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(January- February, 2016)

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'C'

Code of Civil Procedure, 1908- Order 16 Rule 1- Order 39 Rule 2-A- Applicants filed an application pleading that respondents/revisionists had intentionally and voluntarily violated the interim order of Court –respondents denied these allegations- when the case was listed for the evidence of the respondents, name of 'S' an Advocate was mentioned as witness- 'S' refused to accept the summons on the ground that he is an Advocate for the applicant- when the Advocate was present, he was not examined on the ground that he is counsel for the applicant- aggrieved from the order, a revision was preferred- held, that a person who intends to summon a witness should state the purpose for which the witness is proposed to be summoned – respondent had not mentioned the purpose of examining the Advocate- it was stated in the Revision that the Advocate was being examined to prove the pleading filed in the Court- the pleadings signed and filed in Courts are not privileged communications- provision of privileged communication is not applicable to the pleadings- revision allowed and the respondent permitted to examine the advocate for proving the pleadings.

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Title: H. K. Bhardwaj Vs. Rajnish Kuthiala Page-7

Code of Civil Procedure, 1908- Order 39 Rules 1 and 2- Plaintiff, a private limited Company took on lease the suit property along with building on yearly rent of Rs.1,60,000/- for a period of 20 years w.e.f. 1.5.2011 till 30.4.2031- plaintiff paid amount of Rs.4,80,000/- in advance by cheque and also paid Rs.1,80,000/- in cash – plaintiff also agreed that in future rent amount will be paid on or before 31st of every month of May when due- defendants threatened the plaintiff to vacate the premises on which the plaintiff filed the civil suit for seeking injunction- defendant No.1 pleaded that the premises was leased for a period of three years and plaintiff had handed over the possession to defendant No. 1- defendant No. 1 had alienated the suit land in favour of defendant No. 2- defendant No. 2 pleaded that he had purchased the suit property and possession was delivered to him- application filed by the plaintiff was dismissed by the trial Court- an appeal was preferred in which a Local Commissioner was appointed -Appellate Court allowed the appeal and granted the injunction- held, that the lease for more than one year is required to be compulsorily registered- lease deed in the present case was not registered but the same can be used for collateral purpose- lease deed shows that possession was delivered to the plaintiff- no evidence was produced by the defendants to show that the lease was for three years and possession was handed over by the plaintiff after the expiry of three years- report of Local Commissioner shows that the plaintiff is in possession of suit land and defendant No. 2 had broken locks recently- a person in settled possession cannot be dispossessed except in accordance with law- hence, order modified and parties directed to maintain status quo qua nature and possession of the suit land till the disposal of the suit.
Title: Sunil Kumar son of Shri Hira Lal Vs. Big Apple Berry Hospitality Pvt. Ltd
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Code of Criminal Procedure, 1973- Section 378(1) (b) & **NDPS Act, 1985** -accused was seen carrying a bag on his left shoulder, who turned back swiftly at the sight of the police- accused was apprehended on suspicion - search of the bag was conducted during which 3.500 kilograms of cannabis was recovered – trial Court acquitted the accused- held, that despite availability of independent witnesses, none was associated by the Investigating Officer- the evidence regarding the retrieval of the case property from Malkhana to Court and back is also lacking which creates doubt regarding the identity of the case property – accused was rightly acquitted by the trial court - no ground made for granting leave to appeal- hence, leave to appeal refused- petition dismissed.
Title: State of H.P. Vs. Dharam Chand (D.B.) Page-297

Code of Criminal Procedure, 1973- Section 378-**Indian Penal Code, 1860-** Section 366, 376- Prosecutrix was missing from her home- a complaint was lodged- the prosecutrix was subsequently found- she was medically examined- Medical Officer stated that possibility of sexual assault could not be ruled out – accused was charged with the commission of offences punishable under Section 366 and 376 IPC- he was acquitted by the trial Court- aggrieved from the acquittal, an appeal was preferred by the State- Date of Birth of prosecutrix shows that she was a major on the date of incident- accused was tenant of the father of the prosecutrix- the possibility of her developing intimacy with the accused cannot be ruled out – the prosecutrix had tried to conceal herself when her parents had arrived- she admitted that she had proceeded to the room of the accused on receiving the call which shows the intimacy between the accused and the prosecutrix- prosecutrix had not complained that she was forcibly taken by the accused – she had not made any complaint of sexual assault- held, that all these circumstances established that she was a consenting party and the accused was rightly acquitted by the trial Court- leave to appeal refused and application dismissed.

Title: State of H.P. Vs. Amit Kumar (D.B.) Page-66

Code of Criminal Procedure, 1973- Section 438- As per the prosecution case, the prosecutrix had gone to take the test for the post of patwari, when petitioner/accused met her and asked to marry him- prosecutrix refused- the accused mentally tortured her and threatened to humiliate her- mobile phone of the prosecutrix was also snatched by the accused - she was brought to the house by the petitioner and was raped 4-5 times in four days- subsequently, the accused abused the prosecutrix and turned her out of the house with a threatening note that she would be killed in case of disclosure of the incident to anyone- the accused also refused to marry her- petitioner pleaded that he and prosecutrix were in love with each other and intended to marry but their parents are against the marriage- held, that allegations against the petitioner are heinous and grave-the investigation is at the initial stage- merits of the case will be decided during the trial and cannot be considered at the stage of consideration of bail application - taking into account the allegations against the petitioner, he cannot be released on anticipatory bail as investigation will be adversely affected- bail application rejected.

Title: Som Chand s/o Sh. Tule Ram Vs. State of H.P. Page-325

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offence punishable under Section 20 of NDPS. Act- he filed a bail application pleading that investigation is complete and he will not temper with the prosecution evidence- as per prosecution version, the petitioner was found in possession of 850 grams of charas- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and the larger interest of the public and State- contraband recovered from the petitioner is not a commercial quantity- investigation is complete and releasing the petitioner will not interfere with the investigation- petition allowed and petitioner ordered to be released on bail.

Title: Alone Zemer s/o Sh. Edvard US National Vs. State of H.P. Page-429

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the accused/petitioner for the commission of offences punishable under Sections 302, 323, 325, 452, 436, 427, 147, 148, 149, 109, 115, 117 and 120-B I.P.C on the allegations that she was a member of mob which had committed the offences- petitioner pleaded that

investigation is complete and she is mother of two children- held, that investigation is complete and nothing is to be recovered from the petitioner - being a woman she is to be dealt with under special provision of bail for woman- petitioner being mother of two minor children is also entitled for being released on bail - no prejudice shall be caused to the State and society at large by releasing the petitioner on bail- bail application allowed.
Title: Reeta Devi w/o Sh. Raj Kumar Vs. State of H.P. Page-398

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 306, 201 & 120(B) IPC- petitioner filed a bail application pleading that investigation is complete and he will join the investigation as and when directed to do so and will not temper with the prosecution evidence- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and the larger interest of the public and State- there is a special provision of bail for women and minor- investigation has been completed and the final investigation report has been filed in the Court- the interest of the State and general public will not be adversely affected by releasing the petitioner on bail- hence, bail application allowed and the petitioner ordered to be released on bail.
Title: Savitri Devi w/o Sh. Satish Kumar Vs. State of H.P. Page-435

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 307, 324 and 506 IPC- petitioner filed a bail application pleading that challan has been filed in the Court and there is no person to look after the family members of the petitioner- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and the larger interest of the public and State- investigation has been completed and the challan has been filed in the Court- hence, bail application allowed and the petitioner ordered to be released on bail.
Title: Varinder Singh son of late Liak Singh Vs. State of Himachal Pradesh Page-432

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 326 and 307 of the Indian Penal Code - petitioner filed an application for seeking bail -held that, bail is the rule and jail is the exception- taking into account the fact that the injured has also been discharged from the hospital, the petitioner is entitled for bail- the petition allowed.
Title: Sanju Ram S/o Sh. Bachitar Singh Vs. State of H.P. Page-295

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 302, 323, 325, 452, 436, 427, 147, 148, 149, 109, 115, 117 and 120-B IPC petitioner filed a bail application pleading that she is a poor labourer having two minor children to be looked after and had no role in the alleged offence- held that, that petitioner is a woman and the investigation is complete - accused is presumed to be innocent till convicted by competent Court- in view of the fact that petitioner is mother of two minor children; it is expedient in the ends of justice to allow the application -interests of the general public and State will not be adversely effected by the release of the petitioner on bail- application allowed.
Title: Champa Devi w/o Sh. Pawan Kumar Vs. State of H.P. Page-28

Constitution of India, 1950- Article 226- 'R' husband of the petitioner was initially appointed as Forest Guard- he was promoted as Deputy Ranger on 3.7.1970- he was convicted of the commission of offences punishable under sections 41 and 42 of the Indian Forest Act - appeal was dismissed – he filed a Criminal Revision and same was allowed on 5.12.1997 - consequently, his suspension was revoked – DPC was also held to consider him for the post of Ranger- he was promoted notionally on 21.7.2000- feeling aggrieved, he approached Tribunal by filing an original application which was dismissed – writ petition was filed assailing the order - held, 'R' was acquitted as prosecution had failed to prove its case beyond reasonable doubt- there is no evidence that any departmental proceedings were conducted against 'R'- DPC was held in the year 1998 and 'R' was acquitted on 5.12.1997- he could not have been promoted on 21.7.2000 on notional basis as he was ready and willing to discharge his duties as Ranger but was prevented from doing so because recommendations of the DPC were kept in sealed cover which was opened on 21.7.2000- petition allowed- letter dated 21.7.2000 quashed by applying principles of severability and legal heirs of 'R' held entitled to all consequential monetary benefits of the promotional post of Ranger with effect from 8.2.1989 along with interest @ 9% per annum.

Title: Bimla Devi Vs. State of Himachal Pradesh and others (D.B.) Page-302

Constitution of India, 1950- Article 226- 24 students drowned, when they were on a trip to Himachal –inquiry report shows the negligence of the in-charge officers/ officials of the Board- held that Court can grant compensation in exercise of the writ petition when there is a prima facie proof that incident had taken place due to the negligence of the authorities- writ petition for grant of compensation is maintainable irrespective of availability of alternative remedies- a person undertaking an activity involving hazardous or risky exposure to human life, is liable to compensate for the injuries suffered by any person irrespective of negligence or carelessness- inquiry report shows that all the authorities namely Board, College and State, had prima facie contributed to the cause of incident- they had failed to take precautions which were required to be taken- it was the duty of the State to monitor the functioning of the project - breach of guidelines snatched the young students from their parents- their earning capacities are to be kept in consideration while assessing the just compensation- students would have got better placement and would not have been earning not less than Rs. 10 lacs per annum- their monthly salary would not have been less than Rs. 25,000/- - Students were 19-20 years of age- multiplier of '15' has to be applied- 50% of the amount has to be deducted towards personal expenses- parents have lost dependency to the extent of 50%- hence, parents are entitled to compensation of Rs. 12,500/- x 12 x 15 = Rs. 22,50,000/- under the head 'loss of income/dependency' – they are also entitled to Rs. 10,000/- each under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses'- thus, total compensation Rs. 22,80,000/- is payable- however, amount of Rs. 22,00,000/- awarded in lump sum along with interest @ 7.5% per annum- Board held liable to pay compensation to the extent 60%, College liable to pay compensation to the extent of 30% and State liable to pay compensation to the extent of 10%.

Title: Court on its own motion Vs. State of Himachal Pradesh and others (D.B.) (CWPIL No.7 of 2014) Page-176

Constitution of India, 1950- Article 226- A direction was issued by the Single Judge to examine the case of the petitioners in the light of the orders of the appointment, which were contrary to the appointment policy- it was conceded by the petitioner that direction to examine the case of the petitioners in accordance with the offer of the appointment is not legally correct – he prayed that direction be issued to examine the case of the petitioners in the light of the policy which was prevailing at the time when the writ petitioners approached

the writ respondents for appointment on compassionate ground - LPA disposed of with the direction to examine the case of the petitioners in the light of the decision of the Court in ***Surinder Kumar vs. State of H.P. and others, ILR 2015 HP (VI) 842 (DB).***

Title: Himachal Road Transport Corporation Vs. Lekh Ram (D.B.) Page-535

Constitution of India, 1950- Article 226- Candidature of the petitioner in the Panchyat election was rejected on the ground that his father has encroached upon the government land- petitioner challenged the order on the ground that his father had not encroached upon any such land- petitioner has himself annexed a copy of the application, dated 31st July, 2002, whereby his father had sought regularization of the encroachment over the government land-thus the candidature of the petitioner was rightly rejected- writ petition is devoid of any merits, hence dismissed.

Title: Ashok Kumar Vs. State of H.P. and others (D.B.) Page-245

Constitution of India, 1950- Article 226- Deaths caused due to the jaundice outbreak in Shimla and Solan –- jaundice outbreak was the outcome of the inaction of the officers/officials/authorities and other concerned persons- earlier directions were issued to submit the compliance report and it was found that Lift Water Supply Scheme Ashwani Khad was not up to the mark- a suo moto cognizance was taken by the Court - Government had appointed a Special Investigating Team (SIT) for investigating into the matter- Investigating Agency and the State Government have virtually admitted that water from LWSS Ashwani Khad was polluted, contaminated, dirty and a cause for jaundice outbreak- direction issued for creation of post and statutory body, to be manned by a competent authority and members to deal with entire water supply system of Shimla and to submit compliance report after every two weeks- Investigating Officer has reported that only class-IV employees were checking the water supply from LWSS Ashwani Khad and the higher authorities had not taken any interest- they had not even inspected Ashwani Khad and the officers of the Municipal Corporation were also negligent/careless because they had not properly managed the Sewage Treatment Plants at Malyana and Dhalli- contractor for operation and maintenance of the STPs at Lal Pani, Dhalli, Sanjauli-Malyana, Summerhill and North Disposal had not taken any steps for the proper operation and maintenance of STPs- direction issued to the SIT to take investigation to its logical end by pinpointing responsible/involved officers from the year 2007- Secretary (IPH) had filed contradictory affidavit- District Magistrates, Superintendents of Police and the authorities concerned directed to implement the provisions of Food Safety and Standards Act- Principal Secretary (Education) commanded to direct all the educational institutions to follow the provisions of The Food Safety and Standards Act- Chief Medical Officers directed to furnish the details of all the persons, who are/were admitted in the hospitals, are/were under treatment because of jaundice along with the details of all those persons who had succumbed to the jaundice outbreak- Engineers of IPH, Department directed to show cause as to why they should not be dealt with in terms of the mandate of Contempt of Courts Act and prosecuted for filing false affidavits before the Court and for misleading the Court- interim compensation of Rs. 2 lacs awarded to the legal representatives of each of the deceased. (Para-1 to 72)

Title: Court on its own motion Vs. State of Himachal Pradesh and others (D.B.) (CWPIL No. 10 of 2015) Page-471

Constitution of India, 1950- Article 226- Department of Health and Family Welfare issued No Objection Certificate in favour of the petitioners to appear as State sponsored candidates for admission in super specialty courses in All India Institute of Medical Science, New Delhi- private respondents challenged 'No Objection Certificate' by filing Original Application before

the Administrative Tribunal taking the plea that N.O.C was issued arbitrarily and was illegal- Tribunal accepted the plea, allowed the application and quashed the order granting N.O.C to the petitioners- petitioners feeling aggrieved approached the Court - held that Administrative Tribunal could not entertain Public Interest Litigation from a stranger as it would defeat the object of speedy disposal of the services matters for which the Tribunal has been created- petition allowed and the order passed by the Tribunal quashed.

