws. 1, 2, 4 and 5 are very relevant in this respect. P.W.1 has stated that the appellant told him that he had buried the dead body of the deceased in the river bed of 'Budhi Nai' in the presence of three co-villagers, who advised him to report the matter before the police station and accordingly, he reported. P.W.2 has also stated that the appellant told him that he buried the dead body in the river bed of 'Budhi Nai'. P.W.4 has stated that the appellant came to his house and told him that the deceased died on the previous Tuesday and that he buried the dead body in the river bed of 'Budhi Nai'. P.W.5 has stated that the appellant came to his house and told him that the deceased had died and he buried the dead body. The evidence of these witnesses is further strengthened by the evidence adduced by the investigating officer, P.W.9, who has stated that the appellant told her in presence of the villagers and the Executive Magistrate that he had killed his wife and buried her dead body in the river bed of 'Budhi Nai' near his village. The Executive Magistrate being examined as P.W.6 has also stated that the appellant told in presence of the police and the villagers that he had killed the deceased and buried the dead body in the river bed of 'Budhi Nai'. The statement given under Section 27 of the Evidence Act is further fortified that the appellant led the police party, the Executive Magistrate

and the witnesses to the river bed, where the dead body was disinterred by digging the earth. The inquest report (Ext.1) has been prepared which also indicates about the recovery of the dead body at the instance of the appellant. The appellant was put a pertinent question in the accused statement recorded U/s 313 of Cr.P.C. that he along with others including P.W.3, P.W.5, P.W.6 and P.W.9 came to 'Budhi Nai', where he brought out the dead body of the deceased by digging the earth and after the dead body was brought out, the witnesses like P.W.3, P.W.5 and others identified the dead body as that of the deceased. The appellant has answered in the affirmative. Therefore, we are of the view that the learned trial Court has rightly held that the circumstances nos.(iv), (v) and (vi) have been proved by the prosecution sans any doubt.

Whether defence plea relating to cause of death of deceased is acceptable?:

10. The defence plea of the appellant is that he was not present in the house on the date of occurrence and had been to the village Saralapada, Panasapal and Tentuliposi on duty and returned in the night at about 9.00 p.m. We find that no documentary evidence has been proved in that respect regarding his duty. Two of the investigating officers (P.W.8 and P.W.9) who were examined by the prosecution belonged to Karanjia Police Station, where the appellant was Grama rakhi and they have not even suggested that the appellant was on duty on the date of occurrence in the aforesaid three villages.

The evidence of D.W.1, the son of the appellant and the deceased is that the deceased fell down in the house due to head reeling and thereafter she died, is not getting any corroboration from the medical evidence and the doctor (P.W.7) has not noticed any such injury which could be possible by fall rather the cause of death has been opined due to asphyxia on account of throttling. Therefore, the evidence adduced by D.W.1 and the plea taken by the appellant that the deceased died due to fall on account of head reeling has rightly been disbelieved by the learned trial Court.

The evidence of P.W.1 is that when the appellant was questioned about the death of the deceased in presence of the co-villagers, he stated that the deceased might have died by taking medicine or by committing suicide. This statement which the appellant has made before P.W.1 is nothing but false in view of the medical evidence.

The normal principle in a case based on circumstantial case is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established, that the circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; that the circumstances taking cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and those circumstances should be incapable of explanation on any hypothesis other than the guilt of the appellant and inconsistent with his innocence. A false plea taken by the accused in a case of circumstantial evidence is an

additional link in the chain of circumstances (**Ref: Sharad Birdhichand Sarda - Vrs.- State of Maharashtra : (1984) 4 Supreme Court Cases 116**).

Therefore, the inconsistent pleas that are taken by the appellant from time to time further strengthen the prosecution case. In view of the provision under section 106 of the Evidence Act, the appellant is required to discharge the burden of proof which was especially within his knowledge as the deceased was staying in his company and she had met a homicidal death and the appellant had buried the dead body in the river bed hurriedly without disclosing to anyone. The appellant has not been able to discharge this burden.

Conclusion:

11. In view of the foregoing discussions, we are of the humble view that even though there is no direct evidence in the case, but the circumstances available on record if taken together clearly form a complete chain and it excludes every possible hypothesis regarding the innocence of the appellant and it substantiate that the appellant alone is the author of commission of the murder of the deceased and that after committing the murder, he had also buried the dead body of the deceased. The appellant has miserably failed to dislodge the incriminating evidence appearing against him in the prosecution case and hence, we are of the opinion that his conviction and sentence through the impugned judgment and order does not require any interference by us and resultantly, we find no merit in the appeal which for the said reason is dismissed with the affirmation of appellant's conviction and sentence. The appellant has been directed to be released on bail by the order of this Court dated 19.04.2019. The appellant shall surrender within a period of four weeks from today to undergo the sentence, failing which; he shall be taken into judicial custody.

Accordingly, the JCRLA, being devoid of merits, stands dismissed.

Before parting with the case, we would like to put on record our appreciation to Mr. Sanjit Kumar Das, learned counsel appearing for OHCLSC by rendering his valuable help and assistance towards arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance provided by Mr. Sarat Kumar Pradhan, learned Additional Standing Counsel.

The trial Court records with a copy of this judgment be communicated to the concerned Court forthwith for information and necessary action.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
JCRLA dismissed.

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2025 (III) ILR-CUT-42

STATE OF ODISHA
V.
PRAKASH BEHERA @ BABULI
&
NANDAKISHORE SETHI @RANJA

[DSREF NO. 04 OF 2024]
AND
[CRLA NO. 1166 OF 2024]

21 JULY 2025

[S.K. SAHOO, J. & S.S. MISHRA, J.]

Issues for Consideration

1. Whether the DNA profile finding can be admitted as evidence when the forwarding report does not indicate that material objects were in sealed condition at the time of its production after two months of its seizure and scientific officer and A.C.E. undertaking examination has not been examined to prove such report.

2. Whether the conviction of the appellants U/s. 364/34 of IPC is sustainable.

3. Whether the conviction of the appellants under section 201/34 of IPC is sustainable merely on the basis of seized articles.

Headnotes

(A) CRIMINAL TRIAL – Circumstantial Evidence – The Appellants faced trial for commission of offences punishable U/s. 449/302/363/364/394/ 201/34 of the Penal Code r/w sections 25 & 27 of the Arms Act – The learned trial Court has jotted down three circumstances which relates to DNA test report findings to convict the appellants – After registration of FIR the I.O. and the Scientific Officer seized/collected some materials and forwarded the relevant exhibits to Court for chemical examination by S.F.S.L., Rasulgarh – All total 32 exhibits were forwarded to the Director, S.F.S.L. for necessary examination and opinion – The forwarding report does not indicate that the exhibits were in sealed condition – As per the forwarding report the seizures were made in between 10.10.2017 to 12.10.2017 and the exhibits were forwarded to Court on 14.12.2017, after two months – The Scientific Officer and A.C.E. undertaking examination has not been examined to prove the forwarding report – Whether the DNA profile finding can be admitted as evidence when the forwarding report does not indicate that the material objects were in sealed condition at the time of its production after two months of its seizure and Scientific

Officer and A.C.E. undertaking examination has not been examined to prove such report.

Held: No –The learned trial Court in the impugned judgment after noting down the findings in the DNA test report jumped to the conclusion that from the scientific analysis of DNA report, it is crystal clear that both the appellants have the involvement in the murder of deceased Biranchi Nayak and Naba @ Ekalabya Nayak – There is no discussion in the impugned judgment relating to the proper sealing of the exhibits after its seizure, safe custody of the exhibits, absence of any explanation from the side of the prosecution relating to delayed dispatch of the exhibits to Court and the effect of delay when most of the exhibits were produced in unsealed condition.

In view of the foregoing discussions, we are of the view that the DNA test report findings cannot be used against the appellants. (Para 18)

(B) INDIAN PENAL CODE, 1860 – Sections 364/34 – Kidnapping – The appellants are convicted for the offence U/s. 302, 34 of IPC – There is no evidence on record of last seen of two deceased in the company of the appellants or kidnapping of the minor deceased – Whether the conviction of the appellants U/s. 364/34 of IPC is sustainable.

Held: No – The learned trial Court has held that so far as the kidnapping of the minor deceased Naba @ Ekalabya Naik is concerned, from the circumstantial evidence, the prosecution has proved that the said deceased was kidnapped from the lawful custody of his parents and subsequently his murder was committed inside the jungle from where the dead body was found – After careful analysis of the materials on record, we do not find either any direct evidence or circumstantial evidence in that regard – There is no evidence on record like last seen of the two deceased i.e. Tarani Naik or Naba @ Ekalabya Naik in the company of any of the appellants or kidnapping of the minor deceased Naba @ Ekalabya Naik by the appellants – Therefore, the conviction of the appellants under section 364/34 of I.P.C. is totally misconceived. (Para 19)

(C) INDIAN PENAL CODE, 1860 – Sections 201, 34 – At the presence of the appellants, one katuri and some other articles as per seizure lists under Exts. 1/2, 4, 19 and 21 were stated to have been seized – The prosecution has failed to establish that those articles have got any link with the offence committed – Whether the conviction of the appellants under section 201/34 of IPC is sustainable merely on the basis of seized articles?

Held: No – When the incriminating articles stated to have been seized at the instance of the appellants cannot be used as evidence in the case against

the appellants for the reasons assigned, it cannot be said that the appellants have caused disappearance of evidence merely at their instance those were recovered – Thus, the conviction of the appellants under section 201/34 of I.P.C. is not sustainable in the eyes of law. (Para 19)

Citations Reference

Nandu Singh -Vrs.- State of Madhya Pradesh (Now Chhattisgarh), **(2022) 19 Supreme Court Cases 301;** Shankar -Vrs.- State of Maharashtra, **(2023) 19 Supreme Court Cases 553;** Subash Aggarwal -Vrs.- State of NCT of Delhi, **2025 SCC OnLine SC 808;** Karandeep Sharma alias Razia alias Raju -Vrs.- State of Uttarakhand, **2025 SCC OnLine 773;** Rahul -Vrs.- State of Delhi and another, **(2023) 1 Supreme Court Cases 83;** Allarakha Habib Memon and others -Vrs.- State of Gujarat, **(2024) 9 Supreme Court Cases 546;** Sinic Patricia -Vrs.- State of Orissa, **(1994) 7 Orissa Criminal Reports 277;** Sheo Shankar Singh -Vrs.- State of Jharkhand, **(2011) 49 Orissa Criminal Reports (SC) 485;** Sharad Birdhichand Sarada -Vrs.- State of Maharashtra, **A.I.R. 1984 SC 1622;** Gambhir -Vrs.- State of Maharashtra, **A.I.R. 1982 S.C. 1157;** Jaharlal Das -Vrs- State of Odisha, **(1991) 4 Orissa Criminal Reports (SC) 278;** Indrajit Das -Vrs.- State of Tripura, **(2023) 18 Supreme Court Cases 506;** Sukhram -Vrs.- State of Maharashtra, **(2007) 7 Supreme Court Cases 502;** Ramchand -Vrs.- State of U.P., **(2023) 16 Supreme Court Cases 510;** Kattavellai @ Devakar -Vrs.- State of Tamil Nadu, **MANU/SC/0917/2025: 2025 LiveLaw (SC) 703 – referred to.**

List of Acts

Indian Penal Code, 1860; Criminal Procedure Code, 1973; Arms Act, 1959

Keywords

DNA report; DNA profiling methodology; Statistical Analysis; Collection and preservation of evidence; Disappearance of evidence; Kidnapping of the minor; Forwarding of material objects; Seizure; Seal; Last seen together; Hypothesis of guilty; Complete chain; Circumstantial evidence; Test of identification parade; Chemical examination; Seizure list;

Case Arising From

Judgment & order dated 27.09.2024 passed by the learned Addl.Session Judge, Athmallik in C.T(S) No. 16 of 2018.

Appearances for Parties

For Appellants	:	Mr. Debashis Tripathy, AGA, (DSREF 04/2024) Mr. Satya Ranjan Mulia, Mr. Ramesh Ch. Maharana (CRLA 1166/2024)
For Condemned Prisoners/Accused	:	Mr. Ramesh Ch. Maharana, Mr. Ajay Kumar Maharana, Mr. Pradip Kumar Panda (Amicus Curiae) (DSREF 04/2024) Mr. Debashis Tripathy, AGA (CRLA 1166/2024)

Judgment/Order

Judgment

S.K. SAHOO, J.

DSREF No.04 of 2024 is the reference under section 366 of the Code of Criminal Procedure, 1973 submitted to this Court by the learned Additional Sessions Judge, Athmallik (hereinafter 'the trial Court') in C.T.(S) No.16 of 2018 for confirmation of death sentence imposed on Prakash Behera @ Babuli and Nandakishore Sethi @ Ranja (hereinafter 'the appellants') vide judgment and order dated 27.09.2024. CRLA No.1166 of 2024 has been filed by appellants, namely, Prakash Behera and Nandakishore Sethi challenging the self-same judgment and order of conviction passed by the learned trial Court.

The appellants faced trial for commission of offences punishable under sections 449/302/363/364/394/201/34 of the Indian Penal Code (hereinafter 'the I.P.C.') read with sections 25 & 27 of the Arms Act on the accusation that on 09/10.10.2017 night, in village Gambharimaliha under Kishorenagar police station in Angul district, they committed house trespass by entering into the building of Biranchi Naik (hereinafter 'the deceased') used as a human dwelling in order to commit offence punishable with death i.e. robbery and murder and that they kidnapped the said deceased from the house without his consent so also Naba @ Ekalabya Naik (hereinafter 'the deceased') from lawful guardianship of his parents without their consent and that they kidnapped/abducted both the deceased in order that they might be murdered and that they committed robbery of the property i.e. cash of deceased Biranchi Naik and that as such, they caused hurt and committed murder of the three deceased persons, namely, Biranchi Naik, his wife Tarani Naik and their minor son Naba @ Ekalabya Naik and that knowing that the murder of the deceased persons had been committed, caused certain evidence of the said offence to disappear i.e. dumped the dead body of deceased Biranchi Naik under Gambharimunda Bridge near village Pokanda, dumped the dead body of minor deceased Naba @ Ekalabya Naik at Bankadhar Sahi Jungle, threw and buried the 'Katuri' and wearing apparels in the said jungle, as well as near Bidisingh Project Nala, with the intention of screening themselves from legal punishment and that they were in possession of an arm i.e. 'Katuri' in contravention of the provision under section 5 of the Arms Act, 1959 and they also used that arm to commit the crime in furtherance of their common intention.

The learned trial Court vide impugned judgment and order dated 27.09.2024, though acquitted the appellants of the charges under sections 363/394/34 of the I.P.C. so also under sections 25 and 27 of the Arms Act, but found them guilty under sections 302/364/201/34 of I.P.C. and awarded death sentence with direction that they shall be hanged by neck till they are found dead and to pay a fine of Rs.1,00,000/- (rupees one lakh), in default, to undergo R.I. for one year for the offence under section 302 of the I.P.C. and sentenced to undergo imprisonment

for life and to pay a fine of Rs.50,000/- (rupees fifty thousand), in default, to undergo R.I. for six months for the offence under section 364 of the I.P.C. and sentenced to undergo imprisonment for seven years and to pay a fine of Rs.25,000/- (rupees twenty five thousand), in default, to undergo R.I. for two months for the offence under section 201 of the I.P.C. with a further direction that all the sentences are to run concurrently. However, no finding has been given by the learned trial Court relating to the offence under section 449/34 of the I.P.C.

Since the DSREF and CRLA arise out of the same judgment, with the consent of learned counsel for both the parties, those were heard analogously and are disposed of by this common judgment.

Prosecution Case as per F.I.R.:

2. The prosecution case, as per the first information report (hereinafter F.I.R.) (Ext.14) lodged by P.W.9 Susant Nayak, in short, is that the deceased Biranchi Naik was his elder brother, deceased Tarani Naik was his sister-in-law (bhauja), being the wife of deceased Biranchi Naik and the deceased Ekalabya Naik was his nephew, being the son of deceased Biranchi Naik and Tarani Naik. On 09.10.2017 night at about 8.00 p.m., the three deceased persons were present in their house. On 10.10.2017 (Tuesday) morning at about 8.00 a.m., P.W.9 found the deceased Tarani Naik was lying dead in her house premises having cut injury on her throat, however P.W.9 could not trace out his deceased brother and nephew.

One Harekrushna Nayak scribed the F.I.R. as per the version of P.W.9 and on such written report presented before Premananda Lenka (P.W.41), Inspector in-charge of Kishorenagar police station, a case under section 302 of the I.P.C. was registered against unknown person vide Kishorenagar P.S. Case No.91 dated 10.10.2017 and P.W.41 himself took up the investigation of the case.

3. During the course of investigation, P.W.41 examined the informant (P.W.9), engaged one constable to guard the dead body of deceased Tarani Naik at village Gambharimaliha and then he informed the fact to the S.D.P.O. and also the Superintendent of Police over telephone for deputation of scientific team to the spot. P.W.41 along with his staff visited the first spot at 12.00 noon and examined some witnesses. At about 12.40 p.m., the Scientific Officer (P.W.40) arrived at the spot along with police dog. The I.O. (P.W.41) along with the informant (P.W.9) took the Scientific Officer (P.W.40) to the Harada field, which was located in front of the house of deceased Tarani Naik where the dead body of the deceased was lying in a pool of blood with throat cut injury and P.W.9 identified the dead body to be that of the deceased. P.W.41, the I.O. then took P.W.40 to the house of deceased Tarani Naik where he found a pool of blood beneath the window at outer side. P.W.41 prepared the 1st spot map vide Ext.45 and at 1.35 p.m., seized seven household articles in broken condition in presence of the witnesses vide seizure list Ext.46 and examined the seizure witnesses and recorded their statements. P.W.41 conducted inquest over the dead body of the deceased Tarani Naik in presence of the witnesses

and prepared the inquest report Ext.15 and examined the inquest witnesses. At spot no.1, P.W.41 came to know that the dead body of Biranchi Naik was lying under the Pokanda bridge and the dead body of Naba @ Ekalabya Naik was lying at Birumund Sahi Gothamundia jungle and accordingly, he reported the fact to his official superior over phone. P.W.41 left four seized articles out of seven of the 1st spot in the zima of P.W.9 by executing zimanama (Ext.16). He dispatched the dead body of Tarani Naik through Constable to the S.D.M.O., Athmallik with a prayer for post mortem examination along with the dead body challan (Ext.47).

P.W.41, the I.O. then left towards Pokanda bridge (2nd spot) along with his staff, relatives of the deceased and the informant and before arrival at the 2nd spot, he deputed P.W.26, a constable to guard the dead body of Biranchi Naik at the spot and also deputed P.W.33, another constable to guard the dead body of Naba @ Ekalabya Naik at Birimunda Sahi Gothamundia jungle. On arrival at the 2nd spot, P.W.9 identified the dead body of Biranchi Naik, which was lying under the bridge with throat cut injury and there P.W.41 held inquest over the dead body of Biranchi Naik and prepared the inquest report vide Ext.12 and examined the inquest witnesses.

P.W.41, the I.O. then proceeded to the 3rd spot, where he found the dead body of Naba @ Ekalabya Naik at Birimunda Sahi, Gothamundia jungle with cut injuries on his throat lying near the base of Patamasu tree, which was identified by P.W.9. Inquest was held over the dead body of the deceased Naba @ Ekalabya Naik and inquest report vide Ext.13 was prepared and inquest witnesses were examined. After instructing P.W.33, the constable attached to Kishorenagar police station to guard the dead body, P.W.41 left the 3rd spot and proceeded to the 2nd spot with the Scientific Officer. At the 2nd spot, he found a pool of blood at a distance of 2ft. east from the dead body of Biranchi Naik and two blood stained plastic rope were made joint with knot. At Pokanda bridge, P.W.41 found a big patch of blood mark and inside the blood patch, a metallic locket was lying and a dragging mark was extending from the blood patch towards the edge of the bridge towards north. P.W.41 found dragging mark over the grass and near to the blood patch over the bridge, water pouch with remnants of food along with 180 ml. Mc Dwell No.1 reserve whisky (empty) and use and throw tumblers were there with alcohol smell. P.W.41 also found one piece of blood-stained glove with red stripe lying on the pitch road and thereafter, prepared the spot map along with crime detail form in two sheets vide Ext.48. P.W.41 dispatched the dead body of the deceased Biranchi Naik along with dead body challan vide Ext.49. After dispatching the dead body of the deceased Biranchi, P.W.41 proceeded to the 3rd spot along with the Scientific Officer, which was located at a distance of 12 kms. from Thakurgarh P.S. and about 2 km away from the 2nd spot and prepared the 3rd spot map vide Ext.50 and dispatched the dead body of Naba @ Ekalabya Naik to S.D.M.O., Athmallik through P.W.33, the constable along with the inquest report, dead body challan vide Ext.51. At the 3rd spot, on 10.10.1997 on production by the Scientific Officer (P.W.40), the I.O. seized sample earth and blood-stained earth as per seizure list Ext.29 so also

some other articles as per seizure list Ext.30 in presence of witnesses. P.W.41 seized blood stained earth collected near the dead body of deceased Naba @ Ekalabya Naik on being produced by P.W.40 in presence of witnesses as per seizure list Ext.31. P.W.41 also seized two Mc Dowell's No.1 empty whisky bottles on being produced by P.W.40 as per seizure list marked as Ext.32 in presence of witnesses. P.W.41 also received the spot visit report (Ext.43) prepared by P.W.40 and also re-examined the informant (P.W.9) at the 3rd spot.

P.W.41, seized the wearing apparels of the deceased Tarani Naik on production by constable in presence of witnesses as per seizure lists vide Ext.9, Ext.33, Ext.34, Ext.35 and Ext.38, the wearing apparels of the deceased Biranchi Naik on production by constable in presence of the witnesses as per seizure lists vide Ext.10, Ext.36 and Ext.37, the wearing apparels of the deceased Naba @ Ekalabya Naik on production by constable in presence of witnesses as per seizure lists vide Exts.11, 39, 40 & 41.

P.W.41 apprehended the appellant Nandakishore Sethi from his village Gambharimaliha and then proceeded towards the house of appellant Prakash Behera at village Kalapatanali taking the aid of local police and on being identified by the appellant Nandakishore Sethi, the police apprehended the appellant Prakash Behera and searched for the incriminating articles and found nothing from his house. Thereafter, P.W.41 took both the appellants to the 3rd spot for identification and after reaching at the 3rd spot, both the appellants identified the spot where the deceased Naba @ Ekalabya Naik was lying dead. P.W.41 recorded the disclosure statement of the appellant Prakash Behera @ Babuli in presence of the witnesses and basing on such disclosure statement, P.W.41 seized the blood stained Katuri (M.O.6) and one gamuchha (M.O.7) inside the Birimunda-Gothamundia jungle as per seizure list Ext.19 and also seized his wearing apparels i.e. shirt (M.O.1) and jean pant (M.O.2) stained with blood digging the earth near the Brahamanpada project under a bamboo bush as per seizure list Ext.21. After making seizure of the recovered articles, P.W.41 kept the same in his personal custody with proper packing and seal and examined the seizure witnesses. Thereafter, on the disclosure statement being made by the appellant Nandakishore Sethi and on being led by him, P.W.41 proceeded to the 3rd place of recovery where in presence of the witnesses, the appellant gave recovery of one black colour full pant (M.O.23) stained with blood, which was seized as per seizure list Ext.1/2. P.W.41 seized one white colour half shirt (M.O.24) with red-blue-back thin strips of appellant Nandakishore Sethi and on red colour HERO HF Delux motor cycle bearing regd. No.OD-19-K-2022 from the house of the said appellant in presence of witnesses and prepared the seizure list vide Ext.4. Then P.W.41 came back to the police station along with both the appellants and the seized articles and kept it in his custody. He arrested both the appellants and sent them to Kishorenagar C.H.C. for collection of their nail clippings and medical examination. After examination of the appellants, their nail clippings were seized on being produced by the constable as per seizure list Ext.22. The appellants were

forwarded to the Court of learned S.D.J.M., Athmallik through escort party. On 02.11.2017, he received the post mortem examination report of the three deceased persons. After examination of 'Katuri' (M.O.6), the doctors (P.W.5, P.W.6 and P.W.12) submitted the query reports (Ext.6, Ext.8 and Ext.56/2) to P.W.41. On 25.11.2017, P.W.41 handed over the charge of investigation to his successor Prativa Majhi along with all the relevant documents and mal items. On 14.12.2017, Prativa Majhi forwarded the mal items to S.F.S.L., Rasulgarh, Bhubaneswar through S.D.J.M., Athmalik for chemical examination. During her investigation, the second I.O. examined the scribe of the F.I.R. and recorded his statement. She also made a prayer to the District Magistrate, Angul for grant of sanction under section 39 of the Arms Act for prosecution of the appellants under the Arms Act and received the sanction order vide Ext.58. The chemical examination report which includes DNA examination and biology and serology examination was directly received by the Court.

On completion of investigation, Prativa Majhi submitted charge sheet on 30.01.2018 under sections 302/449/363/364/394/201/34 of the I.P.C. and sections 25/27 of the Arms Act against both the appellants.

Framing of Charge:

4. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed the charges against the appellants as aforesaid and since the appellants refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

Prosecution Witnesses, Exhibits & Material Objects:

5. During the course of trial, in order to prove its case, the prosecution examined as many as 41 witnesses.

P.W.1 Jitendra Kumar Pradhan and P.W.2 Prasanta Kumar Pradhan have not supported the prosecution case as seizure witnesses, rather they stated that nothing was seized by police in their presence and as such they were declared hostile.

P.W.3 Babula Naik is a witness to the arrest of the appellants by the police as per two numbers of separate arrest memos vide Exts.2 and 3. He stated that the deceased Biranchi was his paternal brother and around one year back, Biranchi, his wife and son died but he did not know as to how they died.

P.W.4 Krushna Chandra Naik is a witness to the seizure of a motorcycle, one Katuri, pant and shirt of the appellant Nandakishore Sethi at police station as per seizure list Ext.4. He stated that he heard from his wife that Biranchi committed murder of his wife and one Abani Naik (P.W.18) requested him to talk with Biranchi and thereafter, he tried to talk with Biranchi by means of his mobile phone but Biranchi did not respond. He further stated that thereafter, he came to know that the

dead body of Biranchi was lying near village Pokanda and he proceeded to the house of Biranchi and saw that the dead body of the wife of Biranchi lying on Harada pada with cut injuries on her throat so also other parts of her body and thereafter, he heard that the dead body of the son of Biranchi was lying near village Pokanda. He further stated that he suspected that the appellant Nandakishore Sethi committed murder of Biranchi, his wife and son due to previous political rivalry.

P.W.5 Dr. Prajna Paramita Pradhan was working as Assistant Surgeon attached to S.D.H., Athmallik, who conducted post mortem examination over the dead body of deceased Naba @ Ekalabya Naik on police requisition on 11.10.2017 and proved her report as per Ext.5. He also examined the weapon of offence produced by I.O. and submitted the query report vide Ext.6.

P.W.6 Dr. Anil Kumar Dey was working as O & G Specialist attached to S.D.H., Athmallik, who conducted post mortem examination over the dead body of deceased Biranchi Naik on police requisition on 11.10.2017 and proved his report as per Ext.7. He also examined the weapon of offence produced by I.O. and submitted the query report vide Ext.8.

P.W.7 Bibhuti Bhusan Pradhan was working as a constable attached to Kishorenagar police station on the date of occurrence. He is a witness to the seizure of the wearing apparels of the deceased persons, namely, Tarani Naik, Biranchi Naik and Ekalabya Naik as per seizure lists Exts.9, 10 and 11 respectively.

P.W.8 Agasti Nayak is a witness to the inquest over the dead body of deceased Biranchi Naik and Naba @ Ekalabya Naik as per inquest reports marked as Ext.12 and Ext.13 respectively.

P.W.9 Susant Nayak is the younger brother of the deceased Biranchi Naik and informant. He is the informant in the case. He narrated the facts as the incident unfolded on the date of occurrence and supported the prosecution case. He is also a witness to the inquest over the dead body of the deceased Biranchi Naik, Naba @ Ekalabya Naik and Tarani Naik as per inquest reports marked as Ext.12, Ext.13 and Ext.15. He took zima of one iron almirah, two zinc boxes, one iron Alana, one plastic suitcase and the wearing ornaments of the deceased Tarani Naik and Ekalabya Naik from the I.O. as per zimanama marked as Ext.16 and Ext.17 respectively.

P.W.10 Dilip Sethy is a co-villager of the informant. He is a witness to the inquest over the dead body of the deceased Tarani Naik as per inquest report marked as Ext.15. He is also a witness to the seizure of one motorcycle and one half shirt as per seizure list marked as Ext.4.

P.W.11 Bipin Bihari Nayak is a witness before whom the appellant Prakash Behera made his confession which is marked as Ext.18. He is also a witness to the seizure of one Katuri and one blood stained gamucha as per seizure list Ext.19.

P.W.12 Dr. Debasis Bhanja was working as Medicine Specialist attached to S.D.H., Athmalik, who conducted autopsy over the dead body of the deceased Tarani Naik and prepared his report vide Ext.20. He also examined the weapon of offence produced by I.O. and submitted the query report vide Ext.56/2.

P.W.13 Chanda Nayak is a witness to the preparation of the inquest report conducted over the dead body of the deceased Tarani Naik. She stated to have known the appellant Nandakishore Sethi.

P.W.14 Atmaram Patra is a witness to the preparation of the inquest report vide Ext.15 conducted over the dead body of the deceased Tarani Naik and stated to have known both the appellants.

P.W.15 Israil Sahoo is the co-villager of both the appellants. He stated about the confession of the appellants regarding commission of crime. He is also a witness to the seizure of a blue colour jean pant with its sticker and a cement colour full shirt with blood stain as per seizure list marked as Ext.21.

P.W.16 Sanjeeb Kumar Sahoo is the co-villager of both the appellants. He stated that on the date of incident, while he was standing at Pokanda Chhak, he saw movement of police jeep towards Birimunda-Gothamunda Jungle and he followed the police jeep. He further stated that prior to his arrival, police jeep had already reached at the spot and the appellants were moving ahead of the police towards the cultivable land of one Bairagi Nayak. He further stated that appellant Prakash Behera gave recovery of one blood stained Katuri and one blood stained gamucha from a bush and gave it to the police.

P.W.17 Shanti Nayak was a member of Maa Maheswar SSG group. She stated that deceased Biranchi Naik took hand loan from them along with other six persons to purchase one Pick up van and the three deceased persons were murdered by appellant Ranja Sethy to take away the cash which the deceased Biranchi Naik had received to purchase a Pick up van.

P.W.18 Abani Nayak did not support the prosecution case, for which she was declared hostile by the prosecution.

P.W.19 Kumari Nayak stated that after arrival of the police, she moved to the spot and found the dead body of deceased Tarani Naik lying in front of the house with cutting of throat. She further stated that after arrival of police, both the appellants confessed their guilt that they had killed all the three deceased persons.

P.W.20 Sasmita Nayak stated in similar manner like P.W.19 to have moved to the spot and found the dead body of deceased Tarani Naik lying in front of the house with cutting of throat.

P.W.21 Santosh Majhi is a witness to the inquest report (Ext.15) conducted over the dead body of the deceased Tarani Naik.

P.W.22 Suramani Nayak is a witness to the inquest reports conducted over the dead body of the deceased Tarani Naik, Naba @ Ekalabaya Naik and Biranchi Naik as per Exts.15, 13 and 12 respectively.

P.W.23 Gobardhan Dehury and P.W.25 Amruti Pradhan were the constables attached to Kishorenagar police station and also witnesses to the seizure of two glass bottles in which nail clippings of both the appellants were kept as per seizure list Ext.22.

P.W.24 Maharga Nayak is a witness to the inquest reports conducted over the dead bodies of deceased Biranchi Naik and Naba @ Ekalabaya Naik as per inquest reports marked as Exts.12 and 13 respectively.

P.W.26 Rashmiranjan Bagh was the constable attached to Kishorenagar police station, who stated that the I.I.C. issued one command certificate to guard the dead bodies of the deceased Biranchi Naik and his son as per Ext.23. He further stated that after completion of post mortem of deceased Biranchi Naik, he handed over the wearing apparels of the deceased Biranchi Naik to P.W.41, who seized the same as per seizure list vide Ext.10. He also received the nail clippings of both the appellants from Kishorenagar hospital and handed over the same to P.W.41, which was seized as per seizure list Ext.22.

P.W.27 Abhimanyu Nayak is a co-villager of the deceased. He has not supported the prosecution case for which he declared hostile by the prosecution.

P.W.28 Soumitri Nayak is the wife of the informant and sister-in-law of the deceased Biranchi. She stated that the incident took place on 09.10.2017 night and on 10.10.2017 morning after hearing about the incident from two boys of his village about the death of deceased Tarani Naik (bada jaa) and that her dead body was lying inside a harada kiari, she moved to the spot and found blood stains near the side window and her sister-in-law was lying dead there. She further stated that after entering into the house, she saw that the godrej almirah, boxes were broken and in open condition and the deceased Biranchi and Ekalabya were not present in the house and she also heard that the deceased Biranchi and Ekalabya were killed somewhere inside the Thakurgarh locality. She further stated that prior to the incident, the deceased Biranchi had withdrawn cash of Rs.1.75 lakh from Maa Maheswari SHG group of village Gambharimalia to purchase a Pickup van for his business and the appellant Nandakishore Sethi was asking the deceased Biranchi whether he had withdrawn money from Maa Maheswari SHG group. She further stated that appellant Nandakishore Sethi might have killed all the three deceased for money.

P.W.29 Madan Mohan Nayak is a co-villager of the deceased Biranchi. He stated that on 10.10.2017 morning at about 9.00 a.m., while he was at Sanjamura, he got information regarding murder of Tarani Naik and after coming to his village, he came to the spot and found the dead body of Tarani Naik was lying in the harada taila of one Gandhara Sethi and when he entered into the house of deceased

Biranchi, he found blood on the floor near the window and also found damage of almirah, Alana, boxes and then he got information that the dead body of deceased Biranchi was lying under the bridge of village Pokonda and the dead body of deceased Ekalabya was lying at the side of Birimunda jungle of Birimunda sahi. He further stated that appellant Nandakishore Sethi told to him that he would see if his mother got defeated in the panchayat election. He further stated that the deceased Biranchi had taken loan of Rs.1,75,000/- from SHG group of village Gambharimalia to purchase of pick up van in order to increase his business and since there was monetary transaction, he suspected both the appellants for commission of murder of deceased.

P.W.30 Kumar Nayak is an independent witness stated to have known only the appellant Prakash Behera. He stated that the incident took place on 10.10.2017 and the murder was detected under Pokanda bridge and another at Birimunda Gothamundia jungle and that Biranchi Naik, his son along with his wife were murdered by both the appellants and the dead body of deceased Biranchi Naik was lying under the Pokanda bridge and his throat was cut and the son of deceased Biranchi Naik was lying dead at Birimunda Gothamundia jungle and his throat was also cut. He further stated to be a witness to the appellant Prakash Behera giving recovery of one blood stained Katuri (M.O.6) and one gamuchha (M.O.7) which were kept in hiding under a bamboo bush.

P.W.31 Achyuttananda Nayak stated to have got information on 10.10.2017 that a dead body was lying under the Pokanda bridge with throat cut injury and at Birimunda Gothamundia jungle under Katamasu tree, a boy aged about seven years was lying dead with throat cut injury and he also received information on 12.10.2017 that both the appellants had committed the murder.

P.W.32 Sanjaya Nayak stated that he along with Bairagi and Santan Nayak had been to grazing cattle and while they allowed their cattle to drink water at Birimunda, they found a child aged about five years had been killed by cutting his throat and was lying dead and was wearing one half pant and half shirt. He further stated that seeing the furious situation, he called P.W.31.

P.W.33 Saroj Kumar Nayak was the constable attached to Kishorenagar police station, who stated that P.W.41 issued a command certificate to guard the dead body of deceased Naba @ Ekalabya which was lying at Birimunda jungle vide Ext.24. He further stated that after issuance of command certificate, he proceeded to the spot and guarded the dead body of the deceased Naba @ Ekalabya at Birimunda forest and he took the dead body of the deceased to S.D.H., Athmallik for post mortem examination. He further stated that after the post mortem examination, the dead body of the deceased Naba @ Ekalabya was handed over to his paternal uncle and he took the wearing apparels of the deceased Naba @ Ekalabya along with Bala and suta and handed over the same to P.W.41, who seized the same as per seizure list vide Ext.11.

P.W.34 Samarendra Kumar Sethi was the Branch Manager, S.B.I., Dimirimunda Kishorenagar Branch, who stated that he had provided the bank account details of the deceased Biranchi Naik to the I.O. (P.W.41) with seal and signature of Branch Manager vide Ext.26 and on 09.10.2017, the deceased Biranchi Naik had deposited a cash of Rs.1,00,000/- in his account and the total balance of the said account was Rs.1,20,520/-.

P.W.35 Girish Chandra Nayak is a witness to the confessional statement of the appellants vide Ext.18. He is also a witness to the seizure of offensive weapon and the blood stained cloth as per seizure list vide Ext.19.

P.W.36 Subarna Pradhan was residing in the house of deceased Biranchi Naik and she stated to have noticed the dead body of Tarini Naik lying inside harada kiari with throat cut injury on 10.10.2017 morning. She stated that on 07.10.2017, the appellant Nandakishore Sethi came to the house of deceased Biranchi Naik and enquired from the deceased about the loan amount that he received from Arnapurna Group to which the deceased replied to have kept it with one of the members of Arnapurna Group. She further stated that on 09.10.2007, the appellant Nandakishore Sethi came to the house of deceased Biranchi Naik and asked deceased Tarini Naik about the deceased Biranchi purchasing motor cycle after receipt of money, but deceased Tarini Naik pleaded her ignorance about the same. She further stated about the political enmity between the appellant Nandakishore Sethi and deceased Biranchi Naik.

P.W.37 Girish Kumar Sahoo, who was the grocery shop owner at Thakurgarh, stated that both the appellants along with deceased Biranchi had come to the counter of foreign liquor shop which was near his grocery shop and purchased liquor and then they came to his shop to purchase water pouch, three use and throw glasses and mixture and consumed liquor and stayed at his shop for about 10 to 12 minutes. He further stated that the appellants were asking the deceased to go Kalapatanalai to see a melody as the melody was not good at Thakurgarh and then all the three persons moved in a red colour motor cycle. He further stated that on the next day, he had seen a video in his shop that deceased Biranchi had been murdered and after two days of the incident, he found the image of the two appellants, which he had seen in the viral video.

P.W.38 Parto Oram was the A.S.I. of Police attached to Kishorenagar police station, who is a witness to the seizure of seizure lists Ext.9, Ext.10, Ext.11, Ext.29, Ext.30, Ext.31 and Ext.32.

P.W.39 Bhabini Nayak is a hearsay witness, who heard about the murder of three deceased.

P.W.40 Prasanta Kumar Pradhan was the Scientific Officer attached to DFSL, Dhenkanal and he was the in-charge of Angul district at the time of incident and on the direction of the S.D.P.O., Athmallik, he proceeded to the three different spots and prepared the spot visit report vide Ext.43 and handed over the same to the

I.O. (P.W.41). He also produced the collected materials from three spots before P.W.41, who seized the same as per seizure lists vide Exts.29, 30, 31 and 32.

P.W.41 Premananda Lenka was posted as the Inspector-in-Charge of Kishorenagar police station and he is the Investigating Officer of the case, who investigated the case after registering the F.I.R. on 10.10.2017 and handed over the charge of investigation to his successor Prativa Majhi on 25.11.2017, who in turn submitted charge sheet.

The prosecution has proved 62 numbers of exhibits. Ext.1/2 is the seizure list of black colour full pant, Exts.2 & 3 are the arrest memos of both the appellants, Ext.4 is the seizure list of a motorcycle, one Katuri, pant and shirt of the appellant Ranja @ Nandakishore, Ext.5 is the post-mortem report of the deceased Naba @ Ekalabya Naik, Ext.6 is the query report of P.W.5, Ext.7 is the post-mortem report of the deceased Biranchi Naik, Ext.8 is the query report of P.W.6, Ext.9 is the seizure list of wearing apparels of the deceased Tarani Naik, Ext.10 is the seizure list of wearing apparels of the deceased Biranchi Naik, Ext.11 is the seizure list of wearing apparels of the deceased Naba @ Ekalabya Naik, Exts.12, 13 and 15 are the inquest reports of the deceased Biranchi Naik, Naba @ Ekalabya Naik and Tarani Naik respectively, Ext.14 is the F.I.R., Exts.16 & 17 are the zimanama, Ext.18 is the confessional statement of the appellant Prakash Behera, Ext.19 is the seizure list of chopper and one blood stained towel, Ext.20 is the post-mortem report of the deceased Tarani Naik, Ext.21 is the seizure list of a blue colour jean pant and a cement colour full shift with blood stain, Ext.22 is the seizure list of nail clipping of the appellants, Exts.23, 24 and 42 are the command certificates, Exts.25, 49 and 51 are the dead body challans, Ext.26 is the account details of deceased Biranchi, Exts.27 and 28 are the paper slips, Exts.29, 30, 31 and 32 are the seizure lists, Exts.33, 34, 35, 36, 37, 38, 39, 40 and 41 are the sticker on sealed packets, Exts.43 is the spot visit report, Exts.45, 48 and 50 are the spot maps, Ext.46 is the seizure list of seven numbers of house hold articles in broken condition, Ext.47 is the dead body challan of Tarani Naik, Ext.52 is the sticker on M.O.2, Ext.53 is the paper slip on M.O.1, Ext.54 is the paper slip on M.O.23, Ext.55 is the paper on M.O.24, Ext.56/2 is the query report of P.W.12, Ext.57 is the forwarding report of mal item, Ext.58 is the sanction order, Ext.59 is the S.F.S.L. report, Ext.60 is the portion of 161 statement of P.W.1, Ext.61 is the portion of 161 statement of P.W.2 and Ext.62 is the portion of 161 statement of P.W.18.

The prosecution also proved 24 material objects. M.O.1 is the blood stain shirt, M.O.2 is the jean pant, M.O.3 is the jean pant of deceased Biranchi Naik, M.O.4 is the chadi of deceased Biranchi Naik, M.O.5 is the ganji of deceased Biranchi Naik, M.O.6 is the Katuri, M.O.7 is the gamucha, M.O.8 is the half pant of deceased, M.O.9 is the half shirt of deceased, M.O.10 is the red colour suta, M.O.11 is the blood stained saree of deceased Tarani Naik, M.O.12 is the blood stained saya of deceased Tarani Naik, M.O.13 is the blood stained blouse of deceased Tarani Naik, M.O.14 is the gloves, M.O.15 is the paper envelope containing signature of

S.O., D.F.S.L., M.O.16 is the blood stained locket, M.O.17 is the plastic rope, M.O.18 is the plastic rope, M.O.19 is the paper envelope containing signature of P.W.40, M.O.20 is the paper envelope containing signature of P.W.40 (blood stained earth), M.O.21 is the paper envelope containing signature of P.W.40, M.O.22 is the sample earth, M.O.23 is the black colour pant of appellant Nandakishor Sethi and M.O.24 is the shirt of appellant Nandakishor Sethi.

Defence Plea:

6. The defence plea of the appellant Prakash Behera is that he has been falsely implicated by the Thakurgarh police after taking his signatures on some blank papers and the defence plea of the appellant Nandakishore Sethi is that he has been falsely implicated in this case without his involvement.

The appellant Nandakishore Sethi examined himself as D.W.1 and stated that he had never given recovery of any incriminating material to the police during the investigation and that the I.O. had never recorded his statement rather he had taken his signatures on blank papers.

Findings of the Trial Court:

7. The learned trial Court on the basis of the inquest reports Ext.12, 13 and 15, the evidence of the three doctors, i.e. P.W.5, P.W.6 & P.W.12, who conducted postmortem examination over the three dead bodies and postmortem reports findings vide Ext.5, Ext.7 & Ext.20 came to hold that the three deceased died homicidal death. Taking into account the last seen of the deceased in the company of the appellants, leading to discovery of the weapon and other incriminating articles at the instance of the appellants and the D.N.A. report findings coupled with the evidence of Scientific Officer, came to hold that there are following circumstances on record against the appellants:

(i) Motive of appellants to grab huge loan amount from deceased Biranchi Naik;

(ii) Preparation to call deceased Biranchi Naik for melody;

(iii) Purchase of liquor, water pouch and mixture for the commission of murder;

(iv) No explanation by the appellants for last seen with the deceased Biranchi Naik on 09.10.2017 (Monday at 9 p.m. to 9.30 p.m.);

(v) Taking deceased Biranchi Naik to Kalapatanali to see melody as the melody of Thakurgarh is not good;

(vi) Dead body of deceased Biranchi Naik found near the Pokanda bridge which comes on the way from grocery shop to kalapatanali;

(vii) Blood stains found on the katuri (M.O.6) is of human origin of deceased Naba @ Ekalabya Naik;

(viii) Blood stains found on cut piece of shirt of deceased Naba @ Ekalabaya Naik matched with blood stains found in the napkin of appellant Prakash Behera;

(ix) Blood stains found in cut piece of banian of deceased Biranchi Naik matched with blood stains found in cut piece of full pant of appellant Naba Kishore Sethi.

The learned trial Court discussed the evidence available on record with respect to the offence of house trespass and commission of robbery and came to hold that the prosecution has failed to establish the fact of house trespass and commission of robbery by the appellants in the house of the deceased Biranchi Naik. With respect to the charge of kidnapping and abduction, the learned trial Court held that so far as deceased Biranchi Naik is concerned, the fact of abduction could not be proved. However, so far as kidnapping of the deceased Naba @ Ekalabya Naik is concerned, from the circumstantial evidence, the prosecution has proved that he was kidnapped from the lawful custody of his parents and subsequently his murder was committed inside the jungle.

With regard to the charge under section 201 of I.P.C., the learned trial Court relying on the confessional statement of the appellants recorded under section 27 of the Evidence Act that after commission of crime, they took steps to hide the incriminating weapon i.e. 'katuri' and their blood stained clothes in order to destroy the prosecution evidence and also considering the circumstantial evidence, came to hold that the appellants had taken steps for disappearance of prosecution evidence in order to protect themselves from the criminal liabilities.

With regard to the charges under sections 25 and 27 of the Arms Act, the learned trial Court came to the conclusion that since the weapon of offence i.e. katuri (M.O.6) is neither coming under the definition of firearm and ammunition as defined under section 2(b) of the Arms act, no license is necessary for keeping a katuri and thereby, held that the prosecution failed to prove its case under sections 25 and 27 of the Arms Act.

Accordingly, the learned trial Court while holding the appellants not guilty under section 363/394/34 of I.P.C. and sections 25 & 27 of the Arms Act, found them guilty under section 302/364/201/34 of I.P.C.

On the question of sentence, the learned trial Court has held that since it is a case of triple murder which comes under the purview of rarest of rare case, death sentence is the only punishment, which would justify the magnitude of the offence committed by the appellants and accordingly awarded the sentences as aforesaid.

Submission of Parties:

8. Mr. Satya Ranjan Mulia, learned counsel appearing for the condemned prisoners/appellants in DSREF No.04 of 2024 and CRLA No.1166 of 2024 being assisted by Mr. Ramesh Chandra Maharana, Advocate and learned Amicus Curiae Mr. Pradip Kumar Panda contended that the case is based on circumstantial evidence and the main circumstances are the last seen of the deceased Biranchi Naik in the company of the two appellants in the night of occurrence as deposed to by P.W.37, D.N.A. test findings and leading to discovery of the weapon and other incriminating

articles at the instance of the appellants. He argued that the evidence of P.W.37 relating to the last seen should not be accepted as it is contrary to his previous statement made before the I.O. There was no prior acquaintance of P.W.37 either with the deceased Biranchi Naik or appellant no.2 Nandakishore Sethi and therefore, when no test identification parade has been conducted with respect to the appellant no.2, the first time identification of appellant no.2 in Court by P.W.37 after a long gap of almost six years is very difficult to be accepted. He further argued that the articles which were seized at the instance of the appellants were lying in open spaces, which were accessible to all and moreover, there is lack of evidence about its safe custody after those were seized till the same were produced after two months in Court and sent to the Forensic Science Laboratory through Court. It was further argued that the DNA test report was prepared by one Suchismita Behera, S.O. and A.C.E., but she has not been examined to prove the report and it was marked through the Investigating Officer (P.W.41) and therefore, the DNA test report findings should be taken out of consideration. It is further argued that the motive behind the commission of crime has also not been proved by the prosecution inasmuch as so far as the commission of robbery of cash of the deceased Biranchi Naik being one of the motives has been disbelieved by the learned trial Court and there is no clinching evidence relating to the second motive i.e. political hostility between the parties and since in a case of circumstantial evidence, the motive assumes pertinent significance, it cannot be said that the chain of circumstances is so complete that it unerringly points towards the guilt of the appellants. It is further argued that the investigation has been conducted in a perfunctory manner and there are omissions and lapses on the part of the investigating agency and therefore, it is a fit case where benefit of doubt should be given in favour of the appellants. He further argued that in respect of the deceased Tarini Naik and Naba @ Ekalabya Naik, except the DNA test report findings which relates to genetic profile generated from cut piece from the shirt of deceased Naba @ Ekalabya Naik matching with genetic profile generated from napkin of appellant Prakash Behera, there is no other evidence and therefore, the learned trial Court erred in holding the appellants guilty for commission of murder of the three deceased persons and awarding death sentence to them that too without following the due procedure as laid down by the Hon'ble Supreme Court in calling for the reports from the different authorities and giving opportunity to the appellants to produce the mitigating circumstances before awarding the death sentence. He placed reliance in the cases of **Nandu Singh -Vrs.- State of Madhya Pradesh (Now Chhattisgarh) reported in (2022) 19 Supreme Court Cases 301**, **Shankar -Vrs.- State of Maharashtra reported in (2023) 19 Supreme Court Cases 553**, **Subash Aggarwal -Vrs.- State of NCT of Delhi reported in 2025 SCC OnLine SC 808**, **Karandeep Sharma alias Razia alias Raju -Vrs.- State of Uttarakhand reported in 2025 SCC OnLine 773**, **Rahul -Vrs.- State of Delhi and another reported in (2023) 1 Supreme Court Cases 83**, **Allarakha Habib Memon and others -Vrs.- State of Gujarat reported in (2024)**

9 Supreme Court Cases 546 and **Sinic Patricia -Vrs.- State of Orissa reported in (1994) 7 Orissa Criminal Reports 277**.

9. Mr. Debashis Tripathy, learned Addl. Government Advocate, on the other hand, supported the impugned judgment and argued that the last seen evidence as adduced by P.W.37 has not been shaken in the cross-examination and no explanation has been given by the appellants in their accused statements as to how the deceased Biranchi died a homicidal death when he was last seen alive in their company. He further argued that in view of the political hostility, the motive part has also been proved satisfactorily. The learned counsel further argued that the DNA test report has been marked on admission and it has been proved through the I.O. (P.W.41) and specific questions relating to the findings of the DNA test report have been put to the appellants in their accused statements but they have not satisfactorily explained the same and as such the learned trial Court is quite justified in relying upon the same. It was further argued that on the basis of the disclosure statement made by the appellants, the incriminating articles including the weapon were seized and it was kept in safe custody by the I.O., which has not challenged by the defence and therefore, the learned trial Court has rightly relied upon the leading to discovery evidence. He further argued that deficiencies in investigation on the part of the investigating officer cannot be a ground for total rejection of the prosecution case. He vehemently argued that if the circumstances are taken together, it clearly establish the charges under which the appellants were found guilty and since it is a case of triple murder of one family which includes a minor child aged about seven years, therefore, the learned trial Court is quite justified in holding that it is a rarest of rare case and awarding death sentence for the heinous and gruesome murders after hearing the appellants on the question of sentence and therefore, it is not a fit case to interfere with the impugned judgment and accordingly, the death reference should be answered in affirmative and the criminal appeal should be dismissed. He placed reliance in the case of **Sheo Shankar Singh -Vrs.- State of Jharkhand reported in (2011) 49 Orissa Criminal Reports (SC) 485**.

Whether the prosecution has proved the homicidal death of three deceased?:

10. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine the evidence on record as to how far the prosecution has proved that the three deceased Biranchi Naik, Tarani Naik and Naba @ Ekalabya Naik met with homicidal death.

Apart from the inquest reports of the three deceased persons proved by the I.O. (P.W.41) vide Ext.12 relating to deceased Biranchi Naik, Ext.15 relating to deceased Tarani Naik, and Ext.13 relating to deceased Naba @ Ekalabya Naik, the evidence of the three doctors, who conducted postmortem examination over the cadaver of the three deceased are very much relevant for this purpose.

P.W.6 Dr. Anil Kumar Roy conducted autopsy over the dead body of deceased Biranchi Naik in S.D.H., Athmallik on 11.10.2017 and noticed the following external injuries & internal injuries:

(i) Deep Throat cut injury over front of the neck including cot of esophagus, bronchus, vital vessels i.e. arteries and veins, neck muscle steroid muscle;

(ii) Four chop cut injuries back of the neck of size 6cm x 4cm x 3cm, 6cm x 4cm x 3cm, 5cm x 4cm x 3cm and 5cm x 3cm x 3cm respectively.

On dissection, he found abdomen filled with gas and all internal organs were intact and congested. He opined that the death was due to deep sharp cut injury of throat, the death was homicidal and ante mortem in nature, the injuries were caused by sharp and hard object and the time since death from the time of postmortem examination was within 24 hours to 36 hours. The postmortem report has been marked as Ext.7.

No question has been put by the learned defense counsel to P.W.6 relating to the findings in Ext.7 and as such the findings have remained unchallenged.

P.W.12 Dr. Debasis Bhanja conducted autopsy over the dead body of deceased Tarani Naik in S.D.H., Athmallik on 11.10.2017 and noticed the following external injuries and internal injuries:

External Injuries:

i. Incised cut injury of size 9cm x 5cm x 2cm over front part of neck extending from right to left;

ii. Incised wound behind right ring finger of size 3cm x 2cm x 1cm;

iii. Incised wound of size 2cm x 1cm x 0.5cm over backside of left index finger;

iv. Incised wound of size 7cm x 5cm x 2cm over right thigh.

Internal Injuries:

(i) Cut of esophagus, bronchus, neck vessel, neck muscle, sterncleit muscle;

(ii) Maggot present in cut injury of throat;

(iii) Abdomen filled with gas;

(iv) All internal organs are intact and congested.

All the injuries were opined to be ante mortem in nature. The death was caused due to deep sharp cut injury of throat. The nature of death was homicidal. The time since death was within 24 to 36 hours. He opined that the injuries were sufficient to cause the death of a human being. The postmortem report has been marked as Ext.20.

No question has been put by the learned defense counsel to P.W.12 relating to the findings in Ext.20 and as such the findings have remained unchallenged.

P.W.5 Dr. Prajna Paramita Pradhan conducted autopsy over the dead body of deceased Naba @ Ekalabya Naik in S.D.H., Athmallik on 11.10.2017 and noticed the following external injuries and internal injuries:

(i) A deep throat cut injury in front of the neck, from right to left ear was present, which measures 10cm x 7cm x 7cm;

(ii) The esophagus, bronchus and all vital arteries and veins were cut;

(iii) Abdomen is filled with gas;

(iv) All internal organs were intact and congested;

(v) Maggots were found on the injuries on throat and nostrils.

She opined that the cause of death was due to deep sharp cut injury of throat and that the death was homicidal in nature and the injury was ante mortem in nature. The injury on neck might have caused by sharp and hard object. The time since death to the time of examination was approximately 24 hours to 36 hours. The postmortem report has been marked as Ext.5.

No questions have been put by the learned defense counsel to P.W.5 relating to the findings in Ext.5 and as such the findings have remained unchallenged.

Thus, from the inquest reports, postmortem reports and the evidence of the doctors coupled with the other evidence on record, it has been proved that all the three deceased met with homicidal death which is also not disputed by the learned counsel for the appellants. As such, the prosecution has proved the homicidal death of all the three deceased.

Principle for appreciating the case based on circumstantial evidence:

11. There is no dispute that there is no direct evidence as to who committed the murder of the three deceased persons and how. The prosecution case hinges on circumstantial evidence. It is well established rule of criminal justice that fouler the crime, the higher should be the degree of proof. A moral opinion howsoever strong or genuine cannot be a substitute for legal proof. When a case is based on circumstantial evidence, a very careful, cautious and meticulous scrutinization of the evidence is necessary.

In the case of **Sharad Birdhichand Sarada -Vrs.- State of Maharashtra reported in A.I.R. 1984 SC 1622,** it is held that the circumstances from which the conclusion of guilt is to be drawn against an accused should be fully established. The facts so established should be consistent with the hypothesis of the guilt of the accused and they should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show in all human probabilities that the act must have been done by the accused. These five golden principles for appreciation of a case based on circumstantial evidence have

been named as 'Panchsheel'. In the case of **Gambhir -Vrs.- State of Maharashtra reported in A.I.R. 1982 S.C. 1157**, the Hon'ble Supreme Court held that the circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. In the case of **Jaharlal Das -Vrs- State of Odisha reported in (1991) 4 Orissa Criminal Reports (SC) 278**, the Hon'ble Supreme Court held that it is to be borne in mind as a caution that in cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of proof and such suspicion howsoever strong cannot be allowed to take the place of proof. The Court has to watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

In the light of legal principle about the circumstantial evidence, it is to be examined as to whether the circumstantial evidence in the instant case satisfies the requirement of law. Out of the circumstances enumerated by the learned trial Court, we will first discuss about the motive on the part of the appellants to commit the crime.

Motive:

12. The prosecution has adduced two motives on the part of the appellants to commit the murder of the deceased Biranchi Naik. The first motive is that the deceased had availed huge loan amount from the Arnapurna Group and for committing robbery of such amount, the crime was committed. The second one is that there was political hostility between the parties.

The learned trial Court has disbelieved the charge of robbery against the appellants which is not challenged by the State.

The learned counsel for the State Mr. Tripathy fairly submitted that so far as the first motive is concerned, there is no clinching evidence on record.

Coming to the political hostility between the parties, P.W.36 has stated that during the Panchyat election of the year 2017, the mother of appellant Nandakishore Sethi was contesting for the post of Sarpanch and wife of Dillip (P.W.10) was also contesting for the said post. During the election campaigning, the deceased Biranchi was supporting wife of P.W.10, who won the election and mother of Nandakishore Sethi got defeated. He further stated that for the said political reason, there was enmity between the appellant Nandakishore Sethi and deceased Biranchi Naik.

P.W.10 is totally silent that his wife was contesting the election against the mother of appellant Nandakishore Sethi for the post of Sarpanch and won the election. On the other hand, P.W.9, the younger brother of deceased has stated that the mother of appellant Nandakishore Sethi was contesting for the post of Ward Member and the wife of P.W.10 was also contesting for the said post and the mother

of the appellant got defeated for which the appellant had enmity with his deceased brother. Thus, there are discrepancies in the evidence of witnesses as to for which post, the mother of the appellant Nandakishore Sethi was contesting the election, whether it was for the post of Sarpanch as stated by P.W.36 or for the post of Ward Member as stated by P.W.9. Wife of P.W.10 has not been examined by the prosecution to clarify on this aspect.

In a case of circumstantial evidence, motive has an important role to play. It is an important link in the chain of circumstances. **(Ref: Indrajit Das -Vrs.- State of Tripura : (2023) 18 Supreme Court Cases 506).** In a case based on circumstantial evidence, motive assumes great significance inasmuch as its existence is an enlightening factor in a process of presumptive reasoning. **(Ref: Sukhram -Vrs.- State of Maharashtra : (2007) 7 Supreme Court Cases 502).** Motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused. **(Ref: Ramchand -Vrs.- State of U.P. : (2023) 16 Supreme Court Cases 510).** In the case of **Shankar** (supra), it is held that just like complete absence of motive, failure to establish motive after attributing one, should also give a different complexion in a case based on circumstantial evidence and it will certainly enfeeble the case of prosecution. In the case of **Subash Aggarwal** (supra), it is held that motive remains hidden in the inner recesses of the mind of the perpetrator, which cannot, oftener than ever, be ferreted out by the investigation agency. Though in a case of circumstantial evidence, the complete absence of motive would weigh in favour of the accused, it cannot be declared as a general proposition of universal application that, in the absence of motive, the entire inculpatory circumstances should be ignored and the accused acquitted. In the case of **Nandu Singh** (supra), it is held that in a case based on circumstantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence, the case of prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.

In view of the foregoing discussions, we are of the view that the prosecution has failed to establish any of the two motive on the part of the appellants to commit the crime by adducing clinching evidence and therefore, we have to scrutinize the materials available on record carefully to see as to how far the prosecution has satisfactorily proved the other incriminating circumstances and whether the chain of circumstances is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellants and it is consistent with

the only conclusion of guilt of the appellants. The chain of circumstantial evidence is essentially meant to enable the Court in drawing an inference and thus the task of fixing criminal liability upon a person on the strength of an inference must be approached with abandoned caution.

Last seen evidence:

13. The learned trial Court while jotting down the circumstances available on record against the appellants has mentioned about the preparation on the part of the appellants to call the deceased Biranchi for melody, purchase of liquor, water pouch and mixture for the commission of murder, non-explanation by the appellants for last seen with the deceased Biranchi on 09.10.2017 (Monday) at 09.00 p.m. to 09.30 p.m., taking of the deceased Biranchi to Kalapatanali to see the melody as melody of Thakurgarh was not good and that the dead body of Biranchi was found near Pokanda bridge which comes on the way from grocery shop of P.W.37 to Kalapatanali. All these circumstances can be discussed under one heading i.e. 'last seen evidence'.

It is the prosecution case that the deceased Biranchi Naik was last seen alive in the company of both the appellants. In order to prove this circumstance, the prosecution has examined P.W.37 Girish Kumar Sahoo. P.W.37 is a resident of village Thakurgarh and he has stated that he was running a grocery shop at Thakurgarh near a foreign liquor shop and that on 09.10.2017 (Monday) at about 9.00 p.m. to 9.30 p.m., the appellants along with the deceased Biranchi came to the counter of foreign liquor shop, purchased liquor and then came to his shop to purchase water pouch, three use and throw glasses and mixture. He further stated that they consumed liquor in front of him and stayed in his shop for 10 to 12 minutes and at that time they were asking the deceased to go to Kalapatanalai to see melody party as the melody in village Thakurgarh was not good and then they moved together in a red color motor cycle. He further stated that on the next day, there was a viral news through mobile phone that the deceased Biranchi had been murdered and after two days of the occurrence, he could find the image of the appellants whose news was viral through the mobile phone and as such he could identify the appellants along with the deceased from the viral video. He stated that Pokanda bridge comes on the way to Kalapatanalai.

In the cross-examination, P.W.37 has stated that he had got no prior acquaintance with the appellant Nandakishore Sethi so also with the deceased Biranchi. He knew the appellant Prakash Behera prior to the occurrence as he had a furniture shop at Thakurgarh market.

Though, according to this witness (P.W.37), he came to know about the murder of the deceased Biranchi Naik through viral news on the next day so also saw the image of the appellants in viral news two days after the occurrence, but he did not came forward to give his statement before police immediately and his statement under section 161 Cr.P.C. was recorded by the I.O. only on 17.11.2017,

which was more than a month after the occurrence. He has not stated to have disclosed before anyone to have seen the appellants in the company of the deceased in his grocery shop in the night on 09.10.2017.

P.W.41, the I.O. has stated he examined P.W.37 on 17.11.2017 and further stated that as the shop of P.W.37 was found closed during his repeated visit in connection with investigation, he examined P.W.37 lately. It is not clarified by the prosecution as to how the I.O. could know that P.W.37 had any knowledge about the occurrence. The explanation of delayed examination given by the I.O. is very difficult to be accepted as P.W.37 himself has not stated that his grocery shop was closed after 09.10.2017 rather he stated that he saw the viral video sitting at his shop two days of the incident.

Neither the owner nor the salesman of the liquor shop has been examined to corroborate the evidence of P.W.37 that the appellants had come on 09.10.2017 with the deceased Biranchi to purchase liquor. If liquor was consumed in front of P.W.37 after purchasing water pouch, three use and throw glasses and mixture from the shop of P.W.37 staying there for 10 to 12 minutes, then how I.O. and Scientific Officer as per the spot visit report (Ext.43) could found the liquor bottle and use and throw tumblers with alcohol smell at Pokanda bridge, where the dead body of Biranchi Naik was found. P.W.37 has not stated that after consuming some liquor from the liquor bottle in front of his shop, the appellants carried the balance liquor left in the liquor bottle with them so also the use and throw glasses. The finding of liquor bottle and use and throw tumblers at Pokanda bridge falsifies the statement of P.W.37 that after purchasing water pouch, three use and throw glasses and mixture from his grocery shop, the appellants and the deceased consumed the same staying there for about 10 to 12 minutes.

If the appellants and the deceased had not stayed for such time as deposed to by P.W.37 for consuming liquor then he could not have got much time to remember their faces. There is nothing on record about the nature of lighting arrangement in the shop of P.W.37. Appellant Nandakishore Sethi was an unknown person to P.W.37 and there is nothing on record that there were some special features in the appellant which could facilitate P.W.37 to remember his identity. Since no test identification parade in respect of appellant Nandakishore Sethi has been conducted, it is very difficult to accept his identification evidence in Court for the first time as P.W.37 was examined in Court on 08.12.2023, which was more than 6 years after the occurrence.

In the case of **Sheo Shankar Singh** (supra), it is held that identification of the accused in the Court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a test identification parade then provides corroboration to the witness in the Court who claims to identify the accused persons otherwise unknown to him. Test

Identification parades, therefore, remain in the realm of investigation. The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification, is a matter which the Court will determine in the peculiar facts and circumstances of each case. In appropriate cases, the Court may accept the evidence of identification in the Court even without insisting on corroboration.

In the case of **Allarakha Habib Memon** (supra), it is held as follows:-

> "22. Demistalkumar (P.W.12) was also made to identify the accused persons in the dock, but that is another story which we shall consider at a later stage. The witness identified the appellant-accused as the offenders. However, we find that the lame attempt by P.W.12 to make dock identification of the accused in his deposition recorded after nearly two-and-a-half years of the incident is absolutely flimsy and unacceptable. The witness had not given out either the names or the description of the features of the accused in his police statement and thus, if at all, the prosecution was desirous of getting the accused identified at the hands of this witness, then he should have been made to identify the accused persons in a test identification parade during the investigation. Thus, the identification of the accused by Demistalkumar (P.W.12) for the first time in the dock is totally unbelievable and unacceptable."

The viral news through which P.W.37 could come to know about the identity of the appellants and the deceased has not been proved in the case. The deceased Biranchi was also unknown to P.W.37 beforehand. At least the I.O. could have confirmed the identity of the deceased showing his photograph to P.W.37 which has not been done.

If the appellants were there in the company of the deceased on 09.10.2017 and taking him in a motor cycle in the night hours to kill him, it is difficult to accept that they would have exposed the deceased to P.W.37 in his grocery shop rather any of the appellants could have gone to the foreign liquor shop so also to the shop of P.W.37 leaving the other appellant in the company of the deceased at a little distance.

In view of the suspicious features appearing in the evidence of P.W.37, it is difficult to accept his sole testimony to apply 'last seen theory' in this case against the appellants. Once we are not accepting the evidence of P.W.37, the submission of the learned State Counsel that no explanation has been offered by the appellants in their accused statements as to how the deceased Biranchi Naik died a homicidal death after being last seen alive in their company, though seems attractive but does not hold good in fact and circumstance of the present case.

Seizure of Black Colour Full Pant (M.O.23) at the instance of appellant Nandakishore Sethi:

14. The relevant witnesses to the seizure of black colour full pant (M.O.23) at the instance of the appellant Nandakishore Sethi are P.Ws.1 and 2 and the I.O. (P.W.41) and the relevant seizure list is Ext.1/2. The said seizure is stated to have been made on 12.10.2017 from a bush on the road side of Thakurgarh Pathargumpa road near village Pathargumpa.

P.W.1 has not supported the prosecution case of seizure of black colour full pant rather he has specifically stated that nothing was seized by police in the case in his presence. He has simply proved his signature in the seizure list. He has been declared hostile by the prosecution. In the cross-examination, he has stated that the police took his signature on an unwritten paper.

P.W.2 has also not supported the prosecution case and stated that nothing was seized by police in the case in his presence and he has only proved his signature in the seizure list. Like P.W.1, he has stated that the police took his signature on an unwritten paper.

P.W.41, the I.O. has stated that in presence of P.Ws.1 and 2, the appellant Nandakishore Sethi gave recovery of one black color full pant stained with blood on which a sticker written thereon as 'ONLY' on the backside of pant and above the back pocket was there. He has proved the seizure list as Ext.1/2 so also the black colour full pant as M.O.23 and the paper slip affixed on the packet as Ext.54.

The appellant Nandakishore Sethi has disputed the seizure of such black colour full pant at his instance in his accused statement.

Though in the seizure list dated 12.10.2017 vide Ext.1/2, it is mentioned that the place of seizure was from a bush on the road side of Thakurgarh-Patharagumpa road near village Patharagumpa, however P.W.41, the I.O. has not stated that the seizure was made from inside the bush. Similarly, in the seizure list vide Ext.1/2, nowhere it is mentioned that after the seizure, the black color full pant was kept in sealed condition. The seal impression has not been affixed to the seizure list.

The black colour full pant (M.O.23) was produced in Court on 14.12.2017 (after two months of its seizure) for sending the same to the S.F.S.L., Rasulgarh, Bhubaneswar. In the forwarding report vide Ext.57, in serial no.29, though this pant is found mentioned, but it is not written therein that it was in sealed condition.

There is no evidence that after the seizure of black colour full pant (M.O.23), it was kept in safe custody till it was produced in Court. In the case of **Sinic Patricia (supra)**, it is held as follows:-

> "The claim made by the prosecution that the seized articles were kept in safe custody in the police station till they were produced before the Magistrate is too tall a claim to be accepted. Besides the aforesaid fatal lacuna in the prosecution, there is no evidence to guarantee that the seals on the packets in question were properly

made remained intact right from the date of sealing of the packets till they were opened before the Magistrate near about two months after the seizure. As already noted, no evidence is forthcoming to hold that the packets were properly sealed. In absence of evidence of retaining the specimen seal with any reliable person, the apprehension that there was chance of tampering with the packets cannot be lightly brushed aside. The specimen seal was not produced before the Magistrate when packets were opened to bring out samples for the purpose of sending the same to the Chemical Examiner of State Forensic Science Laboratory. It is for the prosecution to establish and cover the entire path by adducing cogent, reliable and unimpeachable evidence that the seized articles were properly sealed and there was no chance of tampering with the packets during the retention of those packets at the police station and the seized articles were the very articles produced before the Magistrate for sending them to the Chemical Examiner. The prosecution has failed to discharge this burden."

In the case of **Allarakha Habib Memon** (supra), it is held as follows:-

"45. On a threadbare analysis of the entire record, we do not find that the prosecution examined any witness who had deposed about the link evidence/safe custody of the muddamal articles right from the time they were received at the police station and seized till the time the same reached the FSL. Hence, otherwise also, the FSL report (Exts. 111-115) pales into insignificance."

In the case of **Karandeep Sharma @ Razia @ Raju** (supra), it is held as follows:-

"55. Evidently, there is not even a semblance of evidence on record to satisfy the Court that the samples/articles collected from the dead body of the child-victim and those collected from the appellant which were later forwarded to the FSL were properly sealed or that the same remained in a self-same condition right from the time of the seizure till they reached the FSL. No witness from the FSL was examined by the prosecution to prove that the samples/articles were received in a sealed condition. Hence, there is every possibility of the samples being tampered/manipulated by the police officers so as to achieve a favourable result from the FSL, thereby, inculpating the appellant in the crime."

P.W.41, the I.O. has stated that after the seizure, he came back to the police station along with the accused persons and the seized articles and then kept it in his custody. The Malkhana Register has not been proved to show that P.W.41 kept the articles seized in the Malkhana. P.W.41 stated to have handed over the charge of investigation on 25.11.2017 to his successor, namely, Prativa Majhi but he has not stated that the seized articles were handed over in sealed condition to Prativa Majhi. Prativa Majhi, the subsequent I.O. has also not been examined to prove the safe custody of the articles seized.

Therefore, the safe custody of the black colour full pant (M.O.23) after its seizure on 12.10.2017 till it was produced in Court on 14.12.2017 and reached the S.F.S.L. is a doubtful feature. Even though small patch of human blood was found on M.O.23 as per Biology Division report dated 15.02.2018, but in view of glaring

loopholes in the prosecution case that M.O.23 remained untampered, no importance can be attached to such seizure.

Seizure of White Colour Half Shirt with Stripes (M.O.24) and Hero HF Deluxe Motorcycle at the instance of appellant Nandakishore Sethi:

15. It is the prosecution case that from the house of the appellant Nandakishore Sethi in village Gambharimaliha, on his production, one white colour half shirt with red, blue and black thin stripes (M.O.24) along with Hero HF Deluxe motorcycle were seized on 12.10.2017 by the I.O. (P.W.41) as per seizure list Ext.4. The relevant witnesses on the seizure are P.W.4, P.W.10 and the I.O. (P.W.41).

P.W.4 has stated that two days after the occurrence, police seized a motorcycle, one Katuri, pant and shirt of appellant Nandakishore Sethi at the police station in his presence and also in presence of P.W.10 and prepared the seizure list Ext.4. However, in the cross-examination, he stated that he did not know as to from which place, police brought the motorcycle, Katuri, pant and shirt. He further stated that the police showed the same at the police station and prepared the seizure list in their presence. He further stated that he did not know the contents of the seizure list and its contents were not read over and explained to him by police.

P.W.10 stated that police seized one motorcycle and one half shirt in his presence as per seizure list Ext.4. However, in the cross-examination, he has stated that he signed the seizure list at Kishorenagar police station and that he could not say from where the police got the shirt and motorcycle.

Thus, the evidence of these two independent seizure witnesses i.e. P.W.4 and P.W.10 is completely silent that the Hero HF Deluxe motorcycle and white half shirt were seized at the instance of the appellant Nandakishore Sethi from his house. These two witnesses have also not stated that after the seizure of the half shirt, it was kept in sealed condition.

P.W.41, the I.O. has stated that on 12.10.2017, he seized one white colour half shirt with red-blue-black thin stripes of the appellant Nandakishore Sethi on which 'LIVERPOOL' had been stitched on the collar and one red colour HERO HF Deluxe motorcycle bearing registration no.OD-19-K-2022 was seized from the house of the appellant in presence of witnesses P.W.4 and P.W.10 and he prepared the seizure list Ext.4. He proved the shirt as M.O.24 and the paper slip affixed on packing as Ext.55.

The seizure list Ext.4 does not indicate that M.O.24 was kept in a sealed condition and specimen seal impression is not given in it.

Apart from the fact that there is no clinching evidence as to where the white color half shirt (M.O.24) was kept after its seizure till it was produced before the Court for sending the same for Chemical Examination but also the forwarding report Ext.57 does not indicate that it was produced in a sealed condition. Moreover, as per the report of Biology Division, no blood was found on the white color half shirt.

Thus, the seizure of the shirt under seizure list Ext.4 is no way helpful to the prosecution case. Similarly, there is no evidence that the HERO HF Deluxe motorcycle bearing registration no.OD-19-K-2022 was used in connection with the crime. P.W.37 has stated that he could not say the registration number of the motorcycle.

Thus, the seizure of white colour half shirt and motorcycle under seizure list Ext.4 cannot be used as incriminating evidence against the appellant Nandakishore Sethi. The learned trial Court erred in utilizing the seizure of M.O.24 as an incriminating evidence against the appellant.

Seizure of Katuri (M.O.6) and Gamucha (M.O.7) at the instance of appellant Prakash Behera:

16. The relevant witnesses on the seizure of Katuri (M.O.6) and Gamucha (M.O.7) at the instance of appellant Prakash Behera are P.W.11, P.W.35 and the I.O. (P.W.41) and the relevant seizure list is Ext.19. The said seizure is stated to have been made on 12.10.2017 from the cultivable land of Bairagi Nayak of village Pokanda.

P.W.11 has stated that on 12.10.2017, the appellant Prakash Behera not only confessed his guilt but also stated to have concealed a chopper and blood stained towel near a bush and then he along with appellant Nandakishore Sethi led them to the place of concealment i.e. land of Bairagi Nayak at village Pokonda and those were seized on production of the appellants as per seizure list Ext.19. In the cross-examination, he has stated that only appellant Prakash Behera brought out the chopper and towel from the bushes and handed over the same to the police. He has not stated about the sealing of either gamucha or Katuri after its seizure. He was not shown the seized gamucha or Katuri by the prosecution for identification in Court.

P.W.35 has stated that the confessional statement of appellant Prakash Behera was recorded vide Ext.18 and then he led the police along with witnesses to the place of hiding and gave recovery of blood stained gamucha along with Katuri from bamboo clump of Bairagi Nayak. He has further stated that in M.O.6, he has put his signature on a paper sticker affixed by police along with the signature of P.W.11 and appellant Prakash Behera. Similarly, he has further stated that M.O.7 is the blood stained gamucha in which a paper slip was affixed and he signed the same and P.W.11 also put his signature. In the cross-examination, he has stated that the place of recovery is situated at a distance of 25 feet from the public road which runs from Pokonda to Mindol and the road nearing the place of recovery is used by the public.

P.W.41, the I.O. has stated that the statement of appellant Prakash Behera was recorded under section 27 of the Evidence Act and he proved the statement as Ext.18. He further stated that the appellant led the police to the cultivable land of Bairagi Nayak and from inside bamboo bush, the appellant produced Katuri (M.O.6) and gamucha (M.O.7) which were seized by him as per seizure list Ext.19 in

presence of witnesses P.W.11 and P.W.35. He further stated to have affixed the paper slip on both the articles seized and those were separately packed, sealed and then kept in his personal custody.

In Ext.19 which is a printed form of property seizure memo, below column no.13, a space is provided for giving the specimen of seal, but no specimen seal impression is there.

The Katuri (M.O.6) was produced before the three doctors i.e. P.W.5, P.W.6 & P.W.12 who conducted post mortem examination over the dead bodies of three deceased to obtain their opinion relating to possibility of the injuries sustained by the deceased persons with such weapon.

P.W.5 has stated that the weapon of offence was produced before her without seal and in open condition. However, she stated that the weapon of offence was returned by her with proper seal. She admits that the specimen seal mark was not affixed on her report and that she did not remember if the weapon of offence was sealed with paper or by means of brass seal. P.W.6 has stated that he could not say whether the weapon which was produced before him by the police for query was sealed or open. P.W.12 however stated that the I.O. produced M.O.6 in a sealed cover and he submitted the query report. From the evidence of the I.O. (P.W.41), it appears that the weapon (M.O.6) was produced before P.W.12 first and then before P.W.6 and lastly before P.W.5.

As already stated, though the evidence of the I.O. (P.W.41) is that after the seizure, the Katuri (M.O.6) was separately packed and sealed and then kept in his personal custody, but when it was produced before the doctors one after another to obtain the query reports, the seal must have been opened. If according to P.W.5, who lastly examined the weapon of offence (M.O.6), it was returned by her with proper seal, then the forwarding report of the weapon vide Ext.57 would have reflected the sealed condition of M.O.6, but it has not been reflected as such. Similarly, the napkin has not been shown to be in sealed condition in Ext.57. No doubt the report of the biology division indicates that the Katuri was stained with human blood and napkin (gamucha) of the accused was also stained with human blood, but no grouping could be made. However, when the safe custody of both these items i.e. Katuri (M.O.6) and Gamucha (M.O.7) before its production in Court for being sent for chemical examination, is a doubtful feature as the malkhana register has not been proved, specimen seal impression is not given in the seizure list and specimen seal was not produced before the Court at the time of production of seized articles for verification before sending it to S.F.S.L., it is very difficult to give any importance to the seizure of Katuri (M.O.6) and Gamucha (M.O.7) as per seizure list Ext.19.

Seizure of Full Shirt (M.O.1) and Jean Pant (M.O.2) at the instance of appellant Prakash Behera:

17. The relevant witnesses on the seizure of full shirt (M.O.1) and jean pant (M.O.2) at the instance of the appellant Prakash Behera are P.W.15 and the I.O.

(P.W.41) and the relevant seizure list is Ext.21. The said seizure is stated to have been made on 12.10.2017 from near bamboo bush situated from the side of Brahmanpada Bidisingh Project Nala.

P.W.15 has stated that the appellants were examined by the police who disclosed to have kept the wearing apparels hiding under bamboo bush and the police recorded the statement and as per the statement, the appellant himself produced his wearing apparels from the bamboo bush and handed over the same to police and the seizure list Ext.21 was prepared. He stated that it was a blue colour jean pant with sticker (M.O.2) and a cement colour full shirt with blood stain (M.O.1). In the cross-examination, he has stated that he had no idea whether the police recorded the statements of the appellants or not.

P.W.41 has also stated about such seizure at the instance of appellant Prakash Behera from near bamboo bush. However, the statement given by the I.O. that after making the seizure of recovered articles, he kept it in his personal custody with proper packing and seal is a doubtful feature as the seal impression is not given in Ext.21 at the appropriate place under the column no.13.

When full shirt (M.O.1) and jean pant (M.O.2) were produced in Court as per forwarding report Ext.57, it was not shown to have in sealed condition. Moreover, as per the biology division report, in full shirt (M.O.1) which is marked as Ext.P-1, no blood was found and in jean pant (M.O.2) which is marked as Ext.P, though human blood was found, but the grouping could not be detected. Moreover, the DNA test report also does not indicate that the human blood found in Ext.P matched with DNA profile of any of the deceased.

Therefore, the seizure of full shirt (M.O.1) and jean pant (M.O.2) at the instance of the appellant Prakash Behera as per the seizure list Ext.21 is no way helpful to the prosecution.

DNA Test Report Findings:

18. The learned trial Court has jotted down three circumstances which relates to DNA test report findings i.e. **(i)** blood stain found on the Katuri (M.O.6) is of human origin of deceased Naba @ Ekalabya Nayak, **(ii)** blood stain of cut piece of shirt of deceased Naba @ Ekalabya Nayak matched with blood stain found on napkin of appellant Prakash Behera @ Babuli, **(iii)** blood stain found on cut piece of banian of deceased Biranchi Nayak matched with blood stain found in cut piece of full pant of accused Naba Kishore Sethi @ Ranja.

After registration of the F.I.R., P.W.41, the I.O. started investigation and informed to S.D.P.O., Athamallik and S.P., Angul over telephone for deputation of scientific team to the spot. The Scientific Officer (P.W.40), who was working under DFSL, Dhenkanal visited the three crime scenes on 10.10.2017 and collected materials and produced the same before the I.O., who seized it vide seizure lists Exts.29, 30, 31 and 32. The I.O. also seized some other articles and forwarded the

relevant exhibits to Court on 14.12.2017 for sending the same for chemical examination and opinion to S.F.S.L., Rasulgarh, Bhubaneswar. The forwarding report (Ext.57) dated 14.12.2017 would indicate that the weapon of offence i.e., one Katuri, wearing apparels of accused persons and deceased persons, exhibits collected by P.W.40 and the nail clippings of the accused persons which were collected by the Medical officer and seized, were produced before the Court for sending it to S.F.S.L., Rasulgarh, Bhubaneswar.

All total 32 exhibits were forwarded by learned S.D.J.M., Athamallik on 14.12.2017 to the Director, S.F.S.L., Bhubaneswar for necessary examination and opinion. The forwarding report (Ext.57) indicates that the exhibits mentioned in serial nos.1 to 15 were seized on 10.10.2017 on production by the Scientific Officer (P.W.40), the exhibits mentioned in serial nos.16 to 24 were seized on 11.10.2017 on being produced by the constables after post mortem examination of the three deceased and the exhibits mentioned in serial nos.25 to 32 were seized on 12.10.2017. The forwarding report (Ext.57) does not indicate that the exhibits mentioned in serial nos.16 to 30 were in sealed condition when those were produced.

At this stage, it would be apt to reproduce the order no.9 dated 14.12.2017 of learned S.D.J.M., Athamallik which reads as follows:-

> "The case record is put today as the Inspector P. Majhi (name mentioned wrongly in place of P. Lenka), I.I.C. of Kishorenagar P.S. appeared before Court with prayer to send the exhibits in Kishorenagar P.S. case no.91 date 10.10.17 under section 302 I.P.C. turned to under sections 302/363/364/394/201 I.P.C. read with section 25/27 of Arms Act to the Director, S.F.S.L., Rasulgarh for chemical examination. Prayer is allowed. Verified the exhibits with forwarding report and seizure list. Send the exhibits to the Director, S.F.S.L., Rasulgarh for chemical report. Put up on the date fixed."

The order does not indicate that the unsealed exhibits which were produced, were sealed in Court. It does not indicate that the learned Magistrate verified the conditions of the seals given in some exhibits. No seal was produced before the Magistrate for its comparison with the seals given in some exhibits. No seal impression is there in the seizure lists Exts.1/2. 4, 19 and 21.

The report (Ext.59) of the S.F.S.L., Rasulgarh, Bhubaneswar indicates that all the 32 exhibits in sealed paper/sealed packet were received on 15.12.2017 through Constable R.R. Bagh (P.W.26). The evidence of P.W.26 is completely silent that he carried the exhibits to S.F.S.L.

On 14.12.2017 Prativa Majhi was in-charge of investigation of the case as per the version of P.W.41, but she has not been examined. If as per the forwarding report (Ext.57), some of the exhibits (as mentioned in serial nos. 16 to 30) were produced in Court in unsealed conditions and the order sheet of the Court does not indicate that those were sealed in Court rather those were routed through police to

reach the S.F.S.L., then the duty of the prosecution was to explain as to when and where those exhibits were sealed and by whom.

If as per the forwarding report (Ext.57), the seizures were made in between 10.10.2017 to 12.10.2017 then why those exhibits were forwarded to Court on 14.12.2017 i.e., after two months. There is no clinching evidence in whose custody and in what conditions the exhibits were retained before those were produced in Court. Though the I.O. (P.W.41) has stated that he kept the recovered articles in his personal custody with proper packing and seal, but since most of the exhibits were produced in Court on 14.12.2017 not in packed and sealed condition, it is difficult to accept the version of the I.O. (P.W.41) relating to safe custody. The Malkhana register has not been proved, nor was the Malkhana in-charge examined by the prosecution which would have at least shown that the exhibits were kept there safely. The seal impressions were not given on the seizure lists. The I.O. (P.W.41) has stated that on 25.11.2017, he handed over the charge of investigation to his successor Prativa Majhi along with all relevant documents and Mal items, but Prativa Majhi has not been examined to say what she did after receiving the Mal items and where she kept the same. These are the glaring lapses on the part of the investigation agency which creates doubt that the exhibits were in safe custody and that there was no chance of tampering with the same.

It is pertinent to note that DNA test findings in respect of some of the exhibits, has gone against the appellants and has also been utilized against them. Therefore, when reasonable doubt crops up relating to the safe custody of the exhibits, it is very difficult to give due weight to the DNA test report.

The following conclusions have been arrived at by the Scientific Officer as per the DNA test report findings, which according to the prosecution are very much relevant against the appellants:-

> (i) The DNA profile generated from Exhibit marked-N (S.E. from Katuri) is of a human male origin and is matching with the DNA profile generated from Exhibit-M1 (cut piece from shirt of deceased Naba @ Ekalabya Nayak). Table III.
>
> (ii) The DNA profile generated from Exhibit marked-O (cut piece from napkin of accused Babuli @ Prakash Behera) with dropout at DYS391 locus (reference: Journal of Forensic Sciences, July 2004, Vol.49 No.4, Chung et al pp 733-740) is of a human male origin. At 23 numbers of loci the DNA profile of Exhibit marked-M1 (cut piece from shirt of deceased Naba @ Ekalabya Nayak) is matching with DNA profile generated from Exhibit marked-O. Table-IV.
>
> (iii) The DNA profile generated from Exhibit marked-Q (cut piece from full pant of accused Ranja @ Nand Kishore Sethi) is of a human male origin and matching with DNA profile of Exhibit-L1 (cut piece from banian of deceased Biranchi Nayak). Table V.

So far as the DNA profile finding relating to Katuri and napkin is concerned, since we have already held that it is very difficult to give any importance

to the seizure of Katuri (M.O.6) and napkin (M.O.7) at the instance of appellant Prakash Behera and its safe custody and particularly when the forwarding report (Ext.57) does not indicate in serial nos.25 and 26 that M.O.6 and M.O.7 were in sealed condition at the time of its production after two months of its seizure, the DNA profile finding becomes irrelevant.

Similarly, so far as DNA profile finding relating to full pant of appellant Nand Kishore Sethi is concerned, since we have held that the safe custody of the black color full pant (M.O.23) after its seizure is a doubtful feature and particularly when the forwarding report (Ext.57) does not indicate in serial no.29 that M.O.23 was in sealed condition at the time of its production after two months of its seizure, the DNA profile finding becomes irrelevant.

Admittedly, the S.F.S.L. report (Ext.59) which includes DNA and serological and biological report has been marked as an exhibit during the examination of the I.O. (P.W.41), who has neither sent the exhibits to Court nor received such report. The Scientific Officer and A.C.E. undertaking examination, namely, Suchismeeta Behera has not been examined to prove such report.

In the case of **Karandeep Sharma alias Razia alias Raju** (supra), it is held as follows:-

> "39. The first flaw in the prosecution case on the aspect of DNA profiling is that the expert who conducted the DNA examination was not examined in evidence and the DNA report was merely exhibited in evidence by the Investigating Officer (P.W.14) who undeniably is not connected with the report in any manner. This Court in the case of ***Rahul Vs. State of Delhi*** *(supra)* while dealing with the issue concerning evidentiary value of DNA report, has held that DNA profiling reports cannot be admitted in evidence *ipso facto* by virtue of Section 293 Cr.P.C. and it is necessary for the prosecution to prove that the techniques of DNA profiling were reliably applied by the expert. The relevant excerpts from the said judgment are reproduced herein below for the sake of ready reference:-
>
> "36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18-4-2012 (Ext. P-23/1), giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant-accused. The Court finds substance in the said submissions made by the Amicus Curiae. **The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.**
>
> 38. It is true that P.W.23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, **however mere exhibiting a document, would not prove its contents**. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-

2012. **During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.**" **(emphasis supplied)**

40. Thus, in the facts and circumstances of the present case, non-examination of the scientific expert who carried out the DNA profiling is fatal, and the DNA report cannot be admitted in evidence."

In the case of **Rahul** (supra), it is held as follows:-

"37. In this regard very pertinent observations made by this Court in ***Manoj v. State of M.P. : (2023) 2 SCC 353*** deserve to be made. This Court has in detail dealt with the issue of DNA profiling methodology and statistical analysis, as also the collection and preservation of DNA evidence. The relevant paragraphs read as under: (SCC paras 151-56)

"*151*. During the hearing, an article published by the Central Forensic Science Laboratory, Kolkata [DNA profiling in Justice Delivery System, Central Forensic Science Laboratory, Directorate of Forensic Science, Kolkata (2007)] was relied upon. The relevant extracts of the article are reproduced below:

'Deoxyribonucleic acid (DNA) is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with intercalated proteins. Twenty-three pairs of chromosomes present in each nucleated cells and an individual inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, chromosomes replicate and one set goes to each daughter cell. All information about internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases : Adenine (A), Guanine (G), Thymine (T) and Cytosine (C) along with sugar-phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA) found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study of people related through the maternal line. Also being in large number of copies than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to trace the male lineage and resolve DNA from males in sexual assault mixtures.

Only 0.1 % of DNA (about 3 million bases) differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples.

* * *

DNA Profiling Methodology

DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA profiling is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed genetic markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA profile unique to an individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoo11permic or vasectomised" male. Cases In which DNA had undergone environmental stress and biochemical degradation, min lSTRs can be used for over routine STR because of shorter amplicon size.

DNA profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available in the laboratory. The analysis principles, however, remain similar, which include:

1. isolation, purification & quantitation of DNA
2. amplification of selected genetic markers
3. visualising the fragments and genotyping
4. statistical analysis & interpretation.

In mtDNA analysis, variations in Hypervariable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:

Statistical Analysis

Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:

(1) Match: If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.

(2) Exclusion: If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.

(3) Inconclusive : The data does not support a conclusion of the three possible outcomes, only the "match" between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population.

In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken into consideration while reporting a match. Paternity or Maternity Indices and Likelihood Ratios are calculated further to support the match.

Collection and Preservation of Evidence

If DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent for DNA profiling.''

In a recent decision which was pronounced on 15.07.2025 by the Hon'ble Supreme Court in case of **Kattavellai @ Devakar -Vrs.- State of Tamil Nadu reported in MANU/SC/0917/2025: 2025 LiveLaw (SC) 703,** it has been held as follows:

"29. The first limb of considering the DNA evidence is the vagina swabs taken from D-2. P.W.37 in her chief examination, stated that once she took the said samples, they were sent to FSL Madurai, for DNA test, but striking an entirely different tone in her cross-examination, she said that having taken these samples she 'might have' handed over the said swabs to the constable on duty. It is noteworthy to observe here itself that P.W.41, who was the constable on duty, makes no such mention of having received the swabs from P.W.37. P.Ws.52 and 54 both state that upon collection, the samples remained with P.W.37 at the Government Hospital. Per contra, P.W.56 states that the samples were kept at Royappanpatti Police Station. P.W.42, who is a police carrier, states that he collected the samples from the Government Medical College and took them to the Regional Forensic Science Laboratory, Madurai, on 29th June, 2011. This means they were sent to the FSL after a delay of 41 days, having been taken on 19th May, 2011. The prosecution has not been able to explain the reason as to why this delay took place. We find force in the argument made on behalf of the Appellant-convict that the circumstances under which the samples were sent from FSL, Madurai to FSL, Chennai, are unclear. P.W.27, who is a Scientific Officer only states that after his analysis of the swab, he sent the same to the DNA wing of the FSL Chennai. No reason is forthcoming as to why and under whose orders the same were sent to a different city. The final DNA report was prepared by P.W.34. He, however, in his evidence does not mention when the samples were received by him or his office. Nor does he depose the conditions in which the sample was received. In this regard, the Appellant-convict contended that the swab itself was received by speed post. We find that to be an incorrect statement of facts. P.W.34 states that the report prepared by him was DNA 152/2011. A perusal of the annexure to the DNA report shows the label given to the document sent by speed post as matching that of the report prepared by P.W.34. So, it is clear that the report was what was sent by speed post, not the swab itself. That apart, had it actually been that the swab was sent by speed post, we would be nothing short of aghast. Time and again, this Court has emphasized the importance of maintaining the sanctity of these samples and, the investigating authorities

actually doing something so glaringly irresponsible would be an affront to any and all observations that have been made by this Court over the years.

30. Having noticed various gaps as above, the logical question that arises is where were the swabs?; why were they sent for forensic analysis belatedly?; were they properly stored?; whether the Malkhana of the Police Station where they were kept according to some of the witnesses, was sufficiently equipped or not; if the same were kept in the hospital, was it ensured that no other member of the staff could have had access to them?; in whose custody were they?; if the swabs were damaged, who shall be held responsible for the destruction of vital evidence, etc. Similar questions arise in connection with the semen sample taken from the Accused as a consequence of an order passed by the Judicial Magistrate, Uthamapalayam, on 13th June, 2011. P.W.56 states that the said samples were sent to FSL, Chennai, on 16th June, 2011 but subsequently returned. It is unclear, yet again, that between 13th and 16th June 2011 where such samples were stored; who was in charge thereof and whether he had kept them in safe custody?; how and in what condition they were sent; when and why they were returned - unfortunately, all these questions have no answer forthcoming from the record.

31. In **Anil v. State of Maharashtra : (2014) 4 SCC 69** this Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected. We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would focus on ensuring that throughout this process, the samples remain in pristine, hygienic and biologically suitable conditions.

32. One such instance where DNA evidence had to be rejected, fairly recently, was a three-Judge Bench decision in **Manoj -Vrs.- State of M.P. : (2023) 2 SCC 353.** The Appellants in the said case had been sentenced to death by the 1st Additional Sessions Judge, Indore, for the murder in the course of the robbery of 3 women. Ultimately, the Court commuted the death sentence to life imprisonment with a minimum 25 years sentence; while dealing with such evidence, it made detailed references to a 2007 paper titled DNA Profiling In Justice Delivery System published by the Central Forensic Science Laboratory, Kolkata and the previous judgments of this Court wherein the topic of DNA has been dealt with, as also the 185th report of the Law Commission of India. In this case, DNA was rejected on the ground that recovery, which was affected, was made from an open place, and the likelihood of its contamination cannot be ruled out. It is also observed that the bloodstains found on the articles were disintegrated, and the quantity was insufficient to run any classification tests.

33. **Rahul** (supra) was a case concerning the kidnap, rape and murder of a woman, wherein 3 persons were convicted by the Special Fast-Track Court, Dwarka Courts in Sessions Case No.91 of 2013. These persons had kidnapped a woman as she returned from work, proceeded to do horrible things to her, and then dumped her

lifeless remains in a field, from where it was discovered four days later. The DNA evidence, here, was rejected because it remained in the police Malkhana for two months and in such time, the possibility of tampering could not be ruled out. It was also held that neither the Trial Court nor the High Court had examined the underlying basis of the findings in the DNA reports or whether the techniques used had been reliably applied by the concerned expert. As such, it was concluded that the DNA profile, in the absence of such evidence, had become highly vulnerable when the collection and sealing of the samples sent for examination was not free from suspicion.

34. **Prakash Nishad -Vrs.- State of Maharashtra : (2023) 16 SCC 357** was a case concerning the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted. DNA evidence had to be rejected by this Court on the grounds that there was a delay in sending the samples to the FSL, which was unexplained. It was observed that because of the delay, the concomitant prospect of contamination could not be ruled out. The need for expediency in sending samples to the concerned laboratories was underscored.