Title: Samriti Gupta and another Vs. State of H.P. and others (D.B.) Page-403

Constitution of India, 1950- Article 226- Directions were issued to the respondents to take action in terms of the judgment titled ***Gauri Dutt & others vs. State of H.P.,*** reported in ***Latest HLJ 2008 (HP) 366-*** held, that judgment was passed on the basis consent and LPA does not lie against the consent judgment – appeal dismissed.

Title: The State of H.P. & another Vs. Kehar Singh & another (D.B.) Page-537

Constitution of India, 1950- Article 226- During the pendency of the proceedings, Apex Court passed the judgment, upholding the judgment of Kerala High Court which deals with the controversy raised in the present matter- respondent directed to examine the case of the petitioner in the light of the judgment passed by the Apex Court.

Title: Romesh Chand Vs. Bharat Sanchar Nigam Ltd. and others Page-224

Constitution of India, 1950- Article 226- **Himachal Pradesh Panchayati Raj Act, 1994-** Section 122- Petitioner wanted to contest the election for the post of Pardhan- however, her nomination paper was rejected on the ground that her husband had encroached upon the Government land- it was not disputed that an application was filed by the husband of the petitioner for regularization of the government land- it was contended that husband of the petitioner had surrendered the encroached land and the prohibition contained in Section 122 ceased to be applicable- no material was placed on record to show that her husband had delivered the possession to the government- husband falls within the definition of the family- therefore, petitioner is debarred from contesting the election – writ petition dismissed.

Title: Madhubala Vs. State of H.P. and Ors. (D.B.) Page-336

Constitution of India, 1950- Article 226- **Himachal Pradesh Urban Rent Control Act, 1987-** Section 14- Rent Controller found the respondent in arrears of rent and ordered the eviction on the ground of non-payment of rent- Rent Controller directed that tenant will not be evicted from the premises if he pays the arrears within a period of 30 days from the date of the order- Rent Controller further directed that memo of cost be prepared - an amount of Rs.117/- was shown as cost in the memo of the cost- landlord claimed that tenant had not deposited the amount of the cost and the interest from the date of order- Rent Controller accepted the plea and ordered the issuance of warrant of possession- held, that Rent Controller had not quantified the amount of cost but had only shown the arrears of rent along with interest- the tenant is under an obligation to pay the arrears of rent, cost and interest- once the cost of Rs.117 was shown in the memo of cost, which was supplied along with order, the tenant was under obligation to pay the amount of cost to the landlord- failure to pay the amount of cost will result in the eviction of the tenant- tenant was also bound to pay the interest on the amount due till the payment of the same- Rent Controller had rightly ordered the eviction- petition dismissed.

Title: Sanjay Kumar Vs. Pushpa Devi Page-283

Constitution of India, 1950- Article 226- It was contended by the private respondents that they are in place for the last about five years - they have earned status in the society- they were appointed by the Government on the basis of the selection process undertaken by the Selection Authority- they had no role to play in their selection and appointment- Competent Authority directed to give appointment to the appellant on notional basis from the date of the appointment of the private respondents in the peculiar facts of the case.

Title: Suresh Kumar Vs. State of H.P and others (D.B.) Page-244

Constitution of India, 1950- Article 226- Judgment passed by the Court was cryptic- cases of the writ petitioners are squarely covered by the judgment passed by this Court in ***Paras Ram versus State of Himachal Pradesh and another CWP(T) No. 7712 of 2012,*** decided on 19.5.2009 – respondent directed to examine the case of the petitioner in the light of the judgment and to take the decision within six weeks.

Title: State of H.P. and another Vs. Rewa Shankar Kaushik Shastri and others (D.B.) Page-538

Constitution of India, 1950- Article 226- Petitioner claimed that he and his cousin were illegally confined in the Police Station and were beaten for possessing mobile phone- he claimed that he had suffered fracture of leg due to the beating- his medical examination was conducted at the instance of the Court- it was reported that petitioner had old healed fracture of the head of 5th Metatarsal- held, that complicated question of facts are involved which cannot be adjudicated in the writ petition- petitioner directed to approach the Civil Court for seeking compensation/damages.

Title: Kailash Chand Vs. State of H.P. & others (D.B.) Page-116

Constitution of India, 1950- Article 226- Petitioner claimed that non-petitioners be directed to enhance the subsistence allowance along with admissible interest- case was registered against the petitioner for the murder of his wife for which he was arrested- he was suspended due to pendency of the criminal case- subsistence allowance at the rate of 50% of the total salary had been granted to the petitioner, whereas he claims subsistence allowance at the rate of 75%- respondent pleaded that subsistence allowance was not enhanced by Review Committee in view of allegations of moral turpitude- held, that there is provision of review after three months and Review Committee had passed an order granting subsistence allowance at the rate of 50%- petitioner was suspended on account of grave criminal offence- there was no delay on the part of non-petitioner- hence, subsistence allowance @ 75% cannot be allowed- petition dismissed.

Title: Parat Singh son of Shri Hari Ram Vs. The Regional Director Employees State Insurance Corporation & others Page-489

Constitution of India, 1950- Article 226- Petitioner filed objections for rejection of candidature of respondent No. 4- objections were rejected and respondent No. 4 was permitted to contest the election – held, that the dispute is not within domain of writ court- an alternative remedy is available to the petitioner- petition dismissed.

Title: Ranjit Singh Pathania Vs. State of Himachal Pradesh and others (D.B.) Page-324

Constitution of India, 1950- Article 226- Petitioner has challenged the action of the Labour Commissioner to refer the dispute to the Labour cum Industrial Tribunal on the ground that the demand notice was raised after six years-held that law of limitation does not come in the

way of making reference of the dispute and the relief cannot be denied to the workman on the ground of delay alone- petition allowed.

Title: Lachman s/o Sh. Sarwan Vs. State of H.P. & Others Page-13

Constitution of India, 1950- Article 226- Petitioner was appointed as laboratory attendant on contract basis for 12 months initially and thereafter renewable for 12 months at a time up to and subject to attaining the maximum age prescribed/indicated in appendix A to Govt. of India Ministry of Defence letter NO.24 (6)/03/US (WE)/D (Res) dated 22 Sep. 2003, or as amended from time to time subject to continued good conduct and performance thereafter- after having completed more than four years of contractual appointment by the petitioner, the post was re-advertised on new terms and conditions-petitioner challenged this action on feeling aggrieved- held that, the action of the Respondent in re-advertising the post is against the basic policy and deterrent to the interest of the petitioner as the contract shall not be renewed as per initial terms and conditions- petition allowed the Annexure P-9 quashed with the directions to the Respondent to renew the contract of the petitioner as per the original terms and conditions.

Title: Bir Pal Singh Vs. Union of India and others (D.B.) Page-81

Constitution of India, 1950- Article 226- Petitioner was appointed as TGT in cantonment board against JBT post- School was upgraded from elementary to middle school- work was divided between the petitioner and non-petitioner No. 4- Govt. of H.P. issued a notification that where elementary school is part of middle school, Head Master of the School would be TGT- Board of Directors proposed the name of non-petitioner No. 4 for the post of head master- petitioner made representation but representation was not decided – it was resolved by the Board of Directors that non-petitioner No. 4 will be promoted for the post of Head Master- petitioner contended that non-petitioner No. 4 is not qualified and the promotion of non-petitioner No. 4 is in violation of promotion rules- respondent pleaded that non-petitioner No. 4 is the senior most teacher and is looking after the administrative duties - petitioner is JBT teacher and is the junior most- representation of the petitioner was rejected- held, that Departmental Promotion Committee had not recommended the name of the petitioner and, therefore, the petitioner cannot claim the promotion to the post of head master- non-petitioner No. 4 has been appointed on adhoc basis and a stop gap arrangement- writ petition dismissed and direction issued to non-petitioner No. 2 and 3 to fill up the regular post of head master in accordance with law.

Title: Ashutosh Garg son of Sh Adesh Kumar Garg Vs. State of HP and others Page-439

Constitution of India, 1950- Article 226- Petitioner was engaged as complaint attendant on daily wages by I&PH Department in January 1996- his services were terminated on 30.11.2000 – he filed a writ petition to challenge the termination which was withdrawn for want of jurisdiction-petitioner requested the Labour Commissioner to refer his dispute to the Industrial Tribunal but his prayer was declined on the ground of delay- held that, similarly situated cases were referred by the commissioner to the Tribunal, and the case of the petitioner should have been referred on the ground of parity - further held, that there was no limitation prescribed for making the reference to the Tribunal-petition allowed.

Title: Chain Singh s/o Sh. Kehru Ram Vs. State of H.P. & Others Page-10

Constitution of India, 1950- Article 226- Petitioner was engaged as daily wager in HPPWD in June 1994 - his services were dis-engaged on 29.11.2004- reference made to the Labour

and Industrial Tribunal was dismissed on the ground that incorrect date of termination was shown in the reference order and Tribunal could not have travelled beyond the same- held that the petitioner was penalized for the fault of other public servant who had mentioned wrong date of termination of petitioner in reference sent to Presiding Judge Labour Court-cum-Industrial Tribunal- award set aside with the directions to the Labour Commissioner to make a fresh reference on correct facts.

Title: Karam Singh s/o Sh. Raju Vs. State of H.P. & Others Page-7

Constitution of India, 1950- Article 226- Petitioner was promoted to the Officers Cadre in Junior Management Grade Scale-I on 22.03.2006 - he was transferred from Dharamshala (Himachal Pradesh) to Hyderabad-he represented that since his father was 77 years old and had a mentally retarded son, therefore, he could not go to Hyderabad and he be adjusted in Dharmashala itself- non-petitioner reverted the petitioner to his substantive cadre and debarred him from promotion for next five years vide letter dated 10/11/2006- on 16.07.2012 new promotion policy was circulated amongst employees- Petitioner applied for promotion to the post of Junior Management Grade Scale-I but his application was rejected on the ground that as per latest promotion policy he was debarred by age for promotion-petitioner took the plea that bar of promotion was for 5 years and thereafter his promotion was automatic as the promotion was kept in abeyance by non-petitioners-held that the plea is devoid of merits as petitioner was reverted to substantive cadre which he occupied prior to his promotion subject to availability of similar vacancy in the same seniority- moreover the petitioner has not impleaded the persons who have been declared successful as parties in the present civil writ petition and the petition was bound to fail for not following the principles of *audi alteram partem*- petition accordingly dismissed.

Title: Roshan Lal Sharma Vs. CMD UCO Bank & Others Page-78

Constitution of India, 1950- Article 226- Petitioner was working as a Beldar - his services were terminated without following the principles of first come first go-reference made to the Labour cum Industrial Tribunal was allowed directing the re-engagement of the petitioner without entitlement to seniority or back wages- the award was challenged by the department but writ petition was dismissed - after three years of re-engagement the petitioner challenged the award and prayed for grant of seniority for the purpose of continuity- no reasons were assigned for the delay in approaching the court-as per the settled law the writ petition should have been filed within six months or at the most within one year-the petitioner had not even filed a counter-claim when the award was challenged by the department- petition dismissed.

Title: Hukam Chand s/o Sh. Kahan Singh Vs. H.P.State Electricity Board Ltd. & Another Page-1

Constitution of India, 1950- Article 226- Petitioners have called in question the scheme for lifting the water supply, namely, LWSS-Malwar and LWSS-Bhatoli-Baih, Dhamaan- held, that it was a policy decision made by the Government in public interest – policy decision cannot be made subject matter of a writ petition, unless arbitrariness is shown- the State has examined all the aspects and had taken the decision thereafter- the Court cannot sit in appeal over the decision of the Government, therefore, petition dismissed.

Title: Jagdish Kumar Dhiman & others Vs. State of H.P. & others (D.B.) Page-484

Constitution of India, 1950- Article 226- Petitioners were employed in different capacities with various universities- they were selected and appointed by respondent/university

pursuant to an advertisement issued by the latter - petitioners were governed under various pension schemes with their parent Organization – petitioners filed a writ petition seeking a direction to the respondent to grant pension by counting their past services rendered in other institutions- held, that University came into existence in the year 2010 with the enactment of the Act - old pension scheme, so framed under various rules cannot be made automatically applicable to the petitioners who had joined the services fully knowing the terms and conditions of their appointments- appointments letters issued to the petitioners specified clearly that they would be governed by new pension scheme of Government of India- since, petitioners had accepted the terms by accepting the employment, they have agreed to be governed by new pension scheme – petitioners have no legally enforceable right which was defeated by the respondent/university- petition dismissed.

Title: Prof. Arvind Kumar Agrawal and others Vs. Central University of Himachal Pradesh Page-321

Constitution of India, 1950- Article 226- Petitioners were engaged as labourers in PWD National Highway 20 on 7.10.1998 - they allege that their services were terminated orally on 1.1.2002- Reference made to the Labour and Industrial Tribunal was dismissed- held that, non-petitioners have taken the plea that the petitioners had voluntarily left the service-thus a complicated dispute of fact has arisen which cannot be entertained in the writ petition-plea of the petitioners that the juniors were retained while their services were disengaged can also not be entertained without impleadment of the juniors-petition dismissed.

Title: Chuni Lal son of Shri Nand Lal & others Vs. State of H.P. through Secretary (PWD NH-20) and another Page- 310

Constitution of India, 1950- Article 226- Respondent was initially appointed as Khalasi - he superannuated on 31.12.2006 and was given the benefit of full grade Wireman-he was paid all his retiral benefits, except the leave encashment- Respondent approached Central Administrative Tribunal; and relying upon an order of the petitioners in which the amount was worked out, the Tribunal ordered the payment of leave encashment of Rs. 93,460/- with interest @ 8% - petitioners feeling aggrieved approached the court in a writ petition- held that, Rs. 14, 954/- calculated towards interest can by no stretch of imagination, be said to be 'huge liability'- further held that, even if the Tribunal had no jurisdiction to grant interest even then the employee can claim interest on the delayed payment - grant of pensionary benefits is not a bounty, but is a valuable right and is property in the hands of the employee –petition dismissed.

Title: Union of India & ors Vs. Central Administrative Tribunal & anr. (D.B.) Page-262

Constitution of India, 1950- Article 226- The dispute raised in the writ petition has already been determined by the Apex Court in **Raghubir Singh versus General Manager, Haryana Roadways, Hissar, 2014 AIR SCW 5515-** hence, order dated 17.7.2006 quashed and Labour Commissioner directed to make reference to the Industrial Tribunal within six weeks.

Title: Prem Lal Vs. The State of H.P. and others (D.B.) Page-223

Constitution of India, 1950- Article 226- Writ court allowed the writ petition and directed the respondents to consider the case of the petitioner for regularization from 2002 with all the consequential benefits- Writ Court has not discussed and marshalled out the facts of the

case- respondents have to consider the case of the petitioner as per law applicable- appeal dismissed.

Title: State of Himachal Pradesh and others Vs. Karuna Devi (D.B.) Page-52

Constitution of India, 1950- Article 226- Writ petition filed by the petitioner was allowed by writ court and the order of removal of the petitioner was set aside- respondents were directed to re-instate the petitioner with liberty to proceed ahead with the inquiry from the stage of supplying the copy of the inquiry report to the petitioner- held, that Writ Court had rightly passed the order in terms of which liberty was granted to the respondents to proceed from the stage of supplying of the copy of inquiry report to the writ petitioner- no interference is required- appeal dismissed.

Title: Himachal Road Transport Corporation and another Vs. Hem Parkash (D.B.) Page-51

Constitution of India, 1950- Article 226- Writ Petition has become infructuous in view of subsequent developments and by the efflux of time- hence, same is dismissed as infructuous.

Title: Parveen Kumar Vs. State Election Commission and others (D.B.) Page-537

Constitution of India, 1950- Article 226- Writ petitioner approached the Court to seek direction against the respondent to regularize his services with effect from 1996 with all consequential benefits and release the arrears of payment- prior to this, writ petitioner had approached the Administrative Tribunal vide OA No. 143 of 1991 decided on 3.12.1996- OA was disposed of with the observations that the writ petitioner had already completed 10 years of the services on December 31, 1995 as Pump Operator and as per the statement of learned Additional Advocate General, his services for regularization will be considered from 1996- relying upon the order of the Administrative Tribunal, the writ petition was dismissed by the Court- held, that the Writ petitioner could not have claimed any relief which was not prayed in that lis as the relief claimed was hit by Order 2 Rule 2 CPC read with Section 11 CPC- Writ Petition was rightly dismissed- appeal also dismissed.

Title: Ghan Shayam Vs. State of Himachal Pradesh and another (D.B.) Page-539

Constitution of India, 1950- Article 226- Writ petitioners filed an application before the Administrative Tribunal for seeking regular pay scale as was given to the respondent No. 3- name of respondent No. 3 was deleted subsequently- statement was made on behalf of respondents before the Tribunal that some of the applicants were regularized and other would be regularized on the occurrence of vacancy in the category- the Tribunal dismissed the application as infructuous- a Writ Petition was filed by one of the applicants subsequently, seeking regularization which was allowed and a direction was issued that petitioners would be deemed to have been regularized w.e.f. 8.6.1999 instead of 12.4.2006 with all consequential benefits- held, that writ petitioners were estopped from filing the writ petitions in view of order passed by the Tribunal – merely, because the relief was granted by the respondents in the contempt petition will not make the appeal infructuous- LPAs allowed and the judgment passed by Writ Court set aside.

Title: Himachal Pradesh University Vs. Bardu Ram and another (D.B.) Page-74

Constitution of India, 1950- Article 226- Writ petitioners were working as constables in police department- they are governed by Punjab Police Rule, 1934 for the purpose of

promotion- writ petitioners were eligible for competing in a test known as B-1 test- they qualified the B-1 test and were brought in list-C making them eligible for promotion as Head constables- they were required to be sent to Lower School Course on the basis of list maintained by S.P./Commandant of Battalion - amended standing order was issued and the validity of list B-1 was restricted for one year- 687 constables were brought in list B-1 out of whom 272 constables were sent to Lower School Course - other candidates could not be sent to the Course due to the amendment in the standing order- there were 362 vacancies of Head constables- B-1 list had not been fully exhausted - writ petitioners were required to compete again for being brought on list B-1 of the notification- respondent contended that the amended standing orders provide that list will be valid for one year- the writ petition was dismissed by the Writ Court- held, that Government had deleted the requirement of appearing in B-1 test by those constables who were not sent to Lower School Course within one year of the preparation of the list- therefore, it was impermissible for the Director General of Police to issue the standing order contrary to the Rule- power to issue standing orders is subject to the rules and regulations and H.P. Police Act- the executive instructions cannot over-ride the rules and what was deleted vide amendment could not have been reintroduced by standing orders- further, power has been vested with the Director General of Police to hold the test once or more in a year keeping in view the vacancy position- the standing orders can be issued regarding the manner in which the test is to be conducted- no power has been conferred upon the Director General of Police to add or subtract anything to the rule- once constables had successfully completed B-1 test and were sent to the Lower School Course, there is no reason why they should be subjected to undergo the test again- appeal and writ petition allowed.

Title: Suresh Kumar and others Vs. State of Himachal Pradesh and another (D.B.)

Page-418

Constitution of India, 1950- Articles 226 and 227- Respondent was working as salesman in ARTRAC Canteen at Shimla on temporary basis - he was transferred to Mandi, but he did not join his new place of posting and obtained stay order from CAT- later on the OA was withdrawn by him and CWP was filed in Hon'ble High Court which was disposed off with the observations that it had no jurisdiction to deal with it- Ministry of Labour referred the dispute to Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh for adjudication - action of the petitioners in terminating the service of non-petitioner was held to be unjustified and illegal by the tribunal –writ petition was filed challenging the order - held that, refusal to join at the place of posting on transfer amounts to misconduct and the services of the non-petitioner could not have been terminated without conducting an enquiry-petitioner has not followed the procedure to be followed in case of the misconduct and has terminated the services of non-petitioner in a wrong manner- the order was rightly set aside on reference- petition dismissed.

Title: Chairman Managing Committee ARTRAC and Anr. Vs. Devki Nand Kalta

Page-264

'H'

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlady filed an application pleading that premises had become unsafe for human habitation- it required repair which cannot be carried out without vacating the premises- premises was required bonafide by the landlady as her son got married and second son is also going to marry- tenant denied these allegations- it was contended that landlady had not pleaded that she was not occupying another residential premises and that she had not vacated any such building without any sufficient cause- held, that there was no evidence to prove that landlady had another residential building in Urban area and that she had vacated the

residential building within five years from the date of filing of the Eviction Petition- other tenants had agreed to vacate the premises on demand- mere fact that eviction petition has not been filed against them is not sufficient to dismiss the eviction petition- non examination of the expert is not material in view of the admission of the tenant that retaining wall had collapsed- petition cannot be dismissed on the ground that site plan was not filed by the landlady- it was duly proved that one son had married and other was going to marry- hence, plea of the landlady that she had insufficient accommodation is acceptable- Revision petition dismissed.

Title: Vijender Sharma son of Parkash Sharma Vs. Uma Devi W/o Bhajan Lal

Page-531

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlord filed an eviction petition against the tenant claiming that tenant is in arrears of rent, tenant had damaged the premises due to which the premises had become unfit and unsafe for human habitation- landlord required the premises bonafidely for the purpose of rebuilding which cannot be carried out without evicting the tenant- tenant denied all these allegations- petition was allowed on the ground of arrears of rent and that premises was bonafide required by the landlord for the purpose of rebuilding- an appeal was preferred before the Appellate Authority which was dismissed- a revision was preferred against the order of the Appellate Authority- held that the Architect had specifically stated in his report that premises would fall at any time and would cause injury to the public- even the court witness had stated that there were cracks in the building, beams had fallen and the premises was in deteriorating stage- tenant had not placed any evidence to counter the report of the expert- merely because approved site plan had not been placed on record, eviction cannot be declined - landlord can evict the tenant for rebuilding the premises to increase its economic utility - held, that in these circumstances, the order of the Appellate Court cannot be faulted, however, right of re-entry granted to the tenant.

Title: Ramesh Chand Jaswal son of Sh. Mulakh Raj Vs. Roshan Lal Sharma son of Shri Lala Ram Page-492

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Rent Controller ordered the eviction of the tenant on account of arrears of rent- tenant instead of paying/tendering the rent to the landlord deposited it with the Rent Controller vide cheque dated 13.8.2009- held, that tenant in order to escape from the eviction has to pay the amount to the landlord - deposit with the Rent Controller will not help the tenant- application filed by the landlord allowed.

Title: Hans Raj Khimta Vs. Kanwaljeet Kaur alias Sardarni Babli Page-541

Hindu Marriage Act, 1955- Section 13- Husband filed a petition for divorce pleading that the wife started torturing him mentally by not obeying his commands- she was also taken to Dharamshala and thereafter, she refused to join the company of the husband- wife denied the allegations- held, that allegations made by the appellant against the respondent are vague and sketchy – no specific incidence of defiance by wife was quoted – husband had not permitted the wife to live with him and he has deserted the wife- two years had also not elapsed from the date of filing of the petition of divorce- District Judge had rightly dismissed the petition- appeal dismissed.

Title: Ajay Singh Vs. Anubala Page-459

Hindu Marriage Act, 1955- Section 24- Husband filed a petition for divorce pleading that wife did not perform any marital obligations and used to become violent- she had also filed a criminal proceedings against the husband- wife pleaded that husband had subjected her to cruelty and he cannot be allowed to take advantage of his own wrong- a petition for maintenance pendente lite allowance and expenses was filed which was allowed- aggrieved from the order, present revision has been filed- held, that the purpose of providing maintenance is to provide financial assistance to the indigent spouse to maintain herself and to have sufficient funds to carry on litigation expenses- husband had admitted his income as Rs.15,000/- per month and it was not proved that wife was earning anything- hence, maintenance enhanced to Rs.5,000/- per month.

Title: Payal wife of Shri Manish Chaudhary Vs. Manish Chaudhary son of Sh.Raghuvir Singh Chaudhary Page-486

'I'

Income Tax Act, 1961- Section 143- Assessee filed a return with Income Tax Department- his case was selected for scrutiny- Assessing Officer reassessed the income by disallowing the depreciation of goodwill and claim of capital receipt- order was affirmed by the Commissioner of Income Tax (Appeals)- this order was affirmed by Income Tax Appellate Tribunal, Chandigarh- held, that whether receipt is a capital or revenue receipt has to be adjudged on the facts of each case- there cannot be any straitjacket formula to determine this question- according to assessee, the sellers had pledged their equity with 'C' – they were in debt to the company 'Z'- the Sellers agreed to transfer their entire shareholding in favour of the assessee for consideration of Rs. 72.5 crores vide Special Purchase Agreement - a sum of Rs. 24, 81, 68, 263/- was paid as earnest money by the assessee- Sellers also agreed to convince 'C' to sell the entire shareholdings in 'S' to the assessee- assessee deposited Rs. 15 crores with Escrow Agent- subsequently, sellers expressed their inability to sell their share and called upon the assessee to terminate the SPA- parties agreed to terminate the SPA by making by the payment of the various amounts- an amount of Rs. 2,25,91,587/- was received as compensation by the assessee for termination of the SPA- assessee had terminated the SPA- there was no breach necessitating payment of compensation to the assessee – in these circumstances, the amount of compensation was rightly held to be a revenue receipt and was rightly assessed to tax as business income.

Title: Avantor Performance Materials India Limited Vs. Commissioner of Income Tax, Shimla & another (D.B.) Page-232

Indian Evidence Act, 1872- Sections 45 and 112- Plaintiff pleaded that defendant No. 1 is not his legally wedded wife and defendants No. 2 to 4 are not his children and they have been born through the loins of defendant No. 5- plaintiff filed an application for subjecting defendants No. 2 to 5 to DNA test- the application was rejected- held, that Court had erred in dismissing the application- the paternity of the defendant was in issue, hence, application allowed.

Title: Ram Gopal Vs. Vidya Devi & others Page-449

Indian Partnership Act, 1932- Section 69(2)- Plaintiff claims to have entered into a partnership with defendant and one A for providing vehicles on rent to N.J.P.C - ratio of profit and loss was decided to be 40% , 40 % and 20%- A sum of Rs. 6,72,500/- was required to be deposited with M/S Anagram Finance Limited Company for getting the vehicles financed- the plaintiff paid a sum of Rs. 2,95,000/- - however, the defendant did not arrange his share- since the vehicles could not be arranged, N.J.P.C., terminated the

contract vide letter dated 31.1.1997-plaintiff filed suit for recovery against the defendant-defendant contested the suit as being not maintainable having not been filed under the provisions of Indian Partnership Act- he also denied the payments and the acknowledgment-suit was dismissed- in first appeal, held that the partnership firm was not registered-although the payments of Rs. 2,95,000/- made by the plaintiff to the defendant are duly proved but since the partnership was not registered, therefore, the suit is not maintainable-learned trial court had rightly come to the conclusion that the suit was not maintainable in view of Section 69(2) of the Indian Partnership Act, 1932- appeal dismissed.
Title: Satish Sharma Vs. Hem Chand Sharma & anr. Page- 59

Indian Penal Code, 1860- Section 148, 149, 307 and 427- Complainant party was standing near the Bus stand Shimla when 6-7 boys came and attacked them with swords – two persons were identified at the spot- complainant party suffered multiple injuries-accused were acquitted by the trial Court- testimonies of the prosecution witnesses are contradictory to each other- incident had taken place during the night – no test identification parade was conducted by the police- recovery of weapons was also not proved satisfactorily and the weapons were not connected to the accused- held, that in these circumstances, acquittal recorded by the trial Court does not suffer from any infirmity-appeal dismissed.
Title: State of H.P. Vs. Vikram Singh & Others Page-70