35. This case, incidentally, if not unfortunately, is another one of the like of the above. Despite the presence of DNA evidence, it has to be discarded for the reason that proper methods and procedures were not followed in the collection, sealing, storage, and employment of the evidence in the course of the Appellant- convict's conviction. DNA, as we have observed, has been held to be largely dependable, even though this evidence is only of probative value, subject to the condition that it is properly dealt with. Over the past decades, many cases have come to their logical conclusion with the aid of DNA evidence in many regions across the world. It is also equally true that many persons wrongly convicted have finally had justice served, with them being declared innocent because of advancements in this technology. It is unfortunate that, alongside such advancements, we still have cases where, despite the evidence being present, it has to be rejected for the reason that the concerned persons, either doctors or investigators, have been careless in the handling of such sensitive evidence."

The learned trial Court in the impugned judgment after noting down the findings in the DNA test report jumped to the conclusion that from the scientific analysis of DNA report, it is crystal clear that both the appellants have the involvement in the murder of deceased Biranchi Nayak and Naba @ Ekalabya Nayak. There is no discussion in the impugned judgment relating to the proper sealing of the exhibits after its seizure, safe custody of the exhibits, absence of any explanation from the side of the prosecution relating to delayed dispatch of the exhibits to Court and the effect of delay when most of the exhibits were produced in unsealed condition.

In view of the foregoing discussions, we are of the view that the DNA test report findings cannot be used against the appellants.

Sum up:

19. The learned trial Court has held that so far as the kidnapping of the minor deceased Naba @ Ekalabya Naik is concerned, from the circumstantial evidence, the prosecution has proved that the said deceased was kidnapped from the lawful custody of his parents and subsequently his murder was committed inside the jungle from where the dead body was found. After careful analysis of the materials on record, we do not find either any direct evidence or circumstantial evidence in that regard. There is no evidence on record like last seen of the two deceased i.e. Tarani Naik or Naba @ Ekalabya Naik in the company of any of the appellants or kidnapping of the minor deceased Naba @ Ekalabya Naik by the appellants. Therefore, the conviction of the appellants under section 364/34 of I.P.C. is totally misconceived.

Merely at the instance of the appellants, one Katuri and some other articles as per seizure lists Exts.1/2, 4, 19 and 21 were stated to have been seized, cannot be a ground to come to a conclusion that the appellants caused disappearance of evidence of offence by concealing the same unless it is established by cogent evidence that those articles have got any link with the offence committed. The prosecution in this case has failed to establish such aspect. We have already held that no importance is to be attached to the seizure of articles at the instance of the appellants as its safe custody after its seizure before it reached S.F.S.L. is a doubtful feature, seal impressions are found missing in relevant seizure lists, the relevant exhibits were not produced in sealed conditions in Court as per forwarding report, order sheet of Court does not indicate that the articles were in sealed condition and that for the reasons assigned, the DNA test report cannot be used against the appellants. When the incriminating articles stated to have been seized at the instance of the appellants cannot be used as evidence in the case against the appellants for the reasons assigned, it cannot be said that the appellants have caused disappearance of evidence merely at their instance those were recovered. Thus, the conviction of the appellants under section 201/34 of I.P.C. is not sustainable in the eyes of law.

There is also no clinching evidence relating to the involvement of the appellants in the commission of triple murder and therefore, the conviction of the appellants under section 302/34 of I.P.C. is liable to be set aside.

Conclusion:

20. In view of the evidence available on record, we are not in a position to accept that the prosecution has established its case against the appellants beyond all reasonable doubt. The reasoning assigned by the learned trial Court in convicting the appellants seems to be based on conjecture and suspicion which has got no place in the matter of legal proof of guilt of accused persons in a criminal trial and we are of the view that the impugned verdict is nothing but a sheer moral conviction. Thus we hold that the prosecution has failed to establish the charges against the appellants beyond all reasonable doubt.

We are conscious that grave and heinous crime has been committed and the culprits whosoever they may be, have taken away the lives of three persons including a minor boy aged about 7 years and his parents in an extremely brutal manner, but when there is no satisfactory proof of the guilt of the appellants and that in view of well settled principle of criminal jurisprudence, the Court must always remind itself that more serious the offence, the stricter is the degree of proof and that higher degree of assurance would be necessary to convict an accused, we have no other option but to give the benefit of doubt to the appellants and we are constrained to do so in this case.

In the result, the criminal appeal is allowed. The appellants are acquitted of the charges under sections 302/364/201/34 of I.P.C. The appellants, who are in jail custody, shall be set at liberty forthwith, if their detention is not required in any other case.

21. Accordingly, the Criminal Appeal is allowed. The death sentence reference is answered in negative.

Before parting with this case, we would like to put on record our deep appreciation to Mr. Satya Ranjan Mulia, Mr. Ramesh Ch. Maharana, learned counsel for the appellants so also Mr. Pradip Kumar Panda, learned Amicus Curiae for the preparation and presentation of the case and assisting the Court in arriving at the decision above mentioned. This Court also appreciates the able assistance provided by Mr. Debashis Tripathy, learned Addl. Govt. Advocate. The hearing fees is assessed to Rs.10,000/- (rupees ten thousand) in toto which shall be paid to the learned Amicus Curiae immediately.

The trial Court records along with a copy of the judgment be sent forthwith to the Court concerned and a copy of the judgment be communicated to the D.L.S.A., Angul so that the victim compensation amount of Rs.30,00,000/- (rupees thirty lakh) which was directed to be paid to the minor daughter of deceased Biranchi Naik, namely Saina, shall be paid immediately, if not already paid.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Criminal Appeal allowed,
DSREF negative.

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2025 (III) ILR-CUT-83

DIPTISH KUMAR DAS
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 30576 OF 2024]

25 JUNE 2025

[K.R. MOHAPATRA, J. & MISS SAVITRI RATHO, J.]

Issue for Consideration

Whether the order which was passed by the Revisional Authority in violation of the Principle Natural Justice is sustainable in law.

Headnotes

ODISHA GOVERNMENT LAND SETTLEMENT ACT, 1962 – Section 7A(3) – Suo motu Revision – Principle of Natural Justice – Violation – The suit land had been leased out in favour of the lessee in W.L. case No. 179/1977 – The lease deed executed in favour of the lessee observing the formalities – After expiry of the period of restriction to transfer, the lessee alienated Ac.0.01 decimals to petitioner by executing Registered Sale deed – Proceeding U/s. 7A (3) of the Act was initiated alleging material irregularities in leasing out the case land in favour of the lessee – The Revisional Authority at the time of adjudication of the revision had knowledge about sale of the case land to different persons including the petitioner – Whether the impugned order which was passed by the Revisional Authority in violation of Principle Natural Justice is sustainable in law?

Held: No – The Petitioner, being the purchaser of a parcel of the case land, should have been given an opportunity of hearing at the time of adjudication of the revision. Certainly, the impugned order under Annexure-3 takes away a valuable civil right of the Petitioner without affording him an opportunity of hearing. (Para 7.1)

Accordingly, the impugned order under Annexure-3 is set aside and the matter is remitted to the Additional District Magistrate, Bhubaneswar for adjudication of Revision Case No.57 of 1998 afresh giving opportunity of hearing to the persons likely to be affected including the Petitioner as well as said Golak Bihari Samantray or persons claiming under him. (Para 10)

List of Acts

Odisha Government Land Settlement Act, 1962; Odisha Survey and Settlement Act, 1958

Keywords

Suo motu Revision; Lease; Government land; Principle of Natural Justice; Opportunity of hearing; Civil Right.

Case Arising From

Order dated 29th April, 1999 passed by Additional District Magistrate, Khurda in Revision Case No.57 of 1998 initiated under Section 7A(3) of the Odisha Government Land Settlement Act, 1962.

Appearances for Parties

For Petitioner : Mr. S.S.K. Nayak

For Opp. Parties : Mr. Sabita Ranjan Pattnaik, A.G.A.

Judgment/Order

Judgment

BY THE BENCH.

I.A. No.16245 of 2024

1. This matter is taken up through hybrid mode.

2. This I.A. has been filed to dispense with filing of certified copy of Annexures-1 and 3 to the writ petition.

3. Order under Annexure-1 is the order sheet in W.L.L Case No.179 of 1977 of the Court of Tahasildar, Bhubaneswar and Annexure-3 is the copy of the order dated 29th April, 1999 passed by learned Additional District Magistrate, Khurda in Revision Case No.57 of 1998. Certified copies of both are filed with analogous writ petition, i.e., W.P. (C) No.30579 of 2024. Hence, the Petitioner need not file the same with the present writ petition.

4. In view of the above, filing of certified copy of Annexures-1 and 3 is dispensed with for the time being.

5. I.A. is accordingly disposed of.

W.P.(C) No. 30576 OF 2024

1. The Petitioner in this writ petition seeks to assail the order dated 29th April, 1999 (Annexure-3) passed by learned Additional District Magistrate, Khurda in Revision Case No.57 of 1998 initiated under Section 7A(3) of the Odisha Government Land Settlement Act, 1962 (for brevity 'the Act').

2. Mr. Nayak, learned counsel for the Petitioner submits that one, Golak Bihari Samantray, being Ex-army personnel, was leased out Ac.5.00 decimals of land in Plot No. 67 under Khata No.237 situated in Mouza Similipatana under Bhubaneswar Tahasil in the district of Khurda (for brevity 'the case land'), pursuant to order dated 2nd June, 1977 of Tahasildar, Bhubaneswar in W.L. Lease Case No.179 of 1977. A lease deed was also executed in favour of the lessee observing the formalities. After expiry of the period of restrictions to transfer the land mentioned in the lease deed, the lessee, namely, Golak Bihari Samantray for his legal necessities alienated Ac.0.01 decimals out of the case

land to the Petitioner by executing Registered Sale Deed dated 13th September, 1994 (Annexure-2) and delivered possession to the Petitioner. Since then, the Petitioner is in possession over the land he has purchased out of the case land exercising his right, title and interest thereon. Proceeding under Section 7A(3) of the Act in Revision Case No.57 of 1998 was initiated alleging material irregularities in leasing out the case land in favour of the vendor of the Petitioner. Although notices were issued to the vendor of the Petitioner, but no notice, whatsoever, was served on the Petitioner to contest the proceeding although learned Additional District Magistrate, Khurda was aware of the fact that separate parcels of the case land had already been sold to different persons including the Petitioner by the time the *suo motu* revision, i.e., Revision Case No.57 of 1998 was taken up for adjudication. Alleging material irregularities in settling the land in favour of the vendor of the Petitioner, learned Additional District Magistrate held that the lease granted in W.L. Lease Case No.179 of 1977 was illegal and irregular. Learned Additional District Magistrate, therefore, set aside the order dated 2nd June, 1977 of Tahasildar, Bhubaneswar settling the case land in favour of the vendor of the Petitioner. Consequently, the Tahasildar, Bhubaneswar was directed to correct the Record of Right (RoR) and take over possession of the case land. Accordingly, the case land was taken back to the government khata (record) by correcting the RoR.

2.1 When the RoR of the case land, out of which the Petitioner had purchased Ac.0.01 decimals, was recorded in government khata, the Petitioner filed Revision Case No. 689 of 2022 under Section 15(b) of the Odisha Survey and Settlement Act, 1958 before the Member, Board of Revenue, Odisha, Cuttack for correction of RoR. At the stage of argument of the said revision, it came to light that the lease granted in favour of the vendor of the Petitioner was cancelled and the case land was taken to government khata pursuant to the direction in Revision Case No.57 of 1998. Hence, finding no other alternative, the Petitioner has filed this writ petition. As such, there occurred some delay in filing the writ petition, which is *bona fide* and not intentional.

3. Mr. Nayak, learned counsel for the Petitioner submits that at the time of purchase, the Petitioner had verified the records, i.e., the order passed in W.L.L. Case No.179 of 1977 settling the case land in favour of Golak Bihari Samantray, who was an Ex-army personnel and the RoR published in his name together with allied documents such as rent receipts etc. On a *bona fide* belief that the said Golak Bihari Samantray was the rightful owner in possession of the case land, the Petitioner had purchased Ac.0.01 decimals out of the case land and was delivered with possession. Learned Additional District Magistrate while discussing the case in the impugned order under Annexure-3, had categorically observed that the vendor of the Petitioner had sold the land to different persons. Thus, the Revisional Authority, at the time of adjudication of the revision, had knowledge that the case land had already been sold to different persons including the Petitioner by the time the revision was taken up for disposal. As such, learned Additional District Magistrate ought to have provided an opportunity of hearing to the Petitioner.

4. It is further submitted by Mr. Nayak, learned counsel for the Petitioner that learned Additional District Magistrate had no jurisdiction to initiate *suo motu* revision under Section 7A(3) of the Act, as the lease was granted as per the Government Grants

Act, 1895. From the order sheet of W.L.L. Case No.179 of 1977, it is also clear that the procedure prescribed under the Government Grants Act, 1895 was followed by the Tahasildar, Bhubaneswar while settling the case land in favour of the vendor of the Petitioner. These aspects were brushed aside by learned Additional District Magistrate, Bhubaneswar while adjudicating Revision Case No.57 of 1998. As such, the impugned order under Annexure-3 is *per se* illegal and is without jurisdiction. Hence, he prays for setting aside the impugned order under Annexure-3 and to direct the Tahasildar, Bhubaneswar to correct the RoR in respect of the land, the Petitioner has purchased in his name.

5. Mr. Pattnaik, learned Additional Government Advocate supporting the impugned order under Annexure-3, submitted that the mandatory provisions provided under the Act as well as the Odisha Government Land Settlement Rules, 1972 was not followed while granting the lease in favour of the vendor of the Petitioner in W.L.L. Case No.179 of 1977. Elaborating his submission, Mr. Pattnaik, learned Additional Government Advocate submits that perusal of the order sheet of W.L.L. Case No.179 of 1977 clearly reveals that there are material irregularities in settling the case land in favour of Golak Bihari Samantray, the vendor of the Petitioner. Proclamation was not made in accordance with law. As such, the lease granted in favour of the vendor of the Petitioner was irregular and was rightly cancelled by setting aside the final order dated 2nd June, 1977 (Annexure-1) passed by the Tahasildar, Bhubaneswar in W.L.L. Case No 179 of 1977.

5.1. It is his submission that since the lease itself was illegal and irregular and suffered from material irregularities, any alienation of the case land or portion thereof in favour of the Petitioner or any other person(s) is *per se* illegal. He, however, submits that the field enquiry report of the concerned R.I. revealed that the lessee, namely, Golak Bihari Samantray had sold the case land to different persons. The field enquiry report was also taken note of by learned Additional District Magistrate, Bhubaneswar at the time of adjudication of Revision Case No.57 of 1998. He, further submits that adhering to the principles of natural justice by providing opportunity of hearing to the Petitioner would have been an empty formality. Thus, no illegality was committed by learned Additional District Magistrate in cancelling the lease without providing any opportunity to the Petitioner. As such, the writ petition merits no consideration and is liable to be dismissed.

6. Heard learned counsel for the parties and perused the record placed before us.

7. From the record, it reveals that the case land was leased out in favour of the vendor of the Petitioner, namely, Golak Bihari Samantray, pursuant to the order dated 2nd June, 1977 passed by the Tahasildar, Bhubaneswar in W.L.L. Case No.179 of 1977. While entertaining the lease case, the Tahasildar, Bhubaneswar relied upon the Resolution No.19431 dated 26th April, 1977, wherein concession by the Home Department was granted for allotment of land in favour of Jawan, like the vendor of the Petitioner. Alleging material irregularity in settling the case land in favour of the vendor of the Petitioner by way of lease, *suo motu* proceeding under Section 7A(3) of the Act was initiated on the file of learned Additional District Magistrate, Bhubaneswar in Revision Case No.57 of 1998.

7.1. Perusal of the impugned order dated 29th April, 1999 (Annexure-3) reveals that the Revisional Authority, namely, learned Additional District Magistrate, Bhubaneswar was aware of the fact that the case land, which was leased out in favour of the vendor of the Petitioner, namely, Golak Bihari Samantray had already been sold to different persons by the time said revision was taken up for adjudication. Thus, the Petitioner, being the purchaser of a parcel of the case land, should have been given an opportunity of hearing at the time of adjudication of the revision. Certainly, the impugned order under Annexure-3 takes away a valuable civil right of the Petitioner without affording him an opportunity of haring.

8. Although Mr. Nayak, learned counsel for the Petitioner submits that the lease in favour of Golak Bihari Samantray was granted under the provisions of the Government Grants Act, 1895, but from the record available before this Court, it is not clear under which provision of law, the lease was granted in favour of said Golak Bihari Samantray in W.L.L. Case No.179 of 1977. The same is a matter of enquiry. It further appears that the Revisional Authority had not discussed, as to how, the proclamation made was irregular and there are material irregularities in settling the land in favour of the vendor of the Petitioner.

9. Hence, this Court is of the considered view that the impugned order under Annexure-3 suffers from violation of principles of natural justice. Had the Petitioner been given an opportunity of hearing, he could have brought to the notice of the Revisional Authority the contentions which are being raised in this writ petition and in that event, the final order passed in Revision Case No.57 of 1998 might have been different.

10. Accordingly, the impugned order under Annexure-3 is set aside and the matter is remitted to the Additional District Magistrate, Bhubaneswar for adjudication of Revision Case No.57 of 1998 afresh giving opportunity of hearing to the persons likely to be affected including the Petitioner as well as said Golak Bihari Samantray or persons claiming under him.

11. This writ petition is allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

12. The consequential RoR, recording the case land in government khata, be kept in abeyance till disposal of the Revision Case No.57 of 1998.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition allowed in part.

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2025 (III) ILR-CUT-88

SAMIR KUMAR MOHANTA
V.
EXECUTIVE ENGINEER, BETNOTI CANAL DIVISION, MAYURBHANJ & ORS.

[W.P.(C) NO. 27738 OF 2011]

19 AUGUST 2025

[K.R. MOHAPATRA, J. & MISS SAVITRI RATHO, J.]

Issues for Consideration

1. Whether the suit land which was recorded in the name of petitioner and his family members before the acquisition U/s. 4(1) of L.A. Act, falls within the definition of "Public Premises" as defined under section 2(f) of the OPP (Eviction of unauthorized Occupants) Act.

2. Whether proceeding U/s. 3 & 4 of the OPP (Eviction of unauthorized Occupants) Act is maintainable on the ground of unauthorized occupation of public premises.

Headnotes

(A) LAND ACQUISITION ACT, 1894 – Section 4(1) r/w Section 2(f) of the Orissa Public Premises (Eviction of unauthorized occupants) Act, 1972 – The petitioner was unauthorisedly occupying the land even after the notification U/s. 4(1) of the L.A. Act was published – The petitioner and his family members was the record of right holder before the acquisition of land U/s. 4(1) of the Act – Petitioner was not paid adequate compensation for the trees grown on the plot – The Estate officer initiated proceeding U/s. 3 & 4 of the OPP(Eviction of unauthorized Occupants) Act alleging unauthorized occupation of the public premises – Whether the suit land which was recorded in the name of petitioner and his family members before the acquisition U/s. 4(1) of L.A. Act, falls within the definition of "Public Premises" as define under section 2(f) of the OPP (Eviction of unauthorized Occupants) Act.

Held: Yes – After the notification U/s. 4 (1) of the L.A. Act, the case land vested in the State free from all encumbrances – Thus, for all purposes, the case land became public premises within the meaning of section 2(f) of the OPP Act. (Para 8)

(B) ORISSA PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1972 – Sections 3 & 4 r/w Section 4(1) of Land Acquisition Act – The case land stood recorded in the name of petitioner and his family members before acquisition of land U/s. 4(1)

L.A Act – Proceeding U/ss. 3 & 4 of 1972 Act was initiated – Whether proceeding U/s. 3 & 4 of Act is maintainable on the ground of unauthorized occupation of public premises.

Held: Yes – The case land has been acquired by the Government and became public premises after acquisition – The Petitioner had also received compensation for acquisition of the case land – Thus, the proceedings under the OPP Act before the Authorities were maintainable – Non-receipt of adequate compensation for acquisition of the case land cannot be a ground to occupy the property already acquired for public purpose. (Para 8)

List of Acts

Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972; Land Acquisition Act, 1894.

Keywords

Public Premises; Land Acquisition; Unauthorized occupation; Compensation; Eviction; Notice of eviction.

Case Arising From

Order dated 5th January, 2011 passed by the Sub-Collector and Estate Officer, Baripada in O.P.P. (EUO) Case No. 2 of 2009.

Appearances for Parties

For Petitioner : Mr. Prakash Ranjan Barik.

For Opp. Parties : Mr. Manmaya Ku. Dash, A.S.C.

Judgment/Order

Judgment

BY THE BENCH

1. This matter is taken up through hybrid mode.

2. Petitioner, in this writ petition, seeks to assail the order dated 5th January, 2011 (Annexure-1) passed by the Sub-Collector and Estate Officer, Baripada in O.P.P. (EUO) Case No.2 of 2009 directing eviction of the Petitioner from the land in question. The Petitioner also assails the order dated 26th September, 2011 (Annexure-2) passed by the Collector, Mayurbhanj in OPP (EUO) Appeal Case No.1 of 2011 confirming the order under Annexure-1.

3. Mr. Barik, learned counsel for the Petitioner submits that Plot Nos.349 to an extent of Ac.2.30 and 350 to an extent of Ac. 0.44 of Khata No.53 and Plot Nos.348 to an extent of Ac.0.88 and 351 to an extent of Ac.2.86 of Khata No.30 of Mouza-Bada Dakoi under Betnoti Tahasil in the District of Mayurbhanj (for brevity 'the case land') stood recorded in the name of the Petitioner and his family members.

The land was acquired under section 4(1) of the Land Acquisition Act, 1894 (for brevity, 'the L.A. Act') for construction of 'Sriramdihi' minor canal off-taking from its parent channel Betnoti Branch Canal from RD-7920 meter. Accordingly, the land acquisition proceeding was initiated. But the Petitioner was not paid adequate compensation for the trees grown over Plot Nos.348 and 349 out of the case land for which L.A. Misc. Case No.48 of 2008 under Section 18 of the Act was pending at the relevant time. Hence, the Petitioner was waiting for enhancement of compensation for the standing trees. As such, he was not in a position to vacate the case land. At that juncture, alleging unauthorized occupation of the public premises by the Petitioner, the Sub-Collector and Estate Officer, Baripada (Opposite Party No.2) initiated O.P.P. (EUO) Case No.2 of 2009 under Sections 3 and 4 of the Orissa Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (for brevity 'the OPP Act') on his file and directed eviction of the Petitioner vide order under Annexure-1. Assailing the said order, the Petitioner preferred OPP (EUO) Appeal No.1 of 2011 under Section 9 of the OPP Act. The Collector, Mayurbhanj without considering the matter in its proper prospective confirmed the order under Annexure-1 vide order under Annexure 2. Hence, the writ application has been filed assailing the orders under Annexures-1 and 2.

4. Mr. Barik, learned counsel for the Petitioner further submits that although the Petitioner and his family members were in possession over the case land but notice of eviction was issued in respect of the Petitioner only.

4.1. The case land does not fall within the definition of *'Public Premises'* as defined under Section 2(f) of the OPP Act. The Petitioner has also not been paid compensation for the valuable trees grown over the case land. Thus, direction for eviction of the Petitioner from the case land without payment of due compensation is illegal and arbitrary. These material aspects were not taken into consideration by either of the Authorities under the OPP Act. Hence, the Petitioner finding no alternative has filed the writ petition.

5 Mr. Dash, learned Additional Standing Counsel submits that the trees were grown by the Petitioner after the notification for acquisition of case land was published. Thus, he is not entitled any compensation for the same.

5.1. On verification of the record and upon hearing learned counsel for the parties, the Estate Officer came to a conclusion that the trees were grown by the Petitioner subsequent to the Notification under section 4(1) of the L.A. Act. Since the Petitioner was unauthorisedly occupying the land after Notification under section 4(1) of the L.A. Act was published, he is liable to be evicted and rightly the Authorities under the OPP Act passed the order of eviction. As such, the impugned orders under Annexure-1 and 2 warrant no interference.

6. Heard learned counsel for the parties. Perused the materials on record.

7. Section 2(f) of the Act defines 'public premises'. It reads as under:-

xxx xxx xxx

2 [(f) "Public premises means any preemies situated within the jurisdiction of Municipal Council or Notified Area Council constituted under the Odisha Municipal Act, 1950 and –

(i) belonging to or taken on lease by the State Government or any Company or by the Board; or

(ii) requisitioned by the State Government."

8. There is no dispute to the fact that the case land situates within a Municipal area. After the Notification under section 4(1) of the L.A. Act, the case land vested in the State free from all encumbrances. Thus, for all purposes, the case land became public premises within the meaning of Section 2(f) of the OPP Act. Notice was issued to the Petitioner and he participated in the proceeding. At no stage in the proceeding under the OPP Act, the Petitioner had raised objection that the notice was not served on other co sharers/co-owners of the case land. There is also no material on record to come to a conclusion that the Petitioner along with his co shares were recorded owners and were in possession of the case land at the time of initiation and continuance of the proceeding under the OPP Act. This being a factual issue should have been raised before the authorities under the OPP Act. Fact remains that the Petitioner is in occupation of the public premises and proceeding under sections 3 and 4 of the OPP Act was initiated against him. He participated in the proceeding by filing objection and the impugned order under Annexure-1 was passed by the Estate Officer. Assailing the same, the Petitioner also filed OPP (EUO) Appeal Case No.1 of 2011, which was dismissed on merit providing opportunity of hearing to the parties concerned. The case land has been acquired by the Government and became public premises after acquisition. The Petitioner had also received compensation for acquisition of the case land. Thus, the proceedings under the OPP Act before the Authorities were maintainable. Non-receipt of adequate compensation for acquisition of the case land cannot be a ground to occupy the property already acquired for public purpose.

9. Upon hearing learned counsel for the parties and on perusal of the record, we find no infirmity in the impugned order either under Annexure-1 and/or under Annexure-2.

10. Accordingly, the writ petition being devoid of merit stands dismissed. But in the facts and circumstances of the case, there shall be no order as to costs.

11. Interim order passed dated 21.12.2011 passed in I.A. No.15934 of 2011 stands vacated.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition dismissed.

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2025 (III) ILR-CUT-92

ORISSA WATER SUPPLY & SEWERAGE BOARD
V.
BIJAY KUMAR SAMAL & ORS.

[W.A. NOS. 857 OF 2024 & BATCH]

WITH

[W.A. NOS. 834, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 854, 855, 856, 858, 859, 860, 861, 862, 863, 864, 867, 868, 869, 870, 871, 872, 877, 878, 885, 887, 1181 & 1470 OF 2024]

30 JULY 2025

[DIXIT KRISHNA SHRIPAD, J. & MRUGANKA SEKHAR SAHOO, J.]

Issues for Consideration

1. Whether the direction to regularize the services of respondent given by the learned single judge should be interfered when the Appellant Board admitted the continuous and spotless service of respondents for more than two decades.

2. Whether the court has the power to give direction to create/ sanction the posts.

Headnotes

(A) SERVICE JURISPRUDENCE – Regularization – This intra-court appeal has been filed wherein the direction of the Hon'ble single bench regularising/absorbing the services of respondents has been assailed – The Appellant in the statement of objections has admitted the engagement of respondents – Requisite qualifications of respondents is not disputed – The Appellant/Board has also admits that 32 ministerial post with various designation are available and one of the employees has been regularized – Whether the direction of the Hon'ble single bench is liable to be interfered with?

Held: No – We decline indulgence in the matter. (Para 6)

It hardly needs to be stated that there is Preambular Socialistic Pattern prescribed by the Constitution itself and therefore such an instrumentality cannot take up a stand that runs contrary to the same, apart from being bereft of elements of justice & fair play – After all, a Statutory Body like the Appellant-Board cannot run its ordained functions as East India Company of bygone era. (Para 6.1)

(B) ORISSA WATER SUPPLY AND SEWERAGE BOARD ACT, 1991 – Section 9 – Appointment by the Board – The Hon'ble Court directed to the Appellant/Board to take decision with regard to creation and

sanction of the posts in order to absorb/ regularize the services of the petitioners – Whether the court has the power to give direction to create/sanction the posts.

Held: No – Power to create posts, as already mentioned above, lies with the Board and it is coupled with a duty as well, inasmuch as the legislature has employed the word 'power' in this provision and not the word 'discretion'. Board cannot say such power is its prerogative and a Constitutional Court cannot regulate it – There is nothing like absolute power or prerogative, "limited Government" being one of the basic features of our Constitution – A contra argument counters the rule of law. (Para 6.5)

Citations Reference

State of Karnataka v. Umadevi, **(2006) 4 SCC 1;** State of Karnatak v. M.L. Kesari , **(2010) 9 SCC 247;** Jaggo v. UOI, **2024 INSC 1034;** Bhupendra Nath Hazarika v. State of Assam, **AIR 2013 SC 234;** UOI v. Ilmo Devi, **2021 SCCOnline (SC) 899;** Shripal v. Nagar Nigam, Gajiabad, **2023 LiveLaw (SC) 520;** Vinod Kumar v. UOI, **(2024) 1 SCR 1230 – referred to.**

List of Acts

Orissa Water Supply and Sewerage Board Act, 1991; Constitution of India, 1950.

Keywords

Regularization/absorption of service; Post; Sanction of post; Creation of Post; Prerogative power; Power; Pick & Choose; Discretion;

Case Arising From

Order dated 22.03.2024 passed by a learned Single Judge of this Court in W.P.(C) No. 12794 of 2015 & order dated 22.03.2024 passed by a learned Single Judge of this Court in W.P.(C) No. 32358 of 2021.

Appearances for Parties

For Appellant : M/s. Sailaza Nandan Das & A. Acharya (in all Appeals)

For Respondent(s) : M/s. Smita Ranjan Patnaik, P.K. Mohanty, S. Mohakud & P. Jena (W.A. 857 of 2024).

M/s. Jayant Ku. Rath, Sr. Adv. & Mr. S. Mishra (W.A. 834 of 2024),

M/s. Dinesh Ku. Panda & A.K. Mishra (W.A. 842, 848, 851, 864, 869, 872, 885, 1181 of 2024).

M/s. Sarangi & A.K. Nayak (W.A. 843 of 2024),

Mr. D.Mohapatra, Sr. Adv. with M/s. M.R. Pradhan, J. Barik, S.K. Rout, P.K. Singhdeo & C.K. Panda (W.A. 844 of 2024).

Ms. Deepali Mohapatra (W.A. 845 of 2024),

M/s. Sangram Mishra, P. Mishra, P.K. Mishra, J.R. Kar & C. Mohanty (W.A. 846 of 2024),

M/s. P.K. Mohanty, S. Mahakuda & P.Jena (W.A. 847 of 2024),

M/s. S. Mishra & J. Mohanty (W.A. 849 of 2024),

None (in W.A. 850, 854, 855, 856, 1470 of 2024),

M/s. T. Mishra, D.K. Patnaik, R. Mishra (W.A. 852, 877, 887 of 2024),

M/s. J. Mohanty, S. Mishra (W.A. 858 of 2024),

Mr. D. Mohapatra, Sr. Adv. with M/s. M.R. Pradhan, J. Barik, S.K. Rout, P.K. Singhdeo, C.K. Pradhan & C.K. Panda (W.A. 859 & 861 of 2024),

M/s. S.K. Pal & Akhand (W.A. 860 of 2024),

M/s. S. Mishra, P. Mishra, P.K. Mishra, J.R. Kar & C. Mohanty (W.A. 862, 870 of 2024),

M/s. S.R. Patnaik, P.K. Mohanty, B.P. Mohanty, A. Patnaik, S. Mohakuda & P. Jena, (W.A. 863,868, 871,878 of 2024),

M/s. P.K. Satapathy, P. Panda, S. Pati & P.K. Das (W.A. 867of 2024).

Judgment/Order

Judgment

D.K. SHRIPAD, J.

All these Intra-Court appeals are by the Orissa Water Supply and Sewerage Board. They seek to call in question the subject orders rendered by learned Single Judges of this Court in the individual writ petitions. All these orders in substance direct the Appellant Board to absorb/regularize the services of Respondent-employees and that if need be and to facilitate the same, posts be created/ sanctioned by the Government since they have been in continuous & spotless service for more than two decades, the perennial nature of work specifically being admitted by the Appellant-Board.

2. For the ease of reference, W.A. No. 857 of 2024 has been taken up with the consent of the Bar as the lead case and relevant part of impugned order dated 22.03.2024 entered in W.P.(C) No. 12794 of 2015 is reproduced:

> *"....In such view of the matter, the Opposite Parties are directed to consider the case of the Petitioner for regularization his service in the light of the order passed by the Coordinate Bench referred to hereinabove which has been confirmed by the*

Hon'ble Supreme Court within a period of two months….It is further directed that while considering the case of the Petitioner for regularization as his service as directed hereinabove, the Opposite Party cannot reject the claim only on the ground that there are no sanctioned posts. Further it is directed that in such eventuality, the Opposite Parties shall take a decision with regard to creation and sanctioned of posts to absorb/regularize of the Petitioner. In the event such decision is taken pursuant to the aforesaid direction and the same requires the concurrence of State, the State-Opposite Parties shall consider grant of concurrence keeping in mind that the Petitioner has been working for more than two decades and as such the nature of work they are performing perennial in nature." (sic)

3. After service of notice, the Respondent-employees, barring a few, have entered appearance through their learned advocates. Learned panel counsel appearing for the Board argued for the invalidation of impugned orders, whereas learned advocates representing the employees contended to the contra resisting the appeals. We hasten to mention here itself that there is a consensus at the Bar that all these appeals involve common questions of law & facts, and therefore they be heard & decided by a common judgment, notwithstanding minor variations in the pleadings of some of the employees.

4. The gist of submissions made on behalf of Appellant-Board is as under:-

(a) Regardless of length of service, employees of the kind are not entitled to absorption/regularization in the absence of sufficient number of sanctioned posts, especially when they were not working in the vacancies of any posts and their initial entry to the employment itself was illegal.

(b) Learned Single Judges grossly erred in directing creation & sanctioning of posts, which prerogative invariably lies with the Government, inasmuch as a host of factors enter the fray of such a decision making.

(c) Learned Single Judges have accorded relief to the employees in gross violation of law declared by the apex Court in State of ***State of Karnataka v. Umadevi***,[1].

In support of above submissions, learned Counsel pressed into service certain rulings of the Apex Court.

5. In resistance to appeals, the following contentions are urged on behalf of Respondent-employees:

(a) Appellant-Board being Article 12 entity under the Constitution has to conduct itself as a Model Employer and provide humane conditions of service for the workmen like the respondents as a matter of constitutional imperative; the impugned orders being animated by this view cannot be faltered.

(b) The long & spotless service of a quarter century demonstrates perennial nature of the work and therefore the argument that sufficient posts are not available for according absorption/regularization would not avail to the Appellant-Board.

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[1] (2006) 4 SCC 1

(c) Appellant-Board is a Statutory Body under the pervasive control of State Government, which is directed to create/sanction posts; however, State not being in appeal, the Board cannot make a grievance against the impugned orders. Although it is ordinarily a prerogative of State/Employer, in the circumstances of the case, learned Single Judges by way of exception have issued the direction, which is otherwise sustainable, the argued priority not being an inviolable Thumb Rule ever.

(d) The Appellant-Board is estopped from faltering the impugned directions, having itself on multiple occasions recommended to the State for the creation/sanction of sufficient number of posts after ascertaining perennial nature of the work, which it has to accomplish under the Scheme of subject Statute.

(e) Case of the Respondent-employees perfectly accords with a catena of rulings of the Apex Court post Umadevi, beginning with ***State of Karnatak v. M.L. Kesari,***[2], ***Jaggo v. UOI,***[3] decided on 20.12.2024 and after. Even otherwise, respondent-employees cannot be discriminated in the matter of regularization qua other similarly circumstanced candidates.

In support of their contentions, learned advocates banked upon a catena of rulings.

6. Having heard learned counsel appearing for the parties and having perused the appeal papers and having adverted to relevant of the rulings cited at the Bar, we decline indulgence in the matter for the following reasons.

6.1. Appellant-Board is constituted under the provisions of the Orissa Water Supply & Sewerage Board Act, 1991; the Board discharges public functions with service rendered by Respondent employees since a quarter century or so, is not in dispute. It is obvious that the work in question is perennial in nature and that these poor employees have been accomplishing the same with no complaint whatsoever. It is also not in dispute that the Board, being the employer in terms of Section 9 of the Act, has engaged the services of these respondents, there being no regular recruits, despite its recommendation to the State Government on several occasions. This being the position, the Appellant-Board, being an instrumentality of State under Article 12 of the Constitution of India, has to conduct itself as a Model Employer, vide ***Bhupendra Nath Hazarika v. State of Assam,***[4]. It hardly needs to be stated that there is Preambular Socialistic Pattern prescribed by the Constitution itself and therefore such an instrumentality cannot take up a stand that runs contrary to the same, apart from being bereft of elements of justice & fair play. After all, a Statutory Body like the Appellant-Board cannot run its ordained functions as East India Company of bygone era.

6.2. The vehement submission of learned panel counsel appearing for the Board that the very initial entry of the respondents to the service is illegal and therefore no

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[2] (2010) 9 SCC 247
[3] 2024 INSC 1034
[4] AIR 2013 SC 234

regularization/absorption would have been granted in terms of Umadevi *supra* cannot be acceded to and reasons for this are many: Firstly, Section 9(1) of the Act says "*The Board may appoint such officers and employees as it considers necessary for the efficient performance of its duties and discharge of its functions against posts sanctioned by the State Government."* Secondly, it is specifically admitted in the statement of objections filed in the writ petitions that the Board has engaged the services of these respondents. It is not the contra case of the Board and it cannot be either, the battle lines having been drawn up both the sides having filed their pleadings. It need not be stated that an admission in the pleadings is a substantive piece of evidence, if not a sacrosanct one. Therefore, the ratio in Umadei *supra* would not come to the aid of Appellant-Board, initial entry being absolutely legal.

6.3. Illegality is one thing and irregularity is another, even if arguably they are not polls asunder. At times, the difference between these two, sages of law like Fedric Pollock say, more often than not, is in degrees & not in kind. In a constitutionally ordained Welfare State its instrumentality like the Board cannot be permitted to contend that although it made the appointments in question, the same are marred by illegality, especially when they are not, for the reasons already discussed above. Here are employees who have been shading their sweat, if not blood, to the soil in the discharge of their functions for more than twenty five years. Firstly, a perpetrator of illegality, if at all these appointments are of the kind, cannot be permitted to take the advantage of its own illegal act. Secondly, whatever arguable illegality at the entry level of employment would diminish year by year and become nil at least after a quarter century, as a concession to the shortness of human life. One cannot dig the grave profitably, the dead having gone with the winds long ago once for all. Therefore, the entry of these respondents is at the most can be termed as irregular and therefore Umadevi cannot be chanted like mantra to defeat their legitimate expectation, if not right.

6.4. The next submission of panel counsel appearing for the Board that it is the prerogative of State Government under Section 9 to create & sanction posts is only a half legal truth. The text of said provision, which is already reproduced above, prescribes only a sanction for the posts that needs to be created by the Board itself. If the legislature intended the view of Board, it would have possibly employed the expression "posts created and sanctioned by the Government" or "posts sanctioned and created by the Government". However, that is not the nature of language here. Ordinarily, sanctioning follows the creation of posts in service jurisprudence. Added, power to appoint would necessarily include all ancillary powers, such as creating of posts to facilitate appointment. No rule or ruling is brought to our notice to sustain a view in variance. We note that the Appellant-Board is not a Department of the Government, which works as its limb but is a statutory entity having a fair degree of autonomy. This aspect has to enter the construing of Section 9(1) of the Act to make it meaningful, if not functional. We fail to understand, why the Board

failed to create posts without abdicating that power and thereafter to seek sanction of the Government. However, it is strange that the converse is practised.

6.5. The vehement submission of learned panel counsel for the Board that it is invariably the prerogative of Government to create posts and Court cannot interfere in any circumstance vide ***UOI v. Ilmo Devi,***[5]**,** again is difficult to completely agree with and reasons of this are not far to seek: Firstly, as already mentioned above, ordinarily power to appoint includes, power to create posts, unless the statute otherwise says; that otherwise is missing here. Apparently, State is not the appointing authority, although it has power to sanction the posts. It remains a riddle wrapped in enigma as to why the Board abdicated its power of creating posts in favour of the Government contrary to the policy enacted in Section 9(1) of the Act. It is not that there is no circumstance warranting creation of posts, when Board itself had asked for such creation & sanction at the hands of Government, more particularly when the engaged personnel have been working since last a quarter century or so. Power to create posts, as already mentioned above, lies with the Board and it is coupled with a duty as well, inasmuch as the legislature has employed the word 'power' in this provision and not the word 'discretion'. Board cannot say such power is its prerogative and a Constitutional Court cannot regulate it. There is nothing like absolute power or prerogative, "limited Government" being one of the basic features of our Constitution. A contra argument counters the rule of law.

6.6. Very importantly, it is not the State Government, which is in appeal before us against the direction purportedly for the creation & sanctioning of posts. Government happens to be one of the parties to the writ petition and it is not making out any grievance against the said direction, which accords with the multiple recommendations made by the Board several times hitherto fore. In fact, Board cannot be considered as an aggrieved party in order to call upon us to undertake a deeper examination of the contention as to the prerogative of the State Government to create & sanction posts for accommodating the poor employees, who have been relentlessly working, we repeat, for more than a quarter century with no complaints whatsoever. Courts have to individualize justice in the pleaded facts & circumstances. They cannot turn a worthy cause away by mindlessly invoking broad propositions canvassed at the Bar. We hasten to add that ordinarily Writ Courts do not interfere in matters of prerogatives of the Government; however, when it comes to lesser bodies, like the statutory Board in question, exceptions are recognized to the norm; the case in appeals at hand is one such exception.

6.7. We notice that the Appellant-Board in the subject Resolutions dated 23.12.2013, 03.01.2014, etc. has specifically stated the circumstances warranting creation & sanctioning of posts explicit recommending to regularize the services of all employees of the kind. It is admitted by the learned panel counsel before us that quite a few employees having secured orders of regularization in WP(C) Nos.3921,

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[5] 2021 SCC Online (SC) 899

3922, 3924 of 2006, WP(C) No. 10046 of 2008 & WP(C) No. 3395 of 2020, the Board had laid challenge in Writ Appeals that came to be negatived and further that even the SLPs filed before the Apex Court met the same fate. If one set of employees are granted regularization, another set similarly circumstanced cannot be unfavorably discriminated vide Apex Court decision in ***Raman Kumar & Ors. v. UOI,***[6]. This decision specifically refers to Umadevi supra. Again we need not say that an Article 12 entity cannot practise "pick & choose", when it comes to employing the work force. What applies to goose, applies to gander, subject to all just exceptions into which argued case of the appellants does not fit.

6.8. Learned advocates appearing for the employees are justified in reminding us that law like a living river flows and streams do emerge. Post Umadevi, that has happened in the matter of regularization/absorption of services. In its recent decision in Civil Appeal Nos. 8157, 8158-8179 of 2024 between **Shripal v. Nagar Nigam, Gajiabad** decided on 31.01.2025 vide MANU/SC/0139/2025, the Apex Court has observed at Para-17 as under:

> *"In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment Rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period."*

We appreciate the fairness of learned panel counsel appearing for the Appellant-Board rightly in not taking up contentions that these employees did not have requisite qualification, that their performance was unsatisfactory or that their services are no longer required for the functioning of the Board. He was also fair in laying bare the vacancy position of 32 ministerial posts with various designations, although some of them not availing to Respondent-employees, by producing the chart prepared by Administrative Officer of the Board on 20.03.2024. Chart also specifically mentions name of one employee Mr. A.K. Panda, who secured order of regularization in WP(C) No. 10046 of 2008. Learned panel counsel does not dispute assertion of learned advocates appearing for the Respondents that this matter ultimately went up to the Apex Court and was laid to rest, the subject SLP having been dismissed.

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[6] 2023 Live Law (SC) 520

6.9. In Jaggo supra the Hon'ble Supreme Court having surveyed the law relating to regularization from ***Umadevi to Vinod Kumar v. UOI,***[7] has observed at Para-20 as under:

> *"20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization…."*

This decision has discussed most of the rulings cited both by the Appellants' counsel and learned advocates appearing for the employees. Therefore, we have not re-ventured the survey, so that this judgment does not become a thesis. More is not necessary to deliberate.

In the above circumstances, these appeals being devoid of merits are liable to be and accordingly dismissed, costs having been reluctantly made easy.

The Appellant-Board & Official Respondents are directed to implement the impugned orders of the learned Single Judges and report compliance to the Registrar General of this Court within an outer limit of three months. Default or delay shall be viewed very seriously in the next legal battle, if waged by the Respondent-employees.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Appeals dismissed.

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[7] (2024) 1 SCR 1230

2025 (III) ILR-CUT-101

KSHYANA PRABHA NAIK
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 12301 OF 2024]

18 AUGUST 2025

[DIXIT KRISHNA SHRIPAD, J.]

Issues for Consideration

Whether rejection of an application for compassionate appointment on the ground of delay is sustainable.

Headnotes

ODISHA CIVIL SERVICES (REHABILITATION ASSISTANCE) RULES, 1990 – Rules 9(11), 16(1) – The Petitioner's application for compassionate appointment have been rejected on the ground of delay – Whether rejection of such application on the ground of delay is sustainable.

Held: No – No claimant for such appointment would stand benefited by brooking delay, has to be kept in view **–** It does not behoove a gigantic entity like the State to reject a claim of the kind only on the technical ground of limitation, when the Rules themselves provide for condonation of delay and also dispensing with rigor of the Rule concerned. (Para 4.3)

The decision on claim for compassionate appointment has to be taken at the earliest & on war footing – Therefore, remand would not do justice. On the contrary, it may generate one more legal battle. (Para 4.4)

This Writ Petition is allowed; a Writ of Certiorari issues quashing the Office Letter No. 2622 dated 12.04.2024 issued by the District Education Officer, Kalahandi-Opposite Party No.3; a Writ of Mandamus issues to the jurisdictional Opposite Parties to condone the delay & allow the application of the petitioner by issuing appointment order on compassionate ground and report compliance to the Registrar General of this Court within an out limit of eight (8) weeks reckoned from this day. (Para 4.4)

Citations Reference

Mohinder Singh Gill V. Chief Election Commission; **AIR 1978 SC 851 – referred to.**

List of Acts

Constitution of India, 1950; Odisha Civil Services (Rehabilitation Assistance) Rules, 1990.

Keywords

Limitation; Technical ground; Delay; Compassionate appointment.

Case Arising From

Rejection of application for compassionate appointment vide Letter No. 1672 dated 12.04.2024.

Appearances for Parties

For Petitioner : M/s. Satya Ranjan Pati, D. Pati, S.S.S. Swain & L. Behura.

For Opp.Parties : Mr. S. K. Jee, A.G.A.

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

Petitioner-widow, having suffered rejection of her application for compassionate appointment only on the ground of claim being belated, vide Letter No. 1672 dated 12.04.2024, is grieving before the Writ Court.

2. Learned counsel for the petitioner vehemently argues that his client has satisfied all the conditions for compassionate appointment, her husband having died in harness on 14.01.2018; she had applied for appointment on 10.11.2020, of course bit belatedly; however, Sub-Rule (11) of Rule-9 of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 (in short, '1990 Rules') provides for condonation of delay; the answering OP in the given circumstances ought to have condoned delay on its own and offered compassionate appointment. This having not happened, he submits, interference of this Court is eminently warranted.

3. Learned AGA for the OPs resists the petition with equal vehemence contending that the policy for compassionate appointment is an exception to the general rule that appointment to public service should be from open market and on merit; therefore, the aspiring appointees on compassionate ground ought to comply with the conditions for such appointment; one such condition is limitation period of one year reckoned from the death of employee vide Rule 9(6) of the 1990 Rules; in the instant case, his widow has made application long after one year of death and she has not offered any explanation for such delay. So contending, he seeks dismissal of the petition.

4. Having heard learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

4.1. The employee died in harness on 14.01.2018 leaving petitioner as widow; she had applied for compassionate appointment on 10.11.2020, whereas the normal

one year period expired on 13.01.2019, as per Sub-Rule (6) of Rule 9 of 1990 Rules. However, Sub-Rule (11) of Rule 9, which provides for condonation of delay, reads as under:

> *"(11) Notwithstanding the period of limitation prescribed in Sub rule (6), the delay in submission of application for appointment under these rules may be condoned by Government in concerned Administrative Department by an order to the effect that the applicant had sufficient cause for not submitting the application within such period."*

The subject rules are founded on the idea of difficulty which the family of a Government servant dying in harness, would encounter in the saga of life. Therefore, the provisions of such a statutory policy, as expressed in the form of Rules, have to be construed with due sympathy & compassion. After all, compassion is not unconstitutional value. In matters like this, Portia's knife in Shakespeare's Merchant of Venice cannot be made use of, ours being a Model State, and not East India Company nor a Mughal Regime of the bygone era. Compassion is a virtue; all scriptures whichever be the faith, preach to practise it. Sympathy & compassion have to animate decisions of the authorities consistent with the requirement of Rule position. That having not happened, there is error apparent on the face of impugned order warranting its invalidation.

4.2. Rule 9(11), which is reproduced above, apparently provides for entertaining belated claims for compassionate appointment. Added, Rule 16(1) provides for not only relaxing any provision of these Rules, but dispensing with too. The same has the following text:

> *"16(1) The State Government where satisfied that the operation of all or any provisions of these rules causes undue hardship in any particular case, it may dispense with or relax the provisions to such extent as it may consider necessary for dealing with the case in a just and equitable manner."*

It is difficult to countenance the contention of learned AGA that a separate application has to be made by the claimant seeking condonation of delay. One cannot oblivious to the fact that a poor widow was before the authorities, with avalanche of difficulties when bread winner of the family dies in harness that too abruptly. It is ideal if some explanation is offered in the very application made for compassionate appointment. In any event, a belated claim cannot be turned down without giving an opportunity to the applicant to explain the delay, if any, more particularly when all other conditions are complied with like the one required in distress certificate or the like. That would accord with the principles of natural justice too. Even otherwise, the authorities should on their own ascertain from the applicant by holding a summery inquiry as to the existence of facts & circumstances that resulted into claim being made belatedly. We hasten to add that the analogy of Section 5 of Limitation Act, 1963 that arguably requires a separate application being filed for condonation of delay, is impertinent.

4.3. When death of the bread winner of a family happens, it is like a bolt from the blue. It brings a train of problems, one of them being financial distress. As already mentioned above, the policy providing for compassionate appointment is founded on humanitarian values. No claimant for such appointment would stand benefited by brooking delay, has to be kept in view. It does not behove a gigantic entity like the State to reject a claim of the kind only on the technical ground of limitation, when the Rules themselves provide for condonation of delay and also dispensing with rigor of the Rule concerned.

4.4. Learned counsel for the petitioner is more than justified in placing reliance on ***Mohinder Singh Gill V. Chief Election Commission;*** AIR 1978 SC 851 in support of his contention that his client's application for compassionate appointment having been negatived only on the ground of delay, there should be a positive direction for granting the claim, instead of remitting the matter for consideration afresh. He is also right in pointing out that the State has not filed any counter nor does it dispute otherwise entitlement of the petitioner to such appointment. Added to this, the decision on claim for compassionate appointment has to be taken at the earliest & on war footing. Therefore, remand would not do justice. On the contrary, it may generate one more legal battle.

In the above circumstances, this Writ Petition is allowed; a Writ of Certiorari issues quashing the Office Letter No. 2622 dated 12.04.2024 issued by the District Education Officer, Kalahandi/Opposite Party No.3; a Writ of Mandamus issues to the jurisdictional Opposite Parties to condone the delay & allow the application of the petitioner by issuing appointment order on compassionate ground and report compliance to the Registrar General of this Court within an out limit of eight (8) weeks reckoned from this day.

Default of delay shall be viewed seriously in the next level of legal proceedings, if the petitioner is driven to take up.

It is open to the answer opposite parties to solicit any information or documents from the side of petitioner or from such other Department, as required for taking a decision on the subject application swiftly; however, in that guise delay shall not be brooked.

Now, no costs.

Web copy of this judgment to be acted upon by all concerned.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ petition allowed.

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2025 (III) ILR-CUT-105

STATE OF ODISHA
V.
NIRANJAN MALLIK

[DSREF NO. 2 OF 2024]
&
[JCRLA NO. 62 OF 2024]

12 AUGUST 2025

[B.P. ROUTRAY, J. & CHITTARANJAN DASH, J.]

Issues for Consideration

1. Whether absence of motive is fatal to the prosecution case.

2. When the plea of insanity had not been proved, it would attract the exception as provided under section 84 of IPC?

3. Burden lies upon whom to prove the plea of insanity.

4. Whether the death sentence is sustainable when the aggravating and mitigating circumstances have not been taken into consideration.

5. Whether the punishment imposed by the court can be altered when there is possibility of reformation and rehabilitation of the convict.

Headnotes

(A) CRIMINAL TRIAL – Absence of motive – The condemned prisoner is convicted for commission of offence U/s. 302, 307, 325, 326, 458 of the IPC – Whether absence of motive is fatal to the prosecution case.

Held: No – So far as motive is concerned, absence of same in a case of homicide is immaterial where there are direct evidence of eyewitnesses supported by medical evidences – Motive is a mental factor hidden in a deep recess of the mind. (Para 31)

It is true that failure to unravel the true motivating factor for committing the crime cannot lead to the inference that the Appellant is innocent. (Para 32)

(B) INDIAN PENAL CODE, 1860 – Section 84 – Plea of unsound of mind – The plea of insanity have not been proved – When the plea of insanity had not been proved, it would attract the exception as provided under section 84 of IPC?

Held: No – In the instant case, the act of commission of offences by the convict though lead towards the presumption of unstable mind, but the same

in absence of other supporting materials is not sufficient to arrive the conclusion regarding unsoundness of mind in order to attract the exception as per Section 84 of the IPC – Because in law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. (Para 32)

(C) INDIAN PENAL CODE, 1860 – Section 84 – Plea of insanity – Burden of proof lies upon whom?

Held: The burden of proof is on the accused – The onus has to be discharged by producing evidence as to the conduct of the accused prior to the offence, at the time or immediately after the offence with reference to his mental condition by production of medical evidence and other relevant factors. (Para 32)

(D) CRIMINAL TRIAL – Death sentence – Imposition – Whether the death sentence is sustainable when the aggravating and mitigating circumstances have not been taken into consideration.

Held: No.

(E) CODE OF CRIMINAL PROCEDURE, 1973 – Section 354(3) – The appellant has been convicted for the offences U/s. 302, 307, 325, 458 of IPC – Death sentence imposed – The learned Court has not considered the antecedents, social and economic background, mitigating and extending circumstances while imposing the sentence to death – Whether the punishment imposed by the court can be altered when there is possibility of reformation and rehabilitation of the convict.

Held: Yes.

Citations Reference

Mohar and another vs. State of U.P., **(2002) 7 SCC 606**; Haryana vs. Krishan, **AIR 2017 SC 3125;** Hari Singh Gond vrs. State of Madhya Pradesh, **(2008) 16 SCC 109;** Chunni Bai vrs. State of Chhattisgarh, **2025 SCC OnLine SC 955**; Dahyabhai Chhaganbhai Thakkar vrs. State of Gujarat, **AIR 1964 SC 1563**; Bachan Singh -Vrs.- State of Punjab, **(1980) 2 SCC 684;** Machhi Singh -Vrs.- State of Punjab, **(1983) 3 SCC 470;** Ravi -Vrs.- State of Maharashtra, **(2019) 9 SCC 622;** Laxman Naik -Vrs.- State of Orissa, **(1994) 3 SCC 381;** Dhananjoy Chatterjee Vrs.- State, **(1994) 2 Supreme Court Cases 220;** Santosh Kumar Satishbhushan Bariyar -Vrs.- State of Maharashtra, **(2009) 6 SCC 498;** Sundar @ Sundarrajan Vs. State by Inspector of Police, **2023 5 SCR 1016;** Allauddin Mian and Others -Vrs.- State of Bihar, **(1989) 3 SCC 5;** Manoj and others -Vrs.- State of Madhya

Pradesh, **(2023) 2 SCC 353;** Rajendra Prasad –Vrs.- State of Uttar Pradesh, **A.I.R. 1979 S.C. 916 – referred to.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973

Keywords

Mitigating circumstances; Burden of proof; Plea of insanity; Joinder of charges; Motive; Prove; Absence of motive; Death sentence; Prove of insanity; Criminal antecedent; Social status; Economic background; Reformation; Rehabilitation; Unsound of mind

Case Arising From

Judgment dated 24th April, 2024 passed by the learned Addl. Sessions Judge, Odagaon in S.T. Case No. 217/39 of 2019-23 (CIS No.28/2023).

Appearances for Parties

For Appellant : Mr. S. Mohanty, AGA

For Respondent : Mr. J.K. Panda, Amicus Curiae

Judgment/Order

Judgment

B.P. ROUTRAY, J.

1. Present death sentence reference along with the criminal appeal are arising out of out of the impugned judgment and conviction dated 24th April 2024, convicting the condemned prisoner Nanda @ Niranjan Mallik. He is convicted for commission of offence under Sections 302, 307, 325, 326, 458 of the IPC and sentenced to capital punishment along with imprisonment for different descriptions and fine. The sentencing part is classified in the following manner:

> (i) Sentenced to death for committing offence of murder punishable under Section 302, IPC and to pay a fine of Rs.50,000/- and in default, to undergo rigorous imprisonment for a period of one year.
>
> (ii) Sentenced to rigorous imprisonment till end of life and to pay a fine of Rs.50,000/- for commission of offence of attempt to murder punishable under Section 307 of the IPC. In default to pay the fine amount to undergo further rigorous imprisonment for one year.
>
> (iii) Sentenced to rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/- for commission of offence of grievous hurt punishable under Section 325, IPC. In default to pay the fine amount to further undergo rigorous imprisonment for six months.
>
> (iv) Sentenced to rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- for causing grievous hurt punishable under Section 326, IPC. In

default to pay the fine amount to further undergo rigorous imprisonment for six months more.

(v) Sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- of committing lurking house trespass punishable under Section 458 of the IPC. In default to pay the fine amount to further undergo rigorous imprisonment for six months more.

2. According to prosecution case, the occurrence took place in a sequence on the intervening night of 16th and 17th January 2019 started from around 2:00 AM till early morning at different places of Odagaon Town.

3. Odagaon in the district of Nayagarh is a small Sub-Divisional town and the convict, as well as all the victims are residents of said area. In a complete sequence, the convict committed murder of two persons namely, Lochan Sethi (Male) and Badani Pradhan (Female) and injured three more persons namely, Sulochana Pradhan (Female), Amulya Barik (Female) and Dambaru (Male). The deceased, Lochan, was working as a Night Watchman in the vegetable market at Odagaon. On the fateful night intervening between 16th and 17th January 2019, while Lochan was performing his night duty in the vegetable market, the convict all of a sudden appeared with a piece of wooden plank and suddenly hit on his head and other parts of the body. The other watchman (P.W.9) of adjacent Ganesh market rushed towards the spot and then Niranjan (convict) fled away from there. After some time then, when deceased Badani was sweeping front portion of his house, which situates within the compounded premises of Sanjibnee Clinic at Odagaon, the convict suddenly appeared there scaling the wall at around 3:00 PM and dealt a blow on her head. The deceased fell in a pool of blood and died at the spot. Hearing her shout, her daughter Sulochana, who was bathing nearby, rushed shouting at the convict. But she was also not spared and the convict assaulted Sulochana (P.W.13) with the same wooden plank on her head and other parts of the body, as a result of which Sulochana also fell down at the spot in a pull of blood. The convict did not spare her with that much of assault. He stabbed her multiple times and inserted a pastry roller (Belena Kathi) into her private part, and it is to be mentioned that at that time Sulochana was pregnant carrying fetus of around seven months. Sulochana was working in Sanjibanee Clinic and residing there along with her mother (deceased Badani) in the servant quarters situated within its premises and the spot of occurrence is the front area of their house surrounded by compound wall of the clinic.

Hearing the scream of mother and daughter, some passersby entered inside the premises of the clinic climbing up the wall and seeing them the convict immediately fled away wearing a ladies night gown kept outside.

Then after some gap of this incident, when Amulya @ Amuli Barik (P.W.5), an elderly woman, was going to Raghunath temple in that fateful hours of early morning, this convict assaulted her in random on her head and other parts of the body. Due to the assault by the convict, P.W.5 fell down on road with bleeding

injuries. The convict then proceeded further and saw other injured Dambaru opening of his shop. He proceeded towards Dambaru (P.W.15) and when raised the wooden plank to assault him, P.W.15 protested the same. There was a tussle between the convict and P.W.15 and P.W.15 snatched the wooden plank from the hands of the convict. The convict bit the left hand little finger of P.W.15 so severely that the tip of finger was separated from the rest part of the finger, resulting severe bleeding injury to P.W.15. Probably the convict was captured thereafter, though the prosecution case is silent regarding the same.

4. Thus, commission of two murders, one attempt to murder and two grievous hurts with lurking house trespass have been charged against the convict under different heads prescribed in the Penal Code. The convict did not plead guilty. The convict during his examination under Section 313, Cr.P.C. has mostly replied to all such questions put to him either as falsehood or without his knowledge. So it is seen that the accused has taken the plea of innocence and false implications.

5. The prosecution in order to prove the charges against the convict has examined 27 witnesses and adduced 94 documents. Apart from this, six material objects have been marked in evidence, in course of trial. The defence did not adduce any evidence in his support.

Among the witnesses examined by the prosecution, P.W.2 is the informant. P.W.9 is stated to be the eye-witness in respect of assault on deceased-Lochana. P.W.13 (Sulochana), who was injured and one of the victims, has narrated the assault on deceased-Badani regarding her death, and said evidence of P.W.13 has been supported by P.W.6 and 17 as the eye-witnesses of the assault committed on deceased-Badani. P.W.5 (Amuli) is one of the injured and her evidence is supported by P.W.1 and 10. P.W.15 (Damodar) is another injured, who speaks of the injury caused to him by the convict. P.W.26 is the Investigating Officer and P.W.27 is the Scientific Officer. P.W.14, 22, 23, 24 and 25 are different Medical Officers relating to post-mortem examination and injuries on different victims of assault.

Ext.P-1 is the FIR, P-21, 22, 23, 24 and 32 are spot maps, P-8 and 13 are post-mortem examination reports, and P-12, 14, 15, 16, 17 and 27/2 are the medical examination reports of the injuries. P-35 is the chemical examination report.

Among material objects produced in course of trial, MO-III is the wooden plank, stated as the weapon of offence.

6. As stated supra, the series of assault on different victims was committed in a sequence one after another. It is committed in that intervening night of 16th and 17th January 2019 between 2.30 A.M. up-to early morning. So far as the murders of deceased-Lochana Sethi and Badani Pradhan are concerned, their deaths are seen homicidal in nature from the circumstances and injuries sustained by them. The post-mortem examination report of Lochana is Ext.P-13 and the concerned Medical Officer has been examined as P.W.23. Three lacerated wounds on his left eye brow, left cheek and both legs are found during post-mortem examination corresponding to

intra-cranial bleeding on the occipital region of the head along with hematoma. There was bruise on the right eye and fracture of both tibia and fibula of deceased-Lochana due to the assault. The post-mortem examining doctor, P.W.23, has unerringly stated same in the court proving his report of examination under Ext.P-13. Nothing could be elicited from the mouth of P.W.23 to disbelieve his evidence or medical report regarding the injuries sustained by deceased-Lochana and his cause of death.

7. Deceased-Badani sustained three lacerated injuries on her head with fracture of skull bone. There were also six stab injuries found on her back amongst which two are so deep in nature, piercing into the abdominal viscera. On dissection, the cranial cavity was found ruptured with blood clotting on the occipital region of the head. The liver was found ruptured and lacerated. The post-mortem doctor, P.W.14, has vividly stated about such injuries inflicted on the body of the deceased-Badani proving his report under Ext.P-5. The evidence of P.W.14 regarding cause of death and injuries sustained by deceased-Badani could not be demolished in his cross-examination. Nothing could be exuded from his mouth during his cross-examination to doubt the veracity of his statements relating to the injuries sustained by Badani or her cause of death.

8. The circumstances as narrated by the eye-witnesses regarding assault on deceased-Lochana and Badani do support the version of the Medical Officers as to how the assault was made by the wooden plank and other weapons on them and how they fell in pool of blood at the respective spots due to the assault. The statements narrated by the eye-witnesses and post occurrence witnesses, if read cumulatively with the medical evidences, clearly and unerringly deduce the conclusion regarding homicidal nature of death of both the deceased. Having analyzed all such materials and statements of witnesses, there could be no hesitation determining that the deceased-Lochana and Badani died homicidal nature of death.

9. To see the complicity of the convict-Niranjan in the alleged murder of two deceased persons, the evidences of respective eye-witnesses are found very much useful in this regard. P.W.9 is the eye-witness with regard to assault on deceased-Lochana at the vegetable market. Said P.W.9 is one of the Watchman of Ganesh Market adjacent to the vegetable market where deceased-Lochana was performing his night duty as the Watchman. It appears from his testimony that on 16th January 2019 in the night at around 2.30 A.M., he saw the convict-Niranjan came armed with one wooden plank and suddenly dealt blow on the head of Lochana. As a result of the same, blood oozed from nostrils of Lochana and he fell down on the ground. The informant (P.W.2) is the son of deceased-Lochana and he named Niranjan as the assailant in the body of the FIR. P.W.2 and 3 both sons of Lochana are the post occurrence witnesses, who shifted deceased-Lochana to the Hospital. The evidences of P.W.2 & 3 are found supported by the circumstances. They narrated about the injuries sustained by deceased-Lochana and his death. The direct eye-witnessing of the assault by the convict as stated by P.W.9 is found corroborated from the recitals

made in the FIR (P-1). A detail analysis of the statement of P.W.9, the recitals of the FIR and the statement of P.W.2 & 3 *vis-à-vis* the medical evidence, it is found that they run parallel and corroborative to describe the role of convict as the assailant in committing assaults on deceased-Lochana.

10. Similarly, the assault on deceased-Badani has been eye-witnessed by P.W.13, 6 and 17. P.W.13 is the daughter of deceased-Badani, who sustained life threatening injuries while trying to save her mother. It is seen from the evidence of P.W.13 that in the alleged early morning at around 3.00 A.M. when she was taking bath and her mother (Badani) was sweeping the outside area of their room, this convict entered into the place and dealt a blow on the head of Badani suddenly. As her mother yelled for help, she (P.W.13) rushed there to see the convict assaulting her mother by the wooden plank mercilessly. As protested by her, the convict dealt blows on her head by the same wooden plank. Due to the assault, she fell down and lost sense. But before that, she could sense that the convict stabbed in her belly with a knife like object. The fetus in the womb, as she was pregnant for around seven months by then, died and she lost her motherhood. It was not the end, but the convict inserted a pastry roller inside her vagina. She was immediately shifted to District Headquarter Hospital and then to AIIMS at Bhubaneswar where she underwent treatment for around two months to recover.

11. P.W.17 is the doctor owning Sanjibanee Clinic where P.W.13 was working as "Attendant" and staying in the servant quarters along with her mother within the campus of said clinic. P.W.6 is the wife of P.W.17 and they are also staying within the same campus. They both have said in their evidence that hearing the noise when they came to their terrace saw the convict assaulting P.W.13, who had also assaulted Badani, the deceased. P.W.6 specifically said that she saw the convict assaulting Sulochana and her mother. Seeing this, she raised shout and by then some local public entered into their premises scaling over the boundary wall, and the convict then fled away wearing a lady night gown. P.W.13 has stated everything how the convict caused assault on her mother and herself in the wee hours of that fateful morning when she was taking bath. Before losing her sense, P.W.13 could sense the horrendous and barbaric act of the convict. Her statements made in the examination-in-chief could not be demolished or rebutted during the cross-examination. Rather her assertions have been fortified by the testimony of P.W.6 & 17, the Husband and Wife duo, who witnessed from their terrace. There is nothing to disbelieve the testimony of P.W.13, being invigorated by the statements of P.W.6 & 17 and supported by the medical evidence.

12. From afore-stated analysis of the testimony of the witnesses, the complicity of the convict in committing the death of both the deceased, Lochana and Badani, is well established beyond all reasonable doubts. It is not the case of circumstantial evidence only, but the assault committed by the convict on the deceased persons is proved through direct evidence. The death of both the deceased, Lochana and

Badani has thus been proved beyond all reasonable doubt that the same is due to assault by the convict as the author of the crime.

13. Three more persons have been injured in the series of occurrence besides two deceased persons. Those three injured have been examined from the side of the prosecution as P.W.5, P.W.13 and P.W.15, namely, Amuli Barik, Sulochana Pradhan and Dambaru Sahu respectively. The assaults on Sulochana (P.W.13) including the assault on her mother (deceased Badani Pradhan) have been well described by P.W.13. It is stated by her that when she was bathing in the early hours of morning and Badani was sweeping the outside area of their house, hearing the scream of Badani she came out and found the accused was assaulting her mother. When she protested, the accused dealt a blow on her head by the same wooden plank. She fell down on the ground and lost sense. But before that she could perceive that the accused stabbed on her belly multiple times with a knife. The accused has also inserted a pastry roller into her vagina. This statement of P.W.13 is found supported by other two eye-witnesses Viz. P.W.6 & 17 from the terrace of their house. It is to be noted here that this place of occurrence is inside the campus of Sanjibanee Clinic-cum-residence of P.W.6 and 17, where P.W.13 was working as an Attendant and staying with her mother in the servant quarters. P.W.6 & 17 have not only testified with regard to the assault on Badani and Sulochana, but also forfeited the evidence of P.W.13 to describe the brutal and barbaric assault of the accused on both of them. The medical evidence of P.W.24 & 25 along with the reports under Ext.P-16 & P-17 also speaks about the injuries of Sulochana, who sustained three lacerated injuries on the left scalp, left eye and lip with multiple stabs in the abdomen, multiple contusions on the chest and upper limb. A foreign body was also detected inserted to her vagina. Not only this but one iron rod of length of 30 cm and broken knife of length of 10 cm along with one broken tooth was recovered from the body of Sulochana during her operation in AIIMS, Bhubaneswar, where she was referred to for treatment, as per the seizure list prepared under Ext.P-26 by the Investigating Officer. Sulochana being the injured her statement carries much credence with regard to nature of assault and the author thereof. In ***Mohar and another vs. State of U.P., (2002) 7 SCC 606,*** the Supreme Court has observed that, "The testimony of an injured has its own efficacy and relevancy. The fact that the witness sustained injuries on his body would show that he was present at the place of occurrence and had seen the occurrence by himself. Convincing evidence would require to discredit an injured witness. Similarly, every discrepancy in the statement of a witness cannot be treated as fatal. The discrepancy which do not affect the prosecution case materially cannot create any infirmity." Similarly in the case of ***Haryana vs. Krishan, AIR 2017 SC 3125,*** the Supreme Court has also observed that, "Deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies for the reason that his presence on the scene stands established in the case and it is proved that he suffered the injuries during the said incident."

As stated before, there is nothing elicited from the mouth of such witnesses to disbelieve her version, rather found corroborative by the evidence of other eye-witnesses. The injuries sustained by Sulochana and the prolonged life saving treatment suffered by her do speak for itself that the attempt was made to commit her murder and therefore, there cannot be any hesitation to conclude that the accused had the intention to commit murder of P.W.13 to attract the punishment under Section 307, I.P.C.

14. The story continues further when P.W.5 was assaulted by the accused by means of a wooden plank while she was going to the temple in that fateful early morning. The accused dealt blow on the head and left hand of P.W.5 leaving her in a pull of blood. P.W. 5 was also treated at Sum Hospital, Bhubaneswar being referred by the C.H.C., Odagaon where she underwent treatment for two days to recover. P.W.1 and 10 are two witnesses, who support the evidence of P.W.5 that they shifted her in injured condition to the Hospital for treatment. As per the evidence of P.W.24 and the medical report vide Ext.P-15, said P.W.5 sustained two lacerated injuries on the tempo parietal region and occipital region of her head along with fracture of left lateral malleous and right distal ulna. The lacerated injuries are on the vital part of the body with threat to life had she not been subjected to treatment soon. Alike P.W.13, the status of P.W.5 as an injured witness speaks itself about credibility of her statement regarding the assault and the author thereof. There is no reason found on record to disbelieve her version or nothing could be elicited from her mouth to disbelieve her evidence. The location of the injuries on her body and the impact thereof further suggests the intention of the accused to kill her. As such taking all such circumstances including the nature of weapon, the offence punishable under Section 307, I.P.C. is definitely established against the accused.

15. The accused again attempted to assault P.W.15 (Dambaru Sahu), who had an eatery at Chudamill Chowk, Odagaon in that alleged early morning. This P.W.15 has stated in his evidence that when he was opening his shop, the accused came near him and blow the wooden plank to assault him, which was protested by him. P.W.15 could able to snatch the wooden plank from the accused in the scuffle but the accused bit his left little finger. As a result of the same, he sustained profuse bleeding and shifted to the District Headquarter Hospital, Nayagarh for treatment and also got treatment in Sum Hospital, Bhubaneswar. This evidence of P.W.15 is also left unimpeachable like the evidences of other injured persons, Viz. P.W.5 and 13. He stood confirmed to his statement about the occurrence and assault concerning him during the cross-examination and as stated earlier such evidence of the injured eye-witness carries great trust and credence about the happenings and no reason is left to disbelieve his evidence. Therefore, the assault on him by the accused that resulted separation of the tip of his little finger attracts the offence punishable under Section 325, I.P.C.

16. It need to be mentioned here that assaults made on Sulochana and Amuli by means of wooden plank and other weapons resulting different injuries on their

person attracts of offence under Section 326, I.P.C. along with the offence of attempt to murder. The entry of the accused into the campus of residence of Sulochana and Sanjibanee Clinic by scaling over the wall makes out the offence punishable under Section 458, I.P.C. against the accused.

17. An argument is advanced on behalf of the defence that there are discrepancies in the evidence of the witnesses that P.W.9 saw, as stated during his cross-examination, that the accused was wearing a lady gown at the time of assaulting deceased-Lochan and so the version of this eye-witness cannot be relied on for the reason that if Lochan was assaulted at the first instance and then Badani with Sulochana, how could it be possible on the part of the convict to be seen wearing the lady gown. It is to be explained here that as per the prosecution there are four spots of occurrence and the relating spot maps are Ext.P-21 (Spot No.1), P-22 (Spot No.2), P-23 (Spot No.3) and P-24 (Spot No.4). But there is nothing on record that all these spots are related in sequence. Prosecution has not stated which occurrence in the sequence was committed first and thereafter one by one. This being lacking on prosecution record, nothing has also been brought on record by the defence to reveal the sequence of occurrence. Therefore it is difficult to opine on which occurrence took first and thereafter serially. Bereft of all these, such discrepancy in the evidence of P.W.9 does not take away his credibility as the eye witness of the assault committed by the accused on deceased-Lochan. In appreciation of evidence, truth has to be separated from falsehood. A true witness is often subjected to some discrepancies because it is not possible to carry the exact memory of past events. The account of statement with regard to eye-witnessing the occurrence is to be perceived on the basis of material evidence and in the case of eye witness it would not be prudent to discard his evidence unless his evidence is found otherwise untrustworthy through material discrepancies. In the case at hand, P.W.9 is an independent witness without having any hostility towards the accused. So such discrepancy as pointed out by the defence does not take away his credibility of his version of accounting the assault by the accused on deceased-Lochan.

18. First to deal with offence of murder and attempt to murder, once it is established beyond all reasonable doubts that the convict (Niranjan) is the author of death of Lochana and Badani, and attempt to murder of Sulochana, by way of assault with the wooden plank (MO-III) and the other weapon, i.e. the knife like object, it falls to determine whether he had the intention and knowledge of killing the deceased and injured in order to attract the punishment under Section 302 of the IPC.

19. It is submitted before this Court in course of hearing that the convict was suffering from mental insanity or unsoundness of mind at the time of committing the offence, and he had no such intention either to kill or attempt to kill or to cause injuries. It is submitted that the convict had previously received treatment for mental unsoundness and in absence of any motive in committing the offences, it is

established that the convict did such assault by unsoundness of mind, without any intention, being incapable of knowing the nature and consequence of the act.

20. Section 300 of the IPC prescribes culpable homicide amounting to murder that every culpable homicide is murder except such exceptions prescribed, if the act by which the death is caused is done with intention of causing death or causing such bodily injury as the offender knows likely to cause death or sufficient to cause death in ordinary course of nature or it is so imminently dangerous to cause death in all probability. The exceptions are regarding the circumstances of grave and sudden provocation, by good faith, in sudden fight without pre-meditation or by a public servant acting in discharge of public duty. Admittedly present facts of the case do not fall within any of the exceptions provided in Section 300 of the I.P.C. So to determine the intention and knowledge of committing culpable homicide amounting to murder or attempt to murder, the facts and circumstances of the given case are important. Intention is a mental state to be gathered from the actions and circumstances of the case.

21. In committing an act, particularly a criminal misconduct, the person who commits the act is attributed with the intention to cause natural consequences that follows from the act performed. There may be situations when the person makes the intention for performing an act known clearly by oral declaration or otherwise. In certain cases, it can be illusive, when intention is not clearly spelt out or discernible and the same has to be gathered from the surrounding facts and circumstances coupled with the acts of the accused. In order to gather the proof of intention or conscious knowledge of what the accused had done, the set of facts in a given case need to be analyzed to attract the component of *mens rea* and establishment of the same beyond reasonable doubt.

22. It is true that nothing could be brought on record before the learned trial court in order to satisfy the contention of the convict to satisfy his unsoundness of mind either at the time of commission of offences or in course of the trial. The convict participated in trial as a normal person with sound mind taking the plea of innocence and falsehood. He did not say anything during his examination by the court under Section 313 Cr.P.C. either regarding his previous conduct or treatment relating to unsoundness of mind. It has been emphasized by the defence in course of hearing before this Court that the conduct of the convict wearing lady night gown while fleeing from the spot of murder of Badani is an unnatural conduct on the part of the convict pointing towards his insanity and in addition to that, there is absence of motive in committing the assaults.

23. But the convict did not adduce any defence evidence. Not a single medical document was produced before learned trial court to justify unsoundness of mind of the convict at any previous point of time and nothing is also produced on record regarding his insanity or unsound mind afterwards following the incident. He faced trial as a normal man with sound mind and the learned trial judge did not find anything regarding his unsoundness of mind. He faced the trial in the court like any

other normal accused. It is true that the burden of proof rests on the defence to prove his insanity at the time of commission of offence. Undoubtedly nothing could be found in course of the trial to opine on the mental state of the accused either as a lunatic or his incapability of making defence due to unsound mind. The learned trial court proceeded against the convict with the satisfaction that he is of sound mind capable of understanding the consequences and making his defence. From the materials produced on record along with intelligible understanding of the questions put to the convict during his examination under Section 313, Cr.P.C. and the questions advanced during cross-examination of different witnesses, it is clear and evident that the convict was in the state of sound mind capable of understanding the procedure, charges and evidences in course of the trial. However, it is found on record that some stray suggestions were put to the Investigating Officer (P.W.26) by recalling him for further cross-examination. The same are re-produced as follows:-

> "xx xx xx
>
> 30. xx .. xx .. xx I had made no investigation to ascertain the background fact of the accused. I had never received any information, before the incident that a person having unsound mind is roaming in Odagaon town. Neither the accused nor of his family member has informed me, during investigation, if accused was any treatment at SCB Medical College, Cuttack, prior to the incident at any point of time. After arrest I had send the accused for medical treatment."

24. Nonetheless, the burden comes on the convict to prove his claim of insanity at the time of commission of offences. The principles to be looked in to examine and determine the plea of insanity, even though the same is absent in the given facts of present case, are the circumstances of the case that;

- whether there is deliberation and preparation for the act,
- whether it was done in a manner revealing a desire for concealment,
- the conduct of the accused following the crime if shows consciousness of guilt and effort to avoid detection, and
- whether he offered false pleas or false statement after being detected.

Mere absence of motive for the crime without any corroboration with previous insanity cannot be the determinative factor to rule in favour of his insanity in committing the crime. The plea of insanity of mind is required to be proved on record beyond doubt and absence of motive is an additional factor to such materials brought on record to prove the insanity.

25. In the chapter of general exceptions envisaged under the Indian Penal Code, Section 84 postulates that nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of act, or that he is doing what is either wrong or contrary to law.

26. In ***Hari Singh Gond vrs. State of Madhya Pradesh, (2008) 16 SCC 109,*** it is observed that:

"11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. Stephen in '*History of the Criminal Law of England*, Vo. II, p.166 has observed that if a person cuts off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section. This Court in *Sherall Walli Mohammed v. State of Maharashtra, (1973) 4 SCC 79*, held that

'….The mere fact that no motive has been proved why the accused murdered his wife and child or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have necessary *mens rea* for the offence.

12. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated *M'Naughton* rules of 19th Century England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in *M'Naughton's* case (1843) 4 St. Tr. NS 847 (HL). Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or prefect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act, but merely a cessation of the violent symptoms of the disorder is not sufficient.

13. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an

accused is conceited, odd irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts, in the past or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section."

27. In a recent decision of the Hon'ble Supreme Court in ***Chunni Bai vrs. State of Chhattisgarh, 2025 SCC OnLine SC 955***, it is explained that,

"XX .. XX .. There is a difference between medical insanity and legal insanity. What Section 84 IPC provides is legal insanity as distinguished from medical insanity. A person is said to be of unsound mind on whom criminal liability cannot be fastened if at the time of commission of the act, he is incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law. It may also be noted that the expression "unsoundness of mind" or the word "insanity" has not been defined in the Penal Code, 1860, though these have been used interchangeably. In the absence of a precise definition of these terms, insanity or unsoundness of mind has been variously understood by courts in varying degrees of mental disorder and the courts have applied this attribute to give the benefit of doubt or otherwise, depending on the facts and circumstances of the cases. However, mere odd behaviour or certain physical or mental ailments affecting the emotions or capacity to think and act properly have not been construed to be "unsound mind" within the scope of Section 84 of the IPC. All kinds of insanity as are understood are not covered under Section 84 of IPC but only such acts, when committed by a person who was incapable of knowing the nature of the act or that he was doing which is either wrong or contrary to law are concerned. As a consequence, only such mental or medical condition which affects or disturbs the faculty of the person which renders him unable to know the nature of act committed or that he was doing which he did not know that it was wrong or contrary to law can be given the benefit of insanity under Section 84 IPC, and thus escape criminal liability."

28. As stated earlier, the burden of proof to prove existence of such circumstance to attract the exception as per Section 84 of the IPC is on the accused and of course, the standard of proof required for accused by law in such cases is preponderance of probability as is adopted in civil cases. (See : *Satyavir Singh Rathi, Assistant Commissioner of Police v. State, (2011) 6 SCC 1 : AIR 2011 SC 1748; Munshi Ram v. Delhi Admn., AIR 1968 SC 702; State of U.P. v. Mohd. Musheer Khan, (1977) 3 SCC 562 : AIR 1977 SC 2226*).

29. In ***Dahyabhai Chhaganbhai Thakkar vrs. State of Gujarat, AIR 1964 SC 1563,*** it is observed as follows:

"7. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the

> accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Penal Code, 1860 : the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

30. In the case at hand, nothing has been brought on record either by the prosecution or the defence to suggest mental illness of the convict prior to commission of the offences. The general suggestions given to the I.O. (P.W.26) upon his recall for further cross-examination, is without any supporting material. No such medical paper could be produced by the convict nor any oral evidence through the witnesses could be brought on record despite elaborate cross-examinations are being faced by them. The convict has participated in the trial as a normal person and the trial court did not find anything with him to be incapable of understanding the nature of proceedings and its consequence, and he did not bring anything towards his past conduct with a view to suggest his legal insanity or mental instability. What is emphasized on behalf of the convict to bring the factum of unsoundness of mind is the submission regarding absence of motive in committing the offences. It is also stated that committing of such offences serially one after another within a short span of time is itself an abnormal conduct suggesting mental instability of the convict and that apart wearing of a lady night gown by the convict is a factor to strengthen such mental unsoundness of the convict.

31. So far as motive is concerned, absence of same in a case of homicide is immaterial where there are direct evidence of eyewitnesses supported by medical evidences. Motive is a mental factor hidden in a deep recess of the mind. It is explained in ***Chunni Bai*** (supra) as follows:

> "47. Motive is usually the basis for causing the "intention" to commit any crime, but it is highly elusive and difficult to prove as it remains hidden in the deep recesses of the mind and is not comprehensible to others, unless disclosed by the perpetrator. Though under the law, it is absolutely not necessary that to prove an offence, motive is also required to be established if the intention or the *mens rea* can be safely inferred from the surrounding facts. But where the motive which can provide the basis for the intention appears to be totally missing, the court has to be very circumspect in drawing the inference of the proof of the presence of intention.
>
> 48. For committing a serious crime like homicide, there could be various motivating factors. One may commit the crime of homicide propelled by anger or motivated by insult, humiliation or jealousy. Other motivating factors may be to exact revenge or by way of retribution or to hide certain crimes already committed. One may also commit homicide to gain undue pecuniary benefit or otherwise. One may commit

> such a crime out of sheer frustration and dejection with life channelising through violent acts. One may commit such crime because of superstitious beliefs.
>
> There could be numerous factors, and it may not be possible to contemplate and mention all such situations that motivates a person to commit violent crime like homicide. While proof of motive of the crime may strengthen the prosecution's case in proving the guilt of the offender, failure to prove motive is not fatal if the offence is otherwise proved through direct and incontrovertible evidence. At the same time, absence of any motive may benefit the accused under certain circumstances, for the ingredient of intention which constitutes the *mens rea* has also to be proved."

32. It is true that failure to unravel the true motivating factor for committing the crime cannot lead to the inference that the Appellant is innocent. In the instant case, the act of commission of offences by the convict though lead towards the presumption of unstable mind, but the same in absence of other supporting materials is not sufficient to arrive the conclusion regarding unsoundness of mind in order to attract the exception as per Section 84 of the IPC. Because in law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof is on the accused. It is true that failure to unravel the true motivating factor for committing the crime cannot lead to the inference that the Appellant is innocent. In the instant case, the act of commission of offences by the convict though lead towards the presumption of unstable mind, but the same in absence of other supporting materials is not sufficient to arrive the conclusion regarding unsoundness of mind in order to attract the exception as per Section 84 of the IPC. Because in law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof is on the accused. P.W.13. So it cannot be said that the intention of the accused was not to hide himself from the eyes of the witnesses and as such, the submission advanced by the defence is denied. It is not that the accused (convict) had not done anything on his part to conceal himself after commission of each crime. But it is the consistent evidence of the witnesses that after assault on each victim he immediately fled away noticing presence of the witnesses approaching towards the scene of crime. In the last crime of the sequence, when he assaulted on Dambaru (P.W.15), Dambaru was swift in defending himself from deadly assault of the accused though has lost his finger in the tussle. A close circumspection of the events with reference to the conduct of convict reveals his preparedness and swift escape from the scene. Therefore, taking note of the circumstances, timing and the manner of commission of the assaults particularly on deceased Badani and P.W.3, it is not suggestive of anything in favour of the convict to be without intention or without knowledge of consequences to commit murder and grievous hurts. Therefore, the intention or *mens rea* on the part of convict is found established from the circumstances and the actions narrated by the witnesses. As such, the conviction rendered by the trial court on the accused is found justified and thus confirmed.

33. Here a technical aspect is raised by learned Amicus Curiae for the convict with regard to joinder of charges. As per him, the joinder of charges of all such

offences admittedly committed in respect of five different persons in four different occurrences could not be charged jointly.

Section 218 read with section 220 of the Cr.P.C. speaks of joinder of charges that includes the power of the court to try such offences together if in the opinion of the court such person is not likely to be prejudiced thereby. Admittedly the accused (convict) has not raised any objection with regard to joinder of such charges at the time of framing of charge or in course of trial. Undoubtedly, mis-joinder of charges is curable under Section 464 & 465 of the Cr.P.C. provided no failure of justice has in fact been occasioned thereby. It is true that there is a distinction between same transaction and similar transaction. Where the series of acts are so connected together by proximity of time with community of same criminal intention, the continuity of action and purpose may amount to one prosecution subject to exception that doing similar things continuously would not amount to same transaction. Moreover, taking note of the fact that no objection was raised by the accused (convict) before learned trial court and the curative effect of Section 464 & 465 of the Cr.P.C., this Court does not find any prejudice caused to the accused by such joinder of charges together or to allow any benefit thereof to the convict at this stage.

34. Now coming to sentencing aspect, the trial court has imposed death sentence on the convict for commission of murder punishable under Section 302 I.P.C. along with payment of fine of Rs.50,000/-. The convict is further awarded with sentences for life imprisonment and different other descriptions of punishment as stated in the beginning of this judgment. It is well settled that before awarding death sentence on a convict, the aggravating and mitigating circumstances are to be balanced. Such circumstances of mitigating and aggravating nature have been well stated in ***Bachan Singh -Vrs.- State of Punjab, (1980) 2 SCC 684*** and ***Machhi Singh -Vrs.- State of Punjab, (1983) 3 SCC 470*** and reaffirmed in catena of decisions pronounced by the Hon'ble Apex Court.

35. In ***Ravi -Vrs.- State of Maharashtra, (2019) 9 SCC 622,*** it is held (as per majority view) that;

> "62. In the light of above discussion, we are of the considered opinion that sentencing in this case has to be judged keeping in view the parameters originating from Bachan Singh and Machhi Singh cases and which have since been strengthened, explained, distinguished or followed in a catena of subsequent decisions, some of which have been cited above. Having said that, it may be seen that the victim was barely a two-year old baby whom the appellant kidnapped and apparently kept on assaulting over 4-5 hours till she breathed her last. The appellant who had no control over his carnal desires surpassed all natural, social and legal limits just to satiate his sexual hunger. He ruthlessly finished a life which was yet to bloom. The appellant instead of showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It is a case where trust has been betrayed and social values are impaired. The unnatural sex with a two-year old toddler exhibits a dirty and perverted mind, showcasing a

horrifying tale of brutality. The appellant meticulously executed his nefarious design by locking one door of his house from the outside and bolting the other one from the inside so as to deceive people into believing that nobody was inside. The appellant was thus in his full senses while he indulged in this senseless act. The appellant has not shown any remorse or repentance for the gory crime, rather he opted to remain silent in his 313 Cr.P.C. statement. His deliberate, well-designed silence with a standard defence of 'false' accusation reveals his lack of kindness or compassion and leads to believe that he can never be reformed. That being so, this Court cannot write of the capital punishment so long as it is inscribed in the statute book."

36. In ***Laxman Naik -Vrs.- State of Orissa, (1994) 3 SCC 381,*** it has been stated that extreme penalty can be inflicted only in gravest cases of extreme culpability and in making choice of sentence, in addition to the circumstances of the offender also.

37. The Supreme Court has observed in ***Dhananjoy Chatterjee Vrs.- State, (1994) 2 Supreme Court Cases 220,*** that the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration. It is further held that the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

38. In ***Santosh Kumar Satishbhushan Bariyar -Vrs.- State of Maharashtra, (2009) 6 SCC 498,*** it is stated that life imprisonment can be said to be completely futile only when the sentencing aim of reformation can be said to be unachievable.

39. In the case at hand the trial court has not made any effort calling for such data in respect of getting aggravating and mitigating circumstances. This court had directed the jail authority for collection of detailed information with reports on the past life, psychological condition and post conviction conduct of the Appellant along with such other materials and also granted opportunity to the Appellant (convict) to file affidavit producing any material on mitigating circumstances. In ***Sundar @ Sundarrajan Vs. State by Inspector of Police, 2023 5 SCR 1016,*** it has been observed as follows:-

> "77. The law laid down in Bachan Singh requires meeting the standard of 'rarest of rare' for award of the death penalty which requires the Courts to conclude that the convict is not fit for any kind of reformatory and rehabilitation scheme. As noted in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, this requires looking beyond the crime at the criminal as well:
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> "66. The rarest of rare dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the Court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh sets the bar very high by introduction of the rarest of rare doctrine." xx xxx xxxxx
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> 81. The duty of the Court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty.
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> 82. During the course of the hearing of the review petition, this Court had passed an order directing the counsel for the state to get instructions from jail authorities on the following aspects: (i) the conduct of the petitioner in jail; (ii) information on petitioner's involvement in any other case; (iii) details of the petitioner acquiring education in jail; (iv) details of petitioner's medical records; and (v) any other relevant information."

40. Pursuant to the direction of this court, the Senior Superintendent of Circle Jail, Berhampur, where the convict is lodged, has filed the affidavit dated 2nd August, 2024 appending the reports relating to his As per the report submitted, the father of the convict was a farmer and the convict initially assisted his father in cultivation. He has read up to Class-X and in the year 1999 he moved to Surat in Gujurat and worked there in a spinning mill as a labourer to earn good money. In the year 2004 the Appellant married and has been blessed with two children but he did not pull well with the wife in marital life and again went to Surat. He returned after some days from Surat and started his business in the locality of selling biometric bracelets and was earning good profit. But he left that business and started selling Chhenapoda (Baked Sweet Paneer) at Jamsedpur, Jharkhand and met with an accident in the year 2012. Thereafter his economic condition became poor and he returned to village where he started selling different sweets in and around the nearby locality. During last part of 2016 he had some psychiatric problems and underwent treatment at MKCG Medical College and Hospital, Berhampur and after recovery

there-from he again started his business in 2018 staying in his village under Odagaon Police Station. As per the report everyone in the village spoke well of him and no adverse report is there against the convict. His behavior towards the public was quite cordial and impressive without having any animosity in the village or outside. He has no criminal antecedent before the present incident. Presently his wife is staying at Bhubaneswar with children and maintaining her livelihood by working as a maid servant. According to the wife of convict he used to take alcohol during night hours and she also supported the fact of psychiatric treatment of the convict at MKCG Medical College and Hospital and his recovery in the year 2018 and thereafter he discontinued the medicines due to financial issues.

As per the medical report submitted by the team of doctors the convict is having stable psychological condition without any adversity observed in his conduct. His short term and long term memory is intact excluding the morbidity period where he was not able to remember the past events of psychotic episode. Further his social and personal judgment are intact and no abnormality is detected upon his examination.

41. According to the report of the medical officer of the jail, the behavior and attitude of the convict towards other inmates and staff is good and he performs daily routine work in a normal manner. Presently his health condition is good and stable and as per advice of the team of doctors he is taking regular medicines for bipolar disorder.

So in the opinion of the Senior Superintendent of Circle Jail, Berhampur the convict's behavior is quite normal. He prays to God and reads Holy Gita regularly and other daily newspapers and his behavior towards others is very normal.

42. In ***Allauddin Mian and Others -Vrs.- State of Bihar, (1989) 3 SCC 5,*** the Supreme Court has held that since the choice is between capital punishment and life imprisonment, the Legislature has provided a guideline in the form of Sub-section (3) of Section 354 of Cr.P.C. and as a general rule the antecedents, social and economic background, mitigating and extenuating circumstances are vital to be considered by the sentencing court.

43. In ***Manoj and others -Vrs.- State of Madhya Pradesh, (2023) 2 SCC 353,*** it is observed as follows:-

> "248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.
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> 249. To do this, the trial Court must elicit information from the accused and the State, both. The State must for an offence carrying capital punishment at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused

person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4), an onus placed squarely on the State conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate Courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

250. Next, the State, must in a time-bound manner, collect, additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

(a) Age;

(b) Early family background (siblings, protection of parents, any history of violence or neglect);

(c) Present family background (surviving family members, whether married, has children, etc.);

(d) Type and level of education;

(e) Socio-economic background (including conditions of poverty or deprivation, if any);

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any);

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial Court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing circumstances.

251. Lastly, information all mitigating regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial Court's conviction, or High Court's confirmation, as the case may be, a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post conviction mental illness, if any.

252. It is pertinent to point out that this Court in ***Anil-Vs.- State of Maharashtra : (2014) 4 Supreme Court Cases 69,*** has in fact directed criminal courts to call for additional material: (SCC p. 86, para 33)

> "33….Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the Court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like section 302 I.P.C., after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."
>
> We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

44. It is true that the criminal is also a human being and is entitled to a life of dignity notwithstanding his crime. However, it is for the prosecution and the court to determine whether such a person can be reformed and rehabilitated. As to aggravating factors in the case at hand, commission of murder of two persons with such brutality to the lady deceased along with injuries to others is undoubtedly a significant aggravating factor where the enormity of crime and number of victims are critical factors. The emotional and psychological impacts on the families of the deceased persons also constitute an aggravating factor. In ***Bachan Singh*** (supra), it is observed that pre-planned, calculated, cold-blooded murder has always been regarded as one of an aggravated kind. It is also stated by the Supreme Court in said case that if there is a probability that the accused can be reformed and rehabilitated, the same can be considered as mitigating circumstance and the State shall by evidence prove that the accused does not satisfy this condition. It is further held that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy. As stated in Section 354 (3) of Cr.P.C. it is imperative for the court to state special reasons for death sentence. For persons convicted for commission of murder, life imprisonment is the rule and death sentence is an exception. In ***Santosh Kumar*** (supra) it has been highlighted that the possibility of reform and rehabilitation should be a pivotal consideration, stressing that the death penalty should not be imposed if the convict shows potential for reformation.

45. In ***Rajendra Prasad –Vrs.- State of Uttar Pradesh, A.I.R. 1979 S.C. 916,*** which is a case of triple murder, the Supreme Court has observed that reasonable prospect of reformation and absence of any conclusive circumstance that the assailant is a habitual murderer or given to chronic violence are the circumstances tearing on the offender to call for a lesser sentence.

46. It is well settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. Upon thorough examination of socio-

economic background of the convict in the present case, it appears that he hails from the poor economic strata of society without having any criminal antecedent and adverse report against his conduct. As per the report of the Jail authority submitted before this court he is cordial to others and no one spoke evil of him in his village, his conduct inside the jail is normal and cordial to other inmates. Nothing on his conduct as per the report of the jail authority would constitute an aggravating factor against him to confirm the death sentence. Regardless of the heinous of crime committed by him, his conduct inside jail is quite satisfactory as per the report of the Superintendent of Jail and he had also no other antecedent than the present one to be counted against him to justify his death sentence. He was and is a normal man except committing the offence prior to and after the occurrence. Taking into consideration of the report of the jail authority in entirety, it cannot be said that there is no possibility of the convict being reformed and rehabilitated, foreclosing the alternative of lesser sentence. We are therefore inclined to convert the sentence imposed on the Appellant from death to life, but taking note of the severity of the offences including murder of two persons we are of the view that the convict deserves life imprisonment for rest of his life.