Indian Penal Code, 1860- Section 302, 201 and 34- Accused and deceased were sitting outside the Hanuman Shamshan Ghat- after sometimes the deceased went inside the Sarai-accused went to the place where the deceased was sitting- complainant heard the cries of the deceased but did not visit the place due to fear- when he saw in the morning, deceased was lying in a pool of blood- accused were convicted by the trial Court- testimonies of PW-1 and PW-2 show that place was not visible from the room of the complainant- the fact that complainant had not come out of his room on hearing cries is unusual on his part- it was admitted that many houses were located in the vicinity- however, no person had visited the spot on hearing cries- recoveries were also not proved- prosecution also relied upon the finger print analysis, however, there is no evidence that chance finger prints were properly lifted for the same- it was admitted that dead body was lying in the open space and anybody could approach the place- there is sufficient material on record that lot of people arrived on the scene before the police and the possibility of case property being touched by the other person cannot be over ruled – the motive was not proved- held, that in these circumstances, prosecution version is not proved beyond reasonable doubt- accused acquitted.
Title: Divesh Vaidya alias Mukhia Vs. State of H.P. (D.B.) Page-87

Indian Penal Code, 1860- Section 302, 201 read with Section 34- **Indian Arms Act, 1959-** Sections 25 and 27- Daughter of the complainant was married to the accused- she complained that she was being harassed by the accused who also threatened to kill her - the complainant advised his son-in-law to treat his wife properly- complainant heard the noise near the house of the daughter – he went to the spot and found that accused had killed his wife and had run away from the spot- accused was convicted by the trial Court- complainant categorically stated that there was no person in the house except the accused and his wife-his statement was corroborated by other witnesses- a gun was produced by the accused-cause of death was gunshot – the plea that deceased died due to the accident cannot be believed- accused had also run away from the spot which falsifies his version regarding accidental fire - accused was rightly convicted by trial court-appeal dismissed.
Title: Muzaffar Khan alias Jafari Vs. State of Himachal Pradesh (D.B.) Page-340

Indian Penal Code, 1860- Section 307 read with Section 149- complainant and accused had purchased the land from 'P'- complainant and the accused got separated in the year 1981 and the joint land was divided in a family partition- accused demanded upper portion of the land during the partition in June, 2010- a dispute arose between the parties - complainant found that two khair trees were cut from the land in his possession- he questioned the labour of the contractor and asked them not to convert the trees into logs- accused formed an unlawful assembly- accused 'B' was armed with a gun- accused started assaulting the complainant and accused B fired a gun at the complainant- accused 'D' assaulted the complainant with an axe on the right arm- complainant was taken to Hospital- accused were convicted by the trial Court – aggrieved from the acquittal, accused preferred an appeal- Medical Officer found gunshot injuries on the person of the complainant- injuries could be caused with blunt and sharp edged weapon like axe and darat- testimony of the injured was corroborated by other eye witnesses- testimonies of the prosecution witnesses were consistent –recovery of weapon was also proved- however, the complainant had not informed the police regarding the infliction of the injuries by accused 'I' and 'K' and the same will amount to improvement- however, they were present at the spot and were close relatives of the accused- hence, an inference can be drawn that they were sharing common object of the unlawful assembly- trial Court had rightly appreciated the evidence- appeal dismissed.

Title: Brij Lal & others Vs. State of Himachal Pradesh Page-170

Indian Penal Code, 1860- Section 363 and 366-A- Prosecutrix, a student of 10+1 class was returning from a local fair with another girl L- a Baloro camper stopped near the prosecutrix- two accused pushed the prosecutrix inside the same and the vehicle was driven away-the prosecutrix kept on raising hue and cry- official Vehicle of Local S.D.M was seen by the accused and the Bolero was turned in another direction- the S.D.M noticing that a girl was raising hue and cry in the vehicle, chased the Bolero - Bolero was stopped after some distance- the accused fled away from the spot-the girl was handed over to her guardian and the police was informed- the accused were convicted by trial court - in appeal held that girl L has deposed that the prosecutrix had boarded the jeep at her sweet will and she could not board the same due to rush- another witness being the occupant of the jeep also deposed that two girls gave signal to take lift in the Bolero - one girl boarded the Bolero and the other did not board as the jeep was full-in view of these facts the guilt of the accused not established- appeal allowed.

Title: Jai Krishan and others Vs. State of H.P. Page-48

Indian Penal Code, 1860- Section 376 and 506- Accused 'R' raped and criminally intimidated minor prosecutrix- she became pregnant- accused 'R' and 'S' administered a medicine to abort foetus being carried by her- they were convicted by the trial Court- there is no evidence that date of birth was got recorded by the parents of the prosecutrix- there are contradictions in the testimony of prosecutrix- she admitted in her cross-examination that she had disclosed the name of some other person at the time of recording of FIR- held, that in these circumstances, trial Court had wrongly convicted the accused- appeal accepted.

Title: Ravinder Singh Vs. State of H.P. (D.B.) Page-160

Indian Penal Code, 1860- Section 420 read with section 120-B- Accused 'B' obtained loan of Rs. 25 lacs from SBI Patiala - branch was taken over by Dena Bank- Dena bank also disbursed a loan of Rs.1 crore 25 lacs to the accused 'B'- legal opinion was sought from the petitioner/accused - accused 'B' handed over a jamabandi showing that his property was mortgaged with Dena Bank- petitioner gave his opinion which was found to be false- an FIR

was lodged against the petitioner and others for the commission of offences punishable under Sections 420, 467, 468, 471 read with Section 120-B IPC - trial Court framed charges for the commission of offence punishable under Section 420/120-B IPC against the petitioner- Order challenged by way of revision- held, that no wrongful loss or gain was caused by the accused to the bank as the loan stood already disbursed- there is no material on record which can suggest that petitioner had colluded or entered into conspiracy with accused B or with the Patwari for preparation of fictitious jamabandi on the basis of which opinion was given- no ground to frame charges for the commission of offences punishable under Section 420 read with Section 120 I.P.C - charges quashed and set aside - petitioner discharged.

Title: Des Gautam Vs. State of H.P. & another Page-240

Indian Penal Code, 1860- Section 420 read with section 120-B- Accused 'B' obtained loan of Rs. 25 lacs from SBI Patiala - branch was taken over by Dena Bank- Dena bank also disbursed a loan of Rs. 1 crore 25 lacs to the accused 'B'- legal opinion was sought from the petitioner - accused 'B' handed over a jamabandi showing that his property was mortgaged with Dena Bank- petitioner gave his opinion, which was found to be false- an FIR was lodged against the petitioner and others for the commission of offences punishable under Sections 420, 467, 468, 471 read with Section 120-B IPC - trial Court framed charges for the commission of offence punishable under Section 420/120-B IPC against the petitioner- Order challenged by way of revision- held, that no wrongful loss or gain was caused by the accused to the bank as the loan stood already disbursed- further held, that there is no material on record which can suggest that petitioner had colluded or entered into conspiracy with accused B or with the Patwari for preparation of fictitious jamabandi on the basis of which opinion was given- no ground to frame charges under Section 420 read with Section 120 I.P.C - charges quashed and set aside - petitioner discharged.

Title: Des Gautam Vs. State of H.P. & another Page-242

Industrial Disputes Act, 1947- Section 25- Petitioner was engaged on daily wage basis- his services were terminated in violation of mandatory provisions of Industrial Disputes Act- petitioner submitted demand notice for reconciliation of matter but conciliation failed- Labour Court dismissed the reference- respondent pleaded that petitioner was appointed as Driver on casual basis till the joining of new driver- petitioner was not ready to serve on daily wages and thereafter H was engaged- services of the petitioner were terminated in the year 2006- hence, no work was available for the driver - appointment of petitioner was stop gap arrangement- petitioner had not impleaded H and no order can be passed against him- petitioner was appointed as driver on daily wages for 89 days only or till the joining of the new driver- petitioner never completed 240 days in a calendar year- appointment on public post is always made through selection process and through recommendation of selection committee in accordance with law- there is no evidence on record that petitioner was appointed by proper advertisement, by adopting the proper selection process - regularization by way of back door entry is not permissible- Labour Court had rightly appreciated the evidence – petition dismissed.

Title: Surender Kumar son of Girdhari Lal Vs. State of HP and others Page-525

Industrial Disputes Act, 1947- Section 25- Petitioners were engaged as workers- they were superannuated at the age of 57 years without complying with the certified and model standing orders- an industrial dispute was raised – conciliation was attempted but could not be effected- Labour Commissioner did not refer the matter to Labour Court- hence, a writ petition was filed- respondent pleaded that age of superannuation was enhanced to 60 years

from 55 years - an appeal was filed before the Labour Court which was accepted and it was held that raising the age of the retirement ignoring the existing settlement between the parties is illegal- a writ petition was filed in which interim order was passed that company will not retire a person on the basis of new certified standing orders- held, that in view of interim order passed by Hon'ble High Court, the Labour Commissioner had rightly declined to make the reference to the Labour Court- petition dismissed.

Title: Joginder Singh son of Diwan Singh and others Vs. State of HP and another

Page-444

Industrial Disputes Act, 1947- Section 25- Services of the workmen were terminated - disputes were raised under the Industrial Disputes Act- matter was referred to Competent Authority who allowed the Reference Petition- held, that awards passed by the Labour Court are based on facts and the evidence led by the parties- Writ Court cannot sit as an Appellate Court and set aside the award made by the Labour Court- writ petition dismissed.

Title: The State of H.P. and another Vs. Shankar Lal (D.B.) Page-225

'L'

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for construction of Sayri-Danwati road- market value of the acquired land was assessed as Rs. 5,14,384/- per bigha for Bangar Awal and Rs. 74,669/- per bigha for Bangar Kadeem - claimant sought a land reference and the Reference Court awarded compensation of Rs. 17,05,000/- per bigha for 7 biswas of Bangar-1 and Rs. 82,500/- per bigha for 13 biswas of Ghasni land along with statutory benefits – aggrieved from the award, appeal and cross objections have been filed- Reference Court had relied upon the award and had applied the decrease of 15% while assessing the value of 7 biswas of land @ Rs. 17,05,000/- per bigha and 13 biswas of Ghasni land @ Rs. 82,500/- per bigha- land was acquired for same purpose – held, that when the land is acquired for one purpose, the market value of the acquired land irrespective of classification/category is required to be assessed - a flat and uniform rate is to be awarded for all categories of land as classification completely loses significance in such a case- Reference Court should have awarded flat and uniform rate of Rs. 17,05,000/- per bigha- cross-objections allowed and uniform rate of Rs. 17,05,000/- per bigha awarded.

Title: The Land Acquisition Collector & ors. Vs. Kanwar Singh Page-425

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for the construction of Kol Dam- compensation at the flat rate of Rs. 3,25,528.37/- per bigha was awarded by the Land Acquisition Collector- the claimant sought reference and Reference Court enhanced the compensation to Rs. 5 lacs per bigha with statutory benefits- it was admitted case of the parties that no sale transaction had taken place in Mohal Ropa at the time of publication of Notification- ACC Cement plant is at a distance of of 2 ½ -3 km. from the acquired land and Power House Dehar is situated at a distance of 2.5-3 kms from the acquired land- Villagers had sold their land by way of private negotiation in favour of HP PWD for consideration of Rs. 4,62,000/- per bigha- in adjacent Mohal, the compensation was awarded @ Rs. 4,35,447.26 /- per bigha- held, that in these circumstances, the compensation was correctly assessed by the Reference Court- appeal dismissed.

Title: NTPC Ltd. Vs. Kirpa and others Page-280

Land Acquisition Act, 1894- Section 18- Land of the respondents was acquired for the construction of Housing Board Colony- Land Acquisition Collector assessed the

compensation – respondent sought reference - reference Court assessed the market value of the land as Rs.18,000/- per biswa – in appeal held, that Court had rightly taken the sale deeds and the awards passed by the Court qua the adjoining land into account and had rightly ignored the sale deeds produced by the appellants as those pertained to the land located at a distance of 3-4 k.m. from the acquired land- appeal dismissed.

Title: H.P. Housing and Urban Development Authority & anr. Vs. Dina Nath Vaidya (dead through LRs Sulochna Vaidya & ors) & ors. Page-53

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

Title: HPPWD through Land Acquisition Collector HPPWD Winter Field Shimla and others Vs. Atma Ram son of Shri Thakur Dass & others Page-503

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

Title: HPPWD through Land Acquisition Collector HPPWD Winter Field Shimla and others Vs. Balbir Singh son of Sh. Bhim Singh & others Page-505

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

Title: HPPWD through Land Acquisition Collector HPPWD Winter Field Shimla and others Vs. Uma Dutt son of Shri Mata Ram & others Page-507

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Bakhalag Bapdoon Tal Behli road – compensation @ Rs.39,000/- per bigha regarding the cultivated land and Rs.6,000/- per bigha for non-cultivated land was awarded by Commissioner- a reference was sought- Reference Court enhanced the compensation @ Rs.31,000/- per bigha for cultivated land and Rs.64,000/- per bigha for non-cultivated land- interest and compensation were also awarded- aggrieved by the award, the present appeal has been preferred- separate appeals were preferred against the award made in favour of the some of the co-owners which were dismissed observing that amount involved is a petty amount-

therefore, the present appeal is liable to be dismissed on the principle of the equality- appeal dismissed.

Title: Land Acquisition Collector HP PWD and another Vs. Boru D/o Sh. Rama

Page-447

Land Acquisition Act, 1894- Section 18- Land was acquired for the construction of Parbati Hydro Electric Project – award was pronounced and a reference was sought to District Court who enhanced the compensation to Rs. 20,000/- per biswa (Rs.4 lacs per bigha) irrespective of classification - interest @ 12% per annum and 30% compulsory acquisition charges were also awarded- aggrieved from the award, appeals were preferred- held, that 17 reference petition were disposed of by one award- some of the appeals filed against this award were dismissed, therefore, the present appeal is to be dismissed on the principle of equality- appeal dismissed.

Title: Collector Land Acquisition National Hydro Electric Power Corporation Parbati Hydro Electric Project Vs. Tej Ram son of Dot Ram & others Page-443

'M'

Motor Vehicles Act, 1988- Section 14 and 149- Tribunal held that driver of the motor vehicle did not have a valid and effective driving licence at the time of accident as licence had expired on 20.3.2005- accident had taken place on 17.4.2005- held, that licence remains effective for a period of 30 days from the date of expiry- the accident had taken place within a period of 30 days- therefore, findings recorded by the Tribunal that the driver did not have a valid driving licence set aside.

Title: Neena Shukla and another Vs. Amar Singh and others Page-367

Motor Vehicles Act, 1988- Section 149- Deceased was employee of contractor -he had hired the vehicle for carriage of plastic tanks and other articles- vehicle met with an accident in which the deceased suffered injuries and succumbed to them - legal representatives of the owner stated that contractor had not hired the vehicle and the deceased was their employee- Insurer directed to pay Rs. 50,000/- under no fault liability- legal representatives directed to pay Rs. 37,000/-.

Title: Satya Devi and others Vs. Sher Singh and another Page-169

Motor Vehicles Act, 1988- Section 149- Driver of the offending vehicle filed a claim petition which was dismissed on the ground that driver was driving the vehicle rashly and negligently- in appeal held, that as per settled law of the land rashness and negligence is sine qua non to maintain a claim petition under Section 166 of the Motor Vehicles Act- Tribunal has rightly held that driver Narinder Singh could not have maintained the claim petition under Section 166 of M.V. Act on the ground of rash and negligent driving- appeal dismissed.

Title: Narinder Singh Vs. Deepak Sharma & another Page-349

Motor Vehicles Act, 1988- Section 149- Driver possessed a driving licence to drive light motor vehicle – the offending vehicle is Mahindra Pick-up, which is a light motor vehicle- Tribunal had rightly held that driver of the vehicle had a valid and effective driving licence to drive the same- it was for the insurer to plead and prove that owner had committed willful breach of the terms and conditions of the policy which it had failed to do so- owner is not

supposed to go beyond verification to the ascertain that driver was having a valid driving licence and to test the competence of the driver- appeal dismissed.

Title: New India Assurance Company Limited Vs. Sushma Rani and others Page-133

Motor Vehicles Act, 1988- Section 149- Driver possessed a driving licence to drive the light motor vehicle and medium goods vehicle- registration certificate of the vehicle shows that unladen weight and gross weight of the vehicle was 4440 kg. and 6700 kg., respectively- thus, vehicle falls within the definition of 'Light Motor Vehicle'- held, that driver had valid and effective driving licence to drive the vehicle on the date of accident.

Title: National Insurance Co. Ltd. Vs. Sube Singh and others Page-132

Motor Vehicles Act, 1988- Section 149- Insurer contended that driver of the vehicle was not having requisite endorsement of PSV in the driving licence and the insurer was not liable to indemnify the insured- held, that driver having a driving licence to drive 'Light Motor Vehicle' requires no PSV endorsement- appeal dismissed.

Title: Oriental Insurance Co. Ltd. Vs. Man Kumari and others Page-136

Motor Vehicles Act, 1988- Section 149- Insurer contended that driver did not possess a valid and effective driving licence to drive heavy transport vehicle- record shows that driver did not possess effective driving licence to drive HTV- owner was under an obligation to engage the driver who possessed effective driving licence- he had committed willful breach of the terms and conditions of the policy- insurer directed to pay amount in the first instance and thereafter to recover the same from the owner.

Title: Oriental Insurance Company Ltd. Vs. Suman Bala & others Page-140

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver of the vehicle was not having valid and effective driving licence- vehicle was being plied in contravention of the terms and conditions of the insurance policy- however, no evidence was led by Insurer to prove this fact- hence, Insurance Company was rightly made liable to pay compensation.

Title: The New India Assurance Company Vs. Pratap Singh and others Page-513

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver did not have a valid driving licence- insurer had not led any evidence to prove that the driver did not have a valid and effective driving licence to drive the vehicle and that the owner had committed willful breach or had not exercised due care and caution- appeal dismissed.

Title: United India Insurance Company Vs. Rakesh Kumar and others Page-529

Motor Vehicles Act, 1988- Section 149- Tribunal had awarded compensation of Rs.4.38 lacs, along with interest at the rate of 9% per annum from the date of filing of the claim petition till deposit- Tribunal had saddled the insurer with the right of recovery- once the Tribunal had recorded the findings the deceased was traveling in the vehicle as gratuitous passenger, the Insurer was rightly saddled with liability with the right of recovery- appeal dismissed.

Title: United India Insurance Co.Ltd. Vs. Sabra Bibi and others Page-528

Motor Vehicles Act, 1988- Section 149- Tribunal held that driver did not possess a valid driving licence to drive heavy transport vehicle- driving licences were issued in favour of the

driver by the competent Authority and the driver was competent to drive HTV- the burden was upon the insurer to prove the breach of the terms and conditions of the insurance policy- no evidence was led to prove the same- held, that Tribunal had fallen in error in absolving the Insurance Company of the liability- appeal accepted.

Title: Ram Lal & another Vs. Sameer & another Page-141

Motor Vehicles Act, 1988- Section 149- Witnesses from Regional Transport Authority, Bilaspur clearly stated that the driving licence was never issued from their office- certificate and copy of driving licence also show that driver did not possess a valid licence on the date of accident- held, that Tribunal had rightly saddled the insurer with liability with right to recovery.

Title: Jagtar Singh and another Vs. Sneh Lata and others Page-115

Motor Vehicles Act, 1988- Section 166- A tractor met with an accident and deceased travelling on the same expired due to the injuries sustained by him- claimants filed claim petition –MACT saddled the owner and driver with liability- claimants had claimed that deceased was working as a labourer at the time of accident, whereas, the owner and driver claimed in reply that deceased had boarded the tractor on his own without the consent of the driver- held, that the insurance policy of the tractor showed that tractor could be used only for agricultural purposes – driver and owner had failed to prove the plea taken by them- Tribunal had rightly held that deceased was travelling as a gratuitous passenger and the owner had committed willful breach – further, the plea that the owner had died during the proceedings and the award was passed against a dead person, which was a nullity, is liable to fail as summary procedure is adopted while deciding a claim petition - all the provisions of C.P.C are not applicable- since, owner had already taken the plea that deceased boarded the tractor on his own, his legal representatives have to follow the same defence- the award saddling the owner with the liability is proper- hence, appeal dismissed.

Title: Baldev Singh and others Vs. Bhagwati Devi and others Page-328

Motor Vehicles Act, 1988- Section 166- Award challenged by insurer on the ground that the tribunal had wrongly decided the issue regarding the deceased travelling in the vehicle as gratuitous passenger - held that, the owner and driver have categorically admitted in their replies that the deceased was travelling in the offending vehicle as owner of the goods- PW-6 had also categorically deposed that the deceased was travelling in the vehicle as owner of the goods and not as a gratuitous passenger- evidence has not been rebutted by the appellant/insurer- the Tribunal has rightly held that the deceased was travelling in the offending vehicle as owner of the goods- appeal dismissed.

Title: Oriental Insurance Company Limited Vs. Kaku alias Karam Singh & others Page-388

Motor Vehicles Act, 1988- Section 166- Car of the deceased was hit by the truck- the age of the deceased was 44 years at the time of accident- Tribunal had applied multiplier of '12', whereas, multiplier of '14' is applicable keeping in view the age of the deceased- deceased was engineer and Class-A contractor- his widow will not be able to manage the business in the same manner as the deceased was doing- the net income of the deceased was reflected in the Income Tax Return and on the basis of the same, Tribunal had rightly held that deceased was earning not less than Rs.15.00 lacs per annum- after deducting 1/3rd amount towards his personal expenses, the annual loss of dependency will be Rs.10.00 lacs- thus, claimants are entitled to Rs.10.00 lacs x 14 = Rs.1.40 crore- in addition to this, the

claimants are also entitled to Rs.10,000/- each, under the heads 'loss of love and affection', 'loss of estate', 'loss of consortium' and 'funeral expenses.

Title: Rama Sood and others Vs. Chavan Singh and others Page-145

Motor Vehicles Act, 1988- Section 166- Claimant had sustained grievous injuries- she had lost her tooth and suffered fracture in the jaw- Tribunal had awarded compensation of Rs.50,000/- which was too meager- claimant had not questioned the award, hence, same was reluctantly upheld- appeal dismissed.

Title: Hans Raj Thakur and another Vs. Leela Wati and another Page-502

Motor Vehicles Act, 1988- Section 166- Claimant had sustained permanent disability to the extent of 75%- injury has shattered his physical frame, his future, has taken away his amenities of life and has deprived him of his charmful life- wife of the claimant proved that injured had lost his power of speech and hearing- thus, he has become a burden on his family- injured was running a kariana shop – his income can be taken as not less than Rs. 5,000/-, even if, he was a labourer- he was aged 27 years and multiplier of '16' is applicable- hence, he is entitled to Rs. 9,60,000/- (5,000/- x 12 x 16) as compensation under the head 'loss of income'- he is entitled to Rs. 1 lac under the head 'future treatment- he had spent Rs. 1,79,089/- for his treatment- he is entitled to Rs. 2,00,000/- under the head 'medical expenses'- he remained bedridden for 7-8 months- he is entitled to Rs.1 lac under the head 'attendant/guide charges'- he was taken to Poanta Sahib, Dehradun and Chandigarh and is entitled to Rs. 30,000/- under the head 'transportation charges'- he is also entitled to Rs.1 lac under the head 'pain and suffering undergone' and Rs.1 lac under the head 'future pain and suffering'- hence, compensation of Rs. 16,69,100/- awarded as compensation.

Title: Oriental Insurance Company Limited Vs. Aman Mittal and others Page-377

Motor Vehicles Act, 1988- Section 166- Claimant had sustained permanent disability to the extent of 75%- keeping in view, all the factors and decision made by the Tribunal amount of Rs.2 lacs awarded in favour of the claimant along with interest @ 7.5% per annum from the date of the award.

Title: Ankit Vs. Sanjeev Kumar and others Page-497

Motor Vehicles Act, 1988- Section 166- Claimant pleaded that he was taken to primary health Centre, Dhami and was under treatment at IGMC, Shimla- he had not examined any person from PHC, Dhami nor had he placed any document on record to prove that he had sustained injuries on the date of the accident- held, that in these circumstances, Tribunal had rightly dismissed the claim petition- appeal dismissed.

Title: Hoshiyar Singh Vs. Parmeshwari Devi & others Page-113

Motor Vehicles Act, 1988- Section 166- Claimant pleaded that his truck was parked on the left side of the road- a Tata Mobile was parked in front of the truck- Tata Mobile suddenly started moving backward and hit the truck due to which truck fell into the gorge- compensation was sought from the owner of the Tata Mobile- Claimant had taken Rs. 2,02,000 from the insurance company- an amount of Rs. 60,000./- was received as salvage- he claimed that market value of the vehicle was Rs. 3,50,000/- and the claim was restricted to Rs. 2,02,000/- wrongly- held, that difference of the amount can be claimed from the owner/insurer of the offending vehicle, where the full and final payment has not

been received - Tribunal had rightly directed the Insurer to pay the difference of the amount- appeal dismissed.

Title: National Insurance Co. Ltd. Vs. Jhenta Ram and others Page-124

Motor Vehicles Act, 1988- Section 166- Claimant questioned the award on the grounds that Tribunal has wrongly saddled the owner with liability, and secondly, amount of compensation is meager – held that since owner has not questioned the award, claimant has no locus standi to challenge the liability saddled on owner -appeal dismissed.

Title: Jeet Ram Vs. Kanta Devi & another Page-335

Motor Vehicles Act, 1988- Section 166- Claimants challenged the award on the ground of adequacy of compensation - held that deceased was 22 years at the time of accident and was a bachelor- by guess work even if deceased is treated as a labourer, he can be safely presumed to be earning not less than Rs. 4,000/- per month - 50 % was to be deducted towards his personal expenses and multiplier of 15 was applicable- the claimants are entitled to compensation of Rs. 2000 x 12 x 15 = 3,60,000 along with interest - appeal allowed and award modified.

Title: Jamila Begum and others Vs. Amar Jeet Singh and others Page-333

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that accident had taken place due to the negligence of the respondent No.1- respondents No.1 to 5 stated that accident was the result of rash and negligent driving of the deceased who was driving the motorcycle and could not control the same- claimants examined the witnesses to prove this fact- however, no evidence was led by the respondent to prove the contrary- held, that it was prima facie proved that Tractor was being driven rashly and negligently by respondent No.1- the income of the deceased can be taken as Rs.4,000/- per month by guess work - after deducting 1/3rd amount towards personal expenses, claimants have lost source of dependency to the extent of Rs.2,500/- per month- multiplier of '16' applicable- thus, claimants are entitled to Rs. 4,80,000 (2500/- x 12 x 16) under the head loss of dependency – amount of Rs.10,000/- each awarded under the heads 'loss of love and affection', 'loss of consortium', 'loss of estate' and 'funeral expenses' along with interest @ 7.5% per annum from the date of the filing of the petition.

Title: Sitara Begum Vs. Mohd Nawab & others Page-522

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that monthly income of the deceased was Rs.3,000/- per month- deceased was bachelor and his age was 22 years at the time of accident- held, that Tribunal had fallen in error in deducting 1/3rd of the amount towards personal expenses of the deceased- 50% of the amount was to be deducted towards personal expenses- thus, claimants had lost source of dependency to the extent of Rs.1,500/- per month, applying multiplier of '16' – Claimants are entitled to Rs. 2,88,000/- (1500/- x 12 x 16) under the head loss of dependency- amount of Rs.10,000/- each awarded under the head loss of 'love and affection', 'loss of estate' and 'funeral expenses'- thus, total amount of Rs. 3,18,000/- awarded with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

Title: Laxmi Devi & others Vs. Brij Raj & others Page-509

Motor Vehicles Act, 1988- Section 166- Compensation of Rs. 5,71,000/ awarded in favour of the claimants- amount has been deposited by the appellant which has been paid to the claimants- award upheld and the appeal dismissed as settled.

Title: Rachh Pal Vs. Sudesh Garg and others Page-521

Motor Vehicles Act, 1988- Section 166- Deceased was a JBT and was earning Rs.15,000/- per month- - 1/5th of the income was to be deducted and the loss of dependency will be Rs. 11,700/-, say Rs. 12,000/-- deceased was aged 38 years and multiplier of '15' will be applicable - thus, claimants will be entitled to Rs. 12,000x15x12= Rs. 21,60,000/- under the head 'loss of source of dependency' – they will be also entitled Rs.10,000/- under the head loss of 'love and affection' , 'loss of estate' , 'loss of consortium' and 'funeral expenses' - thus, claimants are entitled to Rs. 21,60,000 + Rs. 40,000/- = Rs. 22,00,000/-, along with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

Title: Ratna Devi Vs. Rajwanti Devi & others Page-390

Motor Vehicles Act, 1988- Section 166- Deceased was alighting from the bus- driver started the bus without getting a signal from the conductor- held, that driver was supposed to wait for the signal of the conductor before starting the bus- finding recorded by the Tribunal that vehicle was in the state of slow pace and there was no negligence of the driver and conductor is not acceptable - claimant is not supposed to prove his case beyond reasonable doubt but has to prove a prima facie case- respondent No.3 had also stated that deceased had jumped out of the window of the moving bus- hence, finding recorded by the Tribunal cannot be accepted- deceased was 55 years of the age at the time of accident- she was managing household and her husband - she was looking after the children- her family contribution was not less than Rs. 5,000/- per month- 1/3rd of the amount has to be deducted - the claimant has lost source of dependency of Rs. 4,000/- per month- considering the age of the deceased, multiplier of '9' is applicable- thus, compensation of Rs. 4,32,000/- (Rs. 4000 x 12 x 9) is payable towards the loss of dependency- compensation of Rs. 10,000/- awarded each under the heads 'Loss of consortium', 'Funeral expenses', loss of 'love and affection' and 'loss of estate' – thus, total compensation of Rs. 4,72,000/- awarded along with interest @ 7.5% per annum from the date of the filing of the claim petition.