47. With regard to victim compensation, we affirm the views and finding of learned trial Judge in this regard.

48. In the result the conviction of the Appellant (convict) for commission of offences punishable under Section 302, 307, 325, 326, 458 of I.P.C. are confirmed. So far as the sentences imposed in respect of the offences under Section 307, 325, 326 and 458 of I.P.C. are also confirmed being found justified in the given circumstances. It goes without saying that all such sentences shall run concurrently, subject to set off, if any, under Section 428 of Cr.P.C.

49. The DSREF as well as the jail criminal appeal are disposed of accordingly.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter DSREF & JCRLA are disposed of.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-128

VENKATESWAR EDUCATIONAL & MULTIPURPOSE SERVICES (VEMS), BBSR & ANR. V. SURYA PRAKASH PATI & ORS.

[C.M.P. NO. 220 OF 2025]

14 AUGUST 2025

[B.P. ROUTRAY, J.]

Issue for Consideration

Whether the order of learned trial court should be interfered when the proposed amendment refused on the ground that the nature and character of the suit would be changed from a tenancy suit to a suit for specific performance of contract.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order VI Rule 17 – Amendment of plaint – The defendant objected the proposed amendment on the ground that it will change the nature and character of suit – The learned trial court rejected the proposed amendment – Whether the order of learned trial court should be interfered, when the proposed amendment refused on the ground that the nature and character of the suit would be changed from a tenancy suit to a suit for specific performance of contract.

Held: No – The amendments proposed by the plaintiffs to be incorporated in the plaint to use the word "agreement" and to further execute the sale deed, would definitely affect the nature and character of the suit – Thus in such circumstances, the proposed amendment cannot be permitted to be brought on record. (Para 14)

Citations Reference

Life Insurance Corporation of India vs. Sanjeev Builders Pvt.Ltd & Anr., **2022 SCC Online SC 1128 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

Keywords

Amendment of plaint; Nature & Character of the suit; Agreement; Understanding.

Case Arising From

Order dated 17th January 2025 passed by learned Senior Civil Judge, Bhubaneswar in C.S.No.1278 of 2023.

Appearances for Parties

For Petitioners : Mr. H.Mohapatra
For Opp. Parties : Mr. S.Mishra (for O.P. 1 & 2)
Mr. S.Sahoo (for O.P. 3)

Judgment/Order

Judgment

B.P. ROUTRAY, J.

1. Heard Mr. H.Mohapatra, learned Advocate for the Petitioners, Mr. S.Mishra, learned counsel for Opposite Parties 1 & 2 and Mr. S.Sahoo, learned counsel for Opposite Party No.3.

2. Present C.M.P. is directed against order dated 17th January 2025 passed by learned Senior Civil Judge, Bhubaneswar in C.S.No.1278 of 2023, wherein the prayer for amendment of the plaint is refused.

3. Present Petitioners are the plaintiffs who filed the suit against present Opposite Parties as Defendants with the prayer as follows:-

> 18. Relief Sought for;
>
> (a) Let a decree be passed declaring the notice dated 09.02.2023, issued by the defendant No.1 in favour of the plaintiff for terminating the tenancy agreement dated 01.10.2020 as null and void and the same is not binding on the plaintiff. And the defendant No.1 & 2 be directed to perform the oral understanding made between their late father Chandra Sekhar Pati with the VEMS trust in respect of the suit property.
>
> (b) Let a Decree for permanent injunction be passed restraining the defendants permanently not to disposes the plaintiff from the suit premises and not to cause any sorts of disturbances in the suit premises and not to alienate the suit premises creating third party interest.
>
> (c) Let the cost of the suit be awarded in favour of the plaintiff.
>
> (d) Let any other decree be passed which is deem fit and proper taking consideration into the fact of the suit.

4. The Defendants appeared in the suit and Defendants No. 1 & 2 raised their counter claim for eviction of the plaintiffs along with other reliefs. After that, the Plaintiffs sought for incorporation of certain amendments in three parts as mentioned in the petition for amendment under Annexure-4. The first one is with regard to correction of certain typographical error with regard to the date of Sale Deed which was allowed by learned Trial Court. The second part of amendment is regarding replacement by incorporation of certain amounts relating to consideration purpose in respect of the alleged agreement, where third part of the amendment is with regard

to insertion of the word "agreement" after the word "understanding" along with the prayer to execute the sale deed in respect of the suit property in favour of Plaintiff No.1 accepting the consideration amount of Rs.65,00,000/- (Rupees Sixty Five Lakhs only).

5. The Defendants objected said amendment proposed by the Plaintiffs on the ground that it would change the nature and character of the suit, which was initially a tenancy suit and now proposed to be a suit for specific performance. The learned Trial Court upon hearing both parties came to the finding that by seeking incorporation of the proposed amendment the nature and character of the suit would be changed from a tenancy suit to a suit for specific performance of contract and accordingly, refused the prayer for amendment sought for by the plaintiff in that regard.

6. Challenging said order of the trial court as impugned in present CMP, it is submitted by Mr. Mohapatra, learned counsel for the Petitioners that the pleadings in the plaint though are with regard to performance of the contract between the Plaintiffs and Defendant No.3 initially, who was the owner of the suit property, but the word "understanding" was used for the purpose without mentioning the word "agreement" specifically. He emphasizes on the pleadings made at Para-4, 6 and 8 of the plaint to fortify his contention that the pleadings of the suit are in the nature of specific performance of contract.

7. Conversely, it is submitted by Mr. Mishra that the Plaintiffs have not stated a single cause of action with regard to specific performance of any contract alleged by them. Rather their entire endeavor by way of pleadings as well as the description of cause of action is with regard to setting aside the notice of eviction. It is further submitted by him that the Plaintiffs have come with proposed amendment only after the counter claim is raised along with the W.S. by Defendants No.1 & 2 regarding eviction of Plaintiffs from the suit land and other reliefs.

8. Regarding amendments to pleadings, Hon'ble Supreme court in ***Life Insurance Corporation of India vs. Sanjeev Builders Pvt.Ltd & Anr., 2022 SCC Online SC 1128***, have observed that:-

> **71.** Our final conclusions may be summed up thus:
>
> **71.1.** Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negatived.
>
> **71.2.** All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17CPC.
>
> **71.3.** The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. The amendment changes the nature of the suit.

71.4.3. The prayer for amendment is mala fide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pin pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. *(See Vijay Gupta v. Gaginder Kr. Gandhi.)*

9. In the case at hand, the Plaintiff's case is that, it is a school running over the suit property. When it was inducted into the suit property in the year 2007 there was an understanding with the initial owner (Defendant No.3) that the suit property would be subsequently purchased by the Plaintiffs after availability of funds in their hands and accordingly, the rent was paid at Rs.1,80,000/- per annum to be treated as part consideration money. Here it is important to reproduce Para-4, 6 and 8 of the plaint which are as follows:-

> 4. "That the financial condition of the Venkateswar school, which is run under the secretaryship of the plaintiff No.1 of VEMS Trust over the suit land good by that time. But the defendant No…. pressure upon the plaintiffs to pay.… the consideration money amounting Rs.45,00,000/- and get executed the sale deed in favour of the VEMS trust. Though by that time the plaintiffs were unable to pay the same, Chandra Sekhar Pati, the father of the defendant No.1 & 2 came forward with the proposal that he would pay the rest amount to the defendant No.3 and the sale deed would be executed by the defendant No.3 in his favour and when the VEMS trust will be able to pay back the said money to him, he will execute the sale deed in favour of the trust. Accordingly the defendant No.3 executed the sale deed in respect of the suit land in favour of the father of defendant Nos. 1 & 2 vide RSD No.1081509865 dt.19.07.2015 on payment of consideration amounting of Rs.75 lakhs on instalments, as the valuation of the suit lad has already enhanced by efflux of time and the school is running over the suit land under such understanding since then. The Trust has been paying the consideration to the father of the defendant No. 1 & 2 amounting of Rs.10,00,000/- but total money paid by him for execution of the sale deed in respect of suit land has not been paid completely. It was the understanding that till the full consideration is paid to Chandra Sekhar Pati, the School will pay Rs.1,80,000/- per annum. In the mean time Chandrasekhar Pati expired on dt.30.07.2022.
>
> xx…..xxx….xxx xx….xx…xxx
>
> 6. That, Chandra Sekhar Pati was a social worker having good name and fame. He was a student lover for which he had managed Venkateswar English Medium School at unit-4, Bhubaneswar. He had also supported many schools during his lifetime in many ways. He had also educated many needy students by spending money from his own pocket. Though the school of the plaintiffs was in fact in need of the land over which, it is existing and school had no funds and the plaintiff No.2 by that time was working in the Venkateswar English Medium School, Unit-4 in which Late Chandra Sekhar Pati was the Chairman, he extended his help to the school by making such understanding as mentioned above and the school is running smoothly as per such understanding.
>
> xx…..xxx….xxx xx….xx…xxx
>
> 8. That after receiving the said notice, the plaintiff No.2 met to the defendant No.1 on dated 25.04.2023 and stated that for the benefit of the students and also for the school running in the suit premises, his father promised/ assured not to shift the school from the suit premises at any circumstances. The school will run in the said premises and whenever the Trust, the plaintiff No.1 under which the school is running is able to purchase the suit premises, by paying the balance consideration after payment made by the plaintiff No. 2 to Late Chandra Sekhar Pati, the suit

> premises will be purchased by the plaintiff no.1. As the agreement basing on which the defendant no.1 issued notice is prepared for the purpose of submitting before the Block Education Officer, Khordha for getting recognition certificate and the same is a formal agreement having not been effected at all, issuance of notice by defendant no.1 on dated 09.02.2023 is null and nonest in the eye of law and the defendant no.1 has no locustandie to issue such notice".

10. Here it would be not improper to reproduce the Para-10 also which speaks of cause of action stated by the Plaintiffs. Said Para-10 reads as follows:-

> 10. "That, the cause of action arises on 09/02/2023 when the defendant no.1 having no authority has issued notice to the plaintiff to hand over the vacant possession of the suit premises. Further cause of action arises when the plaintiff no.2 met the defendant no.1 on 25.04.2023 intimating him regarding the promise of his later father for continuance of the school in the suit premises on the basis of understanding with him and the defendant no.1 threatened her to throw out the school from the suit premises by utilizing hooligans and threatened to the plaintiff no.2 in dire consequence. Further cause of action also arises on 19.06.2023, when the defendant no.1 coming with some hooligans to the school premises, threatened to the plaintiff no.2 to vacate the school, otherwise she would face dire consequences".

11. Having gone through all such pleadings as stated in the plaint, admittedly the word "agreement" was not used with regard to sale of suit property of Defendant Nos. 1 & 2. According to the Plaintiffs it was the understanding with Late Chandra Sekhar Pati, the father of Defendant Nos. 1 & 2 agreed to sale suit premises to the Plaintiffs. But no document in that respect has been relied by the Plaintiffs nor does he refer to any such written transaction in that respect. Rather a rent agreement was executed with Defendant No.1, Late Chandra Sekhar Pati on 1st October 2020 to be submitted before the authority for getting recognition of the school. This is a formal agreement according to the Plaintiffs required for getting recognition of the school.

12. It is further seen from Para-10 regarding cause of action that, every statement with regard to the same is relating to action of Defendant Nos. 1 & 2 to vacate the possession by the Plaintiffs. It is also stated that the Plaintiffs made Defendant No.1 to intimate them regarding the promise of Late Chandra Sekhar Pati for continuance of the school in the premises on the basis of the understanding arrived between them. The cause of action further states that the Defendants on different dates took actions against the Plaintiffs for their vacation of the suit premises and the threat given to them.

13. The suit is valued at Rs.65,000/- for the declaration sought for, and at Rs.100/- for permanent injunction and accordingly the court fees have been paid.

14. Thus, looking to the entire pleadings made in the plaint including the fact of existence of the house rent agreement, though the same is formal in nature according to the Plaintiffs, and the statements of cause of action read with the amount of valuation mentioned in the plaint, it is vividly clear that the prayer of the Plaintiffs was never in respect of specific performance of any contract. Rather the prayer of

the Plaintiffs and the related pleadings with cause of action reveals the suit is in the nature of tenancy agreement questioning the eviction notice. Therefore, the amendments proposed by the Plaintiffs to be incorporated in the plaint to use the word "agreement" and to further execute the sale deed, would definitely affect the nature and character of the suit. Thus, in such circumstances, the proposed amendment cannot be permitted to be brought on record.

15. As such, no merit is seen to interfere with the impugned order and the CMP is dismissed. However, it is made clear that any such observations made in present order shall not affect the merits of the suit and it is open for the parties to lead their evidence according to their prayer and pleadings.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CMP dismissed

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2025 (III) ILR-CUT-134

M/s. ESSEL MINING AND INDUSTRIES LTD, (EMIT) & ANR.
V.
M/s. RAVI UDYOG PVT. LTD.

[ARBA NO. 5 OF 2024]

20 JUNE 2025

[Dr. S.K. PANIGRAHI, J.]

Issues for Consideration

1. Whether the High Court, in an appeal under Section 37, can re-appreciate evidence or substitute its own view for that of the Arbitrator.

2. Whether the award suffered from patent illegality apparent on the face of the record.

Headnotes

(A) ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 & 37 – Scope of Interference under the section – Whether the High Court, in an appeal under section 37, can re-appreciate evidence or substitute its own view for that of the Arbitrator?

Held : No – What the Arbitral Tribunal has held in the Award has exclusively been its view on the evidence on record and the relevant surrounding facts/factors **–** The view so taken by the Arbitral Tribunal cannot be said to be wholly perverse or suffering from patent illegality so as to be interfered with **–** Needless to observe that even if two views are possible, the Court can

not substitute its own view with that of the Arbitral Tribunal. (Para 40)

The Arbitral Tribunal has taken a particular view of the evidence before it. If it were an appeal against the award, the approach of the Court could have been different but, not so while examining the award within the confines of Section 34 of the Act **–** This Court would hasten to observe in this regard too that even in a regular appeal against a decree of the trial court, the appellate court would not substitute its own views without specifically recording a finding as to the error in the decision under challenge. (Para 41)

(B) ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34(2A) & 37– Patent Illegality– Which permits setting aside of a domestic award if it is "vitiated by patent illegality appearing on the face of the award" – Whether the award suffered from patent illegality apparent on the face of the record? (Para 31)

Held : No – Arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the 1996 Act as if dealing with an appeal or revision against a decision of any subordinate Court **–** The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.

Fact of the matter remains that nothing of a patent illegality apparent on the face of the award has been pointed out – The submissions essentially are of indicating some alleged errors on the merits of the case which, as noticed, do not fall within the parameters of Section 37 of the 1996 Act. (Para 43)

Citations Reference

Renusagar Power Co. Ltd. v. General Electric Co.,**(1984) 4SCC 679;**ONGC v. Western Geco,**(2014) 9 SCC 263;**SsangyongEngg.& Construction Co. Ltd. v. NHAI,**(2019) 15 SCC 131;**Associate Builders v. DDA,**(2015) 3 SCC 49;**ONGC v. Saw Pipes,**(2003) 5 SCC 705;**Delhi Metro Rail Corporation v. DAMEPL, **2024 INSC 292;**MMTC Ltd. v. Vedanta Ltd., **(2019) 4 SCC 163;**PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Tru**st, 2021 SCC OnLine SC 508;**Delhi Airport Metro Express (P) Ltd. v. DMRC, **(2022) 1 SCC 131;**Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum,**(2022) 4 SCC 463;**Haryana Tourism Ltd. v. Kandhari Beverages Ltd.,**(2022) 3 SCC 237;** UHL Power Co. Ltd. v. State of H.P., **(2022) 4 SCC 116– referred to.**

List of Acts

Arbitration and Conciliation Act, 1996.

Keywords

Patent illegality; Public Policy of India; Re-appreciation of evidence, Continuation of Contract; Judicial restraint; Arbitral award finality.

Case Arising From

The judgment dated 13.03.2024 of the District Judge, Keonjhar in Arbitration Petition No. 5 of 2022, & Award dated 25.09.2019 passed by the Sole Arbitrator in Arbitration Proceeding No. 1 of 2009 further modified on 15.02.2020 & 10.06.2020.

Appearances for Parties

For Petitioner: Ms. Pami Rath, Sr. Adv. & Mr. Ipsit Aurobindo Acharya.

For Opp. Party:Mr. Biplaba P.B. Bahali

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. This Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A&C Act") has been filed against the judgment dated 13.3.2024 passed by the learned District Judge, Keonjhar in Arbitration Petition No. 5 of 2022 arising out of award dated 25.9.2019 passed by the Ld. Sole Arbitrator in Arbitration Proceeding No. 1 of 2009, further modified on 15.2.2020 and 10.6.2020.

I. FACTUAL MATRIX OF THE CASE:

2. For the sake of brevity, the facts involved in the appeals are pithily discussed herein:

a. The Appellant is a company incorporated under the Companies Act, 1956 forming the mining division of the Aditya Birla Group and being a leading player in the mining sector. Similarly, the Respondent is also a company incorporated under the Companies Act,1956 having its registered office at 190, Purbalok, 9th Street, PO Kalikapur, Near Calcutta Public School, Kolkota-700099.

b. On 19.12.2000, the Appellant issued a letter of intent for excavation, drilling, blasting and transportation of iron ore and overburden in its mine at Barbil, Odisha for a period of 36 months with stipulation that the Respondent would be paid hire charges at the consolidated rate of Rs.36.50 per M.T of material handled which was based on the diesel price of Rs.16.38 per ltr.

c. It was agreed between the Parties that the rate would be revised suitably pro-rata in increase in diesel price. It was further agreed that the rate would be increased by 5% towards employee cost i.e. Rs.1.90 per annum after 31.3.2002.

d. Pursuant to the contract, the Respondent mobilized its equipment and staff to the site on 12.2.2001 and satisfactorily executed the work. However, allegedly the

Appellant did not increase the employee cost of 5% despite being reminded to do so.

e. Ultimately on 4.8.2003, the Appellant wrote to the Respondent that, it has revised the rate with effect from 1.7.2003 which would be valid till 30.04.2004. However, the Respondent submitted on this front that, the revision of rate ought to have been given effect from 1.4.2003 and not from 1.7.2003 and had it been given effect from 1.4.2003, the Respondent would have received Rs.18,55,884.30 more.

f. Again on 25.06.2004, the Appellant wrote to the Respondent to submit its revised offer taking the diesel rate of Rs.25.31 per ltr for its consideration and accordingly, the Respondent vide letter dated 16.7.2004 intimated the Appellant about the revised rate, however, the same was not revised.

g. On 10.1.2005 the Appellant executed another agreement with the Respondent extending the original and first agreement dated 19.12.2000 with similar scope of work with a little variation and it was made valid till 31.12.2005. Though the work was extended from time to time and the last extension was from 30.6.2008 to 30.9.2008 vide letter dated 25.6.2008, the Appellant did not increase the rate as stipulated in the first agreement dated 19.12.2000.

h. The work was alleged to be completed in all aspect within the extended period of 30.9.2008, but the final payment was not made by the present Appellant. Dispute emerged on multiple other fronts and the Respondent approached this Court u/s 11 of the A&C Act for appointment of an arbitrator.

i. Accordingly, vide order dated 6.3.2009, this Court was pleased to refer the dispute to Hon'ble Justice C.R.Pal (Retd.) Judge, Orissa High Court for arbitration.

j. As, Hon'ble Justice C.R.Pal (Retd.) Judge, Orissa High Court withdrew from the arbitration, this Court vide order dated 20.7.2012 was pleased to appoint Sri. R.N.Biswal, Former Judge of the Orissa High Court as the new arbitrator.

k. It is to be mentioned here that, initially the Respondent had claimed Rs.7,74,30,837.41/- under four heads, after adjusting Rs.32,38,505/- which it had received from the Appellant towards advance. As there was mistake in calculation in second head of claim, by way of an amendment application dated 11.5.2013, it was enhanced from Rs.5,38,77,609.49/- to Rs.14,80,66,355.83/-. So the total claim amount was enhanced to Rs.17,16,20,583/-. This amendment application was allowed on 4.8.2013. Apart from that, the Respondent had also claimed pre-reference, pendent lite and future interest at the rate of 18% per annum upon the amount of Rs.17,16,20,583.75/- to be paid by the Appellant.

l. The Ld. Arbitrator passed the award of Rs. 3,11,42,207/- in favour of the Respondent in respect of one Claim, i.e. Claim No. 2 which pertained to increase towards employee cost, after deducting the advance payment made to the Respondent on 25.9.2019. This awarded amount was modified on account of correction to Rs. 3,18,95,916/- on 15.2.2020. A further modification was made in pursuance of this Court's order dated 23.2.2022 in W.P.(C) No. 11868 of 2021 and Rs.2,76,49,789/- was added to the awarded amount, making the total awarded amount - Rs. 5,95,45,705/-. This amount was directed to be paid within a period of three months, failing which interest was payable at the rate of 15% per annum till payment.

m. Aggrieved, the Appellant approached the Ld. District Judge, Keonjhar in Arbitration Petition No. 5 of 2022 u/s 34 of the A&C Act. The same was rejected vide impugned order and judgment dated 13.3.2024.

3. Now that the facts leading up to the instant Appeals have been laid down, this Court shall endeavour to summarise the contentions of the Parties and the broad grounds that have been raised to seek the exercise of this Court's limited jurisdiction available under S. 37 of the A&C Act.

II. APPELLANTS' SUBMISSIONS:

4. The counsel for the Claimant assails the judgment of the Ld. District Judge mainly on the ground that the Ld. District Judge has failed to note that the Ld. Arbitrator has not considered that the claim dated 9.5.2009 in respect of Claim Item No.2 for the Work Order dated 19.12.2000 for the period 19.12.2000 to 31.12.2004 is barred by limitation under Section 43 read with Section 21 of the Act, 1996 and Section 2(j), Section 3 and Article 137 of the Limitation Act, 1963 and therefore, the award in respect of said Claim No.2 is illegal and violative of Section 34(2A) of the Act, 1996.

5. Moreover, it is submitted that the calculation of interest is without any basis as there is no existing agreement between the parties regarding the % of interest and hence 15% interest is high. Therefore, the award is bad in law and liable to be set aside.

III. RESPONDENT'S SUBMISSIONS:

6. *Per contra*, learned counsel for the Respondent submits that this Court or the court below is not entitled to re-appreciate evidence given the narrow scope of its powers under Section 34/37 of the A&C Act. It is submitted that the arbitration proceeding was initiated by the parties for resolution of their disputes pertaining to non-payment of its legitimate dues. There is no error evident on the face of the record, nor any patent illegality in the Arbitral Award, much less the Ld. District Judge's order and therefore, the present Petition is liable to be dismissed.

IV. ISSUE FOR CONSIDERATION:

7. Having heard the parties and perused the materials available on record, this court here has identified the following solitary issue to be determined:

A. Whether the order of the Ld. District Judge warrants interference keeping in mind the limitations of this court's powers under Section 37 of the A&C Act?

V. ISSUE A: WHETHER THE ORDER OF THE LD. DISTRICT JUDGE WARRANTS ANY INTERFERENCE KEEPING IN MIND THE LIMITATIONS OF THIS COURT'S POWERS UNDER SECTION 37 OF THE A&C ACT?

8. First things first, it would be apposite to refer to the provisions of Section 34 & 37 of the Act, which provisions read as under:

"34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with subsection (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that-

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v.) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elaaed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

37. Appealable orders.—(1) (Notwithstanding anything contained in any other law for the time being in force, an appeal) shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

((a) refusing to refer the parties to arbitration under Section 8;
(b) granting or refusing to grant any measure under Section 9;
(c) setting aside or refusing to set aside an arbitral award under Section 34.)

(2) An appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub section (3) of Section 16; or
(b) granting or refusing to grant an interim measure under Section17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

9. On a careful perusal of Section 34 of the Act, it is clear that an arbitral award can only be set aside by moving an application on grounds mentioned under sub-section (2) and sub-section (3) of Section 34 of the Act. An award can be interfered with where it is in conflict with the public policy of India, i.e., if the award is induced or affected by fraud or corruption or is in contravention of the fundamental policy of Indian law, or if it is in conflict with basic notions of morality and justice.

10. On a careful perusal of Section 34 of the Act, it is clear that an arbitral award can only be set aside by moving an application on grounds mentioned under sub-section (2) and sub-section (3) of Section 34 of the Act. An award can be interfered with where it is in conflict with the public policy of India, i.e., if the award is induced or affected by fraud or corruption or is in contravention of the fundamental policy of Indian law, or if it is in conflict with basic notions of morality and justice.

11. A plain reading of Section 34 reveals that the scope of interference by the Court with the arbitral award under Section 34 is very limited, and the Court is not supposed to travel beyond the aforesaid scope to determine whether the award is good or bad. Even an award that may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the Courts.

12. It is also a well settled proposition in law that the jurisdiction of the Court under Section 34 of the Act is neither in the nature of an appellate remedy or akin to

the power of revision. It is also well ordained in law that an award cannot be challenged on merits except on the limited grounds that have been spelt out in sub-sections (2), (2 A) and (3) of Section 34 of the Act, by way of filing an appropriate application.

13. Having regard to the contentions urged and the issues raised, it shall also be apposite to take note of the principles enunciated by the Hon'ble Supreme Court in some of the relevant decisions cited by the parties on the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the 1996 Act.

14. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions (a) "in contravention with the fundamental policy of Indian law"; (b) "in conflict with the most basic notions of morality or justice"; and (c) "patent illegality" have been construed.

15. The phrase "fundamental policy of Indian law" entered arbitral discourse long before the 2015 amendments, when ***Renusagar Power Co. Ltd. v. General Electric Co.***[1]confined "public policy" challenges to three narrow heads: (i) fundamental policy of Indian law, (ii) interests of India, and (iii) justice or morality.

16. Subsequent decisions—most notably ***ONGC v. Western Geco***[2]**—** stretched that first head by equating "fundamental policy" with Wednesbury-style reasonableness review, permitting courts to re-enter the merits on the pretext of testing arbitral reasoning. Because that approach threatened the speedy, final nature of arbitration, Parliament rolled it back through the Arbitration and Conciliation (Amendment) Act, 2015.

17. Explanation 1 to Section 34(2)(b)(ii) and 48(2)(b) now insists that an award offends public policy 'only' if it violates India's "fundamental policy," a concept deliberately narrower than "contrary to the policy of Indian law." ***SsangyongEngg. & Construction Co. Ltd. v. NHAI***[3] crystallized the post-amendment position: "fundamental policy" reverts to the Renusagar (supra) standard, and Western Geco's (supra) judicial-review expansion "no longer obtains." Mere statutory error— or even an award at odds with substantive Indian law—will not suffice unless the breach strikes at bedrock norms that undergird the administration of justice, such as disregard of natural-justice guarantees, wilful disobedience of binding precedents, or flouting statutes integrally linked to public interest. Crucially, courts must respect Explanation 2, which bars merits review under this ground; their scrutiny stops at identifying systemic, structural affronts to India's legal order, not re-weighing evidence or legal interpretation.

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[1] (1984) 4SCC 679
[2] (2014) 9 SCC 263
[3] (2019) 15 SCC 131

18. To determine whether an award crosses that threshold, courts apply a two-step lens. First, they must ask whether the complained-of rule is itself "fundamental": does it form part of the basic architecture that sustains the rule of law—e.g., *audi alteram partem*, jurisdictional competence, adherence to superior-court decrees, etc. Second, they ought to examine whether the tribunal's conduct amounts to 'contravention', not merely imperfect application. Thus, failure to supply any reasons, refusal to hear a party on pivotal issues, or adjudicating matters wholly outside the reference may qualify; but a plausible yet contestable contractual construction, or even wrongful exclusion of a document, ordinarily will not.

19. ***Associate Builders v. DDA***[4] had assimilated Western Geco (supra) style "perversity" and "judicial approach" tests into public-policy analysis; ***Ssangyong*** (supra) decisively excised those limbs, ruling that courts may not treat facial misinterpretations of law or contract as "fundamental-policy" breaches. Likewise, contraventions of statutes unconnected to public interest—say, stamp-duty underpayment—lie outside this head. The result is a calibrated, high-bar standard: intervention is warranted only where the award undermines essential legal tenets that any fair-minded observer would recognize as indispensable to India's justice system. By retrenching the scope, the 2015 amendments realign Indian arbitration with the UNCITRAL model and global best practice, ensuring that "fundamental policy" remains an exceptional filter, not a backdoor appeal on facts and law.

20. The "morality or justice" limb, present since ***Renusagar*** (supra), was likewise tightened in 2015. Explanation 1 now demands conflict with the "most basic notions" of morality or justice—language intentionally inserted to prevent subjective or elastic expansion. Indian courts have long recognized that justice and morality are context-sensitive; what shocks one era may not perturb another. Therefore, post-amendment jurisprudence treats this ground as a safety valve for truly egregious awards—those that outrage the court's conscience because they subvert elementary fairness intelligible to any reasonable layperson, whether legally trained or not. The Law Commission's 246th Report, echoed by ***Ssangyong*** (supra), emphasized that importing Wednesbury or proportionality tests here would "open the floodgates," defeating legislative intent. Consequently, an award may be annulled under this head only if it institutionalizes manifest injustice—e.g., sanctions fraud, enforces a contract obtained by duress, or imposes liabilities that blatantly contradict mutual assent—thereby eroding society's faith in adjudicatory fairness.

21. In practice, Indian courts deploy a conscience-shock test grounded in universal principles rather than parochial moral codes. For instance, in ***Ssangyong*** (supra), the majority of an arbitral tribunal unilaterally rewrote a price-adjustment formula by applying an internal NHAI circular never agreed to by the contractor, effectively creating a new bargain. The Hon'ble Supreme Court held that foisting a

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[4] (2015) 3 SCC 49

unilateral modification on an unwilling party violated "the most basic notions of justice," as voluntariness lies at the heart of contract law. Similarly, awards enforcing contracts tainted by corruption or transactions forbidden by law (e.g., betting agreements) would offend basic morality. By contrast, awards involving commercial hardship, uneven economic results, or arguable legal mistakes ordinarily pass muster, for equity courts cannot rewrite bargains ex post. The guiding principle is restraint: morality-oriented intervention is reserved for circumstances where a lay observer would perceive the outcome as plainly unconscionable—where the tribunal's decision legitimizes wrongdoing rather than merely errs in quantification or interpretation. This cautious approach upholds arbitral autonomy, protecting parties' bargain to accept a chosen tribunal's view, while ensuring that arbitration does not become a cloak for fundamental injustice. It mirrors international jurisprudence thereby strengthening India's reputation as an arbitration-friendly jurisdiction that simultaneously safeguards core ethical minima.

22. Section 34(2-A), inserted in 2015, introduced "patent illegality appearing on the face of the award" as a separate annulment ground for domestic awards (it does not apply to foreign or Part II enforcement). The provision codifies and confines the doctrine earlier derived from ***ONGC v. Saw Pipes***[5]**,** which had blended patent illegality with public policy. Parliament's aim was twofold: (i) retain a mechanism to nullify awards that flout obvious legal mandates, yet (ii) bar disguised appeals on facts or law. Accordingly, the proviso forbids setting aside "merely on the ground of erroneous application of law" or "re-appreciation of evidence." ***Ssangyong*** (supra) interprets patent illegality as errors that "go to the root of the matter" but are not subsumed within fundamental policy—thus covering blatant violations of substantive statutes, the Arbitration Act itself, or contract terms, provided they are manifest on the award's face. Notable examples include deciding disputes beyond the contract's scope, granting relief contrary to an express prohibition, or ignoring mandatory statutory caps. The test is objective and record-based: the error must be apparent without forensic excavation; hidden or debatable mistakes remain immune.

23. Courts evaluating patent illegality utilize the "perversity" benchmarks articulated in ***Associate Builders*** (supra) and reaffirmed in ***Delhi Metro Rail Corporation v. DAMEPL***[6]**.** An award is perverse—and hence patently illegal—when (i) findings rest on no evidence, (ii) irrelevant factors decisively influence the outcome, (iii) vital evidence is ignored, (iv) reasons are wholly absent, or (v) the tribunal addresses matters beyond its jurisdiction. However, even these indicators must reveal themselves plainly on the award or arbitral record; courts cannot marshal new material or conduct painstaking re-evaluation. The focus is procedural and jurisdictional fidelity, not substantive correctness. Importantly, patent illegality is unavailable in international commercial arbitration seated in India—reflecting

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[5] (2003) 5 SCC 705

[6] 2024 INSC 292

India's commitment to align with the UNCITRAL Model Law and minimize judicial intrusion where foreign parties are involved. Taken together, the 2015 framework establishes a tiered control system: "fundamental policy" and "most basic notions of morality or justice" guard systemic and ethical frontiers applicable to all awards, while "patent illegality" offers an additional, carefully cabined safeguard for domestic awards to weed out egregious but non-fundamental legal flaws. This architecture balances finality with legitimacy, ensuring Indian courts remain sentinels of legality without morphing into appellate arbiters, thereby promoting efficiency and investor confidence in India-seated arbitration.

24. In ***MMTC Ltd. v. Vedanta Ltd.***[7]**,** the Hon'ble Supreme Court took note of various decisions including that in ***Associate Builders*** (supra) and exposited on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). The Supreme Court, inter alia, held as under :

> *"11. As far as Section 34 is concerned, the position is well settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of the Hon'ble Supreme Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. WednesburyCorpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*
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> *12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])*
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> *13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it*

[7] (2019) 4 SCC 163

now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2 A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

25. In ***SsangyongEngg.***(supra), the Supreme Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words:

"37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public

policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse."

26. The limited scope of challenge under Section 34 of the Act was once again highlighted by the Supreme Court in ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust***[8] and the Supreme Court particularly explained the relevant tests as under :

"40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and re-appreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, re-appreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)

'31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

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[8] 2021 SCC OnLine SC 508

27. In ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[9], the Supreme Court again surveyed the case law and explained the contours of the Courts' power to review the arbitral awards. Therein, the Supreme Court not only reaffirmed the principles aforesaid but also highlighted an area of serious concern while pointing out "a disturbing tendency" of the Courts in setting aside arbitral awards after dissecting and reassessing factual aspects. The Supreme Court also underscored the pertinent features and scope of the expression "patent illegality" while reiterating that the Courts do not sit in appeal over the arbitral award. The relevant and significant passages of this judgment could be usefully extracted as under :

> *"26. A cumulative reading of the Uncitral Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or re-appreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] , Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] .)*
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> *28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.*
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> *29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorized as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator*

[9] (2022) 1 SCC 131

takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression "public policy of India" and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

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42. The Division Bench referred to various factors leading to the termination notice, to conclude that the award shocks the conscience of the Court. The discussion in SCC OnLine Del para 103 of the impugned judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] amounts to appreciation or re-appreciation of the facts which is not permissible under Section 34 of the 1996 Act. The Division Bench further held [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] that the fact of AMEL being operated without any adverse event for a period of more than four years since the date of issuance of the CMRS certificate, was not given due importance by the Arbitral Tribunal. As the arbitrator is the sole Judge of the quality as well as the quantity of the evidence, the task of being a Judge on the evidence before the Tribunal does not fall upon the Court in exercise of its jurisdiction under Section 34. [State of Rajasthan v. Puri Construction Co. Ltd., (1994) 6 SCC 485] On the basis of the issues submitted by the parties, the Arbitral Tribunal framed issues for consideration and answered the said issues. Subsequent events need not be taken into account."

28. The position in ***Associate Builders*** (supra) was recently summarized as herein below recorded by ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum***[10]***:***

"42. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204 (two-Judge Bench)] , this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:

42.1. When an award is, on its face, in patent violation of a statutory provision.

42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

42.3. When an award is in violation of the principles of natural justice.

42.4. When an award is unreasonable or perverse.

[10] (2022) 4 SCC 463

42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."

29. In ***Haryana Tourism Ltd. v. Kandhari Beverages Ltd.***[11]**,** the Supreme Court yet again pointed out the limited scope of interference under Sections 34 and 37 of the Act; and disapproved interference by the High Court under Section 37 of the Act while entering into merits of the claim in the following words:

"8. So far as the impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to : (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable."

30. As regards the limited scope of interference under Sections 34/37 of the Act, this Court also considers it apposite to refer to the following observations of a three-Judge Bench of the Supreme Court in ***UHL Power Co. Ltd. v. State of H.P.***[12]**:**

"15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in re-appreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

31. As noticed, arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the 1996 Act as if

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[11] (2022) 3 SCC 237

[12] (2022) 4 SCC 116

dealing with an appeal or revision against a decision of any subordinate Court. The expression "patent illegality" has been exposited by the Supreme Court in the cases referred hereinbefore. The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.

32. Of course, when the terms and conditions of the agreement governing the parties are completely ignored, the matter would be different and an award carrying such a shortcoming shall be directly hit by Section 28(3) of the Act, which enjoins upon an Arbitral Tribunal to decide in accordance with the terms of contract while taking into account the usage of trade applicable to the transaction. As said by the Supreme Court in ***Associate Builders*** (supra), if an arbitrator construes the term of contract in a reasonable manner, the award cannot be set aside with reference to the deduction drawn from construction. The possibility of interference would arise only if the construction of the arbitrator is such which could not be made by any fair-minded and reasonable person.

33. Keeping in view the aforementioned principles enunciated by the Supreme Court with regard to the limited scope of interference in an arbitral award by a Court in the exercise of its jurisdiction under Section 34 of the Act, which is all the more circumscribed in an appeal under Section 37, this Court may examine the rival submissions of the parties in relation to the matters dealt with by the High Court.

3**4.** This Court under Section 37 has only three options:

(a) Confirming the award of the arbitrator;

(b) Setting aside the award as modified under Section 34; and

(c) Rejecting the application(s) under Sections 34 and 37.

35. *Prima facie*, a perusal of the impugned judgment and Award unequivocally demonstrates that the Arbitrator relied upon written submissions, documentary evidence, and the statements of the parties involved in the transaction to determine and quantify the claims.

36. At Paragraph 15 of the impugned judgment, the Ld. District Judge very adroitly has identified the crux of the matter – whether the two agreements/work orders dated 19.12.2000 and 10.1.2005 were in continuation or separate. On the basis of the material available on record, the Ld. Arbitrator framed Issue No. 3 on the same lines and decided it first. After considering the letter dated 10.1.2005, the submissions of the counsel and multiple other exhibits, the Ld. Arbitrator held that the subsequent work order dated 10.1.2005 to be a continuation of the earlier agreement/work order. The Ld. District Judge has examined the same and this Court is in agreement with the conclusion arrived at, as there is no glaring error in the same. A view, taken by the Arbitrator, cannot be trifled with lightly.

37. Arbitration, by its very nature, departs from the strict procedural rigidity of formal court trials. The arbitrator, while vested with substantial discretion, exercises this within a framework that upholds the core tenets of natural justice. Unlike a judicial officer bound by the Evidence Act or procedural codes, an arbitrator operates under a more flexible evidentiary regime. However, this flexibility does not equate to unbridled authority. The arbitrator must still adhere to basic standards of fairness, ensure both parties have an equal opportunity to present their case, and base the award on material that has been legitimately placed on record. Arbitrators may adopt procedures tailored to the dispute at hand, but the credibility and admissibility of evidence must still be judged against principles of logical relevance and procedural fairness. The arbitrator's findings must ultimately reflect a rational evaluation of the materials presented, forming a coherent and well-reasoned basis for the award. It is this calibrated balance between discretion and accountability that defines the arbitrator's role as a fact-finder in arbitration.

38. The autonomy of the arbitrator in assessing facts is intrinsic to the finality and efficacy of arbitral adjudication. Courts consistently refrain from substituting their own assessment of evidence for that of the arbitrator, even where an alternative view may be plausible. This judicial restraint is premised on the consensual nature of arbitration— the parties, having elected to resolve their dispute through an arbitral process, implicitly accept the arbitrator's factual conclusions as binding. The limited grounds for judicial interference under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 underscore this principle. A court will intervene only where the arbitrator's approach is shown to be perverse, in violation of public policy, or lacking in jurisdiction. The prohibition against re-appreciation of evidence ensures that arbitral awards are not undermined by endless litigation. In this context, the arbitrator's primacy in fact-finding is not only a procedural convenience but a doctrinal imperative that upholds the integrity and independence of the arbitral process.

39. A perusal of the arbitral award would elucidate that the sole Arbitrator has considered the facts of the case, the contentions of both the parties and other documentary and oral evidence on record to take a decision. Now, even if one might feel that the evidence could be clearer and its quality could be higher to buttress the award, however, the same does not by itself warrant interference by this Court given the restrictive scope of this Court's powers u/s 37 of the A&C Act.

40. What the Arbitral Tribunal has held in the Award has exclusively been its view on the evidence on record and the relevant surrounding facts/factors. The view so taken by the Arbitral Tribunal cannot be said to be wholly perverse or suffering from patent illegality so as to be interfered with. Needless to observe that even if two views are possible, the Court cannot substitute its own view with that of the Arbitral Tribunal.

41. The Arbitral Tribunal has taken a particular view of the evidence before it. If it were an appeal against the award, the approach of the Court could have been

different but, not so while examining the award within the confines of Section 34 of the Act. This Court would hasten to observe in this regard too that even in a regular appeal against a decree of the trial court, the appellate court would not substitute its own views without specifically recording a finding as to the error in the decision under challenge. In any case, if the approach of this Court in the present case is countenanced, the result would only be of making every award susceptible to challenge before the Court on those very grounds which are, otherwise, of appeal or revision and which are not permitted by the legislature to be taken under Section 34 of the 1996 Act.

42. The narrow scope of "patent illegality" cannot be breached by mere use of different expressions which nevertheless refer only to "error" and not to "patent illegality". This Court is impelled to reiterate what has been stated and underscored by the Supreme Court in ***Delhi Airport Metro Express*** (supra) that restraint is required to be shown while examining the validity of arbitral award by the Courts, else interference with the award after reassessing the factual aspects would be defeating the object of the 1996 Act. This is apart from the fact that such an approach would render several judicial pronouncements of the Hon'ble Supreme Court redundant if the arbitral awards are set aside by categorizing them as "perverse" or "patently illegal" without appreciating the contours of these expressions.

43. Fact of the matter remains that nothing of a patent illegality apparent on the face of the award has been pointed out. The submissions essentially are of indicating some alleged errors on the merits of the case which, as noticed, do not fall within the parameters of Section 37 of the 1996 Act.

VI. CONCLUSION:

44. In light of the discussion above, keeping the settled principles of law in mind and for the reasons given above, this Court is of the considered view that judgment dated 13.3.2024 passed by the learned District Judge, Keonjhar in Arbitration Petition No. 5 of 2022 arising out of award dated 25.9.2019 passed by the Ld. Sole Arbitrator in Arbitration Proceeding No. 1 of 2009, further modified on 15.2.2020 and 10.6.2020 is not liable to be interfered with.

45. ARBA No. 5 of 2024 is disposed of on the abovementioned terms. No order as to costs.

46. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by: *Result of the case:*
Shri Hara Prasad Padhy, Editor-in-Chief, I/C ARBA disposed of

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2025 (III) ILR-CUT-153

FACULTY ASSOCIATION, AIIMS, BHUBANESWAR & ORS.
V.
UNION OF INDIA & ORS.

[W.P.(C) NO. 15349 OF 2024]

20 JUNE 2025

[Dr. S.K. PANIGRAHI, J.]

Issues for Consideration

1. Whether the Faculty Association of AIIMS, Bhubaneswar (FAIIMS) was ever legally recognized under the CCS (RSA) Rules, 1993.

2. Whether the Executive Director of AIIMS had authority to issue the "de-recognition" order.

3. Whether the action of de-recognition violate the fundamental right to form association under Article 19(1) (C) of the Constitution.

Headnotes

(A) CENTRAL CIVIL SERVICES (RECOGNITION OF SERVICE ASSOCIATIONS) RULES, 1993 – Recognition – Legal status of FAIIMS – No formal recognition ever granted under the Rules – Doctrine of legitimate expectation invoked on basis of past institutional conduct – Whether such expectation can override explicit statutory provisions?

Held: No – In fact, it was fairly evident that the petitioner Association could not produce any tangible or formal proof of recognition granted under the CCS (RSA) Rules, 1993 – While it sought to rely on past administrative conduct to suggest de facto acceptance, the absence of a statutory recognition order fatally undermines the foundation of its claim – In law, one cannot be 'de-recognized' if one was never recognized in the first place.

The petitioner invokes the doctrine of legitimate expectation, arguing that the Institute's past conduct effectively "acknowledged" FAIIMS – However, a legitimate expectation cannot override clear statutory provisions – There can be no estoppel against a statute. (Paras 8 & 12)

(B) CENTRAL CIVIL SERVICES (RECOGNITION OF SERVICE ASSOCIATIONS) RULES, 1993 – Rule 8 – Authority of Executive Director, AIIMS – De-recognition of service associations – Whether the Executive Director was competent to declare de-recognition of FAIIMS.

Held: No – In the present case, the Executive Director invoked Rule 8 and unilaterally declared FAIIMS "de-recognized" – This action, in substance, was beyond the scope of the Executive Director's authority – The power to grant or withdraw recognition lies with the Central Government, not with the head of a local unit or institute. (Para 13)

(C) CONSTITUTION OF INDIA, 1950 – Article 19(1)(C) – Right to from Associations – De-recognition of service association under CCS(RSA) Rules, 1993 – Whether denial of recognition amounts to violation of the fundamental right to form associations?

Held: No – The fundamental right to form an association does not entail a right to compel the government to grant that association official recognition or negotiation privileges – In other words, while individuals have freedom to associate, the recognition of that association by the State, which carries with it certain special privileges and obligations, is a matter of government policy and statutory regulation, not a fundamental right. (Para 18)

Citations Reference

D.K. Chhangani and Ors. v. NityaRanjan Mukherjee and Ors, **(1996) 10 SCC 694;** Central PWD Engineers Association v. Union of India, **2023:DHC:3622-DB – referred to.**

List of Acts

Central Civil Services (Recognition of Service Association) Rules, 1993; Constitution of India, 1950.

Keywords

Recognition of service Associations; Legitimate expectation; De-facto recognition; Right to form Associations; Natural Justice and Procedural fairness; Deemed de-recognition; Estoppel

Case Arising From

Order dated 21.12.2023, followed by the communication dated 26.04.2024, issued by the Executive Direction, AIIMS, BBSR.

Appearances for Parties

For Petitioners : Mr. Subir Palit, Sr. Adv. with Mr. A. Kejriwal and Ms. Ananya Pradhan.

For Opp. Parties : Mr. B.S. Rayaguru, Sr. Panel Counsel, Mr. Aurovindo Mohanty

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. In this Writ Petition, the Petitioners seek a direction from this Court to quash the Executive Director's order treating it as unrecognized and to restore its status as a recognized service association, along with consequential privileges, under the CCS (RSA) Rules, 1993.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The Faculty Association of AIIMS, Bhubaneswar (FAIIMS) is a registered body under the Societies Registration Act and has functioned at the institute since 2014. The Association has historically carried out activities pursuant to its bye-laws and has interacted with the AIIMS administration on faculty-related matters.

(ii) On 21.12.2023, the Executive Director of AIIMS Bhubaneswar issued an order stating that the Faculty Association does not have formal recognition under the Central Civil Services (Recognition of Service Associations) Rules, 1993 [CCS (RSA) Rules]. This was followed by a subsequent communication dated 26.04.2024 reiterating the deemed de-recognition. The AIIMS administration contends that no documentary proof of recognition under Rules 4, 5, or 6 of the CCS (RSA) Rules was ever submitted by the Association despite multiple reminders and a show-cause notice issued on 05.04.2023.

(iii) The petitioners challenge the authority of the Executive Director to de-recognise the Association, arguing that only the Central Government has jurisdiction under the CCS (RSA) Rules to withdraw recognition. They further assert that the process adopted lacked compliance with principles of natural justice. AIIMS, on the other hand, maintains that the Executive Director, by virtue of being Secretary of the Institute and Governing Body under Section 11(2) of the AIIMS Act and Regulation 35 of the AIIMS Regulations, 2019, acted within his jurisdiction.

(iv) The matter was initially brought before the Central Administrative Tribunal, which declined jurisdiction. The petitioners then filed W.P.(C) No. 7978 of 2024 before the High Court, which directed the Executive Director to consider the petitioners' representation. The representation was considered, and the impugned order dated 26.04.2024 was passed by the Executive Director.

(v) The last election of the Faculty Association office bearers was held on 09.07.2022, for a two-year term under Clause 7.3 of the bye-laws. While the petitioners claim that ongoing legal proceedings and administrative restrictions impeded further elections, the AIIMS administration contests the legal validity of the petitioners' authority post-expiry of the two-year term and notes the absence of any formal update to the Registrar of Societies.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel for the Petitioners earnestly made the following submissions in support of his contentions:

(i) The Executive Director lacks statutory authority under the CCS (RSA) Rules, 1993 to de-recognise a service association. Rule 8 clearly vests such power solely with the Central Government, contingent upon notice and opportunity. The term "deemed de-recognition" is legally non-existent, and any such punitive action is ultra vires and void ab initio.

(ii) The Executive Director's actions infringe upon the petitioners' fundamental right to form associations under Article 19(1)(c) of the Constitution. The CCS (RSA) Rules were enacted to protect such rights, and the denial of recognition, restriction of association activities, and show cause proceedings violate both constitutional protections and statutory safeguards.

(iii) The impugned actions are retaliatory in nature, stemming from the Association's raising of legitimate concerns regarding institutional governance, including corruption, drug shortages, and irregular appointments. These measures amount to a colourable exercise of power intended to silence dissenting voices.

(iv) AIIMS has previously issued written communications (e.g., letter dated 13.08.2021) affirming recognition of FAIIMS. Salary deductions towards Association membership, official file notings, and the Association's filing of income tax returns further substantiate its continued recognition. The petitioners' tenure has not legally expired due to the sub-judice nature of the matter, supported by judicial precedents.

(v) The essential function of de-recognising a service association cannot be delegated to an institutional authority like the Executive Director, especially when the parent statute does not authorize it.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) The writ petition is alleged to be based on disputed facts such as recognition status and election validity, which can only be adjudicated through civil proceedings requiring evidence. Petitioners allegedly lack locus standi due to expiry of tenure and absence of a valid mandate or resolution.

(ii) FAIIMS's claim to recognition is termed as merely oral and unsupported by any official recognition order or document. Occasional administrative interactions (e.g., salary deductions or meeting invitations) do not amount to formal recognition under CCS (RSA) Rules.

(iii) The decision of 21.12.2023 and the follow-up order dated 26.04.2024 were passed only after show-cause notice and opportunity to be heard. In the absence of recognition, the Executive Director validly declared the Association as deemed derecognized to maintain institutional discipline.

(iv) The Association is alleged to have violated Rules 5–7 of the CCS (RSA) Rules by directly lobbying political persons and operating without proper election approval from the Registrar. Their conduct is said to be unauthorized, disruptive, and contrary to Rule 6, which prohibits political influence.

(v) The 2022 election result has not been submitted to or approved by the Registrar under Section 4 of the Societies Registration Act. In absence of such compliance, the petitioners' authority to represent FAIIMS is questioned.

(vi) Recognition under CCS (RSA) Rules must be formally issued by the Director, who is empowered as Secretary of the Governing Body. In the absence of a written order of recognition from the Director, the Association cannot claim protected status or enforce fundamental rights under Article 19(1)(c).

IV. COURT'S REASONING AND ANALYSIS:

5. Heard Learned Counsel for parties and perused the documents placed before this Court.

6. From the pleadings and submissions, the principal questions that arise are:

(i) Whether FAIIMS enjoys any legal status as a "recognized" service association under the CCS (RSA) Rules, 1993, and if not, whether it can claim any enforceable right via writ proceedings to prevent the opposite parties from treating it as unrecognized;

(ii) Whether the Executive Director of AIIMS had the authority to issue the impugned "de-recognition" order under Rule 8 of the CCS (RSA) Rules, and the effect of any procedural irregularity in this regard;

(iii) Whether the action of the opposite parties violates the petitioner's fundamental rights, particularly the right to form associations under Article 19(1)(c) of the Constitution; and

(iv) To what relief, if any, the petitioner is entitled. These points are addressed in turn.

7. It is undisputed on record that no formal recognition was ever granted to FAIIMS under the procedure prescribed by the CCS (RSA) Rules, 1993. These Rules, framed by the Central Government in exercise of executive powers governing service conditions, lay down a detailed mechanism for according recognition to service associations of government employees. In brief, Rule 3 defines the scope, and Rules 4 to 6 stipulate the eligibility conditions and process for recognition. One key requirement is that the Association must represent a certain proportion of the employees of the category concerned, for example, at least 35% of the employees in that category for primary recognition. The Association must apply to the Government with its memorandum of association, bye-laws, and a list of members, and it must furnish an undertaking to fulfill conditions such as democratic elections of office-bearers, financial accountability, and adherence to the Constitution and laws. Recognition, if granted, is communicated through a formal order or certificate issued by the competent authority (usually the concerned Ministry or Department of

the Central Government) and is typically valid for a fixed period, subject to renewal upon verification of continued support and compliance.

8. In the present case, FAIIMS has been unable to produce any order or notification of the Central Government recognizing it under these Rules. There is no evidence that FAIIMS ever secured the mandatory 35% membership of the relevant cadre or that it ever applied through proper channels for recognition. In fact, it was fairly evident that the petitioner Association could not produce any tangible or formal proof of recognition granted under the CCS (RSA) Rules, 1993. While it sought to rely on past administrative conduct to suggest de facto acceptance, the absence of a statutory recognition order fatally undermines the foundation of its claim. In law, one cannot be 'de-recognized' if one was never recognized in the first place. Any enforcement of rights through a writ of mandamus requires the claimant to establish an existing legal right. Here, absent formal recognition, FAIIMS cannot point to any statutory or legal right to continue as a recognized body. The entire edifice of the petitioner's challenge, which presumes that it enjoyed a recognized status that was withdrawn, collapses on this foundational fact.

9. Given the lack of statutory recognition, the petitioner's plea for relief under Article 226 must fail at the threshold. The writ jurisdiction of this Court, especially in matters of mandamus, is meant to enforce existing legal rights or performance of legal duties. The CCS(RSA) Rules, 1993 do not confer any legal status on an unrecognized association; on the contrary, they explicitly bar unrecognized associations from certain privileges, such as participation in official consultative machinery or use of government facilities.

10. In this context, it is apposite to refer to the decision of the Supreme Court in the case of ***D.K. Chhangani and Ors. v. NityaRanjan Mukherjee and Ors.***[1]wherein the Court underscored the statutory framework laid down under the Central Civil Services (Recognition of Service Associations) Rules, 1993, and held that associations seeking to represent service personnel must first obtain recognition in accordance with the prescribed conditions under Rule 5. The relevant excerpt is produced below:

> *"It would, thus, be seen that if there are more than one rival unions of the Service employees, the Government of India have evolved a policy as to how the Service Associations required to be recognised by the appropriate authority should represent the interest of the members of the respective unions. In this view, it would be open to the appropriate union to approach the Government in the light of the above rules and seek recognition in accordance with law to avoid any future litigation in this behalf."*

11. The Court made it clear that the right to represent employee interests is not inherent but is contingent upon formal recognition by the competent authority. The recognition mechanism serves as a regulatory filter to ensure legitimacy and

1 (1996) 10 SCC 694.

representativeness, and the absence of such recognition disentitles any association from claiming rights or status as a representative body. The principle laid down therein squarely applies to the present case, where the petitioner Association has failed to establish any formal grant of recognition, thereby undermining the legal basis of its claims.

12. The petitioner invokes the doctrine of legitimate expectation, arguing that the Institute's past conduct effectively "acknowledged" FAIIMS. However, a legitimate expectation cannot override clear statutory provisions. There can be no estoppel against a statute. The CCS (RSA) Rules mandate formal recognition by the Government; administrative leniency or oversight cannot create recognition in the eye of law. Thus, whatever informal arrangements existed, they do not translate into an enforceable legal right that this Court can protect. The absence of recognition is sufficient to dismiss the writ petition.

13. Notwithstanding the above conclusion, this Court considers it important to address the manner in which the Executive Director issued the impugned "de-recognition" order, so that the correct legal procedure is clarified. Rule 8 of the CCS (RSA) Rules, 1993 governs withdrawal of recognition. In essence, it provides that the Central Government (through the competent authority) may withdraw the recognition of a service association if it fails to observe the conditions subject to which recognition was granted, or for other specified reasons (such as engaging in undesirable activities). The Rule typically entails a due process: a show-cause notice to the association, an opportunity to be heard, and a reasoned decision by the Government. In the present case, the Executive Director invoked Rule 8 and unilaterally declared FAIIMS "de-recognized." This action, in substance, was beyond the scope of the Executive Director's authority. The power to grant or withdraw recognition lies with the Central Government, not with the head of a local unit or institute.

14. The Delhi High Court in ***Central PWD Engineers Association v. Union of India***[2]dealt with a somewhat analogous situation where a departmental officer issued an Office Memorandum treating an association as unrecognized without the concurrence of the Central Government. It was held that such a unilateral action was not in accordance with the Rules and was liable to be set aside. The relevant excerpts are produced below:

> *"26. The claim of petitioners is based upon the fact that the petitioner Association was entitled to continuation of recognition in accordance with CCS (RSA) Rules, 1993 but the same has been intentionally delayed by the respondents. The rights and privileges of the petitioner Association and office bearers could not be left in limbo pending the request for continuation of recognition. It needs to be appreciated that the steps were taken on behalf of the petitioner Association for continuation of recognition vide various*

2 2023:DHC:3622-DB.

communications though after a delay of about one year and eight months. However, thereafter the matter was expected to be dealt expeditiously by the respondents. The right of continuation of a recognized Association should not have been delayed for such a considerably long period thereby denying the office bearers as well as the Association of the privileges. In such an eventuality, the very object of forming an Association of the employees stands patently denied and becomes illusory, from the perspective of the employees despite existence of CCS (RSA) Rules, 1993. The respondents were expected to adhere and take expeditious decision regarding the continuation of recognition of petitioner Association by the Competent Authority.

We have already set aside OM dated January 09, 2019 to the extent of treating the petitioner Association as "unrecognized", as the decision was not issued with the approval of the Competent Authority as provided under the CCS (RSA) Rules, 1993 but was only taken at the level of DG, CPWD.

This court has ample power under Article 226 of the Constitution of India in appropriate cases to compel the performance of the obligation by the respondents for compliance of grant/continuation of recognition under CCS (RSA) Rules, 1993. The recognition finally appears to have been granted to the petitioner Association in 2021 for a period of five years from the date of issue of the letter but the decision for the period 2009 to 2021 still needs to be reconsidered by the Competent Authority in accordance with law, in view of setting aside of OM dated January 09, 2019 to aforesaid extent. We accordingly deem it appropriate to direct the Competent Authority/respondents to take an appropriate decision in respect of the continuation of recognition in respect of petitioner Association from 2009 till 2021, in accordance with law."

15. By the same token, the Executive Director of AIIMS Bhubaneswar had no competence to suo motu "de-recognize" FAIIMS, especially when FAIIMS had never been recognized by the competent authority in the first place. The proper course for the opposite party, if of the view that FAIIMS ought not to be dealt with as a recognized association, was to refer the matter to the Ministry or follow the procedure under Rule 8, which presupposes an existing recognition to withdraw). In issuing the impugned declaration in the form he did, the Executive Director acted in excess of his jurisdiction.

16. The finding that the Executive Director had no authority to issue a de-recognition order might have, in other circumstances, led the Court to quash that order. Indeed, the petitioner has succeeded in demonstrating a procedural illegality in the impugned action: the use of Rule 8 by an unauthorized official. However, as discussed in the earlier paragraphs, correcting this procedural flaw would not confer any positive rights upon the petitioner. At best, the Court could set aside the Executive Director's letter for want of authority; but even if that is done, FAIIMS would remain in the position of an unrecognized association unless and until the Central Government affirmatively grants it recognition. In other words, quashing the impugned order would only result in removing the taint of "de-recognition". It would not amount to granting recognition or creating any enforceable status for FAIIMS. Since the core issue is the lack of recognition, the petitioner would

ultimately be left with no remedy even if the impugned order is invalidated. In such a scenario, the Court may decline to issue a futile writ. Nonetheless, to dispel any doubt, it is clarified that the impugned order dated 15.03.2024 shall be treated as having no legal effect (having been issued without competence), but this declaration is purely academic given the petitioner's unrecognized status. The bottom line is that FAIIMS currently has no legal recognition; *pro tanto*, it has no right to be treated as a recognized association, and therefore no right capable of enforcement through this writ petition.

17. The petitioner has passionately invoked Article 19(1)(c) of the Constitution, which guarantees to all citizens the fundamental right to form associations or unions. There is no quarrel with the proposition that the members of FAIIMS, as citizens and government employees, enjoy the freedom to form an association for the furtherance of their common interests. Any outright ban or unreasonable restriction on the formation of such an association would indeed offend Article 19(1)(c), subject to permissible restrictions in Article 19(4). In the ***Central PWD Engineers Association*** **(Supra)** it was aptly held as under:

> "*The primary objective of the CCS (RSA) Rules, 1993 is of granting recognition to any Service Association in order to encourage legitimate union activities for enabling the negotiations by the representative body, if so required and maintenance of harmonious relationship between the government and employees. The government servants cannot be excluded from the protection of the rights guaranteed by part III of the Constitution though the duties which they may discharge as a public servant might involve restrictions of freedom in terms of Article 19 of the Constitution of India. By virtue of Article 19(1)(c) of the Constitution of India, the right to form Association or Union or Cooperative Societies is a fundamental right even though the recognition of such Associations by the government may not be a fundamental right.*"

18. In the present case, however, the opposite parties have not attempted to disband FAIIMS or interfere with its existence. The Association is free to continue as a voluntary body of like-minded individuals. What is at stake is recognition by the Government, which is a distinct concept. The fundamental right to form an association does not entail a right to compel the government to grant that association official recognition or negotiation privileges. In other words, while individuals have freedom to associate, the recognition of that association by the State, which carries with it certain special privileges and obligations, is a matter of government policy and statutory regulation, not a fundamental right. Recognition under the CCS (RSA) Rules is essentially an administrative facilitation, it enables a channel of communication and representation between employees and the Government. The denial or absence of such recognition does not take away the right of the individuals to continue to form and operate their association privately; it only means the Government is not bound to deal with that association officially. Therefore, the petitioner's Article 19(1)(c) argument, though evocative, does not advance its case for a writ of mandamus. So long as the opposite parties are not prohibiting the

existence or peaceful activities of FAIIMS, there is no infringement of the constitutional freedom of association. What the petitioner really seeks is a discretionary privilege, something Article 19(1)(c) does not guarantee.

19. The Court also agrees with the opposite parties' submission that informal administrative conduct cannot substitute for formal statutory recognition. The petitioner emphasized past instances where the AIIMS administration engaged with FAIIMS in a manner similar to dealing with recognized associations, such as deducting membership fees through payroll. While such practices may have been allowed, they carry no legal sanctity in the absence of compliance with Rules 4-6 of the CCS (RSA) Rules. It appears that the local AIIMS authorities, perhaps in an effort to maintain cordial relations with the faculty, extended certain facilities to FAIIMS. However, those acts were *ultra vires* to the extent they presumed a status for FAIIMS that the Government of India had never formally accorded. Neither acquiescence nor lapse by administrative officials can create a right contrary to the Rules. The Central Government's policy on recognition of service associations, as reflected in the 1993 Rules, is aimed at ensuring that only representative and accountable associations are conferred recognition, in order to facilitate effective dialogue and prevent a multiplicity of unions.

20. Allowing an unrecognized association to enjoy the fruits of recognition by default would undermine this policy and render the Rules obsolete. Thus, the Court cannot accept the plea that FAIIMS's de facto dealings with the institute entitle it to de jure recognition. If at all, the petitioner's recourse is to seek recognition by following the procedure laid down, not to bypass it by invoking equitable doctrines.

21. This episode highlights a curious disregard for the applicable legal framework. The Faculty Association has functioned since 2014 without showing any serious engagement with the Central Civil Services (Recognition of Service Associations) Rules, 1993. These rules were not introduced yesterday; they have governed the field for decades. On the other hand, the Executive Director has purported to withdraw a recognition that was never formally granted, invoking a power that rests with the Central Government. It seems both parties have been operating in parallel, guided more by habit and informal arrangements than by the applicable law. While one appreciates that academic institutions are primarily driven by pedagogical goals, regulatory literacy is not optional for bodies exercising public functions. Good intentions do not cure procedural invalidity, and institutional habit is not a substitute for statutory recognition.

22. Going forward, both parties might consider reading the rules before quoting them. The Faculty Association has spent over a decade in operation without once knocking on the door of formal recognition, and the Executive Director has attempted to pull the rug from under a carpet that was never laid to begin with. This is not a legal conflict so much as a bureaucratic pantomime, complete with a

generous disregard for the scheme of the CCS (RSA) Rules. Institutions like AIIMS, which pride themselves on academic rigour and public service, cannot afford to wander through regulatory fog. A basic acquaintance with the law is not an aspirational standard, it is the bare minimum. When both the governed and the governing are this far removed from the legal framework that binds them, confusion is not an accident, it is the system.

V. CONCLUSION:

23. In sum, the Court finds that the petitioner Association (FAIIMS) was never formally recognized in accordance with the CCS (RSA) Rules, 1993. Consequently, it has no legal or statutory right to claim the status or privileges of a recognized service association. The Executive Director's impugned order dated 15.03.2024, purporting to de-recognize FAIIMS, was issued without competent authority; yet, setting aside that order would not avail the petitioner, since one cannot lose what one never legally possessed. The fundamental right to form associations under Article 19(1)(c) remains intact for the members of FAIIMS, but that right does not translate into a right to be granted government recognition. No enforceable right of the petitioner has been infringed so as to warrant the intervention of this Court under Article 226. The appropriate course for the petitioner, if it desires official recognition, is to comply with the requisite conditions and pursue recognition through the proper statutory procedure, not to seek a short-circuit through judicial fiat.

24. For the reasons aforestated, the Writ Petition is disposed of with the direction that the Petitioner's Association shall apply to the Government with all documents (i.e. Memorandum of Association, Bye-law, etc.) seeking formal recognition and the appropriate Government shall take steps to formally recognize the Association within one month from the date of submission of the application.

25. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C.

Result of the case:
Writ Petition disposed of.

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2025 (III) ILR-CUT-164

BIKASH BEHURA
V.
STATE OF ODISHA & ANR.

[CRLMC NO. 55 OF 2025]

02 SEPTEMBER 2025

[MISS SAVITRI RATHO, J.]

Issues for Consideration

1. Whether the offences U/Ss. 376(2)(n) & 493 of the Penal Code are attracted against the petitioner.

2. Whether in view of the compromise between the parties, the offence U/s. 376(2)(n) of the penal code can be quashed.

Headnotes

(A) CODE OF CRIMINAL PROCEDURE, 1973 – Section 482 r/w section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 – Offences U/Ss.376 (2)(n) & 493 of IPC – Prayer for quashing of FIR – The victim in her statement recorded U/s. 164 of Cr.P.C has stated that, "she was in love with the petitioner & their marriage was to be fixed – On 17.04.2024 they had a quarrel & he blocked her number – She submitted a false case against him – She had done this out of anger – Now she wants to withdraw the case – The case was false & the petitioner had not misbehaved with her" – Whether in view of the statement recorded U/s. 164 of the Cr.P.C the offences under the penal code are attracted against the petitioner?

Held: No – Apart from the fact that even if the allegations in the FIR are accepted to be true, the offences under Sections 376(2)(n) and 493 of the IPC are not made out against the petitioner, the victim has stated in her statement recorded under Section 164 of Cr.P.C. that being annoyed with the petitioner, she had lodged the FIR making false allegations. (Para 21)

(B) CODE OF CRIMINAL PROCEDURE, 1973 – Section 482 r/w section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 – Offences U/s.376 (2)(n) of IPC – Prayer for quashing of FIR – Compromise between the parties – Whether in view of the compromise between the parties the offence U/s. 376(2)(n) of the penal code can be quashed.

Held: No – The decision in the case of *Gian Singh* (supra) is of no help to the petitioner for the purpose of quashing the FIR or proceeding with regard to the offence under Section 376(2) (n) of the IPC, as it has been held by the Supreme Court in the said case that an offence like rape cannot be quashed

on the ground of compromise – For the same reason, the decision in the case of ***Sumit* (supra),** cannot be of any help to the petitioner. (Para 17)

I am therefore not impressed by the submission of the learned counsel for the petitioner that the proceedings should be quashed as the victim does not want to proceed with the case – Merely because the victim does not want to proceed against an accused, cannot be a ground for quashing the FIR or proceedings in respect of a case, registered under Section -376 (2) (n) of the IPC. (Para 18)

Citations Reference

Vineet Kumar and Others vs. State of Uttar Pradesh & Another, **AIR 2017 SC 1884;** Sumit vs. State of Uttar Pradesh & Another, **2024 AHC 98029;** Manish Yadav vs. State of Uttar Pradesh & Another, **Criminal Appeal No. 333 of 2025 (arising out of SLP (Crl.) No. 15882 of 2024) & 2025 INSC 151;** Gian Singh vs. State of Punjab & Others, **(2012) 10 SCC 303;** Mahesh Damu Khare vs. State Maharashtra, **2024 INSC 897;** Deepak Gulati v. State of Haryana, **(2013) 7 SCC 675;** Prithivirajan vs. State represented by Inspector of Police and another, **2025 SCC OnLine SC 696 (Criminal Appeal No.282 of 2025 @ SLP(Crl.) No.12663 of 2022 decided on 20.01.2025);** Jothiragawan vs. State represented by Inspector Police and another : **2025 SCC OnLine SC 628 : 2025 INSC 386;** Uday v. State of Karnataka, **(2003) 4 SCC 46;** Deelip Singh v. State of Bihar: **(2005) 1 SCC 88;** B.S. Joshi vs. State of Haryana **(2003) 4 SCC 675;** Nikhil Merchant vs. Central Bureau of Investigation and Another, **(2008) 9 SCC 677;** Manoj Sharma vs. State and Others, **(2008) 16 SCC 1;** Vineet Kumar and Others vs. State of Uttar Pradesh & Another, **AIR 2017 SC 1884 : (2017) 13 SCC 369;** State of Haryana vs Bhajan Lal, **1992 Supp (1) SCC 337 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Bharatiya Nagarik Suraksha Sanhita, 2023

Keywords

Quashing of FIR; Rape; Punishment for Rape; False marriage; Compromise between the parties; False allegation; Statement before the Magistrate

Case Arising From

Sukinda P.S. Case No.138 of 2024 corresponding C.T No. 268 of 2024 in the court of learned GN-Cum-JMFC, Sukinda.

Appearances for Parties

For Petitioner : Mr. A.A. Mishra

For Opp. Parties : Ms. Sarita Moharana, A.S.C. (for O.P. No.1)
Mr. Panchanan Panigrahi, (for O.P. No.2)

Judgment/Order

Judgment

MISS SAVITRI RATHO, J.

This CRLMC has been filed with the following prayer:-

"The Petitioner therefore most humbly prays that this Hon'ble Court be graciously pleased to allow this application and be pleased to quash the impugned FIR vide Annexure-1 and the impugned proceeding registered on the basis of such FIR vide Sukinda C.T. No. 268 of 2024 pending on the files of the Court of learned GN-Cum-JMFC, corresponding to Sukinda P.S. Case No. 138/2024;

And pass such other order/orders as this Hon'ble Court deems fit and proper in the facts and circumstance of the case;

And for this act of kindness the Petitioner shall as in duty bound ever pray."

PROSECUTION CASE

2. On 19.04.2024, the victim submitted a written report in the Sukinda Police Station leading to registration of Sukinda P.S. Case No.138 of 2024 under Sections 493 and 376(2)(n) of the Indian Penal Code (hereinafter referred to as "the IPC") against the petitioner.

3. The victim had alleged in the FIR that she was aged more than 18 years and was in love with the petitioner since the last one and half years. He had kept physical relations with her and promised to marry her. When she refused to have physical relationship with his friends, he beat her and she escaped from the place. Thereafter their relationship returned to normal. One month back on 28.03.2024, he called her and they again had physical relations and she returned home. The next day he did not receive her call. A few days thereafter, he blocked her number. When she called the petitioner through another number, the petitioner expressed that he doesn't want to keep any further relation with her. Thereafter she was unable to contact him inspite of her best efforts. Copy of the FIR has been filed as Annexure-1.

4. Statement of the victim under Section 164 of Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") was recorded by the Magistrate on 25.04.2024. In the statement, the victim stated that her marriage had been fixed with the petitioner but due to a quarrel, he had blocked her number for which she had made false allegation against him about their relationship, and that she had a quarrel with the petitioner on 17.04.2024 and thereafter she had lodged the FIR making false allegations against the petitioner.

5. The statement of the victim recorded under Section 164 Cr.P.C. had been called for by this Court during hearing of ABLAPL No. 9070 of 2024 filed by the petitioner and was produced by the learned State Counsel. Its contents were referred

to by the Court in its order dated 06.11.2024 vide which the petitioner had been directed to be released on bail on his surrender before the learned Court below. Copy of the order dated 06.11.2024 passed in ABLPL No. 9070 of 2024 has been annexed as Annexure 2 to the CRLMC. Copy of the affidavit dated 24.04.2024 of the victim sworn before the Executive Magistrate has been annexed as Annexure-4 to the CRLMC.

6. On 21.01.2025, notice of this application had been issued to the victim and further proceedings in the case pending in the Court of the learned Gram Nyayalaya -cum- J.M.F.C., Sukinda in C.T. case No 268 of 2024 corresponding to Sukinda P.S. Case No. 138 of 2024, had been stayed. On a subsequent date, the copy of the statement of the victim recorded under Section 164 Cr.P.C. had been called for by this Court in a sealed cover and was produced. Mr. Panchanan Panigrahi, learned Counsel has entered appearance on behalf of the victim. The name of the victim is not being mentioned to protect her identity.

SUBMISSIONS

7. I have heard Mr. A.A. Mishra, learned counsel for the petitioner, Ms. Sarita Moharana, Additional Standing Counsel and Mr. Panchanan Panigrahi, learned counsel for the informant. I have perused the written note of submission filed by the learned counsel for the petitioner. I have perused the FIR and the statement of the victim recorded under Section 164 of the Cr.P.C. and the written note of submission filed by Mr. Mishra, learned counsel for the petitioner.

8. Mr. A.A Mishra, learned counsel for the petitioner submitted that the petitioner and the informant were in a love relationship and the victim is a major. With consent of the family members of both the parties, the marriage between the informant (victim) and the petitioner had been fixed. But before the marriage could take place, they had a quarrel for which the victim lodged the F.I.R. making false allegations against him. But in the meantime, she realized her mistake and the matter has been resolved. The victim does not want to proceed in this case and has stated this in her statement recorded under Section 164 of the Cr.P.C. and she had submitted an affidavit to this effect before the I.O., copy of which has been annexed to this CRLMC as Annexure-4. She has got married in the meanwhile. The petitioner is also married. Pendency of this case will spoil their respective marital lives and as the victim does not want to proceed in the case, no useful purpose will be served if the proceedings are allowed to continue.

9. Mr. Mishra, learned counsel for the petitioner has submitted a written note relying on the decisions of the Supreme Court in the cases of :-

> *(i)* ***Vineet Kumar and Others vs. State of Uttar Pradesh & Another*** *reported in* ***AIR 2017 SC 1884,***
>
> *(ii)* ***Sumit vs. State of Uttar Pradesh & Another*** *reported in* ***2024 AHC 98029****,*

(iii) ***Manish Yadav vs. State of Uttar Pradesh & Another*** *in Criminal Appeal No. 333 of 2025 (arising out of SLP (Crl.) No. 15882 of 2024) and*

(iv) ***Gian Singh vs. State of Punjab & Others*** *reported in* ***(2012) 10 SCC 303****.*

10. Ms. Sarita Moharana, learned Additional Standing Counsel for the State does not dispute the submissions of the learned counsel for the petitioner that after perusing the statement of the victim recorded under Section 164 of the Cr.P.C., this Court had allowed the application filed under Section 438 of the Cr.P.C. She also does not dispute that the victim is a major. She has also fairly stated that the Supreme Court has quashed proceedings where the accused and the victim-complainant being major were in a consensual physical relationship but subsequently their marriage did not materialize, holding that such allegations do not make out an offence under Section 376 of the I.P.C.

11. Mr. Panchanan Panigrahi, learned counsel for the opposite party no.2-victim submitted that the victim had made false allegations against the petitioner because of a misunderstanding and she has got married and is staying happily with her husband and she does not want to proceed against the petitioner for which the proceedings may be quashed. He has also submitted that if the proceedings continue and the victim is compelled to come to Court to adduce evidence, her marital life may be spoilt.

STATUTORY PROVISIONS

12. Sections 375, 376 (2)(n) and Section 493 of the IPC are the relevant provisions for deciding this application and are extracted below :-

"Section 375. Rape.*—A man is said to commit "rape" if he—*

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

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

Seventhly.—When she is unable to communicate consent.

***"Section 376. Punishment for rape.**—(1) Whoever, except in the cases provided for in sub section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].*

(2) Whoever,—

xxx

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

***"Section – 493.Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.**—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

JUDICIAL PRONOUNCEMENTS

13. In ***Mahesh Damu Khare vs. State Maharashtra : 2024 INSC 897***, the Supreme Court has held as follows:-

"22. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.

*23. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 of IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to the case of **"Deepak Gulati v. State of Haryana": (2013) 7 SCC 675**, in which it was held as follows:*

"21. *Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives."*

"24. *Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."*

(emphasis supplied)

24. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.

In ***Prithivirajan vs. State represented by Inspector of Police and another : 2025 SCC OnLine SC 696 (Criminal Appeal No.282 of 2025 @ SLP(Crl.) No.12663 of 2022 decided on 20.01.2025)***, the Supreme Court has held as follows:-

"6. This Court has time and again reiterated that only because physical relations were established based on a promise to marry, it will not amount to rape. For the offence of rape to be attracted, the following conditions need to be satisfied: first, the accused promised to marry the prosecutrix solely to secure consent for sexual relations without having any intention of fulfilling said promise from the very beginning; second, that the prosecutrix gave her consent for sexual relations by

being directly influenced by such false promise of marriage. [See: ***Pramod Suryabhan Pawar v. The State of Maharashtra and Ors. (2019) 9 SCC 608; Mahesh Damu Khare vs. The State of Maharashtra and Ors. 2024 SCC OnLine SC 347****]*

7. The instant case is one of consensual relationship between the appellant and prosecutrix. Even otherwise, it does not appear from the record that the initial promise to marry allegedly made by the appellant was false to begin with. Perusal of FIR itself suggests that the alleged promise to marry could not be fulfilled by the appellant due to intervening circumstances. Consequently, the relationship ended because of which the present FIR came to be registered. Under these circumstances, letting the appellant face trial would be nothing short of an abuse of the process of the Court. This cannot be permitted."

In ***Jothiragawan vs. State represented by Inspector Police and another : 2025 SCC OnLine SC 628 : 2025 INSC 386)***, the Supreme Court has held as follows:-

"12. On a reading of the statements made by the victim before the Police, both the First Information Statement and that recorded later on, we are not convinced that the sexual relationship admitted by both the parties was without the consent of the victim. That they were closely related and were in a relationship is admitted by the victim. The allegation is also of threat and coercion against the victim, to have sexual intercourse with the accused, which even as per the victim's statement was repeated thrice in the same manner, when she willingly accompanied the accused to a hotel room. The victim had also categorically stated that after the first incident and the second incident she was mentally upset, but that did not caution her from again accompanying the accused to hotel rooms.

13. Having heard both sides in this case, we have absolutely no doubt in our mind that the criminal proceedings initiated against the present appellant are nothing but an abuse of process of the court. This is precisely a case where the High Court should have interfered in exercise of its inherent and extraordinary powers under Section 482 of the Cr.P.C. These proceedings cannot go on. Hence, we direct that the proceedings initiated at the instance of the complainant which are presently going on before Sessions Judge (Mahila Court), Erode in S.C. No. 49 of 2022, be hereby quashed."

In ***Manish Yadav vs. State of Uttar Pradesh & Another: 2025 INSC 151,*** the Supreme Court after referring to its earlier decisions in ***Uday v. State of Karnataka: (2003) 4 SCC 46., Deepak Gulati v. State of Haryana : (2013) 7 SCC 675 and Deelip Singh v. State of Bihar: (2005) 1 SCC 88***, has held as follows:-

"22. In view of the above discussion, we are of the opinion that the present case appears to be one where a consensual physical relationship between two adults has turned sour due to certain intervening events. Hence, allowing the prosecution of the appellant for the offences mentioned above would tantamount to sheer abuse of the process of law and nothing else."

In the case of ***Gian Singh vs. State of Punjab & Others*** reported in ***(2012) 10 SCC 303***, the larger Bench of the Supreme Court had been called upon to answer

the reference whether the decisions in ***B.S. Joshi vs. State of Haryana (2003) 4 SCC 675; Nikhil Merchant vs. Central Bureau of Investigation and Another (2008) 9 SCC 677;*** and ***Manoj Sharma vs. State and Others (2008) 16 SCC 1***, where the Supreme Court had indirectly permitted compounding of non-compoundable offences had been correctly decided as in the opinion of the Bench something which cannot be done directly cannot be done indirectly and non-compoundable offences cannot be permitted to be compounded by the Court, whether directly or indirectly. The larger Bench answered the reference holding as follows :

> *"57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences.*
>
> *But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."*

In ***Vineet Kumar and Others vs. State of Uttar Pradesh & Another : AIR 2017 SC 1884 : (2017) 13 SCC 369***, the Supreme Court found that there were financial transactions between the accused and the complainant, her husband and their son. On dishonor of cheque issued by her husband and son, proceedings under Section 138 of the N.I. Act were initiated by the accused. It found the allegations made by the complainant to be improbable attracting category 7 of the decision in the case of ***State of Haryana vs Bhajan Lal : 1992 Supp (1) SCC 337*** and quashed the criminal proceedings holding that the High Court should have quashed the proceedings in exercise of its power under Section 482 of the Cr.P.C.

In ***Sumit vs. State of Uttar Pradesh & Another : 2024 AHC 98029***, the petitioner had filed an application under Section 482 of the Cr.P.C., for quashing the proceedings against him under Sections – 376, 506 / 34 of the I.P.C. and Section 34 of the POCSO Act. The statement of the victim recorded under Section 164 Cr.P.C revealed that no offence had been committed by the petitioner and he had been falsely implicated. The Allahabad High Court relying on the decision in the case of ***Vineet Kumar*** (supra) quashed the proceedings holding that it comes under category 7 enumerated by the Supreme Court in the case of ***Ch. Bhajan Lal*** (supra)

ANALYSIS AND REASONING

14. In her statement recorded under Section 164 Cr.P.C. on 25.04.2024, the victim has stated that she was in love with the petitioner and their marriage was to be fixed. On 17.04.2024, they had a quarrel and he blocked her number. She came to Sukinda and submitted a false case against him. She had done this out of anger. Now she wanted to withdraw the case. The case was false and the petitioner had not misbehaved with her.

OFFENCE UNDER SECTION 493 OF THE IPC

15. To make out an offence under Section 493 of the IPC. The accused must deceive a woman that she is lawfully married to him, leading her to cohabit or have sexual intercourse with him under that false belief. The necessary ingredients are deceit, the belief of the woman of lawful marriage, and subsequent cohabitation or sexual intercourse.

16. In the present case, there is no allegation that the petitioner had made the victim believe that she was his lawful wedded wife, which led her to have sexual relations with him. So the offence under Section 493 of the IPC is not made out against him.

OFFENCE UNDER SECTION 376(2)(n) OF THE IPC

17. The decision in the case of ***Gian Singh*** (supra) is of no help to the petitioner for the purpose of quashing the FIR or proceeding with regard to the offence under Section 376(2) (n) of the IPC, as it has been held by the Supreme Court in the said case that an offence like rape cannot be quashed on the ground of compromise. For

the same reason, the decision in the case of ***Sumit*** (supra), cannot be of any help to the petitioner.

18. I am therefore not impressed by the submission of the learned counsel for the petitioner that the proceedings should be quashed as the victim does not want to proceed with the case. Merely because the victim does not want to proceed against an accused, cannot be a ground for quashing the FIR or proceedings in respect of a case, registered under Section -376 (2) (n) of the IPC.

19. As per the FIR, the victim was aged more than eighteen years and she has stated that she was in love with the petitioner and they had physical relations and he had promised to marry her, but thereafter started avoiding her. Merely because he started avoiding her after having sexual relations with her, does not make out the offence under Section 376 (2) (n) of the IPC against him as there is no allegation that he had used force on her or compelled her or tricked to have physical relations with him. There is also no allegation that he had sexual relations with her after promising to marry her, although he never had any intention to marry her.

20. In view of the nature of allegations and the decisions of the Supreme Court in the cases of ***Mahesh Damu Khare*** (supra) ***Manish Yadav*** (supra), ***Prithivirajan*** (supra) and ***Jothiragawan*** (supra) referred to above, I am satisfied that the offence under Section – 376 (2) (n) of the IPC is not made out against the petitioner.

21. Apart from the fact that even if the allegations in the FIR are accepted to be true, the offences under Sections 376(2)(n) and 493 of the IPC are not made out against the petitioner, the victim has stated in her statement recorded under Section 164 of Cr.P.C. that being annoyed with the petitioner, she had lodged the FIR making false allegations.

CONCLUSION

22. In view of the above discussion, I am satisfied that this is a fit case where the FIR in Sukinda P.S. Case No. 138 of 2024 corresponding C.T. No. 268 of 2024 in the Court of learned GN Cum-JMFC, Sukinda and further proceedings in the case should be quashed and they are accordingly quashed.

23. All interim applications stand disposed of.

Headnotes prepared by:
Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CRLMC disposed of.

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2025 (III) ILR-CUT-175

ALPHARD MARITIME LTD.
V.
OCEAN JADE (IMO:9660750) & ANR.

[ADMLS NO. 2 OF 2025]

ALONG WITH

[I.A. NOS. 15, 16, 8, 11, & 9 OF 2025]

9 JULY 2025

[MRUGANKA SEKHAR SAHOO, J.]

Issues for Consideration

1. Whether the amendment for plaint is to be allowed when it would cause change in the nature and character of the suit and the result would affect the valuation of the suit.

2. Whether the plaint of the plaintiff be accepted without payment of the Court fee.

Headnotes

(A) CODE OF CIVIL PROCEDURE, 1908 – Order VI Rule 17 r/w Section 12 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 and Rule 3 of the Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020 – On 17.04.2025 the plaintiff/petitioner filed I.A. No.15 of 2025 for amendment of the pleadings – Court fee was not deposited, extension of time was sought for & four week time granted – The period of four week ended on 16.04.2025 – The plaintiff seek further extension of time not for depositing the deficit court fee but to defer such deposit till disposal of the I.A meant for amendment of pleadings – Whether the amendment for plaint is to be allowed when it would cause change in the nature and character of the suit and the result would affect the valuation of the suit.

Held: No – Perusal of the amendments sought for, as indicated above goes to show that the nature and character of the suit from that of a 'money claim arising out of an alleged settlement agreement' changes to a 'suit to secure the plaintiffs claims' in an admiralty suit filed before the Gujarat High Court. (Para 65)

Lack of bona fide in seeking amendment is found as far as the prayer for amendment is concerned – The further finding of this Court is that by bringing proposed amendment the cause of action sought to be raised would become foreign to the case that was set up in the earlier plaint as 'Gujrat

Suit' is introduced in the amendment for the first time without there being any reference in the original plaints and the defendants are not party to the 'Gujrat Suit'. (Para 67)

Accordingly, the I.A. No.15 of 2025 filed by plaintiff seeking amendment of plaint is dismissed. (Para 68)

(B) COURT FEES ACT, 1870 – Section 4 – The plaintiff did not deposit the court fee initially determined by it – Extension of time was sought for to deposit the amount, four week time was granted – The period of four week ended on 16.04.2025 – The plaintiff seeks further extension of time without depositing the deficit court fee, to defer such deposit till disposal of the I.A, which meant for amendment of pleadings – Whether the plaint of the plaintiff be accepted without payment of the Court fee?

Held: No. – Concededly the value is itself determined by the plaintiff, therefore, everything remaining same including the claim against the defendant, the value of ad-valorem court fee remains unchanged as was determined on the date of filing of the suit – These observations are made in the context of the fact, that as noted above, extensive arguments have been advanced by both the sides addressing this particular aspect – Now, though the suit is dismissed for the reasons as elaborated above but assuming for the sake of argument that the amendments could have been allowed then the consequence still would be that the court fee would remain unpaid, in deficit, and in the facts and circumstances as well by operation of law the suit has to be dismissed. (Para 69)

Citations Reference

A. Nawab John and others v. V.N. Subramaniyam, **[2012] 6 SCR 369;** Umrao Devi Bantia and others vrs. Union of India and others, **2015 SCC OnLine Hyd 694: (2015) 5 ALT 11;** J.S. Ocean Liner LLC vrs. M.V. Golden Progress, **2007 SCC OnLine Bom 69: 2007 AIHC 1933 (FB);** Siem Offshore Redri AS vrs. Altus Uber, **2018 SCC OnLine Bom 2730;** Cuddalore Powergen Corporation Ltd. vrs. Chemplast Cuddalore Vinyls Limited and another, **2025 SCC OnLine SC 82;** Life Insurance Corporation of India vrs. Sanjeev Builders Private Limited and another, **(2022) 16 SCC 1;** Dr. Mumtaz Ali vrs. M/s. Shri Mangal Associates through Partner Brajesh Pandya and others dated 05.03.2025, **2025: MPHC-IND-5859;** Suchitra Dubey Vs. Sattar and Others, **2023 SCC OnLine MP 1795;** Geetha vrs. Nanjundaswamy and others, **2023 SCC OnLine SC 1407;** Rushab Ship International LLC v. Bunkers onboard Ship M.V. African Eagle, **2014 SCC OnLine Bom 620 : (2014) 4 Bom CR 269;** Sri Rathnavarmaraja v. Vimla Smt., **AIR 1961 SC 1299;** Pradeep Kumar and another v. Vishnu Kumar and

others, **2018 SCC Online ALL 6466;** Ramcharan Goyal v. Smt. Kamlarani Verma and others, Misc. Petition No.6624 of 2023 decided on 02.05.2025, Madhya Pradesh High Court; Sk. Majnu v. Lochan Sahoo, **(2011) 112 CLT 886: 2011 SCC OnLine Ori 170;** Radha Goyal v. Gaurav Goyal and another, **2024 SCC OnLine Del 2318;** Jatinder Pal Singh v. The State of Punjab and another, **CR No.539 of 2024 (O & M) decided on 09.02.2025;** Kamaleshwar Kishore Singh v. Paras Nath Singh and others, **(2002) 1 SCC 304;** Tajendra Singh Ghambhir v. Gurprit Singh, **(2014) 10 SCC 702;** Buta Singh v. Union of India, **(1995) 5 SCC 284: AIR 1995 SC 1945;** Quinn v. Leathem, **[1901] UKHL 2 : 3[1901] AC 495 : [1900-3] All E.R. Rep.1 (Placitum H & I) – referred to.**

List of Acts

Code of Civil Procedure, 1908; Court Fees Act, 1870; Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017; Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020; Admiralty Jurisdiction and Settlement of Maritime Claims (Removal of difficulties) Order, 2017

Keywords

Admiralty suit; Deficit court fees; Deposit of Court fees; Amendment of pleadings; Nature & Character of the suit; Result of the suit; Extension of time; Acceptance of plaint; Rejection of plaint; Valuation of the suit; Determination; Ex-parte arrest; Detain; Condemn; Settlement of agreement; Ad-valorem court fee.

Case Arising From

I.A. No. 07 of 2025, I.A. No. 09 of 2025, I.A. No. 11 of 2025, I.A. No. 15 of 2025, I.A. No. 16 of 2025.

Appearances for Parties

For Plaintiff : Mr. D.P. Nanda, Sr. Adv. along with Mr. Samvit Mohanty, Mr. Anurag Pati, Mr. Adwitiya Satpathy, Ms. Jimisha Dalal, Ms. Nitansha Nema,
Mr. Aryan Sharma, Ms. Shivani Das,

For Defendants : Mr. Gautam Mukherji, Sr. Adv. along with
Mr. S.S. Mohanty, Ms. Arusmita Acharya,
Ms. Ankita Mukherji, Mr. Amlan Mishra, Mr. S.S. Moharana, Ms. Deepsha Dhal,

For Intervenors : Mr. S.K. Padhi, Sr. Adv. along with Mr. Ipsit Aurobindo Acharya, Mr. Nitesh Jain, Mr. Atul Jain, Ms. Juhi Mathur, Mr. Piyush Panda

Judgment/Order

Judgment

M.S. SAHOO, J.

1. The suit has been filed under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 as amended by the Admiralty jurisdiction and Settlement of the Maritime Claims (Removal of Difficulties) Order, 2017 along with the interlocutory applications filed by the plaintiff-petitioner.

2. I.A. No.7 of 2025 was filed by the plaintiff for extension of time to pay the deficit of court fees while filing the suit as reported in stamp report. The I.A. was disposed of by order dated 19.03.2025 granting four weeks' time. By *ex-parte* interim order dated 19.03.2025, the then assigned Bench issued directions to keep the vessels under arrest at the Paradip Port within the Indian territorial waters by the Port Officer and Custom Authorities or any other competent authority and keep the vessels under arrest until further orders that may be passed by this Court.

I.A. No.9 of 2025 has been filed by the intending intervenor-petitioner to intervene in the suit and seeking a direction accordingly.

I.A. No.11 of 2025 has been filed by the defendants seeking relief under Order VII Rule 11(c) of the CPC, 1908 for rejection of the plaint in the suit.

Thereafter, I.A. No.15 of 2025 has been filed by the plaintiff seeking amendment of the pleadings invoking provisions of the Code of Civil Procedure, 1908, Order VI Rule 17.

I.A. No.16 of 2025 has also been filed on 17.04.2025 by the plaintiff under Chapter VI Rule 27(a) of the Orissa High Court Rules, 1948 read with Section 149 of the Code of Civil Procedure, 1908 read with Section 151 of the CPC, 1908, inter alia, seeking a direction for deferment of payment of court fees.

3. By order dated 30.04.2025 the following order was passed by this Bench :

> *"The matter has been listed before this Bench being assignment of the roster 'Admiralty Suit.' The matter was heard listed yesterday. The submissions of the learned Senior Counsel for the appearing parties have been noted in the order dated 29.04.2025.*
>
> *I.A. No.8 of 2025 filed by the defendants for vacating interim order dated 19.03.2025 passed in I.A. No.6 of 2025 directing arrest of the vessels.*
>
> *I.A. No.11 of 2025 has been filed by the defendants for rejection of the plaint under Order 7, Rule 11(c) of the Code of Civil Procedure, 1908 read with Section 151 of the CPC.*
>
> *I.A. No.16 of 2025 is at the instance of the plaintiff for modification of the order dated 19.03.2025 passed by the Bench then having assignment of the admiralty suit, disposing of I.A.No.7 of 2025.*
>
> *I.A. No.15 of 2025 has been filed by the plaintiff for amendment of the plaint.*
>
> *The prayers made in the I.As mentioned above are entwined to the extent that the prayer for modification of order dated 19.03.2025 disposing of I.A. No.7 of 2025 depends on the amendment being allowed. The prayer for rejection of the plaint arises out of the fact that the direction in the order dated 19.03.2025 disposing of I.A. No.7 of 2025 having not been complied with regarding payment of court fee.*

xxx *xxx* *xxx*

In such view of the matter, the suit and I.A.(s) be placed in the administrative side before Hon'ble the Chief Justice for assignment.

3.1 The matter was placed before Hon'ble the Chief Justice for nomination of appropriate Bench to take up all the I.As: I.A.No.8 of 2025, I.A. No.11 of 2025, I.A. No.16 of 2025 and I.A. No.15 of 2025 arising out of Admiralty Suit. As per the endorsement of Hon'ble the Chief Justice dated 01.05.2025 the matter was assigned and listed before this Bench.

4. Defendant nos.1 and 2, vessels are presently at the Port of Paradip, Odisha. The plaintiff is seeking order and decree in favour of the plaintiff against the defendants vessels jointly and/or severally, her owner, and all persons interested in her, to pay the plaintiff a sum of US$49,268,902.45 (INR428,76,87,464.30) along with applicable interest.

The further prayer is to arrest, detain, condemn and sell both the vessels together with their hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery through Bailiff under order and direction of this Court and to apply the sale proceeds towards the satisfaction of the plaintiff's claim in the suit.

Facts

5. As pleaded by the parties to the suit, the facts and the connected I.A.s (s) are summarized herein:

5.1. On 16.09.2024, purportedly, "Settlement Agreement" was executed between the petitioner-Alphard Maritime Limited ("Alphard"), Samson Maritime Limited ("SML"), and Underwater Services Company Limited ('USCL"). SML is the registered owner of the Defendant vessels. USCL is a wholly owned subsidiary of SML.

5.2. Alphard invoked arbitration under Clause 10 of the purported Settlement Agreement, against SML and USCL under the rules of Singapore Chamber of Maritime Arbitration seeking, inter alia, indemnity under Clause 3.3 of the Settlement Agreement for its purported "losses, including loss of revenue and profit" on account of SML's and USCL' purported failure to execute the MOA under Clause 3.1.

5.3. On 06.03.2025 Alphard filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, before the Bombay High Court seeking, among others, injunctive reliefs relating to SML's shares in USCL.

5.4. On 11.03.2025 Alphard filed an admiralty suit before the Gujarat High Court for an order and decree against 4 of SML's vessels (Ocean Opal, Ocean Citrine, Ocean Coral and Ocean Ammolite) and 1 vessel Chartered by USCL (SwissCO Pearl) jointly and/or severally to pay the same Claim Amount (i.e. USD

49 Million) to Alphard as indemnity for the alleged breach of the Settlement Agreement.

The Gujarat High Court ordered the *ex-parte* arrest of only 1 out of 5 vessels-SwissCo Pearl-vessel chartered by USCL.