Title: Krishanu Ram Vs. Bhagirath and others Page-119

Motor Vehicles Act, 1988- Section 166- Injured was travelling in the vehicle, which met with an accident- she suffered injuries to the extent of 30%- she was a student of 10+2 at the time of accident and was working with All India Radio- she was earning Rs.8,000/- per month from all sources- permanent disability had affected her lower limbs- she is not in a position to do any work including domestic work- it would be difficult to her to get a suitable match in view of disability sustained by her – her income can be taken as Rs.4,500/- per month by guess work- she was bedridden for three months and was further advised bed rest- hence, she is entitled for Rs.4,500 x 10= Rs.45,000/- as loss of income for 10 months- she has suffered 30% injuries which has affected her earning capacity to the extent of Rs.1500/- per month- she was 23 years of age at the time of accident and multiplier of 15 will be applicable- thus, she is entitled to Rs. 2,70,000/- (1500 x 15 x 12) under the head loss of income- she is also entitled to Rs.1 lac under the head loss of marriage prospects, Rs. 50,000/- under the head 'pain and suffering', Rs. 1 lac under the head 'future pain and suffering', Rs. 1 lac under the head 'loss of amenities of life' and Rs. 75,000/- under the head 'medical treatment past and future' – she must have taken services of attendant when she was bedridden- she is entitled to Rs. 50,000/- under the head of 'attendant charges- she has to visit hospital for follow up and is entitled to Rs. 20,000/- under the head 'travel

expenses'- thus, she is entitled to Rs. 45,000 + 2,70,000/- + 1 lac + 50,000 + 1 lac + 1 lac + 75,000 + 50,000 + 20,000= Rs. 8,10,000/-.
Title: Surekha Devi Vs. Mangal Singh and another Page-409

Motor Vehicles Act, 1988- Section 166- Insured/ owner and the driver of offending vehicle have challenged the award on the ground that right of recovery has wrongly been granted to the insurer-held that the unladen weight of offending vehicle was 2800 k.g. and it fell within the definition of light motor vehicle- the offending driver possessed the license to drive light motor vehicle- hence, he possessed valid and effective license- insurer had not pleaded and proved that owner of the offending vehicle had committed willful breach of the terms and conditions of the insurance policy- in these circumstances, tribunal had wrongly granted the right to recovery to the insurer – appeal allowed.
Title: Safdar Ali & another Vs. Raj Kumar & others Page-401

Motor Vehicles Act, 1988- Section 166- Insurer challenged the award on the grounds that Tribunal had wrongly directed it to satisfy the award and then to recover the amount from the owner/insured-held that the aim and object of granting compensation, is social one and compensation has to be granted as early as possible - rights of third party cannot be defeated even if the owner/insured has committed willful breach-appeal dismissed.
Title: National Insurance Company Vs. Kamla & others Page-365

Motor Vehicles Act, 1988- Section 166- Insurer challenged the award on the ground that it has been wrongly saddled with the liability by the Tribunal – held that unladen weight of the vehicle involved in the accident is 1700 k.g. and it falls within the definition of light Motor Vehicle –offending driver had valid and effective license to drive the light motor vehicle and the Tribunal has rightly saddled the appellant/insurer with the liability- appeal dismissed.
Title: The New India Assurance Company Limited Vs. Ramesh Chand and others
Page-372

Motor Vehicles Act, 1988- Section 166- Insurer challenged the award on the ground of adequacy of compensation – held that claimant–injured has not challenged the award on the ground of adequacy of compensation, therefore, this ground is not available to the appellant/insurer- appeal dismissed.
Title: National Insurance Company Limited Vs. Atul Bhatia and others Page-350

Motor Vehicles Act, 1988- Section 166- Insurer of Motorcycle challenged the award on the ground that Tribunal has wrongly saddled it with liability – held that deceased had died due to contributory negligence- no material was brought on the record by the appellant to show that the owner-insured has committed willful breach of the terms and conditions of the insurance policy –the Tribunal has fallen in error while awarding interest @ 9% whereas, interest @ 7.5% should have been granted – award partly modified.
Title: National Insurance Company Limited Vs. Kiran Bala and others Page-351

Motor Vehicles Act, 1988- Section 166- Insurer pleaded that Insurance was not subsisting at the time of the accident- deceased was a daily-wager and his minimum wages were taken as Rs.3300/- per month which should not have been less than Rs. 4500/- per month, in view of latest judgment of the Supreme Court- hence, award cannot be said to be excessive but is meager.
Title: The New India Assurance Co. Ltd. Vs. Simro Devi and others Page-511

Motor Vehicles Act, 1988- Section 166- Monthly income of the deceased was Rs. 3300/- per month – Tribunal had deducted 1/3rd towards personal expenses, whereas 1/4th was to be deducted - claimants had lost the source of dependency to the extent of Rs. 2500/- per month- deceased was aged 27 years and multiplier of '16' was applicable- thus, claimants had lost source of dependency to the extent of Rs. 4,80,000/- (Rs.2500x12x16)- the claimants were also held entitled for Rs. 10,000/- each under the heads loss of 'love and affection', 'loss of estate' , 'funeral expenses' and 'loss of consortium' - thus, claimants are entitled to total compensation of Rs.5,20,000/- - further held, that Appellate Court can enhance the compensation, even in absence of cross-objections.

Title: National Insurance Co. Ltd. Vs. Sharda Devi and others Page- 354

Motor Vehicles Act, 1988- Section 166- Tribunal had recorded the findings that injured remained under treatment for about two years and also remained admitted in different hospitals- petitioner had undergone pain and suffering- compensation has to be awarded commensurate with the pain and sufferings- amount of Rs. 2 lacs awarded under the head 'pain and sufferings' and Rs.1 lac awarded under the head 'future pain and suffering'- claimant had sustained 30% disability in relation to the lower limb and 7.5% qua whole body- claimant is held entitled to Rs.1,000 x 12 x 15 = Rs.1.80 lacs under the head 'future loss of earning'- amount of Rs.50,000/- awarded under the head 'conveyance and other charges', Rs.36,000/- under the head 'attendant charges' and Rs.1,35,000/- under the head 'expenditure on medication'.

Title: Puran Singh Vs. Keshav Rachiyata and others Page-515

Motor Vehicles Act, 1988- Section 166- Tribunal had taken the income of the deceased as Rs.3,000/- p.m. by guess work - his monthly income can be taken as Rs.4,000/- p.m.- 1/3rd amount was deducted towards personal expenses – deceased was bachelor- ½ of the amount was to be deducted towards personal expenses- thus, loss of dependency will be Rs.2,000/- per month- deceased was aged 18 years at the time of accident- multiplier of '14' will be applicable- claimants will be entitled to Rs.2000 x 14 x 12= Rs.3,36,000/-, under the head 'loss of dependency', in addition to this a sum of Rs.10,000/- each awarded under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses'- thus, total compensation of Rs. 3,66,000/- was awarded along with interest @ 7.5 % per annum from the date of the filing of the claim petition.

Title: Rikhi Ram & others Vs. Yogesh Kumar & others Page-167

Motor Vehicles Act, 1988- Section 167- Claimants filed a claim petition on the ground of death of 'S' who was employed as driver by respondent No. 2 with his JCB- death was caused while driving the JCB- it was contended that petition is not maintainable- held, that driver was in the employment of the contractor and had died while using the motor vehicle- legal representatives can file a claim petition to get the enhanced compensation- legal representatives had two remedies- one under Workmen Compensation Act and second under Motor Vehicles Act- they had chosen to knock the door of the Tribunal and the claim petition was maintainable.

Title: National Insurance Co. Ltd. Vs. Sharda Devi and others Page-354

Motor Vehicles Act, 1988- Section 168(1) - Tribunal held that since the claimant had claimed compensation to the extent of Rs.15 lacs- therefore, they were entitled to compensation of Rs.15 lacs, although, after making the assessment, Tribunal had arrived at an amount of Rs.31,93,600/- as total compensation- held, that Tribunal is bound to award

just compensation and is entitled to award more compensation than claimed by the claimants.

Title: Ratna Devi Vs. Rajwanti Devi & others Page-390

Motor Vehicles Act, 1988- Section 228- Deceased had died in an accident involving JCB- it was contended that JCB is not a motor vehicle- held, that JCB is a motor vehicle with a long arm for digging earth and will fall within the definition of motor vehicle under Section 2(28) of the Act.

Title: National Insurance Co. Ltd. Vs. Sharda Devi and others Page- 354

Motor Vehicles Act,1988- Section 166- Insurer challenged the award on the grounds that driver was possessing fake license at the time of accident, and secondly, Tribunal had wrongly awarded Rs. 50,000/- twice under the head 'consortium'- held that, the award shows that Tribunal has fallen in an error in awarding compensation of Rs. 50,000/- twice under the head 'consortium' – further held that, the appellant had not pleaded and proved that owner of the offending vehicle had committed willful breach of terms and conditions of the insurance policy- award modified regarding grant of 'consortium'.

Title: The New India Assurance Company Limited Vs. Nirmala Devi & others Page-369

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N.D.P.S. Act, 1985- Section 15- Accused a truck driver was intercepted by the police in a nakka while transporting eight bags carrying 226 kg poppy straw concealed in the tool-box- trial court convicted the accused - held that, the road was busy and lot of traffic was plying on the road- however no independent witness was associated by the investigation officer-5-6 vehicles were also checked during the nakka and the I.O could have joined the occupants of the vehicle during the search and seizure- the accused was apprehended on 18.2.2014 at 12:40 AM and PW-13 is stated to have proceeded to arrange the scales- however, PW-12 stated that police official visited his shop when he was closing it around 8 O' clock on 17.02.14- there is no entry when the case property was taken out from the malkhana and produced in the Court- no DDR was recorded when the case property was produced before the trial Court- no entry was made when the case property was re-deposited in the malkhana after production in the trial Court - identity of the case property is also doubtful- accused acquitted.

Title: Sanjiv Kumar Vs. State of H.P. (D.B.) Page-227

N.D.P.S. Act, 1985- Section 15- Accused was driving a motor cycle without registration- he tried to run away on seeing the police- he was apprehended - plastic bag being carried by the accused was checked and was found to be containing 10 kg. 500 grams of poppy husk- he was acquitted by the trial Court- State preferred an appeal- it has come on record that Satsang Ghar was in a close vicinity of the spot- there were three villages at the distance of half kilometer from the spot- however, no independent witness was associated- seal was not produced before the Court – prosecution version was not supported by PW-13- held, that in these circumstances, prosecution version was not proved- accused was rightly acquitted by the trial Court.

Title: State of H.P. Vs. Balwinder Kumar alias Jagga (D.B.) Page-247

N.D.P.S. Act, 1985- Section 18 and 20- A secret information was received by police that contraband substances could be recovered from the dhaba being run at National Highway-

two witnesses were associated - appellants were found working in the Dhaba- search of dhaba was conducted - 500 grams charas, 3.500 kgs of Poppy straw, ten bottles of bearing mark Green Label each containing 750 ml of IMFL and 20 bottles of country liquor bearing mark *Suroor* were recovered from the dhaba - trial Court convicted the accused for the commission of offences punishable under Sections 18 and 20 of N.D.P.S. Act and 30 of Excise Act - in appeal held, that independent witnesses have categorically spoken about the search and recovery- there were no material contradictions in the testimonies of witnesses – non production of the original seal would not render the prosecution case doubtful- accused had failed to rebut the presumption under Section 35 of N.D.P.S. Act- guilt of the accused fully established- appeal dismissed.

Title: Naresh Kumar and others Vs. State of H.P. Page-275

N.D.P.S. Act, 1985- Section 18 and 20- Search of the vehicle of the accused was conducted during which one envelope was recovered which was containing 60 grams of opium and 500 grams of charas- accused were acquitted by the trial Court- prosecution case regarding the presence of PW-7 was not corroborated by rapat roznamcha- I.O. had not given name of the person who had written the document which shows that site and location where the document prepared was concealed by him- the fact that single vehicle was stopped shows that police had prior information- it was necessary to comply with the provision of Section 42- held, that in these circumstances, accused were rightly acquitted by the trial Court- application dismissed.

Title: State of H.P. Vs. Harsh Sharma & another Page-37

N.D.P.S. Act, 1985- Section 20 & 29- Accused S was suspected by a police constable to be carrying contraband - superior officer of police was informed- a raiding team was formed - personal search of the accused was conducted in presence of Independent witnesses - 1.900 kg charas was recovered from the accused which was tied around the waist of the accused with a cello tape- trial court acquitted all the accused- in appeal held that, independent witnesses had not supported the prosecution case -statements of the official witnesses were contradictory to each other on material particulars- co-accused also not connected to the offence as the independent witnesses had not supported the case- 'D' stated that the charas was in the shape of sticks and balls, while 'M' stated that the charas was in the shape of sticks only-PW5 was suspected by the prosecution still he was joined as a witness – no explanation was given for the same- trial court has rightly acquitted the accused persons- appeal dismissed.

Title: State of Himachal Pradesh Vs. Sukh Ram and others (D.B.) Page-249

N.D.P.S. Act, 1985- Section 20- Accused was apprehended by the police party with a bag carrying 4.400 kgs of Charas- he was acquitted by the trial court- in appeal held that, both the witnesses associated by the police have not supported the prosecution case- one of the witnesses is a stock witness having been associated in many other cases- no explanation on the record as to why he was chosen by the I.O - testimonies of the official witnesses are contradictory to each other and do not inspire confidence – R says that vehicle of witness K was used for transportation; whereas, witness K states that he does not have any vehicle nor he drives any vehicle - his driving licence was not taken in possession-police party not remembering the types of the vehicles checked before the interception of accused - entire operation was carried out in the night but there is no evidence on the record to show the use of the search light-no evidence that police team carried the scales – seal was not produced in Court nor it was mentioned in the report of the Laboratory that impression of the seal was

also deposited alongwith the sample- the trial court has rightly acquitted the accused- appeal dismissed.