5.5. On 12.03.2025 Alphard filed the Admiralty Suit No.2 of 2025 before this Court against the Defendant vessels (owned by SML) to pay the Claim Amount (i.e. USD 49 Million) to Alphard.

Alphard filed I.A. No.6 of 2025 in the Suit, seeking an *ex-parte* arrest of the Defendants.

5.6 I.A. No.7 of 2025

On 17.03.2025 Alphard filed IA No.7 of 2025 seeking permission to pay only partial court fee of INR 75,000/- in order to admit the plaint in the Suit; and in the alternative, seeking additional time to furnish the deficit court fee while keeping this issue open until the Hon'ble Supreme Court decided the transfer petition (that they would be filing) and the conclusion of the SCMA Arbitration.

5.7. This Court passed an *ex-parte* order directing that the Defendants be arrested at Paradip Port.

5.8. I.A. No.8 of 2025

On 24.03.2025 SML filed I.A.No.8 of 2025 on behalf of the Defendants in the Suit seeking to vacate the 19 March Order.

5.9. On 28.03.2025 Alphard filed a Transfer Petition No.906-907 of 2025 under Section 15 of the Admiralty Act before the Supreme Court seeking the transfer of the Gujarat Proceedings and those before this Court to the Bombay High Court. In the alternative, the plaintiff sought a transfer of this Suit to the Hon'ble Gujarat High Court.

5.10. On 07.04.2025 the Supreme Court dismissed the Transfer Petition.

5.11. I.A. No.10 of 2025

On 08.04.2025 Alphard filed I.A. No.10 of 2025 for sale of the Defendants on the terms that the sale proceeds thereof be deposited with the Admiralty Registrar ***to the credit of the present suit*** and be ***held as security for the satisfaction of Alphard's claim in the Suit.***

5.12. I.A. No.11 of 2025

On 09.04.2025 SML filed an application under Order VII Rule 11 (c) of the Code of Civil Procedure, 1908 for rejection of Alphard's plaint in the Suit on ground that Alphard has failed to pay the prescribed ad-valorem court fee on the reliefs sought in the plaint.

5.13. Time period granted by this Hon'ble Court under the 19 March Order to make payment of the deficit court fee expired on 16th April, 2025.

Neither did Alphard make payment of the deficit court fee nor did Alphard file any application seeking extension of time to pay the court fee, till 16 April, 2025.

5.14. I.A. No.16 of 2025

On 17.04.2025 Alphard filed I.A. No.16 of 2025 for modification of the 19th March Order to seek deferment in payment of deficit court fee.

The present suit

6. The plaintiff alleges that they have a maritime claim falling U/s.4(1)(r) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 under a 'Settlement Agreement' (Annexure-6 to the suit). The agreement has been alleged to be executed between the plaintiff-petitioner Alphard Maritime Limited ("Alphard") with Samson Maritime Limited ("Samson"), and Under Water Services Company Limited ("Under Water"). The plaintiff's claim indemnity of ₹428,76,87,464.30 (equivalent to US$ 49,268,902.454) adding to the said cost the plaintiffs have determined the litigation cost to be US$ 50,000. The aggregate of claims has been stated to be US$ 49,288,902.45. The plaintiffs valued their suit at ₹ 428,76,87,464.30 and ad-valorem court fee payable has been valued by the Stamp Reporter and also stated by the plaintiff at ₹12,86,31, 885/- as indicated in the plaint.

7. The plaintiffs did not pay the court fee, filed I.A. No.7 of 2025. The I.A. was considered and disposed of by the then assigned Bench by order dated 19.03.2025 granting four weeks' time. It was further directed the Registry shall report with regard to its filing and sufficiency before the next date. Considering the prayer in the I.A. No.6 of 2025 the then assigned co-ordinate Bench passed order of arrest against the two vessels. The defendants upon notice appeared, filed I.A. No.11 of 2025.

8. The interveners have stated that vessels have been hypothecated to them. They have further stated that they are interested in view of Rule-17 of the Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020 filed I.A. No.9 of 2025.

I.A. No.8 of 2025 was filed by the defendants for release of the vessels.

9. In the background facts as indicted above the I.A. No.15 of 2025 is taken up for adjudication and consideration of prayer therein as in the emerging scenario, ***the question*** that has to be answered first in the suit: whether the amendment to the plaint is to be allowed or not?

The defendants raised preliminary objection regarding maintainability of the amendment petition in view of the fact that they have filed petition for rejection of the plaint under Order VII Rule 11 (c) of the C.P.C., Mr. Mukherji, learned Senior

Counsel on behalf of defendants made his submission on the preliminary objection. Mr. Mukherji made his submissions opposing the submissions of the learned Senior Counsel, Mr. Nanda on merits.

In support of the prayer for amendment filed under Order VI Rule 17 of the CPC, learned Senior Counsel Mr. Nanda made extensive submissions. Mr. Nanda also made his submissions on merits of the amendment petition and also his submissions in response to the submissions of Mr. Mukherji, learned Senior Counsel on preliminary objections.

10. For convenience of presentation and analysis by the Court the submissions of the learned Senior Counsel, Mr. Nanda for the plaintiff-petitioner are collated and discussed. Similarly the submissions of the learned Senior Counsel, Mr. Mukherji appearing for the defendants-opposite parties are collated and discussed together.

It would be apt to observe that the extensive hearing afforded to the learned counsel appearing in the matter may be said to be not required as the matter boiled down to a narrow compass for determination, as the ultimate analysis and conclusions would indicate. The research done and the labour put by the learned counsel inspired such indulgence.

Submissions on behalf of the plaintiff

11. It is submitted by Mr. Nanda, learned Senior Counsel that Section 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 refers to arrest of vessel in rem. The said provision is quoted herein:

> ***"5. Arrest of vessel in rem.*** *– (1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the Court has reason to believe that –*
>
> *(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or*
>
> *(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or*
>
> *(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or*
>
> *(d) the claim relates to the ownership or possession of the vessel; or (e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.*
>
> *(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1):*
>
> *Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.*

> ***4. Maritime Claim****-(1) The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any xxx xxx (r) dispute arising out of a contract for the sale of the vessel."*

12. The learned Senior Counsel elaborates that the prayer for amendment of the plaint in the suit is for indemnification and for securing the maritime claim. It is a *suit in rem* as defined under the statute. He submits that such I.A. is maintainable under Section 12 of the Act, 2017 and Rule 3 of the Orissa High Court Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2020. He refers to the decision rendered by the Hon'ble Supreme Court in ***A. Nawab John and others v. V.N. Subramaniyam***[1] decided on 3rd July, 2012 to contend that the Court has power to exercise the jurisdiction under Section 149 of the CPC for granting further time for deposit of the deficit court fees. It is submitted that though the defendants heavily rely on ***A. Nawab John*** (*supra*) regarding limits and contours of Court's power and exercise of discretion as prescribed under O.7, R.11 for rejection of the plaint there is also a scope for the plaintiff to seek exercise of discretion by the Court for extension of time.

13. Regarding the prayer made in the petition for amendment (I.A. No.15 of 2025) it is submitted by the learned Senior Counsel that the plaintiff relies on the decision of the High Court of Hyderabad in ***Umrao Devi Bantia and others vrs. Union of India and others***[2] wherein it is held that the Court has power to allow the prayer of the plaintiff even if, in effect, it amounts to reduction of the quantum of claim resulting in reduction in court fee calculated thereupon. Supporting the prayer for amendment he submits that the amendment is necessitated in view of the pendency of the admiralty suit at Gujarat and due to pendency of the arbitration proceeding initiated at Singapore at the instance of the plaintiff. It is submitted that in view of Section 5 of the Act, 2017, for the purpose of providing security against maritime claim, pending before Gujarat High Court and in the arbitration proceeding at Singapore in lieu of the vessels now within the jurisdiction of this Court the amendment needs to be allowed. Such proposed amendment does not change the nature and character of the suit.

14. The learned Senior Counsel refers to the paragraphs-15, 16,17,18 and 23 of the plaint to submit that the amendment sought for will not change the nature and character of the suit inasmuch as the relief sought for remains to be 'injunctive' and 'declaratory'. By the proposed amendment the plaintiff seeks to enforce his right for securing and indemnifying his claim in the suit pending before the Gujarat High Court as well as the claim in an International Commercial Arbitral proceeding initiated at Singapore.

The learned Senior Counsel to support his submissions relies on the decision rendered by the Bombay High Court (Full Bench) in J.S. Ocean ***Liner LLC vrs.***

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[1] [2012] 6 SCR 369

[2] 2015 SCC OnLine Hyd 694: (2015) 5 ALT 11

M.V. Golden Progress[3] decided on 25.01.2007 in Admiralty Suit No.11 of 2005. Paragraphs 2, 3, 30, 35, 36, 45, 48, 55, 56, 57, 60, 61, 64, 68, 72, 73, 77 and 78 of the said decision (SCC OnLine print) are relied on. The conclusions as recorded by the Full Bench of three learned Judges of the said High Court at paragraph 78 of SCC OnLine, is relied upon by the learned counsel. Relied upon paragraph is reproduced herein:

> ***"78.*** *We shall, accordingly, articulate our conclusions thus:*
>
> *(i) An application under Section 9 of the Arbitration and Conciliation Act, 1996 is not maintainable for the arrest of the vessel for obtaining security of an Award that may be made in arbitration proceedings. The view to the contrary in m.v. Indurva Valley, to that extent is overruled.*
>
> *(ii) An action in rem (in admiralty jurisdiction) for recovery of the claim and arrest of the vessel where the parties have agreed to submit the dispute to arbitration can be maintained and in such case if by way of an interim measure, the vessel is arrested or the security provided to obtain the release of the vessel, matter shall proceed in accord with Article 7 of the International Convention on Arrest of Ships, 1999.*
>
> *(iii) If the proceedings are brought within the time so ordered by the Court before the arbitral tribunal, any final decision resulting therefrom shall be recognised and given effect with respect to the arrested ship or to the security provided in order to obtain its release provided that the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for defence and in accord with the provisions contained in Arbitration and Conciliation Act, 1996.*
>
> *(iv) With regard to clauses (ii) and (iii), it is, however, clarified that retention of security shall remain a matter of discretion and it shall be for the court to pass appropriate order in that regard after taking into consideration all relevant circumstances. Let the notices of motion No. 2780 of 2005 and 3287 of 2005 be posted before the Admiralty Judge for disposal in the light of our answer to the reference."*

15. The next decision relied on is also of the Bombay High Court rendered by learned Single Judge in ***Siem Offshore Redri AS vrs. Altus Uber***[4], the learned Senior Counsel refers to paragraphs-2, 3, 4, 5, 35, 39, 52 to 56 of the SCC OnLine report to buttress his submissions. The conclusions as reflected in paragraphs 66 to 69 are relied on and are reproduced herein:

> ***"66.*** *The above reasoning equally applies when considering in rem arrest for the purpose of obtaining security in a case where arbitration proceedings had already been commenced, applying the procedure devised by the Full Bench in Golden Progress. It matters not whether arbitration has been invoked or is yet to be invoked.*
>
> ***67.*** *Any other interpretation would not only defeat the interest of justice but would be contrary to the avowed objective of Courts and Parliament to promote alternative dispute resolution by way of arbitration or mediation. If a party agrees to arbitration it cannot be that he is to be deprived of his right in rem to obtain security in respect of his maritime claim. Just as a party who agrees to arbitration with the seat of arbitration outside India (after 2015 amendment) can apply for interim measures to a Court in*

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[3] 2007 SCC OnLine Bom 69: 2007 AIHC 1933 (FB)
[4] 2018 SCC OnLine Bom 2730

India under Section 9 of the Arbitration Act, 1996, irrespective of the fact that arbitration may have already been invoked before any such application is made, so also a party should not be deprived of his right in rem to invoke admiralty jurisdiction and obtain arrest of a ship to secure his maritime claim even if arbitration may have already been invoked. As noted earlier also, after 2015 amendment, under Section 9 read with Section 2 of the Arbitration Act, 1996, a party can approach this Court for securing the amount in dispute in the arbitration even in the arbitration. Just because the party cannot maintain an admiralty action in rem under Section 9, can such a party be deprived of a chance to secure its claim in arbitration? In Golden progress (Supra) the Full Bench has in paragraph 78 held that the Court has to devise a procedure to permit a party who has agreed to submit disputes to arbitration and as noted earlier, there is no explicit legislation barring such security.

68. *Plaintiff had given their vessel Siem Marlin on bareboat charter to MEDS under a bareboat charter party dated 13th May 2015. Thus MEDS was the demise charterer of plaintiff's vessel. Plaintiff has various claims for damages against MEDS for breach of charter-party. Plaintiff's claims are maritime claims under Section 4(h) of the Admiralty Act, 2017 because these are claims arising out of an agreement relating to the hire of the vessel.*

69. *As per Section 5(2) read with Section 5(1)(b) of the Admiralty Act, 2017, plaintiff is entitled to arrest a vessel which is either owned by or on demise charter to MEDS when the arrest is effected."*

16. The learned Senior Counsel relies on the observations of the Supreme Court in ***Cuddalore Powergen Corporation Ltd. vrs. Chemplast Cuddalore Vinyls Limited and another***[5]. Reliance upon ***Cuddalore Powergen*** is regarding scope of Order II Rule 2 of the Code of Civil Procedure, 1908. The relied on paragraphs-34 and 38 are reproduced herein:

"34. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is as follows: -

i. *Whether in the facts & circumstances of the present case, the principles enumerated under Order II Rule 2 CPC would bar the institution of a second suit and warrant rejection of the plaint filed by the respondent no. 1 herein in O.S. No. 122 of 2008?*

38. Order II Rule 2(1) requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of a particular cause of action. However, the plaintiff has an option to relinquish any part of his claim for the purpose of bringing the suit within the jurisdiction of any court. Order II Rule 2(2) contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, then he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2(2) does not contemplate the omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief(s) earlier

[5] 2025 SCC OnLine SC 82

omitted except in a situation where leave of the court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rules 2(2) and (3) CPC that the aforesaid two sub rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situation where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit, provided that at the time of omission to claim the particular relief, he had obtained the leave of the court in the first suit."

17. The learned Senior Counsel further refers to the decision rendered by the Supreme Court in ***Life Insurance Corporation of India vrs. Sanjeev Builders Private Limited and another***[6]. The judgment is read at length as it deals with the scope of Court's power to allow amendment of pleadings as available under Order 6 Rule 17 of CPC read with Order 2 Rule 2 of CPC. The relied on paragraphs-71 to 71.11 are reproduced herein:

"71. *Our final conclusions may be summed up thus:*

71.1. *Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negatived.*

71.2. *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 of the CPC.*

71.3. *The prayer for amendment is to be allowed:*

71.3.1. *If the amendment is required for effective and proper adjudication of the controversy between the parties.*

71.3.2. *To avoid multiplicity of proceedings, provided*

(a) the amendment does not result in injustice to the other side.

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4*. A prayer for amendment is generally required to be allowed unless:*

71.4.1. *By the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration.*

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is malafide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

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> ***71.5.*** *In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
>
> ***71.6.*** *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
>
> ***71.7.*** *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
>
> ***71.8.*** *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
>
> ***71.9.*** *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
>
> ***71.10.*** *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*
>
> ***71.11.*** *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)."*

18. It is submitted that the power to allow amendment of pleadings as provided in Order 6 Rule 17 of CPC should be exercised liberally. The defendant's objection is of any relevance only when the proposed amendment takes away valuable accrued right and the claim of plaintiff is not barred by time. Otherwise amendment should be allowed by the Court. The power of the Court while considering the petition for amendment of pleadings under Order VI Rule 17 of the CPC is unfettered. It cannot be based on the evidence to be led by the defendants. The Court need not go beyond the pleadings of the plaintiff while considering the prayer for amendment of plaint.

19. Also replying to the contention raised by the defendants regarding plaintiff's plaint to be rejected in terms of Order VII Rule 11 of CPC, he submits that for consideration of prayer of defendants for rejection of the plaint any material other than the plaint need not be looked into by the Court to arrive at a conclusion. Prayer to rely upon any material other than the pleadings of the plaintiff has to result in rejection of prayer for 'rejection of plaint'.

19.1 It is submitted that the defendants in response to the I.A. for amendment have relied on materials and other annexures touching the merits of various issues

whereas the Court has only to go through and refer to the pleadings in the plaint to arrive at a decision whether to reject the plaint or not. It is submitted that even the I.A. filed by the defendants seeking any such relief under Order VII Rule 11 need not be looked into. The only material before the Court for consideration would be the plaint filed by the plaintiff and its contents.

19.2 It is submitted Order VI Rule 17 is intended to give the plaintiff a scope to provide amendment to its pleadings and such right of plaintiff can be exercised at any stage and it needs to be considered liberally irrespective of the other I.As. that may be pending initiated by the plaintiff or the defendants or an I.A. as has been in the present case filed for rejection of the plaint.

20. It is submitted that the application under Order VI Rule 17 for amendment should be heard first as has been held in several judicial pronouncements. He refers to the decision of the learned Single Judge of the High Court of Madhya Pradesh at Indore in ***Dr. Mumtaz Ali vrs. M/s. Shri Mangal Associates through Partner Brajesh Pandya and others***[7] decided on ***05.03.2025***. He refers to paragraph-3 of the said judgment that is reproduced herein :

> *"3. On such contentions, defendant No.1 filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint. Therefore, the plaintiff filed an application under Order 6 Rule 17 of the CPC for amendment in the plaint to bring on record an authority having been issued by all the other partners in favour of the partner who has instituted the suit on behalf of the firm. Amendment in pleadings in that regard was also sought to be made. The applications filed by the parties were contested by the other side."*

21. He then refers to paragraph-6 where the learned Judge relied on earlier judgment of the Madhya Pradesh High Court in ***Suchitra Dubey Vs. Sattar and Others***[8] sub-para 10 and 11 of **Suchitra Dubey** are relied upon which are quotations from earlier judgments:

> *"10. In Dera Baba Bhumman Shah Sangar Sarista (supra) <u>it was categorically held that the application under Order 6 Rule 17 of the CPC has to be decided before the decision of the application under Order 7 Rule 11 of the CPC. The order on application under Order 7 Rule 11 prior to decision of pending application under Order 6 Rule 17 is an illegality and that pending application ought to have been decided prior to decision on the application under Order 7 Rule 11</u>. In Rajesh Kumar Mehlawat (supra) also it was held, though on the basis of concession, that the settled principle of law is that an application under Order 6 Rule 17 of the CPC even if filed after filing of an application under <u>Order 7 Rule 11 of the CPC or before the order on such an application is pronounced, has to be considered first</u>.*
>
> *11. In Gaganmal Ramchand (supra) it was held that <u>the power of the Court to allow amendment of pleadings should not in any manner be restricted or controlled by the provisions contained in Order 7 Rule 11 of the CPC</u>. Though it is incumbent upon the Court to reject the plaint that does not disclose a cause of action but it does not follow that it is not open to the Court to allow a plaint to be amended so that it should disclose*

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[7] 2025: MPHC-IND-5859
[8] 2023 SCC OnLine MP 1795

a cause of action. The Court may prevent the operation of Order 7 Rule 11 of the CPC and save the plaint from being rejected by exercising its power under Order 6 Rule 17. It was held as under:—

"Mr. Seervai's argument is that when a plaint comes before the Court and that plaint does not disclose a cause of action, it is mandatory upon the Court to reject that plaint and dismiss the suit and the Court has no power to permit the plaint to be amended. In other words, Mr. Seervai's contention is that O. VI, r. 17, is controlled by O. VII, r. 11, and in cases falling under O. VII, r. 11, the Court has no jurisdiction to order the amendment of the plaint. I am unable to accept that contention. I see no reason whatever why the power of the Court to allow amendment of pleadings should be in any way restricted or controlled by the provisions contained in O. VII, r. 11. It is perfectly true that it is incumbent upon the Court to reject a plaint that does not disclose a cause of action, but it does not follow that it is not open to the Court to allow a plaint to be amended so that it should disclose a cause of action. It is only when a plaint does not disclose a cause of action that the Court is called upon to exercise its power under O. VII, r. 11. But the Court may prevent the operation of O VII, r. 11, and may save the plaint being rejected by exercising its power under O. VI, r. 17, and allowing the plaint to be amended. It would indeed be an extraordinary proposition to lay down that if various averments had to be made in the plaint which would go to constitute a cause of action, and by some oversight or some mistake the plaintiff failed to make one of the averments, then in that case the plaint must be dismissed and the plaintiff could not apply for an amendment and make the necessary averment."

22. It is submitted by the learned Senior Counsel Mr. Nanda that the plaintiff has indefeasible right as far as the right to amend the pleadings is concerned as provided in Order VI Rule 17 of the CPC. In support he cites the decision of the Supreme Court in ***Geetha vrs. Nanjundaswamy and others***[9]. The relied upon paragraph-6 (23.10 and 23.11) which is quoted herein;

"6. Before considering the legality of the approach adopted by the High Court, it is necessary to consider Order VII Rule 11, CPC and the precedents on the subject. The relevant principles have been succinctly explained in a recent decision of this Court in Dahiben v. Arvindbhai Kalyanji Bhanusali, as follows:

… … 23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to

[9] 2023 SCC OnLine SC 1407

be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23. Regarding the prayer made in I.A. No.08 of 2025 filed by the defendants, it is submitted by Mr. Nanda that in the said I.A. the defendants have sought for release of the arrested vessels which is not contemplated in the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Regarding the I.A. No.16 of 2025 filed by the plaintiff seeking deferment of payment of court fee, the learned Senior Counsel submits that the right to audience in the said I.A. with regard to the prayer made therein be reserved and leave may be granted for making further submissions in I.A. No.16 of 2025.

24. Mr. Nanda, learned counsel in response to the submissions of Mr. Mukherjee learned senior counsel opposing the amendment submits that though the defendants find flaw in the plaint in not mentioning the 'Gujarat admiralty suit' but the suit before this Court is in aid of the admiralty suit pending before Gujarat High Court, Section 5(1) of the Admiralty (Jurisdiction and Settlement of Maritime Claims Act, 2017) itself gives the answer to the said contention of the defendants. Section 5(1) is reproduced herein :

"5(1). The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—(a)the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or(b)the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or(c)the claim is based on a mortgage or a charge of the similar nature on the vessel; or(d)the claim relates to the ownership or possession of the vessel; or(e)the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9."

25. It is submitted that since section 5(1) refers to an "…Subject of an admiralty proceeding…", the suit before this Court is also in aid of another admiralty suit and the claim against the vessel is the subject of an admiralty suit pending before the Gujarat High Court. It is submitted that the suit is for securing that claim and also for securing the value of the vessels those are subject matter of the suit at Gujarat.

26. It is submitted that reliance of the defendants on ***Rushab Ship International LLC v. Bunkers onboard Ship M.V. African Eagle***[10] (rendered by the Bombay High Court) has to be considered in the context of the fact that ***African Eagle*** (*supra*) is a pronouncement prior to coming into force of the 2017 Act. The learned senior counsel refers to observations of ***Siem Offshore Redri AS vrs. Altus Uber***[4] paragraph-37 onwards (of the SCC OnLine print) to contend that the observation in ***African Eagle***[10] (*supra*) was rendered in a different context prior to the 2017 amendment.

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[10] 2014 SCC OnLine Bom 620 : (2014) 4 Bom CR 269

27. Responding to the contention of the learned senior counsel Mr. Mukherjee that defendants in the present suit before this Court are not party before the Gujarat High Court in the pending suit there, Mr. Nanda submits that the defendants do not dispute that they are the owners of the vessels, the vessels have been named and are identified being subject matter of/party to the suit before this Court.

Referring to the preliminary objection of the learned senior counsel Mr. Mukherjee regarding the scope and applicability of Order VII, Rule11-(a), it is submitted by Mr. Nanda that Order VII, Rule11-(a) provides that only if the plaint does not disclose a cause of action it shall be rejected and in the proposed amendment the cause of action is disclosed.

27.1 Referring to the Court-fees Act, 1870 section 7 i.e computation of fees payable in certain suits Mr. Nanda relies on section 7(iv)(c) i.e. 'for a declaratory decree and consequential relief', 7(iv)(d) 'for an injunction' and 7(iv)(f) 'for accounts'.

It is submitted by the senior counsel Mr. Nanda that regarding valuation of the suit it is the plaintiff who will value the suit. On the said proposition, he relies on judgment of the Supreme Court reported ***in Sri Rathnavarmaraja v. Vimla Smt.***[11]. He refers to paragraphs 2 and 3 of the said judgment:

> *"2. The Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate.*
>
> *xxx xxx xxx*
>
> *"Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid…."*

[11] AIR 1961 SC 1299

3. But this section only enables the defendant to raise a contention as to the proper court fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court Fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the Court of first instance on the matter of court fee payable in a plaint. The Act, it is true by Section 19, provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court fee due from the litigant is manifest from the detailed provisions made in Chapter Ill of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court fee at the instance of the defendant, when no question of jurisdiction was involved."

28. Referring to paragraph-3 of ***Sri Rathnavarmaraja***[11] (*supra*) it is further submitted that the anxiety of legislature to collect court fee from the litigant does not arm the defendants with a weapon of technicality to obstruct a suit.

Summing up his submissions the learned senior counsel files a memorandum indicating the issues proposed on behalf of the plaintiff to be answered. The issues suggested on behalf of plaintiff reproduced herein:

"1. Whether non-payment of court fee within the time specified by the court followed by an application seeking modification of such order renders the suit liable for rejection under Or 7 R 11?

2. Whether there can be an automatic dismissal of suit (without passing a decree as required under Or 7 R 12 of the CPC)?

3. Can the plaintiff file an application for amendment under Or 6 R17 after such specified date fixed for the payment of court fee with an aim to reduce the quantum of court fee?

4. Whether the application under Or 6 R 17 to be considered prior to a decision is rendered on Or 7 R 11 application?

5. Whether non-payment of court fee creates any legal right in favour of the defendants for the purpose of consideration/rejection of amendment application under OR 6 R 17?

6. Whether the application under Or 6 R 17 filed by the plaintiff changes the nature and character of the suit?

Submissions on behalf of the Defendant

29. Mr. Mukherji, learned Senior Counsel for the defendants raised a preliminary objection to the application seeking amendment i.e. I.A. No.15 of 2025. Apart from the preliminary objection he addressed the Court in I.A. No.8 of 2025 filed for release of the vessels and I.A. No.11 of 2025 filed by the defendants invoking Order VII Rule 11(c) of the CPC for rejection of the plaint. Mr. Mukherji refers to paragraph-35 of the plaint to submit that it has been stated therein that the plaintiff has paid a "fixed Court fees of INR [ ]" and hence, the present suit is

sufficiently stamped. He then draws attention of the Court to the paragraph captioned as 'prayer' of the plaint

> *"i. This Hon'ble Court be pleased to pass an Order and Decree in favour of the Plaintiff and against the Defendants Vessels jointly and/or severally, her owner, and all persons interested in her, to pay the Plaintiff a sum of US$ 49,268,902.45 (INR 428,76,87,464.30) along with applicable interest per annum from the date of filing of the suit till the date of the decree and applicable interest from the date of the decree till payment/realization."*

Referring to the above quoted prayer he submits that the prayer is for a money claim of a sum of ₹428,76,87,464.30 along with applicable interest per annum, the said amount is arrived at as the value of nine ships which form part of the alleged settlement agreement.

30. The learned Senior Counsel then refers to paragraph-11 of I.A. No.7 of 2025 filed by the plaintiff, which contains the following averments/statements:

> *"11. In the circumstances aforesaid, in all probability, this Hon'ble Court would not be hearing the captioned proceedings substantively, and they are likely to be stayed and/or transferred to another High Court. It would be manifestly unjust to compel the Plaintiff to pay court fees of approximately INR 85,00,000 in relation to a proceeding which will not be substantively heard by this Hon'ble Court."*

It is submitted that the Stamp Report made on 18.03.2025 by the Registry of this Court at paragraph-3 indicates court fee:"*Rs.12,86,31,885/- is payable, Rs.75,012/- paid. Deficit court fee of Rs.12,85,56,873/- not paid.*"

The learned Senior Counsel refers to the paragraph captioned as 'prayer' in the I.A. No.7 of 2025 that contains the prayer :

> *"that the plaintiff be granted additional time and <u>the question of the payment of the of the remaining court fees be kept open till the transfer petition that would be filed by the plaintiff under Section 15 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is finally decided by the Hon'ble Supreme Court</u>, and <u>the arbitration proceedings are concluded.</u>"*

31. The learned Senior Counsel referring to the order passed by this Court dated 19.03.2025 in I.A. No.7 of 2025 submits that the discretion of this Court was invoked by the plaintiff before the coordinate Bench assigned earlier taking up the suit, by stating that Rs.75,000/- has been paid as court fee and the rest of the amount shall be paid as would be directed by the Court by enlarging the time for payment. Referring to the pleadings in the I.A. No.7 of 2025, disposed of by earlier order dated 19.03.2025, he submits that the prayers made in the said I.A. or any part of the plaint do not in any manner dispute the amount of court fee quantified to be payable by the plaintiff; paragraph-4 of the earlier order dated 19.03.2025 is very clear to the extent that on submission of the plaintiff, the Court granted four weeks time for payment of the admitted/deficit court fee. Mr. Mukherji also draws attention to the part of the order dated 19.03.2025 that records with respect of court fee: "*the Registry shall report with regard to its filing and sufficiency before the next date.*"

32. It is submitted by the learned Senior Counsel, Mr. Mukherji that as the events have unfolded, the defendants filed the application bearing I.A. No.8 of 2025 on 24.03.2025 for vacation of the order of arrest dated 19.03.2025 passed in I.A. No.6 of 2025 in view of the clear mandate of the order as contained in I.A. No.7 of 2025 dated 19.03.2025. The plaintiff consistently represented before this Court in the subsequent proceedings that they want to pay the court fees within the time fixed as directed by this Court by order dated 19.03.2025. The court fees was not paid by the time extended/granted by this Court i.e. 16.04.2025 and thereafter application : I.A. No. 11 of 2025 was filed by the defendant on 08.04.2025 in terms of Order 7, Rule 11 of the Code of Civil Procedure (CPC) for rejection of the plaint.

33. It is submitted no application for extension of time for payment of deficit court fees has been filed by the plaintiffs by the extended date i.e. 16.04.2025 and even thereafter till today, no application for extension of time has been filed. It is submitted that the I.A. No.16 of 2025 filed by the plaintiffs for modification of order dated 19.03.2025 passed in I.A. No.7 of 2025 is misconceived, hit by *res judicata* and otherwise not maintainable in view of the consistent stand of the plaintiff to pay the deficit court fees within the time fixed by the Court.

Further, in the alternative it is submitted that no case is made out for exercise of discretion for extension of time to deposit the court fees as directed earlier by this Court. It is submitted that filing of I.A. No.15 of 2025 is abuse of the process of law inasmuch as the prayer for amendment is effectively is to change the nature and character of the suit. If such amendment is to be allowed that would result in the suit no more remaining an admiralty suit. At best the purpose for filing of this I.A. is for delaying or not paying the court fees as determined by the Registry of the Court in terms of the Court Fees Act and Rules. The time granted by the Court having expired, further indulgence would amount encouraging the abuse of process of law.

34. Mr. Mukherji, learned Senior Counsel draws attention to the transfer application referred to by the plaintiff in I.A. No.86277/2025 filed before the Supreme Court. On 07.04.2025 the Supreme Court has dismissed the Transfer Petition (s) (Civil) Nos.906-907/2025 filed by the plaintiff. Therefore, it is submitted the plea of extension of time till consideration and the decision of the transfer petition by the Supreme Court no more survives after 07.04.2025. It is submitted that on the face of it, the value of the vessels remaining same the court fees that would be applicable and determined on the said value cannot be changed at the instance of the plaintiff in any manner. More so, when the value has been disclosed by the plaintiff themselves to be urged before this Court. It forms basis of their claim and calculation of the court fee payable. The defendant's prayer would be that the order dated 19.03.2025 directing arrest of the vessels of the defendants could not have continued after the date of extension of time to pay the court fees expired on 16.04.2025 as the suit did not survive to be adjudicated. After filing of the I.A. No.11 of 2025 at the instance of the defendants for modification of the interim order

of arrest should not continue beyond today and the plaint is liable to be rejected in terms of the O.7, R.11 of the CPC.

35. It is submitted by the learned Senior Counsel that when the plaint or the suit does not survive in view of the order dated 19.03.2025 in I.A. No.6 of 2025 which also itself forms part of the order passed in I.A. No.7 of 2025, there is no question of bringing any amendment to the pleadings of the suit. Mr. Mukherji refers to the decision of the Supreme Court in ***Life Insurance Corporation of India vrs. Sanjeev Builders Private Limited and another***[6] which has also been relied upon by the learned senior counsel for the plaintiff. Mr. Mukherji relies on paragraphs-71.3.2, 71.4.2., 71.4.3. and 71.4.4 of ***Life Insurance Corporation***[6] (*supra*) which are reproduced herein :

> ***"71.3.*** *The prayer for amendment is to be allowed:*
>
> ***71.3.2.*** *To avoid multiplicity of proceedings, provided*
>
> *(a) the amendment does not result in injustice to the other side.*
>
> *(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side and*
>
> *(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
>
> ***71.4.2.*** *The amendment changes the nature of the suit.*
>
> ***71.4.3.*** *The prayer for amendment is malafide, or*
>
> ***71.4.4.*** *By the amendment, the other side loses a valid defence."*

36. It is submitted that the amendment sought for, would take away the valuable right, i.e., dismissal of the suit accrued in favour of the defendants as provided under Order VII Rule 11 of CPC. It is submitted that the exceptions to rejection of amendment of plaint as laid down in ***Life Insurance Corporation***[6] (*supra*) do not protect the plaintiff as far as prayer for amendment is concerned. The learned Senior Counsel refers to the order passed by the Co-ordinate Bench assigned earlier (Order No.1 dated 19.03.2025), to submit that the Court directed court fee to be furnished within four weeks that ended on 16.04.2025. As far as rejection of plaint due to non-payment of court fee: contemplated in Order VII Rule 11(c); the fatality occurred on 16.04.2025. Post occurrence of that fatality, valuable right accrued in favour of the defendants which is sought to be taken away by the amendment.

37. The learned Senior Counsel refers to paragraphs-10, 17, 18 (a), (d),(e),(f) of the I.A. for amendment i.e. I.A. No.15 of 2025, to submit that the I.A. makes it clear and it has been pleaded in the I.A. that the plaintiff for the first time refers to the suit before the Gujarat High Court wherein the present defendants are not party. Neither the owner nor any of the vessels are parties thereto.

Referring to the paragraph-10 of I.A., the learned Senior Counsel reiterates that the value of the vessels are still mentioned as ₹153,14,75,775/- to be the market value of such vessels. He then refers to the paragraph-7 of the schedule of the amendment (quoted herein):

"7. For paragraph 35 of the Plaint :

"The plaintiff has paid a fixed court fee of INR [] and hence, the present suit is sufficiently stamped" is deleted, and "The Plaintiff values its relief at ₹20,00,000/-. Therefore, the ad valorem court fee to be paid by the Plaintiff is ₹61,185/. The Plaintiff has already paid INR 75,000/- as court fee for the suit, and hence, the present suit would be sufficiently stamped. The Plaintiff has filed I.A. No.13 of 2025, seeking extension of time on the issue of court fee till this Hon'ble Court allows I.A. No.12 of 2025" is inserted."

38. It is submitted in the proposed amendment as indicated above the valuation of the relief claimed by the plaintiff is valued at ₹20,00,000/- (Rupees Twenty Lakhs), the *ad valorem* court fee to be paid on the same has been calculated to be ₹ 61,185 is without any basis, bereft of any particulars. No reasons for such calculation is forthcoming everything else including the valuation of the vessels remaining the same.

39. The learned Senior Counsel, Mr. Mukherji then refers to the decision of the Bombay High Court in ***Siem Offshore Redri AS vrs. Altus Uber***[4] also relied upon by the plaintiff. The relied upon paragraphs-36 and 37, are quoted herein:

"36. An action in rem is filed by way of a suit and governed by the provisions of the Code of Civil Procedure, 1908. The Full Bench in Golden Progress (Supra) was conscious of the fact that a suit cannot be filed simplicitor for interim relief as they have expressed their conclusion in paragraph 78(ii) by saying that the action in rem must be for recovery of the claim. This can only mean that a decree must be sought as a decree is the only manner in which a claim can be recovered in a suit.

37. This Court in African Eagle (Supra) was considering an action in rem where the prayer in the suit was confined to seeking security pending arbitration, i.e., for interim reliefs only. The suit was not for recovery of the claim at all and no final relief of decree was sought. It is in this context, this Court, relying upon the settled legal position reiterated in BALCO (Supra) held that such a suit only for interim relief is not maintainable. The present suit of plaintiff is not such a suit. In fact in the case of African Eagle (Supra), this Court observed in paragraph 21 that "the Full Bench (in Golden Progress), in my view has not considered a situation like in the present suit as to whether a suit seeking a final relief at the interlocutory stage is maintainable or not". Consequently, the judgment in African Eagle (Supra) is distinguishable on facts because that suit was only for interim relief and no decree for recovery of the claim was sought."

40. Relying on paragraph-36 of ***Siem Offshore***[4] (*supra*), it is argued that action in rem must be for recovery of the claim. This can only mean that a decree must be sought as a decree is the only manner in which a claim can be recovered in a suit. Referring to paragraph-37 of ***Siem Offshore*** (*supra*) it is submitted that in ***Rushab Ship International LLC v. Bunkers onboard Ship M.V. African Eagle and Freight***[10] (*supra*) it was held that the settled legal position is that suit only for interim relief is not maintainable. In ***African Eagle*** (*supra*) the Bombay High Court was considering an action in rem where the prayer in the suit was confined to securing security pending arbitration i.e. for interim reliefs only. The suit was not for recovery of claim at all. The Court relying on the earlier decision in **BALCO** held

that such a suit only for interim relief is not maintainable. It is submitted the proposed amendments are seeking security for the suit pending at Gujarat.

41. The learned Senior Counsel also relies on ***Pradeep Kumar and another v. Vishnu Kumar and others***[12]: paragraph-17 to submit that the plaintiff was required to make good the deficiency in court fee by the date fixed by the Court and in the relied upon decision the plaintiff in fact sought amendment of the plaint seeking reduction in the claim by the date fixed as held in ***Mt. Saiyadunnssa Khatun v. Gaibandha Loan Co. Ltd.*** (*supra*). He further refers to the decision of the High Court of the then East Punjab in the case of ***Gainda Mal v. Madan Lal*** referred to in ***Pradeep Kumar*** (*supra*) to submit that the plaintiff can reduce his claim and furnish requisite court fee on reduced valuation within the time extended by the Court to deposit the court fee. It is submitted that in the case at hand after the fatality had already happened i.e. non-payment of court fee by the extended date fixed by the Court : 16.04.2025. Before such date there has been no plea for amendment/prayer for extension of time to pay court fee.

42. Mr. Mukherji, learned Senior Counsel continuing his submissions in opposition to the prayer for amendment made in the I.A. No.15 of 2025 referred to the judgment rendered by the High Court of Bombay in ***Rushab Ship International LLC and others v. Bunkers onboard the Ship M.V. African Eagle***[10] (*supra*). The relied upon paragraphs 17, 18, 21 22, 23, 25, 31, 37, 38, 48, 49 and 51 are reproduced herein:

> *17. In Golden Progress (supra), <u>what the Court had to consider was whether an application under Section 9 of the Arbitration and Conciliation Act, 1996 for security pending the award could be obtained by arrest of a ship in rem. The Court held, for arrest of a vessel for obtaining security for an award that may be made in the arbitration proceeding, an application under Section 9 of the said Act is not maintainable. What the Court held was an action in rem (in admiralty jurisdiction) for recovery of the claim and arrest of the vessel where the parties have agreed to submit the dispute to arbitration can be maintained and in such case if by way of an interim measure, the vessel is arrested or security is provided to obtain the release of the vessel, matter shall proceed in accord with Article VII of the International Convention on Arrest of Ships, 1999</u>.*
>
> *18. In Golden Progress, the plaintiffs had filed a suit (a) for the purposes of recovering an amount aggregating US$ 46,913.52 (together with interest thereon and costs) due and payable to them by the second defendant and (b) in the alternative, for securing the said amount pending the commencement and outcome of the arbitration proceedings to be initiated in London against the second defendant.*
>
> *The plaintiffs had claims against the defendants under the Charter Party and the defendants not having made the payments, the plaintiffs filed the suit. <u>It is necessary to emphasise that the primary prayer was for a decree in their favour, i.e., for recovering US$ 46,913.52 and only in the alternative the plaintiffs pleaded that in view of the arbitration clause they are entitled to an order of arrest of the ship to secure their claim</u>*

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in arbitration which was to be commenced. In the said judgment, the full bench considered the Apex Court's judgment in the matter of Bhatia International v. Bulk Trading S.A.5 and held that the conclusions drawn in Bhatia International by the Apex Court and the law declared therein do not lead to the conclusion that an application under Section 9 of the said Act is maintainable for the arrest of the vessel for obtaining security for an award that may inure for their benefit in the foreign arbitration. The Court felt that Section 9(ii)(b) of the said Act cannot be construed so as to read into it in rem jurisdiction. The Court held that the said provision does not cover the arrest of the ship or the keeping of the ship under arrest in the exercise of the Court's jurisdiction in rem at all. The Court held that what is provided by Section 9(ii)(b) is securing the amount in dispute in the arbitration by way of an interim measure which does not include the arrest of the vessel. Though the Court has not said in so many words, I would say that such an action in the admiralty jurisdiction cannot be only for security pending arbitration as the sole relief. The reason for that, in my view, is the ship may be arrested in the admiralty jurisdiction only to acquire/assume jurisdiction or to obtain security for satisfaction of the claim when decreed or in execution of a decree and once the vessel is arrested, the suit must proceed to trial against the owner as in any other suit. In fact, this is confirmed by the full bench in Golden Progress (supra), while considering the judgment of the Apex Court in the matter of M.V. Elisabeth v. Harwan Investment & Trading Pvt. Ltd. and in the matter of M.V. Sea Success v. Liverpool and London Steamship Protection and Indemnity Association Ltd.. The Full Bench has in paragraphs 30 and 38 observed thus:

xxx xxx xxx

22. The expression used is "An action in rem (in admiralty jurisdiction) for recovery of the claim and arrest of the vessel ...". Recovery of claim can only be in the suit where the plaintiff has sought a decree - 'recovery of the claim'. In fact, the Full Bench has quoted and has not disagreed with what the English Courts have held. The English Courts have opined that where the plaintiff had sought to invoke the admiralty jurisdiction not to obtain the hearing and determination of claim but for the purpose of obtaining security for an award for arbitration proceedings such an action cannot be maintained. Para 39, 40, 41 & 42 of Golden Progress read as under:

23. ... ...Brandon, J. granted the order for which the ship owners asked and also ordered that in the event of the action being so dismissed, the bail should be released. Brandon J. opined that the charterers had sought to invoke the admiralty jurisdiction not to obtain the hearing and determination of claim but for the purpose of obtaining security for an award for arbitration proceedings, and that an admiralty court had no jurisdiction to arrest the ship or to keep ships under arrest for that purpose."

25. ... ... it is not the purpose of arresting a ship in an action in rem to provide the plaintiff with security for payment of an award which he may obtain in an arbitration of the same claim as that raised in the action and, therefore, the court has no jurisdiction to arrest a ship, or keep her under arrest, for such other purpose.

31. In the BALCO (supra) judgment, the Apex Court has in no uncertain terms held that an inter parte suit simply for interim reliefs pending arbitration would not be maintainable. The Apex Court held that in order to claim an interim relief, the existence of a pending suit is necessary. The Apex Court opined that pendency of the arbitration proceedings outside India would not provide a cause of action for the suit where the main prayer is for interim relief and in a suit where it is only for interim relief as security pending arbitration, interlocutory reliefs and the final relief would be identical and such a suit would not be maintainable because an interlocutory injunction can only

be granted during the pendency of the suit, claiming the relief which is likely to result in a final decision upon the subject in dispute. The Apex Court further held that the suit would be maintainable only on the existence of a cause of action, which would entitle the plaintiff for the substantive relief claimed in the suit and the interim relief must be a part of the substantive relief to which plaintiff's cause of action entitled him. The Court further said that these ingredients will be missing in a suit claiming only interim relief during pendency of the arbitration proceedings outside India. Since the dispute is to be decided by the arbitration, no substantive relief concerning the merits of the arbitration could be claimed in the suit and the plaintiff's only claim would depend on the outcome of the arbitration proceedings in a foreign country over which the Courts in India would have no jurisdiction. The cause of action would clearly be contingent/speculative. There would be no existing cause of action and the plaint itself would be liable to be rejected under Order 7 Rule 11(a) of the Civil Procedure Code. What in effect the Court said was no interim relief could be granted unless it is in aid of as an auxiliary to the main relief that may be available to a party on final determination of rights in a suit.

37. .. .. In order to claim an injunction the existence of a pending suit is a prerequisite. It is in this background that one has to examine as to whether an inter partes suit for interim relief during the pendency of arbitration proceedings outside India would be maintainable.

38. ... ... outside India would not provide a cause of action for a suit where the main prayer is for injunction. ... . It must also be noticed that such a suit, if at all, can only be framed as a suit to "inter alia restrain the defendant from parting with property." ... ... All that could then be filed would, therefore, be a bare suit for injunction restraining the other party from parting with property. The interlocutory relief would also be identical. In our view, such a suit would not be maintainable, because an interlocutory injunction can only be granted during the pendency of a civil suit claiming a relief which is likely to result in a final decision upon the subject in dispute. The suit would be maintainable only on the existence of a cause of action, which would entitle the plaintiff for the substantive relief claimed in the suit. The interim injunction itself must be a part of the substantive relief to which the plaintiff's cause of action entitled him. In our opinion, most of the aforesaid ingredients are missing in a suit claiming injunction restraining a party from dealing with the assets during the pendency of arbitration proceedings outside India. Since the dispute is to be decided by the Arbitrator, no substantive relief concerning the merits of the arbitration could be claimed in the suit. The only relief that could be asked for would be to safeguard the property which the plaintiff may or may not be entitled to proceed against. ... ... The cause of action would clearly be contingent/speculative. There would be no existing cause of action. The plaint itself would be liable to be rejected under Order 7 Rule 11(a). ... ...

48. So far as the Indian Law is concerned, it is settled that the source "of a Court's power to grant interim relief is traceable to Section 94 and in exceptional cases Section 151 CPC. The Civil Procedure Code pre supposes the existence of a substantive suit for final relief wherein the power to grant an interim relief may be exercised only till disposal thereof.

49. In this view of the matter, it is patent that there is no existing provision under the Civil Procedure Code or under the Arbitration Act, 1996 for a Court to grant interim measures in terms of Section 9, in arbitrations which take place outside India, even though the parties by agreement may have made the Arbitration Act, 1996 as the governing law of arbitration. (emphasis supplied)"

51. In the circumstances, as the Apex Court has held that an interparte suit simply for interim relief pending arbitration outside India will not be maintainable and unless the dispute is decided by the arbitrator cause of action will clearly be contingent and speculative and there will be no existing cause of action, the plaint is bound to be rejected under Order 7 Rule 11(a). In my opinion, the Court's jurisdiction to arrest a ship in an action in rem should not be exercised for the purpose of providing security of an award, which may be made in arbitration proceedings that is maintainable because the purpose of the exercise of the jurisdiction is to provide security in respect of the action in rem, and not to provide security in some other proceedings like an arbitration proceeding. If the plaintiff invokes the jurisdiction of the Court to obtain the arrest of the ship as security for an award in an arbitration proceeding, the Court should not issue a warrant of arrest."

43. Mr. Mukherji refers to the decision of Madhya Pradesh High Court at Gwalior in ***Ramcharan Goyal v. Smt. Kamlarani Verma and others***, Misc. Petition No.6624 of 2023 decided on 02.05.2025, paragraphs 10 and 11 are reproduced herein:

"10. As per the law settled, the allegations in the plaint including the substantive relief claimed must be the basis for settling the Court fee payable by the plaintiff. But where the plaintiff attempts to under-value the plaint and reliefs, the Court has to intervene. In doing so, concept of real money value forms integral part of Court enquiry where relief sought has real money value, which can be objectively ascertained. In this connection, Sub-section (iv)(c) of Section 7 of the Act which relates to computation of court fees payable in certain suits, envisages that "to obtain a declaratory decree or order, where consequential relief is prayed".

11. In the present case, petitioner-plaintiff has sought declaration for protection of possession on the basis of agreement to sell which itself is not the basis of any title. The relief for such declaration is an independent relief and connected with the relief of title, meaning thereby, the relief sought by the plaintiff on the basis of agreement automatically includes the question of title alongwith possession and for such independent relief, the petitioner will have to pay the court fee on the basis of amount of consideration mentioned in the agreement."

44. The learned Senior Counsel then refers to the decision of this Court by a coordinate Bench in ***Sk. Majnu v. Lochan Sahoo***[13], paragraph 15 is reproduced herein:

"15. Also, even though provision under Section 7 (iv)(c) of the Court Fees Act provides for determination of valuation of the suit by 9 the plaintiffs at his option but such valuation cannot be arbitrary and must have some relation with the real market value of the property at the time of institution of the suit. Referring to a number of authoritative judicial pronouncements, this Court has held in Kedarnath Biswal –vrs.- Budhanath Jena : 106 (2008) CLT 595:

"6. On a close and composite reading of the provisions of Section (iv)(c) of the Court Fees Act along with the above noted case laws, one can comfortably infer that in a suit for declaration coupled with the consequential reliefs, the Plaintiffs as per the provisions of Section 7 (iv)(c) of the Court Fees Act can value the suit at his option, but

[13] (2011) 112 CLT 886: 2011 SCC OnLine Ori 170

such valuation cannot be arbitrary and must have some relation with the real market value of the property at the time of institution of the suit."

45. The learned Senior Counsel relies on the decision of the High Court of Delhi in ***Radha Goyal v. Gaurav Goyal and another***[14], paragraphs 6, 7, 8 and 9 are relied upon and are reproduced herein:

"6. The said order was never challenged and attained finality. Arguments were then addressed on the application of the respondents/defendants under Order VII Rule 11 of the CPC. When the third application was moved and apparently in order to avoid ad valorem court fee, the petitioner/plaintiff sought to introduce averments in the nature of claiming constructive/joint possession of the properties in question along with the respondents thereby blowing hot and cold in same breath inasmuch as perusal of the pleadings would show that she has claimed complete ouster and exclusion from the possession of the properties by the respondents. Learned Trial Court noticed the following defects in the proposed amendment that were sought to be carried out in paragraph (11):

xxx xxx xxx xxx

"7. It would be relevant to reproduce the reasons given by the learned trial Court in dismissing the application, which go as under:—

"26. It is stated that it is well settled that amendment to plaint is retrospective in nature and such amendment shall be applicable from the date, plaint was instituted. It is apparent that this court did not have pecuniary jurisdiction to hear the case, when the same was filed. Defendant No. 1 has taken the objection in his written statement and also moved an application that this court did not have pecuniary jurisdiction to try the suit and suit was not properly valued for the purpose of jurisdiction and court fees, however, plaintiff instead of moving appropriate application at that stage had opposed application filed by defendant No. 1 and thus, wasted almost 09 years of the court-as well as of defendant No. 1. After period of 09 years, clock is trying to be moved anti clockwise and parties are again relegated to the position in which they were 07 years ago. Application has been filed by plaintiff with malafide intention to delay proceedings and hence, deserve to be dismissed.

27. On reply on merits, contentions of plaintiff have been denied. It is denied that unless there is dismissal of partition suit on merits, right to partition does not extinguish. It is stated that multiple opportunities have been granted to plaintiff to amend the plaint to comply with law of valuation but plaintiff has failed to do so and has filed present application with malafide intention to avoid payment of ad valorem court fees despite finding of this court in order dated 22.11.2023 that plaintiff is not in possession of suit properties and is liable to pay ad valorem court fees.

28. Plaintiff has failed to meet onus under proviso to Order 6 Rule 17 CPC that despite due diligence, party could not have raised the matter before commencement of trial. Documents for circle rate filed with the application are denied. It is stated that valuation is not clear as to which property is being valued. Plaintiff is attempting to add word "constructive" joint possession in para numbers 3 and 7 of the plaint simply to avoid payment of ad valorem court fees as directed vide order dated 22.11.2023. Plaintiff has

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deleted relief of permanent injunction even after valuing the same while attempting to amend para No. 11 of the plaint.

xxx xxx xxx xxx

8. Unhesitatingly, the aforesaid observations clearly bring out the conduct of the petitioner/plaintiff in the open. It clearly appears that in order to avoid payment of ad valorem court fee, the petitioner/plaintiff is making all sorts of attempts to hoodwink the process of law by avoiding putting a fair and just value to the reliefs claimed by her.

9. Suffice to state that although the petitioner/plaintiff by way of the proposed amendments has apparently valued each relief with regard to share in the properties putting a different value and though the overall relief is above Rs. 5,94,00,000/-, she has again elected to pay fixed court fee of Rs. 20/- and valuing the suit for permanent injunction at Rs. 130/-. There is a clear attempt to evade payment of ad valorem court fee under Article 17(vi) of the Court Fees Act, 1870 and the proposed amendment being not warranted by law, cannot be allowed."

46. The learned Senior Counsel Mr. Mukherji further relies on the decision of the High Court of Punjab & Haryana at ***Chandigarh in Jatinder Pal Singh v. The State of Punjab and another***[15]. Paragraphs 2, 5 and 6 of the said judgment are relied upon and are reproduced herein:

2. Shorn and short of unnecessary details, the facts, emerging from the perusal of the file and culminating in the filing of the present revision petition, are that the petitioner-plaintiff filed the above-referred Civil Suit for seeking a decree for declaration to the effect that the order passed by the respondents-defendants (here-in-after to be referred as 'the defendants') on 15.02.2018, for denying his extension in the service, was illegal, arbitrary and discriminatory and he also claimed the damages for the consequential loss as suffered by him and further prayed for the issuance of mandatory injunction, by directing the defendants to grant him all the service benefits as well as compensation for the period, for which he was denied the extension of his service and to pay the damages, along-with interest thereon. The defendants filed written-statement and the trial Court framed the issues on 18.03.2021. Thereafter, on 17.03.2022, the plaintiff stepped into the witness-box as his own witness and tendered his affidavit (Annexure P-4) with some documents. Meanwhile, he moved the application Annexure P-3 under Order XI CPC and application Annexure P-5 for summoning the record and another application Annexure P-6 under Order XII CPC and as mentioned in the impugned order (Annexure P-16), the defendants also moved an application under Order 7 Rule 11 CPC for seeking rejection of the plaint on the ground of non-payment/non-affixation of proper court-fee thereon. On 09.02.2023, the plaintiff moved the afore-said application, Annexure P-11, for seeking amendment in the plaint by way of considering the affidavit and the documents, as tendered by him in his evidence, as a part of the pleadings therein and by adding the words "this is for assessing the jurisdiction of the Hon'ble Court only" in Para No.24 and by replacing the word 'damages' in Paras No.1 & 3 in the prayer clause with words 'consequential relief' and also by substituting Para No.32 in the same with the following Para :-

"That a court fee of Rs 50/- is affixed for the relief of declaration and the court fee of Rs 50/- (Rs fifty only) for the relief of mandatory injunction and the value of the suit for

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court fee is assessed as Rs 1000/- (Rs one thousand only) because the consequential relief for which the plaintiff will be eligible as per law,

A. has not been assessed by this Hon'ble court,

B. the case falls under the category 'C' of Section 7(iv) of the court fee Act.

accordingly, as per the law laid down in the case of case of 'State of Punjab Vs Dev Brat Sharma' by the Hon'ble APEX COURT where in the reference of the law laid down by the CONSTITUTIONAL BENCH in the case of S. RM.AR.RM. Ramanathan Chettiar by the Apex Court has been given, that ultimately it would be the actual relief granted which would determine the court fee, the plaintiff undertakes to make good the deficient court fee as per the actual relief that would be granted by this Hon'ble court, as such a court fee of Rs 50/- (Rs fifty only) is affixed at this stage. A court fee of a sum of Rs 50/- (Rs fifty only) is affixed for future interest as well because the consequential relief has not been assessed by this Hon'ble court, the plaintiff undertakes to make good a deficient court fee as per the actual relief that would be granted by this Hon'ble court as ultimately it would be the actual relief granted which would determine the court fee".

and vide the impugned order, the trial Court has dismissed his above-mentioned application (Annexure P-11).

5. However, the above-raised contentions are devoid of any merit because as mentioned earlier, the issues had been framed in the afore-said Suit long back on 18.03.2021 and then, on 17.03.2022, the plaintiff had tendered his affidavit, along-with several documents, in his evidence while appearing as his own witness whereas he had moved the application, Annexure P-11, on 09.02.2023. Meaning thereby that the trial had already commenced in the said Civil Suit before the filing of the above-said application. The verdict rendered by the Apex Court in Life Insurance Corporation of India (supra), is of no avail to the plaintiff because though, it has been observed therein that "all the amendments are to be allowed which are necessary for determining the real question in controversy provided these do not cause injustice or prejudice to the other side and this is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 CPC" but in the instant case, throughout in his afore-referred application, the plaintiff has not whispered even a single word to explain as to how the proposed amendments would be necessary for determining the real question in controversy between the parties.

6. Rather, as regards the prayer of the plaintiff for considering his affidavit and the documents tagged therewith, as a part of his pleadings/plaint, it is well settled that the evidence need not be pleaded in the pleadings. So far as his prayer for replacing word 'damages' with words 'consequential relief' in Paras No.1 and 3 of the prayer clause and for the proposed amendments in Paras No.24 and 32 qua the valuation of the Suit for the purpose of court-fee, is concerned, the same would not be permissible in the circumstances when concededly, the application moved by the defendants under Order 7 Rule 11 CPC for seeking rejection of the plaint on the score of non-affixation of the proper court-fee on the same, is pending adjudication before the trial Court and rather, the above-mentioned proposed amendments seem to have been sought in view of the afore-said application, as filed by the defendants."

47. The learned Senior Counsel relies on the decision of the Supreme Court in ***Kamaleshwar Kishore Singh v. Paras Nath Singh and others***[16], paragraph 8 is reproduced herein:

> *"8. It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of court fees and fixed for the purpose of conferring jurisdiction on some court which it does not have, or depriving the court of jurisdiction which it would otherwise have, can also be interfered with by the court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit.*

48. Referring to the proposed amendments as contained in the amendment petition, it is submitted by the learned Senior Counsel that there is no reference to the Gujarat suit filed and pending before the High Court in the plaint. It is for the first time being introduced in the form of proposed amendment. The learned Senior Counsel refers to **paragraphs 7, 8, 10 and 15** of the I.A. for amendment as well as schedule paragraph 7 to submit that the proposed amendments shall result in change of nature and character of the suit i.e. pending before this Court. It is submitted that the indulgence shown by the Court for payment of court fee by the time extended as directed should not be extended to the extent that the suit is allowed to remain without being dismissed. Modification sought for cannot come into the aid of the plaintiff for not paying the court fee. Referring to the I.A. No. 16 of 2025 filed by the plaintiff it is submitted that there has been no prayer for extension of time to file the deficit court fee.

49. Mr. Mukherji after serving copy on the other side provides a comparative table of the pleadings in the original plaint along with I.A. Nos.6, 7 and 10 of the 2025 compared with the pleadings in the I.A. No.15 of 2025 seeking amendment, I.A. No.16 of 2025 for modification of the order dated 19.03.2025 to contend that proposed amendment changes the nature and character of the suit and also such amendment does not change the value of suit.

I.A. No.9 of 2025

50. The I.A. No.9 of 2025 has been filed on behalf of intending intervenors.

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[16] (2002) 1 SCC 304

At the outset, learned Senior Counsel Mr. Padhi submits he does not have to make any submissions in response to the submissions of learned Senior Counsel either by Mr. Nanda on behalf of plaintiff or by Mr. Mukherjee on behalf of the defendants. Since it is admitted by the parties that the property involved in the present suit i.e. the two vessels are mortgaged to the petitioner (intending interveners) in the I.A. Petitioner's substantial rights are involved. Consequence of the order in the I.A. arresting the ships has directly impacted the mortgaged property. He submits that at this stage the Court is grappling with the vexed issues i.e. whether the plaint is to be allowed to be amended; whether court fee not being paid the plaint is to be rejected; if at all the amendment is allowed whether as a consequence what would be the valuation of the suit; and whether on allowing the application for amendment the Court fees suggested by the plaintiff would be accepted as the correct valuation. It is submitted by the learned Senior Counsel that he may have further arguments as far as the intervention application is concerned, however, for the present the contentions would be confined to the issues raised in the I.A for amendment. It is submitted that the amendment to be allowed has to pass the scrutiny of the tests laid down in ***Life Insurance Corporation of India vrs. Sanjeev Builders Private Limited and another***[6] (*supra*) relied on by the plaintiffs as well as the defendants. Learned senior counsel refers to paragraphs 71.4.3 and 71.10 of the judgment, reproduced herein :

> ***"71.4.3.*** *The prayer for amendment is malafide, or*
>
> ***71.10.*** *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed."*

51. Referring to the above quoted paragraphs of **LIC** (*supra*), the learned senior counsel submits that the Court has to see whether the proposed amendment is afflicted by mala fide and whether amendment would cause change of the nature and character of the suit or result in change of the cause of action. The Court has to see whether the case set up in the proposed amendment is foreign to the case already set up in the plaint. To give an instance he refers to the original plaint where there has been no reference to any pending admiralty suit before the Gujarat High Court whereas in the proposed amendment the issue is all about the pending suit before the Gujarat High Court. It is submitted that not mentioning regarding the pending admiralty suit before the Gujarat High Court in all probability could be a deliberate ploy of the plaintiff. Regarding the valuation of the suit, the learned senior counsel refers to the plaint at paragraphs-12 and 13, to submit that the plaintiff themselves value the suit at Rs.598 crores whereas in the amendment proposed they have valued it differently, purportedly being in aid of the suit pending at Gujarat.

52. In response to the submissions of Mr. Padhi, learned Counsel Mr. Samvit Mohanty, appearing for the plaintiff made his submissions. He refers to Order VI

Rule 17 of CPC to submit that the amendment shall be allowed by this Court that may be necessary for the purpose of determining the real question in controversy between the parties. He highlights the term 'parties' to submit that the intending interveners not being party to the proceeding, there is no scope for entertaining the contentions of the interveners. It is submitted that submissions of the learned senior counsel regarding mala fide, change of nature and character of the suit have been argued by Mr. Mukherji for the defendants and have been answered by arguments of Mr. Nanda, for the plaintiff.

Summary of the submissions of the learned Senior Counsel on behalf of the plaintiff and the contentions raised

53. (i) court has power to exercise the jurisdiction under Section 149 of the CPC for granting further time for deposit of the deficit court fees;

(ii) court has power to allow the prayer of the plaintiff to amend even if in effect it amounts to reduction of the quantum of claim resulting in reduction in court fee calculated thereupon;

(iii) in view of Section 5 of the Act, 2017, for the purpose of providing security against maritime claim, pending before Gujarat High Court and in the arbitration proceeding at Singapore in lieu of the vessels now within the jurisdiction of this Court the

(iv) amendment of pleadings as prayed for needs to be allowed; amendment sought for will not change the nature and character of the suit inasmuch as the relief sought for remains to be 'injunctive' and 'declaratory;

(v) all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side;

(vi) if the amendment is required for effective and proper adjudication of the controversy between the parties, it should be allowed.

(vii) the power of the Court while considering the petition for amendment of pleadings under Order VI Rule 17 of the CPC is unfettered. It cannot be based on the evidence to be led by the defendants. The Court need not go beyond the pleadings of the plaintiff while considering the prayer for amendment of plaint;

(viii) Order VI Rule 17 is intended to give the plaintiff a scope to provide amendment to its pleadings and such right of plaintiff can be exercised at any stage;

(ix) though the defendants find flaw in the plaint, as the 'Gujarat admiralty suit' has not been mentioned but the suit before this Court is in aid of the admiralty suit pending before Gujarat High Court; (x) the anxiety of legislature to collect court fee from the litigant does not arm the defendants with a weapon of technicality to obstruct a suit.

Summary of the submissions on behalf of the defendants and the contentions raised

54. (i) there is no change in value of the suit i.e. a money claim of US$ 49,268,902.45 (INR ₹428,76,87,464.30) with applicable interest, if the amendment would be allowed as sought for the value still remains ₹428,76,87,464.30;

(ii) the Stamp Report made on 18.03.2025 by the Registry of this Court at paragraph-3 indicates court fee: "Rs.12,86,31,885/- is payable, Rs. 75,012/- paid. Deficit court fee of Rs. 12,85,56,873/- paid.";

(iii) prayer in the I.A. No.7 of 2025 may be referred to (as quoted below):

"that the plaintiff be granted additional time and the question of the payment of the of the remaining court fees be kept open till the transfer petition that would be filed by the plaintiff under Section 15 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is finally decided by the Hon'ble Supreme Court, and the arbitration proceedings are concluded."

the prayers made in the said I.A. or any part of the plaint do not in any manner dispute the amount of court fee quantified to be payable by the plaintiff;

(iv) paragraph-4 of the earlier order dated 19.03.2025 passed by the court is very clear to the extent that on submission of the plaintiff, the Court granted four weeks' time for payment of the admitted/deficit court fee;

order dated 19.03.2025 records direction of the Court with respect to court fee: "the Registry shall report with regard to its filing and sufficiency before the next date.";

(v) the plaintiffs consistently represented before this Court in the subsequent proceedings that they want to pay the court fees within the time fixed as directed by this Court by order dated 19.03.2025. The court fees was not paid by the time extended/granted by this Court i.e. 16.04.2025;

(vi) no application for extension of time for payment of deficit court fees has been filed by the plaintiffs by the extended date i.e. 16.04.2025 and even thereafter till today no application for extension of time has been filed;

(vii) I.A. No.16 of 2025 filed by the plaintiffs for modification of order dated 19.03.2025 passed in I.A. No.7 of 2025 is misconceived, hit by principle of *res judicata* and otherwise not maintainable in view of the consistent stand of the plaintiff to pay the deficit court fees within the time fixed by the Court;

(viii) no case is made out for exercise of discretion by the Court for further extension of time to deposit the court fees as directed earlier by this Court;

(ix) filing of I.A. No.15 of 2025 with the prayers as made is abuse of the process of court and law inasmuch as the prayer for amendment is effectively is to change the nature and character of the suit. If such amendment is to be allowed that would result in the suit no more remaining an admiralty suit. At best the purpose for filing of this I.A. is for delaying or not paying the court fees as determined by the Registry of the Court in terms of the Court Fees Act and Rules. The time granted by the Court having expired, further indulgence would amount encouraging the abuse of process of law;

(x) plea for extension of time to pay the court fee till consideration and the decision on the transfer petition by the Supreme Court no more survives as the transfer petition has been dismissed;

(xi) on the face of it, the value of the vessels remaining same the *ad valorem* court fees that would be applicable and determined on the said value cannot be changed at the instance of the plaintiff in any manner;

the value has been disclosed by the plaintiff themselves to be urged before this Court. It forms basis of their claim and calculation of the court fee payable;

(xii) order dated 19.03.2025 directing arrest of the vessels of the defendants could not have continued after the extended date as directed by the Court to pay the court fees expired on 16.04.2025. Thereafter, the suit did not survive to be adjudicated;

after filing of the I.A. No.11 of 2025 at the instance of the defendants for modification of the interim order of arrest should not continue beyond today and the plaint is liable to be rejected in terms of the O.7, R.11 of the CPC;

(xiii) in view of the order dated 19.03.2025 in I.A. No.6 of 2025 which also itself forms part of the order passed in I.A. No.7 of 2025, there is no question of bringing any amendment to the pleadings of the suit;

the amendment results in injustice to the other side;

the amendment divests the other side of a valuable accrued right, i.e., dismissal of the suit for non-payment of court fee;

amendment would change the nature of the suit; the prayer for amendment is malafide;

(xiv) as far as rejection of plaint due to non-payment of court fee is concerned, it is contemplated in Order VII Rule 11(c) of C.P.C., the fatality occurred on 16.04.2025. Post that fatality valuable right accrued in favour of the defendants which is sought to be taken away by seeking the amendment;

(xv) that the value of the vessels are still mentioned as ₹153,14,75,775/- to be the market value;

in the proposed amendment as indicated above the valuation of the relief claimed by the plaintiff is valued at ₹20,00,000/- (Rupees Twenty Lakhs), the *ad valorem* court fee to be paid on the same has been calculated to be ₹61,185/- is without any basis, bereft of any particulars. No reasons for such calculation is forthcoming everything else including the valuation of the vessels remaining the same;

(xvi) action in rem must be for recovery of the claim. This can only mean that a decree must be sought as a decree, is the only manner in which a claim can be recovered in a suit; an action in rem where the prayer in the suit is confined to securing security pending arbitration is for interim reliefs only. Such suit is not for recovery of claim at all. Such a suit only for interim relief is not maintainable;

(xvii) a suit with only prayer for interim relief is not maintainable;

(xviii) plaintiff, if so advised can reduce his claim and furnish requisite court fee on reduced valuation within the time extended by the Court to deposit the court fee, but cannot reduce the court fee on the claim remaining unchanged;

(xix) after the fatality had already happened i.e. non-payment of court fee by the extended date fixed by the Court: 16.04.2025, before such date there has been no plea for amendment/prayer for extension of time to pay court fee;

(xx) there is no reference to the Gujarat suit filed and pending before the High Court in the plaint. It is for the first time being introduced in the form of amendment. The paragraphs 7, 8, 10 and 15 of the I.A. for amendment as well as schedule paragraph 7 to clearly reveal that the proposed amendments shall result in change of nature and character of the suit pending before this Court;

(xxi) indulgence shown by the Court for payment of court fee by the time extended as directed should not be extended to the extent that the suit is allowed to remain without paying court fee instead of being dismissed. Issues to be decided

55. Based on the pleadings of the parties and the submissions at the Bar, this Court frames the following issues that falls for adjudication:

(i) whether the plaint is to be allowed to be amended;

(ii) whether amendment if allowed would cause change of the nature and character of the suit or result in change of the cause of action;

(iii) whether the case set up in the proposed amendment is foreign to the case already set up in the plaint;

(iv) whether the proposed amendment is afflicted by mala fide;

(v) if at all the amendment is allowed whether as a consequence it would affect the valuation of the suit, i.e., whether it would result in reduction of the value and the court fee payable ;

(vi) whether on allowing the application for amendment the Court fees suggested by the plaintiff would be accepted as the correct valuation;

(vii) whether court fee having not been paid the plaint is to be rejected;

Further discussions and conclusions

56. On 17.04.2025 the plaintiff-petitioner filed I.A. No.15 of 2025 for amendment of the pleadings. As they did not deposit the amount of court fee initially determined by them and extension of time was sought for by them for deposit of the amount, this Court had granted further four weeks' time by order dated 19.03.2025. The four weeks' period ended on 16.04.2025. The plaintiff does seek further extension of time but not for depositing the deficit court fee but to defer such deposit till disposal of the I.A. seeking amendment of pleadings.

In the I.A. No.15 of 2025 for amendment the paragraphs-3 to 10 and Schedule (i), paragraph-7 indicates the following:

"3. It has always been the Applicant's case that they have instituted arbitration proceedings against the Samson, i.e., the owner of the Defendant Vessels, on 20 February 2025 for inter alia their indemnity claim provisionally quantified at ₹428,76,87,464.30 (equivalent to approximately USD 49.23 million) arising from the breach of the Settlement Agreement. Subsequently, on 11 March 2025 and 12 March 2025, respectively, the Applicant invoked the admiralty jurisdiction of both the Hon'ble Gujarat High Court and this Hon'ble Court in accordance with the well-settled legal position that vessels may be arrested as security for an arbitration by instituting admiralty suits for a maritime claim in the court exercising admiralty jurisdiction.

4. The Plaintiff's maritime claim of ₹428,76,87,464.30 arises out of the Settlement Agreement which is a contract for the sale of vessels and falls under Section 4(1)(r) of the Admiralty Act.

5. The Admiralty Act is vessel-centric and requires an aggrieved plaintiff to go to different courts for the same cause of action.

6. Accordingly, the Plaintiff filed R/Admiralty Suit No. 3 of 2025 before the Hon'ble Gujarat High Court for its maritime claim of ₹ 428,76,87,464.30 for the arrest of the five vessels situated within its territorial waters.

7. The value of each vessel in Gujarat High Court proceedings is as follows:

Sr. no.	Vessel Name	Vessel Value - 04/03/2025	MSI- 04/03/2025	Average
1	Ocean Opal	$ 6,650,000	$ 6,500,000	$ 6,575,000
2	Ocean Coral	$ 6,490,000	$ 8,400,000	$ 7,445,000
3	Ocean Citrine	$ 6,170,000	$ 6,500,000	$ 6,335,000
4	Ocean Ammolite	$ 2,960,000	$ 3,000,000	$ 2,980,000
5	Swissco Pearl	$ 9,300,000	$ 12,700,000	$ 11,000,000
	Total	$ 31,570,000	$ 37,100,000	$ 34,335,000 **₹296,52,39,270**

8. Thus, the total value of the five vessels in Gujarat is approximately ₹296,52,39,270 (US$ 34,335,000), leaving a shortfall of ₹128,72,21,700 (US$ 14,903,902.45).

9. Moreover, the values tabulated above are only market estimates, and the actual realisable value from judicial sale may be significantly lower due to prevailing market conditions, vessel condition, and other commercial factors. Therefore, in order to secure the entire claim, the Plaintiff has also approached this Hon'ble Court for arrest of additional vessels, i.e., the Defendant Vessels that are within its territorial jurisdiction.

10. The value of the Defendant Vessels, which are located within the jurisdiction of this Hon'ble Court, is as follows:

Sr. no.	Vessel Name	Vessel Value - 04/03/2025	MSI- 04/03/2025	Average
1	Ocean Jade	$6,110,000	$13,200,000	$9,655,000
2	Ocean Morganite	$7,760,000	$8,400,000	$8,080,000
	Total	$13,870,000	$21,600,000	$17,735,000 **₹153,14,75,775**

SCHEDULE-I

"7. For paragraph 35 of the Plaint :

"The plaintiff has paid a fixed court fee of INR [] and hence, the present suit is sufficiently stamped" is deleted, and "The Plaintiff values its relief at ₹20,00,000/-. Therefore, the ad valorem court fee to be paid by the Plaintiff is ₹61,185/. The Plaintiff has already paid INR 75,000/- as court fee for the suit, and hence, the present suit would be sufficiently stamped. The Plaintiff has filed I.A. No.13 of 2025, seeking extension of time on the issue of court fee till this Hon'ble Court allows I.A. No.12 of 2025" is inserted."

57. Section 4 of the Court Fees Act, 1870 provides as follows :

"4. Fees on documents filed, etc., in High Courts, in their extraordinary jurisdiction- No document *of any of the kinds specified in the First or Second Schedule to this Act, annexed, as chargeable with fees,* ***shall be filed, exhibited or recorded in, or shall be received or furnished by****, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;*

Or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction- or in the exercise of its jurisdiction as regards appeals from the [Judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one] or more Judges of the said Court, or of a Division Court;

Or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision- or in the exercise of its jurisdiction as a Court of reference or revision,

Unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document."

[Underlined to supply emphasis]

In ***Tajendra Singh Ghambhir v. Gurprit Singh***[17] at paragraph-8 of SCC, [the Court discussed the scheme of Section 6 (2) and (3) of the Court Fees Act, 1870 (as applicable in the State of U.P.)]: it was held by the apex Court that the said Sections cast duty on the Court to determine as to whether or not Court fee paid on the plaint is deficient and if the court fee is found to be deficient, then give an opportunity to the plaintiff to make up such deficiency within the time that may be fixed by Court. The important thread that runs through Section 6 (2) and (3) of 1870 Act is that for payment of court fee, time must be granted by the Court and if despite the order of the Court, deficit court fee is not paid, then consequence as provided therein must follow.

58. The provisions of the Court Fees Act, 1870 make it mandatory for documents specified in first and second schedules of the Act to be affixed with the court fee as prescribed in the schedule and the statute further mandates the documents shall not be received or furnished by the parties unless fee of an amount not less than prescribed is paid.

Tajendra Singh Ghambhir[17] (*supra*) lays down that opportunity to the plaintiff to be given to make up the deficiency in court fee and if despite the order of the court, the deficit court fee is not paid then the consequence as provided therein must follow. In the suit at hand, this Court by order dated 19.03.2025 in I.A. No.7 of 2025 had granted time to make up the deficiency in court fee. The court fee having not been paid the consequence as provided Court Fees Act, 1970 must follow.

59. Sections 148 and 149 of the C.P.C. have been relied upon by the plaintiff as well as the defendants to support their respective contentions. The said sections are quoted herein:

> ***"148. Enlargement of time.-*** *Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, [not exceeding thirty days in total,] even though the period originally fixed or granted may have expired*.
>
> ***149. Power to make up deficiency of Court-fees.*** *– Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."* [Underlined to supply emphasis]

60. In considered view of this Court, Section 148 of the Code is a general provision and Section 149 thereof is special. The first application was filed in terms of Section 149 of the Code (I.A. No.7 of 2025). Once the Court granted time for payment of deficit court fees within the period specified, thereafter it would not have been possible to extend the same by the Court in exercise of its power under Section

[17] (2014) 10 SCC 702

148 of the Code. The plaintiff has opted not to pay the deficit court fee, not to seek extension of time to file the deficit court fees, but has preferred to seek amendment of the pleadings, which according to the plaintiff if allowed would reduce the amount of court fee payable.

61. In ***Buta Singh v. Union of India***[18], the Supreme Court had the occasion to state the nature of judicial discretion of a Court as available under Sections 148 and 149 and Order 41, Rule-9 of the C.P.C. as well as the manner in which such discretion is to be used. It was held: such discretion has to be exercised keeping the facts and circumstances in each case in mind and not by showing undue indulgence. The indulgence to be shown is not automatic for mere asking to make good the deficit court fee [paragraph-9 of SCC].

62. The plaintiff relies on Section 7(iv)(c) i.e., for a declaratory decree and consequential relief, 7(iv)(d) 'for an injunction' and 7(iv) (f) 'for accounts' of the Court Fees Act, 1870 as indicated herein :

> ***"7. Computation of fees payable in certain suits. –***
>
> *(iv) In suits –*
>
> ***for a declaratory decree and consequential relief.*** *–(c) to obtain a declaratory decree or order, where consequential relief is prayed;*
>
> ***for an injunction.****- (d) to obtain an injunction;*
>
> ***for accounts.****- (f) for accounts –*
>
> *according to the amount at which the relief sought is valued in the plaint or memorandum of appeal:*
>
> *In all such suits, the plaintiff shall state the amount at which he values the relief sought;*

The prayer in the plaint is for a money decree of amount US$ 49,268,902.45 (INR 428,76,87,464.30) along with applicable interest per annum from the date of filing of the suit till the date of the decree and applicable interest from the date of the decree till payment/realization.

63. In view of ***Buta Singh***[18] (*supra*) it has to be and is held that for making good the deficit court fee, indulgence was shown by this Court to the plaintiff by order dated 19.03.2025 in I.A. No.7 of 2025 filed by the plaintiff. The indulgence shown has not yielded any result as the time granted by the Court has expired and the court fee has not been paid. As an irresistible conclusion, the legal consequence must follow.

64. This Court is of the considered opinion that the proposed amendment will change the nature and character of the suit as would be evident by comparative analysis of the plaint and prayer on record and the amendment that is sought to be made. For convenience of reference relevant portions of the comparative table are extracted that demonstrate the change in nature and character of the suit:

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[18] (1995) 5 SCC 284: AIR 1995 SC 1945

PLAINT/1A NO.6/IA NO.7/IA NO. 10	IA NO.15/IA NO. 16
"18. The plaintiff has a claim of the indemnity amount of INR 428,76,87,464.30 (equivalent to US$ 49,238,902.45). Given that this indemnity amount has not been paid to the Plaintiff, the Plaintiff has been constrained to file the present Suit and incur costs of litigation…" "¶18@Pg12. Plaint.	**Proposed amendment to paragraph-18** "The plaintiff has a claim of the indemnity amount of INR 428,76,87,464.30 (equivalent to USS 49,238,902.45), initiated before the Gujarat High Court vide the Gujarat Suit. The average market value of the five vessels in the Gujarat Suit is ₹296,52,39,270 (US$ 34,335,000), leaving a shortfall of ₹128,72,21,700 (US$ 14,903,902.45) … In these circumstances, as the value of the five vessels in the Gujarat Suit were not sufficient to secure Plaintiff's claims, the Plaint was compelled to file the captioned Admiralty Suit to, inter alia, seek arrest of the Defendant Vessels which are within the jurisdiction of this Hon'ble Court in aid of the claim in the Gujarat Suit." ¶4(a), Schedule 1, IA No.15. **Insertion of paragraph 18A** "Given that this indemnity amount has not been paid to the Plaintiff and the value of the vessels before the Gujarat High Court are insufficient to satisfy the Plaintiff's claim, the Plaintiff has been constrained to file the present Suit and incur costs of litigation. The Plaintiff humbly submits that the costs of its litigation before this court are likely, at the very least, to be US$ 50,000. Thus, the Plaintiff is entitled to arrest and the sale proceeds of the Defendant Vessels, plus poundage with further interest at the rate of 2% per month from the date of suit till the date of payment and/or realization against the Defendant Vessels." ¶5, Schedule I, IA No.15.
"28. **The plaintiff has established that there exists a prima facie maritime claim under Section 4(1)(r) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.** Therefore, the Plaintiff has satisfied the requirement for getting an order of arrest of the Defendant Vessels" ¶28@Pg 15, Plaint.	**Proposed amendment to paragraph 28** "The plaintiff has established that there exists a prima facie maritime claim under Section 4(1)(r) of Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, and its entitlement to security against the maritime claim." ¶6, Schedule I, IA No.15.
Prayer (i) This Hon'ble Court be pleased to pass an Order and Decree in favour of the Plaintiff and against the Defendants Vessels jointly and/or severally, her owner, and all	**Proposed amendment to Prayer (i)** "This Hon'ble Court be pleased to declare that the Defendant Vessels are connected with and subject of the same maritime claim arising out of or in connection with the transaction under the

persons interested in her, to pay the Plaintiff a sum of US$ 49,268,902.45 (INR 428,76,87,464.30) along with applicable interest per annum from the date of filing of the suit till the date of the decree and applicable interest from the date of the decreed till payment/realization" Prayer Clause (i) @ Page17, Plaint.	Settlement Agreement as in the Gujarat Suit (AS(R) 3/2025." ¶8. Schedule I, IA No.15
Prayer(ii) "That the Defendant Vessel OCEAN JADE (IMG: 9660750),together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip Port, Odisha or at such other location within the territorial waters of India be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon'ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the Suit". Prayer Clause (ii) @ Pgs 17 18, Plaint.	**Proposed amendment to Prayer (ii)** "That the Defendant Vessel OCEAN JADE (IMG:9660750), together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip Port, Odisha or at such other location within the territorial waters of India be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon'ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the Gujarat Suit (AS (R) 3/2025)" ¶9, Schedule I, IA No.15.
Prayer (III) "That the Defendant Vessel OCEAN MORGANITE (IMG:9676498) together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip Port, Odisha or at such other location within the territorial waters of India be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon'ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the Suit" Prayer Clause (iii) @ Pg 18, Plaint.	**Proposed amendment to prayer (iii)** "That the Defendant Vessel OCEAN MORGANITE (IMG:9676498) together with her hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at Paradip Port, Odisha or at such other location within the territorial waters of India be arrested, detained, condemned, and sold through the Bailiff under Order and direction of this Hon'ble Court and the sale proceeds be applied towards the satisfaction of the Plaintiffs claim in the Gujarat Suit (AS (R) 3/2005" ¶10. Schedule I., IA No.15.
Prayer (iv) "That pending the hearing and final disposal of the Suit, Defendant Vessels OCEAN JADE (IMO:9660750) and OCEAN MORGANITE (IMO:9676498), together with their hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at the port of Paradip or at such other	**Proposed amendment to Prayer (iv)** "That pending the hearing and final disposal of the Gujarat Suit (AS (R) 3/2005), Defendant Vessels OCEAN JADE (IMO:9660750) and OCEAN MORGANITE (IMO:9676498), together with their hull, engines, gears, tackles, bunkers machinery, apparel, plant, furniture, fixtures, appurtenances and paraphernalia, plant and machinery present at the port of Paradip or at such other location within the territorial

location within the territorial waters of India be arrested by a warrant of arrest under the orders of this Hon'ble Court and/or **be detained and/or be restrained from sailing out of their respective ports and/or moving out of the territorial waters of India until security towards the Plaintiffs claim is furnished**" Prayer Clause (iv)@ Pg 18, Plaint.	waters of India be arrested by a warrant of arrest under the orders of this Hon'ble Court and/or be detained and/or be restrained from sailing out of their respective ports and/or moving out of the territorial waters of India until security towards the plaintiffs claim in Gujarat Suit (AS (R) 3/2025) is furnished" ¶11, Schedule I, IA No.15.
Prayer (vi) "That pending the hearing and final disposal of the Suit, the Bailiff be directed to immediately upon the sale of Defendant Vessels OCEAN (IMO:9660750) and OCEAN MORGANITE (IMO-9676498) and to hold the sale proceeds on behalf of the Admiralty Registrar and to deposit the sum with the Admiralty Register to the Credit of the Plaintiffs claim in suit after deducting the expenses of sale incurred by him" Prayer Clause (vi) @ Pg Plaint.	**Proposed amendment to Prayer (vi)** "That pending the hearing and JADE final disposal of the Suit, the Bailiff be directed to immediately upon the sale of Defendant Vessels OCEAN (IMO:9660750) MORGANITE (IMO:9676498) and to hold the sale proceeds on behalf of the Admiralty Registrar and to deposit the sum with the Admiralty Register to the Credit of the Plaintiffs claim in Gujarat Suit (AS (R) 3/2025) after deducting the expenses of sale incurred by him." ¶ 12, Schedule I, IA No. 15."

65. Perusal of the amendments sought for, as indicated above goes to show that the nature and character of the suit from that of a 'money claim arising out of an alleged settlement agreement' changes to a 'suit to secure the plaintiffs claims' in an admiralty suit filed before the Gujarat High Court. The principles enumerated in ***Life Insurance Corporation of India***[6] (*supra*) that would be applicable for allowing amendment do not come to the aid of the plaintiff. Rather, the exceptions as enumerated in paragraph 71.4 comes to aid of the defendant. To further elaborate the conclusions of LIC: *71.4.2 the amendment changes the nature of the suit, 71.4.3 prayer for amendment is mala fide. 71.4.4 by the amendment the other side loses the valid defence*, come into play for this Court to refuse the proposed amendments.

66. The judicial pronouncements relied upon on behalf of the plaintiff and elaborately dealt in preceding paragraphs would be of no avail for it's cause as the fact matrix of those cases are at poles apart from the facts of the present suit. A decision is only an authority for the proposition laid down in a given fact matrix, and not for all that, would logically follow from what has been so laid down or every observation made, said the Earl of Halsbury, Lord High Chancellor more than a century ago in ***Quinn v. Leathem***[19] and I quote :

> *"Before discussing the case of Allen v. Flood, [1898] AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before-that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the*

[19] [1901] UKHL 2 : 3[1901] AC 495 : [1900-3] All E.R. Rep.1 (Placitum H & I)

> *whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow legically from it. Such a mode fo reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. I think that the application of these two propositions renders the decision of this case perfectly plain, notwithstanding the decision in Allen v. Flood(1).”*
>
> [Underlined to supply emphasis]

67. Lack of bona fide in seeking amendment is found as far as the prayer for amendment is concerned. Paragraph 71.1.10 of ***Life Insurance Corporation of India***[6] (*supra*) also comes in the way of the plaintiffs to seek amendment as the amendment changes the nature and character of the suit. The further finding of this Court is that by bringing proposed amendment the cause of action sought to be raised would become foreign to the case that was set up in the earlier plaint as ‘Gujrat Suit’ is introduced in the amendment for the first time without there being any reference in the original plaints and the defendants are not party to the ‘Gujrat Suit’. As a result the issues no.(ii), (iii) and (iv) noted at paragraph 55 above are answered in the affirmative against the plaintiff and in favour of the defendants.

68. Accordingly, the I.A. No.15 of 2025 filed by plaintiff seeking amendment of plaint is dismissed. The issues as have been framed at para 55 i.e. issue no.(i) is answered in the negative against the plaintiff.

69. Dismissal of I.A. No. 15 of 2025 leads to the issue whether still the plaint can be sustained after non-payment of the court fee.

By filing I.A. No.7 of 2025, the plaintiff had sought for exercise of the discretion of this Court before the Co-ordinate Bench stating that ₹75,000/- has been paid as court fee and the rest of the amount would be paid by enlargement of the time for payment. The prayer made in the said I.A. or any part of the plaint did not in any manner dispute the amount of court fee quantified to be payable by the plaintiff. The order dated 19.03.2025 by the Bench then having assignment, granting further time for payment of court fee is clear to the extent: that on submission of the plaintiff this court granted four weeks’ time for payment of the deficit ad-valorem court fee. This Court further directed “The Registry shall report with regard to its filing and sufficiency before the next date”. The plaintiff consistently and unequivocally represented before this Court that they want to pay the court fee within the time fixed as directed by this Court. The deficit court fees were not paid by the extended time granted by the Court, i.e., 16.04.2025. The fatality (of the time granted to pay court fees having expired) occurred. Thereafter no application for extension of time was filed or has been filed, rather, I.A. No.16 of 2025 has been filed for modification of the order dated 19.03.2025. The prayer made by the plaintiff in the subsequent I.A., is at the most, is for deferment of payment of court fee which is in complete contrast to its original stand to pay court fee within a certain date.

Without looking at any other material other than the plaint and the IAs filed by the plaintiff this Court is of the considered view that on the face of it, the value of the vessels remains the same, the court fee that would be payable on the said value cannot be changed in any manner. Concededly the value is itself determined by the plaintiff, therefore, everything remaining same including the claim against the defendant, the value of ad-valorem court fee remains unchanged as was determined on the date of filing of the suit. Accordingly, the issues (v) and (vi) as at para-55 have to be and are answered in the negative against the plaintiff.

These observations are made in the context of the fact, that as noted above, extensive arguments have been advanced by both the sides addressing this particular aspect. Now, though the suit is dismissed for the reasons as elaborated above but assuming for the sake of argument that the amendments could have been allowed then the consequence still would be that the court fee would remain unpaid, in deficit, and in the facts and circumstances as well by operation of law the suit has to be dismissed.

70. The Co-ordinate Bench in it's order dated 19.03.2025 though did not expressly refer to the section 149 of the CPC in I.A. No. 7 of 2025, presumably exercised judicial discretion to extend the time for payment of deficit court fee by four weeks. By the said order this Court had further directed the Registry to report with regard to filing of the deficit court fee and sufficiency. The ad-valorem court fee determined by the Registry to be payable in the plaint remains unchanged, i.e., Rs.12,86,31,885/- (Rupees Twelve crore eighty six lakhs thirty one thousand eight hundred and eighty five only) and the deficit that remains is Rs.12,86,56,873/- (Rupees Twelve crores eighty six lakhs fifty six thousand eight hundred and seventy three only). Non-payment of court fee has resulted in fatal injury to the suit. Such being the position, in view of ***Tajendra Singh***[17] (*supra*) and ***Buta Singh***[18] (*supra*) the I.A. No.16 has to fail.

The I.A. No. 16 of 2025 filed by the plaintiffs seeking relief of deferment of payment of court fees by exercise of discretion 'under section 149' of the CPC is dismissed.

71. As a result of the aforesaid findings and conclusions and as a consequence of dismissal of the I.A.s, the suit: ADMLS No.2 of 2025 has to be and is dismissed; issue no.(vii) is answered in the affirmative against the plaintiff.

All the interim orders passed earlier stand vacated.

In view of dismissal of the suit, the I.A. No.9 of 2025 for intervention is disposed of without any further orders.

In the facts and circumstances of the case, costs made easy.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
ADMLS dismissed

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2025 (III) ILR-CUT-219

GAJENDRA CHANDRA SINGH
V.
RAMESWAR PRASAD SINGH & ORS.

[MSA NO. 6 OF 2016]

07 AUGUST 2025

[R.K. PATTANAIK, J.]

Issues for Consideration

Whether the exercise of power conferred under OHRE Act rightly invoked by the learned courts below while dealing with the contentious issue with proper verification and examination of records followed by an enquiry as contemplated under law.

Headnotes

ODISHA HINDU RELIGIOUS ENDOWMENT ACT, 1941 – Section 41(e) and Section 74 – The Respondent filed an application U/s. 41(e) of OHRE Act to allow him to perform the 'Chhera Pahanra Seva' on the chariot of Lord Jagannath Jew, Lord Balabhadra Jew and Devi Subhadra on the occasion of Rath Yatra and Bahuda Yatra at Nayagarh – Learned Assistant Commissioner of Endowment allowed & the same also confirmed by the Commissioner in an appeal filed U/s. 44(1) of the Act – Whether the exercise of power conferred under OHRE Act rightly invoked by the learned courts below while dealing with the contentious issue with proper verification and examination of records followed by an enquiry as contemplated under law.

Held: No – The Court is of the conclusion that the learned Commissioner of Endowments, Odisha, Bhubaneswar, while exercising powers under the OHRE Act, is a court of fact and law, hence, should have exercised the jurisdiction as contemplated under law even directing the appellant to lead evidence or holding an inquiry by himself, the purpose being to ascertain as to who has the rights to perform the chhera pahanra seva during the car festival – A decision on the issue was really needed as it has a serious repercussion since both the sides are at loggerhead claiming each as the real successor of the King of Nayagarh. (Para 20)

Since the learned authorities below failed to exercise the power conferred under the OHRE Act with a detailed inquiry, as it was anticipated, looking at the above facts, the irresistible conclusion of the Court is that the matter needs a remand for a fresh decision considering the fact that the issue is one of customary rights involving the Royal family of Nayagarh

notwithstanding any such default of the appellant in O.A. No.12 of 2013, rather, for failing to hold a proper enquiry according to law. (Para 20)

Citations Reference

Bhramarbar Santra & others Vrs. State of Orissa & others, **AIR 1970 Ori 141– referred to.**

List of Acts

Odisha Hindu Religious Endowments Act, 1941; Code of Civil Procedure, 1908.

Keywords

Power of Assistant Commissioner; Exercise of power; Inquiry; Customary Right; Examination of record; Verification of record; Chhera Pahanra Seva; Seva Puja Right

Case Arising From

Judgment dated 31st October, 2016 passed in connection with F.A. No. 10 of 2016 by the learned Commissioner of Endowments, Odisha, confirming the decision and order of the learned Assistant Commissioner of Endowments dated 23rd June, 2016.

Appearances for Parties

For Appellant : Mr. S.K.Padhi, Sr. Adv. with Mr. Satya Smruti Mohanty

For Respondents : Mr. A.K. Mohapatra-1, (for Resp.No.1)
Mr. A.K. Nath, (for Resp.No.2)
Mr. Milan Kanungo, Sr. Adv (for Resp.Nos.5, 7 & 8)

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant appeal under Section 44(2) of the Odisha Hindu Religious Endowments Act, 1941(hereinafter referred to as 'the OHRE Act') is at the behest of the appellant assailing the impugned judgment dated 31st October, 2016 at Annexure-10 passed in connection with F.A. No. 10 of 2016 by the learned Commissioner of Endowments, Odisha, Bhubaneswar confirming the decision and order of the learned Assistant Commissioner of Endowments, Odisha dated 23rd June, 2016 i.e. Annexure-8 in O.A. Case No. 12 of 2013 on the grounds stated.

2. In the case at hand, respondent No.1 filed an application under Section 41(e) of the OHRE Act registered as O.A. Case No. 12 of 2013 praying therein to allow him to perform the 'chhera pahanra seva' on the chariots of Lord Jagannath Jew, Lord Balabhadra Jew and Devi Subhadra on the occasion of Rath Yatra and Bahuda

Yatra at Nayagarh and learned Assistant Commissioner of Endowments, Odisha, Bhubaneswar by judgment dated 23rd June, 2016 allowed the same as per Annexure-8. Being aggrieved of the aforesaid decision, the appellant preferred an appeal under Section 44(1) of the OHRE Act in F.A. No. 10 of 2016 before the learned Commissioner of Endowments, Odisha, Bhubaneswar but the same stood dismissed vide Annexure-10 confirming the order as at Annexure-8. As against the confirmation order and the judgment vide Annexure-10, the present appeal under Section 44(2) of the OHRE Act is filed on the grounds inter alia that the impugned decisions of the learned authorities below while dealing with the customary rights adversely claimed are not legally tenable and hence, liable to be set aside.

3. It is pleaded on record by the appellant that prior to independence, his late grandfather, namely, Krushna Chandra Singh Mandhata was the Ruling Chief of Nayagarh Estate and the Memoranda of the Indian Estates, 1938 corrected up to then and published by the Government of India reveals the hierarchy of the Rulers of the Estate. It is further pleaded that the appellant's grandfather was born on 15th August, 1911 and married to Rani Sahiba, namely, Homarajya Laxmi, the daughter of the second son of late Prime Minister of Nepal held on 29th January, 1931, whereas, his father was born on 4th September, 1933 out of the said wedlock. It is also pleaded that the grandfather of the appellant was installed on the throne with the coronation performed on 20th July, 1933. A copy of the Memoranda as at Annexure-1 is referred to in support of such claim. It is pleaded that the Directory showing up to date details of the princely States of India and Burma reveals that the late grandfather of the appellant was the Ruler of the Nayagarh Estate and his father, namely, Brajendra Kishore Singh as the heir-apparent and the same is also referred to as at Annexure-2. It is claimed that after the death of the King on 24th June, 1983, as the successor and being the prince, the appellant's father was coroneted as Raja of Nayagarh Estate as per the custom and tradition and thereafter, the latter performed the chhera pahanra seva during the car festival being invited by the local Administration and in support of such claim, Annexure-6 series is placed reliance on. The further claim is that late grandfather of the appellant developed intimacy with one Soubhagya Manjari Devi of Hindol, who was his maternal uncle's daughter and on account of such relationship, a male child was born, who is the father of respondent No.1, but as the marriage was not lawful, hence, the British Crown did not approve the same. It is pleaded that respondent No.1's father, namely, Amarendra Kishore Singh claiming himself to be the Raja of Nayagarh Estate started creating disturbance, as a result of which, a suit was instituted by the father of the appellant registered as T.S. No. 72 of 1988 before the court of learned Civil Judge (Senior Division), Nayagarh seeking declaration that he is the sole owner of the schedule properties and the father of respondent No.1 does not have any semblance of right, title and interest over the same and also for a decree of permanent injunction restraining the said respondent's father in exercising rights over the properties involved and therein, while dealing with the dispute, it was held that the father of the appellant to be the legitimate son born out of the marital wedlock between the Raja

Krushna Chandra Singh Mandhata and his wife Homarajya Laxmi but by judgment dated 23rd April, 1997 dismissed it, challenging which, the father of the appellant preferred appeal in F.A. No. 190 of 1997 before this Court and it was also dismissed and at last, the SLP was filed before the Apex Court and it also resulted in dismissal. But, the pleading is to the effect that though the suit and appeal have been dismissed but the finding of fact that the father of the appellant was the legitimate son born out of marriage of the King with the first queen has not been disturbed by any court including the Supreme Court of India.

4. The dispute arose between the parties during the car festival of 2013 for performing chhera pahanra seva by the appellant since a rival claim was advanced and in that connection, the matter was brought before the learned Endowment Commissioner, Odisha, Bhubaneswar, who referred the same to the concerned Sub-Collector for a adjudication and at that time, it was learnt that a decision has been taken by the learned Collector, Nayagarh authorizing the Sub-Collector, Nayagarh to perform the seva on the chariots during such festival and after that, the matter reached this Court in W.P.(C) No. 13857 of 2013 to quash such decision and to allow him to perform the chhera pahanra seva and it was permitted for the car festival of that year and at the same time, both the parties were directed to approach the Endowment Authority claiming respective rights and in view of such order dated 9th July, 2013, he was allowed to perform the seva and also for the year 2014-15 by the order of the Endowment Commissioner, Odisha, Bhubaneswar as at Annexure-7. But, thereafter, in 2016, it was informed to the appellant that respondent No.1 claiming to be the grandson of late Raja Krushna Chandra Singh Mandhata has filed an application under Section 41(e) of the OHRE Act and lastly, it was disposed of vide O.A. No. 12 of 2013 allowing him to perform the chhera pahanra seva during the car festival. It has been pleaded that despite the fact that the appellant is the son of the late Brajendra Kishore Singh and grandson of late Raja Krushna Chandra Singh Mandhata of Nayagarh Estate, respondent No.1 was allowed to perform the chhera pahanra seva on the chariots thereby confirming the order dated 23rd June, 2016 of the learned Assistant Commissioner of Endowments, Odisha.

5. The final decision against the appellant is under challenge on the grounds as follows:

> (i) The impugned decision as per Annexures-8 & 10 are illegal, perverse and arbitrary, hence, liable to be set aside and the same is against the weight of evidence on record.
>
> (ii) The learned Assistant Commissioner of Endowments, Odisha failed to appreciate the facts pleaded on record that till the death of Brajendra Kishore Singh, namely, father of the appellant in 2012, it was him, who was performing the chhera pahanra seva on the occasion of car festival and after his death, the appellant succeeded and performed such seva for the year 2013, 2014, 2015 & 2016 and as such, clearly established the right since the time of their ancestor.

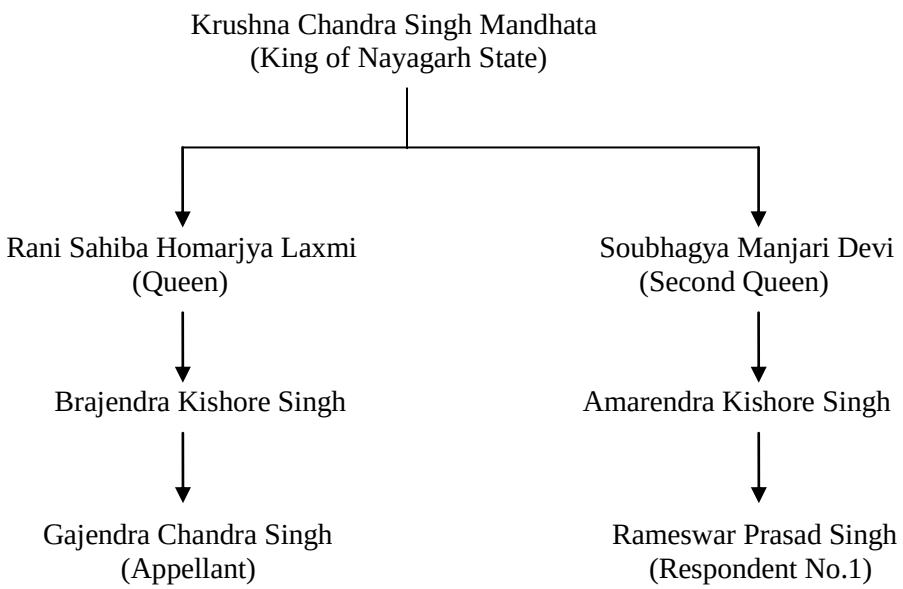
(iii) Both the learned courts below in a mechanical manner overlooking the fact that the Ruling King and his son are entitled to perform the chhera pahanra seva as per the prevailing custom and tradition more so when Kingship of late Brajendra Kishore Singh remained challenged, inasmuch as, the father of respondent No.1 was never the King and the appellant, as the son of the reigning King has all the rights to perform the seva puja, hence, the finding in that regard is grossly erroneous.

(iv) Learned courts below lost sight of the fact and the assertion that the father of respondent No.1 to be the illegitimate child in absence of any proof of second marriage, hence, the relationship has no valid basis and thus, the impugned orders at Annexures-8 & 10 are to be set aside.

6. Heard Mr. Padhi, learned Senior Advocate for the appellant, Mr. Mohapatra, learned counsel for respondent No.1 and Mr. Nath, learned counsel for respondent No.2, namely, Endowment Commissioner, Odisha, Bhubaneswar besides Mr. Kanungo, learned Senior Advocate appearing for respondent Nos. 5,7 & 8.

7. As per the appellant, the following is the genealogy:

GENEALOGY



8. The copies of the depositions in O.A. No. 12 of 2013 are made available to the Court at the time of hearing and the same are perused.

9. Mr. Padhi, learned Senior Advocate for the appellant submits that respondent No.1 performed the chhera pahanra seva of the deities during the time of car festival falsely claiming him to be the king of Nayagarh after the death of Brajendra Kishore Singh and thereafter, even raised an objection before the learned

Assistant Endowment Commissioner, Odisha. It is further submitted that the question of declaration of Kingship was not an issue in T.S. No. 72 of 1988 but it has been concluded at the end that Brajendra Kishore Singh to be the legitimate son of Raja Krushna Chandra Singh Mandhata. Referring to a copy of the judgment in the suit, such a claim is put forth from the side of the appellant. The further contention of Mr. Padhi, learned Senior Advocate is that the Executive Officer filed a written statement before the learned Assistant Endowment Commissioner, Odisha in the O.A. proceeding and admitted that from 1978 to 1982, the chhera pahanra seva during car festival was being performed by Rajguru Samantnarayan Rajguru Mohapatra as Krushna Chandra Singh Mandhata was ill by then and after the latter's death in the year 1983, Brajendra Kishore Singh performed the same till 2012 barring 2005. It is, hence, contended that Brajendra Kishore Singh was performing chhera pahanra seva from 1983 till 2012 for about twenty nine years and Amarendra Kishore Singh, son of the King through second wife and father of respondent No.1 never performed it till his death in 2002. The submission is that after the death of Brajendra Kishore Singh, the dispute was raised by respondent No.1 and as a result, W.P.(C) No. 13857 of 2013 was filed and it was disposed of by order dated 9th July, 2013 allowing the appellant to perform the seva puja with a finding that it was being managed by late Brajendra Kishore Singh till he passed away on 13th August, 2012. In such view of the matter and for the fact that the proceeding before the learned Assistant Commissioner of Endowments, Odisha could not be properly looked after and as the appellant failed to take adequate steps and hence, it was disposed of ex-parte but the decision has been arrived at without any independent enquiry and it has also resulted in dismissal of the appeal by the learned Commissioner of Endowments, Odisha, Bhubaneswar, before whom, a fresh hearing was sought for with a remand and adjudication providing him an opportunity to contest the claim of respondent No.1 by filing a written statement but it was not entertained and ultimately, was dismissed, the contention of Mr. Padhi, learned Senior Advocate is that as against the aforesaid backdrop, the impugned judgment at Annexure-10 should be set aside paving the way for an adjudication since such a customary right to perform chhera pahanra seva is claimed adversely and also a matter of public interest involving emotion and sentiment of the citizens of Nayagarh with the following pleading on record that the father of respondent No.1 never ever performed chhera pahanra during his life time, whereas, the appellant's father performed it all along ever since 1983 till his death in 2012 except for a single year and in view of the finding of the civil court about the legitimacy of late Brajendra Kishore Singh as the son of Raja Krushna Chandra Singh Mandhata and real successor of the Nayagarh Estate and also in view of the order dated 1st July, 2016 in W.P.(C) No. 11269 of 2016 allowing the appellant to perform chhera pahanra for the year 2016 pending disposal of the appeal before the learned Commissioner of Endowments, Odisha. Narrating the above facts, Mr. Padhi, learned Senior Advocate highlighted upon the facts relevant and the dire need of a detailed and independent enquiry with evidence on record by the learned Assistant Commissioner of

Endowments, Odisha for a definite finding and conclusion on the rights of chhera pahanra seva at Nayagarh.

10. In fact, respondent No.1 moved the learned Commissioner of Endowments, Odisha, Bhubaneswar under Section 41(e) of the OHRE Act allowing him to perform the chhera pahanra seva of Shri Jagannath Jew during the car festival as it was received from respondent No.4 to answer the reference and while dealing with the same in O.A. No.12 of 2013, as pleaded by the appellant, it has been admitted by him at the time of examination that late Brajendra Kishore Singh, the father of the appellant, was born on 4th September, 1933, however, deposed that he cannot be treated as the son of late Raja Krushna Chandra Singh Mandhata through Rani Sahiba Homarajya Laxmi in view of the judgment dated 23rd April, 1997 in T.S. No.72 of 1988 of the learned Civil Judge (Senior Division), Nayagarh having discarded his paternity and declared the right, title and interest of the properties involved in favour of late Soubhagya Manjari Devi, namely, second queen and grandmother of respondent No.1. It is further pleaded for the appellant that in the said suit being a part of the record before the learned Assistant Commissioner of Endowments, Bhubaneswar and the decree as at Annexure-13 of the additional affidavit dated 2nd December, 2024, the question of declaration as the King of Nayagarh was not the subject matter in dispute contrary to the claim and evidence in O.A. No.12 of 2013 and that, such paternity of late Brajendra Kishore Singh was discarded, rather, it is clearly manifest that Brajendra Kishore Singh is the legitimate son of Raja Krushna Chandra Singh Mandhata born out of the marital wedlock with Rani Sahiba Homarajya Laxmi. The further pleaded that the learned Assistant Commissioner of Endowments, Bhubaneswar in spite of a written statement received from the Executive Officer, wherein, it was deposed that from 1978 to 1982, the chhera pahanra seva during car festival was being performed by Rajguru Samanta Narayan Rajguru Mohapatra as the King was unwell by then and thereafter, Brajendra Kishore Singh did perform such seva till 2012 barring 2005, when Mandir Parichha performed, it reached at a flawed conclusion that respondent No.1 is eligible and entitled to be declared for the said seva oblivious of the fact that late Brajendra Kishore Singh performed the seva for nearly 29 years and that apart, Amarendra Kishore Singh, namely, the father of respondent No.1 born through second queen never performed it till his death in 2002. It is reiterated that the appellant filed W.P.(C) No.13587 of 2013 before this Court when dispute was raised by respondent No.1 and therein, it is held that till the death of Brajendra Kishore Singh, he was admittedly performing the chhera pahanra seva but unfortunately, the learned Assistant Commissioner of Endowments, Bhubaneswar ignoring all such facts declared respondent No.1 instead as eligible to perform the seva during the car festival.

11. The contention is that the appellant could not take adequate steps in O.A. No.12 of 2013 and the decision is entirely based on the averments of respondent No.1 and others close to him without any independent inquiry as required under the

OHRE Act. It is contended that the appellant filed F.A. No.10 of 2016 but the learned Commissioner of Endowments, Bhubaneswar confirmed the order in the O.A. and therein, the reason behind the default in taking steps before the learned Assistant Commissioner of Endowments, Bhubaneswar was described stating that the appellant's brother, namely, Hemendra Kumar Singh was looking after the matter and he suddenly died during its pendency and hence, no written statement could be filed and lastly, on 12th April, 2016, he was set ex-parte and since by then, his place of residence was at Ranchi in the State of Jharkhand, upon receiving the information about the ex-parte order, filed the appeal and even requested a remand for fresh adjudication providing opportunity to him with a defence filed pleading that if it was not allowed, there would be substantial prejudice but correspondingly assailed the decision on merit but the appeal was dismissed without any remand as learned Commissioner of Endowments, Bhubaneswar declined such request and proceeded to dispose of the appeal. It is contended that it is a fit case where the matter deserves a fresh adjudication with evidence received from the appellant and others as it is also a question of honour and deals with secular rights and a matter of great public interest concerning the people of Nayagarh and such remand is really needed, all the more when, learned Assistant Commissioner of Endowments, Bhubaneswar without a proper inquiry disposed of the O.A. as such an inquiry is contemplated in Section 41 of the OHRE Act. Essentially, the argument advanced by Mr. Padhi, learned Senior Advocate is that it was incumbent upon the learned Assistant Commissioner of Endowments, Bhubaneswar to conduct an independent inquiry to arrive at a definite conclusion but the entire exercise was accomplished in a mechanical manner and not only that, the learned court below also lost sight of all such admitted facts regarding the chhera pahanra seva being performed by late Brajendra Kishore Singh for a quite long period and therefore, the concurrent findings of the learned authorities below are required to be interfered with.

12. On the contrary, Mr. Mohapatra, learned counsel for respondent No.1 vehemently opposed the claim of the appellant and justified the decision under challenge with reference to the evidence received before the learned Assistant Commissioner of Endowments, Bhubaneswar. It is contended that the appellant though entered appearance in the O.A. did not file the written statement or show cause nor participated in the hearing and was ultimately set ex parte on 12th April, 2016 and since ample opportunity was provided to him, the matter does not deserve a remand as the said plea was duly taken judicial notice of by the learned Lower Appellate Court. It is further contended that as per the age-old tradition and custom, the King of Nayagarh used to perform the chhera pahanra seva on the occasion of car festival and after the State of Nayagarh merged in 1948 and consequent upon such merger, though, the King was divested of the power with regard to the management and administrative control of the affairs of the temple but continued to perform the chhera pahanra seva till 1983. Reiterating the facts pleaded before the learned authorities below, it is contended that the King initially married the first queen and grandmother of the appellant in 1931 but their relationship got strained as the latter

chose to lead an immoral life and kept extra-marital relationship with her Personal Assistant and deserted the King in the year 1939 and settled in Calcutta and thereafter, at Ranchi, for which, she was divested of the status as a queen and since, the King had no issue through her, had executed a Deed of Authority on 29th April, 1936 to adopt a son as a successor to the Royal family and the proposal was sent to the Political Agent of British Crown for approval but it was not accepted, rather, disapproved on 26th June, 1936 and thereafter, the King married the second queen and grandmother of respondent No.1 and out of that marriage, late Amarendera Kishore Singh and three daughters were born and after the death of the King, son Amarendera Kishore Singh was the heir apparent to the throne of Nayagarh as he was formally coronated and became the King of the ex-State of Nayagarh for the purpose of discharging the traditional and customary duties and functions of the Royal family including, the chhera pahanra seva. Referring to the above facts, Mr. Mohapatra, learned counsel for respondent No.1 submits that learned authorities below did not commit any serious error or illegality in not recognizing the appellant as the successor of the King through late Brajendra Kishore Singh. It is also submitted that late Brajendra Kishore Singh instituted the suit in T.S. No.72 of 1988 against the father of respondent No.1 and others seeking a declaration that he was the owner of the schedule properties left behind by the King as per the rule of Primogeniture on the plea that he was born on 4th September, 1933 to the King and Rani Sahiba Homarajya Laxmi and by claiming that he forcibly performed the chhera pahanra seva, to which, respondent No.1 could not object being busy in litigations with the State Government to protect the properties and status as the King and it was dismissed by a judgment dated 23rd April, 1997 and confirmed in F.A. No.190 of 1997 being dismissed on 6th November, 2002, in such view of the matter, as according to Mr. Mohapatra, learned counsel and for the fact that respondent No.1 has been duly recognized as the heir apparent and successor to the Royal family of Nayagarh, the learned authorities below rightly declared him so, while dealing with the O.A., morefully when, neither the appellant nor his father had ever been coronated with any such customary rights performed and hence, the appeal is liable to be dismissed.

13. Recorded the submission of Mr. Kanungo, learned Senior Advocate appearing for respondent Nos.5, 7 and 8 and also Mr. Nath, learned counsel for respondent No.2 with reference to the materials on record in juxtaposition to the decision of learned Assistant Commissioner of Endowments, Bhubaneswar finally affirmed in F.A. No.10 of 2016.

14. Regard being had to the pleadings on record, the Court formulates the following substantial questions of law summarized herein below:

> (i) Whether the learned authorities below have been justified to reach at a decision with concurrent findings in favour of respondent No.1 declaring him to have the rights to perform the chhera pahanra seva on the occasion of car festival?

(ii) Whether, the exercise of power conferred under the OHRE Act rightly invoked by learned courts below while dealing with the contentious issue with proper verification and examination of records followed by an enquiry as contemplated under law?

15. Admittedly, the appellant failed to file the defence by way of a show cause in the O.A. and the explanation offered was to the effect that the litigation was being pursued by his brother late Hemendra Singh, who suddenly died during the pendency of the same. It is admitted that the decision of learned Assistant Endowment Commissioner, Bhubaneswar was not sought to be revoked under Order 9 Rule 13 C.P.C., instead the appeal was filed for a decision on merit, of course, with a plea seeking remand for a fresh adjudication. As previously stated, the appeal was dismissed by the learned Commissioner of Endowments, Bhubaneswar, Odisha without any such remand, considering the fact that the appellant was at default in not filing the show cause despite series of adjournments and hence, miserably failed to avail the opportunity and therefore, not entitled to a fresh hearing and referring to the evidence on record in absence of any challenge to the same concluded that respondent No.1 being the son of late Amarendra Kishore Singh, the grandson of the King of Nayagarh is entitled to perform the chhera pahanra seva of the deities during car festival having declined to take a different view than the learned Assistant Commissioner of Endowments, Bhubaneswar.

16. Before the learned authorities below, it was claimed by respondent No.1 that he is the real successor of the Royal family and hence, eligible to perform the seva on the occasion of the car festival as the de jure traditional King of the erstwhile State of Nayagarh. The pleading of respondent No.1 in the O.A. was that he was under a bonafide impression that late Brajendra Kishore Singh was authorized by the State Government to perform the chhera pahanra seva of Lord Jagannath Jew during car festival and Bahuda Yatra. Such pleading is revealed from the record and reiterated by respondent No.1 while being examined as P.W.1 in the O.A. It is also pleaded that in view of the Deed of Authority dated 29th April, 1936 executed by the King in favour of Rani Sahiba Homarajya Laxmi and letter dated 26th June, 1936 addressed to the British Crown by the Political Agent, late Raja Krushna Chandra Singh Mandhata had no issue till 29th April, 1936, whereas, late Brajendra Kishore Singh, the father of the appellant was born on 4th September, 1933 and therefore, he cannot be treated as the son of the King. The said Deed of Authority or any such material with contemporaneous documents has not been produced before the learned authorities below. Under what circumstances, such a request was moved by the Political Agent of British Crown in 1936 in spite of the fact that late Brajendra Kishore Singh was born on 4th September, 1933 is not revealed from the record nor it has been dealt with and discussed, while disposing of the O.A. and even by the learned court below in appeal. The fact remains, late Brajendra Kishore Singh apparently as the successor of the King through the first marriage perform the chhera pahanra seva for a long period commencing from 1983 and continued till 2012. It is not denied that the father of respondent No.1, who is the son of the King through 2nd

marriage ever performed such seva till his death in 2002. The explanation of respondent No.1 is that the chhera pahanra seva by late Brajendra Kishore Singh went unopposed due to pending litigations with the Government and for such other reasons. But, the admitted fact is that the appellant's father performed the seva for nearly 29 years, except when, he was sick.

17. It is pleaded on record that in the O.A., no show cause could be filed and it was on account of the death of the appellant's brother, who was busy in the general election and subsequently, elected as an M.P. and hence, could not diligently pursue the same before the learned Assistant Commissioner of Endowments, Bhubaneswar, Odisha and he passed away in 2016, while it was pending disposal. The impugned judgment at Annexure-10 reveals that there had been twenty seven adjournments but still the appellant failed to file the written statement and hence, was finally set ex parte with the appeal being dismissed confirming the decision of the learned Assistant Commissioner of Endowments, Bhubaneswar. Of course, such default on the part of the appellant left the learned Assistant Commissioner of Endowments, Bhubaneswar with no option except to proceed to dispose of the O.A. However, the question is, whether, the decision in the proceeding, which is entirely based on the evidence of respondent No.1 and oral testimony of few others without any documents referred to regarding the succession as the heir apparent to the throne and King of Nayagarh is justified and legal? Whether, the customary rights of the appellant including the chhera pahanra seva during car festival have been taken away in view of the decree in T.S. No.72 of 1988 affirmed in F.A. No.190 of 1997 instituted by the late father of the appellant? Referring to the additional affidavit, it is made to suggest by the appellant that he happens to be the successor of the King duly accepted and recognized by the local and hence, the decision in favour of respondent No.1 is erroneous. Mr. Mohapatra, learned counsel for respondent No.1 seriously objects to the acceptance of any such additional affidavit, while dealing with the second appeal when the appellant was grossly at default to file defence in the O.A and even failed to defend the same. Admittedly, the appellant failed to turn up and did not file the show cause in the O.A. despite numbers of adjournments allowed, the fact, which perhaps weighed the mind of the learned court below, while dealing with the appeal ultimately deciding the issue in favour of respondent No.1 even though said to considered the issue on merit. Of course, the appellant had pleaded for a remand since the dispute is over a right to perform the chhera pahanra seva and as it involves a contentious issue as to who is the real King of Nayagarh and eligible to perform such seva and other rights but it has not been found favour with learned court below dismissing the appeal on merit confirming the findings based on the evidence adduced by respondent No.1 and others discarding the reply of respondent No.4.

18. As regard, the decree in the suit instituted by late Brajendra Kishore Singh, it was against the father of respondent No.1 and four others seeking a declaration him as the sole owner in respect of the schedule properties with the defendants therein

having no any right, title and interest and for rendition of accounts vis-à-vis the usufructs thereof and for a permanent injunction restraining the latter and their agents/servants in exercising rights over the same in any manner whatsoever, even from withdrawing the compensation amounts payable out of the land acquisition proceedings. So, it is clear that no such question as to the successor of the King of the Royal family was ever a subject matter in the suit i.e. T.S. No.72 of 1988, rather, it was with regard to the claim of the title over the properties succeeded by the 2nd wife of the King. On a reading of the judgment dated 23rd April, 1997 as at Annexure-13 to the additional affidavit, which, as earlier stated, has been a part of the record in the O.A. proceeding, it is made to reveal that the suit was so instituted by the father of the appellant claiming ownership in respect of schedule 'A' & 'B' properties more fully described therein by pleading rule of Primogeniture. In fact, it was held by learned Civil Judge (Senior Division), Nayagarh in the suit that schedule 'A' properties were not available with the father of the appellant as it had already been gifted to the 2nd wife of the King in the year, 1949 and therefore, such rule of Primogeniture is not attracted with a conclusion that there is no evidence that the King had any intention or ever treated the properties as a part of the impartible estate in his hand. In fact, the schedule 'A' properties were claimed to have been gifted by the King in favour of his 2nd wife on 7th March, 1949 through a registered deed and in the suit, it was held to be a valid one and duly acted upon in absence of any further evidence that the gift was stage managed exercising undue influence or fraud. The suit was also held to be barred by limitation by challenging such a gift. The decision in the suit was ultimately upheld in F.A. No.190 of 1997. With the above discussion, it has to be concluded that the question of succession as the heir apparent to the throne was not an issue for a decision in the suit and it was concerning the properties succeeded by the 2nd queen of the King of Nayagarh and the father of the appellant lost it out while claiming ownership thereof. But, the learned Assistant Commissioner of Endowments, Bhubaneswar even though considered such an evidence received from the side of respondent No.1 apparently proceeded on the premise that the appellant in view of the dismissal of the suit and F.A. No.190 of 1997 having failed to establish as the real successor of the King of Nayagarh cannot be allowed to perform the chhera pahanra seva. At the cost of the repetition, it has to be held that the decision in T.S. No.72 of 1988 has no bearing in so far as the issue at hand is concerned which relates to performing the chhera pahanra seva on the eve of the car festival. The father of the appellant though lost the rights in respect of the properties, over which, he had extended a claim by pleading the rule of Primogeniture but the same having been acquired by the 2nd queen of the King of Nayagarh, it cannot influence the decision regarding the exercising the rights by him or for that matter, respondent No.1 including the chhera pahanra seva. In other words, such a right has to be independently examined without being overwhelmed by the decree in T.S. No.72 of 1988. Rather, it is made to reveal that the learned Civil Judge (Senior Division), Nayagarh had taken cognizance of the status of the

late father of the appellant having him the locus standi to institute the suit though found to be time barred.

19. In course of hearing, Mr. Mohapatra, learned counsel for respondent No.1 submits that the learned authorities below received evidence and concluded that the appellant is not the real successor. It is also submitted that such an exercise has been undertaken by the learned Assistant Commissioner of Endowments, Bhubaneswar, in the manner in which, an inquiry is to be held as provided in Section 74 of the OHRE Act. In that connection, a decision of this Court in **Bhramarbar Santra & others Vrs. State of Orissa & others AIR 1970 Ori 141** is referred to by Mr. Mohapatra, learned counsel for respondent No.1 to contend that it has been duly followed, while dealing with the application under Section 41(e) of the OHRE Act. That apart, it has been alleged that the appellant having not assigned any sufficient cause or justiciable reason for being not diligent while pursuing the O.A., for such deliberate and willful default, he is not entitled to any such equitable relief, even remand of the matter for a fresh decision, more so when, nothing is placed on record to satisfy the reason for the alleged default. It is contended by Mr. Padhi, learned Senior Advocate for the appellant that even after the default, it was the bounden duty of the learned authorities below to hold an inquiry instead of out rightly accepting the evidence of respondent No.1. A reference has been made to Section 41 of the OHRE Act regarding the jurisdiction conferred on the learned Assistant Commissioner of Endowments, Bhubaneswar to enquire into and decide any such issue regarding entitlement of a person to any honour and emolument or perquisite in any religious institution and what the established usage of the religious institution. The decision (supra) deals with Section 41 of the OHRE act and it has been held therein that it is made applicable to all Hindu public religious institutions and endowments. On a reading of the said provision, it is conveyed that the learned Assistant Commissioner of Endowments, Bhubaneswar has the power to deal with all such disputes and matters specified therein including the one related to the entitlement by custom or otherwise vis-à-vis honour etc. in respect of a religious institution.

20. Admittedly, no any evidence from the side of the appellant was allowed or received by the learned Lower Appellate Court or to consider remand of the matter for a fresh adjudication. In the humble view of the Court, learned Commissioner of Endowments, Bhubaneswar, even though, was not in favour of condoning the alleged default of the appellant, could have held an inquiry to ascertain as to who was coroneted as the King of Nayagarh as against the rival claims advanced. The Court is also of the view that the learned Assistant Commissioner of Endowments, Bhubaneswar was required to hold a threadbare inquiry on the issue involved while exercising powers under Section 74 of the OHRE Act and ought not to have proceeded in disposing of the O.A. with a decision entirely rested on the oral testimony of respondent No.1 and others. The same was mistake was repeated by the learned Lower Appellate Court. The fact of coronation should have been examined and unearthed with an independent inquiry even in the absence of the appellant. It is

a matter of public importance and also a question of honour dealing with the secular and customary rights of the parties involved and while exercising any such power, it was for the learned Assistant Endowment Commissioner, Bhubaneswar to hold a comprehensive inquiry by calling such records to test the veracity of the claims to the throne of the erstwhile Kingdom. In any case, the locus standi of the father of the appellant is no more in dispute in view of the judgment in T.S. No.72 of 1988 and for having reached finality upon disposal of F.A. No.190 of 1997 but in view of the fact that late Brajendra Kishore Singh performed the chhera pahanra seva for about 29 years with no real break except once and succeeded by the appellant, a duty was cast upon the learned authorities below to examine such an issue with all sincerity holding a detailed inquiry in view of Section 41 of the OHRE Act. Since the honour of the Royal family is involved, which is also of utmost public importance, in order to set it at rest the controversy, learned Assistant Commissioner of Endowments, Bhubaneswar, while dealing with the O.A., should have conducted a roving inquiry as permissible under law, a power which is exercisable by him having all the trappings of a civil court. It is to reiterate that an authority under the OHRE Act, while dealing with a proceeding, shall have the powers vested in the court under the Code of Civil Procedure, 1908 when trying a suit like discovery and inspection, enforcing attendance of witnesses, even compelling production of documents, so on and so forth by issuing Commissions as well for examination of witnesses specified in Section 74 thereof. A party is at default does not mean that the learned Assistant Commissioner of Endowments, Bhubaneswar or the Endowment Commissioner, for that matter, is absolved of any such responsibility in holding an inquiry under the OHRE Act, rather, to insist upon such evidence necessary by following the procedure prescribed therein demanding inspection and production of records necessary to adjudicate upon the dispute. The Court is of the conclusion that the learned Commissioner of Endowments, Odisha, Bhubaneswar, while exercising powers under the OHRE Act, is a court of fact and law, hence, should have exercised the jurisdiction as contemplated under law even directing the appellant to lead evidence or holding an inquiry by himself, the purpose being to ascertain as to who has the rights to perform the chhera pahanra seva during the car festival. A decision on the issue was really needed as it has a serious repercussion since both the sides are at loggerhead claiming each as the real successor of the King of Nayagarh. Notwithstanding, any such decision in the suit, as it cannot prevail upon the learned authorities below, not being a decision over the customary rights, a detailed inquiry was essential but none of them exercised the jurisdiction in the manner expedient and merely accepting the oral evidence of respondent No.1 and others rendered the decision dismissing the O.A. and also the appeal finally. It is not about condoning the default of the appellant, which matters the most, but what is relevant is, an issue claiming the seva puja rights as a successor of the King of Nayagarh and hence, a proper and detailed investigation was the need of the hour and expected from the learned Assistant Commissioner of Endowments, Bhubaneswar but the power as such for inquiry was never really exercised as envisaged in Section 41 of the OHRE

Act nor any purposeful enquiry was conducted by the learned Lower Appellate Court, as it could not have been avoided simply for the default of the appellant. The claim of coronation by respondent No.1, the fact of late Brajendra Kishore Singh performing the chhera pahanra seva for 29 years and such other plea regarding the Deed of Authority of 1936 and seva puja was being performed by the appellant after 2012 and of course in view of the recent arrangement in view of the Court's order dated 28th June, 2018 in I.A. No.8 of 2018 allowing respondent No.1 to perform the seva and since the learned authorities below failed to exercise the power conferred under the OHRE Act with a detailed inquiry, as it was anticipated, looking at the above facts, the irresistible conclusion of the Court is that the matter needs a remand for a fresh decision considering the fact that the issue is one of customary rights involving the Royal family of Nayagarh notwithstanding any such default of the appellant in O.A. No.12 of 2013, rather, for failing to hold a proper enquiry according to law.

21. On account of the above conclusion, the substantial questions of law formulated by the Court stand answered.

22. Hence, it is ordered.

23. In the result, the appeal is allowed. As a logical sequitur, the impugned orders as at Annexures-8 and 10 are set aside. Consequently, the proceeding in O.A. Case No. 12 of 2013 is hereby restored to the file with a direction to the learned Assistant Commissioner of Endowments, Odisha, Bhubaneswar to hold a detailed and meaningful enquiry and at the same time, to receive such further evidence from both the sides allowing the appellant to file the defence and thereafter, to dispose it of as per and in accordance with law at the earliest soon after receiving a copy of this judgment keeping in view the discussions and observations made hereinabove.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
MSA Allowed.

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2025 (III) ILR-CUT-234

KALPANA SAHOO
V.
METRO BUILDERS LTD. & ANR.

[MSA NO. 17 OF 2024]

07 AUGUST 2025

[R.K. PATTANAIK, J.]

Issues for Consideration

Whether the alleged project of the respondent is an ongoing one or with the issuance of completion certificate prior to the cut-off date, it had been completed and hence not amenable to the Act.

Headnotes

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 – Section 14(2) (i) r/w Odisha Development Authorities Act, 1982 – Section 91 (1) – The dispute is related to alternation of the sanctioned plan in respect of the ground floor as there has been no commercial units in that floor and hence complaint was filed before the RERA as per the provision of the Act – The Authority (RERA) concluded that Section 14 would have application, if the project is an ongoing one but it was completed prior to the commencement of the Act, hence the complaint is not maintainable – The said decision of RERA was affirmed by the OREAT in appeal – The petitioner claim that, as no completion certificates has been furnished the project should be treated as ongoing project, complaint is maintainable – Whether the alleged project of the respondent is an ongoing one or with the issuance of completion certificate prior to the cut-off date, it had been completed and hence not amenable to the Act.

Held: – Without elaborating further, the conclusion of the Court is that issuance of completion certificate in respect of a flat is essential and if the same has not been obtained by the promoter or developer in respect of a project ongoing at the time of the commencement of the Act, for such a lapse, a complaint is entertainable by the RERA. (Para 26)

Citations Reference

M/s. Newtech Promoters and Developers Private Limited Vrs. State of U.P. and others, **2021 SCC OnLine SC 1044;** Dharmendra Sharma Vrs. Agra Development Authority, **(2025) 1 SCC 422 – referred to.**

List of Acts

Odisha Development Authorities Act, 1982; Real Estate (Regulation and Development) Act, 2016.

Keywords

Delivery of possession; Completion Certificate; Jurisdiction; RERA; Complaint; Maintainability of complaint; Sanctioned plan; Commercial purpose; Residential purpose

Case Arising From

Order dated 22nd November, 2023 of the Odisha Real Estate Appellate Tribunal, in OREAT Appeal No.58 of 2022 disposed of on 22nd November, 2023 confirming the order dated 18th January, 2022 of the Odisha Real Estate Regulatory Authority, arising out of Complaint Case No.243 of 2021.

Appearances for Parties

For Appellant : Mr. S.K. Mishra, Sr. Adv.
For Respondents : Mr. S.S. Das, Sr. Adv. (Res. No. 1)

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant appeal filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') read with Section 100 of the Civil Procedure Code, 1908 is at the behest of the appellant assailing the correctness, legality and judicial propriety of the impugned decision by order dated 22nd November, 2023 of the learned Odisha Real Estate Appellate Tribunal, Bhubaneswar (shortly as 'the OREAT') in OREAT Appeal No.58 of 2022 disposed of on 22nd November, 2023 confirming the order dated 18th January, 2022 of the learned Odisha Real Estate Regulatory Authority, Bhubaneswar (hence called as 'the RERA') arising out of Complaint Case No.243 of 2021 on the grounds inter alia that the decisions of the learned authorities below having declined action for demolition of the structure raised in the Ground floor of the apartment for being used commercially restoring it to the original condition are legally untenable and hence, liable to be interfered with and set aside.

2. A copy of the impugned order dated 22nd November, 2023 in OREAT Appeal No.58 of 2022 is at Annexure-1.

3. The case of the appellant is that an agreement was executed between the land owner and respondent builder for construction of a multi-storied high rise building to be used as commercial-cum-residential complex in the year, 2010, according to which, it was agreed upon to execute the sale deeds in favour of the intending purchasers transferring the flats, commercial units, parking space together with undivided interest in the land inclusive of the right of use and enjoyment of common area, amenities etc. provided in the complex. It is pleaded that under such

sale deeds, the land owner shall only transfer the proportionate undivided interest in the land and the respondent builder was to transfer and convey the readily built flats, units, commercial and parking space. According to the appellant, a sale deed was executed between her and the promoter and a memorandum of declaration was executed on 16th July, 2015 between the latter and the land owner pertaining to the allotment of the flats and units confirming absolute title in respect thereof inclusive of parking space in the complex styled as 'Metro Avenue'. It is further pleaded that respondent builder has made extensive alteration and changes in the apartment in deviation of the approved plan of the Cuttack Development Authority (CDA) and the same is in contravention of Section 14(2)(i) and (ii) of the Act. It is claimed that as per the approved plan of the CDA, the Ground floor with apartment is for parking and road and accordingly, a portion of First floor is reserved for being used for commercial purpose and other floors are exclusively meant for residential purposes but respondent builder violating the plan has undertaken alteration in the Ground floor by re-structuring it for commercial use without any approval and consent of the residents of the apartment. As a result of such illegality being committed, the appellant would further plead that a notice was issued to the Managing Director of Metro Builders on 6th September, 2021 by the Deputy Commissioner, Cuttack Municipal Corporation (CMC) under Section 91(1) of the Odisha Development Authorities Act, 1982 (in short 'the ODA Act') to show cause as to why the unauthorized construction should not be demolished or removed. It is further claimed that the Deputy Commissioner, CMC by a letter dated 8th September, 2021 instructed the IIC of local P.S. to take immediate action against the builder but the unauthorized constructions continued despite such notice and at last, the complaint was filed alleging violation of the plan making alteration in terms of Section 31 of the Act registered as C.C. No.243 of 2021 and it was disposed of on 18th January, 2022. The complaint was dismissed ex parte against the respondent builder by the learned RERA with the conclusion that the CDA has the jurisdiction to entertain such grievance of the appellant vis-a-vis violation of the sanctioned plan. The further conclusion of the RERA is that Section 14 of the Act would have application, if the project is an ongoing one but it was completed prior to the commencement of the Act, hence, the complaint is not maintainable. The said decision of the RERA was challenged in OREAT Appeal No.58 of 2022 and it was disposed of on 22nd November, 2023 with a finding that there is no legal infirmity to warrant any interference on the premise that the flats were delivered to all the allottees in 2016 prior to commencement of the Act with effect from 1st May, 2017 and the complaint was filed nearly after five years of such occupation without any convincing reasons assigned.

4. With the claim that no completion certificate has been furnished by the builder and that the CDA has not issued any such occupancy certificate either, it is pleaded by the appellant that learned authorities below denied action for the deviation in plan and unauthorized construction in the Ground floor of the apartment with a conclusion that the subject matter in dispute lies within the domain of the

CDA is grossly erroneous. Since, there is clear violation of Section 14(2)(i) and (ii) of the Act leading to the deviation of the sanctioned plan and specifications of the building, the respondent builder was required to necessarily adhere thereto and comply and as there has been no completion certificate submitted and received by the CDA, it is further claimed that the complaint was to be duly entertained with directions issued preventing the unauthorized construction but it was dismissed and again confirmed by the learned authority below disposing of OREAT Appeal No.58 of 2022.

5. Heard Mr. Mishra, learned Senior Advocate appearing for the appellant and Mr. Das, learned Senior Advocate appearing for the respondents.

6. The learned OREAT answered the following questions, such as:

(i) Whether the complaint is maintainable under the Act?

(ii) Whether the complainant has any cause of action to file the same?

(iii) Whether the respondent builder has violated the sanctioned plan and raised construction in the Ground floor?

(iv) Whether the complainant is entitled to any relief as prayed for?

7. Learned RERA held that there is no evidence to show that the project is still ongoing, hence, the same does not require any registration under the Act and that apart, the complainant purchased the flat in 2016, the year in which, the project was completed with the possession delivered and as the CDA has granted the permission to raise construction for commercial and residential purpose, in case of any deviation therefrom, the claim in that regard shall have to be taken judicial notice of by the said authority and since, the Act does not apply to the project, any such violation vis-à-vis the sanctioned plain in terms of Section 14 thereof cannot be taken cognizance of. The aforesaid decisions vide Annexure-3 stood confirmed by the learned OREAT, while disposing of the appeal filed under Section 44 of the Act.

8. Mr. Mishra, learned Senior Advocate appearing for the appellant submits that due to non-submission of completion certificate as contemplated in Section 3 1st proviso and as the violation of the sanctioned plan was challenged amongst other grounds, the complaint was maintainable. Since, no such occupancy certificate was issued for the project in question in view of the information obtained as per the Right to Information Act, according to Mr. Mishra, learned Senior Advocate, the same strongly suggested that the project is an ongoing one for the purpose of the Act and that apart, the consent of the owners of the flats was not taken for changing the sanctioned plan, which is in violation of Section 14 of the Act, inasmuch as, sub-section(2) thereof would have an overriding effect, nevertheless, the promoter may make such minor additions or alterations as may be required by the allottees or necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to all the allottees.

9. Before considering the response and reply of the respondent builder and submission of Mr. Das, learned Senior Advocate appearing for them, the Court is inclined to formulate the following substantial questions of law:

(i) Whether learned OREAT was justified in upholding the order dated 18th January, 2023 at Annexure-3 of the learned RERA in C.C. No.243 of 2021 affirming dismissal of the complaint filed by the appellant?

(ii) Whether learned OREAT ignoring the materials placed on record with such clinching evidence was correct in dismissing the complaint denying exercise of powers invocable under Section 44(6) of the Act by calling for the records from the RERA and also the CDA in view of non-submission of completion certificate?

(iii) Whether, it was justified on the part of the learned OREAT to dismiss the appeal on the ground of delay and that absence of cause of action under the Act despite respondent builder deviated the construction from its original sanctioned plan, and

(iv) Whether the learned OREAT was just and proper in accepting the consent letters of 32 flat owners contrary to the law?

10. Mr. Das, learned Senior Advocate for the respondent builder would submit that there is no any error or illegality committed by the learned authorities below and rightly, the complaint was held to be not maintainable and dismissed on the ground of delay and for the fact that the deviation, if any, alleged by the appellant is cognizable by the CDA. It is contended that the project was completed long back in 2016 and nearly after five years, the complaint was filed before the learned RERA. Since, the Act is not applicable in respect of concluded projects, the learned authorities below correctly dismissed the complaint with a conclusion that the sanctioned plan, if deviated from by the respondent builder, the project since not an ongoing one cannot be entertained as per the Act, all the more when, the allottees were delivered possession of the flats in 2016 prior to the commencement of the Act in 2017. An order of this Court in MSA No.8 of 2021 dated 24th April, 2023 is cited by Mr. Das, learned Senior Advocate to further contend that the complaint could not have been entertained by the learned RERA and hence, the impugned order vide Annexure-3 and was finally confirmed as per Annexure-1 is not to be disturbed. Such an argument is advanced by Mr. Das, learned Senior Advocate referring to the decision of the Apex Court in **M/s. Newtech Promoters and Developers Private Limited Vrs. State of U.P. and others 2021 SCC OnLine SC 1044**. Essentially, the very challenge to the maintainability of the complaint is with the plea that the project is a concluded one, hence, not amenable to the Act.

11. The following at the grounds in the appeal, such as:

(i) For that, impugned order dated 22.11.2023 in OREAT Appeal No.58/2022 arising out of C.C. No.243/2021 of ORERA, Bhubaneswar passed by OREAT dated 22.11.2023 in confirming the order of the Adjudicating Authority dated 18.01.2022 stating that there is no infirmity or illegality to warrant any interference to order for demolition of the restructuring of the Ground floor of the Apartment to commercial purpose is contrary to law and against the weight of evidence on record.

(ii) For that, the Appellate Authority has grossly failed to frame the issue at hand when the appellant who represents the owners of the flat/apartment in Metro Avenues agitated such issue primarily on the ground that the promoter/builder/respondent has carried out alteration in the sanctioned plan/layout plan in violation of Section 14 of the Act.

(iii) For that the real issue in adjudication in the instant case is that the consent of 2/3rd allottees when addition/alteration is a major change to the parking space (which cannot be deviated in any manner).

(iv) For that, the learned RERA and the Tribunal, despite repeated requests had not called for the records from the Cuttack Development Authority nor the Municipal Corporation and hence, the learned Tribunal has failed to exercise power conferred under Section 45(6) of the Act to call for requisite records for the purpose of testing the judicial propriety of order passed of the RERA.

(v) For that, the RTI reports of the Cuttack Development Authority clearly states that there is no occupancy certificate issued by it furthermore asserting that no completion certificate has been submitted for the said project, which clearly justifies and leads to an impression that the project is ongoing.

(vi) For that, the promoter has completely acted in contravention to Section 3(1) 1st proviso of the Act.

(vii) For that, the learned authority below has not applied its mind in respect of the non-registration of the project despite of the fact that completion certificate has not been issued and has consequentially not made the promoter liable for any punishment under Section 59 of the Act.

12. The learned RERA, considering the complaint, discussed the issues point wise and ultimately, reached at a conclusion that the CDA has jurisdiction to entertain the plea regarding violation of the sanctioned plan and hence, the complainant is required to approach such authority and ultimately, dismissed the same against the respondent builder. It has been held therein that as per Section 3(1) of RERA, the projects that are ongoing on the date of commencement of the Act and for which, the completion certificate has not been issued, the promoter shall have to apply for registration of the projects within three months from the date of commencement of the same but in view of sub-section 3(1)(b) thereof, no such registration of the real estate project is necessary, where the completion certificate has been issued prior to the law being enforced. In fact, the RERA was of the conclusion that there is no such evidence to show that the project is still ongoing and hence, to be registered under the Act and as the project was shown to have been completed in 2016 and thereafter, possession was delivered, it was found fit for human living and in so far as, the permission to raise construction for residential and commercial purposes, it was granted by the CDA, however, the complainant failed to clarify the extent of area constructed for being used commercially and for such other reasons, concluded that there is no clear evidence regarding violation of sanctioned plan as neither him nor any other allottees adduced evidence in support of such violation and ultimately, held that in case of violation of the sanctioned plan, the competent authority would be the CDA And such decision has been affirmed by the learned OREAT vide Annexure-1.

13. Referring to the counter affidavit, it is contended by Mr. Das, learned Senior Advocate for the respondents that the appeal filed under Section 58 of RERA is not maintainable as the appellant is a home buyer of the project purchased much prior to the commencement of the Act i.e. on 1st May, 2017 and furthermore, the project was already completed before the above cut-off date. It is claimed that the appellant filed the complaint under Section 31 of the RERA not against M/s. Metro Builders Private Limited, which is a company and a juristic person and therefore, the same is not maintainable. The contention is that the appellant and five others had earlier approached the CDA in 2024 claiming themselves to represent the flat owners to initiate action against the Managing Director of Metro Builders to restrain the latter from any such unauthorized constructions over the case land and thereafter, therein, direction was issued by the competent authority under the ODA Act and an Amin was engaged to hold an enquiry and report. It is alleged that there is no society registered under the Act, hence, the representation carrying the allegation cannot be constituted as allegation of the apartment owners or of a society, however, the UC proceeding was initiated upon such allegation. It is also alleged that once again, a similar complaint was lodged before the CMC on 31st December, 2024 and likewise, an enquiry was directed. Mr. Das, learned Senior Advocate submits that the complainant does not have the locus standi to represent the other flat owners and therefore, the action initiated against the respondents could not have been entertained by the learned authorities below. It is claimed that on 13th January, 2025, the Assistant Town Planner, CDA furnished the enquiry, wherein, it is also observed that the society, namely, Metro Avenue Residential Welfare Society has been approved and recognized but it found from the record that the matter of regularization was placed before a Committee and finally regularized through compounding on 24th May, 2023 and thereafter, the occupancy certificate was issued to the complainant on 30th November, 2023 and on 17th January, 2025, the proceeding in UC Case No.103 of 2024 was dropped taking note of the fact that the earlier UC cases involved similar issues and while claiming so, a copy of the said order as at Annexure-A/4 of the counter is referred to. It is alleged that the appellant suppressed the fact regarding disposal of UC Case No.41 of 2021 which may be termed as a fraud perpetuated on the Court and against the respondents as it was also dropped by order dated 5th April, 2024 by the Deputy Commissioner (U.C. Court), CMC. The submission of Mr. Das, learned Senior Advocate is that the entire effort of the appellant is to make repeated allegations with initiation of UC proceedings and ultimately, the complaint was filed but it had the same fate and affirmed by the learned OREAT finally. With the above contention, Mr. Das, learned Senior Advocate would submit that the impugned orders at Annexures-1 and 3 are not to be disturbed as it has been rightly concluded that the real estate project of the respondents not to an ongoing one but had been completed before the commencement of the Act.

14. Section 2(q) of the Act defines completion certificate, which means, a certificate issued by the competent authority certifying that the real estate project

has been developed according to the sanctioned plan, lay out plans and specifications as approved under the law. According to Section 3(1), 1st proviso, all such projects that are ongoing on the date of commencement of the Act and for which, completion certificate has not been issued, the promoter shall make an application to the authority concerned for registration of the project within a stipulated period which means such registration is necessary, only if, the project is ongoing and not completed as on the cut-off date. The term 'occupancy certificate' is defined in Section 2(zf) of the Act and it does mean, any such certificate issued by the competent authority permitting occupation of any building as provided under the local laws which has provision for civic infrastructure, such as, water, sanitation and electricity. As per Section 2(zq) of the Act, the sanctioned plan means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan inclusive of structural designs, if applicable permissions, such as, environment permission and such other permissions, which are approved by the competent authority prior to the commencement of the real estate project. On a reading of the above provisions, it is made to understand that upon issuance of a completion certificate by the competent authority in respect of real estate project developed according to the sanctioned plan and other specifications, occupancy certificate is issued by the local authority, only if all such provision for civic infrastructure is in place.

15. In the case at hand, the appellant alleges that the project was not completed prior to the commencement of the Act but is ongoing one and therefore, the learned authorities below ought to have considered the complaint and the facts alleged therein for appropriate action but it has not taken place, as a result, the respondents are let off despite violation since the project is not completed as per sanctioned plan. The contention of Mr. Mishra, learned Senior Advocate for the appellant is that the project required registration under the Act and the defects pointed out by the appellant and others alleging violation to the sanctioned plan of the project was to be taken notice of by learned authorities below but unfortunately, the complaint was dismissed. It is reiterated by Mr. Das, learned Senior Advocate that no illegality has been committed in dismissing the complaint and appeal as there is a definite conclusion reached at to the effect that the case is not of an ongoing project but a concluded one prior to the commencement of the Act.

16. The completion certificate serves as a proof that the building has been constructed according to the approved plan, while the occupancy certificate confirms that the building is safe and fit for occupancy. It means that without a completion certificate, the certificate of occupancy is not to be issued as the building cannot be legally occupied. In other words, the completion certificate verifies that the building is constructed as per the plan approved and sanctioned which is a pre-requisite for obtaining the occupancy certificate which signifies that the building is safe and fit for use by the buyers. The completion certificate is, in fact, a necessary step in the process of obtaining the certificate of occupancy. It may

be said that without an occupancy certificate, a building is considered illegally occupied and the buyer and owner of the property could face legal complications and penalty. In case, there is valid completion certificate granted and it is in respect of a project completed before the commencement of the Act, such project would not fall within the ambit of the law. If before the cut-off date, any such completion certificate is issued, the project shall have to be held as a completed one. It has to be understood that a project is not amenable to the Act, if a completion certificate is issued before its commencement w.e.f. 1st May, 2017. One is also required to appreciate the distinct nature of the certificates issued while the completion certificate signifies the fact that the real estate project had been developed according to the sanctioned and lay out plans as approved by the competent authority, whereas, the occupancy certificate is issued for occupation of a building having all the amenities making it fit for human living. An occupancy certificate is granted as per Section 20A of the ODA Act, consequent upon, receipt of a completion certificate issued under Section 20 thereof. According to Section 20 of the Act, every permission under the Act shall remain valid up to 3 years, during which period, completion certificate from a registered Architect or Engineer or a person approved by the authority shall be submitted and if, the same has not been done, the permission shall have to be revalidated before the expiration of the period and the same shall be subject to the rules and regulations in force. As earlier stated, only upon receipt of the completion certificate, the authority concerned under the Act is to consider grant the occupancy certificate in such form prescribed authorizing occupation of a building or the premises in part or full on payment of such fee and on such terms and conditions as may be stipulated. So, it is necessary that, before an occupancy certificate is issued as per Section 20A of the Act, a completion certificate in respect of a project must have been issued by the authority concerned.

17. The moot question is, whether, the alleged project of the respondents is an ongoing one or with the issuance of completion certificate prior to the cut-off date, it had been completed and hence, not amenable to the Act? Admittedly, the project of the respondents has not been registered. The commencement of the project is before the Act came into force. Whether, it was still an ongoing project as on 1st May, 2017 is relevant, while considering the plea of the appellant. After having discussed the relevant provisions of the Act and on a conjoint reading of the same, it is clear that what is material is the date of issuance of the completion certificate. The legality of the completion certificate is not a matter to be considered under the Act as the legislative intent is clear and conspicuous. A project should be complete as on the date of the commencement of the Act in order to take it out from the purview of registration. So, the completion certificate is a proof of closure of the project as far as the Act is concerned. When it is proved that the completion certificate is received before the Act arrived, the project is not liable to be registered and in such a case, further enquiry as to whether the project is ongoing or not is unwarranted. The manner in which the completion certificate is issued is the look out of the local authority and as earlier stated, it is granted under Section 20 of ODA

Act. The Court is also of the view that issuance of an occupancy certificate is not the determinative factor to consider whether a project is ongoing or a concluded one. It is at the cost of the repetition held that issuance of a completion certificate seals the fate to make it amenable to the Act.

18. In the case of the respondents, the complaint is received from the appellant in respect of a project said to have been completed in 2016 with delivery of possession. It has been concluded by the learned OREAT that all 37 units of the project have been delivered in 2016 prior to the commencement of the Act and the allottees including the appellant have been staying ever since then. It is made to understand from the impugned orders of learned authorities below that the flats were delivered to the allottess in 2016 and in such view of the matter, the building plan of the project was accorded in 2011 and as per the respondents, the construction was completed in 2014 with delivery of all the flats to the allottees accomplished in 2016, who are in peaceful possession of the same including the appellant. After the occupation of the flat, as it appears, the complaint was filed after a lapse of five years from the date of occupancy with the allegation by the appellant that there is a violation of the sanctioned plan. It is also made to understand that the respondents obtained the letters of 32 buyers/allottees and produced the same along with the parking agreements with a reply affidavit before the learned OREAT.

19. In so far as, the decision in **M/s. Newtech Promoters and Developers Private Limited** (supra) is concerned, the Apex Court while considering a batch of appeals at the instance of promoter/real estate developers assailing certain provisions of the Act discussed in detail and ultimately, held and observed that the law is intra vires as the legislation by the parliament is intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude and used the term converting and adjusting building or a part thereof into apartments including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act and the intention is loud and clear that the Legislature by necessary implication and without any ambiguity included the projects which are ongoing and in cases, where completion certificate has not been issued under the Act.

20. Turning to the facts of the case, the dispute is related to alteration of the sanctioned plan in respect of the Ground floor as there has been no any plan to have commercial units in that floor and hence, the complaint was filed. As is understood, the Ground floor of the multi-storied building has been earmarked for parking and road; First floor shall have residential and commercial units; and rest of the floors would have residential flats and since the petitioner alleged alteration in the Ground floor, the matter was carried to the RERA but it has not been entertained on the premise that the construction of the building with delivery of the flats to the owners has taken place prior to the commencement of the Act and ultimately, upheld by the learned OREAT by the impugned order i.e. Annexure-1. In respect of the complaint

regarding change in sanctioned plan, action was earlier initiated under Section 91(1) of the ODA Act. It is the allegation of the petitioner that there has been extensive alteration by the builder vis-à-vis First floor of the building project in deviation of the approved plan of the CDA in clear contravention to Section 14(i) and (ii) of the Act. As earlier stated, the learned authorities below declined any such interference with the conclusion that the project is a completed one and that apart, the flats are being possessed by the owners after being delivered in 2016.

21. It is claimed by the petitioner that information was obtained under the RTI Act on the approved plan and other details received on 16th March, 2012. It is pleaded on record that the builder has not submitted the EC, rather, applied for regularization under a scheme seeking modification of the plan and there has been no issuance of any occupancy certificate. It is also alleged that the completion certificate has not been issued to the builder either as per the information provided by the CDA. In response to the above, it is claimed by the respondent builder that site inspection report has been prepared by an Architect and it has been placed before the Planning Member, CDA with a request for approval of plan, such as, regularization of existing S+4 storied residential and commercial building constructed over the plot in question.

22. The findings of the RERA as at Annexure-3 reveals that the project is not an ongoing one and therefore, registration under Section 3 of the Act is not necessary, inasmuch as, the petitioner purchased the flat in 2016 and hence, it was completed and thereafter, the possession was delivered. Furthermore, it is held that the petitioner failed to clarify the extent of area constructed for commercial purpose and in absence of any measurement, it was not possible to know as to if the entire Ground floor or a part thereof has been used for commercial purpose with the alleged construction and therefore, difficult to reach at a conclusion regarding violation of sanctioned plan merely by referring to the evidence produced and ultimately, held that the CDA has the jurisdiction instead to deal with the application regarding any such violation and such a finding has been affirmed by the learned OREAT as per Annexure-1.

23. To reiterates, the seminal question is, whether, the subject matter is amenable to the RERA? It is pleaded on record by the respondent builder that the completion certificate was issued in respect of the project certifying it to have been completed on 30th December, 2016 but inadvertently, the same could not be produced before the learned OREAT, which is instead submitted to the CDA and the promoter has also deposited the requisite fee on 29th April, 2017 for scrutiny of the same. The Court is of the considered view that as against such claim, necessary verification was to be made since issuance of the completion certificate prior to the commencement of the Act takes away the project from the jurisdiction of the RERA.

24. At the cost of the repetition, it is to be held that a project demands registration as per Section 3 of the Act provided the same is not completed as on the

date of commencement of the Act and in that case, the promoter shall have to move the application to the concerned authority. The Act stipulates that the sanctioned plan and project specifications shall have to be adhered to as per Section 14 thereof. It is further stipulated therein that any addition and alteration in the sanctioned plan, layout plans and specifications etc. in respect of an apartment, plot or building, as the case may be, which are agreed to be taken shall not be carried out by the promoter without the previous consent of the person, who has been disclosed or furnished with the details thereof but the same is not to include minor changes as may be required by the allottee or when such addition and alteration is considered necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer. It does mean, any such change or alteration of the plan sanctioned with all such specifications is not to be subjected to any alteration or addition, unless it is minor, without the consent of the allottees. That apart, the promoter has the obligation in view of Section 11(4) of the Act to discharge it and in case of any such lapses, a complaint in that regard may be entertained by the authority concerned. One of the obligations of the promoter as per sub-section 4(b) of Section 11 of the Act is that the promoter shall be responsible to obtain the completion certificate or certificate of occupancy or both as applicable from the competent authority as per the rule or law or such other law in place and to make it available to the allottee individually or to the association of the allottees, as the case may be. On a reading of the above provisions, it is understood that no any deviation is permissible to a sanctioned plan under the Act unless there is consent of the allottees. In fact, Section 14(3) of the Act stipulates that in case of a structural defect or any other defect in the workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of such promoter to rectify such defects without further charge within thirty days and in the event of failure to rectify the same within such time, the aggrieved allottees shall be entitled to receive compensation in the manner provided under the Act. So, therefore, all such compliances are to be made by a promoter, while dealing with a project provided the same is ongoing one as on the date of commencement of the Act.

25. Without the completion certificate having been obtained, offering possession of flats is per se illegal under the Act. If a builder offers possession without the said certificate, the allottees shall have several options including filing of a complaint with the RERA seeking a refund or claiming compensation under the Act. The completion certificate is indeed crucial as it signifies that the building is constructed according to the approved plan. Such a certificate and occupancy certificate shall have to be obtained by the builder before handing over possession of the flats to the allottees, who are assured that the property is built according to the approved plan and is safe for habitation and in case where such certificate is not managed, the allottee may have the right to refuse possession and can also seek

legal recourse including filing of the complaint under the Act. At the same time, the builder, who violates the provisions of the Act, rule and regulation by offering possession without completion certificate is to invite penalty and legal action. It is, hence, to be concluded that an allottee makes a developer responsible and duty bound to obtain necessary certificates and clearances before offering possession of the flat to him. In **Dharmendra Sharma Vrs. Agra Development Authority, (2025) 1 SCC 422**, it has categorically held that an offer made by a real estate developer to a home buyer to take possession of a flat without obtaining completion certificate and firefighting clearance would not be considered valid and does amount to deficiency in service and consequently directed the concerned Development Authority to pay compensation due to the inability on the part of the developer to provide completion certificate and such clearance when the flat was handed over to the allottee, while dealing with a consumer complaint. It cannot, therefore, be gainsaid that the certificate and the clearances are sine qua non for any legitimate delivery of a housing project and at times, builders often try to avoid such responsibility in order to shift the onus to the buyers and the law is clear enough to meet such a contingency necessitating the former to obtain all such documents before the flats are being handed over to the latter. It is reiterated that Section 11(4)(b) of the Act mandates that a developer has the obligation to obtain completion and occupancy certificates from the competent authority and only after obtaining the same, the possession of the flats to be handed over to the buyers. Without elaborating further, the conclusion of the Court is that issuance of completion certificate in respect of a flat is essential and if the same has not been obtained by the promoter or developer in respect of a project ongoing at the time of the commencement of the Act, for such a lapse, a complaint is entertainable by the RERA.

26. As to the instant case, the respondent builder claims that the completion certificate was issued in respect of the project and it was over before the law came into force. It is claimed that the completion certificate which could not be produced before the learned OREAT certified the project to be over on 30th December, 2016 and it was placed before the CDA with payment of a fee of Rs.1000/- for scrutiny of the same. It is not understood why and what prevailed upon the respondent builder not to bring the said fact to the notice of the learned OREAT. Perhaps, it was not demanded by the learned authorities below for a conclusion that the project was over with delivery of flats in 2016 and hence, cognizable by the CDA, in case of any such violation of the sanctioned plan. Under the above circumstances, the Court is of the humble view that learned OREAT is required to verify the record to ascertain as to when the completion certificate was issued in respect of the flat of the petitioner or for that matter, the project in question and to ascertain, if at all, it has been placed at the disposal of the CDA as claimed by the respondent builder in order to confirm, whether, the project to be an ongoing or a concluded one as on the date, when the Act came into force. It is, therefore, concluded that even though there is delivery of possession of the flat, in absence of a completion certificate, as

on the date of such delivery, it has to be held that the project is an ongoing one and hence, amenable to the Act and if such a decision is reached at by the learned OREAT after verification of the record lying in the custody of the CDA with further enquiry as necessary and expedient with a satisfaction reached at with issuance of the completion certificate prior to the cut-off date, the petitioner, in that case, shall have to approach the CDA alleging alteration or addition in the sanctioned plan, layout or specifications, since the RERA lacks jurisdiction to deal with the complaint under Section 31 of the Act.

27. On such other grounds advanced by the respondents regarding action against the Managing Director and not the company, a juristic entity, the Court is of the view that any such complaint may be filed against a promoter, even an allottee or even a real estate agent and hence, leaving out a promoter or a company becomes really insignificant looking at the intent, purport and objective of the law, which is introduced primarily to protect the interest of the consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal. One more ground raised to the effect that the petitioner alone cannot maintain the complaint as against the claim that other flat owners did offer the consent, it is again immaterial provided the consent is according to law and that apart, any such complaint may be filed and received by the RERA even at the instance of an aggrieved person inclusive of the association of the allottees or any voluntary consumer association duly registered under law in view of the Explanation to Section 31(1) of the Act,. Thus, the conclusion is that the above grounds advanced and pleaded by the respondents opposing the complaint and the intended action cannot be sustained.

28. On account of the above conclusion, the substantial questions of law formulated by the Court stand answered accordingly.

29. Hence, it is ordered.

30. In the result, the appeal is allowed. As a necessary corollary, the impugned orders as at Annexures-1 and 3 are set aside. Consequently, the learned OREAT is directed to call for the records from the CDA and such other authority concerned to find out and ascertain about the date of issuance of the completion certificate in respect of the flat or the project in question in view of the rival claims of the parties and thereafter, to deal with the proceeding in OREAT Appeal No.58 of 2022 hereby restored to file followed by a decision and order in accordance with law preferably within a month from the date of receipt of a copy of this judgment and till such time, the disposal of the appeal is achieved, any such construction vis-à-vis the floor(s) in question of the apartment for commercial purpose shall be deferred or in case, it has already commenced, to be discontinued till then.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter MSA Allowed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-248

BELAMATI DIGAL & ANR.
V.
PRAVABATI NAYAK & ORS.

[CMP NO. 1308 OF 2024]

08 AUGUST 2025

[SASHIKANTA MISHRA, J.]

Issue for Consideration

Whether the Court by applying power U/s. 152 of C.P.C. can correct the mistake committed by the parties.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Section 152 – Amendment of Judgments, decrees or orders – The application of the plaintiff for correction of the schedule Mouza in the judgment & decree has been allowed by the Court below – Challenging such order of correction, present application has been filed – It was pleaded that by applying section 152 of C.P.C the court can correct its own arithmetic & typographical error not the mistake of the parties & such correction cannot be made without the amendment of plaint – On the other hand it was pleaded that if the correction would not be made then it would amount to depriving the plaintiffs the fruits of the decree – Issue raised that, whether the court by applying power U/s. 152 of C.P.C or taking the aid of section 152 can correct the mistake committed by the parties?

Held: Yes – This Court has already held that if the decree in so far as it relates to description of the suit property is left uncorrected it would result it being unenforceable depriving thereby the decree holder from the fruits thereof – As such, the decree can be corrected even without amending the plaint schedule. (Para 11)

This is also a case where the principle *"actus curiae neminem gravabit'* i.e, 'the act of Court shall prejudice no person' would fully apply – It must also be kept in mind that apart from Section 152, the Court has inherent power under Section 151 of CPC which permits it to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court while exercising the power of the Court under Section 151 of CPC. (Para 12)

Citations Reference

Netrananda Dalai –v- Ratnabati Nayak (Dead) and another, **2016 (II) ILR-CUT 372;** Prakash Chandra Patra vrs. Parbati Patra and others, **2022 II**

OLR 588; Niyamat Ali Molla v. Sonargon Housing Co-operative Society Ltd. and Ors., **AIR 2008 SC 225;** Jayanta Kumar Rath (since dead) through L.Rs. –v–Pravas Kumar Rath (since dead) through L.Rs., **2016 (I) ILR-CUT 969;** Bela Debi v. Bon Behary Roy and other, **AIR 1952 CAL 86;** K.K. Velusamy v. N. Palanisamy, **(2011) 11 SCC 275 – referred to.**

List of Acts

Civil Procedure Code, 1908.

Keywords

Judgment; Decree; Order; Amendment; Correction; Arithmetic & Typographical error; Amendment of decree; Amendment of plaint; Inherent power of the Court; Mistake of the parties; Omission in judgment; Accidental slip; Ends of Justice; Abuse of the process of the Court.

Case Arising From

Order dated 09.08.2024 passed by the Civil Judge (Senior Division), G.Udayagiri, in CMA No. 03 of 2024.

Appearances for Parties

For Petitioners : Mr. A.K.Mishra
For Opp. Parties : Mr. S.K.Mishra

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

The petitioners are defendant Nos. 3 and 5 in C.S. No. 29 of 2023 and Opposite Party Nos. 3 and 5 in CMA No. 3 of 2024 in the Court of learned Civil Judge (Senior Division), G. Udayagiri. Said suit was filed by Opposite Party Nos. 1 to 6 (plaintiffs) while the Opposite Party No. 7 to 22 are proforma defendants. In the present application, the petitioners seek to challenge order dated 09.08.2024 passed by the Court below in the aforementioned CMA whereby, the name of the suit schedule Mouza, as per the plaint schedule, was corrected by the Court below after passing of the judgment and decree exercising power under Section 152 of CPC.

2. The facts of the case, briefly stated, are that the suit was filed by the plaintiffs seeking declaration of their right, title and interest over the suit property, declaration that the unregistered 'Will' dated 07.09.1981 is valid and binding on all as per law, permanent injunction and relief. The suit was decreed vide judgment dated 28.03.2024 and the corresponding decree was drawn out by the Court on 08.04.2024. On 29.04.2024, the plaintiffs filed the aforementioned CMA for correction of the suit schedule Mouza in the judgment and decree as per Section 152 of CPC, on the ground that the same was mistakenly mentioned as Raikia instead of Piserama which is a clerical mistake made by the advocate's clerk. The present

petitioner filed objection stating that the plaintiffs should have sought for amendment of the plaint schedule before adducing evidence in the suit whereby the defendants would have had opportunity to file additional written statement. Further, there is no provision in law permitting amendment of the plaint after passing of the judgment and decree.

3. The Court below, after hearing both sides allowed the petition by holding that the defendants had admitted in the written statement that the suit land is situated in Mouza Piserama. The ROR marked Ext. 1 also mentions the name of the Mouza as Piserama. On such basis, the Court held that the plaintiff should not be deprived of the fruits of the decree more so, as defendant No.3 being examined as witness admitted that the suit schedule property is situate in Mouza Piserama. The petition for correction was thus allowed by the impugned order.

4. Heard Mr. A.K.Mishra, learned counsel for the petitioners and Mr. S.K.Mishra, learned counsel for the Opposite Parties.

5. Mr. Mishra would argue that the provision under Section 152 of CPC is meant for correction of arithmetic and typographical errors committed by the Court but cannot be invoked for correction of any mistake committed by the parties in the pleadings. In the instant case, the plaintiffs never sought amendment of the plaint schedule before adducing evidence. Therefore, after passing of the decree they cannot seek correction of the decree without amending their plaint. Mr. Mishra, has relied upon the following judgments of this Court in support of his contentions:

(1) Netrananda Dalai –v- Ratnabati Nayak (Dead) and another, 2016 (II) ILR-CUT 372.

(2) Prakash Chandra Patra vrs. Parbati Patra and others 2022 II OLR 588.

Citing the above decisions, Mr. Mishra forcefully argues that the Court below has completely misconstrued the scope of the Section 152 of CPC by allowing the application for correction of a mistake not committed by Court but by the plaintiffs themselves.

6. Per contra, Mr. S.K.Mishra, would argue that the fact that the suit property is situated in Mouza Piserama is admitted by the defendants in their written statement. Defendant No.3 being examined D.W.1 also admitted the said fact. The ROR marked as Ext.1 mentions Mouza Piserama. Since the decree was passed in respect of the suit property which is situated in Mouza Piserama mentioning the same as Raikia would amount to depriving the plaintiffs of the fruits of the said decree. The Court below, realizing the above has therefore, rightly allowed the application for correction. As regards the scope of Section 152 of the CPC. Mr. Mishra has relied upon a judgment of the Supreme Court in the case of ***Niyamat Ali Molla v. Sonargon Housing Co-operative Society Ltd. and Ors.***, AIR 2008 SC 225 to submit that the true meaning of Section 152 should not be given a narrow construction, inasmuch as it gives power not only to rectify any accidental slip or omission in a judgment, decree or order but might include an accidental slip or omission in the conduct of the parties themselves.

7. I have given my anxious consideration to the contentions raised by the parties. The admitted facts are that in the plaint filed by the plaintiffs the suit schedule property was described as under;

> *" Schedule of the Suit Properties*
>
> *Name of R.T. Mouza Khata No. Plot Nos. Kissam Area in Hc.R*
> *Burdha Digal Raikia 62 260 Gharabari 0.5650*
> *District:- Kandhamal (Odisha)*
> *East:- Land of Boida Nayak enjoyed by Suresh Nayak.*
> *West:- Land and house of Pitambara Digal*
> *North:- Main road*
> *South:- Houses of Manab Digal, Satyaban Didgal and Sudhir Digal"* [*Emphasis Added*]

In the written statement filed by the defendants, the following is mentioned under Paragraph No. 4.

> *"That, the Para No.6 of the plaint is also not true and correct. That, the suit scheduled land is the self acquired property of Burdha Digal and in his life time, Burdha Digal sold the suit scheduled land of Khata No. 62, mauza-Piserama, pot No. 260, Kisama Gharabari, Area Hc.0.565R in favour of Balamati Digal in presence of villagers namely Nikalas Digal, Nakula Digal, Bibhisana Pradhan and others as per the local tradition (Mati Teka) and from the date of purchase, Balamati Digal is in possession till today alongwith legal heirs namely Aparajita Digal, Praija Digal and Chandan Digal and Sujata Digal."*

In the judgment passed by the Court below there is reference to the averment made by the petitioners in regard to the suit schedule land in paragraph 3 as follows:

> *"3.XX XX XX The suit scheduled land is the self-acquired property of Burdha Digal and in his lifetime Burdha Digal sold the suit schedule land of Khata No.62, Plot No.260, Area H0.565R, Mouza:-Piserama, Kisama: Gharabari, in favour of the Defendant No.3 Balamati Digal in presence of villagers namely Nikalas Digal, Nakula Digal, Bibhisana Pradhan and others as per the local tradition (Mati Teka) and from the date of purchase the Defendant No.3 Balamati Digal is in possession till today along with legal heirs namely Aparajita Digal(Defendant No.5), Praijai Digal(Defendant No.7), Chandan Digal(Defendant No.6) and Sujata Digal(Defendant No.4). XX XX XX"*
> [*Emphasis Added*]

The Court below, under issue Nos. III, IV and V has taken note of the evidence of P.W.1 regarding Khata No, Plot No., area and Kisam of the suit schedule property. It is nobody's case that the said property is situate in Mouza Raikia and not Piserama. Thus, the position that the disputed property situates in Mouza Piserama and not Raikia was within the knowledge of both parties. As already stated, the suit was decreed in part by granting some of the reliefs claimed by the plaintiffs particularly declaring their title over the suit schedule property and that the 'Will' dated 07.09.1981 is valid. In other words, the judgment and decree was passed in respect of the property situate in Mouza Piserama and not Raikia. In fact it is nobody's case that any such property corresponding to the particulars mentioned in the schedule actually situates in Mouza Raikia. Had the decree been

passed mentioning the suit property as being situate in Mouza Raikia, it would tantamount to an un-enforceable decree, countenanced in law.

8. Reading of the impugned order reveals that the Court below has taken note of the pleadings of the parties and also the admission of D.W.1 that the property situates in Mouza Piserama and thus was of the view that not allowing the correction to the decree sought for by the plaintiffs would amount to depriving them of the fruits of the decree.

9. The question that now arises for consideration is, whether the Court below had the power to do so. As already stated, the application for correction was filed under Section 152 of CPC. Section 152 reads as follows;

> *"Sec 152-Amendment of judgments, decrees or orders.—Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."*

The provision has been subject to interpretation by different Courts including this Court in the case of ***Netrananda Dalai (supra).*** This Court, relying upon an earlier judgment passed by this Court in the case of ***Jayanta Kumar Rath (since dead) through L.Rs. –v- Pravas Kumar Rath (since dead) through L.Rs.,*** reported in 2016 (I) ILR-CUT 969, held the view that Section 152 does not comprehend the correction of any error on the part of the litigating parties and that the error sought to be corrected must be of the Court. In the case of ***Pratap Ch. Patra, (supra),*** a coordinate Bench of this Court, also relying upon ***Netrananda Dalai and J.K.Rath (supra)*** held as follows:

> *"On a plain reading of the provision, it is manifest that clerical or arithmetical mistake in the judgment and decree or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either on its own motion or on an application made by any of the parties to the said suit of proceeding. In the case at hand, it is admitted by the Plaintiffs Petitioners that the mistake was in the description of Schedule 'A' of the plaint. It is the case of the Petitioners that in view of such mistake in the schedule of the plaint, the mistake/error has crept in the judgment and decree."*

The above judgments have been cited by the petitioners to buttress their contention that the so-called error in description of the property being that of the plaintiffs themselves, the provision under Section 152 could not have been invoked and exercised.

10. The above being the settled position of law, it would now be apposite to refer to the judgment of the Supreme Court in the case of ***Niyamat Ali Molla (supra)*** cited by learned counsel for the Opposite Parties. In the said case, the Supreme Court also interpreted the scope of Section 152 and held as follows:

> *"19. Code of Civil Procedure recognises the inherent power of the Court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the Code but also inherent power in general. The Courts also have duty to see that the records are true and present the correct state of affair. There cannot, however, be any*

doubt whatsoever that the Court cannot exercise the said jurisdiction so as to review its judgment. It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the Court both in exercise of its power under Section 152 as also under Section 151 of the Code of Civil Procedure. Such a power of the Court is well recognized."

While there is no doubt as regards the power of the Court to rectify its own mistake, the question is, can the aid of Section 152 be taken to correct an error committed by the parties themselves. Similar question arose before the Calcutta High Court in the case of ***Bela Debi v. Bon Behary Roy and other***, reported in AIR 1952 CAL 86 referred to with approval in ***Niyamat Ali Molla (supra)*** wherein, the following was held.

"21.The question came up for consideration before the Calcutta High Court in Bela Debi (supra), wherein it was held :-

"It will thus be seen that there is a diversity of judicial opinion as to how far a Court can go in rectifying its own decree. Where, of course, the amendment is in order to carry out its own meaning, there is no doubt about the power of the Court in effecting such corrections (see In re St. Nazaire Co., (1879) 12 Ch. D. 88; Preston Banking Go. v. Allsop, (1895) 1 Ch. 141). Nor can it be disputed that it has power to rectify mistakes which are of a ministerial kind (see Mellor v. Swire, (1885) 30 Ch. D 239). But the difficulty arises when it is found that the mistake is not one of the Court but is a mistake of the parties themselves. Mistakes in the description of properties in deeds, is illustrative of this kind of mistake. It is the parties who have made the mistake, and the mistake is continued in the pleadings and the decree. According to one view, section 152 is confined to acts of the Court and, therefore, mistakes of parties made in the pleadings or deeds and documents evidencing the transaction cannot be corrected (Ramchander Sarup v. Mazhar Hussain, AIR (6) 1919 All 264). The second view is that under this section and section 151, plaint, judgment and decree all can be amended (see Shiam Lal v. Mt. Moona Kuar, AIR (21) 1934 Oudh 352 at p. 354; Ram Chandra v. Jamna Prosad, AIR (22) 1935 oudh 92). A third view is that it is permissible under such circumstances to amend the decree and it is unnecessary to amend the plaint (Badri Pande v. Chhangur Pandey/AIR (20) 1933 All 102; Jamini Bala Biswas v. Bank of Chettinad Ltd., AIR (22) 1935 Rang. 522 at p. 523). Lastly, there is the view, which I have already noted, which goes to the extent of holding that the Court cannot only rectify pleadings and decrees but rectify documents evidencing the transactions themselves, upon which the suit was founded.I shall now state, what in my opinion, is the true meaning of section 152, Civil P. C. I am not in favour of giving a narrow construction to section 152. I do not agree that section 152 must necessarily refer to an 'accidental slip or omission' of the Court itself, or its ministerial officers. It does not say so in the section itself, and should not be interpreted as such. Where it is the Court's own accidental slip or omission, or that of its ministerial officers, there can be no doubt that the section applies. <u>But it gives power to rectify any accidental slip or omission in a judgment, decree or order, and might include an accidental slip or omission traceable to the conduct of the parties themselves</u>. But it must be an 'accidental slip or omission'. A mistake made by the parties in a, deed upon which the suit is founded, and repeated in the judgment, decree or order, may or may not be an 'accidental slip or omission.' <u>Where it is clear, that such is the case, then I do not see why the Court cannot set it right. In doing so, what is going to be rectified is, the judgment decree or order, and it is</u>

not at all necessary to rectify either the pleadings or the deed. In making such corrections, however, the Court can only proceed on the footing that there could be no reasonable doubt as to what it really intended to say in its judgment decree or order. It cannot go into any disputed questions. If there is a particular description of a property in a deed, and a suit has been instituted on the strength of that description, and a decree passed, it is not permissible in proceedings under section 152 to go into disputed questions as to what property was intended to be dealt with, by the parties in the deed. I agree with Gentle C. J. that such a question can only be dealt with, in appropriate proceedings under the Specific Relief Act (see T. M. Ramakrishnan Chettiar v. G. Ramakrishnan Chettiar, AIR (35) 1948 Mad 13). But it may so happen that the mistake is so palpable that nobody can possibly have any doubt as to what the parties meant or what the Court meant when it passed its judgment, decree or order. For example, suppose in a conveyance a property is described as '24 Chowringhee Road, Bhawanipur'. It would be clear to everybody what property was meant, and it cannot be seriously doubted that in abating that the property was in 'Bhawanipur', the parties had committed an 'accidental slip or omission'. In such a case, I would not go to the extent of holding that the Court has no power to correct the judgment, decree or order which has repeated the mistake. In doing so, the Court need not correct the pleadings or the document but its own decision. In my opinion, it is not necessary in such a case to amend the pleadings or to rectify the deed, therefore, no question arises as to whether the Court has power to do so. It is, however, quite clear that such cases must be of rare occurrence, and the scope thereof is severely limited. The power cannot be extended to the resolving of controversial points, and a decision as to what the parties intended or did not intent to do. Apart from this exceptional case, I hold that the Court cannot correct errors anterior to the proceedings before it. For such a purpose, the proper proceeding is by way of a suit under Section 31, Specific Relief Act. xx xx xx"

[Emphasis Added]

11. Having noted the ratio decided in the cited cases, this Court would once again refer to the facts of the case to observe that the case is not one wherein there was any doubt as regards the location of the suit property by either of the parties. Notwithstanding the mistake in the plaint schedule, the averments made in the plaint and the written statement coupled with the admission of D.W.1 in her evidence, makes the position clear. So, it is not a case where correcting the Mouza would mislead anyone much less the defendant. In other words, the defendants cannot be said to be taken by the surprise. Having admitted that the property situates in Mouza Piserama in their written statement they cannot take the plea that had a petition been filed by the plaintiffs for amendment of the plaint, they would have had the opportunity of filling an additional written statement. Assuming such an application had been filed then, in view of the specific pleading in their written statement quoted above, admitting the location of the suit property in Mouza Piserama, they obviously could not have taken a different view. So, this is not a case where any controversy exists as regards location of the suit land necessitating further enquiry. It would be worthwhile at this stage to also refer to the following observations made by the Supreme Court in ***Niyamat Ali Molla (supra)***

"26. It is not a case where the defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by

reason of an amendment, one property is being substituted by the other. If the Court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands. Only because some blanks in the schedule of the property have been left, the same, by itself, may not be a ground to deprive the respondents from the fruit of the decree. If the appellant herein did not file any written statement, he did so at its own peril. Admittedly, he examined himself as a witness in the case. He, therefore, was aware of the issues raised in the suit. It is stated that an Advocate-Commissioner has also been appointed. We, therefore, are of the opinion that only because the JL numbers in the schedule was missing, the same by itself would not be a ground to interfere with the impugned order."

This Court has already held that if the decree in so far as it relates to description of the suit property is left un-corrected it would result it being unenforceable depriving thereby the decree holder from the fruits thereof. As such, the decree can be corrected even without amending the plaint schedule.

12. This is also a case where the principle *"actus curiae neminem gravabit'* i.e, 'the act of Court shall prejudice no person' would fully apply. It must also be kept in mind that apart from Section 152, the Court has inherent power under Section 151 of CPC which permits it to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court while exercising the power of the Court under Section 151 of CPC. In the case of ***K.K. Velusamy v. N. Palanisamy***, reported in **(2011) 11 SCC 275,** the Supreme Court summarized its findings under paragraph 12 of the judgment as follows-

12. *The respondent contended that Section 151 cannot be used for reopening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that Section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of Section 151 has been explained by this Court in several decisions [see Padam Sen v. State of U.P. [AIR 1961 SC 218 : (1961) 1 Cri LJ 322] , Manohar Lal Chopra v. Seth Hiralal [AIR 1962 SC 527] , Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] , Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava [AIR 1966 SC 1899] , Nain Singh v. Koonwarjee [(1970) 1 SCC 732] , Newabganj Sugar Mills Co. Ltd. v. Union of India [(1976) 1 SCC 120 : AIR 1976 SC 1152] , Jaipur Mineral Development Syndicate v. CIT [(1977) 1 SCC 508 : 1977 SCC (Tax) 208 : AIR 1977 SC 1348] , National Institute of Mental Health & Neuro Sciences v. C. Parameshwara [(2005) 2 SCC 256] and Vinod Seth v. Devinder Bajaj [(2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212]]. We may summarise them as follows:*

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is "right" and undo what is "wrong", that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.

(c) A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and in the facts and circumstances of the case. The absence of an express provision in the Code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court."

13. True, on the face of an available provision, the Section 151 cannot ordinarily be taken resort to and that the power under Section 151 has to be with for circumspection and care but then, if in a case like the present one, where grave injustice would result by non-exercise of such power, the Court should not shy away from doing so. It is stated at the cost of repetition that it would prevent the decree holder from getting its benefits, thereby rendering it a paper decree. The Court below must therefore, be deemed to have exercised its inherent power under Section 151 of CPC along with Section 152 of CPC.

14. From the foregoing narration, this Court is left with no doubt that the Court below approached the issue from the right perspective and has passed the impugned order to ensure that the decree holder is not deprived of the fruits of the decree passed in his favour. As between an unenforceable and the technical consideration of limitation on exercise of power under Section 152, the cause of former obviously has to be advanced. The Court below must therefore, be held to have rightly allowed the application for correction.

15. In the result, this Court fully concurs with the reasoning adopted by the Court below and therefore, finds no reason to interfere. Resultantly, the CMP is dismissed.

Headnotes prepared by:
Shri Jnanendra Kumar Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CMP Dismissed.

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2025 (III) ILR-CUT-257

M/s. TASTY FOOD PRODUCTS
V.
SECRETARY, ORISSA STATE COUNCIL
FOR CHILD WELFARE & ANR.

[RSA NO. 207 OF 2016]

20 AUGUST 2025

[SASHIKANTA MISHRA, J.]

Issue for Consideration

Whether the fresh period of limitation would start running upon disposal of the Writ Petition or from the rejection order of the authority as directed in the writ petition.

Headnotes

LIMITATION ACT, 1963 – Section 14 – Period of limitation – Cause of Action – The plaintiff supplied bread (bun) as per the letter dated 03.02.2001starting from 07.03.2001 to 14.12.2001 – The plaintiff claims that he has raised eleven bills amounting to ₹2,64,426/-, the last bill raised on 14.12.2001 – The plaintiff filed a Writ petition on 06/07/2004 – The Writ petition was disposed of on 18.09.2007 with a positive direction to the Defendant No. 2 to consider the case of plaintiff – The claim of the plaintiff was considered and rejected on 22.11.2007 – The suit was filed on 12.11.2010 within three years from the date of rejection i.e. on dated 22.11.2007 – Whether the fresh period of limitation would start running upon disposal of the Writ Petition or from the rejection order of the authority as directed in the writ petition?

Held: – Regardless of the date of arising of the cause of action, this Court still directed defendant No.2 to consider the case of the plaintiff – This amounts to giving rise to a fresh cause of action – Admittedly, the claim of the plaintiff was considered and rejected on 22.11.2007 without citing any reason and the suit was filed on 12.11.2010, i.e. within three years from the date on which the cause of action arose i.e. 22.11.2007 – This Court having entertained the writ application and issued a particular direction, the same cannot be ignored to hold that the original cause of action had revived and along with it the period of limitation that had begun to run since 14.12.2001 – It would be an absurd proposition as it would set at naught the order of this Court – The cause of action as on 14.12.2001 related to non-payment of the plaintiff's dues but the cause of action on 22.11.2007 was rejection of the petitioner's claim upon consideration of the documents supplied by him as directed by this Court – Both cannot be equated with each order – The matter would have been different had the plaintiff not approached this Court

within the period of limitation, but having done so, he cannot be denied the benefit of saving of limitation firstly, because of pendency of the writ application for more than three years and secondly, for arising of a new cause of action basing on the order passed by this Court. (Para 21)

Citations Reference

Union of India vs. M.K. Sarkar, **(2010) 2 SCC 59;** Simplex Infrastructure Ltd. vs. Union of India, **(2019) 2 SCC 455– referred to.**

List of Acts

Limitation Act, 1963.

Keywords

Preponderance of probabilities; Consideration; State; Dead; Limitation; Rejection of claim; Cause of action; Representation; Reason; Exclusion of period of limitation

Case Arising From

The judgment dated 17.02.2016 and decree passed by Addl. District Judge-cum-Special Judge, CBI-II, Bhubaneswar in RFA No. 4/636 of 2015/2014 arising out of the judgment and decree dated 04.09.2014 passed by the 2nd Addl. Senior Civil Judge, Bhubaneswar in M.S. No. 157/1907 of 2012/2010.

Appearances for Parties

For Appellant : Mr. P.K. Rath, Sr. Adv. with M/s. R.N. Parija, A.K. Rout, S.K. Singh, S.K. Pattnaik, A. Behera, P.K. Sahoo, A.K. Behera, S.K. Behera & B.K. Dash.

For Respondents : M/s. Dayananda Mohapatra, Sr. Adv. with Mr. G.R. Mahapatra, J.M. Barik, P.K. Singh Deo & S. Rout, [For R-1]
Mr. S.N. Pattnaik Addl. Govt. Adv. [For R-2]

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

This is a plaintiffs' appeal against a reversing judgment. The suit of the plaintiff for realization of Rs.2,32,426/- from the defendant No.2 was decreed by the trial Court and reversed in appeal.

2. For convenience, the parties are referred to as per their respective status before the Trial Court.

3. The case of the plaintiff, briefly stated, is that it is a proprietary concern engaged in manufacturing and supply of bread (bun) having its factory at Rasulgarh in Bhubaneswar. Defendant No.2 is a registered society working under the administrative control of the Government in Department of Women and Child Development (defendant No.1). The plaintiff offered to supply bread to defendant

no.2 meant for distribution among the street children and accordingly submitted quotation on 25.01.2001. Defendant no.2 accepted the quotation and requested for supply of bread to different centers with effect from 01.02.2001. The plaintiff also used to supply bread earlier till the end of December, 2000. The plaintiff, pursuant to the order, supplied bread daily and submitted bills on different dates between 07.03.2001 to 14.12.2001 in all, amounting to Rs.2,67,426/-. Out of the said amount, defendant No.2 paid Rs.10,000/- in cash, Rs.20,000 by cheque dated 13.06.2001 and again cash of Rs.5000/- on 15.03.2002. Thus, the plaintiff received a sum of Rs. 35,000/- from defendant No.2 but the balance amount of Rs.2,32,426/- was not paid despite several requests. On 07.06.2003, the plaintiff wrote to defendant No.2 requesting for realization of payment. Since no action was taken, the plaintiff approached this Court in W.P.(C) No. 6993 of 2004. During pendency of the writ application, the petitioner also approached the Lokpal, who by order dated 22.06.2006, held that the Secretary of the Society had failed to discharge his duty. Further, this Court disposed of the writ application on 18.09.2007 directing defendant No.2 to consider the representation of the plaintiff within two months. Copy of said order being submitted by the plaintiff on 26.09.2007, the plaintiff was asked to submit the relevant papers as the file was missing. The plaintiff submitted all the attested copies of documents on 12.10.2007. But by letter dated 22.11.2007, the claim of plaintiff was rejected by defendant No.2. The plaintiff thereafter served notice under Section 80 of CPC on the defendants on 09.08.2010. Since there was no response, he filed the suit.

4. Defendant No.1-State filed written statement stating that defendant No.2 being an autonomous and independent body, it has no administrative control over the same. The grievance of the plaintiff relating to arrear claim being received on 22.07.2003, the same was forwarded to defendant No.2 for consideration and payment of the admissible dues. There is no contractual relationship between the plaintiff and defendant No.1 and therefore, no liability could be saddled on it.

5. Defendant No.2 filed written statement questioning the genuineness of the receipts/bill submitted. The payment of Rs.35,000/- made by it was stated to have been made for the supply made in the year 2000 but not against the supply made in 2001. Pursuant to the order of this Court, the plaintiff's case was thoroughly verified but as the claim was found to be illegal, forged and fabricated, the same was rejected.

6. Basing on the rival pleadings, the trial Court framed the following issues for determination.

> *"1. Whether the suit is maintainable?*
>
> *2. Whether there is any cause of action to file the suit?*
>
> *3. Whether the suit is barred by limitation?*
>
> *4. Whether the plaintiff is entitled to a decree as sought for?*
>
> *5. To what other relief, the plaintiff is entitled?"*

7. The trial Court took up issue No.4 for determination at the outset. The oral and documentary evidence adduced were analyzed in detail. It was found that there was contract between the plaintiff and defendant No.2 for which it was regularly supplying bread to street children as per order placed by defendant No.2. Thus, on the strength of valid order of defendant No.2 dated 03.02.2001 (Ext.2), the plaintiff supplied bread from 01.02.2001 to the six street children centers. The plaintiff was also paid Rs.35,000/- on different dates pursuant to such supply. The defendant No.2, though alleged that the documents relied upon by the plaintiff were forged, yet it could not successfully discharge the onus by examining the relevant persons to show that the supply had not been made. According to trial Court, the best evidence available to defendant No.2 was withheld, for which the allegation of fraud was held to be not substantiated. The trial Court accepted 11 numbers of carbon copies of the bills as raised by the plaintiff vide Ext.3 series. As regards the plea of loss of file, the trial Court held that the same cannot give advantage to defendant No.2 to overcome its liability. The trial Court further took note of the fact that the representation of the plaintiff was rejected by defendant No.2 without assigning any reason. Ultimately it was held that the plaintiff had proved his case by preponderance of probabilities. On the remaining issues, the trial Court held that the suit is in time since it attracts Section 14 of the Limitation Act. The plaintiff's approach to this Court as well as the Lokpal was in relation to the case and therefore, the suit must be held to be within time. On such findings, the suit was decreed by directing the defendant No.2 to pay the decretal dues of Rs.2,32,426/- with P.I. and F.I. @ 6% per annum.

8. Being aggrieved, defendant No.2 carried appeal to the district Court. After considering the rival contentions and the grounds raised, the First Appellate Court framed the following points for determination.

> *"1. Whether plaintiff has supplied the bread to the defendant No.2 under any contract in the year 2001?*
>
> *2. Whether the suit is barred by limitation?"*

9. On point No.1, the First Appellate Court, after re-appreciating the oral and documentary evidence on record held that the actual supply of bread was not proved. There is also no evidence that the payment of Rs.35,000/- was a part-payment towards claim for the year 2001. Holding that the trial Court had not considered the infirmities in the evidence, the First Appellate Court held that the money claim of the plaintiff towards the price of bread supplied was not proved.

On point No.2, the First Appellate Court relying upon some judgments to hold that the claim was due on 14.12.2001, for which the suit ought to have been filed by 13.12.2004. The same having been filed on 12.11.2010 is barred by limitation and exclusion of time due to pendency of the writ petition under Section 14 of the Limitation Act does not save the limitation. The suit was thus held to be barred by limitation. On the above findings, the appeal was allowed by setting aside the judgment and decree passed by the trial Court.

10. Being aggrieved, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law.

> *"(i) Whether the learned Lower Appellate Court is correct in reversing the judgment and decree passed by the learned Trial Court basing upon one particular bill, particularly when there are other bills available on record in support of supply which have not been taken into consideration.*
>
> *(ii) Whether the learned Lower Appellate Court is correct in law dismissing plaintiff's suit on the ground of limitation in view of the order passed by the Defendant on 22.11.2007 acknowledging the claim under Section18 of the Limitation Act giving rise to the cause of action and the suit for realization of money and the suit was filed within the limitation period of three years from the said date."*

11. Heard Mr. P.K. Rath, learned Senior Counsel along with Ms. S. Das, learned counsel for the plaintiff-appellant and Mr. D. Mohapatra, learned Senior Counsel along with Mr. S. Rout, learned counsel for the defendant No.2-respondent. Mr. S.N. Pattnaik, learned Addl. Government Advocate appeared for the State-defendant No.1- respondent.

12. Mr. Rath would argue that the First Appellate Court committed manifest illegality in framing points for determination regarding supply of bread, which was never an issue in the First Appeal. There is no evidence on record to support the finding that the plaintiff had not supplied bread as claimed. Even assuming there was discrepancy in two bills, the same could have been ignored but the other nine bills could have been allowed. There was no justification in rejecting all the eleven bills only because two of them were found to be discrepant.

Mr. Rath further argues that the plaintiff having been paid Rs.35,000/- implies part acknowledgement of his dues. That apart, the evidence of D.W.-1 could not have been accepted because he admitted to have joined much after the transaction and also of having no personal knowledge about it. In any case, defendant No.1 admitted that the dues might not have been paid because of non-receipt of grant-in-aid from the Government. On the question of limitation, Mr. Rath, would argue that the writ petition was filed within the period of limitation for the suit i.e. on 06.07.2004, which remained pending till 18.09.2007. The writ petition was disposed of with a direction to defendant No.2 to consider the representation of the petitioner, whereupon the claim of the petitioner was finally rejected on 22.11.2007. This gives rise to a fresh cause of action and the suit having admittedly been filed within three years thereafter i.e., 12.11.2010 cannot be treated as barred by limitation.

13. Per contra, Mr. D. Mohapata would argue that if the copies of the bills exhibited by the plaintiff with objection by defendant No.2 are looked at, it would clearly reveal that the same were forged and created only for the purpose of the claim. The original bills were never produced. It was never proved as to who received the bills. The copies being in the nature of secondary evidence could not have been accepted or relied upon by the trial Court for non-compliance of the conditions laid in Section 65 of the Indian Evidence Act. No other corroborative

evidence like the challans/register etc. was adduced. The plaintiff also did not produce the daily supply register.