Title: State of Himachal Pradesh Vs. Tek Chand (D.B.) Page-255

N.D.P.S. Act, 1985- Section 21- Accused tried to run away on seeing the police- police became suspicious and gave option to the accused to be searched before police or gazetted officer- accused consented to be searched before Gazetted Officer- Dy.SP was informed who arrived at the spot- I.O. associated two independent witnesses- accused was taken to police post where his search was conducted- accused had kept one plastic envelope in his socks- 4 smalls packets containing white coloured powder were recovered – powder was tested and was found to be cocaine- total 65 grams of cocaine was found in all the four packets- one 'P' was arrested as co-accused on the basis of telephonic conversation- accused was convicted by the trial Court – in appeal held, that there were contradictions in the testimonies of official witnesses and trial Court had wrongly relied upon such testimonies- appeal accepted- accused acquitted.

Title: Marvelous Osaza Vs. State of H.P. Page-270

'S'

Specific Relief Act, 1963- Section 20- One 'R' entered in to an agreement with the plaintiff to sell her share in the house, compound and the path – she had received earnest money as well-sale deed was to be executed within one year- R died in the meantime and was succeeded by the defendants No. 2 to 6-one T being the G.P.A of the defendants No. 2 to 6 sold the aforesaid property to defendant No. 1 in spite of being made aware of the agreement by the plaintiff- plaintiff sought specific performance of the agreement and possession of the land- the defendants denied the agreement - suit was partly decreed- appeal was dismissed- in second appeal, held that it is not in dispute that R owned the property- the plaintiff had duly proved the agreement - plaintiff has paid a sum of Rs. 5500/- as earnest money to R and had also served notices upon the defendants not to enter into agreement of the suit land- despite that the land was sold by General Power of Attorney of defendants No. 2 to 6 to defendant No.1- plaintiff was already ready and willing to perform his part of the agreement- the plea of the defendant No. 1 to the effect that he is a bonafide purchaser is not made out from the record as the plaintiff is proved to have apprised the defendant No. 1 in the presence of the witness that he had entered into an agreement to sell the suit property prior in time-appeal dismissed.

Title: Govind Ram & ors. Vs. Krishna Devi & ors. Page-42

Specific Relief Act, 1963- Section 34- Plaintiff claimed his exclusive possession as tenant over the suit land- plaintiff claims to have purchased the land for consideration of Rs. 450/- in the year 1957- plaintiff pleaded that defendants were neither inducted as tenants on the suit land nor in possession thereof- plaintiff challenged the order conferring proprietary rights on defendants on the plea that same was done behind his back - defendants claimed occupancy tenants-defendants denied exclusive possession as tenants by the plaintiff and the alleged subsequent purchase by him- trial Court dismissed the suit land- first appeal was also dismissed - in second appeal held, that plaintiff has miserably failed to prove himself as sole tenant- further, plaintiff has failed to prove that defendants were never inducted as tenants over the suit land- no documentary evidence was produced- predecessor-in-interest of the previous owner was also not examined in the witness box- plaintiff proved to have participated in the process and received compensation of Rs. 450/- -

plaintiff also claimed to have become owner by adverse possession – both courts have correctly appreciated the oral and documentary evidence- appeal dismissed.
Title: Gauri Singh and another Vs. Manghru and others Page-107

Specific Relief Act,1963- Section 34- Plaintiff, a society, registered under the Societies Registration Act, 1860 sought permanent prohibitory injunction against defendants for restraining them from taking over the affairs of Naag Devta Mandir on the plea that the temple is being looked after and managed by the Society for long- defendants claiming to be Pujaris of the temple from generations asserted their rights on the collection of the offering in the temple pleading that they had no means of livelihood and were collecting offerings for centuries-defendants challenged the existence of the society itself-the suit was dismissed-first appeal was also dismissed - in second appeal, held that the temple of Naag Devta is an ancient temple established by Maharaja Dhak Prakash- defendants No. 1 to 3 & 5 and other 11 families of village Kotga are the Pujaris/Priests/Shebait of the temple and before them, their ancestors were managing the affairs of the temple from generation to generation-they have a right to perform pooja at the temple, manage its affairs and appropriate offerings of the temple- residents of 14 villages offer part of their produce as "*Patha*" to the temple-fairs of the temple, are organized by the Panchayat- plaintiff-Society has no right, whatsoever, to interfere with the affairs of the temple- there is no evidence to suggest that the defendants are forcibly taking over the affairs of the temple- suit and first appeal were rightly dismissed- second appeal also dismissed.
Title: Naag Devta Sewa Samiti, Dobri Salwala Vs. Sant Ram & ors. Page-32

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Wazir Chand vs. Ambaka Rani & another, reported in 2005 (2) Shim. L.C. 498

'Y'

Yomeshbhai Pranshankar Bhatt vs. State of Gujarat, (2011) 6 SCC 312

BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Shri Hukam Chand s/o Sh. Kahan Singh .....Petitioner
Versus
H.P.State Electricity Board Ltd. & Another .....Non-petitioners

CWP No. 4560/2013-F
Reserved on : 16th July 2015
Date of order: 5th August, 2015

Constitution of India, 1950- Article 226- Petitioner was working as a Beldar - his services were terminated without following the principles of first come first go-reference made to the Labour cum Industrial Tribunal was allowed directing the re-engagement of the petitioner without entitlement to seniority or back wages- the award was challenged by the department but writ petition was dismissed - after three years of re-engagement the petitioner challenged the award and prayed for grant of seniority for the purpose of continuity- no reasons were assigned for the delay in approaching the court-as per the settled law the writ petition should have been filed within six months or at the most within one year-the petitioner had not even filed a counter-claim when the award was challenged by the department- petition dismissed. (Para 5 to 7)

Case referred:
P. S. Sadasivaswamy vs. State of Tamil Nadu (Apex Court of India), 1976 (1) Services Law Reporter page 53

For the petitioner : Mr. T. C. Sharma, Advocate
For non-petitioners : Ms. Sharmila Patial, Advocate

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present petition is filed under Article 226 of Constitution of India. It is pleaded that the petitioner was initially appointed as Beldar on daily wages in H. P. State Electricity Board in the month of July 1993 and thereafter in the month of April 1998 the petitioner was disengaged while retaining junior ignoring principle of 'Last come first Go'. It is further pleaded that thereafter Reference No. 50/2005 was made to Labour Court after failure of conciliation proceedings. It is further pleaded that the learned Labour Court decided the reference in favour of the petitioner on dated 30th June 2010 and termination of the petitioner w.e.f. 30.11.1997 was set aside and quashed and H. P. State Electricity Board was directed to re-engage the petitioner Hukam Chand forthwith. Learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. held that petitioner would not be entitled to seniority or back wages. It is further pleaded that thereafter the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. was challenged by the H. P. State Electricity Board in CWP No. 8433/2010 which was decided on 3rd August 2012 by Hon'ble High Court of Himachal Pradesh. It is further pleaded that the petitioner was re-engaged on daily wages with prospective date ignoring the seniority of the petitioner. It is further pleaded that the H. P. State Electricity Board be directed to allow the seniority of the petitioner for the purpose of continuity. It is further pleaded that work charge status after completion of 10 years of service at par with his juniors with all

consequential benefits be granted. It is further pleaded that award dated 30.6.2010 passed in Ref. No. 50/2005 be modified accordingly.

2. Per contra the H. P. State Electricity Board pleaded that the petitioner did not complete 240 days continuous service with the Board and he left the job at his own will and accord. It is pleaded that the award passed by the Industrial Tribunal-cum-Labour Court Dharamshala H.P. had attained the stage of finality. It is further pleaded that the petitioner is not entitled for the benefit of seniority for past service rendered by the petitioner. It is further pleaded that the award passed by the Industrial Tribunal-cum-Labour Court Dharamshala H.P. was upheld by the Hon'ble High Court of Himachal Pradesh in CWP No. 8433/2010. It is further pleaded that the present petition is not maintainable. Prayer for dismissal of the civil writ petition sought.

3. Court heard learned Advocate appearing on behalf of the petitioner and learned Advocate appearing on behalf of the non-petitioners at length. Court also perused the entire records carefully.

4. Following points arise for determination:

1) Whether the petitioner is entitled for benefit of seniority for the purpose of continuity and conferment of work charge status as alleged?

2) Final order.

FINDINGS ON POINT NO.(1)

5. Submission of learned Advocate appearing on behalf of the petitioner that the petitioner is entitled for benefit of seniority for the purpose of continuity and is also entitled for work charge status after completion of 10 years of service with all consequential benefits is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. has decided Ref. No.50/2005 titled Sh. Hukam Chand vs. The Executive Engineer on dated 30.6.2010. It is also proved on record that the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. on dated 30.6.2010 held that the petitioner would not be entitled to seniority or back wages. It is also proved on record that the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. directed the H. P. State Electricity Board to re-engage the petitioner Hukam Chand w.e.f. 30.11.1997.

6. It is proved on record that w.e.f. 30.6.2010 petitioner Hukam Chand did not challenge the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. relating to benefit of seniority. It is also proved on record that the petitioner challenged the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. in CWP No. 4560/2013-F on dated 21.6.2013 near about after three years. No positive, cogent and reliable reason is proved on record by the petitioner as to why he did not challenge the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. for about three years relating to benefit of seniority. It was held in case reported in 1976 (1) Services Law Reporter page 53 titled ***P. S. Sadasivaswamy*** vs. ***State of Tamil Nadu*** (Apex Court of India) that writ petition should be filed within six months or at the most within one year from date of cause of action. In the present case cause of action to file writ petition accrued in favour of the petitioner w.e.f. 30.6.2010 when learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. announced award relating to seniority and back wages of petitioner.

7. It is proved on record that on the contrary H. P. State Electricity Board challenged the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. in CWP No.8433/2010 titled H. P. State Electricity Board & Another vs. Shri Hukam Chand. It is also proved on record that the Hon'ble High Court of Himachal Pradesh on dated 3rd August 2012 dismissed the CWP No.8433/2010 filed by the H. P. State Electricity Board and affirmed the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala. The Hon'ble High Court of Himachal Pradesh in CWP No.8433/2010 did not modify the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala H.P. It is held that the order of Hon'ble High Court of Himachal Pradesh passed in CWP No.8433/2010 titled Himachal Pradesh Electricity Board & Another vs. Shri Hukam Chand had attained the stage of finality inter se parties qua the award passed by the learned Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala. The petitioner did not file any counter claim in CWP No.8433/2012 relating to benefit of seniority. In view of the above stated facts Point No.1 is answered in the negative.

Point No.(2) (Final Order):

8. In view of the above stated facts civil writ petition filed under Article 226 of Constitution of India is dismissed. No order as to costs. CWP No.4560/2013-F is disposed of. Pending applications if any also disposed of

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Sh. Jai Singh s/o late Sh. Narayan Singh & Ors. ....Revisionists
Versus
Smt. Santo Devi & Others ...Non-revisionists

Civil Revision Petition No. 69/2014
Reserved on: 15th July, 2015
Date of order: 13th August, 2015

Code of Civil Procedure, 1908- Order 9 Rule 9- Suit was dismissed in default on 28.07.08- plaintiff filed an application for restoration on 26.08.08 and died thereafter-his legal representatives were brought on record- it was stated in the application that the plaintiff could not contact his counsel nor the counsel could appear before the court when the suit was dismissed in default- trial court found no sufficient grounds to restore the suit and dismissed the application - appeal was also dismissed - in revision, held that in civil suit parties are not expected to appear in all stages and in this case there was no direction from the trial Court to the revisionists to appear on 28.07.2008- parties should not suffer for the fault of the Advocate- restoration application was filed within one month from the date of dismissal - it is expedient in the ends of justice to restore the suit to its original number and no serious prejudice shall be caused to the other party-revision allowed. (Para 9 to 13)

Cases referred:

Vidhyadhar vs. Mankikrao , AIR 1999 Apex Court 1441
Iswar Bhai C. Patel @ Bachu Bhai Patel vs. Harihar Behera, SLJ 1999 Apex Court 724
Munna Lal vs. Jai Prakash, AIR 1970 Allahabad 257 Full Bench

For the revisionists : Mr. G. D. Verma, Sr. Advocate with Mr. B. C. Verma, Advocate
For the non-revisionists: None

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present civil revision petition is filed under Section 115 of the Code of Civil Procedure against the order dated 22.03.2014 passed by the learned Additional District Judge-I Shimla in Civil Misc. Appeal RBT No.06-S/14 of 2013/11 whereby the learned Additional District Judge-I Shimla upheld the order of learned trial Court dated 24.05.2011 announced in CMA No. 30/6 of 2008 tilted Narayan Singh vs. Smt. Santo Devi & Ors.

BRIEF FACTS OF THE CASE

2. Shri Narayan Singh filed application under Order 9 Rule 9 read with Section 151 CPC for restoration of C.S. No.114/1 of 2005 tilted Narayan Singh vs. Smt. Santo Devi & Ors. which was dismissed in default for want of prosecution on dated 28.07.2008 by the learned trial Court. During pendency of the application Sh. Naraayan Singh died and his LRs were brought on record by the learned trial Court. It is pleaded that the civil suit was fixed for service of LRs of co-defendant No.3 on dated 28.07.2008. It is further pleaded that the learned trial Court on the previous date i.e. 05.06.2008 directed the plaintiff to file process fee and correct address for service of LRs of co-defendant No.3. It is further pleaded that thereafter the plaintiff contacted his Advocate on dated 05.06.2008 itself and was informed about the steps to be taken in the civil suit. It is further pleaded that thereafter the plaintiff could not contact his Advocate and consequently neither the plaintiff nor his Advocate could appear before the learned trial Court on dated 28.07.2008 when the case was called for hearing. It is further pleaded that the default was not intentional. It is further pleaded that the plaintiff was diligently prosecuting the case after the institution of the civil suit. It is further pleaded that co-defendant No.3 was proforma defendant in the civil suit. Prayer for restoration of C.S. No.114/1 of 2005 sought.

3. Per contra response filed on behalf of the contesting defendants pleaded therein that the applicant has no cause of action to file the application under Order 9 Rule 9 CPC. It is further pleaded that the applicant was negligent. It is further pleaded that the applicant cannot be permitted to take advantage of his own omission. It is further pleaded that the applicant is estopped from filing the application. It is further pleaded that the application is time barred. It is further pleaded that no sufficient cause is mentioned in the application for restoration of C.S. No.114/1 of 2005 and prayer for dismissal of application sought.

4. As per pleadings of the parties learned trial Court framed following issues on dated 05.07.2010:

1) Whether there are sufficient grounds to set-aside the order dated 28.07.2008 vide which suit was dismissed in default? OPA

2) Whether the applicant has no cause of action to file the application as alleged? OPR

3) Whether the applicant is estopped from filing the present application as alleged? OPR

4) Whether the application is time barred as alleged? OPR

5) Relief.