On the question of limitation, Mr. Mohapatra would argue that it is well settled that the issue of limitation has to be considered with reference to the original cause of action, which cannot be extended. Even assuming that Section 14 would be applicable then also the suit would be barred by limitation. Mr. Mohapatra amplifies his argument by submitting that the last bill having been submitted on 14.12.2001, the suit should have been filed by 14.12.2004. The plaintiff filed writ petition on 06.07.2004, which was disposed of on 18.09.2007. As between the date of arising of the cause of action i.e., 14.12.2001 and filing of the writ petition, the total period elapsed is 936 days. If the date of filing of the suit i.e., 12.11.2010 is considered, a further period of 1087 days is found to have been consumed. Thus, the total period consumed comes to 2023 days, which was never explained.

In support of his contention, Mr. Mohapatra has relied upon the judgments of the Supreme Court in the case of **Union of India vs. M.K. Sarkar**[1] and **Simplex Infrastructure Ltd. vs. Union of India**[2],

14. Having regard to the rival contentions, this Court deems it proper to consider substantial question No.2 relating to limitation at the outset since the same goes to the root of the matter. The other question would be relevant only if the plaintiff succeeds on the first point, i.e., limitation.

15. It is claimed that the plaintiff supplied bread (bun) as per the letter dated 03.02.2001(Ext.2) beginning from 07.03.2001 to 14.12.2001. The plaintiff claims that he had raised eleven bills amounting to Rs.2,67,426/-, the last of which being submitted on 14.12.2001. It is not disputed that the limitation for filing suit for realisation of money due is three years. As such, the suit ordinarily should have been filed by 14.12.2004. However, it is borne out from the materials on record that before expiry of the period of limitation, the plaintiff filed a writ petition on 06.07.2004. Said writ petition remained pending till 18.09.2007. The question is, whether Section 14 of the Limitation Act would come into play. For immediate reference, Section 14 is reproduced below:

> ***"14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(****1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
>
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same*

1 (2010) 2 SCC 59
2 (2019) 2 SCC 455

relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."

16. Having regard to the facts of the case and the language of Section 14, this Court is of the considered view that Section 14 would have no application for the reason that approach to the High Court by the plaintiff cannot be treated as approach to a wrong forum or forum having no jurisdiction. The defendants being instrumentalities of State within the meaning of Article 12 of the Constitution of India, the writ petition was maintainable. In fact, the writ petition was entertained and disposed of with a positive direction to defendant No.2 to consider the representation of the petitioner.

17. In the case of **M.K. Sarkar** (supra), the Supreme Court has observed as follows:

"15. *When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.*

16. *A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."*

18. Said case was one in which the petitioner had raised a claim 22 years after his retirement, for which it was held to be a 'stale' or 'dead' issue/dispute. What was clarified in the cited judgment is that directing consideration of a claim is to be examined whether it relates to a live or dead issue. If it is with reference to a dead or stale issue no such direction for consideration should be issued. Such is not the fact situation obtaining in the present case. The plaintiff approached the High Court when the period of limitation for filing the suit had not expired. It was therefore, a live and not a stale claim. The judgment in **M.K. Sarkar** (supra) can therefore, be distinguished on facts.

19. As regards the judgment in **Simplex Infrastructure Ltd.** (supra) the matter relates to filing of an application under Section 34 of the Arbitration and Conciliation Act before a Court having no territorial jurisdiction for which Section 14 was invoked. As already stated, the present case is one in which Section 14 has no application. The cited judgment is therefore, distinguishable of facts.

20. Undisputedly the writ petition, filed by the plaintiff at a time when the limitation had not expired, remained pending from 06.07.2004 to 18.09.2007. This Court while disposing of the writ application did not say anything with regard to limitation nor directed the plaintiff to approach the civil court but issued a positive direction to the defendant No.2 to consider the case of the plaintiff. Under such circumstances, limitation must be held to have been saved because of pendency of the writ application for more than three years.

21. The question is, whether the period of limitation would start running upon disposal of the writ application. This can be answered with reference to the order passed by this Court, the relevant portion of which has been quoted by the First Appellate Court in pargraph-9 of its judgment. It cannot be said that this Court was not aware that the cause of action had arisen on 14.12.2001 while issuing the aforesaid direction. Regardless of the date of arising of the cause of action, this Court still directed defendant No.2 to consider the case of the plaintiff. This amounts to giving rise to a fresh cause of action. Admittedly, the claim of the plaintiff was considered and rejected on 22.11.2007 without citing any reason and the suit was filed on 12.11.2010, i.e. within three years from the date on which the cause of action arose i.e. 22.11.2007. This Court having entertained the writ application and issued a particular direction, the same cannot be ignored to hold that the original cause of action had revived and along with it the period of limitation that had begun to run since 14.12.2001. It would be an absurd proposition as it would set at naught the order of this Court. The cause of action as on 14.12.2001 related to non-payment of the plaintiff's dues but the cause of action on 22.11.2007 was rejection of the petitioner's claim upon consideration of the documents supplied by him as directed by this Court. Both cannot be equated with each order. The matter would have been different had the plaintiff not approached this Court within the period of limitation, but having done so, he cannot be denied the benefit of saving of limitation firstly, because of pendency of the writ application for more than three years and secondly, for arising of a new cause of action basing on the order passed by this Court. It is stated at the cost of repetition that if the interpretation made by the First Appellate Court were to be accepted, it would wipe out the order passed by this Court in the writ application in its entirety. Such a position obviously cannot be countenanced in law. It is reiterated that while the original cause of action related to non-payment of dues simplicitor, which is an inaction or omission, fresh cause of action related to rejection of claim of the plaintiff upon consideration of documents in obedience to order passed by this Court, which is a positive action or commission.

22. This Court is therefore, unable to persuade itself to agree with the reasoning adopted by the First Appellate Court and therefore, holds that the suit was not barred by limitation and was rightly entertained by the trial Court.

23. Coming to the substantial question No.1 which relates to the correctness of the First Appellate Court's order in reversing the judgment of the trial Court, this Court would first keep in perspective the legal principle that civil cases are to be decided on the basis of preponderance of probabilities and not on the anvil of beyond reasonable doubt as is applied to criminal cases. The trial Court has done precisely that. After weighing the evidence adduced by both sides the trial Court deemed it reasonable to accept the evidence adduced by the plaintiff than the defendant No.2. This Court has also scanned the evidence independently vis-å-vis the findings based thereon of the trial Court and finds no reason to differ from it. As held by the trial Court, an order was placed for supply of bread to 6 street children centers vide Ext.2. All the exhibits were marked with objection yet the same were never disproved by the contesting defendant. It has been argued that the so-called part payment was not actually a part payment but payment made for supply of bread for the previous period i.e. till the end of December, 2000. If such was the case then, the following admission made under paragraph-9 of the written statement is rendered incomprehensible. Paragraph-9 is quoted below.

> *9. That in reply to the averment made in Para 7 of the plaint it is again humbly submitted that the Plaintiff approached the Hon'ble High Court in writ petition of WP (C) 6993/2004 where in the Hon'ble High Court has directed the defendant No.2 to dispose of the representation of the Plaintiff as expeditiously as possible preferably within 2 months from the date of receipt of the certified copy of the order and accordingly this defendant taking into consideration of the fact on record and it was concluded that the plaintiff was not entitled for the claim amount as does not justify the claim of getting Rs.2,32,426/- for alleged supply of bread (Bun) and the same was intimated to the plaintiff on 22.11.2007 vide office letter no.737/CW dated 22.11.2007. <u>However this defendant in consideration of the situation has released Rs.35000/- in different spells treating it to be the final payment of the dues</u>. It may not be out of place to mention here that this defendant has received the dues/grant for the year 1999-2000 till the month of December 2000 and the said scheme of the central government is not functioning and the dues for the year 2001 onwards has not yet been released by the central government. This defendant was simply to implement the scheme of the central government having its no financial control or authority to release money from any other source without the sanction of the central government. Since the street children project was central government grant based and the plaintiff was aware about the modality of release of grant by the Government of India and was agreed to receive the grant by OSCCW after it is sanctioned by the Government of India. Hence during the past supply of bread, payment was made after receipt of the grant from Government of India and interest has never been claimed by the plaintiff and as such neither the alleged supply nor payment of or interest thereon is acceptable." [Emphasis added]*

24. This Court fails to understand that if the plaintiff was not entitled to the claim amount, then where was the question of releasing any amount in his favour much less Rs.35,000/-. Further where was the question of *'in consideration of the situation'* to

justify payment of Rs.35,000/-. This only goes to fortify the claim of the plaintiff that it was indeed a part payment of the dues.

25. A plea of loss of file has been taken. An FIR was lodged in this connection, vide Ext.D. Now, the FIR itself was lodged on 30.05.2007. The FIR firstly does not whisper as to when it came to light that the file was missing and secondly, such plea was never taken earlier. The FIR was lodged during pendency of the writ application. This Court is therefore, unable to place any reliance on the FIR as the same would not absolve defendant No.2 of its liability. The trial Court has not placed much reliance on the evidence of D.W.-1, and according to this Court rightly so, for the simple reason that he joined in the organization in the year 2014 and therefore, had no personal knowledge about the transaction.

26. Much has been argued as regards acceptability of the bills submitted by the plaintiff. In this context, the provision of Section 65 has been referred to. This Court is unable to accept the arguments as above for the reason that the originals of the bills having been submitted to defendant No.2, would obviously not be available with the plaintiff any more but only copies thereof would be retained. The originals are supposed to be available in the office of defendant No.2 but a convenient plea was taken that the file had been lost. Faced with such situation, there is nothing wrong in accepting the carbon copies of the bills submitted by the plaintiff as evidence.

27. It has been argued that the bills were forged and fabricated for the purpose of the suit. Some discrepancies in the bills have been referred to in this context. Nothing has been said as regards the remaining bills. Obviously only because two bills were found to be discrepant, cannot render all the remaining bills as such. This Court therefore, finds that the trial Court rightly appreciated the evidence on record and applying the principle of preponderance of probability, rightly held that the plaintiff had proved its case. The suit must therefore, be treated as being correctly decided.

28. On the other hand, the first Appellate Court ignoring the admission in the written statement referred above has refused to accept the same as part payment and placed undue importance on the so called discrepancies in one of the bills.

29. For the reasons stated above, this Court is unable to concur with the findings.

30. The substantial question of law No.1 is answered accordingly.

31. In the result, the appeal is allowed in part. The judgment passed by the first appellate Court is set aside. The decree passed by the trial Court is confirmed subject to the modification that the plaintiff is entitled to the dues as quantified by the trial Court minus the amount covered under bill dated 14.12.2001.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Appeal allowed.

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2025 (III) ILR-CUT-267

DEBASHIS DASH & ORS.
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 20102 OF 2025]
AND
[W.P.(C) NO. 20297 & 20355 OF 2025]
WITH
[I.A. NOS. 12013, 12014, 12011 & 12248 OF 2025]

18 AUGUST 2025

[ADITYA KUMAR MOHAPATRA, J.]

Issues for Consideration

1. Whether the disqualification of the petitioner is sustainable as per the Rule.

2. Whether the conduct of the opposite parties in disqualifying the petitioners is valid in law.

Headnotes

(A) ODISHA FOREST SERVICE, GROUP-A (JUNIOR BRANCH) (RECRUITMENT & CONDITIONS OF SERVICE) RULES, 2013 – Rule 8 – The Opposite Parties disqualified petitioners from participating in the Physical Standard and Endurance Test basing upon faulty blood pressure measurement – Whether the disqualification of the petitioners is sustainable, when there is no such provision in the Rule to do so?

Held: No – This Court is of the considered view that there is no such provision to disqualify a candidate only on the basis of the measurement of blood pressure of such candidates – Therefore, this Court has no hesitation in coming to a conclusion that the Opposite Parties have committed a gross error of law by not adhering to the terms and conditions of the advertisement as well as the Rules, 2013 and, as such, their conduct can very well be declared as illegal and arbitrary. (Para 23)

(B) SERVICE JURISPRUDENCE – Appointment – Petitioners have qualified in the written test for the post of Forest Ranger and Assistant Conservator of Forest – Petitioners appeared for Physical Standard Test – It has been pleaded that although the petitioners fulfilled the Physical Standard prescribed in the Rule but they were disqualified from participating in the test – Such disqualification is based on a faulty blood pressure measurement done by digital instruments violating the conditions in the advertisement and Rule 8 of the

Recruitment Rule – Whether the conduct of the opposite parties in disqualifying the petitioners is valid in law.

Held: No – In the ultimate analysis of the factual as well as legal position, this Court is of the view that the Opposite Parties have not followed the rules while disqualifying the Petitioners – As such, the decision to disqualify the Petitioners from the recruitment test and preventing them from participating further in the physical endurance test (walking test) is absolutely illegal and, as such, the same is hereby quashed. (Para 24)

List of Acts

Odisha Forest Service, Group-A (Junior Branch) (Recruitment and Conditions of Service) Rules, 2013.

Keywords

Appointment; Advertisement; Terms & conditions; Physical Endurance Test; Disqualification; Blood pressure measurement

Case Arising From

Petitioners challenge the disqualification in the recruitment process.

Appearances for Parties

For Petitioner : Mr. Rajib Rath (WPC 20102/2025),
Mr. Madan Mohan Das (WPC 20297/2025),
Ms. Chinmayi Tripathy (WPC 20355/2025).

For Opp. Parties : Mr. B.K. Sahoo (O.P.1 to 3) & Mr. Arnav Behera (O.P.4-OPSC) (WPC 20102/2025),
Mr. B.K. Sahoo(O.P.1) & Mr. Arnav Behera (O.P.2-OPSC) (WPC 20297/2025),
Mr. C.M. Singh (O.P. 1 to 3) & Mr. Arnav Behera (O.P.4-OPSC) (WPC 20355/2025)

Judgment/Order

Judgment

A.K. MOHAPATRA, J.

1. In I.A. No.12013 of 2025, arising out of W.P.(C) No.20102 of 2025, the Petitioners have prayed for a direction to the Opposite Parties to do a retest by measuring their blood pressure afresh and permit them to compete in the next physical endurance (walking test) as well as a subsequent viva voce test which has not yet commenced taking into consideration the fact that they have already qualified in the written test. Similarly, I.A. No.12014 of 12014 of 2025, arising out of W.P.(C) No.20102 of 2025, has been filed by the Petitioner with a prayer for a direction to the Opposite Parties to keep 9 posts of Forest Ranger and Assistant Conservator of Forests reserved for the Petitioners taking into consideration the fact

that the Petitioners have already qualified in the combined written test of Forest Ranger and Assistant Conservator of Forests till finalization of the writ petition.

2. I.A. No.12011 of 2025, arising out of W.P.(C) No.20297 of 2025, has been filed by the Petitioner with a prayer for a direction to the Opposite Parties to keep one post vacant in respect of the Petitioner till disposal of the writ petition.

3. I.A. No.12248 of 2025, arising out of W.P.(C) No.20355 of 2025, has been filed by the Petitioner with a prayer for a direction to the Opposite Parties to keep 9 posts of Forest Ranger and Assistant Conservator of Forests reserved, taking into consideration the fact that Petitioner has already qualified in the combined written test of Forest Ranger and Assistant Conservator of Forests, till disposal of the present above noted writ petition.

4. Since the above noted interlocutory applications arise out of a common factual background and a common recruitment test and the prayer made in the above noted interlocutory applications are almost identical in nature, all the above noted interlocutory applications are being taken up for disposal by virtue of the following common order.

5. For better understanding of the factual background involved in the above noted applications, the facts involved in W.P.(C) No.20102 of 2025 is being taken up for discussion while disposing of the above noted interlocutory applications.

6. W.P.(C) No.20102 of 2025 has been filed by the 9 Petitioners jointly with a prayer for a direction to the Opposite Party No.1 and 2 to allow the Petitioners to participate in the next phase of recruitment test, i.e. Physical Endurance Test of Walking, and to permit them to participate in the viva voce test as the Petitioners have come out successful in the written test conducted by the Opposite Party No.3 and 4. The Petitioners have also prayed for issuance of writ of mandamus for declaring that the procedure of disqualifying the Petitioners solely on the basis of the advertisement under Annexure-2 and the disqualification of the Petitioners on the basis of faulty B.P. Test (instrumental error of digital B.P. Meter) also violates Rule-8 of the Recruitment Rules, 2013 and the same is also violative of the principles contained in Article 14, 16 and 21 of the Constitution of India. The Petitioners have also prayed for quashing of their disqualification on the ground that the Petitioners were not provided with any opportunity before disqualifying them to participate in the further recruitment process. Moreover, such disqualification on the basis of blood pressure test amounts to change in the recruitment process by introducing a new clause of elimination which is dehors the conditions in the advertisement and the provisions of the Rules, 2013.

7. The genesis of the dispute involved in the above noted writ applications is based on a common set of facts. In May, 2023, the Odisha Public Service Commission (in short 'OPSC') published an advertisement online for recruitment to 45 posts of Assistant Conservator of Forests (Group A - JB) and 131 posts of Forest Ranger (Group-B) under Odisha Forest Service Cadre. Pursuant to the aforesaid

advertisement, the Petitioners along with other eligible candidates submitted their application and after due scrutiny of their applications they were allowed to participate in the recruitment process. In between 18.08.2024 to 28.08.2024 the written examination was conducted by the OPSC at two centres. The Petitioners along with other candidates participated in such a written examination.

8. While this was the position, on 03.07.2025, a notice was published by the OPSC announcing the schedule for the Physical Standard and Endurance Test (Walking) to be conducted from 14.07.2025 to 20.07.2025. The Petitioners were scheduled to appear in such test on 15th and 16th July, 2025. On 09.07.2025, the Petitioners downloaded physical test call letters from the OPSC website.

9. Pursuant to the aforesaid call letters to participate in the physical test, the Petitioners appeared for physical standard test. It has been pleaded that although the Petitioners fulfilled the physical standard prescribed for being selected, however, they were disqualified from participating in the Physical Standard and Endurance Test (Walking). It has also been alleged in the writ petitions that such disqualification is based on a faulty blood pressure measurement done by using digital instruments is in violation of the advertisement and Rule-8 of the Recruitment Rules. On 16.07.2025, although the Petitioners submitted a representation via email to the Opposite Party No.4 requesting re-measurement of blood pressure using a proper instrument and seeking permission to appear in the walking test, however, no reply whatsoever was given on such representation. As a result of which, the Petitioner could not participate in the Physical Endurance Test and, as such, they were debarred from further participating in the recruitment test. Being aggrieved by such conduct of the Opposite Parties in disqualifying the Petitioners only on the basis of blood pressure measurement with the help of faulty instrument, which is contrary to the terms and conditions contained in the advertisement as well as the Recruitment Rules, 2013, the Petitioners have approached this Court by filing the present batch of writ petition.

10. Heard Mr. Rajib Rath, learned counsel for the Petitioners in W.P.(C) No.20102 of 2025; Mr. Madan Mohan Das, learned counsel for the Petitioner in W.P.(C) No.20297 of 2025; Ms. Chinmayi Tripathy, learned counsel for the Petitioner in W.P.(C) No.20355 of 2025; learned counsel for the State advanced his argument on the prayer made in the interlocutory applications on behalf of the State-Opposite Parties, and heard Mr. Arnav Behera, learned counsel for the OPSC. Perused the writ petitions as well as the documents annexed thereto.

11. The above noted interlocutory applications have been filed with a common prayer to either allow the Petitioners to participate in the further recruitment process or, in the alternative, keep an equal number of posts reserved for the Petitioners in each of the above noted three writ petitions.

12. Mr. Rajib Rath, learned counsel for the Petitioners in W.P.(C) NO.20102 of 2025, while leading the argument on behalf of the Petitioners contended before this

Court that the Petitioners, who were eligible to participate in the recruitment process pursuant to the advertisement, cleared the written test successfully. Thereafter, they were eligible to participate in the physical endurance test. Pursuant to the call letter issued to the Petitioners to participate in the physical endurance test, the Petitioners appeared on the scheduled date and time to participate in such test. However, before they could participate in the physical endurance test (walking test), the Opposite Parties in a surprise move called the Petitioners for their blood pressure measurement with the help of digital B.P. instrument. In good faith the Petitioners cooperated with the Opposite Parties for measurement of their blood pressure. Petitioners were surprised by the result of the B.P. measurement test. Mr. Rath, at this juncture, contended that the digital B.P. instrument used by the Opposite Parties was a faulty instrument and the same did not reflect the correct reading. As a result of which, the Petitioners were disqualified on the basis of such faulty reading done by the B.P. instrument.

13. In the aforesaid context, Mr. Rath referred to Clause-5 of the advertisement at Annexure-2 to the writ petition. While referring to Clause-5 of the advertisement, learned counsel for the Petitioner demonstrated that nowhere in the said clause it has been mentioned to measure the blood pressure of the candidates. This Court on a careful scrutiny of Clasue-5 of the advertisement found that although the physical standard of candidates have been clearly mentioned in the said clause, however, nowhere in the said clause there is any provision with regard to measurement of the B.P. reading of the candidates. As such, learned counsel for the Petitioners argued that the B.P. measurement test which was done by the Opposite Parties, on the basis of which the Petitioners were disqualified, is something which is extraneous to the terms and conditions mentioned in the advertisement. Therefore, the conduct of the Opposite Parties in disqualifying the Petitioners from participating further in the physical endurance test is highly illegal and arbitrary.

14. To establish his contention that the Petitioners have been disqualified on the basis of a test which has not been mentioned in the advertisement and that the same does not have any basis, Mr. Rath also referred to the Odisha Forest Service, Group-A (Junior Branch) Recruitment and Conditions of Service) Rules, 2013 (in short "the Rules 2013"). He further submitted that Rule-8 of the Rules, 2013 is the only rule that governs the field relating to the physical standard of the candidates. For better appreciation, the aforesaid Rule-8 of the Rules, 2013 has been quoted herein below:-

> "***8. Physical Standard:***
>
> *Candidates, who qualify in the written test shall confirm to the following physical standard and test for being selected by the Commission, namely:-*
>
> *(i) A male candidate shall not be less than 163 cm. in height and shall have chest measurement of at least 84 cm. expandable to at least 89 cm.*
>
> *(ii) A female candidate shall not be less than 150 cm. in height and shall have chest measurement of at least 79 cm. expandable to at least 84 cm.*
>
> *(iii) The candidates must pass the following physical endurance test of walking :-*

(a) Male: 25 Kms. in four hours

(b) Female: 16 Kms. in four hours

Notes-(a) For the purpose of this test, necessary arrangement shall be made by the Commission. An officer of the Forest Department deputed by the PCCF shall assist the Commission in conducting the test. The Commission shall determine the number of successful candidates required to undergo physical test depending upon the number of vacancies.

(b) Failure of candidates to fulfill any of the provisions of this rule shall disqualify him for the purpose of appointment under these rules.

(c) The Government shall not be responsible for any injury during the test."

15. On a perusal of the Rule-8 of the Rules, 2013, this Court observed that such a rule has been incorporated to regulate the physical standard of the candidates. It provides that the candidates who have qualified the written test shall confirm to the physical standard mentioned therein and the test to be conducted by the Commission. The Commission obviously means the Odisha Public Service Commission as defined in Rule-2(1)(a) of the Rules, 2013. Moreover, the condition with regard to blood pressure measurement test could be found nowhere in the said rule. On an overall assessment of the recruitment process, it appears that the candidates shall be first asked to appear in the written test. On becoming successful in written test, they will have to conform to the physical standard and to participate in the physical endurance test. Upon coming out successful in the physical endurance test, the candidates shall be asked to participate in the viva voce test. Thus, there is no requirement of measuring the blood pressure reading of the candidates. In view of the aforesaid position, Mr Rath as well as other learned counsels appearing for the Petitioners contended before this Court that the conduct of the Opposite Parties in declaring the Petitioners as disqualified on the basis of the blood pressure reading is highly illegal and arbitrary.

16. Per contra, Mr. Arnav Behera, learned counsel appearing on behalf of the OPSC, at the outset, contended that as per the Rules, 2013, the recruitment process is to be conducted by the OPSC. Accordingly, upon getting the intimation with regard to the vacancy position and on the request of the requisitioning department, an advertisement was published by the OPSC inviting applications from the aspiring candidates. Accordingly, a written test was conducted in accordance with the Rules, 2013 as well as the terms and conditions reflected in the advertisement at Annexure-2. Mr. Behera further contended that the physical endurance test was being carried out by the State-Opposite Parties under the supervision of the OPSC.

17. Mr. Behera, learned counsel appearing for the OPSC further stated that during first phase of physical endurance test, it was found that a candidate fainted and collapsed while participating in the walking test. Therefore, keeping in view the safety of the candidates the State-Opposite Parties measured the blood pressure reading of the candidates before the selected candidates could participate in the physical endurance test. It is only those candidates whose B.P. reading was normal were allowed to participate in the physical endurance test. In such view of the

matter, learned counsel for the OPSC contended that the Opposite Parties have not committed any illegality in measuring the blood pressure of the candidates before they could participate in the physical endurance test. Moreover, such test being in larger public interest and in the interest of the candidates, cannot be termed as illegal and arbitrary. Thus, it was contended that the submission made by the learned counsels for the Petitioners is absolutely baseless and vague.

18. Learned counsel for the State, in reply, supported the argument advanced by the learned counsel for the OPSC. He also submitted that although the physical endurance test was conducted by the Forest Department under the supervision of the OPSC, however, the same was being monitored by the experts. Keeping in view the untoward incident that had happened during the test, the action of the Opposite Parties cannot be faltered solely on the ground that the blood pressure measurement has not been mentioned in the advertisement as well as the in the Rules 2013. In such view of the matter, learned counsel for the Petitioner contended that the Opposite Parties have not committed any illegality. As such, prayers made in the I.A. applications are liable to be rejected in limine.

19. Having heard the learned counsels appearing for the respective parties and on a careful analysis of the factual background involved in the above noted writ petitions, this Court observed that the Petitioners have called in question the action of the Opposite Parties in disqualifying the Petitioners only on the basis of blood pressure reading of the candidates. Therefore, this Court is required to adjudicate as to whether the conduct of the Opposite Parties in disqualifying the Petitioners only on the basis of the blood pressure reading is valid in law or the same is an illegal and arbitrary conduct of the Opposite Parties while conducting the recruitment test? To answer the aforesaid question, this Court is required to examine the legal provision as to whether there was any such requirement to conduct a blood pressure monitoring test of the aspiring candidates who were found eligible in the written test conducted by the OPSC?

20. As has been referred in the preceding paragraph, this Court, on a careful scrutiny of the advertisement, found that Clause-5 of such advertisement at Annexure-2 lays down the procedure for physical endurance test. Such conditions have been extracted and inserted in the advertisement from Rule-8 of the Rules, 2013. As has been discussed, on a close scrutiny of the Clause-5 of the advertisement as well as Rule-8 of the Rules, 2013, this Court found that there is no such requirement to monitor the blood pressure of the candidates and to disqualify them from the recruitment test solely on the basis of such blood pressure measurement.

21. Rule-8(iii) of the Rules, 2013 provides that the candidates must pass the physical endurance test of walking which has been prescribed as 25 Kms. in four hours for male candidates and 16 Kms. in four hours for female candidates. The note appended to Rule-8 of the Rules, 2013 also provides that such physical endurance test shall be conducted by the OPSC with the help of the PCCF by deputing an

officer of Forest Department to assist the Commission in conducting such physical test. Thus, it appears that unless the candidates confirm to the physical standard mentioned in sub-clause (i) and (ii) and if they do not pass the test under sub clause(iii) of Rule-8 of the Rules, 2013, the candidates shall automatically be declared disqualified.

22. Rule-11 of the 2013 Rules provides the disqualification and penalty clause. On a careful reading of Rule-11, it can be seen that the same does not provide any provision for disqualification on the ground of blood pressure measurement.

23. On a careful analysis of the factual matrix involved in the above noted batch of writ petitions, further on a close scrutiny of the provisions contained in the Rules, 2013 as well as the terms and conditions indicated in the advertisement at Annexure-2, this Court is of the considered view that there is no such provision to disqualify a candidate only on the basis of the measurement of blood pressure of such candidates. Therefore, this Court has no hesitation in coming to a conclusion that the Opposite Parties have committed a gross error of law by not adhering to the terms and conditions of the advertisement as well as the Rules, 2013 and, as such, their conduct can very well be declared as illegal and arbitrary.

24. In the ultimate analysis of the factual as well as legal position, this Court is of the view that the Opposite Parties have not followed the rules while disqualifying the Petitioners. As such, the decision to disqualify the Petitioners from the recruitment test and preventing them from participating further in the physical endurance test (walking test) is absolutely illegal and, as such, the same is hereby quashed. While allowing the prayer of the Petitioners, this Court directs the Opposite Parties to allow the Petitioners to participate in the physical endurance test subject to the Petitioners furnishing an undertaking supported by a certificate from a registered medical practitioner/physician that their blood pressure is normal. Such physical endurance test be conducted by the Opposite Parties within a period of four weeks from the date of communication of this order.

25. It is needless to mention here that in the event the Petitioners are found suitable in the physical endurance test, they shall be allowed to participate in the further recruitment process and the final result of the recruitment shall depend upon the performance of the Petitioners in such test.

26. In view of the aforesaid observation and direction, the Interlocutory Applications stand disposed of. Since nothing survives to be adjudicated in the pending writ petitions, the writ petitions are also disposed of in view of this judgment.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition Disposed of.

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2025 (III) ILR-CUT-275

Dr. PURUSOTTAM SWAIN
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 33349 OF 2024]

18 AUGUST 2025

[A. K. MOHAPATRA, J.]

Issue for Consideration

Whether the order of termination is sustainable when the authority does not have the jurisdiction to terminate the service of petitioner.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 311(1) – The State Government in Health & Family Welfare Department has directed the Dean and Principal of Medical Colleges, along with others to conduct recruitment for remaining vacancies in various posts on the 25th of every month and report to the Health & Family Welfare Department – Further as per the agreement which has been signed by the petitioner indicates that the said agreement has been signed between the "First Party" the Health & Family Welfare Department, Government of Odisha represented through the Dean and Principal and the "Second Party" the appointee – It is also indicated in the agreement that the Health & Family Welfare Department may terminate the agreement and the services of the petitioner/ second party may be terminated by the competent authority that is Health & Family Welfare Department – The Dean and Principal MKCG MCH passed the impugned order of termination against the petitioner – Whether the order of termination is sustainable when the authority does not have the jurisdiction to terminate the service of petitioner.

Held: No – It is settled principle of law, as enumerated under Article 311(1) of the Constitution of India, that it is the Appointing Authority which has the power to terminate the services of the employee – In the instant case, from the aforesaid analysis, it is clear that the State Government in H&FW Department is the appropriate authority to terminate the service of the Petitioner. (Para 36)

Moreover, there is nothing on record to show that the power to terminate the services of the Petitioner has been expressly delegated by the State Government to the Dean & Principal MKCG MCH – Accordingly, with regard to the third issue at hand, this Court is of the opinion that the Dean &

Principal, MKCG MCH did not have the jurisdiction to issue the impugned order of termination dated 29.12.2024 under Annexure-6 to the present Writ Petition. (Para 37)

Citations Reference

GRIDCO Ltd. v. Sadananda Doloi, **(2011) 15 SCC 16**; Swati Priyadarshini v. State of Madhya Pradesh & Ors., **AIR 2024 SC 4339**; OPTO Circuits (India) Ltd. v. Axis Bank, **AIR 2021 SC 729**; U.P. State Road Transport Corporation & Others v. Brijesh Kumar & Ors., **AIR 2024 SC 4424**; Govt. of A.P. v. N. Ramanaiah, **(2009) 7 SCC 165**; Kunal Nanda v. Union of India & Ors., **2000 (5) SCC 362**; atilal B.Soni & Ors. v. State of Gujarat & Ors., **AIR 1990 SC 1132**; Jagdish Mitter v. Union of India, **1963 SCC OnLine SC 75**; Parshotam Lal Dhingra v. Union of India, **AIR 1958 SC 36**; Ramnath Prasad v. State of Bihar, **(1988) 2 SCC 423**; State of Bihar v. Shiva Bhikshuk Mishra, **(1970) 2 SCC 871**; State of U.P. v Kaushal Kishore Shukla, **(1991) 1 SCC 691 – referred to.**

List of Acts

Constitution of India, 1950

Keywords

Appointment; Agreement; Competent authority; Jurisdiction; Principle of natural justice; Termination; Misconduct; Committee Report; Selection Authority; Contractual service; Terms & Conditions

Case Arising From

Challenging the order of termination dated 29.12.2024.

Appearances for Parties

For Petitioner : Mr. Budhadev Routray, Sr. Adv. with Mr. S. Routray.

For Opp. Parties : Mr. Dayanidhi Lenka, A.G.A.

Judgment/Order

Judgment

A. K. MOHAPATRA, J.

1. The present Writ Petition has been filed by the Petitioner challenging the impugned office order dated 29.12.2024 under Annexure6 to the Writ Petition passed by the Opposite Party No.4-the Dean & Principal, Maharaja Krishna Chandra Gajapati, Medical College and Hospital, whereby the service of the Petitioner has been terminated with immediate effect on disciplinary ground. The Petitioner has prayed for quashing of the impugned order of termination dated 29.12.2024, under Annexure-6, and for reinstating him in service with all service and financial benefits.

FACTUAL MATRIX OF THE CASE

2. The factual background of the present case, as culled out from the pleadings of the respective parties filed before this Court, including the Counter Affidavit filed by the Opposite Party No.4-the Dean & Principal, Maharaja Krishna Chandra Gajapati, Medical College and Hospital, in gist is as follows; the Petitioner, who is a Medical Officer of the OMHS cadre, was appointed as Assistant Professor, Orthopedic on deputation/ contractual basis vide office order dated 22.07.2024 under Annexure-3 to the Writ Petition. Following such appointment, the Petitioner joined in his service at the Maharaja Krishna Chandra Gajapati, Medical College and Hospital (hereinafter referred to as "MKCG MCH"). While the Petitioner was continuing in his service, there was some physical disturbance in the canteen of the hostel in the PG campus, on the mid night of 20.12.2024 (i.e. in the early hours of 21.12.2024) involving the Petitioner, one Dr.Rajinikanth and several others. Following such incident Dr.Rajinikanth has made allegations of physical assault against the Petitioner and some other persons. Consequently, based on such allegations, the College Council Committee conducted disciplinary proceedings on 23.12.2024. Thereafter, the office order dated 29.12.2024, under Annexure-6 to the Writ Petition, was issued pursuant to the decision taken in the College Council Meeting held on 23.12.2024 and the communication received by the D.M.E.T, Odisha vide letter No.25143 dated 27.12.2024, wherein the service of the Petitioner along with three others were terminated with immediate effect on disciplinary grounds. The petitioner, upon being aggrieved by such an order of termination, has approached this Court by filing the present Writ Petition with the prayer as mentioned hereinabove.

CONTENTIONS OF THE PETITIONER

3. Heard Mr.Budhadev Routray, learned Senior Counsel along with Mr.S.Routray, learned Counsel, appearing for the Petitioner. It is the Petitioner"s stance that the impugned order of termination dated 29.12.2024, under Annexure-6 to the present Writ Petition, is bad in law and that his termination from service suffers from the latches of nonadherence to applicable guidelines and the principles of natural justice.

4. The Learned Senior Counsel for the Petitioner, at the outset submitted that the Petitioner was initially appointed pursuant to the Office Order No.5534 dated 22.05.2024 issued by the Opposite Party No.4, under Annexure-2. Referring to the aforesaid order of appointment of the Petitioner, the Learned Senior Counsel for the Petitioner submitted that it can be clearly seen from the said order that that the Petitioner's service is governed as per the Govt. Resolution No.8967/H dated 25.04.2022. As such, the service of the present Petitioner is regulated by the *"Guidelines for Engagement of Assistant Professor/Associate Professor/Professor in Government Medical/Dental College in the State of Odisha on contractual basis"* (hereinafter referred to as "Guidelines"), under Annexure-7 to the Writ Petition,

issued by Health & Family Welfare Department, Government of Odisha vide its Resolution No. 8967 dated 25.04.2022.

5. Learned Senior Advocate for the Petitioner, further submitted that Clause-9(1) of the aforesaid resolution states that the engagement of the Petitioner shall be purely temporary and on a year-to-year tenure basis and which may be extended for a maximum period of four years. Further, it is also revealed that it is the Government that reserves the right to terminate the services of the faculty without assigning any reason, with one month prior notice. In the context of the aforesaid clause, the Learned Senior Counsel for the Petitioner submitted that before terminating the service of the Petitioner there was a clear requirement of providing one month's prior notice to the Petitioner. However, in the instant case, the Petitioner, along with three others, were terminated from their service with immediate effect on disciplinary ground and the mandate of the one month's prior notice period has not been complied with by the offending Opposite Parties.

6. Next, the Learned Senior Counsel for the Petitioner submitted that the law with regard to issuing a stigmatic order of termination is very well settled inasmuch as, the order of termination being stigmatic and passed without following the principles of natural justice will be illegal, arbitrary and not sustainable in the eyes of law. Even if the service is contractual in nature, the Petitioner is required to be given an opportunity of hearing and to show cause before an order of termination can be issued against him. It is the Learned Senior Counsel's contention that in the instant case there has been a total non-compliance of the well-established principles of natural justice. Referring to the Counter Affidavit filed by the Opposite Party No.4, the Learned Senior Counsel for the Petitioner contended that the notice, as claimed by the Opposite Party No.4, is not as per the requirements of Clause-9(1), therefore, it cannot be said to be a notice to the Petitioner.

7. Moreover, it is the Learned Senior Counsel for the Petitioner's contention that the minimum requirement when the service of an employee is terminated based on his alleged misconduct, is that the charges against the delinquent have to be framed and communicated to him seeking his reply. In the event an enquiry is made into the delinquent's activities, he has to be provided with an opportunity of hearing and if an adverse order is made against the delinquent, then the Opposite Parties are required to communicate the same to him and afford him the opportunity to reply to the same. In the instant case, none of the principles of natural justice have been adhered to and no show cause as per the Guidelines under Annexure-7 has been issued to the Petitioner, before terminating his service.

8. Furthermore, it is the contention of the Learned Senior Counsel for the Petitioner that the impugned order of termination dated 29.12.2024 is illegal and without authority since it has been passed by the authority incompetent to pass such order of termination. The Learned Senior Counsel for the Petitioner, at first, referring to Clause-3 of the Guidelines under Annexure-7, contended that the Selection Authority is required to obtain post facto approval from the Government

before selection is made. Then, referring to Clause-9(1) of the said Guidelines, it was submitted that as per the said clause, it is the State Government who can issue the one month's notice before terminating the service of the Petitioner. This implies that as per the aforesaid Clause-9(1) of the Guidelines, the State Government reserves the right to terminate the services of the faculty. In light of the aforesaid provision, the Learned Senior Counsel for the Petitioner submitted that no authority other than the State Government is competent to terminate the service of the Petitioner.

9. The Learned Senior Counsel for the Petitioner then drew the attention of the court to the impugned termination order under Annexure6 and stated that the order was issued by Dean & Principal, MKCG MCH and not by the State Government. Therefore, the same has clearly been passed by an authority without having the jurisdiction to do so, and, as such, the said order of termination dated 29.12.2024 suffers from illegality and jurisdictional error. Learned Senior Counsel for the Petitioner further contended that if the Guidelines provide that a thing is to be done in a particular way, and it is done is some other way, then such conduct will be illegal. To support this arguments, the Learned Senior Counsel for the Petitioner has placed reliance on a catena of decisions of the Hon'ble Apex Court in ***GRIDCO Ltd. v. Sadananda Doloi***, reported in ***(2011) 15 SCC 16***, specifically paragraphs 38 and 39; ***Swati Priyadarshini v. State of Madhya Pradesh & Ors***, reported in ***AIR 2024 SC 4339***, specifically paragraphs 32 to 36; ***OPTO Circuits (India) Ltd. v. Axis Bank***, reported in ***AIR 2021 SC 729***, specifically paragraph 14; paragraph 19 of the judgement of the Hon'ble Supreme Court in ***U.P. State Road Transport Corporation & Others v. Brijesh Kumar & Ors.*** Reported in ***AIR 2024 SC 4424***; and ***Govt. of A.P. v. N. Ramanaiah***, reported in ***(2009) 7 SCC 165***.

10. Thereafter, the Learned Senior Counsel for the Petitioner has contended that the Petitioner has been wrongfully terminated from his service despite none of the allegations against the Petitioner having been proven. Even though an FIR has been filed against the Petitioner, mere filing of FIR does not in any way prove the guilt of the Petitioner, unless a proper enquiry is conducted in the matter.

11. Next, referring to the Counter Affidavit filed by the Opposite Party No.4, the Learned Senior Counsel for the Petitioner submitted that the letter dated 21.12.2024, under Annexure-H/4 to the Counter, asking the Petitioner for show-cause and the letter dated 21.12.2024, under Annexure-G/4 to the Counter, calling for urgent College Council meeting on 23.12.2024, have not been received by the Petitioner. Instead, the Dean & Principal of the College had orally directed the Petitioner to submit an application to the D.M.E.T, Odisha regarding allegations by Dr. V. Rajinikanth. The Learned Senior Counsel for the Petitioner contended that unless a proper full-fledged inquiry is conducted, the Petitioner cannot be held guilty solely on the basis of a committee report. As such, the order of termination of the Petitioner's service is not sustainable in the eyes of law.

12. Lastly, referring to Clause-9(7) of the Guidelines, the Learned Senior Counsel for the Petitioner contended that in the event the service of the Petitioner is terminated, then he will be debarred from being selected for a period of next three years, which will cause serious hardships to the Petitioner and hamper his career progression. In such view of the matter, it was prayed that the impugned order of termination dated 29.12.2024 under Annexure-6 be quashed and the Petitioner be reinstated in service with all consequential service benefits.

CONTENTIONS BY THE STATE-OPPOSITE PARTIES

13. Heard Mr. Dayanidhi Lenka, Additional Government Advocate appearing for the Opposite Parties. The Opposite Parties have, at the outset, strongly disputed the Petitioner's stance and have contended that the impugned order of termination dated 29.12.2024, under Annexure-6 to the present Writ Petition does not suffer from any illegality and that the Petitioner has been rightfully terminated from his deputation.

14. Learned Counsel for State-Opposite Parties, before beginning his arguments, clarifies before this court that the doctors that have been appointed in Medical Colleges and Hospitals are direct recruitees appointed through OPSC and their promotional avenue will be up to D.M.E.T. As to doctors appointed in district peripheral medicals placed in OMHS Cadre, their promotion avenue is up-to CDMO & DHS (Directorate of Health Services). So far as the appointing authority for the both the categories of doctors is concerned, it is the State Government, i.e., the Secretary, Health & Family Welfare Department, Govt. of Odisha for OMHS cadre doctors and the D.M.E.T is the appointing authority for the doctors appointed to Medical College and Hospitals. The Learned Counsel for State-Opposite Parties also states that the cadres of both the above-mentioned categories of doctors are different from one another.

15. Learned Counsel for State-Opposite Parties, at this stage, has drawn the attention of this Court to the State Government Resolution No.8967 dated 25.04.2022, under Annexure-7 to the present Writ Petition, wherein guidelines have been laid down regarding the engagement of Asst. Professor/Associate Professor in Government Medical/Dental Colleges in the State. Clause-3 of the aforesaid Resolution, titled "Selection Authority", provides that the D.M.E.T, Odisha shall be the selecting authority competent to enter into contract with faculties to be recruited contractually. However, when required in exigency, the D.M.E.T, Odisha may direct the Dean & Principal of a Govt. Medical College to conduct the selection and get the same approved by the D.M.E.T, Odisha.

16. The Learned Counsel for State-Opposite Parties contended that on the basis of the aforesaid resolution, the Petitioner was selected by the Dean & Principal of MKCG Medical College and after due approval of the D.M.E.T, Odisha on 21.05.2024, the Petitioner was appointed as Asst. Professor in Orthopedic Department on contractual basis by the Dean & Principal of MKCG Medical

College vide Office Order No.5534 dated 22.05.2024, under Annexure-2 to the Writ Petition. Therefore, it is the Dean & Principal of MKCG Medical College & Hospital who is the Appointing Authority of the Petitioner.

17. To further substantiate his stance, the Learned Counsel for State-Opposite Parties, again referred to the State Government Resolution No.8967 dated 25.04.2022, under Annexure-7, specifically Appendix-1 to the said resolution containing "Agreement for Contractual Service". Learned Counsel for State-Opposite Parties contended that the said agreement is required to be signed by the contractual candidate, i.e. the "SECOND PARTY" and the Dean & Principal, i.e. the "FIRST PARTY". Clause-8(d) of the said agreement, which is a non-obstante clause, provides that the services of the second party (the contractual candidate) may be terminated at any point of time by the competent authority of HFWD if the second party is involved in criminal offence, or guilty of insubordination, intemperance or other misconduct or breach or nonperformance or at the completion of the contract period as mentioned.

18. Furthermore, the Learned Counsel for State-Opposite Parties has clarified that as per the Letter No.18133 dated 22.07.2024 issued by the Additional Secretary to Government of Odisha in the Health & Family Welfare Department, under Annexure-3, the Secretary to Government of Odisha, Health & Family Welfare Department is the appointing authority of the Petitioner for OMHS Cadre. And, as per the appointment letter dated 22.05.2024 issued by the Dean & Principal MKCG Medical College & Hospital, Berhampur, under Annexure-2, it is the Dean & Principal, MKCG MCH who is the Appointing Authority of the Petitioner so far as the post of Assistant Professor on deputation basis is concerned. Therefore, the service of the Petitioner has been rightfully terminated from his post of Assistant Professor on deputation basis by the Dean & Principal, MKCG MCH vide impugned termination order dated 29.12.2024 under Annexure-6 to the Writ Petition.

19. A counter Affidavit has also been filed by the Opposite Party No.4- the Dean and Principal, MKCG MCH, Brahmapur, Ganjam. It has been stated in the Counter Affidavit that, the Petitioner had been provisionally/temporarily selected as Assistant Professor in the Surgery Department on deputation basis, vide the Order No.5534 dated 22.05.2024, under Annexure-A/4 to the Counter Affidavit. The Learned Counsel for State-Opposite Parties, referring to the said Counter Affidavit, submitted before this Court that the fact of the Petitioner's assault on one Dr. V.Rajinikanth, on the night of 20.12.2024 at around 12:30 am (i.e. early hours of 21.12.2024), is clear from the complaint filed by the victim-Dr. V.Rajinikanth, the complaint filed by Dr. Narendra Behera, HOD, Paediatrics and advisor to P.G Student Union, and the treatment records of the Dr. V.Rajnikanth under Annexure-B/4, Annexure-C/4 and Annexure-D/4 respectively to the Counter Affidavit filed on behalf of the Opposite Party No.4. In fact, after the occurrence, an FIR was also registered against the Petitioner at Baidyanathpur Police station as PS Case

No.600/2024. A copy of the said FIR is furnished as Annexure-E/4 to the Counter Affidavit filed by the Opposite Party No.4. Moreover, the learned Additional Government Advocate contended that in addition to the FIR which was lodged against the Petitioner, the boarders of the PG Hostel also conducted an in-house meeting on 21.12.2024 and passed a resolution, under Annexure-F/4 to the Counter, prohibiting the Petitioner from the PG Hostel.

20. Next, the Learned Counsel for State-Opposite Parties has contended that before the termination order was issued against the Petitioner, he was provided with ample opportunity to show cause. He further contended that after the occurrence, in the night of 20.12.2024, the Dean & Principal, MKCG MCH convened a „College Council Meeting‟ on 23.12.2024 by his letter dated 21.12.2024, under Annexure-H/4 to the aforesaid Counter Affidavit. In the said letter, the Dean & Principal, MKCG MCH had asked the Petitioner to show cause on the allegation made by Dr. V.Rajnikanth and to submit his statement before the Committee. In the said meeting, the Petitioner was given sufficient opportunity to explain his stance and the Petitioner's statement was also reduced to writing. A copy of the Disciplinary Proceedings by the Enquiry Committee and the statement of the Petitioner have been provided under Annexure-J/4 series to the Counter Affidavit filed by the Opposite Party No.4.

21. Learned Counsel for State-Opposite Parties further contended that it was only after viewing the retrieved video footage, cross-examining the Petitioner (along with other perpetrators), and after considering the statement of the Petitioner, that the Committee prepared an „Action Taken Report‟ which was submitted to the D.M.E.T, Odisha, Bhubaneswar vide letter No.63-C dated 24.12.2024, under Annexure-K/4 to the Counter. In fact, it was contended that the Petitioner has also submitted his representation regarding the incident before the D.M.E.T, Odisha, Bhubanseswar, a copy of which has been attached under Annexure-L/4 to the Counter. Learned Counsel for State-Opposite Parties submitted that consequent upon the decision taken in the College Council meeting, the Action Taken Report, and the direction received from the D.M.E.T, Odisha vide letter No.25143 dated 27.12.2024, the Petitioner along with others were terminated from their services with immediate effect on disciplinary grounds via the termination order dated 29.12.2024 under Annexure-M/4 to the Counter Affidavit. As such, it was contended by the Learned Counsel for State-Opposite Parties that the Petitioner has been given an opportunity of hearing at each stage of the proceeding and the principles of natural justice have been thoroughly followed before the Petitioner's service on deputation was terminated. To support his contentions, the Learned Counsel for State-Opposite Parties has relied on the decision of the Hon'ble Supreme Court in ***Kunal Nanda v. Union of India & Ors***. reported in ***2000 (5) SCC 362*** and ***Ratilal B.Soni & Ors. v. State of Gujarat & Ors***. reported in ***AIR 1990 SC 1132***, in the Counter Affidavit.

22. In respect of the contention of the Petitioner that he has not been given one month's notice prior to his termination, the Learned Counsel for State-Opposite Parties submitted that the engagement of the Petitioner was on purely temporary basis and could be terminated without assigning any reason. However, since in the present case there were sufficient reasons for the termination of his service, on disciplinary grounds, there was no need to serve one month's notice upon the Petitioner prior to the termination of his service. Lastly, the Learned Counsel for State-Opposite Parties contended that in the light of the incident that had occurred on the night of 20.12.2024, i.e. at around 12:30 am on 21.12.2024, the presence of the Petitioner in the campus premises was likely to aggravate the situation and could have led to other similar incidents. Therefore, the termination of his service was also necessary for maintaining peace and harmony in the campus.

23. An additional Counter Affidavit has also been filed on behalf of the Opposite Party No.4-the Dean and Principal, MKCG MCH, Brahmapur, Ganjam. In the said additional Counter Affidavit it has been contended that vide Office Order No.5534 dated 22.05.2024, under Annexure-2, the State Government has made the resolution No.1532 dated 19.12.2024, under Annexure-H/1 to the additional Counter Affidavit. The appointment of the Petitioner has been made pursuant to the aforesaid resolution of the State Government dated 19.12.2024. it has been further contended in the additional Counter Affidavit that in the said resolution No.1532 dated 19.12.2024, in order to expedite filling up of vacant medical posts, the State Government has delegated the power to the Dean & Principals of Medical Colleges to conduct recruitment for appointment to contractual and deputation posts through walk-in interviews/ counselling and to report the same to the D.M.E.T, Odisha.

24. It has been further stated in the additional Counter Affidavit on behalf of the Opposite Party No.4 that after the service of the Petitioner on deputation as Assistant Professor was terminated, he is deemed to have returned back to his post in the Directorate of Health Services. In fact, following the termination of the service of the Petitioner, an order bearing Letter No.9470 dated 28.03.2025 was passed and pursuant to such order the Petitioner has already joined as LTRMO, SDH Bhanjanagar, Ganjam. The Petitioner has also accepted his appointment to the said post on 29.03.2025. As such, it was contended that the Petitioner has erroneously interpreted the word 'termination'.

25. Furthermore, since the Petitioner was on purely deputation basis, the termination of his services as per Clause-8(d) of the agreement under Appendix-1 to the State Government Resolution No.8967 dated 25.04.2022, under Annexure-7 to the present writ petition does not wipe off the services of the Petitioner completely. Instead, the Petitioner has only been disengaged from deputation as Assistant Professor at MKCG MCH. It has been contended that the Action Taken Report by the Committee clearly states that the Petitioner has only been terminated from his present post, i.e. Assistant Professor, Orthopedics and termination from the said post does not in any way hamper the service benefits of the Petitioner. In such view of

the matter, it was contended that the Writ Petition filed by the Petitioner has become infructuous and is devoid of merit. Therefore, the same is liable to be dismissed.

ANALYSIS OF THE COURT

26. Heard Mr.Budhadev Routray learned Senior Advocate along with Mr.S.Routray for the Petitioner and Mr.Dayanidhi Lenka, Additional Government Advocate for the Opposite Parties. Perused the Writ Petition, the Counter Affidavit filed by the Opposite Party No.4, the Rejoinder filed by the Petitioner, and other documents annexed to the Writ Petition.

27. At the outset, it is clear that initially vide Order No.4928 dated 07.05.2024 under Annexure-1 to the present Writ Petition, which was passed pursuant to the letter No.7041 dated 30.04.2024, the Petitioner was relieved from MKCG MCH after completing two years of post PG bond service. In the same order the Petitioner was directed to report before the DHS (O)/Government in H&FW Department for further place of posting. Then, vide order No.5534 dated 22.05.2024, the Petitioner was appointed temporarily as Assistant professor on deputation/ contractual basis in the Orthopedics discipline. The appointment order reveals that the terms and conditions of his service will be governed by the State Government resolution No.8967/H dated 25.04.2022, under Annexure-7, i.e. the Guidelines. The relevant clauses of the Guidelines are reproduced herein below for better appreciation;

Clause-3 of the Guidelines under Annexure-7;

*"**3. Selection Authority**:*

The Director of Medical Education & Training, Odisha shall be the selecting authority and competent to enter into contract with faculties to be recruited on contract. While engaging Associate Professors and Professors on contract, the tentative vacancies against which the eligible candidates in feeder cadre are not available immediately, may be considered. Such list of vacancies shall be obtained from the Government for consideration. However, if required in exigency, the Director of Medical Education & Training may direct the Dean & Principal of a Govt. Medical College to conduct the selection and send the select list along with the proceedings to D.M.E.T Odisha. For all such selections by D.M.E.T, Odisha or Dean & Principals, the D.M.E.T, Odisha shall issue engagement order and intimate the same for obtaining post facto approval of the Government."

Clause-9(1) of the Guidelines under Annexure-7

"9. Terms and Conditions:

1. The engagement shall be purely temporary and on year to year tenure basis and may be for a maximum period of four years subject to satisfactory performance. However the Government reserves the right to terminate the services of the faculty with one month prior notice without assigning any reason."

Clause-8(a) of the agreement under Appendix-1 to the Guidelines under Annexure-7;

> ***"8. TERMINATION***
>
> ***a.*** *In case of improper conduct by the Second Party, the HFWD may terminate this Agreement and no compensation shall be payable in such a case."*

Later on, the above-discussed untoward incident occurred in the night of 20.12.2024 within the college campus. Following such incident, the Petitioner has been terminated from his service vide the termination order dated 29.12.2024 under Annexure-6. The crux of the issue involved in the present Writ Petition revolves around the aforesaid order of termination.

28. On perusal of the Writ Petition along with the submissions made and Rejoinder filed by the Petitioner, this Court observes that the Petitioner has challenged the impugned order of termination under Annexure-6 on three primary grounds. *Firstly*, that the order of termination has been issued without following the principles of natural justice. *Secondly*, no prior notice of one month, as stipulated by the applicable Guidelines, was sent to the Petitioner before the termination of his service. *Thirdly*, the authority issuing the order of termination does not have the jurisdiction to terminate the service of the Petitioner. Therefore, in order to evaluate the merits of the relief sought by the Petitioner, this Court is required to first adjudicate the aforesaid three issues at hand.

29. So far as the nature of service of the Petitioner is concerned, it is beyond doubt that the Petitioner's service was on deputation basis, as is evident from the appointment order under Annexure-2 issued in favour of the Petitioner. It is also clear from the said order of appointment that the terms and conditions of the Petitioner's service shall be governed by the Guidelines under Annexure-7. Clause-9 of the said Guidelines deals with "Terms and Conditions" and Clause-9(1) of the Guidelines enumerates that the State Government reserves the right to terminate the temporary service of the employees by providing a prior notice of one month. However, Clause-9(1) clearly states that the aforesaid procedure is to be followed when the termination is without assigning any reason, i.e. when the termination is made as per the Guidelines and is a termination simpliciter.

30. In the instant case nothing has been brought on record by the Opposite Parties to show that one month's prior notice was indeed given to the Petitioner before issuing the order of termination in his favour. As such, this Court is of the view that no prior notice of one month was given to the Petitioner. However, on perusal of the order of termination under Annexure-6 it can be seen that the service of the Petitioner has been terminated on "disciplinary ground". Therefore, the aforesaid order cannot be said to be a termination simpliciter. Instead, it appears to be a stigmatic order. Now, the law regarding termination of a government employee's service is well-settled (reference maybe had to ***Parshotam Lal Dhingra case*** reported in ***1958 SCR 828***, ***Jagdish Mitter v. Union of India***, reported in ***1963 SCC OnLine SC 75*** and a catena of decisions along similar lines). The settled principle can be summarised thusly; if the service of the temporary employee is terminated as per the contract of his engagement/ guidelines, i.e. by providing the

notice as stipulated under the said contract/ guidelines, then the said order of termination will be simpliciter in nature and proper. However, if the services of the temporary employee has been terminated by an order which is not a termination simpliciter, i.e. the termination is punitive in nature, then the order of termination is stigmatic and shall attract the protection of Article 311(2) of the Constitution of India.

31. Article 311(2) of the Constitution of India postulates that no government employee shall be dismissed or removed or reduced in rank unless an inquiry is conducted into the matter and the delinquent is communicated the charges against him and given a reasonable opportunity of being heard in respect of those charges. As has already been established, the Petitioner was appointed on deputation basis, i.e. his service was temporary/contractual in nature. Now, it is well-settled through a catena of decisions of the Hon'ble Supreme Court that contractual employee can also avail the protection of the mandatory provision contained in Article 311(2) of the Constitution of India in the event the termination of his service in stigmatic in nature (reference maybe had to ***Parshotam Lal Dhingra v. Union of India***, reported in ***AIR 1958 SC 36***, ***Ramnath Prasad v. State of Bihar*** reported in ***(1988) 2 SCC 423***, ***State of Bihar v. Shiva Bhikshuk Mishra*** reported in ***(1970) 2 SCC 871***, ***State of U.P. v Kaushal Kishore Shukla***, reported in ***(1991) 1 SCC 691*** and other similar decisions). Therefore, it is established that the Petitioner in the instant case is entitled to the protection afforded by Article 311(2) of our Constitution.

32. Consequently, this Court is now required to examine whether the protection afforded under Article 311(2) of the Constitution of India was extended to the Petitioner before his service was terminated. On perusal of the documents annexed to the Counter Affidavit filed by the Opposite Party No.4, specifically the letter No.14980 dated 21.12.2024 under Annexure-H/4 to the said Counter, it can be seen that the Dean & Principal, MKCG MCH has informed Petitioner about the College Council Meeting to be held on 23.12.2024 and asked the Petitioner to attend the meeting and submit his statement regarding the incident that took place on 21.12.2024 at around 12:30 am. The complaint letter by Dr. V.Rajnikath concerning the incident has also been annexed to the said letter. This indicates that the subject matter of the proposed meeting and the issue on which the Petitioner is required to submit his statement was communicated to him. Thereafter, the College Council Meeting was conducted and it can be seen from the copy of the attendance sheet under Annexure-J/4 series that the Petitioner was present in the said meeting. Additionally, the said Annexure-J/4 series also contains written statements of several persons present at the meeting, one of them being the present Petitioner. A copy of the proceeding of the said meeting is also present under Annexure-J/4 to the Counter Affidavit filed by the Opposite Party No.4.

33. After the proceeding was concluded, an "action taken report" was submitted to the D.M.E.T, Odisha, Bhubaneswar, vide Letter No.63-C dated 24.12.2024, under Annexure-K/4 to the Opposite Party No.4's Counter Affidavit. In fact, it can be seen

from Annexure-L/4, annexed to the Counter Affidavit by the Opposite Party No.4, that the Petitioner has also submitted his representation regarding the incident to the D.M.E.T, Odisha. Since the impugned order of termination under Annexure-6 was passed on 29.12.2024, it can be fairly ascertained that the Petitioner was indeed given an opportunity of hearing before his contractual service was terminated. Thus, this Court has no hesitation in concluding that the Petitioner has been granted proper opportunity of being heard and the provision under Article 311(2) has been followed prior to terminating the service of the Petitioner. The first and second issues are answered accordingly.

34. Next, this Court has to determine as to whether the Dean & Principal, MKCG MCH has the requisite jurisdiction to issue the order of termination of service of the Petitioner. The impugned order of termination under Anexure-6 reveals that the said order has been issued by the Dean & Principal, MKCG MCH as per the decision taken in the College Council meeting and according to the direction received from the D.M.E.T, Odisha vide letter No. 25143 dated 27.12.2024. On perusal of the office order of appointment dated 22.05.2024 under Annexure-2, it can be seen that the said order of appointment was issued by the Dean& Principal, MKCG MCH. Also, the said appointment order reveals that the appointment has been made by the Dean& Principal, MKCG MCH in exercise of the delegated powers vide the Resolution No. l532/H dated 19.01.2024, issued by the State Government in the H&FW Department, and in pursuance of the communication received from the D.M.E.T, Odisha vide Letter No.7883 dated 21.05.2024.

35. Now, on perusal of the Resolution No.l532/H dated 19.01.2024 under Annexure-H/1 to the Additional Affidavit filed by the Opposite Party No.4, it can be seen that the State Government in H&FW Department has directed the Dean & Principal of Medical Colleges, along with the Director of PGIMER and Capital Hospital, Bhubaneswar and the Principal, SCB Dental College, Cuttack shall conduct recruitment of Assistant Professors amongst other posts on the 12th of every month via walk-in interview/ counselling and report the same to the D.M.E.T Odisha. Similarly, the D.M.E.T, Odisha shall conduct recruitment for remaining vacancies in various posts on the 25th of every month and report to the H&FW Department.

36. Furthermore, as per the agreement under Appendix-1 to the Guidelines under Annexure-7, which has been signed by the Petitioner, indicates that the said agreement has been signed between the 'FIRST PARTY' the H&FW Department, Government of Odisha represented through the Dean & Principal and the 'SECOND PARTY' the appointee. Similarly, in Clause-8 of the said agreement titled "TERMINATION", specifically Clause-(a) and Clause-(d) thereof, it is indicated that the H&FWD may terminate the agreement and that the services of the 'SECOND PARTY' may be terminated by the "competent authority of the H&FWD". It is a settled principle of law, as enumerated under Article 311(1) of the Constitution of India, that it is the Appointing Authority which has the power to

terminate the services of the employee. In the instant case, from the aforesaid analysis, it is clear that the State Government in H&FW Department is the appropriate authority to terminate the service of the Petitioner.

37. Moreover, there is nothing on record to show that the power to terminate the services of the Petitioner has been expressly delegated by the State Government to the Dean & Principal MKCG MCH. Accordingly, with regard to the third issue at hand, this Court is of the opinion that the Dean & Principal, MKCG MCH did not have the jurisdiction to issue the impugned order of termination dated 29.12.2024 under Annexure-6 to the present Writ Petition. Furthermore, it has been brought to the notice of this court, by the Additional Counter Affidavit filed by the Opposite Party No.4, that after the service of the Petitioner as Assistant Professor on deputation basis at MKCG MCH was terminated, the Petitioner was reverted back to his post in the Directorate of Health Services and that the Petitioner has already joined as LTRMO, SDH Bhanjanagar, Ganjam on 29.03.2025 vide Letter No.9470 dated 28.03.2025. Such fact has also not been disputed by the Petitioner.

38. Consequently, In view of the aforesaid analysis, this court is of the view that the impugned order of rejection dated 29.12.2024, under Annexure-6 to the Writ Petition, is bad in law, inasmuch as it has been issued by an authority not having the jurisdiction to issue such order of termination against the Petitioner. As such, this Court has no hesitation in quashing said order of termination under Annexure-6. Accordingly, the same is hereby quashed.

39. Accordingly, the Writ Petition is disposed of. However, there shall be no order as to costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ petition disposed of.

—— o ——

2025 (III) ILR-CUT-289

JAGATPATI HANSDA
V.
STATE OF ORISSA, PRINCIPAL SECY, HOME DEPARTMENT, KHORDHA & ORS.

[W.P.(C) NO. 26823 OF 2021]

07 APRIL 2025

[V. NARASINGH, J.]

Issues for Consideration

1. Whether assigning reason is essential before passing the order of dismissal of a civil servant in terms of Article 311(2)(b) of the Constitution.

2. Whether the petitioner is entitle to reinstatement when the Authority has not assigned any reason and passed the order of dismissal.

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Article 311(2) (b) r/w Sub Rule (ii) of Rule 18 of the Odisha Civil Service (Classification, Control & Appeal) Rule, 1962 – Involvement in criminal case – The petitioner dismissed from service by the Authority in exercise of power conferred under Article 311(2) (b) of the Constitution r/w Sub Rule (ii) of Rule 18 of 1962 Rule – The order of dismissal was affirmed by the Appellate Authority – The Disciplining Authority in the impugned order had not recorded the reasons for its satisfaction that it was not "reasonably practicable" to hold the enquiry contemplated U/A 311 (2) (b) – Whether assigning of reason is essential before passing the order of dismissal of a civil servant in terms of Article 311 (2) (b) of the Constitution.

Held: Yes – There is nothing on record to indicate the reason which impelled the authorities to take recourse to extraordinary measure and dispense with the services of the Petitioner in terms of Article 311 (2) (b) by the impugned order at Annexure-4 – By the selfsame Authority and on the same date i.e. on 17.12.2019. In such view of the matter, this Court is persuaded to hold that in view of the judgments cited above the order of the Disciplinary Authority as well as the Appellate Authority does not stand scrutiny in terms of the law laid down by the Apex Court in the case of Tulsiram Patel (Supra) and followed subsequently in several judgment noted above and the order passed by this Court in the case of State of Orissa & Others Vrs Amulya Kumar Champatiray, 2017 (Supp-II) OLR-107, the impugned order of dismissal at Annexure-4 dated 17.12.2019 passed by the Superintendent of Police, Bhadrak and the Appellate order dated 30.07.2021 at Annexure-7 is liable to be quashed. Accordingly it is so directed. (Para 14)

(B) ORISSA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – Rule 18 Sub Rule (ii) r/w Article 311 (2) (b) of Constitution of India – The Disciplinary Authority dismissed the petitioner from service being charge sheeted U/s. 376 (1)/ 393/ 417/ 312/ 506 of IPC – The Appellant Authority affirmed the order of Disciplinary Authority – The Authority have not recorded the reason for its satisfaction that it was not reasonably practicable to hold enquiry – Whether the petitioner is entitle to reinstatement when the dismissal order is quashed for want of reason.

Held: No – Taking into account the nature of allegation, this Court is not persuaded to hold that in the case at hand the reinstatement of the present Petitioner in service can be directed. (Para 18)

Citations Reference

Haryana Financial Corporation Vrs. Jagdamba Oil Mills, **(2002) 3 SCC 496;** Islamic Academy of Education and Another Vrs. State of Karnataka and Others, **(2003) 6 SCC 697 – referred to.**

List of Acts

Constitution of India, 1950; Odisha Civil Services (Classification, Control and Appeal) Rule, 1962.

Keywords

Disciplinary Proceeding; Dismissal; Removal; Assigning of Reason; Enquiry; Practicability to hold Enquiry; Reinstatement; Criminal misconduct; Moral turpitude; Nature of allegation; Technical ground; Police manual

Case Arising From

Order of dismissal dated 17.12.2019 passed by the Superintendent of Police, Bhadrak and affirmed by the Appellate Authority.

Appearances for Parties

For Petitioner : Mr. P.K. Mohapatra
For Opp. Parties : Mr. S.N. Das, ASC

Judgment/Order

Judgment

V. NARASINGH, J.

1. Heard learned counsel for the Petitioner and the learned counsel for the State.

2. The Petitioner who was working as a constable in the Odisha Police District Headquarter, Bhadrak has assailed the order of dismissal dated 17.12.2019 at Annexure-4 passed by the Superintendent of Police, Bhadrak in purported exercise

of power conferred under Article 311 (2)(b) of the Constitution of India read with Sub Rule (ii) of Rule-18 of the Odisha Civil Service (Classification, control and Appeal) Rule 1962 and affirmed by the Appellate Authority at Annexure-7. For convenience of ready reference the impugned order at Annexure-4 and the Appellate Authority at Annexure-7 are extracted hereunder:

"xxx xxx xxx

Annexure-4

ODISHA POLICE
DISTRICT HEADQUARTERS, BHADRAK

No. 2014/ RO Dated. 17.12.2019

ORDER

……AND WHEREAS, in view of the above facts, the full departmental enquiry is dispensed with and urgent necessity of dismissal of constable/573 Jagatpati Hansdah has arisen since it is not reasonably practicable to hold the enquiry considering the public good since the said Constable has damaged faith of police in public eyes and affected sentiments of local people.

AND WHEREAS, I have applied my mind judiciously with the view that his continuation in the police department will damage the image of police further in public eyes and will affect sentiments of public.

..... Hence, in exercise of powers conferred under Art-311(2)(b) of the Constitution of India read with Sub Rule(ii) of Rule-18 of Odisha Civil Service (Classification, Control and Appeal) Rules 1962, I Rajesh Pandit, IPS, Superintendent of Police, Bhadrak dismiss C/573 Jagatpati Hansdah from Government Service with immediate effect on this 17th day of December, 2019.

xxx xxx xxx

Annexure-7

Order passed by Shri Himanshu Kumar Lal, IPS, I.G. of Police, Eastern Range, Balasore on the appeal petition filed by Ex.C/573 Jagatpati Hansda of Bhadrak district preferred against the order of dismissal from service issued vide Bhadrak D.O.No. 2014 dt. 17.12.2019

……There is no dispute with the fact that the appellant being involved in criminal case was suspended and subsequently dismissed from service under provision (b) to Article 311(2) of the Constitution of India. The disciplinary authority has exercised the extraordinary power conferred on him under the above provision of the Constitution. The appellant is guided under Police Manual Rules and not OCS (CCA) Rules. While dismissing the appellant from service, the disciplinary authority has recorded reason of disposing the enquiry as laid down in PMR. Since the appellant was involved in heinous crime like sexual assault and the case was subsequently charge sheeted to face the trail action of the disciplinary authority seems to be just and proper.

I agree with findings of Disciplinary Authority. The Disciplinary Authority has imposed the punishment applying his judicious mind and maintaining all the

decorum of the discipline in the department. Hence, the appeal petition is devoid of merit and rejected.

xxx xxx xxx"

3. On a bare perusal of the memorandum of appeal, it is seen that the Petitioner has extracted the dictionary meaning of "not reasonably practicable" by referring to the "Webster's Third New International Dictionary" and stated that the exercise of power in the given case is ex facie arbitrary.

4. Since the Appellate Authority did not dispose of the appeal in time, the Petitioner approached this Court by filing W.P.(C) No.7421 of 2021 in which by order dated 01.03.2021 appeal was directed to be considered within a period of two months from the communication of the said order.

5. On such consideration, the appeal of the Petitioner was dismissed by order dated 30.07.2021 by the I.G of Police, Eastern Range, Balasore- Opposite Party No.3. Assailing both the order passed at Anexure-4 & 7, the present writ petitioner has been preferred, as noted.

5A. It is apt to note that the Petitioner is the sole accused in Bhadrak Town P.S. Case No.385, dated 16.12.2019, under Sections 376(1)/493/417/312/506 of IPC and it is stated at the Bar that he is now facing trial pending in the Court of learned S.D.J.M., Bhadrak.

6. It is submitted by the learned counsel for the Petitioner that the Petitioner joined as a constable in the year 2009 and till the incident happened in the year 2019, there was no allegation against him and on extraneous consideration the allegation has been made and being swayed away by such allegation, the impugned orders have been passed. Hence, the same are liable to be set aside and to fortify his submission that prima facie condition precedent for exercise of the power under Article 311(2)(b) is non-existent, learned counsel for the Petitioner relies on the following judgments;

i. Union of India and Anr. Vs. Tulsiram Patel and Anr., AIR 1985 SC 1416

ii. Tarsem Singh Vs. State of Punjab and Ors, (2006) 13 SCC 581

iii. Risal Singh Vs. State of Haryana and Ors, (2014) 13 SCC 244

iv. State of Orissa & Others Vs. Amulya Kumar Champatiray, 2017 (Supp-II) OLR-107

7. For convenience of ready reference Article 311(1) and (2)(b) is extracted hereunder:

xxx xxx xxx

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) Xxx

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) xxx

(3) xxx

xxx xxx xxx"

8. Referring to the leading Judgment under Article 311(2)(b), in the case of Tulsiram Patel (Supra), it is urged by the learned counsel for the Petitioner that the decision of the Disciplinary Authority is not binding in Court and does not in any way curtail the power of the Judicial Review.

9. It is his further submission that the impugned order ought to have recorded the reasons for its satisfaction that it was not "reasonably practicable" to hold the enquiry contemplated under Article 311(2)(b) in writing. And, in the absence thereof the impugned order is liable to be set aside.

10. Per contra, learned counsel for the State submits that taking into account that the Petitioner belongs to the Disciplined force and the nature of allegation, filing of the charge sheet and the matter being pending trial, there is no illegality or improper exercise of power by the Disciplinary Authority as well as the Appellate Authority in passing the impugned orders warranting interference by this Court.

11. It is his further submission that the Petitioner admittedly, belongs to a disciplined force and since it affected the image and moral of the police personnel, right action has been taken. In this context he refers to the paragraph-8 of the counter affidavit, which inter alia contained the stand of the Opposite Party. The same is culled out hereunder for convenience of ready reference;

"xxx xxx xxx

Therefore, keeping in view of the public interest, public good, public order & faith for Police administration, the extraordinary situation which was arising due to the involvement of the petitioner in heinous crime of sexual assault on victim lady Constable against her will and consent repeatedly with false assurance to marry her, threatened her with dire consequences and to damage her reputation by exposing her obscene photograph viral. Hence, in exercise of powers conferred under Article

> 311(2) (b) of the constitution of India r/w. sub-rule ii) of Rule 18 of Odisha Civil Service (Classification, Control & Appeal) Rules, 1962, the petitioner was dismissed from Govt, Service w.e.f. 17.12.2019 vide Annexure-4 by the then S.P. Bhadrak.
>
> xxx xxx xxx"

12. Admittedly, the Petitioner belongs to the disciplined force and so also the victim. The contentions raised by the learned counsel for the Petitioner has to be examined on the touch stone of the judgments relied upon which, inter alia, lay down the proposition of law as referred to the hereinabove in the case of Tulsiram Patel (Supra) that the reasons have to be reflected for taking the extra ordinary step of dispensing with the Enquiry and secondly, which ought to indicate why it is not reasonably practicable "to hold such enquiry".

13. There is an interesting feature of this case which ought to be noticed. In as much as by taking into account the nature of allegation on 16.12.2019, the suspension order was passed by 17.12.2019 by the Disciplinary Authority- the Superintendent of Bhadrak. In the said suspension order, it has been stated thus;

> "xxx xxx xxx
>
> The above activities are not expected from the member of a disciplined department. As a departmental proceeding enquiry is being contemplated against him for the above reason, APR Const./573 Jagatpati Hansda is hereby placed under suspension w.e.f 17.12.2019 A.M for his gross misconduct, indiscipline conduct & moral turpitude. xxx xxx xxx"

14. There is nothing on record to indicate the reason which impelled the authorities to take recourse to extraordinary measure and dispense with the services of the Petitioner in terms of Article 311 (2) (b) by the impugned order at Annexure-4. by the selfsame Authority and on the same date i.e. on 17.12.2019. In such view of the matter, this Court is persuaded to hold that in view of the judgments cited above the order of the Disciplinary Authority as well as the Appellate Authority does not stand scrutiny in terms of the law laid down by the Apex Court in the case of **Tulsiram Patel (Supra)** and followed subsequently in several judgment noted above and the order passed by this Court in the case of State of Orissa & Others Vrs Amulya Kumar Champatiray, 2017 (Supp-II) OLR-107, the impugned order of dismissal at Annexure-4 dated 17.12.2019 passed by the Superintendent of Police, Bhadrak and the Appellate order dated 30.07.2021 at Annexure-7 is liable to be quashed. Accordingly it is so directed.

14A. Having held so the next question that confronts this Court, is the relief which can be granted to the Petitioner.

15. Learned counsel for the Petitioner submits that since the orders are not sustainable ex facie being violative of the dictum of the Apex Court and not within the parameters as laid down under Article 311(2)(b) of the Constitution, the logical

consequence is that the Petitioner should be directed to be reinstated with all consequential financial and service benefits.

16. Such submission is opposed by the learned counsel for the State on the ground that since the order is interfered on "technical grounds", inter alia for not containing reasons, taking into account the nature of allegation, such relief ought not to be granted.

17. It is trite that the judgments rendered by the Apex Court have to be followed in the facts of each case. In this context this Court respectfully refers to the judgment of the Apex Court in the case of **Haryana Financial Corporation Vrs. Jagdamba Oil Mills** reported in **(2002) 3 SCC 496** and in the case of **Islamic Academy of Education and another Vrs. State of Karnataka and others** reported in **(2003) 6 SCC 697.**

18. Taking into account the nature of allegation, this Court is not persuaded to hold that in the case at hand the reinstatement of the present Petitioner in service can be directed.

19. In the factual matrix of the present case taking into account the nature of allegation, this Court directs that in view of quashment of the order of dismissal and the Appellate order at Annexure 4 and 7 respectively, the Authority shall conduct an enquiry in terms of the Police Manual and conclude the same within the period of six months from the date of receipt/ production of copy of this judgment.

20. In the event, the enquiry is not concluded within the aforesaid period and the delay is not attributable to the Petitioner, it shall be open for the Petitioner to seek relief of reinstatement.

21. Accordingly, the writ petition stands disposed of. No costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ petition disposed of.

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2025 (III) ILR-CUT-296

BARATAM SATYA RAJU (DEAD)
2. BARATAM NABIN KUMAR
3. BARATAM RAJESH KUMAR
V.
GIAN KAUR CHAHAL
2. NATIONAL INSURANCE CO. LTD.

[MACA NO. 1229 OF 2016]

27 MAY 2025

[V. NARASINGH, J.]

Issues for Consideration

1. Whether the monthly income of the home maker can be enhanced.

2. Whether the attendance charges should be calculated at par with loss of income.

Headnotes

(A) MOTOR ACCIDENT – Compensation – Quantification/ Calculation of the income of a home maker – The learned Tribunal took the monthly income of the deceased home maker as ₹3000/- per month – Whether the monthly income of the home maker can be enhanced.

Held: Yes – This Court is of the considered view that an amount of Rs.6000/- per month as loss of income would subserve the ends of justice – Accordingly, the amount per year comes to Rs.72,000/-. (Para 10)

(B) MOTOR ACCIDENT – Attendance charges – Enhancement – The counsel claimed that attendance charges should be calculated at par with the loss of income – Whether the attendance charges should be calculated at par with the loss of income.

Held: No – This Court is not persuaded to hold that attendance charges should be at par with the loss of income during treatment as claimed. (Para 11)

(C) MOTOR ACCIDENT – Compensation – Consortium – Division – Discussed with reference to case law. (Paras 13 & 14)

Citations Reference

Arun Kumar Agrawal and another vrs. National Insurance Company and others, **2010 (3) TAC 769 (SC);** Rajesh vrs. Rajbir Singh, **2013 (3) TAC 697;** Anjani Singh vrs. Salauddin, **2014 (58) OCR 923;** Rojalini Nayak and others

vrs. Ajit Sahoo and others, **(2024) 8 SCC 239;** National Insurance Company Ltd. vrs. Pranay Sethi and others, **(2017) 16 SCC 680;** Kirti and another vrs. Oriental Insurance Company Limited, **(2021) 2 SCC 166;** Kajal vrs. Jagdish Chand and others, **(2020) 4 SCC 413;** Magma General Insurance Company Ltd. Vrs. Nanu Ram alias Chuhru Ram & others, **(2018) 18 SCC 130;** New India Assurance Company Limited vrs. Somwati and others, **SCC OnLine 2020 SC 717; – referred to.**

List of Acts

Motor Vehicles Act, 1988.

Keywords

Motor Accident; Just compensation; Enhancement; Windfall; Bonanza; Unskilled worker; Home maker; Consortium; Medical Expenses; Attendance charges; Spouse consortium; Filial consortium ; Parental consortium; Conventional Heads

Case Arising From

Award dated 30.06.2016 passed by the learned 1st M.A.C.T., Koraput-Jeypore in MAC Case No.13 of 2012.

Appearances for Parties

For Appellants : Mr. D. Mund
For Respondents : Ms. R. Pati (Resp. No. 2)

Judgment/Order

Judgment

V. NARASINGH, J.

1. Being aggrieved by the quantification of compensation to the tune of Rs.4,48,000/- by award dated 30.06.2016 passed by the learned 1st M.A.C.T., Koraput-Jeypore in MAC Case No.13 of 2012 the Appellants-Claimants seeking enhancement have preferred this MACA.

The present Appeal was preferred by one Baratam Satya Raju along with other Appellants. During pendency of the appeal, Appellant No.1 passed away. His L.Rs Appellant Nos.2 and 3, Baratam Nabin Kumar and Baratam Rajesh Kumar respectively are already on record. Taking into account that no substitution is necessary, this appeal abates qua Appellant No.1 and thus confined to Appellant Nos. 2 and 3.

2. Appellants as Claimants filed Motor Accident Claim Case No.13 of 2012 in the court of learned District Judge-cum-First Motor Accident Claims Tribunal, Koraput at Jeypore claiming compensation of Rs.15,00,000/- on account of the death of one Baratam Vanajakshi who was the wife of Appellant No.1 (since dead)

and mother of Appellant Nos.2 and 3 to whom the appeal is confined as noted above.

It was stated that while Baratam Vanajakshi was travelling in OSRTC Bus bearing registration number OR-10-F-3850 on 25.5.2011 on N.H.26 near Tharapuram village, she met with an accident on account of rash and negligent driving of the driver of the offending truck bearing registration number CG 04-DF-4126.

2-A. It is stated that in the said accident Baratam Vanajakshi, mother of Appellant Nos.2 and 3, sustained fracture injuries on both legs and other grievous bleeding injuries on her right thigh. She underwent treatment at different hospitals i.e. Government Hospital, Salur, Government Hospital, Vijayanagaram and then to K.G.H., Visakhapatnam and thereafter, she was shifted to NRI Hospital, Sangivalasa and unfortunately during treatment, she succumbed to the injuries on 23.09.2015.

Claiming that she was aged about 45 years and was a home maker, compensation of Rs.15 lakhs was claimed from the Respondents.

2-B. Respondent No.2 herein Insurance Company was arrayed as Opposite Party No.2 being the insurer of the offending truck and the owner of the offending truck as Opposite Party No.1 before the learned Tribunal.

2-C. In spite of due service of notice, the owner Opposite Party No.1-Respondent No.1 herein did not participate in the proceeding and she was set ex parte.

Respondent No.2-Opposite Party No.2 before the learned Tribunal filed its written statement opposing the claim for compensation and a stand was taken that even if it is held that the Insurance Company is liable to pay the compensation then liberty should be granted to recover the same from the owner of the offending truck since the accident occurred due to laches on account of the owner and the driver.

3. On the pleadings of the parties, the following issues were framed:

> "1. Whether the accident occurred due to the rash and negligent driving of the driver of the offending truck causing injury leading to the death of the deceased?
>
> 2. Whether the Petitioners are entitled to get any compensation and if so, from whom and what is its quantum?
>
> 3. To what other reliefs the Petitioners are entitled to?"

3-A. To fortify their stand, the Claimant-Appellant No.3 herein examined himself as P.W.1 and several documents were admitted into evidence at the behest of the Appellant and marked as Exts.1 to 5, 5/b, 6, 6/b, 7 and 7/b.

Neither oral nor documentary evidence was adduced either on behalf of the Insurance Company or the owner (Respondent Nos.1 and 2 herein respectively).

4. Learned Tribunal on assessment of the evidence on record came to the finding that the accident took place on account of rash and negligent driving of the driver of the offending vehicle (truck) and on going through the evidence on record

came to a finding that the driver of the offending vehicle had a valid driving licence and the vehicle in question was covered by the valid insurance coverage and referring to the judgment of the Apex Court in the case of **Arun Kumar Agrawal and another vrs. National Insurance Company and others, 2010 (3) TAC 769 (SC)** and taking into account the monthly income of the deceased-homemaker as Rs.3000/- after deducting 1/3rd towards personal and living expenses, the annual dependency was assessed as Rs.24,000/- and applying multiplier 9 quantified compensation on account of loss of income at Rs.2,16,000/- and under non-pecuniary heads such as funeral expenses at Rs.20,000/-, Rs.40,000/- towards loss of estate and Rs.40,000/- towards consortium were awarded. And, in total compensation was quantified at Rs.3,16,000/-.

To such amount the medical bills of Rs.1,32,000/- was added and thereby the total compensation of Rs.4,48,000/- (Rs.3,16,000/- + Rs.1,32,000/-) was awarded along with interest at the rate of 7.5% per annum from the date of filing of the claim application i.e. 13.02.2012.

Being aggrieved by such quantification, the present appeal has been preferred for enhancement of the compensation by the Claimants – Appellants now confined to Appellant Nos.2 and 3 sons who are now as on date aged about 50 years and 46 years respectively. Relevance of their age will be dealt with at the appropriate stage of this judgment.

5. It is submitted by the learned counsel for the Appellants that the compensation is liable to be enhanced on the ground of loss of income during the period the deceased was admitted in the hospital. And, on account of future prospect which has not at all been granted, on account of the expenses towards attendance charges, special diet and extra nourishment. And, since the deceased was admitted in the hospital for 52 months an amount of Rs.40,000/- towards transportation, conveyances and other pecuniary damages from the date of accident till her death and a further sum of Rs.1,25,000/- towards loss of consortium, loss of estate and towards funeral expenses and further Rs.70,000/- towards medical expenses were claimed.

Referring to the judgment of the Apex Court in the case of **Rajesh vrs. Rajbir Singh, 2013 (3) TAC 697** and **Anjani Singh vrs. Salauddin, 2014 (58) OCR 923** and also the judgment of the Apex Court in the case of **Rojalini Nayak and others vrs. Ajit Sahoo and others, (2024) 8 SCC 239**, it is stated that Appellant Nos.2 and 3 are entitled to get Rs.36,300/- towards loss of estate and funeral expenses and Rs.2,00,000/- towards medical expenses. Hence, total compensation on account of all heads cumulatively came to Rs.16,21,528/-.

It is asserted that the learned Tribunal has awarded Rs.4,48,000/- which is abysmally low. Hence, the Appellant Nos.2 and 3 are entitled to get further sum of Rs.11,73,528/- with interest at the rate of 7.5% as awarded.

6. Such submission was resisted by the learned counsel for the Insurance Company, Ms. Pati, inter alia, on the ground that the amount of compensation does not warrant interference on the touchstone of "just compensation". Enhancement as claimed would amount to "windfall" or "bonanza".

7. In the case of **National Insurance Company Ltd. vrs. Pranay Sethi and others, (2017) 16 SCC 680**, the amount of compensation on "conventional heads" i.e. loss of estate, loss of consortium and funeral expenses was quantified at Rs.15,000/-, Rs.40,000/- respectively, so summation and Rs.15,000/- of it makes it Rs.70,000/-. And, the same was awarded as per the impugned judgment.

In Paragraph-52 of the judgment in the case of **Pranay Sethi (supra)**, it was stated that the amount quantified as above should be enhanced on percentage basis every three years and enhancement should be at the rate of 10% in a span of three years.

The Apex Court held that such enhancement will "bring in consistency in respect of those heads". Treating the filing of the appeal as continuation of the proceeding in tune with the judgment of the Apex Court in the case of **Pranay Sethi (supra)** on account of "conventional heads" the amount has to be enhanced by 10% twice. As such it comes to **Rs.84,000/-.**

8. During the course of submission, leaned counsel for the Appellants, Mr. Mund has claimed compensation on two counts i.e. loss of income during treatment and compensation towards life.

Keeping in view the dictum of the Apex Court in the case of **Pranay Sethi (supra)**, this Court is not persuaded to hold that in the case of death, as in the case at hand, the bifurcation of compensation on account of loss of income during treatment and compensation towards loss of life can be entertained. Such compensation can be awarded under the composite head "loss of income" taking note that ultimately the injured in the accident succumbed to her injuries during treatment.

9. So far as quantifying the income of the homemaker is concerned, reference can be respectfully made to the judgment of the Apex Court in the case of **Kirti and another vrs. Oriental Insurance Company Limited, (2021) 2 SCC 166** wherein while supplementing the majority judgment Hon'ble Mr. Justice N.V. Ramana, as his Lordship then was,, held thus:

> "**41.2.** Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all."

10. Applying the doctrine of enhancement of 10% in terms of **Pranay Sethi (supra)** and keeping in view that Rs.3000/- per month was quantified by the Apex

Court in the case of **Arun Kumar Agarwal (supra)** this Court is of the considered view that an amount of Rs.6000/- per month as loss of income would subserve the ends of justice. Accordingly, the amount per year comes to Rs.72,000/-.

10-A. Hence compensation towards loss of income is assessed as Rs.72,000/- X 2/3rd X 9 = Rs.4,32,000/- and adding future prospect of 10% (Rs.43,200/-) since deceased was aged about 57 years (as per the finding of the learned Tribunal), the amount is quantified as **Rs.4,75,200/-** (Rs.4,32,000/- + Rs.43,200/-).

11. So far as enhancement as sought for on account of attendance charges is concerned, learned counsel for the Appellants heavily relied on the judgment of the Apex Court in the case of **Kajal vrs. Jagdish Chand and others, (2020) 4 SCC 413**. Such reliance is bereft of its context.

It is on record that the accident in the case at hand took place on 25.5.2011 and she unfortunately succumbed to the injuries on 23.09.2015 while undergoing treatment. As such she underwent treatment for 3 years 3 months and 28 days which, for the purpose of calculation is rounded off to 3 years 4 months.

11-A. It is claimed that the same should be at par with the loss of income. But in making such submission, learned counsel for the Appellants failed to take note of the distinguishable factual matrix of **Kajal (supra).**

Hence, this Court is not persuaded to hold that attendance charges should be at par with the loss of income during treatment as claimed.

11-B. The deceased was hospitalized for a period of 3 years 4 months and considering the nature of duty performed by the attendants in the given facts of the case at hand the service as rendered can be treated as "Unskilled" worker and taking the liberal view considering the benevolent nature of legislation though the deceased was hospitalized and underwent treatment for a period of 3 years 4 months and passed away while undergoing treatment in 2015, the wages of "Unskilled" worker of 2015 is taken into account for the purpose of quantification. As per the Notification No.636 dated 30th April, 2015 of the Government of Odisha in the Labour & E.S.I Department minimum wages for "Unskilled" worker was Rs.200/-. Thus, taking into account the period of treatment 3 years 4 months the quantification on account of attendance charges comes to **Rs.2,40,000/-.**

12. It cannot be lost sight that when one is admitted as an indoor patient diet and nourishment as per the instructions of the dietician attached to the hospital is provided by the hospital. But one cannot be oblivious to the fact that the relatives of the patient also spend additional amount towards diet and extra nourishment over and above what is provided by the hospital(s). Hence, amount as claimed at Rs.30/- per day for 52 months in the considered view of this Court would be just and equitable. Accordingly, the said amount is quantified at **Rs.46,800/-.**

13. So far as loss of consortium is concerned, the consortium has been divided into three parts, spousal, filial and parental.

In this context it is worthwhile to refer to Paragraph-21 of the judgment of the Apex Court in the case of **Magma General Insurance Company Ltd. Vrs. Nanu Ram alias Chuhru Ram & others, (2018) 18 SCC 130** which was quoted with approval in the case of **New India Assurance Company Limited vrs. Somwati and others, SCC OnLine 2020 SC 717**.

> "**21.** A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.
>
> 21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."
>
> 21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."
>
> 21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit."

14. In the case at hand Appellant No.1 husband of the deceased has passed away. Thus, point for consideration is parental consortium.

Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, discipline, guidance and training.

But while awarding such compensation keeping in view the nature thereof as enunciated by the Apex Court taking into account the age of the Claimants-Appellants; the two sons, this Court is persuaded to hold that in the facts of the present case a lump sum amount of **Rs.1,00,000/-**, would meet the ends of justice.

15. So far as the medical expenses, the learned Tribunal has granted Rs. 1,32,000/- towards two bills which are placed on record. Keeping in view the judgment of the Apex Court in the case of **Kajal (supra)** a further sum of Rs.70,000/- is awarded. As such the compensation on this count comes to **Rs.2,02,000/-** (Rs.1,32,000/- + Rs.70,000/-).

The total compensation on all counts runs thus:

Conventional Heads	Rs. 84,000/-
Loss of income	Rs. 4,75,200/-
Attendance charges	Rs. 2,40,000/-
Diet	Rs. 46,800/-
Loss of consortium	Rs. 1,00,000/-
Medical Expenses	Rs. 2,02,000/-
Total	Rs.11,48,000/- round off to Rs.11,50,000/-

16. The Insurance Company is directed to deposit modified amount of compensation of Rs.11,50,000/- (rupees eleven lakhs fifty thousand) along with interest @ 7.5% per annum in terms of the award passed by the learned Tribunal and disburse the same amongst the surviving Claimants in equal proportion within a period of eight weeks from the date of receipt/production of a copy of this order minus the amount, if any, paid as per the impugned judgment.

17. Court fees shall be payable by the Claimants as per Rules.

18. Accordingly, the MACA stands disposed of. No costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
MACA disposed of.

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2025 (III) ILR-CUT-303

Dr. SASMITA KUMARI PADHY
V.
VEER SURENDRA SAI UNIVERSITY OF TECHNOLOGY, SAMBALPUR & ORS.

[W.P.(C) NO. 34700 OF 2023]

14 MAY 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issues for Consideration

1. Whether order of punishment of compulsory retirement from service violating the Rule 15(10)(i)(b) of the Rule is sustainable.

2. Whether alternative remedy of appeal is a bar to file the Writ petition when the relevant statutory rule has been violated while imposing the punishment.

Headnotes

(A) ODISHA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – Rule 15(3) and 15(10)(i)(b) – Disciplinary Proceeding – Non-compliance of statutory provisions – Petitioner while continuing as an Associate Professor in the Department of computer application, she was directed to take over charges of H.O.D. of the department – Petitioner filed representation with a prayer to regularize the records and documents of the department prior to taking over the charge – Without taking a decision on the request made by the petitioner, she was issued with a show-cause – Petitioner submitted a reply to the show-cause reiterating her prayer to regularize the records and documents of the department – Petitioner prayed for supply of documents – Neither the documents were supplied nor 2nd show cause notice was issued under Rule 15(10)(i)(b) of the Rules – The punishment of compulsory retirement from service was imposed – Whether the punishment of compulsory retirement from service violating the rule 15(10)(i)(b) of the Rule is sustainable.

Held: No – This Court on the face of the decision in the case of ***Mohd. Ramzan Khan*** as cited (supra), is also of the view that without issuing the 2nd show-cause notice proposing the punishment to be imposed, no order of punishment could have been imposed against the Petitioner – This Court is unable to accept the decisions relied on by the learned counsel appearing for the University with regard to availability of alternative remedy and non-issuance of the 2nd show-cause notice. (Para 7.7)

(B) ALTERNATIVE REMEDY – Whether alternative remedy of appeal is a bar to file Writ petition when the relevant statutory Rule has been violated while imposing the punishment.

Held: No – Since it is not disputed that without issuance 2nd show cause as provided under Rule 15(10)(i)(b) of the Rules, the impugned order of punishment has been passed, placing reliance on the decision in the case of Whirlpool Corporation as cited (supra) it is the view of this Court that alternate remedy of appeal is not a bar for this Court to interfere with the order of punishment, as the impugned order of punishment has been passed in total non-compliance of the principle of natural justice. (Para 7.6)

Citations Reference

Union of India and Others Vs. Mohd. Ramzan Khan, **(1991) 1 SCC 588;** Bhagat Ram Vs. State of Himachal Pradesh and Others., **AIR 1983 S.C 454 (Para-13 to 16);** Ranjit Thakur Vs. Union of India and Others, **AIR 1987 S.C 2386 (para-9 & 10);** Jogeswar Bagh Vs. Registrar (Admn.) Orissa High Court and others, **2009 (1) OLR 483 (para-9 to 31);** Ex-Constable Rambir

Singh Vs. Union of India and others, **2009 (3) SCC 97(para-23);** State of U.P. Vs. Mohd. Nooh, **AIR 1958 S.C page 86;** Baburam Prakash Chandra Maheshwari v. AntarimZila Parish Ad Now ZilaParishad, **AIR 1969 S.C 556 (Para-3);** ShyamLal Vs. State of U.P., **1954 SCC 369;** ECIL. v. B. Karunakar, **(1993) 4 SCC 727;** SBI v. Mohd.Badruddin, **2019(16) SCC 69;** State of Orissa Vs. Bidyabhushan Mohapatra, **AIR 1963 SC 779;** SBI v. Mohd.Badruddin, **2019(16) SCC 69;** Indian Oil Corporation Ltd. Vs. Rajendra D. Harmalkar, **2022 SCC Online SC 486;** A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani, **AIR 1961 S.C 1506;** Whirlpool Corpn. v. Registrar of Trade Marks, **(1998) 8 SCC 1;** State of Andhra Pradesh V. S. Sree Rama Rao, **1963 SCC Online SC 6;** B.C. Chaturvedi V. Union of India & Others, **(1995) 6 SCC 749;** Deputy General Manager(Appellate Authority) & Others V. Ajai Kumar Srivastava, **(2021) 2 SCC 612 : (2021) 1 SCC (L&S) 457 : 2021 SCC OnLine SC 4 (page 626);** State of Karnataka Vs. Umesh **(2022) 6 SCC 563, (2022) 2 SCC (Cri) 655 : (2022)2 SCC (L & S) 321 : 2022 SCC OnLine SC 345(page 574) – referred to.**

List of Acts

Odisha Civil Services (Classifiation, Control & Appeal) Rules, 1962.

Keywords

Disciplinary Proceeding; Show cause notice; 2nd Show cause notice; Compulsory retirement; Disproportionate Punishment; Shockingly disproportionate; Violation of Natural Justice; Non-compliance statutory rule; Supply of document; Regularization of document; Marshaling officer; Alternative remedy; Inquiry report; Major punishment; Appeal; Misconduct

Case Arising From

Challenging the order of punishment passed against the Petitioner vide Office Order dt.03.10.2023.

Appearances for Parties

For Petitioner : Mr. S. Roy
For Opp. Parties : Mr. N.K. Sahu (O.P. Nos. 1 to 3)

Judgment/Order

Judgment

B.P. SATAPATHY, J.

1. The present Writ Petition has been filed challenging the impugned order of punishment passed against the Petitioner vide Office Order dt.03.10.2023 under Annexure-18. Vide the said order, while disposing the proceeding initiated against the Petitioner on 27.04.2023 under Annexure-7, Petitioner was imposed with the punishment of compulsory retirement with immediate effect.

2. It is the case of the Petitioner that Petitioner while continuing as an Associate Professor in the Department of Computer Application in Veer Surendra Sai University of Technology, Burla (in short, VSSUT), she was directed to take over the charge of Head of Department, Computer Application for a period of three (3) years vide Office Order dt.22.07.2022 under Annexure-1 so issued by the Registrar of the University-Opp. Party No.3

3. It is contended that on receipt of the order so issued under Annexure-1, Petitioner though time and again by making necessary application prayed for regularization of all relevant and important documents/Registers prior to her taking over the charge of H.O.D of the Department of Computer Application, but the same was never considered on the face of the applications made by the Petitioner under Annexure-2.

3.1. On the face of such request made by the Petitioner, when vide another letter issued on 08.08.2022 under Annexure-3, Petitioner was again asked to take over the charge of H.O.D, Department of Computer Application, Petitioner again reiterated her prayer for regularization of all the documents/records prior to her taking over the charge of the Department on 10.08.2022 under Annexure-4.

3.2. It is contended that without proper appreciation of the request made by the Petitioner under Annexures-2 & 4, Petitioner vide letter dt.21.10.2022 under Annexure-5 was directed to explain in writing as to why on the face of the letter issued by the University on 22.07.2022 under Annexure-1 and further letter issued on 08.08.2022 under Annexure-3, Petitioner has failed to take over the charge of H.O.D, Department of Computer Application.

3.3. It is contended that on receipt of the show-cause issued under Annexure-5, Petitioner also gave a detailed reply on 26.10.2022 under Annexure-6 inter alia indicating therein the ground for her not taking over the charge. However, without proper appreciation of the difficulties pointed out by the Petitioner in her reply under Annexure-6 and so also the earlier request made under Annexures-2 & 4, a proceeding was initiated against the Petitioner vide memorandum dt.27.04.2023 under Annexure-7 inter alia with the following charge.

Article of Charges

The statement of imputation of misconduct in respect of which the inquiry is proposal to be held is set out in the statement of article of charges.

Charge No.-1

Dr. Sasmita Kumari Padhy, Associate Professor in the department of Computer Application with approval of the competent authority vide office order No.VSSUT/OOR/301 dated 22.07.2022 was appointed as HOD in the department of Computer Application w.e.f 01.08.0222 with a tenure posting of 03 years. Also it was directed thereunder to take /handover charge by 31.07.2002. Dr. Padhy neithr complied the office order No.VSSUT/OOR/301 dated 22.07.2022 nor took over charge of HOD, Computer Application.

Charge No.-2

Dr. Padhy instead of complying with office order No.VSSUT/OOR/301 dated 22.07.2022 remained complainant and did not cooperate with the administration. She wa again directed vide letter No.VSSUT/Estt/2215 dated 08.08.2022 to takeover charge and report compliance on or before 12.08.2022. However, she did not comply the instruction.

Dr. Padhy neither complied the office order NO.VSSUT/OOR/301 dated 22.07.2022 nor took over charge. Again Dr. Padhy was intimated to comply vide letter No.VSSUT/Estt/2313 dated 19.08.2022 to comply the office order NO.VSSUT/OOR/301 dated 22.07.2022 positively on or before 22.08.2022. But she did not pay any heed. Dr. Padhy neither complied the office order No.VSSUT/OOR/301 dated 22.07.2022 nor took over charge.

Charge No.-3

Dr. Padhy in NO.VSSUT/Estt/2215 spite dated of receipt of 08.08.2022 letter and No.VSSUT/Estt/2313 dated 19.08.2022 with direction to take over charge as HOD of Computer Application Department did not comply the order for which she was called upon to explain her conduct/failure vide letter NO.VSSUT/Estt/2783 dated 21.10.2022 and to submit a written reply within 07 days. In reply as her written explanation, she has taken plea to justify her inaction vide her reply dated 26.10.2022 which was found to be not satisfactory.

3.4. It is contended that such a proceeding was initiated against the Petitioner in terms of the provisions contained under Rule 15 of the OCS (CC & A) Rules, 1962 (in short, "Rules"). Learned Counsel appearing for the Petitioner contended that on receipt of the charges, so framed against the Petitioner vide memorandum dt.27.04.2023 under Annexure-7, Petitioner vide letter dt.30.04.2023 when sought for various documents in order to enable her to file the written statement of defence under Annexure-8 as well as under Annexure-9 series, but Petitioner was never provided with such documents as prayed for. Instead vide Office order dt.04.07.2023 under Annexure-10, Opp. Party No.3 appointed the Inquiry Officer to proceed with the inquiry in the proceeding so initiated against the Petitioner.

3.5. It is contended that Petitioner vide another representation dt.07.07.2023 under Annexure-11 though raised objection with regard to appointment of the Inquiry Officer as well as Marshalling Officer, but no action was taken either to supply the documents in order to enable the Petitioner to submit her written statement of defence or for change of Inquiry Officer as well as the Marshalling Officer. In the alternate, Petitioner was issued with a notice on 14.07.2023 under Annexure-12 asking her to participate in the inquiry.

3.6. Learned counsel appearing for the Petitioner contended that since Petitioner was never provided with the documents as requested, nor any action was taken to change the Inquiry Officer as well as the Marshalling Officer as prayed for, Petitioner could not participate in the proceeding by taking her defence. However, vide another letter issued on 04.08.2023 under Annexure-14, Petitioner when was again asked to participate in the inquiry, Petitioner taking into account the conduct of the University, did not participate in the proceeding. But vide letter dt.05.09.2023

under Annexure-15, Petitioner was issued with the 1st show-cause along with the inquiry report as provided under Rule 15 (10)(i)(a) of the Rules. The Inquiry Officer in his report enclosed to Annexure-15 gave the following finding :

> *12. Conglomerating the analysis and findings as discussed above it is now clearly established that the CSE by her conduct has not carried out the orders or acted according to the instruction of her superior authorities so far as her official duties are concerned and thereby has violated Rule 3 of OGS Conduct Rule-1959. She has also filed to maintain absolute integrity decorum of conduct and devotion to duty and failed to discharge duty properly amount to violation of Rule 3(b) of OGS Conduct Rule-1959. In addition, CSE has committed misconduct by disobedience to the order of superior by not carrying out their orders and not acting to the instruction of her superior Authority resulting in violation of Rule 4 OGS Conduct Rule-1959. Hence the charges on all count are established and*
>
> *To Sum up –*

Article of Charge	Misconduct as mentioned in Memo Dated 27.04.2023	Violation Of OGSCR- 1959 r/w OCS(CA&A) Rule 1962	Findings
1.	Failure to maintain absolute integrity decorum of conduct and devotion to duty	Rule 3	Established
2.	Failure to discharge duties properly and indicating absence of loyalty	Rule 3(b)	Established
3.	Disobedience of order of higher Authority and failing to carry out order/instruction of superior Authority	Rule 4	Established

3.7. It is contended that in the meantime, challenging the proceeding as well as appointment of the Inquiry Officer with submission of the inquiry report, Petitioner though approached this Court in W.P.(C) No.31857 of 2023, but the same was permitted to be withdrawn vide order dt.29.09.2023 under Annexure-16. Petitioner thereafter vide letter dt.02.10.2023 under Annexure-17, submitted her reply to the inquiry report with a prayer to withdraw the charge-sheet so initiated against her vide memorandum dt. 27.04.2023. However, it is contended that without issuing the 2nd show-cause as provided under Rule 15(10) (i)(b) of the Rules, Petitioner was imposed with the impugned order of punishment vide Office order dt.03.10.2023 of Opp. Party No.2, by imposing the punishment of compulsory retirement with immediate effect.

3.8. Learned counsel appearing for the Petitioner vehemently contended that since the proceeding under Annexure-7 was initiated under Rule-15 of the Rules, without issuing a 2nd show-cause, proposing the punishment to be imposed in terms of the provision contained under Rule 15(10)(i)(b) of the Rules, no order of punishment could have been imposed and that too imposing the punishment of compulsory retirement, which is a major punishment.

3.9. It is contended that since prior to such imposition of punishment, Petitioner was never issued with the 2nd show cause, the same is a nullity in the eye of law. In support of the same, reliance was placed to a decision of the Hon'ble Apex Court reported in ***(1991) 1 SCC 588, Union of India and Others Vs. Mohd. Ramzan Khan.*** *Hon'ble Apex Court in para 13,14 & 15 has held as follows:*

> ***13.*** *Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty-second Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case [(1969) 2 SCC 128 : (1970) 1 SCR 251] , the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out: [Administrative Law, 6th edn., p. 10]*
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> *"The concept of natural justice has existed for many centuries and it has crystallised into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing…. They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."*
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> ***14.*** *This Court in Mazharul Islam Hashmi v. State of U.P. [(1979) 4 SCC 537 : 1980 SCC (L&S) 54] pointed out:*
>
> *"Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved."*
>
> ***15.*** *Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the*

Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

3.10. A further submission was also made that since Petitioner by the time the proceeding was initiated against her was working as against the post of Associate Professor, in terms of the provisions contained under Section 20(ix) of the VSSUT Act, 2008 (in short, "Act"), the proceeding in question should have been initiated by the Board of Management of the University. Section 20(ix) of the Act reads as follows:

20(ix) *To suspend, discharge, dismiss or otherwise take disciplinary action against teachers and officers of and above the rank of Assistant Registrar.*

3.11. A further submission was also made that since the Petitioner after being asked to take over the charge of H.O.D of the Department of Computer Application, Petitioner raised a genuine grievance for her to take over the charge under Annexures-2 & 4, without taking a decision on such prayer made by the Petitioner, Petitioner should not have been proceeded with, in the proceeding initiated vide memorandum dtd.27.04.2023.

3.12. It is also contended that taking into account the nature of charges framed against the Petitioner vide memorandum dt.27.04.2023 under Annexure-7, punishment of compulsory retirement from service is also disproportionate to the alleged mis-conduct, if any. In support of the same, reliance was placed to the following decisions.

1. AIR 1983 S.C 454, Bhagat Ram Vs. State of Himachal Pradesh and Others. (Para-13 to 16)

2. AIR 1987 S.C 2386 Ranjit Thakur Vs. Union of India and Others (para-9 & 10).

3. 2009 (1) OLR 483 Jogeswar Bagh Vs. Registrar (Admn.) Orissa High Court and others (para-9 to 31)

4. 2009 (3) SCC 97 Ex-Constable Rambir Singh Vs. Union of India and others (para-23).

Hon'ble Supreme Court in case of ***Bhagat Ram***, in para 13 to 16 has held as follows:

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13. *That conclusion poses another question as to what relief we should give in this appeal. Ordinarily where the disciplinary enquiry is shown to have been held in violation of principle of natural justice, the enquiry would be vitiated and the order*

based on such enquiry would be quashed by issuance of a writ of certiorari. It is well settled that in such a situation, it would be open to the Disciplinary Authority to hold the enquiry afresh. That would be the normal consequence.

14. *We invited Mr Talukdar, learned counsel for the respondent State to address us on the question whether the game of holding the fresh enquiry is worth the battle. Moreso looking to the fact that there is a very minor infraction of duty leading to a trivial charge of negligence in performance of duty which has caused no loss to the Government, we are of the opinion that it would not be fair to this low-paid Class IV government servant to face the hazards of a fresh enquiry.*

15. *The question is once we quash the order, is it open to us to give any direction which would not permit a fresh enquiry to be held? After all what is the purpose of holding a fresh enquiry? Obviously, it must be to impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh enquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fairplay demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela v. A.K. Roy [(1969) 3 SCC 513 : AIR 1970 SC 1401 : (1970) 3 SCR 343 : (1970) 1 LLJ 228] where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50 percent of the arrears from the date of termination till the date of reinstatement.*

16. *Accordingly, this appeal is allowed. The Order dated May 6, 1977 removing the appellant from service and the Order dated January 31, 1978 of the Chief Conservator of Forest, Himachal Pradesh, Simla dismissing his appeal and the Order of the High Court dismissing his petition in limine are quashed and set aside. The appellant is reinstated in service. His two increments with future effect shall be withheld. He should be paid 50 per cent of the arrears of salary from the date of termination till the date of reinstatement. The period between the date of termination of service and reinstatement shall be treated for other purposes as on duty. The Order reinstating the appellant in service must be carried out within four weeks from today and the arrears shall be paid within four weeks thereafter.*

Hon'ble Supreme Court in case of ***Ranjit Thakur*** in para 9 & 10 has held as follows:

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9. *The proceedings do not indicate — this was not disputed at the hearing — that appellant was asked whether he objects to be tried by any officer, sitting at the court-*

martial. This, in our opinion, imparts a basic infirmity to the proceedings and militates against and detracts from the concept of a fair trial.

10. *The "Act" constitutes a special law in force conferring a special jurisdiction on the court-martial prescribing a special procedure for the trial of the offences under the "Act" Chapter VI of the "Act" comprising of Sections 34 to 68 specifies and defines the various offences under the "Act". Sections 71 to 89 of Chapter VII specify the various punishments. Rules 106 to 133 of the Army Rules, 1954 prescribe the procedure of, and before, the summary court martial. The Act and the Rules constitute a self-contained code, specifying offences and the procedure for detention, custody and trial of the offenders by the courts martial.*

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This Court in case of ***Jogeswar Bagh***, in para 9 to 31 has held as follows:

9. *Admittedly, the process required under Rule 15 (10)(i)(a) of the Rules, 1962 to serve the copy of the inquiry report along with proposed punishment had not been complied with. More so, the question of taking into consideration his past conduct was unwarranted and impermissible as it had never been a part of the so called show cause/charge sheet. The non-issuance of second show cause along with inquiry report may not be fatal in every case if it is established that no prejudice has been caused to the delinquent employee. But in a case like instant, where inquiry had been concluded merely taking into consideration the explanation furnished by the delinquent employee to the show cause/charge-sheet it may be fatal. In such a fact-situation, it was unwarranted for the Inquiring Officer to make comment that delinquent employee had threatened the Presiding Officer, he was arrogant and caused a great problem for the department. More so, the Disciplinary Authority could not have considered his past conduct as such a course would violates the principles of natural justice as the Petitioner had no opportunity to furnish any explanation on those issues. It is for the Opposite Parties to establish that non-compliance of the statutory requirements has not caused any prejudice at all. Proof of prejudice is unnecessary where requirement of statutory provision is mandatory. "It will come from a person who has denied justice that the person who has been denied justice is not prejudiced." (Vide S.L.Kapoor v. Jagmohan and Ors. MANU/SC/0036/1980: [1981]1SCR746; and State of U.P. v. Shatrughan Lal and Anr. MANU/SC/0554/1998: [1998]3SCR939.)*

10. *Against the order of the Disciplinary Authority, Petitioner preferred an appeal before the Appellate Committee of this Court, but the same has been dismissed by the Committee without*

11. *The alleged show cause/charge sheet seems to be only a notice of holding a preliminary inquiry and the purpose of holding the preliminary inquiry is only to have a finding of fact as to whether regular disciplinary proceedings are required to be held, and no punishment can be imposed on that. A preliminary Inquiry has nothing to do with the inquiry conducted after issue of charge-sheet, unless it is to be relied upon in regular inquiry, (vide Amlendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar MANU/SC/0318/1960: (1960) IILLJ61SC; Champak Lal Chiman La Shah v. Union of India MANU/SC/0274/1963: (1964)ILLJ752SC; Government of India Ministry of Home Affairs and Ors. v. Tarak Nath Ghosh, MANU/SC/0691/1971: (1971)ILLJ299SC; and Narayan Dattaraya Ramteerathakhar v. State of Maharashtra and Ors. MANU/SC/0526/1997: AIR1997SC2148).*

12. *The scope of judicial review in such matter is limited to the process of decision making and not against the decision itself as it lies to correct the errors of law or*

fundamental procedural requirements which may lead to manifest injustice. The Court can interfere with the impugned order in exceptional, circumstances. In exercise of such a power, the High Court cannot trench on the jurisdiction of the statutory authority to re-appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. When the conclusion of the authority is based on evidence, the Court is devoid of power to re-appreciate the evidence. Interference is permissible provided the Court comes to the conclusion that the finding of fact recorded by the authority is not based on facts or authority falls to take into consideration the relevant facts. (Vide Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh and Ors. MANU/SC/0455/1997: (1999)ILLJ947SC The General Court Marti] and Ors. v. Col. Aniltej Singh Dhaliwal MANU/SC/0902/1998 1998CriLJ1402; N.R. Nair and Ors., v. Union of India and rs. MANU/SC/0284/2001 [2001]3SCR353; and S.J.S. Business Enterprises (P) Ltd., v. State of Bihar and Ors., MANU/SC/0236/2004: AIR2004SC2421).

13. *It is equally well settled that where a quasi-judicial authority record findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the order suffers from the infirmity of non-application of mind and stands vitiated, and such a finding can be held to be perverse and hence unsustainable (vide Rajinder Kumar Kindra v. Delhi Administration MANU/SC/0285/1984).*

14. *In Commissioner of Income Tax, Bombay & Rs., v. Mahindra & Mahindra Ltd., and Ors. MANU/SC/0181/1983: [1983]1441TR225(SC), the Apex Court held as under:*

It must act in good faith, must have regard to all relevant considerations, must not be swayed by irrelevant considerations, must not seek to promote purposes allen to the letter or to the spirit of the legislation that gives it power to act,and must not act arbitrarily or capriciously.

15. *In Smt. Shalini Soni v. Union of India MANU/SC/0227/1980: 1980CriLJ1487, the Supreme Court held:*

It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.

16. *The ground for interference may be where the Court comes to the conclusion that exercise of power is manifestly arbitrary unreasonably or there is manifest error in the exercise of such power or in isolation of the statutory provision or error of law apparent the face of the record. (Vide State of U.P. & Os. v. Renusagar Power Co. and Ors. MANU/SC/0505/1988: AIR1988SC1737); Karnataka State Industrial Investment anc Development Corporation Ltd., v. Cavalet India Ltd. MANU/SC/0234/2005: (2005)45CC456; Maharashtra State Seeds Corporation Ltd., v. Hari Prasad Drupadrao Jadhao MANU/SC/8057/2006: (2006)IILL]107SC; and Mathura Prasad v. Union o India and Ors. MANU/SC/8620/2006: (2007)ILLJ1021SC*

17. *In CIT (Central), Calcutta v. Daulat Ram Rawatmull MANU/SC/0290/1972: [1973] 871TR349 (SC), the Supreme Court held as under:*

There should, in our opinion, be direct nexus between the conclusion of fact arrived at by the authority concerned and the primary facts upon which that conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact because it is difficult to predicate as to what extent the extraneous and irrelevant material has influenced the authority in arriving at the conclusion of fact.

18. *In H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Ors. 1992 Supp. (2) SCC 312, the Supreme Court held that "if a finding of fact is arrived at by Ignoring or excluding relevant material or by taking into consideration irrelevant material or if the findings so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the findings are rendered infirm in law."*

19. *The scope of judicial review against quantum of punishment is also very limited. The issue has been considered by the Hon'ble Supreme Court time and again and it has been held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary and would violate the mandate of Article 14 of the Constitution. (Vide Bhagat Ram v. State of Himachal Pradesh and Ors. MANU/SC/0322/1983: (1983)IILLJ1SC; Ranjit Thakur v. Union of India and Ors MANU/SC/0691/1987: 1988CriLJ158; Union of India and Ors. v. Giriraj Sharma MANU/SC/0058/1994: (1994)ILLJ604SC; S.K. Giri v. Home Secretary, Ministry o Home Affairs and Ors. MANU/SC/0090/1996 1995 Supp (3) SCC 519; Bishan Singh and Ors. v. State of Punjab and Anr. MANU/SC/0709/1997: (1997)ILLJ 926 SC; anc B.C. Chaturvedi v. Union of India and Ors. MANU/SC/0118/1996: (1996) ILL) 1231 SC).*

20. *In Ranjeet Thakur (supra), the Apex Court observed as under*

But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even" as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

21. *The said Judgment has been approved and followed by the Apex Court in Union of India and Ors. v. G. Ganayutham MANU/SC/0834/1997: (2000) IILLJ648SC, and after examining elaborately the concept of reasonableness, rationality and proportionality, the same view has been reiterated.*

22. *In B.C. Chaturvedi (supra), after examining various earlier decisions of Supreme Court, the Court observed that in exercise of the powers of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the Court penalty imposed by an Authority "shocks the conscience" of the Court, it would appropriately mould the relief either directing the Authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, Court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced him to do so, though he had no intention to do so. (Vide Giriraj Sharma (supra). The Court may further examine the effect, if order is set aside or substituted by some other penalty.*

23. *In G. Ganayutham (supra), the Apex Court has considered the entire law on the subject and compared the Indian Law with English, Australian and Canadian Laws, and held that in case the Court comes to the conclusion that the punishment awarded is disproportionate or the Disciplinary Authority was irrational in imposing the punishment, the punishment cannot be quashed as even then the matter has to be*

remitted back to the appropriate authority for reconsideration and it is only in very rare cases that the Court might to shorten the litigation-think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority. In Aniltej Singh Dhaliwal (supra); U.P.S.R.T.C. and Ors. v. A.K. Paru MANU/SC/0030/1999: AIR1999SC1552; and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and Ors. MANU/SC/1098/2003: (2004)2SCC130, the Apex Court has taker the same view.

24. *In v. Ramana v. A.P.S.R.T.C. and Ors. MANU/SC/0539/2005: (2005)1IILLJ725SC the Supreme Court reconsidered the whole issue, compared the Indian Law with English Law on judicial review and after placing reliance on large number of Judgments, came to the conclusion that every administrative order should be rational and reasonable and the order should not suffer from any arbitrariness. The scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscious of the Court, in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, it may, in exceptional and rare cases, itself can impose appropriate punishment by recording cogent reasons in support thereof.*

25. *In the case of State of Meghalaya and Ors. v. Mecken Singh N. MarakAIR 2008 SC 4726, the Supreme Court has observed that a Court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefore. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the Court, cannot be subjected to judicial review.*

26. *in State of Madhya Pradesh and Ors. v. Hazarilal MANU/SC/0870/2008: (2008)IILLJ715SC, the Apex Court held that issue of proportionality may always be determined by the Court and Court is clear with the order of determination. While deciding the said case, Apex Court placed reliance on its earlier Judgments in Coimbatore District Central Cooperative Bank v. Coimbatore District Central Co-operative Bank Employees Association and Anr. MANU/SC/2117/2007 (2007)IILLJ724SC and M.P. Gangadharan and Anr. v. State of Kerala and Ors. MANU/SC/8167/2006: AIR2006SC2360.*

27. *In Bharat Forge Co. Ltd. v. Uttam Manohar Nakate MANU/SC/0043/2005: (2005)ILLJ738SC the Apex Court placing reliance upon its earlier Judgments in Colour-Chem Ltd. v. A.L. Alaspurkar and Ors. MANU/SC/0096/1998: [1998]1SCR663 and Regional Manager, Rajasthan Road Transport Corporation v. Sohan Lal MANU/SC/0841/2004: (2004) IIILLJ1078SC held that in case the past conduct is not: part of the charge-sheet, punishment should not be awarded considering the same, it would amounts to violation of principle of natural justice.*

28. *Similar view has been reiterated by the Apex Court in Indra Bhanu v. Committee, Management of M.M. Degree College and Ors.MANU/SC/0894/2003.*

29. *Thus, it is evident that scope of judicial review is limited to the extent that Court may examine whether inquiry has been conducted in consonance with the statutory requirement and authority has given strict adherence to the principles of natural justice, the decision has been taken relying upon relevant materials and order is not perverse being based on irrelevant materials and the delinquent had been given a fair opportunity to meet the charge and punishment is not disproportionate to the gravity of the misconduct. In exceptional circumstances, where the punishment imposed is disproportionate to the delinquency to the extent that it shocks the conscience of the Court, the Court may interfere with the quantum of punishment also.*

30. *If the instant case is examined in the light of the aforesaid settled legal propositions, we are of the view that the Disciplinary Proceedings have been conducted and concluded in utter disregard to the statutory provisions. The alleged show cause/charge-sheet seems to be basically to find out a fact as to whether there was sufficient material against the delinquent on the basis of which a regular inquiry could be held. The Registrar-cum-Presiding Officer treated the reply to the said show cause as a confession/admission of guilt and recommended severe punishment so that other employees may also learn a lesson. It was further observed by him that the delinquent employee had threatened the Presiding Officer concerned and he caused a problem for the department. The said remarks in his report were unwarranted and uncalled for and could not have been made as the same has not been the case of any person nor these allegations have been mentioned in the alleged show cause/charge sheet. He made unwarranted observations without any basis and foundation. The Disciplinary Authority went further taking into consideration the past conduct of the employee though it was not permissible for him to do so and imposed the punishment of removal basing on the same though it has never been disclosed to the Petitioner. Copy of the Inquiry Report along with second show cause notice had never been served upon the Petitioner/delinquent. Had it been served upon him, he could have furnished explanation for the same. Thus it is not a case in which it can be safely held that cause of the Petitioner had not been prejudiced. As the inquiry had been concluded relying upon the admission of the delinquent employee and that too taking into consideration the explanation furnished by the Petitioner to the so called show cause/charge-sheet the punishment so imposed is disproportionate to the extent that it shocks the conscience of the Court.*

31. *In view of the above, the Writ Petition succeeds and is allowed. The order of punishment is hereby set aside. The Petitioner be reinstated in service with consequential benefits. In view of the fact that Petitioner had been out of service for a long time, he might be in gainful employment, therefore the issue of grant of back wages is considered. Learned Counsel for the Petitioner fairly conceded that he would be satisfied if 20% of the back wages are awarded to the Petitioner. In view of thereof, we direct the Opposite Parties-authorities to make the payment of 20% of the back wages from the date of removal till the date of joining. The same shall be paid within a period of three months from the date of joining. No costs.*

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Hon'ble Supreme Court in case of ***Ramvir Singh***, in para 23 has held as follows:

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> ***23.*** *However, it is well known that except the cases where the punishment is shockingly disproportionate, the superior courts would not ordinarily interfere with the quantum of punishment. In State Bank of Hyderabad v. P. Kata Rao [(2008) 15 SCC 657 : (2008) 6 Scale 575] this Court held:*
>
> *"There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the enquiry officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment…."*
>
> *Xxx xxx xxx*

3.13. It is accordingly contended that since prior to imposing the order of punishment, no 2nd show cause was issued which is a mandatory requirement as provided under Rule 15(10)(i)(b)of the Rules and the punishment of compulsory retirement from service is shockingly disproportionate to the alleged charges, the impugned order of punishment passed vide the impugned order dt.03.10.2023 under Annexure-18 is liable for interference of this Court.

4. Mr. N.K. Sahu, learned counsel appearing for the University on the other hand made his submission basing on the stand taken in the counter affidavit so filed by the University.

4.1. It is the main contention of the learned counsel appearing for the University that since as provided under Clause-107(2) of the VSSUT Statute, there is a remedy of appeal to the Chancellor against any order passed by the Board or the Vice-Chancellor, Petitioner since has not availed the alternative remedy of appeal so available to her, the Writ Petition is not maintainable. In support of the same, reliance was placed on the following decisions of the Hon'ble Apex Court

> **1.** State of U.P. Vs. Mohd. Nooh, AIR 1958 S.C page 86
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> **2.** Baburam Prakash Chandra Maheshwari v. AntarimZila Parish Ad Now ZilaParishad, AIR 1969 S.C 556 (Para-3).

Hon'ble Supreme Court in the case of ***Mohd. Nooh*** in Para 19 has held as follows:

> ***19.*** *I think it is elementary that, save in exceptional cases, the courts will not interfere under Article 226 until all normal remedies available to a petitioner have been exhausted. The normal remedies in a case of this kind are appeal and revision. It is true that on a matter of jurisdiction, or on a question that goes to the root of the case, the High Courts can entertain a petition at an earlier stage but they are not bound to do so and a petition would not be thrown out because the petitioner had done that which the Courts usually direct him to do, namely, to exhaust his normal remedies before invoking an extraordinary jurisdiction. Therefore, if this order of dismissal had been made after the Constitution, the petitioner would have been expected to pursue his remedies of appeal and revision first and could not have come to the High Court in the ordinary way until he had exhausted them; and having come at that stage he could not have been turned away unheard on the ground that he was out of time because his grievance was against the original order. The very decisions to which my Lord has referred establish that for these purposes, at any rate, the earlier orders would merge in the final one. But I am not basing on technicalities. What is plain to me is that if this order of dismissal had been made after the Constitution, the petitioner would have been entitled to wait for*

the final order (and in the ordinary way would have been bound to wait) before coming to the High Court. Why is the position any different because he has done before the Constitution exactly what he would have been expected, and in the ordinary course bound, to do after it?

Hon'ble Supreme Court in the case of ***Baburam Prakash Chandra Maheshwari***, in Para 3 has held as follows:

3. *It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana [1950 SCC 221 : 1950 SCR 566] "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs" and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted. In State of Uttar Pradesh v. Mohammad Nooh [1958 SCR 595, 605] , S.R. Das, C.J., speaking for the Court, observed:*

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. (Halsbury's Laws of England, 3rd Edn. Vol. II, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued inspite of the fact that the aggrieved party had other adequate legal remedies. In King v. Postmaster-General Ex parte Carmichael, [1928 (1) KB 291] a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction. The case of Rex v. Wandsworth Justices Ex parte Read, [1942 (1) KB 281] is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction."

There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well-settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent,

without his being obliged to wait until those proceedings run their full course. — (See the decisions of this Court in Carl Still G.m.b.H. v. State Bihar [AIR 1961 SC 1615] . and Bengal Immunity Co. Ltd. v. State of Bihar [(1955) 2 SCR 603] . In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice (See State of Uttar Pradesh v. Mohammad Nooh [1958 SCR 595, 605]).

4.2. With regard to the challenge made by the Petitioner that the proceeding since has not been initiated by the Board and accordingly it is not maintainable, learned counsel appearing for the University contended that vide the proceeding of the 43rd meeting dt.21.11.2022, so conducted by the Board of Management under Annexure E/3 to the counter affidavit, the Board of Management authorized the Vice-Chancellor-Opp. Party No.2 to initiate the proceeding against the Petitioner.

4.3. It is contended that since in terms of the decision taken by the Board under Annexure-E/3, the proceeding in question was initiated against the Petitioner by Opp. Party No.2, no illegality or irregularity can be found with such action of the University. It is also contended that as provided under Section 12 of the Act read with Clause 15(iv) and clause 15(x) of the VSSUT 1st Statute, 2010, Vice-Chancellor is also empowered to start disciplinary proceeding against any delinquent employee.

4.4. It is also contended that in terms of the decision taken by the Board of Management in its 45th meeting held on 30.09.2023 under Annexure-H/3, the Board permitted the Vice-Chancellor to pass appropriate order in the proceeding initiated against the Petitioner. In terms of such authority given by the Board, the impugned order of punishment was imposed by Opp. party No.2 vide Office order dt.03.10.2023 under Annexure-18. It is accordingly contended that the impugned punishment has been imposed in conformity with the provisions of the Act and the Statute and it cannot be called in question.

4.5. With regard to second non-issuance of the 2nd show cause as contemplated by the Writ Petitioner, learned counsel appearing for the University contended that there is no such mandatory requirement to issue the 2nd show cause, as in terms of the 42nd amendment to the Constitution of India, the only requirement is to send a copy of the inquiry report to the delinquent employee to meet the principle of natural justice. In support of the same, reliance was placed to the following decisions.

1. ShyamLal Vs. State of U.P., 1954 SCC 369

2. ECIL. v. B. Karunakar, (1993) 4 SCC 727

3. SBI v. Mohd.Badruddin, 2019(16) SCC 69

Hon'ble Supreme Court in case of ***ShyamLal in para 17 & 19*** has held as follows:

17. *Under Article 353 of the Civil Service Regulations, no pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency, but to officers so dismissed or removed compassionate allowances may be granted when they are deserving of special consideration, provided that such allowance shall not exceed two-*

thirds of the pension which would have been admissible to him if he had retired on medical certificate.

Then came the Government of India Act, 1935. Section 240 is important for our purpose. The relevant portions of that section were as follows:

"240. Tenure of office of persons employed in civil capacities in India.— (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

The rest of the section is not material for the present discussion. In short, sub-section (1) reiterated the English constitutional theory, sub-section (2) reproduced the restriction introduced by Section 96 B(1) of the 1919 Act and sub-section (3) gave statutory protection to the rights conferred by Rule 55 of the Civil Services (Classification, Control and Appeal) Rules but which prior to this Act of 1935 had been held by the Privy Council in the two last cited cases to be ineffective against the Crown's plenary power of dismissal. It will, however, be noticed that in sub-section (3) the word "removed" was not used, although that word occurred in Rule 55 and the other rules quoted above. It was, however, held in I.M. Lal case [High Commr. for India v. I.M. Lall, 1948 SCC OnLine PC 25 : (1947-48) 75 IA 225 : AIR 1948 PC 121] that removal was within Section 240(3), which conclusion implies that removal is comprised within dismissal. The position, therefore, is that both under the rules and according to the last mentioned decision of the Judicial Committee there is no distinction between a dismissal and a removal except that the former disqualifies from future employment while the latter does not.

***19.** The foregoing discussion necessarily leads us to the conclusion that a compulsory retirement does not amount to dismissal or removal and therefore, does not attract the provisions of Article 311 of the Constitution or of Rule 55 and that, therefore, the order of the President cannot be challenged on the ground that the appellant had not been afforded full opportunity of showing cause against the action sought to be taken in regard to him. Both the questions under consideration must also be answered against the appellant.*

Hon'ble Supreme Court in case of ***ECIL*** in para 19,25,29 & 30 has held as follows:

***19.** In Mohd. Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the*

enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

xxx xxx xxx

25. *While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.*

29. *Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.*

30. *Hence the incidental questions raised above may be answered as follows:*

[i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

[ii] The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding

other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

[iii] Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hon'ble Supreme Court in case of ***Mohd.Badruddin*** in para 23 has held as follows:

23. *The previous punishments could not be subject-matter of the charge-sheet as it is beyond the scope of inquiry to be conducted by the inquiry officer as such punishments*

have attained finality in the proceedings. The requirement of second show-cause notice stands specifically omitted by the 42nd Amendment. Therefore, the only requirement now is to send a copy of Inquiry Report to the delinquent to meet the principle of natural justice being the adverse material against the delinquent. There is no mandatory requirement of communicating the proposed punishment. Therefore, there cannot be any bar to take into consideration previous punishments in the constitutional scheme as interpreted by this Court. Thus, the non-communication of the previous punishments in the show-cause notice will not vitiate the punishment imposed.

4.6. Learned counsel appearing for the University also contended that since the impugned order of punishment has been passed basing on the findings arrived at by the Inquiry Officer in his report dt.01.09.2023 and on the face of the initiation of the proceeding with issuance of the notice by the Inquiry Officer, Petitioner never participated in the inquiry, this Court has got no jurisdiction to interfere with the order of punishment. In support of the same, reliance was placed to the following decisions:

1. State of Orissa Vs. Bidyabhushan Mohapatra, AIR 1963 SC 779,

2. SBI v. Mohd.Badruddin, 2019(16) SCC 69

Hon'ble Supreme Court in case of ***Bidyabhushan Mohpapatra*** in para 9 has held as follows:

9. *The High Court has held that there was evidence to support the findings on heads (c) and (d) of Charge (1) and on Charge (2). In respect of Charge 1(b) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of Charges 1(a) and 1(e) in the view of the High Court "the rules of natural justice had not been observed". The recommendation of the Tribunal was undoubtedly founded on its findings on Charges 1(a), 1(e), 1(c), 1(d) and Charge (2). The High Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated rules of natural justice. The High Court therefore directed that the Government of the State of Orissa should decide whether "on the basis of those charges, the punishment of dimissal should be maintained or else whether a lesser punishment would suffice". It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on Charges 1(a) and 1(e) were vitiated for reasons set out by it, because in our judgment the order of the High Court directing the Government to reconsider the question of punishment cannot, for reasons we will presently set out, be sustained. If the order of dismissal was based on the findings on Charges 1(a) and 1(e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned*

to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is not justiciable : nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question.

Hon'ble Supreme Court in case of ***Mohd.Badruddin*** in para 28 has held as follows:

28. *In view of the said judgment, the findings recorded by the Division Bench that the order of punishment passed on the basis of uncommunicated reasons of disagreement recorded in respect of Charges 1 and 5 cannot be faulted with. In fact, the argument of Mr Viswanathan is that Charge 4 alone is sufficient to maintain the order of punishment of removal from service. Though, Charge 4 may be sufficient to inflict punishment but it is not necessary that Charge 4 alone will entail punishment of removal from service. While exercising the power of judicial review, it will not be within our jurisdiction to maintain the order of punishment of removal from service in view of findings recorded on Charge 4 itself. It is for the disciplinary authority to inflict punishment as it may consider appropriate after finding Charge 4 proved against the delinquent*

4.7. It is also contended that since on the face of the letter issued under Annexures-1 & 3, Petitioner never took over the charge of the Department as its H.O.D and disobeyed direction of the University, the punishment imposed against the Petitioner is not disproportionate to the alleged mis-conduct. Reliance was placed to a decision of the Hon'ble Apex Court reported in the case of ***Indian Oil Corporation Ltd. Vs. Rajendra D. Harmalkar, 2022 SCC Online SC 486,*** Hon'ble Apex Court in para 18,19 & 20 has held as follows:

18. *On the question of judicial review and interference of the courts in matters of disciplinary proceedings and on the test of proportionality, a few decisions of this Court are required to be referred to.*

19. *In Om Kumar [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority to order and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as "Wednesbury principles". In Wednesbury Case*

[Associated Provincial Picture Houses Ltd. v. WednesburyCorpn., (1948) 1 KB 223 (CA)] , it was said that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

20. *In B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , in para 18, this Court observed and held as under : (SCC p. 762)*

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

4.8. Making all these submissions, learned counsel appearing for the University contended that taking into account the nature of charges framed against the Petitioner and non-participation of the Petitioner in the proceeding in spite of due opportunity being given to her, no illegality or irregularity can be found with the impugned order of punishment. Accordingly, it is contended that the Writ Petition is liable for dismissal.

5. To the stand taken by the University, learned counsel appearing for the Petitioner made further submissions taking into account the stand taken in the rejoinder affidavit.

5.1. With regard to availability of the alternative remedy to which the Petitioner has not availed, learned counsel appearing for the Petitioner contended that existence of alternative remedy is not always a bar for this Court to issue a Writ, while exercising the power under Article 226 of the Constitution of India. In support of his submission, reliance was placed to the following decisions:

1. A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani AIR 1961 S.C 1506.

2. Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1

Hon'ble Supreme Court in case of ***A.V. Venkateswaran*** in para 8 to 20 has held as follows:

8. *The only point, therefore, requiring to be considered is whether the High Court should have rejected the writ petition of the respondent in limine because he had not exhausted all the statutory remedies open to him for having his grievance redressed. The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of a petition under Article 226 of the Constitution*

unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est. In all other cases, he submitted, Courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners. In the present case, he urged, the High Court in appeal had expressly dissented from the reasoning of the learned Single Judge as regards the lack of jurisdiction of the Customs officers to adjudicate regarding the item under which the article imported fell and the duty leviable thereon. Nor was there any complaint in this case that the order had been passed without an opportunity to the importer to be heard, so as to be in violation of the principles of natural justice. The learned Solicitor-General questioned the correctness of the reasoning of the learned Chief Justice in condoning the conduct of the respondent in not moving the Government in revision by taking into account the time that had elapsed between the date of the impugned order and that on which the appeal was heard. The submission was that if this were a proper test, the Rule as to a petitioner under Article 226 having to exhaust his remedies before he approached the Court would be practically a dead letter because in most cases by the date the petition comes on for hearing, the time for appealing or for applying in revision to the departmental authorities would have lapsed.

9. *We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the Rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a Rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases : In Union of India v. T.R. Varma [(1958) SCR 499 at pp. 503-504] VenkataramaAyyar speaking for the Court said:*

"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs'. Vide also K.S. Rashid and Son v. Income Tax Investigation Commission. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor."

There is no difference between the above and the formulation by Das, C.J., in State of Uttar Pradesh v. Mohammad Nooh [(1958) SCR 595 at pp. 605-607] where he observed;

"... It must be borne in mind that there is no Rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this Rule requiring the exhaustion of

statutory remedies before the writ will be granted is a Rule of policy, convenience and discretion rather than a Rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned Chief Justice added:

"It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari."

In the result this Court held that the existence of other legal remedies was not per se a bar to the issue of a writ of certiorari and that the Court was not bound to relegate the petitioner to the other legal remedies available to him.

10. *The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor-General formulated to the normal Rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the Court.*

11. *The question that we have now to consider is has the discretion which undoubtedly vested in the Court been so improperly exercised as to call for our interference with that order. We might premise this discussion by expressing our opinion on two matters merely to prevent any misunderstanding. First we entirely agree with Chagla, C.J. that the order of the Assistant Collector of Customs in assessing duty at 78¾ per cent or of the Collector of Customs in confirming the same, was not void for lack of jurisdiction. The interpretation they put on the relevant items in the Tariff Schedule might be erroneous, even grossly erroneous, but this error was one committed in the exercise of their jurisdiction and had not the effect of placing the resulting order beyond their jurisdiction. Secondly, as we have already indicated, we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in Mohammed Nooh case [(1958) SCR 595 at pp. 605-607] with its reference to the right to appeal being lost "through no fault of his own" emphasizes this aspect of the Rule.*

12. *The question, however, still remains whether in the circumstances of this case we should interfere with the decision of the High Court. In considering this, we cannot lose sight of three matters : (1) that the levy of the duty at 78¾ per cent was manifestly erroneous and cannot be supported on any reasonable construction of the items in the Tariff Schedule, (2) it was stated by the Customs authorities in answer to the writ petition, in the grounds of appeal to the High Court under the Letters Patent, as also in*

the statement of case before us, that the Central Board of Revenue had issued a ruling to the effect that fountain-pens with nibs or caps which were gold-plated fell within Item 61(8). This might be some indication that the adjudication by the Assistant Collector of Customs and by the Customs Collector on appeal was in pursuance of a settled policy of the entire heirarchy of the department. Without going so far as to say that a Revision to the Central Government might in the circumstances be a mere futility, we consider that this is not a matter which would be wholly irrelevant for being taken into account in disposing of the appeal before us. After all, the basis of the Rule by which Courts insist upon a person exhausting his remedies before making application for the issue of a prerogative writ is that the Court's jurisdiction ought not to be lightly invoked when the subject can have justice done to him by resorting to the remedies prescribed by statutes. (3) Lastly, the learned Solicitor-General does not dispute the correctness of the principle of law as enunciated by Chagla, C.J., his complaint is that the law as laid down by the learned Chief Justice has not been properly applied to the facts of the case before him. If the challenge to the judgment of the High Court were of the former type, this Court might have to interfere to lay down the law correctly lest error creep into the administration of justice. But where the error is only in the application of the law correctly understood to the facts of a particular case, we should be persuaded that there has been a miscarriage of justice in the case before us before being invited to interfere; and this the learned Solicitor-General has not succeeded in doing. It would be remembered that the question is not whether if the respondent's application were before us, we should have directed the writ to issue, but whether the learned Judges of the High Court having in their discretion which they admittedly possessed made an order, there is justification for our interfering with it. The two matters set out earlier should suffice to show that no interference could be called for in this appeal.

13. *We consider, therefore, on the whole and taking into account the peculiar circumstances of this case that the High Court has not exercised its discretion improperly in entertaining the writ application or granting the relief prayed for by the respondent and that no case for interference by us in an appeal under Article 136 of the Constitution has been made out. The appeal fails and is dismissed with costs.*

14. *A.K. Sarkar, J.— In this case the respondent had imported a certain number of fountain-pens plated with gold. The goods were assessed to import duty by an assessing officer of the Indian Customs under Item 61(8) of the first schedule to the Customs Tariff which dealt with "Articles, other than cutlery and surgical instruments, plated with gold or silver" and provided for a duty of 78¾ per cent ad valorem. The respondent appealed from this assessment to the Collector of Customs under Section 188 of the Sea Customs Act, 1878, on the ground that the assessment should have been under Item 45(3) of that schedule which dealt with "Fountain-pens, complete" and provided for a duty of 30 percent, ad valorem. He did not dispute that the fountain-pens imported by him were gold-plated. His appeal was dismissed. The respondent then moved the High Court at Bombay for a writ to quash the order of assessment under Item 61(8). The application was allowed by Tendolkar, J. who issued a writ of mandamus directing the Collector of Customs to release the goods upon payment of the duty specified in Item 45(3). The appeal by the Collector of Customs from the order of Tendolkar, J. to an Appellate Bench of the High Court was dismissed. The Collector has therefore filed the present appeal.*

15. *The first question is, whether the writ should have been refused on the ground that the respondent had another remedy, namely, an application to the Central Government under Section 191 of the Sea Customs Act to revise the order of the Collector.*

Tendolkar, J. held that the writ could issue though the other remedy had not been pursued, as the order of assessment under Item 51(8) was without jurisdiction. This was clearly wrong. The Collector had ample jurisdiction to decide under which item in the schedule the fountain-pens had to be assessed to duty, and if he made a mistake in his decision that did not make his order one without jurisdiction : cp. Gulabdas& Co. v. Assistant Collector of Customs [AIR 1957 SC 733] . The learned Judges of the appellant Bench held that the writ was properly issued, not because the assessing authority had no jurisdiction to assess the goods under Item 61(8), but because at the date the matter had come before them, the other remedy had become barred. This again is, in my view, plainly erroneous for a party who by his own conduct deprives himself of the remedy available to him, cannot have a better right to a writ than a party who has not so deprived himself. Normally — and the present has not been shown to be other than a normal case — a writ of mandamus is not issued if other remedies are available. There would be stronger reason for following this Rule where the obligation sought to be enforced by the writ is created by a statute and that statute itself provides the remedy for its breach. It should be the duty of the courts to see that the statutory provisions are observed and, therefore, that the statutory authorities are given the opportunity to decide the question which the statute requires them to decide.

16. *The fact that the Central Government had on a prior occasion decided, as appears in this case to have happened, that fountain-pens of the kind which the respondent had imported, were liable to duty under Item 61(8) cannot furnish any reason justifying a departure from the normal Rule or the issue of a writ without that Government having been moved under Section 191. This prior decision of the Central Government could be a reason for such departure only on the presumption that it would not change its view even if that view was shown to be incorrect. I cannot imagine that a court can ever make such a presumption. Therefore, it seems to me that it would have been proper to refuse the writ on the ground that the respondent had another remedy available to him which he had not pursued. On the present occasion, however, I do not wish to decide the case on that ground.*

17. *Next, I feel the gravest doubt if the case is one for the issue of a writ of mandamus. It is of interest to observe that the respondent had in his petition to the High Court himself asked for a writ of certiorari. A writ of mandamus issues in respect of a ministerial duty imposed by a statute; it cannot issue where the duty to be performed is of a judicial nature, except for the purpose of directing that the judicial duty should be performed, that is, a decision should be given on the question raised. In John Shortt's book on Informations, Mandamus and Prohibition it is stated at p. 256:*

"If the duty be of a judicial character a mandamus will be granted only where there is a refusal to perform it in any way; not where it is done in one way rather than another, erroneously instead of properly. In other words, the Court will only insist that the person who is the judge shall act as such; but it will not dictate in any way what his judgment should be.

If, however, the public act to be performed is of a purely ministerial kind, the Court will by mandamus compel the specific act to be done in the manner which to it seems lawful."

18. *It does not seem to me that the duty which the Sea Customs Act created and the performance of which was sought to be enforced by a writ in the present case, can properly be said to be a ministerial duty. That duty was to decide which item in the Customs Tariff was applicable to the respondent's goods and to realise the customs duty specified in that item. Insofar as the statute required the officer to realise the Customs*

levy, I find it difficult to see how it can be said to be a public duty to the performance of which the respondent had a legal right and without this right he was not entitled to the mandamus : see Ex party Napier [1852 18 QB 692] . Insofar again, as the Act required the Customs officer to choose the proper item in the Customs Tariff for assessment of the customs levy on goods, it in my view involves performance of work of a quasi-judicial nature. The observation of Das, J. in Province of Bombay v. K.S. Advani [1950 SCC 551 : (1950) SCR 621, 725] which I am about to read, fully fits this case:"If a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially". Now the Sea Customs Act empowers the Customs authorities to impose a certain duty on goods imported and this no doubt prejudicially affects the importer. The Act further clearly requires the authorities to proceed judicially in imposing that duty when a dispute arises, that is, after giving a hearing to the party affected : see Sections 29, 31 and 32 of the Act. In this case a hearing was in fact given to the respondent. This taken with the provisions as to a right of appeal from the decision of the first assessing officer and as to the right to move the Government in revision from the decision in the appeal, would clearly indicate that the authorities have to act judicially. In Gulabdas& Co. v. Assistant Collector [AIR 1957 SC 733] this Court proceeded on the basis that the duty of assessing the customs levy was of a judicial nature. Therefore I feel the gravest doubt, if the present is a case where a mandamus could at all issue.

19. *No doubt if a mandamus could not issue because the act which the statute required to be performed was not a ministerial one but judicial in its character, the case might be a fit one for the issue of a writ of certiorari. But that writ cannot, in any event, issue unless the proceedings disclosed an error apparent on their face. In issuing a certiorari again, the Court does not examine the judicial act questioned as if it was hearing an appeal in respect Satyanarayan Laxminarayan Hegde of it : see v. Mallikarjun Bhavanappa Tirumale [(1960) 1 SCR 890, 901] . I do not propose to discuss this question further in the present case, for it was not considered by the High Court nor raised at our Bar. I proceed on the basis that it was a case where an application for a mandamus lay.*

20. *The respondent, in substance, asked for and obtained a writ directing the Customs authorities to release the goods on payment of duty at the rate of 30 per cent ad valorem as prescribed by Item 45(3). This was on the basis that the duty should have been levied under that item and not under Item 61(8) as the Customs authorities had done.*

Hon'ble Supreme Court in case of ***Whirlpool Corpn.*** In para 14 to 21 and 28 to 30 has held as follows:

14. *The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*

15. *Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and*

efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. *Rashid Ahmed v. Municipal Board, Kairana [1950 SCC 221 : AIR 1950 SC 163 : 1950 SCR 566] laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission [AIR 1954 SC 207 : (1954) 25 ITR 167] which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.*

17. *A specific and clear rule was laid down in State of U.P. v. Mohd. Nooh [AIR 1958 SC 86 : 1958 SCR 595] as under: "But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."*

18. *This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani [AIR 1961 SC 1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:*

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

19. *Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:*

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."

20. *Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.*

21. *That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".*

Xxx xxx xxx

28. *Now, the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words, similar to the words used in the present case, namely "unless there is anything repugnant in the subject or context". Thus there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words "under those circumstances". (see Vanguard Fire and General Insurance Co. Ltd. v. Fraser & Ross [AIR 1960 SC 971 : (1960) 3 SCR 857])*

29. *Before considering the contextual aspect of the definition of "Tribunal", we may first consider its ordinary and simple meaning. A bare look at the definition indicates that the High Court and the Registrar, on their own, are not "Tribunal". They become "Tribunal" if "the proceeding concerned" comes to be pending before either of them. In other words, if "the proceeding concerned" is pending before the High Court, it will be treated as "Tribunal". If, on the contrary, "the proceeding concerned" is pending before the Registrar, the latter will be treated as "Tribunal".*

30. *Since "Tribunal" is defined in Section 2 which, in its opening part, uses the phrase "Unless the context otherwise requires", the definition, obviously, cannot be read in isolation. The phrase "Unless the context otherwise requires" is meant to prevent a person from falling into the whirlpool of "definitions" and not to look to other provisions of the Act which, necessarily, has to be done as the meaning ascribed to a "definition" can be adopted only if the context does not otherwise require.*

5.2. It is contended that since it is not disputed by the university that on the face of the application made by the Petitioner under Annexures-2 & 4, no action was ever taken and Petitioner was never provided with the documents in order to enable her to file her written statement of defence and no 2nd show-cause was ever issued to the Petitioner as provided under Rule 15(10)(i) (b) of the Rules, in view of such non-compliance of the statutory provisions so contained under Rule 15 of the Rules, the impugned order of punishment is liable for interference of this Court.

5.3. It is also contended that since the proceeding under Page 46 of 55 Annexure-7 was initiated under Rule-15 of the Rules, the University is required to follow the provisions contained under Rule-15. But as found and which is not disputed as provided under Rule 15(3) of the Rules, Petitioner was never provided with the documents. Secondly as provided under Rule 15(10(i)(b) of the Rules, Petitioner was never issued with the 2nd show-cause, proposing the punishment to be imposed. Therefore, in view of such non-compliance of the statutory provisions, contained under Rule 15(3) and 15(10(i)(b) of the Rules, the impugned order of punishment is not sustainable in the eye of law.

5.4. It is also contended that taking into account the nature of charges framed against the Petitioner under Annexure-7, punishment of compulsory retirement from service is completely disproportionate to the alleged misconduct.

5.5. Making all these submissions, it is contended that the impugned order of punishment is not sustainable in the eye of law and liable to be set aside by this Court in exercise of the power of judicial review in matters involving judicial proceedings. In support of the power of judicial review, reliance was placed on the following decisions:

1. State of Andhra Pradesh V. S. Sree Rama Rao, 1963 SCC Online SC 6

2. B.C. Chaturvedi V. Union of India & Others, (1995) 6 SCC 749

3. Deputy General Manager(Appellate Authority) & Others V. Ajai Kumar Srivastava, (2021) 2 SCC 612 : (2021) 1 SCC (L&S) 457 : 2021 SCC OnLine SC 4 (page 626)

4. State of Karnataka Vs. Umesh (2022) 6 SCC 563, (2022) 2 SCC (Cri) 655 : (2022)2 SCC (L & S) 321 : 2022 SCC OnLine SC 345(page 574)

Hon'ble Supreme Court in case of ***S. Sree Rama Rao*** In para 7 has held as follows:

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7. *The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds.*

Hon'ble Supreme Court in case of ***B.C. Chaturvedi*** in para 12 has held as follows:

12. *Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court / Tribunal is concerned to determine*

whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

Hon'ble Supreme Court in case of ***Ajai Kumar Srivastava*** in para 24 has held as follows:

24. *The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence.*

Hon'ble Supreme Court in case of ***Umesh*** In para 22 has held as follows:

xxx xxx xxx

22. *The Court in the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a discipline ary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:*

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(v) the penalty is disproportionate to the proven misconduct.

6. I have heard Mr. S. Roy, learned counsel appearing for the Petitioner and Mr. N.K. Sahu, learned counsel appearing for the University. On consent of the learned counsel appearing for the parties and with due exchange of the pleadings, the matter was heard at the stage of admission and dispose of by the present order.

7. Having heard learned counsel appearing for the parties, considering the submission made and the materials available on record, this Court finds that the Petitioner while continuing as an Associate Professor in the Department of Computer Application, vide Office Order dt.22.07.2022 under Annexure-1, she was

directed to take over the charge of H.O.D of the Department of Computer Application.

7.1. As found, petitioner on being communicated with the order dt.22.07.2022, she filed a representation on 25.07.2022 before Opp. Party No.3 under Annexure-2 with a prayer to regularize the records and documents of the Deptt. prior to her taking over the charges of the Department as its H.O.D. However, on the face of such representation made by the Petitioner under Anexure-2 vide letter dt.08.08.2022 under Annexure-3, Petitioner when once again was directed to take over the charge, Petitioner made a representation on 10.08.2022 under Annexure-4, with a request to the previous H.O.D of the Department to apprise her on various aspects, prior to her taking over the charge. Copy of the said representation was also provided to Opp. party No.3.

7.2. As found, without taking a decision on the request made by the Petitioner under Annexures-2 & 4, Petitioner when was issued with a show-cause on 21.10.2022 under Anneuxre-5 by Opp. Party No.3 vide order of Opp. Party No.1, Petitioner again submitted a reply to the show-cause reiterating her prayer to regularize the records and documents for her to take over the charge on 26.10.2022 under Annexure-6. However, without taking a decision either way on the request made by the Petitioner under Annexures-2,4 & 6, the proceeding in question was initiated against the Petitioner vide memorandum dt.27.04.2023 under Annexure-7. As found, the said proceeding was initiated under Rule-15 of the OCS (CC& A) Rules, 1962.

7.3. On such initiation of the proceeding, Petitioner vide letter dt.30.04.2023 under Annexure-8 though requested Opp. party No.3 for supply of the documents in order to enable her to file her written statement of defence and further request was also made on 02.05.2023, 05.05.2023 and 10.05.2023 under Annexure-9 series, but without providing the Petitioner with the documents as prayed for, Inquiry Officer was appointed vide Office order dt.04.07.2023 under Annexure-10, Petitioner though raised her objection to such appointment of the Inquiry Officer by making a representation before Opp. party No.1 on 07.07.2023 under Annexure-11, but no decision was taken on such request of the Petitioner.

7.4. As found without taking any decision with regard to supply of documents and change of the Inquiry Officer, Petitioner vide notice dt.14.07.2023 under Annexure-12 and further notice issued on 02.08.2023 under Annexure-13 was asked to participate in the proceeding. Thereafter, Petitioner was issued with the 1st show-cause along with the inquiry report dt.01.09.2023 as provided under Rule 15(10(1)(a) of the Rules on 05.09.2023 under Annexure-15.

7.5. Petitioner though submitted a reply to the 1st show cause on 02.10.2023 before Opp. Party No.1 under Annexure-17, but without issuance of the 2nd show-cause notices provided under Rule 15(10)(i)(b) of the Rules, the impugned order of

punishment was passed, by imposing the punishment of compulsory retirement from service vide Order dt.03.10.2023 under Annexure-18.

7.6. Since it is not disputed that without issuance 2nd show cause as provided under Rule 15(10)(i)(b) of the Rules, the impugned order of punishment has been passed, placing reliance on the decision in the case of Whirlpool Corporation as cited (supra) it is the view of this Court that alternate remedy of appeal is not a bar for this Court to interfere with the order of punishment, as the impugned order of punishment has been passed in total non-compliance of the principle of natural justice.

7.7. This Court on the face of the decision in the case of ***Mohd. Ramzan Khan*** as cited (supra), is also of the view that without issuing the 2nd show-cause notice proposing the punishment to be imposed, no order of punishment could have been imposed against the Petitioner. This Court is unable to accept the decisions relied on by the learned counsel appearing for the University with regard to availability of alternative remedy and non-issuance of the 2nd show-cause notice.

7.8. This court after going through the records and taking into account the nature of charge framed against the Petitioner in the memorandum and placing reliance in the case of ***Bhagat Ram*** as well as ***Ranjit Thakur***, is also of the view that punishment of compulsory retirement from service is shockingly disproportionate to the alleged charges.

7.9. Therefore, in view of the aforesaid analysis, this Court while exercising the power of review in matters relating to disciplinary proceedings and placing reliance on the decisions in the case of ***S. Sree Rama Rao, B.C. Chaturvedi, A.K. Srivastav*** and ***Umesh*** as cited (supra) is inclined to quash the order of punishment so passed against the Petitioner vide order dt.03.10.2023 under Annexure-18. While quashing the said order, this Court directs Opp. Party No.1 to re-instate the Petitioner in her services with passing of an appropriate order within a period of two (2) weeks from the date of receipt of this order.

7.10. However, this Court taking into account the nature of order passed by the University under Annexures-1 & 3 directs the Petitioner to take over the charge of the Department as and when the University will comply her request so made under Annexures-2 & 4.

7.11. The Writ Petition accordingly stands disposed of with the aforesaid observation and direction.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition disposed of.

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2025 (III) ILR-CUT-337

THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD., CUTTACK
V.
BINDHYABEN SAHOO & ORS.

[MACA NO. 576 OF 2023]

26 JUNE 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issues for Consideration

1. Whether the policy taken against the offending vehicle is a lawful contract in terms of the provisions contained under the Contract Act.

2. Whether in view of the policy i.e. CPM policy issued against the offending vehicle, the appellant/ company is liable to pay the compensation as awarded.

Headnotes

(A) CONTRACT ACT, 1872 – Sections 10, 146 – The policy issued in favour of the offending truck is a CPM policy and it covers the location Parjang in the district of Dhenkanal – The appellant/ insurance company submitted that the policy being the policy in the nature of CPM , it does not cover 3rd party claim arising out of the motor accident in a public road – Whether the policy taken against the offending vehicle is a lawful contract in terms of the provisions contained under the contract Act.

Held: No – On the face of such status of the vehicle, it is the view of this Court that no policy could have been issued in favour of the offending vehicle by issuing a CPM Policy – Since the offending vehicle is a motor vehicle within the definition of Section 146 of the Motor Vehicle Act, such policy in the nature of CPM Policy could not have been issued in favour of the offending vehicle and the said contract is not a lawful contract. (Para 7.1)

It is the view of this Court that since the offending vehicle which is not disputed is a Motor Vehicle, no such policy either could have been taken by the owner-Respondent No.5 as CPM Policy, nor such a policy could have been issued by the appellant/insurer. (Para 7.4)

(B) MOTOR ACCIDENT – Compensation – The offending Vehicle is a Heavy Motor Vehicle in view of the provisions contained under Section 146 of the M.V. Act – The policy issued against the offending truck is a CPM policy and it cover the location Parjang in the district of Dhenkanal – The learned Tribunal while allowing the claim of the

claimants/ Respondent No. 1 to 4 held appellant/company liable to pay compensation amount of ₹45,11,468.25/- with interest payable @6% per annum is payable from the date of application till its realization – Whether in view of this kind of policy i.e. CPM policy issued against the offending vehicle, the appellant/ company is liable to pay the compensation as awarded.

Held: No – Since knowing fully well that the offending vehicle is a Heavy Goods Vehicle and such a policy could not have been issued, the appellant by taking the premium issued the policy in the name and style CPM Policy and Owner-Respondent No.5 on the face of nature of vehicle took the said policy by paying the premium, it is the view of this Court that both the parties cannot take advantage of their own wrong. (Para 8.2)

It is the view of this Court that the policy so issued by the appellant-company and taken by the Owner-Respondent No.5 being an illegal contract and knowing its repercussion, such a policy was issued as well as taken, both the appellant and Respondent No.5 are equally and severally liable to pay the compensation – For the latches on the part of the appellant and Respondent No.5, Claimants/Respondent Nos.1 to 4 cannot be deprived to get the benefit of the compensation. (Para 8.3)

Citations Reference

Shivram Chandra Jagarnath Cold Storage and others Vs. New India Assurnce Company Limited and Others, **2022 4 SCC 539;** New India Assurance Co. Ltd. and Others Vrs. Rajeswar Sharma and Others, **2019 (2) SCC 671;** National Insurance Co. Ltd. Vrs. Chief Electoral Officer and Others, **2023 (6) SCC 441;** G.T. Girish Vrs. Y. Subba Raju, **2022 (12) SCC 321;** Union of India and Others Vrs. A.K. Pandey, **2009 (10) SCC 552;** Asha John Divianathan Vrs. Vikram Malhotra and Others, **(2021) 19 SCC 629;** Kusheshwar Prasad Singh Vrs. State of Bihar and Others, **(2007) 11 SCC 447;** Municipal Committee Katra and Others Vrs. Ashwani Kumar, **(Civil Appeal No.14970-71 of 2017 decided on 09.05.2024) Apex Court in Para 18 & 19 – referred to.**

List of Acts

Contract Act, 1872.

Keywords

Motor Accident; Compensation; CMP Policies; Lawful Contract; Payment of compensation; Liability to pay compensation; Heavy Motor vehicle; Nature of policy; Third party risk; Policy condition; Award.

Case Arising From

The judgment dated 31.01.2023 passed by the 3rd Addl. District Judeg-cum-4th MACT, Cuttack in MAC Case No. 138 of 2018.

Appearances for Parties

For Appellant : Mr. S. Satapathy
For Respondent s : Mr. D. Patnaik (Res. 1 to 4), Mr. P.K. Mishra (Res. 5)

Judgment/Order

Judgment

B.P. SATAPATHY, J.

1. Heard learned counsels appearing for the parties.

2. The present Appeal has been filed by the Appellant-Company *inter alia* challenging the impugned judgment dated 31.01.2023, so passed by the 3rd Addl. District Judge-cum-4th MACT, Cuttack in MAC Case No.138 of 2018. Vide the said judgment, the Tribunal while allowing the claim of the Claimants-Respondent Nos.1 to 4, held the appellant-company liable to pay compensation amount of Rs.45,11,466.25/- with interest payable @ 6% per annum payable from the date of application till its realization. The Tribunal also allowed default interest @ 12% per annum in case the compensation amount is not paid, within the period of 2 (two) months from the date of award.

3. While assailing the impugned judgment, learned counsel for the appellant-company vehemently contended that taking into account the nature of policy issued by the appellant and the fact that the accident occurred beyond the area covered under the Policy, the appellant is not liable to pay the compensation as awarded.

3.1. It is contended that the vehicle in question bearing Registration No.OR-04-P-3025 is a Heavy Motor Vehicle, to be more specific a Hywa Truck. It is the case of the claimants that while the deceased was looking after the road work, standing on the extreme left side of the road, the offending Truck bearing Registration No.OR-04-P-3025, came with a high speed in a rash and negligent manner, dashed the deceased and accordingly the deceased died on the spot. Claimants accordingly for such death of the deceased in a road accident caused by the offending vehicle, filed the claim application in MAC No.138 of 2018, claiming compensation amount of Rs.70 lakhs.

3.2. It is contended that the policy in question was issued by the appellant covering the period from 31.03.2017 to 30.03.2018. Even though the vehicle was a Heavy Motor Vehicle (Hywa Truck) but the owner of the offending vehicle took the policy in the name and style Contractors Plant and Machinery Insurance Policy (in short CPM Policy) vide Policy No.2603044416P118073112. It is also contended that the policy in question was so issued with the location code “Parjang Dhenkanal” in the State of Odisha.

3.3. It is contended that since the policy so issued in favour of the offending Truck is a CPM Policy and it's coverage covers the location Parjang in the district of Dhenkanal, the accident having taken place outside the location, the policy does not cover the liability, as the accident admittedly occurred beyond the location area coming under Mangalpur P.S. in the District of Jajpur.

3.4. A further submission was also made that the policy being the policy in the nature of CPM Policy, it does not cover the 3rd Party claim arising out of the motor accident in a public road. A further submission was also made that in respect of 3rd Party liability though the company accepted the premium of Rs.850/- but by fixing the outer limit of such 3rd Party liability at Rs.5 lakhs. But since the accident admittedly occurred beyond the location area, the policy being the policy in the nature of CPM Policy, the appellant is not at all liable to pay any compensation amount so awarded by the Tribunal vide the impugned judgment. A further submission was also made that in support of the nature of policy and its coverage, the policy was not only exhibited vide Ext-A but also the same was proved by the appellant with examination of its witness as P.W. 1.

3.5. It is also contended that the policy being the policy in the nature of a CPM Policy, is not a policy issued in favour of motor vehicle in terms of the provisions contained under Section 147 of the Motor Vehicle Act, which deals with Insurance of Motor Vehicle against 3rd Party risk.

3.6. In support of his aforesaid submission, reliance was placed to a decision of this Court passed on 27.02.2023 in MACA No.388 of 2019 and batch. This Court in Para-10 of the said judgment has held as follows:-

> *"It is true that a CPM Policy is not the same statutory policy according to the provisions contained in Section 147 of the M.V. Act."*

3.7. Reliance was also placed to a decision of this Court passed on 23.08.2022 in MACA No.815 of 2020. This Court in Para-7, 8 and 9 of the said judgment has held as follows:-

> *"7. Admittedly, the policies issued under Exts.B & C are CMP policies. The question falls for decision is that, even if the policy is not a motor vehicular policy in terms of Chapter-XI of the M.V. Act, whether the same can be extended to be considered as a policy issued under Chapter-XI of the M.V. Act for the reason that it has accepted to cover the third party risk.*
>
> *8. In this regard, the definition as contemplated in Section 145 (b) postulates that "certificate of insurance" means a certificate issued by an authorized insurer in pursuance of Sub-section (3) of Section 147. Section 147 (3) speaks that a policy shall be of no effect for the purpose of Chapter-XI unless and until it is issued by the insurer in favour of the person by whom the policy is effected containing the prescribed particulars of any condition subject to which the policy is issued and for any other prescribed matter. Section 147(1) prescribes that, in order to comply with the requirements of this Chapter, a policy of insurance must be issued by an authorized insurer insuring a person or class of persons to the extent specified in Sub-Section 2. Sub-section (2) read with subsection (1) of Section 147 says that a policy of insurance*

shall cover such liability incurred in respect of any accident to a third party caused by or arising out of the use of the motor vehicle in a public place up to such limits. Therefore a thorough examination of the provisions contained in Chapter-XI makes it clear that the policy of insurance and its limit shall be against such liability that may be incurred in respect of an accident arising out of use of a motor vehicle. Thus a thorough reading of all such provisions under Chapter XI of the M.V. Act does not imply such a conclusion that a policy issued for plants and machineries would be treated or extended in respect of a motor vehicle.

9. In the instant case the Tribunal has assigned the reason that, despite Exts.B & C are undisputedly CPM policy and the offending vehicle is a motor vehicle and place of accident is a public place, the same would cover the risk involved in the accident because under the said policy, the insured has paid premium of Rs.313/- for coverage of third party liability to the extent of Rs.1,25,000/-. As discussed in the above paragraph, this Court is unable to agree with such finding of the Tribunal in view of the clear provisions contained in Section 147 of the M.V. Act. The policy as in the present case is in respect of a machine cannot at any stretch be extended to use of a motor vehicle for which specific statutory provisions have been provided for issuance of valid insurance policy. Therefore the finding of the Tribunal to the extent that the CPM policy covers the risk of third party in respect of a motor vehicle to indemnify the liability is set aside."

3.8. It is also contended that since policy taken by the owner of the offending vehicle is in the nature of a contract, the terms of the agreement have to be strictly followed to determine the liability of the insurer. Since in the present case on the face of the 3rd Party liability fixed at Rs.5 lakhs, the accident admittedly occurred beyond the location area, the appellant is not liable to pay the compensation even to the tune of Rs.5,00,000/-.

3.9. In support of the aforesaid submission, reliance was also placed to a decision of the Hon'ble Apex Court in the case of ***Shivram Chandra Jagarnath Cold Storage and others Vs. New India Assurnce Company Limited and Others,*** reported in ***2022 4 SCC 539***. Hon'ble Apex Court in Para-17 of the said judgment has held as follows:-

"17. This Court held thus : (Oriental Insurance case [Oriental Insurance Co. Ltd. v. Sony Cheriyan, (1999) 6 SCC 451] , SCC pp. 455-56, para 17)

"17. The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy."

3.10. It is contended that since the appellant by exhibiting the policy and proving the same through its witness has proved that the terms and conditions of the policy has been violated, the company is also not liable to pay the compensation to the tune of Rs.5,00,000/-. Reliance was also placed to a decision of the Hon'ble Apex Court in the case of ***New India Assurance Co. Ltd. and Others Vrs. Rajeswar Sharma and Others,*** reported in **2019 (2) SCC 671**. Hon'ble Apex Court in Para-14,15 of the said judgment has held as follows:-

"14. According to The Law Relating to Accidental Insurance [A.W. Baker Welford, The Law Relating to Accidental Insurance (Butterworth & Company, 1923) at p. 126.] , insurers are exempt from any liability where the loss is attributable to an excepted cause which is inserted ex abundanti cautela to make it quite clear to the assured that the policy is not intended to cover such losses. The position is elucidated below:

"The object of the exceptions is to define with greater precision the scope of the policy by making clear what is intended to be excluded and contrasting it with what is intended to be included.

Since exceptions are inserted in the policy mainly for the purpose of exempting the insurers from liability for a loss which, but for the exception, would be covered by the policy, they are construed against the insurers with the utmost strictness and it is the duty of the insurers to except their liability in clear and unambiguous terms. The onus of proving that the loss falls within an exception lies upon the insurers, unless by proving the language of the exception the assured is expressly required to prove that, in the circumstances, the exception does not apply."

15. In 2016, the UK Supreme Court dealt with the interpretation of an exclusion clause in a solicitors' professional indemnity insurance policy in Impact Funding Solutions Ltd. v. Barrington Support Services Ltd. [Impact Funding Solutions Ltd. v. Barrington Support Services Ltd., Supreme Court as per Lord Toulson, JSC (with whom Lord Mance, Lord Sumption and Lord Hodge, JJSC agreed) 2017 AC 73 : 2016 UKSC 57] Dealing with the construction of insurance exclusions, Lord Toulson, JSC observed thus : (AC pp. 85-86, para 35)

35. The fact that a provision in a contract is expressed as an exception does not necessarily mean that it should be approached with a pre-disposition to construe it narrowly. Like any other provision in a contract, words of exception or exemption must be read in the context of the contract as a whole and with due regard for its purpose. As a matter of general principle, it is well established that if one party, otherwise liable, wishes to exclude or limit his liability to the other party, he must do so in clear words; and that the contract should be given the meaning it would convey to a reasonable person having all the background knowledge which is reasonably available to the person or class of persons to whom the document is addressed.... This applies not only where the words of exception remove a remedy for breach, but where they seek to prevent a liability from arising by removing, through a subsidiary provision, part of the benefit which it appears to have been the purpose of the contract to provide. The vice of a clause of that kind is that it can have a propensity to mislead, unless its language is sufficiently plain. All that said, words of exception may be simply a way of delineating the scope of the primary obligation."

3.11. Reliance was also placed to a decision of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Vrs. Chief Electoral Officer and Others***, **2023 (6) SCC 441**. Hon'ble Apex Court in Para-27,28,29,30 and 31 has held as follows:-

"27. We would first like to elucidate the principles on which a claim under any insurance policy is examined. It is trite to say that the terms of the insurance policy are to be strictly construed.

28. The insurance contracts are in the nature of special class of contracts having distinctive features such as utmost good faith, insurable interest, indemnity subrogation, contribution and proximate cause which are common to all types of insurances. Each class of insurance also has individual features of its own. The law governing insurance

contracts is thus to be studied in three parts, namely, (1) general characteristics of insurance contracts, as contracts; (2) special characteristics of insurance contracts, as contracts of insurance, and (3) characteristics of each class of insurance.

29. Now turning to some of the judicial pronouncements, wherein it has been opined that the words used in a contract of insurance must be given paramount importance and it is not open for the court to add, delete or substitute any words [Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd. [Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd., (2010) 10 SCC 567 : (2010) 4 SCC (Civ) 267]]. Insurance contracts are in the nature where exceptions cannot be made on ground of equity and the courts ought not to interfere with the terms of an insurance agreement [Export Credit Guarantee Corpn. (India) Ltd. v. Garg Sons International [Export Credit Guarantee Corpn. (India) Ltd. v. Garg Sons International, (2014) 1 SCC 686 : (2014) 1 SCC (Civ) 648]].

30. This Court in Vikram Greentech (I) Ltd. v. New India Assurance Co. Ltd. [Vikram Greentech (I) Ltd. v. New India Assurance Co. Ltd., (2009) 5 SCC 599 : (2009) 2 SCC (Civ) 590] reiterated that the insured cannot claim anything more than what is covered by the insurance policy. The terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely. The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the Insurance Company must also be read strictly.

31. In several other judgments [Oriental Insurance Co. Ltd. v. Sony Cheriyan, (1999) 6 SCC 451; Polymat India (P) Ltd. v. National Insurance Co. Ltd., (2005) 9 SCC 174; Sumitomo Heavy Industries Ltd. v. ONGC Ltd., (2010) 11 SCC 296 : (2010) 4 SCC (Civ) 459 and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306.] , this Court has held that the insurance contract must be read as a whole and every attempt should be made to harmonise the terms thereof, keeping in mind that the rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon."

3.12. It is contended that in the aforesaid decision, Hon'ble Apex Court has held that the words used in Contract of Insurance must be given paramount importance and it is not open for the Court to act, delete or substitute any word. Placing reliance on the aforesaid decisions of this Court as well as Hon'ble Apex Court, it is finally contended that since the policy in the nature of a CPM Policy with location code at Parjang, Dhenkanal and the accident admittedly having taken place beyond the location area in the district of Jajpur, even though 3rd Party liability as per the policy covers the claim to the extent of Rs.5 lakhs, but in view of such violation of the policy condition, the appellant is not liable to pay any compensation lest Rs.5 lakhs towards 3rd Party Liability. It is accordingly contended that the impugned award needs interference of this Court.

4. Mr. D. Patnaik, learned counsel appearing for the Claimants-Respondent Nos.1 to 4 on the other hand while supporting the award, contended that since the deceased admittedly died because of a road accident caused by the offending vehicle on 21.12.2017, the appellant is liable to pay the compensation and if as alleged the policy condition has been violated, the appellant may recover the same from the owner-Respondent No.5.

4.1. It is contended that because of the fault committed by the Appellant as well as the Owner Respondent No.5, the claimants could not be made to suffer.

5. Mr. P.K. Mishra, learned counsel appearing for the Respondent No.5-Owner on the other hand made his submission in support of the award. It is contended that though it is not disputed that the policy is a CPM Policy, but since the appellant while issuing the policy accepted the premium to the tune of Rs.850/- towards 3rd Party liability, outer limit fixed in the policy by putting the limit towards 3rd Party liability at Rs.5 lakhs is not sustainable in the eye of law. Once the insurer takes the premium towards 3rd Party liability, no limit can be fixed in that regard.

5.1. It is accordingly contended that on the face of the acceptance of the premium towards 3rd Party liability, liability fixed in the policy at Rs.5 lakhs, is illegal and the Tribunal has erred in permitting the appellant to recover the 3rd Party liability to the tune of Rs.5,00,000/- from the Owner-Respondent. It is contended that as provided under Section 146 of the Motor Vehicle Act, 1988, covering 3rd Party risk is mandatory for a Motor Vehicle to ply in a public road. Section 146 of the Act reads as follows:-

> *"146. Necessity for insurance against third party risk. - (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:*
>
> *Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991.*
>
> *Explanation. - For the purposes of this sub section, a person driving a motor vehicle merely as a paid employee, while there is in relation to the use of the vehicle no such policy in force as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.*
>
> *(2) The provisions of sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for purposes not connected with any commercial enterprise.*
>
> *(3) The appropriate Government may, by order, exempt from the operation of sub-section (1), any vehicle owned by any of the following authorities, namely: -*
>
> *(a) the Central Government or a State Government, if the vehicle is used for purposes connected with any commercial enterprise;*
>
> *(b) any local authority;*
>
> *(c) any State Transport Undertaking:*
>
> *Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in such manner as may be prescribed by appropriate Government."*

5.2. It is contended that once the insurer has accepted the 3rd Party liability by taking a premium of Rs.850/-, by fixing the liability of the insurer at Rs.5 lakhs is

not permissible in view of the provisions contained under Section 147 of the Act. Section 147 of the Act reads as follows:-

> *"147. Requirements of policies and limits of liability. - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –*
>
> *(a) is issued by a person who is an authorised insurer; and*
>
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place;*
>
> *(ii) against the death of or bodily injury to any passenger of a transport vehicle, except gratuitous passengers of a goods vehicle, caused by or arising out of the use of the motor vehicle in a public place.*
>
> *Explanation. - For the removal of doubts, it is hereby clarified that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place, notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.*
>
> *(2) Notwithstanding anything contained under any other law for the time being in force, for the purposes of third party insurance related to either death of a person or grievous hurt to a person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under sub-section (1) in consultation with the Insurance Regulatory and Development Authority.*
>
> *(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected, a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.*
>
> *(4) Notwithstanding anything contained in this Act, a policy of Insurance issued before the commencement of the Motor Vehicles (Amendment) Act, 2019 shall be continued on the existing terms under the contract and the provisions of this Act shall apply as if this Act had not been amended by the said Act.*
>
> *(5) Where a cover note issued by the insurer under the provisions of this Chapter or the rules or regulations made thereunder is not followed by a policy of insurance within the specified time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority or to such other authority as the State Government may prescribe.*
>
> *(6) Notwithstanding anything contained in any other law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."*

5.3. It is contended that while dealing with similar issue, this Court in its judgment dated 24.08.2023 in MACA No.92 of 2022, did not accept the plea taken by the insurer on the face of the view taken by this Court in MACA No.815 of 2020.

5.4. It is accordingly contended that since it is not disputed that the appellant accepted the premium towards 3rd Party liability, in view of the provisions contained under Section 146 and Section 147 of the Motor Vehicle Act, it is the appellant who is liable to pay the entire compensation as awarded and such a direction has been rightly issued by the Tribunal which needs no interference.

5.5. Not only that, permission given by the Tribunal to recover a sum of Rs.5 lakhs from the Owner Respondent No.5 is not sustainable, as in view of the provisions contained under Section 147 of the Act, no outer limit can be fixed once the insurer accepts the premium towards 3rd Party liability and the vehicle being a Motor Vehicle in terms of the provisions contained under Section 146 of the Act.

6. To the submission made by the learned counsel appearing for the Respondent No.5-owner, learned counsel for the appellant made further submission and contended that this Court in MACA No.92 of 2022 was not inclined to interfere with the award as on the face of the policy being a CPM policy, the accident however had taken place in the premises of the work shade. View expressed by this Court in Para-7 of the said judgment reads as follows:-

> *"7. Mr. Khan relies on the decision of this Court dated 23rd August 2022 rendered in MACA No.815 of 2020 to contend that the risk coverage in respect of CPM policy cannot be extended to cover the risk provided under the MV Act in respect of a third party. It needs to be mentioned here that in said case cited by Mr.Khan, the third party premium due was in respect of damages up to the extent of Rs.1,25,000/- and the accident took place in the premises of the worksite. Therefore, said earlier decision of this Court is found distinguishable on the facts of the present case."*

6.1. It is accordingly contended that judgment passed in MACA No.92 of 2022 is not applicable to the facts of the present case as the accident admittedly has not taken place within the location area so indicated in the policy. It is accordingly contended that the appellant is not liable to pay the compensation as directed by the tribunal.

7. This Court taking into account the pleadings made and the decisions relied on, is inclined to decide first as to whether the policy taken by the offending vehicle is a lawful contract in terms of the provisions contained under the Contract Act.

7.1. It is not disputed that the offending vehicle is a Heavy Motor Vehicle (Hywa Truck). On the face of such status of the vehicle, it is the view of this Court that no policy could have been issued in favour of the offending vehicle by issuing a CPM Policy. Since the offending vehicle is a motor vehicle within the definition of Section 146 of the Motor Vehicle Act, such policy in the nature of CPM Policy could not have been issued in favour of the offending vehicle and the said contract is not a lawful contract. Hon'ble Apex Court in Para-98, 99, 100 and 102 of the decision in the case of ***G.T. Girish Vrs. Y. Subba Raju***, reported in ***2022 (12) SCC 321*** with regard to lawful contract has opined as follows:-

"98. Section 10 of the Contract Act declares as to what agreements are contracts and all agreements are declared contracts, if they are made by the free consent of parties competent to contract with a lawful consideration and with the lawful object and not expressly declared to be void under the Contract Act. Section 23 must be read with Section 10. Without the illustrations, Section 23, reads as follows:

"23. What consideration and objects are lawful, and what not. —The consideration or object of an agreement is lawful, unless— — The consideration or object of an agreement is lawful, unless—" it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

99. The very first head under which an agreement become unlawful is, when the consideration or object of agreement is forbidden by law. In regard to the same, we may notice the view of a Bench of three learned Judges in Gherulal Parakh v. Mahadeodas Maiya and others19. Therein, quoting from Pollock and Mullah from their work Indian Contract Act, this Court has stated as follows:

"8. xxx xxx xxx An act or undertaking is equally forbidden by law whether it violates a prohibitory enactment of the Legislature or a principle of unwritten law. But in India, where the criminal law is codified, acts forbidden by law seem practically to consist of acts punishable under the Penal Code and of acts prohibited by special legislation, or by regulations or orders made under authority derived from the Legislature."

(Emphasis supplied)

100. In regard to the Commentary by the very same Author, under the Second Head of ―illegal object or consideration" in Section 23 of the Contract Act, viz., if the consideration or object is of such a nature that if permitted, it would defeat the provisions of any law, it is that, this Court took the view that law for the purpose of Section 23 would be, law made by the Legislature. Quite apart from the fact that what is involved in the said case was only a letter, the Judgment of this Court in Gherulal Parakh (supra) and the Commentary from the very same Author, was not noticed by this Court. Therefore, it becomes all the more reason as to why we need not refer the matter to a larger Bench. We may also notice that 'law', for the purposes of Clauses (1) and (2) cannot be different. It is very clear that Regulations or Orders made under the Authority derived from the Legislature referred to by this Court, are species of subordinate legislation. Statutory Rules would also, therefore, clearly be law.

xxxx xxxx xxxx xxxx

102. A contract may expressly or impliedly, be prohibited by provisions of a law. The intentions of the parties do not salvage such a contract. [See AIR 1968 SCC 1328 (supra)]. What is involved in this case, may not be a mere case of a conditional decree for specific performance being granted as was the case in the line of decisions commencing with Motilal (supra) and ending with Ferrodous Estates (supra). The Rules contemplate a definite scheme. Land, which is acquired by the Public Authority, is meant to be utilised for the particular purpose. The object of the law is to invite applications from eligible persons, who are to be selected by a Committee and the sites are allotted to those eligible persons, so that the chosen ones are enabled to put up structures, which are meant to be residential houses."

7.2. Hon'ble Apex Court in the case of ***Union of India and Others Vrs. A.K. Pandey*** reported in ***2009 (10) SCC 552*** in Para-14 on similar issue has held as follows:-

> *"14. In Mannalal Khetan v. Kedar Nath Khetan [(1977) 2 SCC 424] while dealing with Section 108 of the Companies Act, 1956 a three-Judge Bench of this Court held: (SCC pp. 429-31, paras 17-23)*
>
> *"17. In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970] this Court referred to various tests for finding out when a provision is mandatory or directory. The purpose for which the provision has been made, its nature, the intention of the legislature in making the provision, the general inconvenience or injustice which may result to the person from reading the provision one way or the other, the relation of the particular provision to other provisions dealing with the same subject and the language of the provision are all to be considered. Prohibition and negative words can rarely be directory. It has been aptly stated that there is one way to obey the command and that is completely to refrain from doing the forbidden act. Therefore, negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory. (See Maxwell on Interpretation of Statutes, 11th Edn., pp. 362 et seq.; Crawford: Statutory Construction, Interpretation of Laws, p. 523 and Bhikraj Jaipuria v. Union of India [AIR 1962 SC 113 : (1962) 2 SCR 880] .)*
>
> *18. The High Court said that the provisions contained in Section 108 of the Act are directory because non-compliance with Section 108 of the Act is not declared an offence. The reason given by the High Court is that when the law does not prescribe the consequences or does not lay down penalty for non-compliance with the provision contained in Section 108 of the Act the provision is to be considered as directory. The High Court failed to consider the provision contained in Section 629(a) of the Act. Section 629(a) of the Act prescribes the penalty where no specific penalty is provided elsewhere in the Act. It is a question of construction in each case whether the legislature intended to prohibit the doing of the act altogether, or merely to make the person who did it liable to pay the penalty.*
>
> *19. Where a contract, express or implied, is expressly or by implication forbidden by statute, no court will lend its assistance to give it effect. (See Melliss v. Shirley Local Board [(1885) 16 QBD 446] .) A contract is void if prohibited by a statute under a penalty, even without express declaration that the contract is void, because such a penalty implies a prohibition. The penalty may be imposed with intent merely to deter persons from entering into the contract or for the purposes of revenue or that the contract shall not be entered into so as to be valid at law. A distinction is sometimes made between contracts entered into with the object of committing an illegal act and contracts expressly or impliedly prohibited by statute. The distinction is that in the former class one has only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract: if a contract is made to do a prohibited act, that contract will be unenforceable. In the latter class, one has to consider not what act the statute prohibits, but what contracts it prohibits. One is not concerned at all with the intent of the parties, if the parties enter into a prohibited contract, that contract is unenforceable. (See St. John Shipping Corpn. v. Joseph Rank Ltd. [(1957) 1 QB 267 : (1956) 3 WLR 870 : (1956) 3 All ER 683]) (See also Halsbury's Laws of England, 3rd Edn., Vol. 8, p. 141.)*

20. It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim a pactis privatorum publico juri non derogatur means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect. (See Melliss v. Shirley Local Board [(1885) 16 QBD 446] .) What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action.

21. If anything is against law though it is not prohibited in the statute but only a penalty is annexed the agreement is void. In every case where a statute inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act.

22. Penalties are imposed by statute for two distinct purposes:

(1) for the protection of the public against fraud, or for some other object of public policy;

(2) for the purpose of securing certain sources of revenue either to the State or to certain public bodies. If it is clear that a penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if done, will be treated as void, even though the penalty if imposed is not enforceable.

23. The provisions contained in Section 108 of the Act are for the reasons indicated earlier mandatory. The High Court erred in holding that the provisions are directory."

7.3. Similarly, Hon'ble Apex Court in Para-45 of the decision in the case of ***Asha John Divianathan Vrs. Vikram Malhotra and Others***, reported in (2021) 19 SCC 629 has held as follows:-

"45. Even a Division Bench of the Madras High 24 1986 SCC OnLine Bom 234 : 1986 Mah LJ 1031 25 (2001) 1 Mad LJ 188 : 2000 SCC OnLine Mad 737 26 (2018) 1 KLJ 525 : 2017 SCC OnLine Ker 25269 Court in Mrs. Shoba Viswanatha v. D.P. Kingsley27, while considering the purport of Section 31 of the 1973 Act, vide its erudite judgment considered the scope of Section 23 of the Contract Act and the principles delineated in that regard in Pollock and Mulla Indian Contract Act, VII Edition, page 158 including the decisions in Joaquim Mascarenhas Fiuza (supra), Beharilal Maudgi v. The Secretary to Govt. of A.P. Home Department, Hyderabad & Ors.28 and the considerations governing public policy as delineated in Gherulal Parakh v. Mahadeodas Maiya & Ors.29, Rattan Chand Hira Chand v. Askar Nawaz (Dead) by L.Rs. & Ors. 30 and other treaties, to eventually conclude that the position of law is clear that when the enforcement of the contract is against any provision of law, that will amount to enforcement of an illegal contract. The contract per se may not be illegal. But its enforcement requires compliance of statutory conditions, failure of which will amount to statutory violation. A court which is expected to enforce the law, cannot be a party to such a decree. The view so taken in this judgment commends to us. As a matter of fact, this judgment has become 27 1996 (I) CTC 620 : 1996 SCC Online Mad 319 28 1986 (2) ALT 241 29 AIR 1959 SC 781 30 1991 (3) SCC 67 final in view of dismissal of SLP (Civil) No.15024 of 1996 by this Court vide order dated 14.08.1996."

7.4. Placing reliance on the decision of the Hon'ble Apex Court in the case of ***G.T. Girish, A.K. Pandey*** and ***Asha John Divianthan***, it is the view of this Court that since the offending vehicle which is not disputed is a Motor Vehicle, no such

policy either could have been taken by the owner-Respondent No.5 as CPM Policy, nor such a policy could have been issued by the appellant/insurer.

7.5. Since knowing fully well that such a policy is not issuable, no such policy could have been issued in favour of the offending vehicle. Neither the appellant nor the owner-Respondent No.5 can take undue advantage for their own fault. View expressed by the Hon'ble Apex Court on the aforesaid issue in Para-14 to 16 in the case of ***Kusheshwar Prasad Singh Vrs. State of Bihar and Others,*** reported in ***(2007) 11 SCC 447*** on the aforesaid issue reads as follows:-

> *"14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani & Another v. Narmada Bala Sasmal & Another, AIR 1961 SC 1353, wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim 'Commodum ex injuria sua nemo habere debet' (No party can take undue advantage of his own wrong).*
>
> *15. In Union of India & Ors. v. Major General Madan Lal Yadav (Retd.), (1996) 4 SCC 127, the accused-army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court referred to Broom's Legal Maxims (10th Edn.) p. 191 wherein it was stated;*
>
> *"it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure"*
>
> *16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong"."*

7.6. Similar view has also been made by the Hon'ble Apex Court in the case of ***Municipal Committee Katra and Others Vrs. Ashwani Kumar*** (Civil Appeal No.14970-71 of 2017 decided on 09.05.2024). Hon'ble Apex Court in Para-18 and 19 of the judgment has held as follows:-

> *"18. The situation at hand is squarely covered by the latin maxim 'nullus commodum capere potest de injuria sua propria', which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of Union of India v. Maj. Gen. Madan Lal Yadav 1 observing as below:-*
>
> *"28. In this behalf, the maxim nullus commodum capere potest de injuria sua propria - meaning no man can take advantage of his own wrong - squarely stands in the way of*

avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2).

In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:

"it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [(1846) 8 QB 757 : 15 LJ QB 239] . At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'. The conduct of the respondent writ petitioner is fully covered by the aforesaid proposition."

8. Having heard learned counsel for the parties and considering the submissions made and the issue decided hereinabove, point of consideration to be decided by this Court is as to whether on the face of the policy issued by the appellant, the appellant is liable to pay the compensation as awarded. It is not disputed that the offending vehicle is a Heavy Motor Vehicle (Hywa Truck) bearing Registration No.OR-04-P-3025. In the certificate of Registration issued in favour of the offending vehicle, description of the vehicle has been indicated as a Transport vehicle with class Heavy Goods Vehicle.

8.1. Since the offending vehicle is a Transport vehicle more in the nature of a Heavy Goods Vehicle, in view of the provisions contained under Section 146 of the Motor Vehicle Act, the policy in the name and style, CPM Policy could not have been issued by the appellant, nor such a policy could have been taken by the Owner-Respondent No.5. Placing reliance on the decision in the case of ***Asha John Divianathan, A.K. Pandey and G.T. Girish*** as cited (supra), it is the view of this Court that such a policy with the nature of Contract could not have been issued as the policy is not a contract in the eye of law.

8.2. Similarly, since knowing fully well that the offending vehicle is a Heavy Goods Vehicle and such a policy could not have been issued, the appellant by taking

the premium issued the policy in the name and style CPM Policy and Owner-Respondent No.5 on the face of nature of vehicle took the said policy by paying the premium, it is the view of this Court that both the parties cannot take advantage of their own wrong.

8.3. In view of the decisions of the Hon'ble Apex Court in the case of ***Kusheshwar Prasad Singh and Municipal Committed Katra*** as cited (supra), it is the view of this Court that the policy so issued by the appellant-company and taken by the Owner-Respondent No.5 being an illegal contract and knowing its repercussion, such a policy was issued as well as taken, both the appellant and Respondent No.5 are equally and severally liable to pay the compensation. For the latches on the part of the appellant and Respondent No.5, Claimants/Respondent Nos.1 to 4 cannot be deprived to get the benefit of the compensation.

8.4. Therefore, this Court while is not inclined to interfere with the impugned award, held the appellant and owner-Respondent No.5 liable to pay the awarded compensation amount along with interest equally. While holding so, this Court directs the Appellant and Respondent No.5 to deposit their respective share to the extent of 50% before the Tribunal within a period of 8(eight) weeks from the date of receipt of this order. On such deposit of the amount, the compensation amount be disbursed in favour of the claimants-Respondents proportionately in terms of the judgment dated 31.01.2023.

8.5. Statutory deposit be refunded to the appellant after satisfaction of its share of the award as directed along with accrued interest if any, on proper identification.

9. The Appeal accordingly stands dismissed.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
MACA dismissed.

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2025 (III) ILR-CUT-353

SANGRAM KESHARI ROUTRAY
V.
HEXAGON INFRASTRUCTURES PVT. LTD, CUTTACK & ANR.

[TRPCRL NO. 58 OF 2025]

30 JULY 2025

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether application U/s. 447 of BNSS is maintainable to transfer the complaint case from the Court at Cuttack to the Court at Bhubaneswar.

Headnotes

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 447, 224 r/w Section 142(2) of Negotiable Instruments Act, 1881 – The petitioner filed the complaint case before the Court of learned JMFC-II, Cuttack who has no jurisdiction – The complaint case ought to have been filed before the Court having jurisdiction at Bhubaneswar as the cheque was deposited by the petitioner in his Bank at Bhubaneswar – The petitioner filed present application U/s. 447 with a prayer to transfer the case to the Court at Bhubaneswar – Whether application U/s. 447 of BNSS is maintainable to transfer the complaint case from the Court at Cuttack to Court at Bhubaneswar.

Held: In view of the said specific provision under section 224 of the BNSS, which is akin to Section 201 of Cr.P.C., this Court is of the view that the present Petitioner, who is the Complainant in 1CC Case No.172 of 2024, instead of filing an application under Section 447 of BNSS before this Court for transfer of proceeding, should have moved appropriate application before the Court of learned JMFC-II, Cuttack for return of the complaint, with proper endorsement, enabling him to re-file the same before the Court having jurisdiction at Bhubaneswar. (Para 12)

In view of the observation made above, the Petitioner, who is the complainant in 1CC Case No.172 of 2024, may move an application before the Court of learned JMFC-II, Cuttack in 1CC Case No.172 of 2024 for return of the complaint enabling him to file the same before the appropriate Court having jurisdiction at Bhubaneswar. (Para 13)

If such an application is moved, learned JMFC-II, Cuttack or the Magistrate, who is in charge of the said Court, shall do well to return the complaint to the Petitioner-Complainant forthwith with proper endorsement,

in terms of provision enshrined under section 224(a) of the BNSS, enabling the Petitioner to re-file the said complaint case before the appropriate Court at Bhubaneswar, having jurisdiction to try the said complaint case. (Para 14)

Citations Reference

M/s Shri Sendhur Agro & Oil Industries Vs. Kotak Mahindra Bank Ltd., **2025 LiveLaw (SC) 292;** Canbank Financial Services Vs. Pallav Sheth, **2001 (Suppl.) ACC 936 : Manu/SC/1987/2001 – referred to.**

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Code of Criminal Procedure, 1973; Negotiable Instrument Act, 1881.

Keywords

Complaint Case; Transfer of case; Jurisdiction of the Court; Endorsement; Cognizance; Dishonour of Cheque

Case Arising From

1CC Case No. 172/2024 pending in the Court of learned JMFC-II Cuttack.

Appearances for Parties

For Petitioner : Mr. H.S. Mishra, Mrs. R. Nayak
For Opp. Party : None

Judgment/Order

Judgment

S.K. MISHRA, J.

1. This transfer petition has been filed under Section 447 of the Bharatiya Nagarika Surakhya Sanhita, 2023, shortly, "BNSS", by the Petitioner, who is the Complainant in 1CC Case No.172 of 2024, which is now pending in the Court of learned JMFC-II, Cuttack, for transfer of the said proceeding to the Court of learned JMFC-IV, Bhubaneswar.

2. Learned Counsel for the Petitioner submits, the cheque was issued by the Accused, drawn on IndusInd Bank, Cuttack Chandi Road Branch, Cuttack. The same was deposited by the Petitioner, who is the Complainant in 1CC Case No.172 of 2024, in his Bank Branch at Bhubaneswar i.e. IndusInd Bank, Lewis Road Branch, Bhubaneswar. The said cheque was dishonoured and returned to him vide Cheque Return Memo dated 23.10.2024 with a noting "Drawers signature not as per mandate in the account".

3. Learned Counsel for the Petitioner further submits, though in terms of sub-section 2 under section 142 of the Negotiable Instruments Act, 1881, shortly hereinafter, "the N.I. Act", the complaint case ought to have been filed before the

Court having jurisdiction at Bhubaneswar, on being advised by the learned Counsel for the Complainant, who gave notice under section 138 (b) of the N.I. Act from Cuttack, the complaint case was wrongly filed before the Court of learned JMFC-II, Cuttack.

4. Though it has not been pleaded in the transfer petition, learned Counsel for the Petitioner further submits, the post of JMFC-II, Cuttack is lying vacant as the PO has been transferred. Now the PO, JMFC-III, Cuttack is in charge of the said Court.

5. Learned Counsel for the Petitioner submits, the Magistrate, who is in charge of the Court of JMFC-II, Cuttack, cannot pass any order for transfer of proceeding in 1CC Case No.172 of 2024 to the Court having jurisdiction to try the said complaint. Unless this Court passes appropriate order to transfer the case record in 1CC Case No.172 of 2024 to the Court at Bhubaneswar having jurisdiction, the Petitioner will be seriously prejudiced. If the Petitioner withdraws the said Complaint Case and files a fresh complaint case before the Magistrate having power at Bhubaneswar, there is every possibility that the said Court may not entertain the same on the ground of limitation, as prescribed under Section 142(1)(b) of the N.I. Act.

6. Accordingly, a prayer is made to direct the learned JMFC-II, Cuttack to transmit the case record in 1CC Case No.172 of 2024 to the Court of learned JMFC-IV, Bhubaneswar.

7. In view of such submission made, it would be apt to reproduce below the provisions under Sub section (2) of section 142 of the N.I.Act :

> "*2. The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction, -*
>
> ***(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated****; or*
>
> *(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.*
>
> *Explanation- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."* ***(Emphasis supplied)***

8. It is amply clear from Section 142(2)(a) of the N.I. Act that, when a cheque is delivered for collection to the payee's bank account, the relevant jurisdiction for filing a case under Section 138 of the N.I. Act would be where the payee's bank branch, where the account is maintained, is situated. Similarly, Section 142(2)(b) of the N.I. Act applies when the cheque is presented for payment directly to the bank (not through an account, possibly over the counter), the relevant jurisdiction would be where the drawer's bank branch, where the account is maintained, is located. In simpler terms, if a person deposits the cheque in his bank account and the said

cheque is bounced, he can file the case where his bank is located. If the said person presents the cheque directly to the bank for payment and the said cheque is dishonoured, he can file the case where the other person's bank, who issued the cheque, is located.

9. In view of the provision enshrined under Section 142(2) of the N.I. Act so also facts detailed in the transfer petition, admittedly, the appropriate Court to try the complaint case filed by the Petitioner would be at Bhubaneswar. However, it appears from the record that the Petitioner, who is the payee of the cheque, which has been dishonoured, has wrongly instituted the said Complaint Case at Cuttack in the Court of learned JMFC-II, Cuttack, who is incompetent to take cognizance in 1CC Case No.172 of 2024, having no territorial jurisdiction to try the said offence under Section 138 of the N.I. Act.

10. Accordingly, this transfer petition has been filed for transfer of proceeding from Cuttack to the Court at Bhubaneswar on the ground of lack of territorial jurisdiction. In a recent judgment in ***M/s Shri Sendhur Agro & Oil Industries Vs. Kotak Mahindra Bank Ltd.***, reported in 2025 LiveLaw (SC) 292, the Supreme Court held that an order of transfer of trial is not to be passed as a matter of routine, more particularly, on the plea of lack of territorial jurisdiction of the Court to try the offence under section 138 of the N.I. Act. The power to transfer proceeding has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial.

11. Section 224 of the BNSS mandates, if a complaint is made to a Magistrate, who is not competent to take cognizance of an offence, he shall, if the complaint is in writing, return it for prosecution before the proper Court with an endorsement to that effect.

12. In view of the said specific provision under section 224 of the BNSS, which is akin to Section 201 of Cr.P.C., this Court is of the view that the present Petitioner, who is the Complainant in 1CC Case No.172 of 2024, instead of filing an application under Section 447 of BNSS before this Court for transfer of proceeding, should have moved appropriate application before the Court of learned JMFC-II, Cuttack for return of the complaint, with proper endorsement, enabling him to re-file the same before the Court having jurisdiction at Bhubaneswar. Such view of this Court is also supported with the views taken by the Supreme Court in ***Canbank Financial Services Vs. Pallav Sheth***, reported in 2001 (Suppl.) ACC 936 : Manu/SC/1987/2001, wherein it was held that once the Court comes to a conclusion that it has no jurisdiction to decide the complaint, by virtue of Section 201 of Cr.P.C., the complaint should be returned to the complainant, to be presented in the proper Court having jurisdiction to try the said case.

13. In view of the observation made above, the Petitioner, who is the complainant in 1CC Case No.172 of 2024, may move an application before the Court of learned JMFC-II, Cuttack in 1CC Case No. 172 of 2024 for return of the

complaint enabling him to file the same before the appropriate Court having jurisdiction at Bhubaneswar.

14. If such an application is moved, learned JMFC-II, Cuttack or the Magistrate, who is in charge of the said Court, shall do well to return the complaint to the Petitioner-Complainant forthwith with proper endorsement, in terms of provision enshrined under section 224(a) of the BNSS, enabling the Petitioner to re-file the said complaint case before the appropriate Court at Bhubaneswar, having jurisdiction to try the said complaint case.

15. With the above observation, the transfer petition stands disposed of.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
TRPCRL disposed of.

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2025 (III) ILR-CUT-357

MEENAKSHI HOTA
V.
CHINMAY HOTA

[W.P.(C) NO. 22849 OF 2025]

20 AUGUST 2025

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether the Learned Judge, Family Court should consider/decide the interim application filed U/s. 24 of the Act primarily before adjudicating the main case.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 24 – Pendente lite maintenance – The petitioner is the Opposite Party in C.P. 144 of 2016 – Petitioner filed application U/s. 24 of the Act for interim maintenance – The Learned Judge, Family Court, Sambalpur proceeded to hear the C.P. No.144/2016 on merit without considering the I.A. filed by petitioner for maintenance – Whether the Learned Judge, Family Court should consider/decide the petition filed U/s. 24 of the Act first before adjudicating of the main case i.e. C.P. No.144/2016.

Held: Yes – Taking into consideration the submission made by the learned Counsel for the Petitioner, the order sheet on record, legal provisions enshrined under Section 24 of the Hindu Marriage Act, 1955 and the settled

position of law, the learned Judge, Family Court, Sambalpur is directed to take up the hearing in I.A. No.22 of 2024 preferred under Section 24 of the Act, 1955 before proceeding further on merit in C.P. No.144 of 2016 and dispose of the said application within six weeks from the date of production of certified copy of this order. (Para 11)

Citations Reference

Mohinder Verma v. Sapna, **2014 SCC OnLine P&H 25147**; Rajnesh v. Neha, **(2021) 2 SCC 324 – referred to.**

List of Acts

Hindu Marriage Act, 1955.

Keywords

Matrimonial Proceeding; Interim Maintenance; Pendentelite Maintenance; Adjudication; Main case; Quantum;

Case Arising From

C.P. No. 144/2016 pending before the learned Judge, family Court, Sambalpur.

Appearances for Parties

For Petitioner : Mr. P.R. Chhatoi
For Opp. Party :

Judgment/Order

Order

S.K. MISHRA, J.

1. This matter is taken up through hybrid mode.

2. The present Writ Petition has been filed by the Petitioner-wife with the following prayers:

> **"PRAYER**
>
> In the above facts and circumstances, the petitioner, therefore, most humbly prays that your Lordship would be graciously pleased to admit the writ petition, issue notice to the opposite party and after hearing the counsel for the parties, this Hon'ble Court be further pleased **to direct the learned Judge, Family Court, Sambalpur for early disposal of LA. No.22 of 2024 (arising out of C.P. No. 144 of 2016) filed by the petitioner under Section 24 of Hindu Marriage Act, 1955 before proceeding with the main proceeding i.e. C.P. No. 144 of 2016 within a stipulated period;**
>
> And/or pass such other order/direction as deem fit and proper in the fact and circumstances of the case;" **(Emphasis supplied)**

3. The sole grievance of the Petitioner, who is the Opposite Party in C.P. No. 144 of 2016, is that without disposing of I.A. No. 22 of 2024 filed by her under Section 24 of Hindu Marriage Act, 1955 for interim maintenance, the learned Judge,

Family Court, Sambalpur is proceeding on merit in C.P. No.144 of 2016 preferred by the Opposite Party-Husband for divorce.

4. In view of such limited prayer made in the writ petition, to avoid further delay, the writ petition is taken up for hearing and disposal at the stage of admission without noticing the Opposite Party.

5. Learned Counsel for the Petitioner, drawing attention of this Court to the averments made in Para-7 of the writ petition so also the certified copy of the entire order sheet in C.P. No.144 of 2016, as at Annexure-3 submits, though the said I.A. was filed under Section 24 of the Hindu Marriage Act, 1955 for interim maintenance on 27.12.2024 and despite filing of objection to such application by the present Opposite Party, who is the Petitioner in C.P. No.144 of 2016, such application is still pending. On filing of affidavit evidence of P.W.1, the said witness has already been examined and documents have been marked as exhibits with objection on 28.07.2025. However, on oral prayer of the learned Counsel for the Petitioner, who represents her in C.P. No.144 of 2016, the matter stood adjourned to 5th August, 2025 and again stood adjourned to 19th August, 2025.

6. At this juncture, this Court deems it appropriate to refer to Section 24 of Hindu Marriage Act, 1955:

> "Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:
>
> **Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be." (Emphasis Supplied)**

7. The Punjab and Haryana High Court **in *Mohinder Verma* v. *Sapna*** reported in 2014 SCC OnLine P&H 25147 held as follows:

> **"*8*. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this section are summary in nature and confer a substantial right on the applicant during the pendency of the proceedings. *Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28-A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said court*.** In other words, the striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under

Section 28-A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28-A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off."
(Emphasis Supplied)

8. The above-stated principles were subsequently affirmed by the Hon'ble Supreme Court in ***Rajnesh v. Neha*** reported in (2021) 2 SCC 324, which comprehensively addressed various facets of maintenance law, including interim maintenance, overlapping jurisdictions, disclosure obligations, criteria for determining quantum, and enforcement mechanisms. The Supreme Court categorically upheld the view taken by the Punjab & Haryana High Court in *Mohinder Verma* (supra) as laying down the correct position of law.

9. Pertinently, the Supreme Court also framed comprehensive guidelines aimed at ensuring the timely disposal of interim maintenance applications. Para 72.10(j) of the said judgment mandates as follows:

"72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court."

10. Regarding the enforcement of orders granting maintenance, in *Rajnesh v. Neha* (supra), the Supreme Court held as follows:

114. Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in *Sushila Viresh Chhadva v. Viresh Nagshi Chhadva [Sushila Viresh Chhadva v.Viresh Nagshi Chhadva, 1995* SCC OnLine Bom 315 : AIR 1996 Bom 94] held that : (SCC OnLine Bom para 7)

"*7.* …The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and … the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds."

"115. An application for execution of an order of maintenance can be filed under the following provisions:

"(a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);

(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(c) Section 128 CrPC before the Magistrate's Court."

116. Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC/CrPC.

117. Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

118. Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition. In *Kaushalya* v. *Mukesh Jain* [*Kaushalya v. Mukesh Jain*, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] , the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21."

11. Hence, taking into consideration the submission made by the learned Counsel for the Petitioner, the order sheet on record, legal provisions enshrined under Section 24 of the Hindu Marriage Act, 1955 and the settled position of law, the learned Judge, Family Court, Sambalpur is directed to take up the hearing in I.A. No.22 of 2024 preferred under Section 24 of the Act, 1955 before proceeding further on merit in C.P. No.144 of 2016 and dispose of the said application within six weeks from the date of production of certified copy of this order.

12. It is made clear that unless and until the I.A. No.22 of 2024 stands disposed of and the Court below ensures compliance of the said order, if any, passed in favour of the Petitioner-wife, it shall not proceed further on merit in C.P. No.144 of 2016.

13. Accordingly, the writ petition stands disposed of.

14. Registry is directed to communicate a copy of this order to the learned Judge, Family Court, Sambalpur for compliance.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Hara Prasad Padhy, Editor-in-Chief)

Result of the case:
Writ Petition disposed of.

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2025 (III) ILR-CUT-362

JATI @ SUSANTA ROUT
V.
STATE OF ODISHA

[BLAPL No. 5527 OF 2025]

AND

JILAPI@BASANTA SAHU V. STATE OF ODISHA
[BLAPL No. 6993 OF 2025]

06 AUGUST 2025

[G. SATAPATHY, J.]

Issue for Consideration

Whether the accused persons entitle to be released on bail.

Headnotes

BHARATIYA NAGARIK SURAKSHA SAHINTA, 2023 – Section 483 – Bail – In the present case the accused persons have not been produced before the Court/Magistrate within 24 hours of their arrest – Plea of violation of section 58 of the Sanhita as well the Right to life & personal liberty as provided under Art. 22(2) of the Constitution raised – In the circumstances above, whether accused persons entitle to be released on bail?

Held: Yes – On a careful conspectus of admitted facts of the time of detention and arrest of the petitioners in this case, which found to be violative of Article 22(2) of the Constitution of India and applying the law laid down by Apex Court in ***Subash Sharma (supra)***, this Court considers that since the arrest and detention of the petitioners being infringement of their fundamental right, their further detention in custody should not be enlarged and they be released on bail forthwith. (Para 8)

Citations Reference

Directorate of Enforcement Vrs. Subash Sharma, **2025 SCC On Line SC 240 – referred to.**

List of Acts

Bharatiya Nagarik Suraksha Sahinta, 2023; Constitution of India, 1950.

Keywords

Bail; Right to life & personal liberty of accused person; Arrest of Accused; Production of Accused; Twenty four hours of mandatory provision; Detention of Accused; Infringement of fundamental rights.

Case Arising From

Purushottampur P.S Case No.14 of 2025 arising out of GR Case No.14 of 2025 pending in the Court of learned JMFC, Purushottampur..

Appearances for Parties

For Petitioners : Mr. S.N. Das (BLAPL No. 5527 of 2025)
Mr. S.K. Bhanjadeo, (BLAPL No. 6993 of 2025)
For Opp. Party : Mr. M.K. Mohanty, Addl. PP

Judgment/Order

Judgment

G. SATAPATHY, J.

1. Since these two bail applications arise out of one and same case record, the same are heard together and disposed of by this common order with the consent of the learned counsel for the parties.

2. These are two bail applications U/S.483 of BNSS by the petitioners for grant of bail in connection with Purushottampur PS Case No.14 of 2025 arising out of GR Case No.14 of 2025 for commission of offences punishable U/Ss. 317(2)/309(6)/ 111/123 of BNS pending in the Court of learned JMFC, Purushottampur.

2.1 The allegations in brief are that on 04.01.2025 at about 04:45PM, while Kuntala Gouda and Sweety Gouda were going to Purushottampur from their village Chadhiapalli by an auto rickshaw, the driver of the said auto rickshaw took them away towards Rambha area, instead of Purushottampur and threw away them at the road side by spraying some poisonous substance on their nose and taking away some gold ornaments weighing 2 tola gold neckless and 80 Grams silver ornaments, when they become unconscious. The aforesaid two persons were rescued by Rambha Police and admitted to Chattrapur Hospital. On this incident, the son of Kuntala Gouda lodged an FIR on 05.01.2025 paving the way for registration of Purushottampur PS Case No. 14 of 2025 and in the course of investigation, the involvement of the present Petitioners were allegedly unearthed and they were taken into custody.

3. In the course of hearing, Mr. Sailaza Nandan Das, learned counsel for the Petitioner in BLAPL No. 5527 of 2025 prays to grant bail to the petitioner on the plea of their illegal detention in custody on the ground that the petitioners were forwarded to the Court after the statutory period of maximum 24 hours prescribed for detention in custody and thereby, their arrest being violative of Sections 57, 58 and 187 of BNSS, the further detention of the petitioners is illegal.

3.1. Mr. Sanjib Kumar Bhanjadeo, learned counsel for the Petitioner in BLAPL No. 6993 of 2025 also takes the same plea only in the course of argument, but he has not taken such plea in his bail application.

3.2. On the other hand, Mr. M.K. Mohanty, learned Additional Public Prosecutor, however, does not dispute about the detention of the Petitioners in

custody w.e.f 5:00am on 16.01.2025 till they were produced before the Court concerned on 17.01.2025 at about 8:00am after arresting them at about 00:20am in the intervening night of 16/17.01.2025, but Mr. Mohanty clarifies that the Petitioners were only detained in Buguda PS for investigation in another case w.e.f 05:00am on 16.01.2025 till 00:20am of 16/17.01.2025 and, therefore, there is hardly any violation of the statutory of provision of law for which the arrest of the Petitioners cannot be considered illegal. On the aforesaid submissions, Mr. Mohanty prays to reject the bail application of the Petitioners.

4. On a careful consideration of the rival submissions makes it apparently clear that the plea of illegal detention of the Petitioners as advanced stems from the provisions of Sec. 58 of BNSS(Sec. 57 of CrPC) which is titled as "person arrested not to be detained more than 24 hours" and it is accordingly, laid down in Sec. 58 of BNSS that no Police Official shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187 of BNSS (U/S. 167 CrPC), exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not. What is significant is that arrest has not been defined either in BNSS or in any statute, but how arrest is made has been provided in Sec. 43(1) of BNSS (Sec. 46 of CrPC) and it is stated therein that in making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. It is, therefore, plain and simple that if the Officer arresting the person touches or confine the later, it can be said that the said person (the later) is arrested and such person can also be said to have been arrested, if he submits to the custody by word or action. However, "custody" and "arrest" are not synonymous and in every arrest, there must be custody, but not vice versa, since a person in custody may not be under arrest. Further, the custody means physical surrender of the person and even if a person is not arrested, he can surrender in the Court, but one thing is very clear that during custody in a criminal matter, the person is considered to be in duress. It is, however, very clear that if a person is either arrested or confined in custody of a law enforcing agency, he is under duress. Protection of life and personal liberty of a person is the fundamental right of such person and Article 22 of the Constitution of India provides protection against arrest and detention in certain cases and, therefore, the provision of Sec. 58 of BNSS(Sec. 57 of CrPC) flows from Article 22(2) which makes it mandatory that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. In addition, Article 22(1) of the Constitution of India provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied

the right to consult, and to be defended by, a legal practitioner of his choice. It is, therefore, very clear that if a person is detained in custody of Police on the charge of committing any offence is automatically can be presumed of his arrest, unless he is set free and if such custody of said person by the Police Official continues, the Police Official keeping such person in custody shall be required to produce him before nearest Magistrate within a period of 24 hours excluding the time necessary for the journey.

5. In the present case, as per the affidavit filed by the IIC, Purushottampur PS, it appears that the Petitioners were taken into custody of Buguda PS w.e.f 5:00am on 16.01.2025, but they were produced in the Court on 17.01.2025 at about 08:00am by Purushottampur Police, even though they were taken into custody by Purushottampur Police on 17.01.2025 at about 00:20am, but the Petitioners having not released from custody w.e.f 5:00am on 16.01.2025, their detention in Police custody can be considered beyond 24 hours inasmuch as they were not merely under Police custody, but their physical movement was confined as well as restricted and thereby, they were in duress. For the purpose of criminal case, the Petitioners being not produced beyond 24 hours, their detention can be considered illegal for violation of provision of Article 22(2) of the Constitution of India r/w Sec. 58 of BNSS and, therefore, the arrest of the Petitioners are violative of the Constitutional mandate. One of the important aspects as emerged in this case is that the copy of arrest memo of the Petitioner Jilapi @ Basanta Sahu produced in this case containing the signature of IIC does not contain the time of arrest as such place in the column in the printed form meant for time of arrest remains blank, whereas the time of the arrest in the printed arrest memo of the co-accused Jaga @ Jaganath Mohapatra, has been filled up in hand by writing 08:00am in pen. These documents go a long way to say about the illegal detention of the Petitioners in custody beyond 24 hours. Detention of a person in police custody in reference to a criminal case would definitely be construed as arrest of such person. In every arrest, there must be an element of custody, but not vice versa inasmuch as a person can be taken into custody without formal arrest, however, in both “arrest and custody”, the personal liberty is curtailed since the movement of such person is restricted.

6. Assuming the plea of the police about arresting the petitioners by Purusottampur Police at 00.20am to be a fact, but the petitioners being detained by Buguda police since 5 AM of the previous day i.e. 16.01.2025 without any authorization by Judicial Magistrate is violative of the Constitutional provision of arrest and detention inasmuch as, law prescribes that no person can be detained in custody beyond 24 hours without the authorization of the Judicial Magistrate which is the mandate of 187 of BNSS (U/S. 167 CrPC) and, therefore, the police in this case could have taken permission of the concerned Magistrate to take the petitioners in remand beyond 24 hours. When a particular thing in law is to be done in a particular way, it is to be done in that way or not at all. In this case, what prevented the police not to take any authorization from the concerned Magistrate to take the petitioners in remand, if they are found allegedly involved in a criminal case.

Personal liberty of a person is not only sacrosanct, but also his fundamental right and such personal liberty of a person cannot be curtailed except according to the procedure established by law. This Court is unable to accept the plea of the Police for keeping the petitioners detained in custody beyond 24 hours without any authorization of the Magistrate, even the petitioners were received in custody from Buguda police at 00.20am by the Purusottampur Police since the petitioners were detained continuously w.e.f. 5am on 16.01.2025.

7. In the above context, this Court considers it profitable to refer to the decision in the case of ***Directorate of Enforcement Vrs. Subash Sharma; 2025 SCC On Line SC 240*** wherein in a somewhat similar situation the Apex Court at Paragraph-5, 6, & 8 has held as under:-

> *"5. The submission of the learned counsel appearing for the appellant is that pursuant to the Look Out Circular (for short, 'the LOC') issued against the respondent, he was detained at IGI Airport from* ***11.00 hours, on 5th March, 2022.*** *But he was* ***shown as arrested at 01.15 hours on 6th March, 2022*** *by the appellant Enforcement Directorate and was* ***produced before the Court of the learned Magistrate within 24 hours from 1.15 hours on 6th March, 2022.***
>
> *6.* ***This argument cannot be accepted.*** *Admittedly, the LOC was issued at the instance of the appellant-Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly,* ***the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022.*** *Thereafter,* ***at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur.*** *He was* ***produced before the Court at 3 p.m. on 6th March, 2024.*** *The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready.* ***The date and time of arrest were kept blank which appear to have been filled in by hand.*** *Admittedly, the respondent was* ***not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022.*** *Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.*
>
> *8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under* ***Articles 21 and 22 of the Constitution of India have been violated*** *while arresting the accused or after arresting him,* ***it is the duty of the Court dealing with the bail application to release the accused on bail.*** *The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."*

8. On a careful conspectus of admitted facts of the time of detention and arrest of the petitioners in this case, which found to be violative of Article 22(2) of the Constitution of India and applying the law laid down by Apex Court in ***Subash***

Sharma (supra), this Court considers that since the arrest and detention of the petitioners being infringement of their fundamental right, their further detention in custody should not be enlarged and they be released on bail forthwith.

9. Hence, the bail applications of the Petitioners namely Jati @ Susanta Rout and Jilapi @ Basanta Sahu in BLAPL Nos. 5527 & 6993 of 2025) stand allowed and they are allowed to go on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with one solvent surety each for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it.

10. Accordingly, the BLAPL Nos. 5527 & 6993 of 2025 stands disposed of.

Headnotes prepared by: *Result of the case:*
Shri Jnanendra Ku. Swain, Judicial Indexer BLAPL Nos. 5527&6993 disposed of.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-367

HARSHA C
V.
STATE OF ORISSA

[CRLMA NO. 107 OF 2025]

03 SEPTEMBER 2025

[G. SATAPATHY, J.]

Issues for Consideration

Whether the condition imposed by the learned trial Court is valid under the law.

Headnotes

BHARATIYA NAGARIK SURAKSHA SAHINTA, 2023 – Section 483(1)(a), (b) – Modification of condition for bail – This case has been filed challenging the imposition of condition i.e. 'to furnish one surety of kin relative', while granting the bail – Bail is the Rule, Jail is the exception, plea raised – Right to life & personal liberty as mandated under Art. 21 of the Constitution is also pleaded – Whether the condition imposed by the learned trial Court is valid under the law?

Held: No – In this case, due to the condition as imposed by the learned trial Court, the petitioner is unable to get out from the jail custody and he is in custody since 29.04.2025 – Time and again, it is being held that bail is the rule, but jail is the exception and an accused should be presumed to be

innocent until proven guilty at the trial and Court should not consider a person to be guilty of the crime, unless the same is established in terms of the proof beyond all reasonable doubts – In the aforesaid situation and circumstance and taking into account the precedents referred to above, this Court considers it proper to allow the CRLMA by waiving out the condition of furnishing a surety of kin relative of the petitioner, especially when the petitioner is unable to get out of the jail despite being allowed to go on bail.

(Para 5)

Citations Reference

Moti Ram & Others vs. State of Madhya Pradesh, **(1978) 4 SCC 47;** Policy Strategy for Grant of Bail, **INRE SMWP (Criminal) No. 4/2021; 2023 SCC OnLine SC 483;** Ramchandra Thangappan Aachari vrs. The State of Maharashtra, **2024 SCC Online SC 2629;** Satender Kumar Antil vs. Central Bureau of Investigation & Anr, **(2022) 10 SCC 51 – referred to.**

List of Acts

Bharatiya Nagarik Suraksha Sahinta, 2023.

Keywords

Bail; Condition of bail; Modification of condition of bail; Personal liberty; Bail is the Rule; Jail is the exception.

Case Arising From

Challenging the imposition of condition by the learned Session Judge.

Appearances for Parties

For Petitioner : Mr. D. Mund
For Opp. Parties : Mr. C. Mohanty, Addl. PP

Judgment/Order

Judgment

G. SATAPATHY, J.

1. Against the imposition of condition to furnish "one surety, who must be a kin relative of the accused" by the learned Sessions Judge, the petitioner has invoked the jurisdiction of this Court U/S. 483(1)(a)/(b) of BNSS.

2. Heard, Mr. Dhananjaya Mund, learned counsel for the petitioner and Mr. C. Mohanty, learned Addl. PP in the matter and perused the record.

3. It appears that the learned Sessions Judge while granting bail to the accused has imposed a condition on the petitioner to furnish a surety, who must be his kin relative, but it appears that such condition is not only onerous, but also the same was an impediment for the petitioner for getting out of the jail. Right to personal liberty is the constitutional mandate, but detaining a person in custody is an exception and that must be in according to the procedure established by law. Regarding imposition of conditions in granting bail, law is also fairly well settled in ***Moti Ram & Others vs. State of***

Madhya Pradesh; (1978) 4 SCC 47, wherein the Apex Court through the immortal words of Hon'ble Mr.Justice Krishna Iyer had held that "India is one and not a conglomeration of districts, untouchably apart" and therefore, seeking a condition which is not strictly in terms of the mandate of law would be highly unacceptable. No doubt, there is no provision regulating imposing any condition while granting bail, but the condition would be of such nature that it would only help in securing the attendance of the petitioner at the trial and when the Court has already imposed a condition to furnish two sureties, there is no need to insist that out of the two sureties, one would be his kin relative and even if it is imposed, it would have been waived out when the petitioner could not furnish such surety even after getting bail. While interpreting the provision of law, the Court should always be inclined to give effect to the personal liberty of a person. The underlying principle in imposing conditions while grating bail is that the excessive bail is no bail. In the context, it is to be understood why there are provisions for bail which is in fact enacted to prevent detention of accused pending adjudication of the allegation leveled against the accused as pre-trial punishment since the accused is presumed to be innocent until proven guilty and, therefore, imposing onerous conditions sometimes amounts to denial of bail. The conditions imposed on the accused while granting bail is somewhat meant to ensure attendance of the accused at the trial, but imposing a condition which is not only excessive, but also impossible for the accused to comply is never the intention of the legislature and while granting bail by passing an order, it is presumed that the Court has already intended to exercise its discretion of personal liberty in favour of the accused, but thereafter imposing an impossible condition to comply would only frustrate the intention of the Court to grant bail to the accused and it is against the personal liberty of the accused which is guaranteed under Article 21 of the Constitution of India. After granting bail, imposing excessive and onerous conditions, which are impossible for compliance by the accused for his release from custody is not the spirit of law and would be considered depriving the accused of his personal liberty without the sanction of law. What are considered excessive and onerous conditions would depend on the facts and circumstances of each case and the capacity of the accused, but once the accused is found unable to furnish surety or comply the conditions of bail, the Court has to come to the aid of the such accused by modifying/relaxing the conditions for bail. At this stage, this Court considers it relevant to reiterate the directions issued by the Apex Court in ***POLICY STRATEGY FOR GRANT OF BAIL, INRE SMWP (Criminal) No. 4/2021; 2023 SCC OnLine SC 483*** and the two relevant directions as issued therein are extracted hereunder:-

> *"9.(6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation.*
>
> *9.(7) One of the reasons which delays the release of the accused/convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety."*

3.1. In ***Ramchandra Thangappan Aachari vrs. The State of Maharashtra; 2024 SCC Online SC 2629,*** the Apex Court in Paragraph-6 of the order has held that it would be a **travesty of justice** if the petitioner is unable to secure **the benefit of bail order for his inability to furnish local surety.** This will infringe the rights

guaranteed under Article 21 of the Constitution for the person, who continues to be detained despite a bail order in his favour.

4. In ***Moti Ram (supra),*** the Apex Court has further held in Paragraph-33 as under:-

> *"33. To add insult to injury, the magistrate has demanded sureties from his own district! (we assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff."*

4.1. In ***Satender Kumar Antil vs. Central Bureau of Investigation & Anr; (2022) 10 SCC 51,*** the Apex Court has held that "imposing a condition which is impossible of compliance would be defeating the very object of release."

5. In this case, due to the condition as imposed by the learned trial Court, the petitioner is unable to get out from the jail custody and he is in custody since 29.04.2025. Time and again, it is being held that bail is the rule, but jail is the exception and an accused should be presumed to be innocent until proven guilty at the trial and Court should not consider a person to be guilty of the crime, unless the same is established in terms of the proof beyond all reasonable doubts. In the aforesaid situation and circumstance and taking into account the precedents referred to above, this Court considers it proper to allow the CRLMA by waiving out the condition of furnishing a surety of kin relative of the petitioner, especially when the petitioner is unable to get out of the jail despite being allowed to go on bail.

6. In the result, the CRLMA stands allowed and the condition "out of the two sureties, one surety must be kin relative of the accused" stands waive out and rest part of the order remains unaltered. Accordingly, the CRLMA stands disposed of.

Headnotes prepared by:
Shri Jnanendra Kumar Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CRLMA allowed.

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2025 (III) ILR-CUT-371

NAVEEN BHATIA & ORS.
V.
STATE OF ODISHA & ANR.

[CRLMC NO. 3280 OF 2017]

30 JULY 2025

[CHITTARANJAN DASH, J.]

Issues for Consideration

Whether the punishment against the petitioner under section 27(d) of the Act is sustainable when the authority failed to comply with a mandatory statutory requirement before launching the prosecution.

Headnotes

DRUGS AND COSMETICS ACT, 1940 – Sections 18(a)(i), 23, 25 & 27(d) – Allegation of manufacture & sale substandard drug – Punishment under Section 27(d) of the Act – The sample was drawn on 22.08.2007 and tested by the State Laboratory – The result was communicated to the petitioner's company vide letter dated 26.07.2008 & received on 05.08.2008 – The petitioner challenged the said report within the statutory period of twenty eight days – The Drug sample having expired on 31.08.2008 could not be referred for re-testing/analysis by the Central Laboratory U/s. 24(4) of the Act – Whether the punishment against the petitioner under section 27(d) of the Act is sustainable when the authority failed to comply with a mandatory statutory requirement before launching the prosecution.

Held: No – This Court cannot blink aside from the irregularities in the functioning of the authorities, who, despite handling a matter directly affecting public health and safety, failed to ensure due compliance with statutory provisions – Such inaction reflects serious lapses in the discharge of official duties – This matter deserves to be brought to the notice of the authorities at the helm for appropriate departmental action against any officer found responsible. (Para 13)

Coming to the case at hand, as the authority failed to comply with the mandatory provisions before instituting the prosecution, no criminal liability can be ascribed to the Petitioners, and continuation of the proceedings would amount to an abuse of the process of law. (Para 14)

List of Acts

Drugs and Cosmetics Act, 1940.

Keywords

Drugs & Cosmetics; Manufacture & Sale; Substandard; Mandatory requirement; Sample; Drawn of sample; Test Report; Statutory period; Re-test

Case Arising From

2 (C) CC Case No. 55 of 2012 pending before the learned S.D.J.M., Sonepur.

Appearances for Parties

For Petitioners : Mr. M.K. Mishra, Sr. Adv.
For Opp. Parties : Mrs. S. Mohanty, ASC

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. By means of this application, the Petitioners seek to invoke the inherent powers of this Court for quashing the proceedings initiated against them in connection with 2(C) CC Case No.55 of 2012 pending before the learned S.D.J.M., Sonepur, for the alleged commission of offences under Section 27(d) of the Drugs and Cosmetics Act, 1940.

2. The background facts of the case are that the Drugs Inspector, Subarnapur Range, Subarnapur, lodged a complaint alleging that on 22.08.2007, he collected a statutory sample of the drug "Vigizyme Liquid," Batch No. VVZ/01, M/D: 06/07, E/D: 08/2008, manufactured by M/s Three B Health Care Ltd., Opp. Dental College, Rampur Road, Paonta Sahib (H.P.) from the sales premises of M/s New Life Medical Store, At/Po - Ullunda, District Subarnapur, through Sri Lalit Kumar Sahu, the then Drug Inspector, Bolangir Range, vide Form-17, for the purpose of test and analysis. One sealed portion of the drug sample (1 × 200 ml) was sent to the Government Analyst, State Drug Testing and Research Laboratory (SDTRI), Bhubaneswar, vide Form-18 of the Drug Inspector, Bolangir, against memorandum No.1586 dated 23.08.2007. The Government Analyst declared the above drug as "NOT OF STANDARD QUALITY" vide Form-13 of the test report.

3. As per Notification No.19110 dated 29.07.2009 issued by the Government of Orissa, Health and Family Welfare Department, the Inspector took charge of the newly created Office of the Drugs Inspector, Subarnapur Range, on 01.10.2009 along with related documents. The portion of the drug sample as required under Section 23(4)(iii) and a copy of the test report in Form-13 as required under Section 25(2) of the Drugs and Cosmetics Act, 1940 were sent to the manufacturer, M/s Three B Health Care, Paonta Sahib, Himachal Pradesh, by registered post with A.D.,

vide Drugs Inspector, Bolangir Letter No.933 dated 26.07.2008. In response, the manufacturer furnished a reply vide its letter dated 22.08.2008.

4. During investigation, M/s New Life Medical Store, Ullunda, was directed, vide Drugs Inspector, Bolangir Letter No.935 dated 26.07.2008, to disclose the source of acquisition of the said drug. In response, the firm produced a self-certified copy of purchase Invoice No.364 dated 25.06.2007 of M/s Archana Enterprises, Rugudipada, District Bolangir. Subsequently, vide Drugs Inspector, Bolangir Letter No.1062 dated 14.08.2008, M/s Archana Enterprises was also directed to disclose the source of acquisition of the said drug. In response, the firm furnished a self-certified copy of purchase Invoice No.797 dated 03.07.2007 of M/s Vision Medilink, Ahmedabad. On further inquiry, vide Drugs Inspector, Bolangir Letter No.509 dated 22.04.2009, M/s Vision Medilink, Ahmedabad, was also asked to disclose the source of acquisition of the said drug. In response, the firm furnished a reply dated 08.05.2009, along with a self-attested copy of its drug license and the purchase invoice of M/s Three B Health Care, Paonta Sahib.

The Drugs Controller, Orissa, vide Letter No.3255 dated 07.04.2009, instructed to establish the supply link between the manufacturer and the wholesaler and accordingly submit a draft prosecution report for approval. For further investigation and effective drug recall, the Drugs Inspector, Cuttack-1 Range, was directed to assist vide Letter No.809 dated 24.07.2009, and in response, a report was furnished vide her letter dated 28.08.2009. Vide Office Letter No.954 dated 05.10.2010, M/s Three B Health Care, Himachal Pradesh, was directed to furnish the Articles of Association and Memorandum of its Board of Directors under intimation to the Drugs Controller, Himachal Pradesh, vide Memo No.956 dated 05.10.2010. In response, the Drugs Licensing Authority, Himachal Pradesh, furnished the said documents vide Letter No.HFW-H (Drugs) 231/06-3405 dated 07.01.2011.

On completion of the investigation, it was revealed that the manufacturer, M/s Three B Health Care, represented by its Board of Directors, had manufactured and sold the substandard drug in violation of Section 18(a)(i) of the Drugs and Cosmetics Act. M/s Vision Medilink, represented by its proprietor Sri Subash Shivkumar Lohia, had stocked and sold the said drug, also in violation of Section 18(a)(i) of the Act, making them liable for punishment under Section 27 thereof. Similarly, the distributor, M/s Archana Enterprises, represented by its partners Sri Pramod Kumar Mishra and Sri Anil Kumar Nanda, and the retailer, M/s New Life Medical Store, represented by its proprietor Smt. Chandrama Bastia, were found to have violated Section 18(a)(i) of the Act, punishable under Section 27(d). Accordingly, the prosecution report was approved by the Drugs Controller, Orissa, Bhubaneswar, and the complaint was filed, which was registered as 2(C) CC Case No.55 of 2012 on 02.04.2012.

5. The learned Court, having taken cognizance, issued summons to the accused persons vide order dated 02.04.2012, directing their appearance on 19.06.2012.

Aggrieved by the issuance of the said summons, the Petitioners have approached this Court seeking quashing of the aforesaid proceedings.

6. Mr. Manoj Mishra, learned Senior Advocate appearing on behalf of the Petitioners, submitted that the entire prosecution lodged against the Petitioners for the alleged violation of Section 18(a)(i) of the Drugs and Cosmetics Act, making them liable for punishment under Section 27(d), is not maintainable, inasmuch as the prosecution report submitted by the Drug Inspector suffers from inherent infirmities. It is contended that the statutory right of the Petitioners to exercise their defence in accordance with law has not been afforded, thereby rendering the entire prosecution void ab initio. Elaborating on his submissions, Mr. Mishra contended that the complaint itself reveals that the sample was drawn on 22.08.2007. In terms of the provisions under Sections 25(3) and 25(4) of the Drugs and Cosmetics Act, it is incumbent upon the authority to afford the Petitioners an opportunity to exercise their right to challenge the report of the State Laboratory by seeking a reference of the sample to the Central Drugs Laboratory for testing.

7. In the present case, although the sample was drawn on 22.08.2007 and tested by the State Laboratory, the result was communicated to the Petitioners' company only vide letter dated 26.07.2008, received on 05.08.2008. The Petitioners, without any delay, replied to the authority on 22.08.2008, challenging the said report within the statutory period of twenty-eight days.

8. The statutory right to challenge the report of the State Laboratory is embodied under Section 25(3) of the Drugs and Cosmetics Act, 1940, which provides:

> **25(3)** Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken [or the person whose name, address and other particulars have been disclosed under Section 18A] has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report."

Section 25(4) further mandates:

> **25(4)** Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug [or cosmetic] produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory, and such report shall be conclusive evidence of the facts stated therein.

9. Furthermore, although the Petitioners invoked their statutory right within twenty-eight days, the shelf life of the sample expired on 31.08.2008, rendering it impossible to send the drug for re-analysis to the Central Laboratory as contemplated under Section 25(4). It is evident from the record that the intimation of the test result was withheld almost till the expiry of the drug, thereby frustrating the valuable statutory right of the Petitioners to challenge the State Analyst's report. It is further significant that the complaint itself was lodged nearly five years after the test result. Had the complaint been filed promptly, the Court could have, either suo motu or at the instance of the Petitioners, exercised its power under Section 25(4) to send the sample for re-testing. The failure of the Drug Inspector to act diligently, both in promptly communicating the test result and in initiating proceedings, has caused serious prejudice to the Petitioners' right of defence.

10. For completeness, Section 34 of the Drugs and Cosmetics Act, dealing with offences by companies, provides that only those persons who were in charge of and responsible for the conduct of the company's business at the time of commission of the offence shall be deemed guilty, unless they establish that the offence was committed without their knowledge or despite due diligence exercised by them. In essence, the delay in communication and initiation of prosecution, coupled with the expiry of the sample before the Petitioners could exercise their statutory right of re-analysis, vitiates the very foundation of the prosecution and renders the proceeding ab initio unsustainable.

11. Keeping in view the legal position as discussed above, it was incumbent upon the authority under the Drugs and Cosmetics Act to afford sufficient opportunity to the Petitioners to have the drug tested by the Central Laboratory upon their challenge to the report of the State Laboratory, as mandated under law. Compliance with this statutory safeguard is a pre-condition before attributing any liability to the Petitioners regarding the standard of the drug. The absence of such re-testing through the Central Laboratory renders the complaint itself incomplete and the very initiation of prosecution is unsustainable.

12. The record reveals that, though the sample was drawn on 22.08.2007, the test result of the State Laboratory was communicated to the Petitioners only vide letter dated 26.07.2008, received on 05.08.2008. The Petitioners promptly exercised their statutory right and challenged the said result within twenty-eight days, as required by law. However, the drug sample, having expired on 31.08.2008, could not be referred for re-testing/analysis by the Central Laboratory under Section 25(4) of the Act. Consequently, the authority failed to comply with a mandatory statutory requirement before launching the prosecution.

13. This Court cannot blink aside from the irregularities in the functioning of the authorities, who, despite handling a matter directly affecting public health and safety, failed to ensure due compliance with statutory provisions. Such inaction reflects serious lapses in the discharge of official duties. This matter deserves to be

brought to the notice of the authorities at the helm for appropriate departmental action against any officer found responsible.

14. Coming to the case at hand, as the authority failed to comply with the mandatory provisions before instituting the prosecution, no criminal liability can be ascribed to the Petitioners, and continuation of the proceedings would amount to an abuse of the process of law.

15. In view of the discussions made hereinabove, this Court is of the considered opinion that the prosecution initiated against the Petitioners suffers from inherent infirmities and non-compliance with the mandatory provisions of the Drugs and Cosmetics Act, 1940. The belated communication of the test report and consequent denial of the Petitioners' statutory right to seek re-testing through the Central Laboratory vitiate the entire proceedings.

16. Accordingly, the CRLMC is allowed. The proceeding in 2(C) CC Case No.55 of 2012 pending before the learned S.D.J.M., Sonepur, as against the present Petitioners, is hereby quashed.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CRLMC allowed.

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2025 (III) ILR-CUT-376

JAYANTA KUMAR DAS
V.
STATE OF ODISHA

[CRLMC NO. 473 OF 2022]

22 AUGUST 2025

[CHITTARANJAN DASH, J.]

Issues for Consideration

Whether the investigation conducted by the then inspector-in-charge who being of the rank of Inspector in the Kumbharpada Police Station suffers from inherent lack of jurisdiction under the Information Technology Act to investigate the matter.

Headnotes

INFORMATION TECHNOLOGY ACT, 2000 – Sections 78, 80 r/w Odisha Home Department Notification dated 22.09.2017 & dated 18.12.2021 – Petitioner filed the present application for quashing the entire criminal proceeding registered U/s. 465, 469 and 500 of the IPC r/w Section 66(c)

of the Information Technology Act, on the ground of lack of territorial jurisdiction – The petitioner urged that the Cyber-Crime P.S. at CID, Crime Branch, Odisha has exclusive jurisdiction to investigate offences under the Information Technology Act throughout the State, thus the local police station had no authority to register or investigate the case – Whether the investigation conducted by the Kumbharpada Police Station suffers from lack of jurisdiction under the Information Technology Act.

Held: No – The provisions (Section 78 & 80) when read together, clearly indicate that the I.T. Act does not divest general police stations of competence to investigate; rather, it conditions such competence by prescribing the minimum rank of the Investigating Officer – Therefore, the jurisdictional bar is not territorial in nature but functional, rooted in the rank of the officer investigating the case. (Para 10)

To summarise, this Court, therefore, comes to considered conclusion that the objection regarding lack of jurisdiction on the part of Kumbharpada P.S. is untenable – The investigation having been carried out by an Inspector of Police, the statutory requirement under Section 78 of the I.T. Act, 2000 stands satisfied – The Notifications of 2004 and 2017, when read in entirety, particularly the expression "concurrent jurisdiction all over the State," as well as the subsequent 2021 Notification and the clarification issued by the CID, CB Cyber Crime P.S., all make it abundantly clear that local police stations are not deprived of competence to investigate cyber offences – The plea of exclusive jurisdiction of CID Cyber Crime P.S. to the exclusion of all other police stations is, therefore, without merit. (Para 17)

Citations Reference

Sharat Babu Digumarti Vs. Govt. of NCT of Delhi, **(2017) 2 SCC 18 – referred to.**

List of Acts

Information Technology Act, 2000; Odisha Home Department Notification dated 22.09.2017 and 18.12.2021; Indian Penal Code, 1860; Criminal Procedure Code, 1973

Keywords

Exclusive Jurisdiction; Lack of Jurisdiction; Concurrent jurisdiction; Offences under the information technology Act; Cyber police station; Local/ General Police station; Investigation; Foundational requirements

Case Arising From

G.R. Case No. 309 of 2019 arising out of Kumbharpada P.S. Case No. 27 of 2019.

Appearances for Parties

For Petitioner : Mr. Shivsankar Mohanty
For Opp. Parties : Mr. S.K. Mishra, Sr. Adv. (O.P. 2),
Ms. S. Mohanty, Addl. P.P. for the State

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. Heard learned counsels for both the parties.

2. By means of this application, the Petitioner seeks to invoke the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 for quashing the entire criminal proceeding in G.R. Case No.309 of 2019 arising out of Kumbharpada P.S. Case No.27 of 2019 registered under Sections 465, 469 and 500 of the IPC read with Section 66(C) of the Information Technology Act, 2000, which is pending before the learned S.D.J.M., Puri.

3. The brief facts of the case are that on 23.02.2019, one Biswajit Pattanaik lodged a written report before the Inspector-in-Charge, Kumbharpada Police Station, Puri, alleging that on 21.02.2019 at about 9:21 P.M. the present Petitioner, Jayanta Kumar Das, had uploaded on Facebook a forged electronic record by editing his photograph and posting certain defamatory and derogatory remarks with an intention to malign his reputation in public. It was alleged that the Petitioner circulated the same to different groups and individuals, thereby tarnishing the social prestige of the informant. On the basis of the report, Kumbharpada P.S. Case No. 27 of 2019 was registered, and investigation was taken up.

4. During investigation, incriminating materials were seized, including documents relating to the alleged social media posts. After completion of investigation, charge sheet was filed against the Petitioner under Sections 465, 469, 500 IPC and Section 66(C) of the I.T. Act, on the basis of which cognizance was taken by the learned S.D.J.M., Puri.

5. Mr. Mohanty, learned counsel for the Petitioner, submits that the entire proceeding is vitiated for want of jurisdiction. He contended that the offences alleged against the Petitioner pertain to cyber-crime, namely creation of forged electronic records, misuse of Facebook ID, and uploading of morphed and defamatory images, which are offences exclusively governed by the provisions of the Information Technology Act, 2000. He urged that in view of the Home Department Notification No.36478-HOME-DA1-CRTN2-0166/2017 DATED 22.09.2017, PUBLISHED IN THE Odisha Gazette, the Cyber Crime P.S. at Cyber Crime P.S. at CID, Crime Branch, Odisha has been vested with exclusive jurisdiction to investigate offences under the I.T. Act throughout the State. Thus, the local police station, like Kumbharpada P.S., had no authority to register or investigate the case. It is further submitted that continuation of the proceeding on the basis of an investigation carried out by an incompetent and un-authorised agency is an abuse of the process of Court. He placed his reliance on the ratio of ***Sharat Babu Digumarti Vs. Govt. of NCT of Delhi*, (2017) 2 SCC 18,** wherein the

Hon'ble Supreme Court held that once an offence falls within the scope of the special statute, the provisions of the general law cannot be simultaneously invoked. Mr. Mohanty accordingly argued that the cognizance taken on the basis of such an investigation is without jurisdiction and the charge sheet submitted by the Kumbharpada P.S. is unsustainable in law, and hence the entire criminal proceeding is liable to be quashed.

6. Mr. S. K. Mishra, learned Senior advocate, appearing for O.P. No.2–Complainant, argues on the basis of the RTI information received from the CID, CB, Odisha, that the plea of the Petitioner regarding lack of jurisdiction is misconceived. He points out that while the 2004 Notification had declared the CID, CB Cyber Crime P.S. at Cuttack to have jurisdiction throughout the State, subsequent notifications, including the Government of Odisha Home Department Notification dated 18.12.2021, have created multiple Cyber Crime & Economic Offences Police Stations at the district level, including one at Puri itself, with territorial jurisdiction over the district. More importantly, the RTI reply clarifies that apart from the designated Cyber Crime Police Stations, any other police station in the State is competent to register and investigate cases under the I.T. Act, provided the investigation is conducted by an officer not below the rank of Inspector. Since in the present case, the investigation was carried out by the Inspector-in-Charge of Kumbharpada P.S., the requirement under Section 78 of the I.T. Act is satisfied. It is further contended that the RTI reply specifically affirms that there is "no harm" in prosecution or investigation of the present case by Kumbharpada P.S., as the same was investigated by an Inspector. Therefore, the allegation of lack of jurisdiction is unfounded, and the investigation and charge sheet cannot be faulted on that score.

7. Ms. S. Mohanty, learned Additional Public Prosecutor, placed the affidavit submitted by the Deputy Superintendent of Police-In-Charge, wherein it is contended that the investigation was conducted by the then Inspector-in-Charge, who being of the rank of Inspector, was fully competent under Section 78 of the I.T. Act, 2000 to investigate the matter. Ms. Mohanty submits that the affidavit clarifies that there is no bar in the I.T. Act or in the relevant notifications upon the general police to register and investigate cases under the said Act, so long as the officer is not below the rank of Inspector. After collection of documentary as well as electronic evidence, a prima facie case was well established against the Petitioner for the offences under Sections 465, 469, 500 IPC read with Section 66(C) of the I.T. Act, and accordingly Charge Sheet No.185 dated 31.07.2020 was submitted. It is further highlighted in the affidavit that the Petitioner is a habitual offender, having antecedents in multiple criminal cases registered earlier at Kumbharpada P.S. and therefore the plea that the present proceeding is vitiated by lack of jurisdiction is wholly untenable. On these grounds, it was urged that the CRLMC application deserves to be dismissed.

8. Having heard learned counsel for the parties and perused the materials on record, this Court finds it necessary to first address the jurisdictional objection raised by the Petitioner, inasmuch as the maintainability of the present prosecution hinges upon whether the investigation conducted by Kumbharpada P.S. suffers from inherent lack of jurisdiction. For such purpose, it is essential to carefully dissect the statutory foundation

under the Information Technology Act, 2000, the series of Government Notifications issued in the State of Odisha, and the clarifications subsequently furnished by the competent authorities.

9. At the outset, the statutory scheme itself provides the foundational answer. For better appreciation, Sections 78 and 80 of the Information Technology Act, 2000 is produced a below –

> **"78. Power to investigate offences.** –Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the rank of Inspector shall investigate any offence under this Act.
>
> **80. Power of police officer and other officers to enter, search, etc. –**
>
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer, not below the rank of a Inspector, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this Act.
>
> *Explanation.* – For the purposes of this sub-section, the expression – public place includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.
>
> (2) Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without necessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in charge of a police station.
>
> (3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.

10. The provision mandates that *no public officer below the rank of Inspector shall investigate any offence under this Act.* This provision creates a rank-based safeguard, ensuring that offences under the I.T. Act, which often involve technical appreciation of electronic records, are investigated only by experienced officers. Section 80 further confers power upon an officer not below the rank of Inspector to enter, search, and arrest without warrant in respect of offences under the Act. These provisions, when read together, clearly indicate that the I.T. Act does not divest general police stations of competence to investigate; rather, it conditions such competence by prescribing the minimum rank of the Investigating Officer. Therefore, the jurisdictional bar is not territorial in nature but functional, rooted in the rank of the officer investigating the case.

11. Turning to the Government Notifications, the State Government vide Notification dated 06.07.2004 had declared the Cyber Crime P.S. at CID, CB, Cuttack to be a Police Station with jurisdiction over the whole State of Odisha. This was further supplemented by the Home Department Notification No. 36478-HOME-DA1-CRTN2-0166/2017 dated 22.09.2017, which is heavily relied upon by the

Petitioner. The final paragraph of the said notification, however, deserves to be reproduced for clarity. It reads as:

> *"The existing Cyber Crime Police Station at CID, Crime Branch, Odisha, Cuttack which has earlier been notified to have the jurisdiction all over the State will now have exclusive jurisdiction over rest of the Police Districts along with concurrent jurisdiction all over the State and all the Cyber Crime Police Stations shall function operationally and administratively under State CID, Crime Branch."*

12. Much emphasis has been placed by the Petitioner upon the words "exclusive jurisdiction," but this Court is of the considered view that the same cannot be read in isolation. The very same sentence preserves the expression "along with concurrent jurisdiction all over the State."

13. The import of the above referred phrase is clear that while the Cyber Crime Police Station at CID, CB, Cuttack is vested with exclusive jurisdiction over such Police Districts where no other specialised Cyber P.S. has been established, it simultaneously retains concurrent jurisdiction with other police stations all over the State. This concurrent jurisdiction acts as a statutory safety-valve and ensures that the general mandate of Section 78 of the I.T. Act is not rendered null and void. If the interpretation urged by the Petitioner is accepted that only CID Cyber Crime P.S. could investigate all cyber offences, it would render the words "*along with concurrent jurisdiction all over the State*" redundant and would create a monopoly that would be impractical, rendering it inconsistent with the spirit of law. Hence, the 2017 Notification does not exclude jurisdiction of general police stations manned by Inspectors, rather, it reinforces the supervisory role of CID Cyber P.S. while recognising concurrent competence of other stations.

14. The position becomes further clarified in light of the Home Department Notification No. HOME-DA1-CRTN1-0005-2021/44843/D&A dated 18.12.2021, whereby multiple Cyber Crime and Economic Offences Police Stations were created at the district level. By this Notification, the State recognised the increasing volume of cyber offences and vested local cyber police stations with territorial jurisdiction while still preserving the overarching supervisory role of CID, CB. More importantly, subsequent clarification furnished by the Inspector-in-Charge, CID, CB Cyber Crime Police Station, pursuant to an RTI query, explicitly affirms the interpretation discussed hereinabove. It has been clarified by the IIC, CID, CB Cyber P.S. to the D.S.P. (Law Section), CID, CB, Cuttack that:

> *"As per the Information Technology Act 2000 Section 78 empowered that not below the rank of Inspector can investigate IT Act offences in his/her jurisdiction. It empowers the Police Station having Inspector in Charge on or above the rank of Inspector can investigate IT Act cases.*
>
> *As per IT Act 2000 if Kumbharpada Police Station case No.27 dtd. 23.02.2019 u/s 465/469/500 IPC r/w Section 66-C IT Act is investigated by not below the rank of an Inspector of Police, there is no harm in prosecution or investigation of the said case."*

15. This clarification by the designated Cyber P.S. itself underscores that jurisdiction under that jurisdiction under the I.T. Act is not territorially exclusive to

the CID, CB Cyber Crime P.S., but extends concurrently to local police stations, subject only to the rank qualification under Section 78.

16. In the present case, the record discloses that the investigation was conducted by the then Inspector-in-Charge of Kumbharpada P.S., who was statutorily competent under Section 78. Therefore, the foundational requirement under the I.T. Act stands satisfied. Accordingly, the jurisdictional challenge raised by the Petitioner cannot be sustained. The statutory scheme, the Government Notifications of 2004, 2017 and 2021, and the clarifications from CID, CB Cyber P.S. retains harmonious interpretation that while CID Cyber P.S. retains concurrent jurisdiction across the State, local police stations headed by Inspectors are not divested of competence to investigate cyber offences. The expression "exclusive jurisdiction" in the 2017 Notification cannot be read so as to obliterate the concurrent jurisdiction expressly preserved in the same sentence, nor can it override the clear mandate of Section 78 of the I.T. Act. On the contrary, the notifications and clarifications demonstrate that the investigation by Kumbharpada P.S. was lawful and within jurisdiction.

17. To summarise, this Court, therefore, comes to considered conclusion that the objection regarding lack of jurisdiction on the part of Kumbharpada P.S. is untenable. The investigation having been carried out by an Inspector of Police, the statutory requirement under Section 78 of the I.T. Act, 2000 stands satisfied. The Notifications of 2004 and 2017, when read in entirety, particularly the expression "concurrent jurisdiction all over the State," as well as the subsequent 2021 Notification and the clarification issued by the CID, CB Cyber Crime P.s., all make it abundantly clear that local police stations are not deprived of competence to investigate cyber offences. The plea of exclusive jurisdiction of CID Cyber Crime P.S. to the exclusion of all other police stations is, therefore, without merit.

18. At this juncture, it is necessary to emphasise that all the other grounds raised by the Petitioner touching upon alleged defects in collection of electronic evidence, alleged misidentification of Facebook accounts, or questions regarding the admissibility of materials, are matters which are essentially defences available to the accused at the stage of trial. Such disputed questions of fact cannot be adjudicated in proceedings under Section 482 Cr.P.C., which are intended to be exercised sparingly and only where the proceedings are manifestly without jurisdiction or unsustainable in law.

19. It is made clear that this Court has not expressed any view on the merits on the allegations or on the evidentiary value of the materials collected. Those issues remain open to be urged before the trial court, which shall consider them in accordance with law.

20. In view of the above, the grounds propounded by the Petitioner do not warrant interference under Section 482 Cr.P.C. The CRLMC application stands dismissed, accordingly. Interim order, if any, stands vacated.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CRLMC dismissed.

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2025 (III) ILR-CUT-383

AJAY KUMAR SINGH
V.
STATE OF ORISSA

[CRA NO. 315 OF 1995]

19 AUGUST 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether caste status of the informant rests solely upon oral testimony without any documentary proof.

Headnotes

SCHEDULE CASTES AND SCHEDULE TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3(1) (x) & 3(1) (xv) r/w Section 506 of IPC – Offence under the sections – Prove of the offences – Caste status of the informant – Whether caste status of the informant rests solely upon oral testimony without any documentary proof?

Held: No – A careful reading of both the aforesaid judgments reveals that the principle laid down is consistent and unequivocal, in prosecutions under the Act of 1989, the caste status of the victim is an essential ingredient of all the offence under the Act and must be proved by cogent and reliable evidence, preferably through a certificate issued by the competent authority. Mere oral assertions, unaccompanied by any such documentary proof, cannot be treated as sufficient to establish this foundational fact. In both ***Prahalad*** (supra) and ***Chalaniya Dheemar*** (supra), the Hon'ble Madhya Pradesh High Court held that in the absence of such proof, the charge under the provisions of the Act cannot be sustained, even if other aspects of the prosecution case are otherwise proved. (Para 11)

Citations Reference

Prahalad and another v. The State of M.P., **Criminal Appeal No. 50 of 2004;** Chalaniya Dheemar v. State of M.P., **I.L.R.(2012) M.P. 189 – referred to.**

List of Acts

Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989; Criminal Procedure Code, 1973.

Keywords

Prevention of Atrocities; Caste status; Prove; Oral testimony; Documentary evidence; Certificate; Competent Authority

Case Arising From

The judgment and order dated 10.11.1995 passed by the learned District and Sessions Judge, Phulbani in S.T. Case No. 32 of 1995.

Appearances for Parties

For Appellant : Mr. D.P. Dhal, Sr Adv.
For Respondent : Mr. Rajbhusan Dash , ASC

Judgment/Order

Judgment

S.S. MISHRA, J.

The present Criminal Appeal, is filed by the appellant under Sections 374 and 382 of the Cr. P.C., assailing the judgment and order dated 10.11.1995 passed by the learned District and Sessions Judge, Phulbani in S.T. Case No. 32 of 1995, whereby the learned trial Court has convicted the accused-appellant U/s.3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989(Herein after referred to as "Act of 1989" for brevity) sentencing him to undergo imprisonment for six months and pay a fine of Rs. 300/- in default to undergo further imprisonment of one month.

Facts of the Case

2. The prosecution case, briefly stated, is that the accused-appellant Ajay Singh, an Advocate of Phulbani Bar belonging to the "KSHATRIYA" caste, was in litigating terms with the informant, Smt. Puspanjali Behera, who belonged to the "PANA" caste, in a court case. On the morning of 06.02.1994 at around 7:30 A.M., while the informant was proceeding to the Circuit House for certain official work, the accused with some of his associates arrived near Post Office Chhak of Phulbani Town and subjected her to harassment on the public road. The informant raised an alarm, attracting many persons to the spot, whereupon the accused-appellant fled. However, while leaving, he threatened the informant that if her witnesses deposed against him in court, he would take her life and drive her out of her native place. Feeling humiliated by these acts, the informant instructed one Biswanath Behera to scribe a report, which was lodged at Phulbani P.S. Upon completion of investigation, only the accused-appellant was charge- sheeted under Sections 3(1)(x) and 3(1)(xv) of the Act of 1989 and Section 506 of the IPC. On his stance of denial, he was put to trial.

Analysis of evidence by the Trial Court

3. To substantiate the case against the accused-appellant, six witnesses were examined. P.W.1 was the scribe of the F.I.R., P.W.2 is the mother of the informant, P.W.3 was the S.D.P.O., Baliguda, P.W.4 was a passer-by at the place of

occurrence, and P.Ws.5 and 6 were the investigating officers. It is pertinent to mention that the informant expired during the course of the trial.

4. The learned trial Court analyzed the evidence on record in detail and returned the following findings:-

> *"In view of the evidence of earlier litigations sub-judiced against accused Ajaya Singh initiated by the informant, it cannot be assumed that accused Ajaya Singh came to Pushannjali Behera near the post office chhak, while she was on her way to circuit house, as friend or as a well-wisher of Pushanjali Behera or that there was an occurrence in between Pushpanjali Behera and accused Ajaya Singh at the post office chhak cannot be disbelieved.*
>
> *3. On the facts this case, the evidence of P.W.2 that Ajaya Singh came in a scooter accompanied by two of his associates and abused Pushpanjali Pehera can believed P.W.2 has no one to grind against the accused has proved the presence of the deceased/informant and P.W.2 in the circuit house, in the morning hour of the day of occurrence and further proved that they complained before Smt. Danti Nanda about the incidence supposed on their way to circuit house is a feature of the evidence of P.W.2 and has also reflected the conduct of deceased-informant and P.W.2 in the total appreciation of the case. There some truthfulness in the evidence of P.W.2 since a lady who have taken for the harassment inflicted on her, on a public road and has lodged F.I.R. against the accused presumably felt insulted and humiliated."(Unclear)*

<u>Judgement of Conviction by the Trial Court</u>

5. By appreciating and analyzing the evidence brought on record by the prosecution and taking into consideration the defence plea eventually the learned trial Court recorded the guilt of the appellant by concluding as under:

> *"In the net, accused Ajay Singh is found guilty u/s. 3(1)(x) of Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and is convicted thereunder. But, however, accused is found not guilty of offence u/s. 506 I.P.C. and Section 3(1)(xv) of Scheduled Caste and Scheduled Tribes(Prevention of Atrocities) Act, 1989 and is acquitted thereof by virtue of operation of Section 235(1) Cr.P.C." (Unclear)*

6. Aggrieved by the aforementioned judgment of conviction and order of sentence passed by the learned District and Sessions Judge, Phulbani, the present Appeal has been preferred by the appellant.

7. Heard Mr. D.P. Dhal, learned Senior Counsel appearing for the appellant and Mr. Rajbhusan Dash, learned Additional Standing Counsel for the State.

<u>Submissions on behalf of the Appellant</u>

8. Mr. Dhal, learned Senior Counsel for the appellant, while addressing the Court on the merits of the matter, invited attention to a series of factors which, according to him, demolish the prosecution case and entitle the accused-appellant to an acquittal. The first and foremost point stressed was that the informant herself had

passed away during the pendency of the trial and, consequently, her testimony could not be recorded. In the absence of her evidence, the substratum of the prosecution's case is considerably weakened, as the direct account of the alleged occurrence from the principal witness is unavailable. Learned Senior Counsel submitted that this circumstance alone creates a substantial gap in the chain of evidence and, therefore, operates to the benefit of the accused-appellant by raising a reasonable doubt regarding the veracity of the allegations.

9. Proceeding further, learned Senior Counsel contended that the trial court had primarily placed reliance upon the deposition of P.W.2, the mother of the informant. However, on a plain reading of her testimony, it becomes evident that she has not stated a single word to the effect that the accused-appellant had abused her daughter in the name of caste or had uttered any caste-related insult. In other words, there is a complete absence of any direct assertion from P.W.2 connecting the accused-appellant with the commission of an offence under the relevant provisions that is Section 3(1)(x) of the Act of 1989. For the convenience, the exact deposition of P.W.2 is reproduced herein:

> *1. Pushpanjali is my daughter. Pushpanjali died a year back. About one and half years back is the occurrence date. On the occurrence day at 7 AM myself and my daughter Pushpanjali Behera were going to circuit house to meet the Commissioner for Women Smt. Shanti Nanda. On the main road at the frontage of General Post Office the accused, Ajaya Singh came in a scooter accompanied by two of his associates. Accused abused Pushpanjali and threatened Pushpanjali that he, whosoever will give evidence against him he, will set fire to him. I and Pushpanjali felt humiliated on the abuse of accused in that road. So threatening, the accused left the place with his associates.*
>
> *2. Myself and Pushpanjali belong to "PANA " caste the accused belong to KSHETRIYA caste, Thereafter we went to the Circuit House to meet the Commissioner for Women Smt. Shanti Nanda, and appraised her the incidence of 7.00 A.M.*
>
> *3. At the Circuit House On the instruction Pushpanjali Behera, P.W. 1 scribed Ext. 1. On being read over in by P.W. 1, Pushpanjali Behera put her signature Ext. 1/1 is the signature of Pushpanjali Behera. Already marked Ext. 1 is that scribed report."*

Learned Senior Counsel further emphasised that the finding of the trial court regarding the caste status of the informant rests solely upon oral testimony. There is no documentary evidence, such as a caste certificate or any other legally acceptable proof, to establish beyond doubt that the informant belonged to a Scheduled Caste. In the absence of such proof, the essential ingredient for attracting the provisions of the Act of 1989 remains unsubstantiated.

10. It was further submitted that P.W.4, who was projected by the prosecution as an eye-witness to the incident and who, as a passerby, was allegedly present at the place of occurrence, has completely turned hostile during trial. Similarly, P.W.1, the

scribe of the F.I.R., has also turned hostile. Learned Senior Counsel submitted that the hostility of these witnesses, coupled with the non-examination of the informant and the absence of credible proof of her caste status, renders the prosecution case highly doubtful and unsafe to sustain a conviction.

Precedent Analysis

11. On the entire conspectus of the case it will be apt to place reliance upon the judgement of the Hon'ble Madhya Pradesh High Court in ***Prahalad and another v. The State of M.P.***[1]**,** wherein the court by placing reliance on one of its earlier judgement held thus:

> *"6. In Pillu Alias Pyarelal versus State of Madhya Pradesh ILR 2012 MP 1309, it is held that if prosecution fails to prove the caste of victim by any cogent and reliable document issued by the competent authority than mere oral deposition of witness would not deem to be proved."*

Further, it would also be apt to rely on the judgement of the same Hon'ble Court in ***Chalaniya Dheemar v. State of M.P.***[2]**,** wherein it was held thus:

> *"10. On a close scrutiny of the evidence of aforesaid witnesses, it is clearly established that accused caught the hand of complainant Hiriya (PW-1) in the Nala with a view to outrage her modesty while she was going to fetch greenery. However, on scanning the evidence of all the prosecution witnesses, I find that there is absolutely no legal evidence to establish that complainant Hiriya belonged to scheduled caste or scheduled tribe. No certificate of any competent authority to that effect was produced or proved before the Court. Neither Hiriya (PW-1) nor any other witness including head constable Devideen (PW-4) deposed in the Court that she belonged to scheduled caste. It is true that in the first information report Ex.P/1 and Ex.P/2 the name of complainant has been mentioned as Hiriya Ahirwar, but merely from that it cannot be held that she belonged to scheduled caste in the absence of legal evidence in the Court. First Information Report cannot be treated as a part of substantive evidence. It can be used only for corroboration or contradiction of its maker. It is also important to note that police registered the offence under section 354 of Indian Penal Code only and not under the provisions of SC & ST (Prevention of Atrocities) Act. Trial Court recorded the finding that it was established that accused outraged modesty of the complainant who belonged to scheduled caste but it appears to have been based on no legal and substantive evidence."*

A careful reading of both the aforesaid judgments reveals that the principle laid down is consistent and unequivocal, in prosecutions under the Act of 1989, the caste status of the victim is an essential ingredient of all the offence under the Act and must be proved by cogent and reliable evidence, preferably through a certificate issued by the competent authority. Mere oral assertions, unaccompanied by any such documentary proof, cannot be treated as sufficient to establish this foundational fact.

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1 Criminal Appeal No. 50 of 2004
2 I.L.R.(2012)M.P. 189

In both ***Prahalad*** (supra) and ***Chalaniya Dheemar*** (supra), the Hon'ble Madhya Pradesh High Court held that in the absence of such proof, the charge under the provisions of the Act cannot be sustained, even if other aspects of the prosecution case are otherwise proved. This legal position, when applied to the present case, clearly fortifies the defence contention that the prosecution has failed to discharge its burden of proving the caste status of the informant beyond reasonable doubt.

Observations

12. On an overall assessment of the materials available on record, this Court finds that the prosecution has failed to establish, through any cogent and reliable documentary evidence issued by a competent authority, that the informant belonged to a Scheduled Caste. The only evidence on this point is the oral assertion of P.W.2, which, in view of the settled legal position as laid down by the Hon'ble Madhya Pradesh High Court in ***Prahalad*** (supra) and ***Chalaniya Dheemar*** (supra), is wholly insufficient to prove this essential ingredient of the offence under Section 3(1)(x) of the Act of 1989. The situation is further compounded by the fact that the informant could not be examined owing to her death during the pendency of the trial, and two key witnesses, that is P.W.1, the scribe of the F.I.R., and P.W.4, the alleged eye-witness who turned hostile. In these circumstances, the prosecution case suffers from serious infirmities and lacks the degree of certainty required for sustaining a conviction under the provisions of the Act of 1989.

Conclusion

13. In the considered view of this Court, the learned trial Court erred in convicting the appellant under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the absence of legally admissible and substantive evidence to prove the caste status of the informant beyond reasonable doubt. The benefit of such doubt must necessarily enure to the accused. Accordingly, the judgment of conviction and the order of sentence dated 10.11.1995 passed by the learned District and Sessions Judge, Phulbani, are hereby set aside. The appellant, is acquitted of the charge under Section 3(1)(x) of the Act of 1989. Bail bonds, if any furnished, stands discharged.

14. Hence, the Criminal Appeal is allowed.

Headnotes prepared by:
Shri Jnanendra Kumar Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Appeal allowed.

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2025 (III) ILR-CUT-389

SABITA AGRAWALA
V.
STATE OF ODISHA, SECRETARY, REVENUE & DISASTER MANAGEMENT, BHUBANESWAR & ORS.

[W.P.(C). NO. 2946 OF 2025]

04 JULY 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

Whether the District Registrar has the power to direct Sub-Registrar not to register a document presented for registration.

Headnotes

THE REGISTRATION ACT, 1908 r/w Orissa Amendment – Sections 22-A, 68 – Superintendent power of the District Registrar – Whether the District Registrar has the power to direct Sub-Registrar not to register a document presented for registration?

Held: No – When, the propositions of law has already been clarified in the ratio of the above decisions interpreting Section 68 of the Registration Act, 1908 that, Section 68 of The Registration Act confers power upon the Registrar only for exercising his/her superintendence and control over the Sub-registrars and the said power is purely administrative in nature, therefore, the Registrar cannot in exercise of his power under Section 68 of the Registration Act, 1908 direct any Sub-registrar not to register any document in respect of any property presented for registration, if the said document complies all the statutory requirements and formalities of the Registration Act and Rules making the same fit for registration. (Para 14)

Citations Reference

Daitari Jena vrs. State of Odisha and others, **2025(I) OLR-887;** Jajati Keshari Mohanty vrs. State of Odisha and others, **2025 (I) OLR-936;** Damodar Mishra vrs. State of Odisha and others, **2025 (I) OLR-874;** T. Thevarasan, represented by his Power of Attorney Agent A Navaneetham vrs. The Sub Registrar Joint-II, South Chennai, Chennai and others (Madras), **W.P.(C) No.11897 of 2023**; Bihar Deed Writers Association vrs. State of Bihar, **AIR 1989 (Patna)-144 (Para No.5;** Jodh Singh vrs. The Registrar, **1999(1) Civil Court Cases (P&H)-413 (Para No.15;** P. Pappu vrs. The Sub-Registrar, Rasipuram SRO, Rasipuram, Namakkal district, **2025 (2) Civil Law Judgments-205 (Madras (Para No.8) – referred to.**

List of Acts

The Registration Act, 1908.

Keywords

Superintendent power of District Registrar; Registration of document; Presentation of document; Stoppage of registration of document; Statutory requirements.

Case Arising From

Letter No.12702/Rev/2024 dated 16.12.2024 issued by the ADM-cum-District Registrar, Boudh to the District Sub-Registrar, Boudh.

Appearances for Parties

For Petitioner : Mr. D.P. Dhal, Sr. Adv., assisted by Mr. S. Mohapatra
For Opp. Parties : Mr. Gyanalok Mohanty, learned SC

Judgment/Order

Judgment

ANANDA CHANDRA BEHERA, J.

This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioner against the Opposite Parties praying for quashing(setting aside) the Letter No.12702/Rev/2024 dated 16.12.2024(Annexure-6) issued by the ADM-cum-District Registrar, Boudh (Opposite Party No.2) to the District Sub-Registrar, Boudh (Opposite Party No.4) for temporary stoppage of registration of plots and their subsequent divided plots indicated in the said letter vide Annexure-6.

2. I have already heard from the learned senior counsel for the petitioner and learned Standing Counsel on behalf of the State-Opposite Parties.

3. The RoR of Khata No.217 containing several plots indicated in Annexure-6 was published in the name of Banamali Vyas. As per orders passed in OLR Case No.830 of 1975, the Tahasildar, Boudh corrected the RoR of Khata No.217 from the name of Banamali Vyas to the name of his legal heirs after the death of Banamali Vyas. The legal heirs of Banamali Vyas sold the said properties covered under Khata No.217 in Mouza-Boudhgarh to the petitioner of this writ petition on dated 09.07.2014 by executing and registering a sale deed. Thereafter, the RoR of the said properties was corrected to the name of the petitioner as per the orders passed in Mutation Case Nos.1057/14, 1058/14, 1059/14 and 1060/14 respectively filed by the petitioner.

Out of the properties under Khata No.217, the petitioner alienated Ac. 10.000 decimal to her different purchasers through different sale deeds and the said

purchasers of the petitioner have already mutated their purchased properties to their names through different mutation cases.

4. Thereafter, the Additional Tahasildar, Bouth filed an appeal vide Mutation Appeal No.01 of 2024 before the Sub-collector, Boudh (Opposite Party No.3) challenging the orders for mutation of the properties under Khata No.217 passed in Mutation Case Nos.1057/14, 1058/14, 1059/14 and 1060/14 respectively in favour of the petitioner along with her purchasers on the basis of orders passed by the Member, Board of Revenue, Orissa, Cuttack in OLR Revision Case No.24 of 1994 in setting aside the orders passed by the Tahasildar, Boudh in OLR Case No.830 of 1975.

As, in the said Mutation Appeal No.01 of 2024 before the Sub-collector, Boudh, the petitioner was not impleaded as a party, for which, the petitioner filed an application under Order-1, Rule-10 of the C.P.C. on dated 22.06.2024 in that Mutation Appeal No.01 of 2024 for her impleadment as a party, which is pending for consideration.

5. While, the matters had stood thus, she(petitioner) came to know that, the ADM-cum-District Registrar, Boudh (Opposite Party No.2) has issued Letter No.12702/Rev/2024 dated 16.12.2024 (Annexure-6) to the District Sub-registrar, Boudh (Opposite Party No.4) directing him (Opposite Party No.4) to stop registration of plots covered under Khata No.217 and subsequent divided plots thereof until further order to avoid any dispute in future as per request letter dated 03.12.2024 of the Tahasildar, Boudh indicating therein that,

> *"The Tahasildar, Boudh has intimated him that, properties indicated in that Annexure-6 containing eight plots covered under Khata No.217 in Mouza-Boudhgarh primarily belongs to the Ceiling surplus land of Sri Navin Prasad Dev, but, the same were mutated as per order passed in OLR Case No.830 of 1975 in favour of Smt. Suman Joshi and five others misinterpreting to the order dated 28.07.2009 passed by the High Court in W.P.(C) No.6970 of 2008. In this connection, Mutation Appeal No.01 of 2024 has been initiated before the Sub-collector, Boudh. Further, it has been reported that, some transactions and mutations have already been done over the concerned plots and it is going on."*

6. After knowing about the issuance of that Annexure-6 by the ADM-cum-District Registrar, Boudh (Opposite Party No.2) to the District Sub registrar, Boudh (Opposite Party No.4) regarding temporary stoppage of registration of plots and their subsequent divided plots covered under Khata No.217 of Mouza-Boudhgarh indicated in that Annexure-6, the petitioner challenged the same by filing this writ petition praying for quashing that Letter No.12702/Rev/2024 dated 16.12.2024 (Annexure-6), as the said letter is ultimately affecting her rights in respect of the properties recorded in her name covered in that letter vide Annexure-6.

7. During the course of hearing, learned senior counsel for the petitioner relied upon the following decisions in order to quash the Annexure-6 issued by the ADM-

cum-District Registrar, Boudh (Opposite Party No.2) to the District Sub-registrar, Boudh (Opposite Party No.4) and the said decisions are :-

(i) ***2025(I) OLR-887 : Daitari Jena vrs. State of Odisha and others.***

(ii) ***2025(I) OLR-936 : Jajati Keshari Mohanty vrs. State of Odisha and others.***

(iii) ***2025(I) OLR-874 : Damodar Mishra vrs. State of Odisha and others***

8. On the contrary, learned Standing Counsel for the State in support of the Anenxure-6 issued by the ADM-cum-District Registrar, Boudh (Opposite Party No.2) to the District Sub-registrar, Boudh (Opposite Party No.4) relied upon the following decision:-

(i) ***W.P.(C) No.11897 of 2023 : T. Thevarasan, represented by his Power of Attorney Agent A Navaneetham vrs. The Sub Registrar Joint-II, South Chennai, Chennai and others (Madras).***

9. On the basis of the rival contentions of the learned counsels of both the sides, the crux of this writ petition is,

Whether, the issuance of Letter No.12702/Rev/2024 dated 16.12.2024(Annexure-6) by the ADM-cum-District Registrar, Boudh to the District Sub-registrar, Boudh (Opposite Party No.4) regarding temporary stoppage of registration of plots and their subsequent divided plots indicated in that Annexure-6 is inconformity with law?

10. Section 68 of The Registration Act, 1908 provides power to the District Registrars like the Opposite Party No.2 in this writ petition to exercise power of superintendence and control over Sub-registrars including the District Sub-registrar under him/her inside the District.

The said power of the ADM-cum-District Registrar under Section 68 of The Registration Act is only an administrative power.

Section 68 of The Registration Act does not empower any ADM-cum-District Registrar like Opposite Party No.2 in this matter at hand to direct the Sub-registrars under him/her inside the District like Opposite Party No.4 for non-registration of any document presented for registration, if the said document complies with the statutory requirements and formalities of its registration.

Section 22-A (as inserted into the statute book on dated 22.02.2014) of the Registration Act empowers the Registering Officer for the refusal to register certain documents enumerated therein.

11. Neither Section 68 nor Section 22-A of the Registration Act empowers any District Registrar like Opposite Party No.2 in this writ petition to direct the Sub-registrars under him like District Sub-registrar, Boudh (Opposite Party No.4) not to register any document presented for registration, if the said document fulfills the statutory requirements and formalities of registration.

12. Section 22-A of the Registration Act empowers the Sub-registrars like District Sub-registrar, Boudh (Opposite Party No.4) to refuse the registration of any instrument, if the properties covered therein fall within the purview of Sub-clause(a), (b) and (c) of that Section 22-A.

13. On this aspect, the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions interpreting Section 68 of the Registration Act, 1908 :-

> (i) In a case between ***Bihar Deed Writers Association vrs. State of Bihar :***reported in ***AIR 1989(Patna)-144 (Para No.5)—Indian Registration Act, 1908—Section 68—Scope of the Section—***The power of the District Registrar under Section 68 of the Registration Act, 1908 is an administrative power to exercise superintendence and control over the Sub-registrars. The Registrar in exercise of the power under Section 68 of the Registration Act, 1908 cannot direct the Sub-registrars not to register a document presented for registration, if the document complies with the statutory requirements and formalities of Registration.
>
> (ii) In a case between ***Jodh Singh vrs. The Registrar :*** reported in ***1999(1) Civil Court Cases(P&H)-413 (Para No.15)—Registration Act, 1908—Section 68—Scope of the Section—***The power conferred under Section 68 of the Act on the Registrar is to exercise superintendence and control over the Sub-registrar, which is an administrative power.
>
> (iii) In a case between ***P. Pappu vrs. The Sub-Registrar, Rasipuram SRO, Rasipuram, Namakkal district :*** reported in ***2025(2) Civil Law Judgments-205(Madras (Para No.8)— Registration Act, 1908—Section 22-A, 68 and 69—Registration of instrument—Refusal—Legality—***Even if a person sells a property that does not belong to him, there is no provision in the Registration Act, to enable the Sub-registrar to refuse registration except Section 22-A of the Registration Act.

14. When, the propositions of law has already been clarified in the ratio of the above decisions interpreting Section 68 of the Registration Act, 1908 that, Section 68 of The Registration Act confers power upon the Registrar only for exercising his/her superintendence and control over the Sub-registrars and the said power is purely administrative in nature, therefore, the Registrar cannot in exercise of his power under Section 68 of the Registration Act, 1908 direct any Sub-registrar not to register any document in respect of any property presented for registration, if the said document complies all the statutory requirements and formalities of the Registration Act and Rules making the same fit for registration. For which, it is held that, the Letter No.12702/Rev/2024 dated 16.12.2024(Annexure-6) issued by the ADM-cum-District Registrar, Boudh (Opposite Party No.2) to the District Sub-registrar, Boudh (Opposite Party No.4) to stop registration of the plots indicated in that Annexure-6 and subsequent divided plots thereof is not inconformity with the provisions of law. As such, the ADM-cum-District Registrar, Boudh (Opposite Party No. 2) had no power or authority under law to issue the Letter No. 12702/Rev/2024

dated 16.12.2024(Annexure-6) to the District Sub-registrar, Boudh (Opposite Party No.4) directing him to stop registration of the properties covered under Annexure-6.

Therefore, Annexure-6, which was issued by the ADM-cum-District Registrar, Boudh (Opposite Party No.2) to the District Sub-registrar, Boudh (Opposite Party No.4) being contrary to law is liable to be quashed. For which, the decisions relied by the parties indicated in Para nos.7 and 8 of this judgment have become inapplicable being distinguishable from this matter at hand on facts and law as discussed above.

15. Therefore, there is merit in the writ petition filed by the petitioner. The same must succeed.

16. In result, the writ petition filed by the petitioner is allowed on contest.

The Letter No.12702/Rev/2024 dated 16.12.2024(Annexure-6) issued by the ADM-cum-District Registrar, Boudh (Opposite Party No.2) to the District Sub-registrar, Boudh (Opposite Party No.4) is quashed (set aside)

17. Accordingly, this writ petition is disposed of finally.

Headnotes prepared by:
Shri Jnanendra Ku. Swain , Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition disposed of.

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2025 (III) ILR-CUT-394

CHAGULI OJHA @ CHUGULI OJHA & ANR.
V.
MANORANJAN PRADHAN & ORS.

[C.M.P. NO. 470 OF 2014]

25 JULY 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

Whether petition for repurchase U/s. 4 of the Partition Act is maintainable at the stage of final decree.

Headnotes

THE PARTITION ACT, 1893 – Section 4 – Partition suit by transferee of share in dwelling house – Right of repurchase – Petition for repurchase

– Maintainability – Whether petition for repurchase U/s. 4 of the Act is maintainable at the stage of final decree?

Held: Yes – In view of the principles of law enunciated in the ratio of the above decisions of Apex Court and Hon'ble Courts, the learned Additional Civil Judge (Senior Division) Balasore should not have rejected their petition under Section-4 of the Partition Act, 1893 only on the ground that, such petition is not maintainable at the stage of final decree of the suit. (Para 12)

Citations Reference

Ghantesher Ghosh Vrs. Madan Mohan Ghosh & others, **1996 (11) SCC 446;** Anirudha Adhikari Vrs. Amarendra Adhikari, **AIR-1988 Orissa Page-42;** Pirgonda Hongonda Patil Vrs. Kalgonda Shidgonda Patil & Others, **AIR-1957 SC-363;** P. Kunjukrishna Pillai & another Vrs. D. Sreekantan Nair & others, **2008(II) OLR(SC)-511;** Gudu Bhotra & others Vrs. Tapaswini Rondhari & Others, **1997 (I) OLR-484;** Babulal Vrs. Habibnoor Khan (Dead) By LRs. & Others, **2000 (III) Civil law Times (SC) 118;** Bimalendu Chatterjee & Another Vrs. Smt. Sarita Chhyajlani & Others, **2002 (1) CCC 309 (Calcutta);** Bijan Kumar Ghosh Vrs. Swapan Mondal & Others, **2024 (1) CCC 171 Calcutta – referred to.**

List of Acts

Partition Act, 1893; Constitution of India, 1950.

Keywords

Partition Suit; Dwelling House; Transferee share; Right of repurchase; Final decree; Co-sharer; Petition for repurchase; Maintainability

Case Arising From

Judgment dated 20.02.2014 passed by the learned Additional Civil Judge (Senior Division), Balasore in C.S. No.778 of 2003-I.

Appearances for Parties

For Petitioner : Mr. Maheswar Mohanty

For Opp. Parties : Mr. Himanshu Sekhar Panda (O.P. No. 1)

Judgment/Order

Judgment

ANANDA CHANDRA BEHERA, J.

1. This Civil Miscellaneous Application under Article 227 of the Constitution of India, 1950 has been filed by the Petitioners praying for setting aside the order of rejection to their Petition under Section-4 of the Partition Act, 1893 passed on dated

20.02.2014 by the learned Additional Civil Judge (Senior Division), Balasore in C.S. No.778 of 2003-I.

The Petitioners in this CMP are the Defendant Nos.2 & 3, the Opposite Party No.2 is the Defendant No.1 and the Opposite Party No.1 is the Plaintiff in the suit vide C.S. No.778 of 2003-I pending in the Court of learned Additional Civil Judge (Senior Division) Balasore at the stage of its final decree after its preliminary decree for partition.

2. The factual backgrounds of this Civil Miscellaneous Application, which prompted the Petitioners for filing of the same is that, the Opposite Party No.1 in this CMP Manoranjan Pradhan being a purchaser of the joint and undivided properties of the petitioners and Opp. Party No.2 filed the suit vide C.S. No.778 of 2003-I against the Petitioners & Others praying for partition of his purchased property and that suit vide C.S No. 778 of 2003-I was decreed preliminarily for partition of his half share from the suit properties and their final decree proceedings of the said suit vide C.S No. 778 of 2003-I is continuing.

In that final decree proceedings of the suit vide C.S No. 778 of 2003-I, the Petitioners/Defendants filed a petition under Section- 4 of the Partition Act, 1893 praying for repurchasing the half share of the Plaintiff stating that, the Plaintiff is a stranger purchaser of their suit undivided dwelling house. To which, the Plaintiff objected on the grounds that, the Defendants had not prayed for repurchasing the suit properties during the trial of the suit, by filing any counter claim, for which, their petition under Section- 4 of the Partition Act, 1893 is not entertainable under law at the stage of final decree.

3. After hearing from the learned counsels of both the sides, the learned Additional Civil Judge (Senior Division), Balasore rejected to the Petition under Section-4 of the Partition Act, 1893 of the Defendant Nos.2 & 3 as per order dated 20.02.2014 assigning the reasons that, as the defendants had neither raised any counter claim nor pleaded in their W.S. regarding the declaration of the suit land as their undivided dwelling house and as no issue had been framed in that regard in the suit and as the suit has already been decreed preliminarily for partition, then, at this stage, the relief claimed by the Defendant under Section-4 of the Partition Act,1893 is not entertainable under law. For which, the same stands rejected.

4. On being dissatisfied with the said order of rejection to the Petition under Section-4 of the Partition Act, 1893 of the petitioners (defendant Nos.2 & 3) passed on dated 20.02.2014 in C.S. No.778 of 2003-I by the learned Additional Civil Judge (Senior Division), Balasore, the said Defendant Nos.2 & 3 challenged the same by filing this CMP under Article 227 of the Constitution of India, 1950 being the petitioners against the Opp. Parties including the Plaintiff praying for quashing that order dated 20.02.2014 passed in the suit vide C.S. No.778 of 2003-I.

5. I have already heard from the learned counsel for the Petitioners (Defendant Nos.2 & 3) and the learned counsel for the Opposite Party No.1 (Plaintiff).

6. The crux of this CMP is,

> *Whether a petition under Section-4 of the Partition Act, 1893 can be entertainable under law at the stage of final decree in a suit for partition like C.S. No.778 of 2003-I?*

7. During the course of hearing, in order to assail the impugned order, the learned counsel for the Petitioners relied upon the following decisions:-

> ***(i) 1996 (11) SCC 446- (Ghantesher Ghosh Vrs. Madan Mohan Ghosh & others.***
>
> ***(ii) AIR-1988 Orissa Page-42 (Anirudha Adhikari Vrs. Amarendra Adhikari).***
>
> ***(iii) AIR-1957 SC-363 (Pirgonda Hongonda Patil Vrs. Kalgonda Shidgonda Patil & Others).***
>
> ***(iv) 2008(II) OLR(SC)-511 (P. Kunjukrishna Pillai & another Vrs. D. Sreekantan Nair & others).***
>
> ***(v) 1997 (I) OLR-484 (Gudu Bhotra & others Vrs. Tapaswini Rondhari & Others).***

8. The Petitioners, in this CMP (Defendant Nos.2 & 3 in the suit) have specifically stated in their written statement that, the Opposite Party No.1 (Plaintiff) is a stranger to their family and the suit properties is their undivided dwelling house.

9. The suit of the Plaintiff vide C.S. No.778 of 2003-I has been decreed preliminarily allotting half share to him (Plaintiff) as a purchaser from the co-sharer of the Defendant Nos.2 & 3.

10. On this aspect the propositions of law has already been clarified in the ratio of the following decisions:-

> (i) *In cases between* ***Ghantesher Ghosh Vrs. Madan Mohan Ghosh & others: 1996 (11) SCC 446*** & ***Babulal Vrs. Habibnoor Khan (Dead) By LRs. & Others: 2000 (III) Civil law Times (SC) 118*** *that, an application under Section-4 of the Partition Act, 1893 is maintainable only when the stranger transferee filed the suit for partition and separate possession of the undivided share transferred to him by the co-owner of the applicants concerned or else the petition under Section-4 of the Partition Act, 1893 is not maintainable under law.*

11. So far as the stage of the maintainability of the petition under Section-4 of the Partition Act, 1893 is concerned!

on that, aspect the propositions of law has already been clarified in the ratio of the following decisions:-

> *(i) In a case between* ***Bimalendu Chatterjee & Another Vrs. Smt. Sarita Chhyajlani & Others*** *reported in* ***2002 (1) CCC 309 (Calcutta)*** *that, application under Section-4 of the Partition Act, 1893 can be filed for first time in execution*

proceedings if the stranger tries to take possession. Even after the co-sharer had become separate in title, they could maintain an application for pre-empition until decree for partition is fully satisfied. ***(Para Nos.17 to 20 & 22)***

(ii) In a case between ***Bijan Kumar Ghosh Vrs. Swapan Mondal & Others*** *reported in* ***2024 (1) CCC 171 Calcutta*** *that, an application under Section-4 of the Partition Act, 1893 can be made at any stage, of partition suit so long entire partition decree is not satisfied. It is only when decree engrossed on stamp paper, joint title of parties comes to an end and parties ceases to be a co-sharer.*

(iii) In a case between ***Anirudha Adhikari Vrs. Amarendra Adhikari AIR1988 (Orissa) Page-42*** *that, suit for partition continues till passing of final decree.*

12. Here in this matter at hand, when the petition under Section-4 of the Partition Act, 1893 has been filed by the Defendant Nos.2 & 3 in the suit vide C.S. No.778 of 2003-I at the stage of final decree praying for repurchasing the purchased share of the Plaintiff from their co-sharer stating that, the suit properties are their undivided dwelling house on the basis of their pleadings in their written statement, then, at this juncture, in view of the principles of law enunciated in the ratio of the above decisions of Apex Court and Hon'ble Courts, the learned Additional Civil Judge (Senior Division) Balasore should not have rejected their petition under Section-4 of the Partition Act, 1893 only on the ground that, such petition is not maintainable at the stage of final decree of the suit.

For which, the impugned order dated 20.02.2014 passed by the learned Additional Civil Judge (Senior Division), Balasore in the suit vide C.S. No.778 of 2003-I cannot be sustainable under law.

13. Therefore, there is justification under law for making interference with the same through this CMP filed by the petitioners (defendant Nos.2 & 3).

14. As such, there is merit in this CMP filed by the Petitioners (Defendant Nos.2 & 3). The same must succeed.

In result this CMP filed by the Petitioners (Defendant Nos.2 & 3) is allowed on contest.

15. The impugned order dated 20.02.2014 passed in C.S. No.778 of 2003-I by the learned Additional Civil Judge (Senior Division), Balasore is quashed and held that, the petition under Section-4 of the Partition Act, 1893 filed by the Defendant Nos.2 & 3 in the suit vide C.S. No.778 of 2003-I at the stage of its final decree is maintainable under law.

The learned Additional Civil Judge (Senior Division), Balasore is directed to dispose of that petition under Section-4 of the Partition Act, 1893 of the Defendant Nos.2 & 3 in the suit vide C.S. No.778 of 2003-I reaching in a conclusion through an enquiry to the same as per law taking oral and documentary evidence from the parties providing them opportunity of being heard, whether the suit properties are the undivided dwelling house of the defendant Nos.2 & 3 or not.

The learned Additional Civil Judge (Senior Division), Balasore shall dispose of that petition under Section-4 of the Partition Act, 1893 of the defendant Nos.2 & 3 as expeditiously as possible within a period of three months from the date of appearance of the parties as per the Judgment in this CMP.

16. The parties in this CMP are directed to appear before the learned Additional Civil Judge (Senior Division), Balasore in the pending suit vide C.S. No.778 of 2003-I on dated 12.08.2025 for the purpose of receiving the directions of the said Court as to the further proceedings of that suit according to the directions made above.

17. The Registry is directed to communicate the copy of this judgment immediately to the learned Additional Civil Judge (Senior Division), Balasore in reference to C.S. No.778 of 2003 Class-I.

18. Accordingly, the CMP is disposed of finally.

Headnotes prepared by: *Result of the case:*
Shri Jnanendra Ku. Swain, Judicial Indexer CMP disposed of.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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