5. The applicant examined AW-1 Sh. Jai Singh as oral witness. AW-1 Sh. Jai Singh has stated that he had filed a civil suit for injunction which was dismissed in default on dated 28.07.2008. He has further stated that the learned trial Court had directed to bring on record LRs of co-defendant No.3. He has further stated that when he brought the correct address of LRs of co-defendant No.3 to his Advocate then he was informed that his case was dismissed in default on dated 28.07.2008. He has further stated that C.S. No.114/1 of 2005 be restored to its original status. In cross-examination he denied the suggestion that he did not intentionally appear before the Court on the date of hearing. He has also denied the suggestion that there are no sufficient grounds to restore the C.S. No.114/1 of 2005.

6. Court heard learned Advocate appearing on behalf of the revisionists at length. None appeared on behalf of the non-revisionists. Court also perused the entire records carefully.

7. The non-revisionists did not adduce any rebuttal evidence. The non-revisionists did not appear in the witness box to rebut the testimony of revisionists. Hence adverse inference under Section 114(g) of the Indian Evidence Act is drawn against the non-revisionists in the present case. It was held in case reported in AIR 1999 Apex Court 1441 titled ***Vidhyadhar*** vs. ***Mankikrao*** that if a party did not enter into the witness box then adverse inference should be drawn against the party who did not appear in the witness box. Also see SLJ 1999 Apex Court 724 titled ***Iswar Bhai C. Patel @ Bachu Bhai Patel*** vs. ***Harihar Behera.*** Also see AIR 1970 Allahabad 257 Full Bench titled ***Munna Lal*** vs. ***Jai Prakash***.

8. Submission of learned Advocate appearing on behalf of the revisionists that there are sufficient grounds for non-appearance of the non-revisionists when the case was listed for hearing before the learned trial Court is accepted for the reasons hereinafter mentioned. It is proved on record that C. S. No. 114/1 of 2005 was filed by Sh. Narayan Singh for permanent prohibitory injunction restraining co-defendant No.1 Smt. Santo Devi from raising any construction or structure over land comprised in Khasra No. 231 measuring 0-01-96 hectares. The plaintiff also sought alternative relief that in case Court comes to the conclusion that co-defendant No.1 is in settled possession of the suit land then decree of possession be also passed in favour of the plaintiff and against co-defendant No.1. It is also proved on record that co-defendant No.2 Kishan Chand and co-defendant No.3 Jeet Ram were impleaded as proforma defendants and no relief was sought against proforma defendants by the plaintiff. It is also proved on record that the C.S. No.114/1 of 2005 filed by deceased Narayan Singh was dismissed in default for non-prosecution on dated 28.07.2008 by the learned trial Court.

9. It is also proved on record that the civil suit was dismissed in default for non-prosecution by the learned trial Court under Order 17 Rule 2 of the Code of Civil Procedure 1908. The learned trial Court did not mention any order where the learned trial Court had dismissed the C.S. No.114/1 of 2005 under Order 17 Rule 2 or under Rule 3 CPC. The learned trial Court did not proceed to decide the civil suit forthwith.

10. It is well settled law that whenever a suit is dismissed under Order 17 Rule 2 CPC the same can be restored to its original number under Order 9 of the Code of Civil Procedure 1908. It is also well settled law that when the suit is disposed of by the learned trial Court under Order 17 Rule 3 CPC on merits then the aggrieved party is at liberty to file application for setting-aside the ex-parte decree. In the present case no ex-parte decree was

passed by the learned trial Court. Hence it is held that the learned trial Court disposed of the present suit under Order 17 Rule 2 CPC.

11. It is well settled law that whenever a suit is dismissed under Order 17 Rule 2 CPC the same can be restored under Order 9 CPC within one month. The present suit was dismissed in default on dated 28.07.2008 and restoration application was filed on 26.08.2008 within one month from the date of cause of action.

12. It is proved on record in the present case that the applicant had engaged an Advocate to appear in the Court and Power of Attorney was filed on behalf of the applicant. It is well settled law that in civil suit parties are not expected to appear in all the proceedings. There was no direction from the learned trial Court to the revisionists to appear in the civil suit on dated 28.07.2008. It is also well settled law that parties should not be suffered for the fault of the Advocate.

13. In view of the fact that the civil suit was dismissed by the learned trial Court under Order 17 Rule 2 CPC and in view of the fact that restoration application was filed within one month from the date of cause of action and in view of the fact that co-defendant No.3 was simply a proforma defendant and in view of the fact that no relief was claimed by the plaintiff against proforma defendant No.3 Court is of the opinion that it is expedient in the ends of justice to restore C.S. No.114/1 of 2005 to its original number in the ends of justice.

14. Submission of learned Advocate appearing on behalf of the revisionists that the revisionists will suffer irreparable loss if C.S. No.114/1 of 2005 is restored to its original number is rejected being devoid of any merit. It is held that the non-revisionists can be compensated with heavy costs and it is also held that no miscarriage of justice will be caused to the non-revisionists if C.S. No.114/1 of 2005 is restored to its original number because due opportunity will be granted to the non-revisionists to prove their case in accordance with law and due opportunity would be granted to the non-revisionists to cross-examine the witnesses of the plaintiff.

15. In view of the above stated facts Civil Revision Petition No.69/2014 titled Jai Singh & Ors. vs. Santo Devi & Ors. is accepted and orders of learned trial Court and learned first Appellate Court announced upon application filed under Order 9 Rule 9 CPC are set-aside and application filed under Order 9 Rule 9 CPC is allowed in the ends of justice and C.S. No.114/1 of 2005 is restored to its original status subject to payment of costs of Rs.3000/- (Rupee three thousand). Learned trial Court will restore C.S. No.114/1 of 2005 to its original status and thereafter the learned trial Court will dispose of C.S. No.114/1 of 2005 strictly in accordance with law expeditiously within two months because C.S. No.114/1 of 2005 is pending since 2005 and requires expeditious disposal. Parties are directed to appear before the learned trial Court on date **28th August, 2015**. Files of the learned trial Court and learned first Appellate Court along with certified copy of this order be transmitted forthwith. Civil Revision Petition No. 69/2014 is disposed of. Pending application(s) if any also disposed of. No order as to costs.

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

H. K. Bhardwaj ...Applicant
Versus
Rajnish Kuthiala ...Non-applicant

CMP No. 8845/2015
Date of order: August 14, 2015

Code of Civil Procedure, 1908- Order 23 Rule 1- Learned counsel for the applicant does not want to pursue the application- hence the application is dismissed as withdrawn.

For the applicant :M/s. Neel Kamal Sood and Bhuvnesh Sharma, Advocates
For non-applicant : Ms. Meera Devi, Advocate

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Learned Advocates appearing on behalf of the applicant submitted before the Court that applicant does not want to continue with the present application and the same be dismissed as withdrawn. In view of the submission of learned Advocates appearing on behalf of the applicant CMP No. 8845/2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Karam Singh s/o Sh. Raju .....Petitioner
Versus
State of H.P. & Others ....Non-petitioners

CWP No. 5857/2012-F
Reserved on : 6th August 2015
Date of order: 2nd September 2015

Constitution of India, 1950- Article 226- Petitioner was engaged as daily wager in HPPWD in June 1994 - his services were dis-engaged on 29.11.2004- reference made to the Labour and Industrial Tribunal was dismissed on the ground that incorrect date of termination was shown in the reference order and Tribunal could not have travelled beyond the same- held that the petitioner was penalized for the fault of other public servant who had mentioned wrong date of termination of petitioner in reference sent to Presiding Judge Labour Court-cum-Industrial Tribunal- award set aside with the directions to the Labour Commissioner to make a fresh reference on correct facts. (Para 2 to 8)

For the petitioner : Mr. Avinash Jaryal, Advocate
For non-petitioners : Mr. M. L. Chauhan, Addl. A.G. with Mr. J. S. Rana, Asstt. A.G.

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present petition is filed under Article 226 of the Constitution of India against order/award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) dated 18.05.2012 tilted Karam Singh vs. Executive Engineer H.P.P.W.D. Division Salooni District Chamba (H.P.).

BRIEF FACTS OF THE CASE

2. It is pleaded that in the month of June 1994 petitioner was engaged as daily wager in HPPWD Department Chamba Division Chamba (H.P.). It is further pleaded that in the year 2003 petitioner filed O.A.(D) No. 233/2003 before the State Administrative Tribunal titled Narinder Kumar & Ors. vs. State of H.P. & Ors. which was decided on dated 26.02.2004 by the State Administrative Tribunal with the directions to non-petitioners not to give fictional breaks to the petitioner if the work and funds would be available. Learned State Administrative Tribunal further directed non-petitioners not to terminate the services of the petitioner except in accordance with law. It is further pleaded that services of the petitioner were dis-engaged on dated 29.11.2004. It is further pleaded that thereafter reference was sent to Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) and learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala dismissed the reference petition of the petitioner on dated 18.05.2012. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners No.1 to 5 pleaded therein that petitioner was engaged in the month of June 1994 on daily waged basis as Beldar and petitioner continued to work upto December 2004. It is pleaded that petitioner did not complete 240 days in a calendar year. It is further pleaded that reference was sent to learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) and learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) dismissed the reference petition. Prayer for dismissal of civil writ petition sought.

4. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the non-petitioners. Court also perused the entire records carefully.

5. Submission of learned Advocate appearing on behalf of the petitioner that reference was sent by appropriate government under Section 12(5) of Industrial Disputes Act 1947 to learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) wherein wrong date of termination of services of petitioner was mentioned in the reference order and on this ground petition be accepted is accepted for the reasons hereinafter mentioned. It is proved on record as per certificate Annexure R-1 placed on record issued by Assistant Engineer Chamba Sub Division No.1 H.P.P.W.D. Chamba that petitioner had worked in the month of December 2004 also. Document Annexure R-1 is issued by Assistant Engineer Chamba Sub Division No.1 H.P.P.W.D. Chamba while discharging his official duties and is relevant factor under Section 35 of Indian Evidence Act. Annexure R-1 issued by Assistant Engineer Chamba Sub Division No.1 H.P.P.W.D. Chamba is not rebutted by any oral or documentary evidence placed on record. It is held that appropriate government was under legal obligation to send the reference under Section 12(5) of Industrial Disputes Act 1947 to learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) as per Annexure R-1 issued by Assistant Engineer Chamba Sub Division No.1

H.P.P.W.D. Chamba relating to date of termination of service of petitioner. It is well settled law that a party cannot be penalized for the fault of any other public servant.

6. Learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) had dismissed the reference petition of petitioner simply on the ground that learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) cannot travel beyond the terms of reference. Learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) has held that reference for adjudication was sent as follows: (1) Whether termination of the services of Sh. Karam Singh s/o Sh. Raju w.e.f. November 2004 by Executive Engineer H.P.P.W.D.(B&R) Division Chamba Distt. Chamba (H.P.) and continuing the services of junior workman as alleged by workman is proper and justified? If not what relief of service benefits including reinstatement and compensation the above workman is entitled to?.

7. Learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) has held that petitioner had served in the month of December 2004 as well. As such it cannot be said that services of the petitioner were terminated w.e.f. November 2004. Learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) further held that Labour Court cannot travel beyond the terms of reference and learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) has held that petitioner is not entitled to any relief simply on the ground that wrong date of termination of service of petitioner was mentioned in reference. Learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) further held that facts of the case are not discussed because the same would be flogging a dead horse. Court is of the opinion that petitioner was penalized for the fault of other public servant who had mentioned wrong date of termination of petitioner in reference sent to Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.). Court is of the opinion that it is expedient in the ends of justice to set-aside the wrong reference sent by the appropriate government relating to date of termination of petitioner. Court is of the opinion that it is expedient in the ends of justice to set-aside the order/award passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) dated 18.05.2012 in the ends of justice on the concept of justice, equity and good conscience.

8. In view of the above stated facts civil writ petition is accepted. Order of learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) dated 18.05.2012 is set-aside and it is further ordered that learned Labour Commissioner Himachal Pradesh will send a fresh reference to the learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) within one month from the date of order such as “Whether termination of the services of Sh. Karam Singh s/o Sh. Raju in the month of December 2004 by Executive Engineer H.P.P.W.D.(B&R) Division Chamba Distt. Chamba (H.P.) and continuing the services of junior workmen as alleged by workman is proper and justified? If not what relief of service benefits including reinstatement and compensation the above workman is entitled to?” It is further ordered that thereafter learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) will dispose of the present case on merits within two months after the receipt of reference from appropriate Government. No order as to costs. CWP No.5857/2012-F is disposed of. Pending application(s) if any also disposed of

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Chain Singh s/o Sh. Kehru Ram .....Petitioner

Versus

State of H.P. & Others .....Non-petitioners

CWP No. 2567/2009-E
Reserved on : 19th August 2015
Date of order: 3rd September 2015

Constitution of India, 1950- Article 226- Petitioner was engaged as complaint attendant on daily wages by I&PH Department in January 1996- his services were terminated on 30.11.2000 – he filed a writ petition to challenge the termination which was withdrawn for want of jurisdiction-petitioner requested the Labour Commissioner to refer his dispute to the Industrial Tribunal but his prayer was declined on the ground of delay- held that, similarly situated cases were referred by the commissioner to the Tribunal, and the case of the petitioner should have been referred on the ground of parity - further held, that there was no limitation prescribed for making the reference to the Tribunal-petition allowed. (Para 6 to 9)

Cases referred:

Raghubir Singh vs. General Manager Haryana Roadways Hissar, (2014) 10 SCC 301

Jasmer Singh vs. State of Haryana and Another, (2015) 4 SCC 458

Collector Land Acquisition Anantnag and another vs. Mst. Katiji & Others, AIR 1987 Apex Court 1353

For the petitioner: Mr. Naresh Kaul, Advocate

For non-petitioners : Mr. M. L. Chauhan, Addl. A.G. with Mr. J. S. Rana, Asstt. A.G.

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present petition is filed under Article 226 of Constitution of India against the order passed by learned Labour Commissioner Himachal Pradesh dated 13.10.2007 wherein case of petitioner was not sent to Labour Court-cum-Industrial Tribunal Himachal Pradesh for adjudication.

BRIEF FACTS OF THE CASE

2. It is pleaded that petitioner was engaged as complaint attendant on daily wages by I&PH Department Government of Himachal Pradesh in the month of January 1996. It is further pleaded that on dated 30.11.2000 Department of Irrigation and Public Health terminated the services of petitioner. It is further pleaded that on dated 17.05.2001 petitioner challenged the termination order before H.P. State Administrative Tribunal but the case was withdrawn due to jurisdiction. It is further pleaded that thereafter petitioner approached learned Labour-cum-Conciliation Officer through demand notice under Section 10 of Industrial Disputes Act 1947. It is further pleaded that non-petitioner No.2 namely Labour Commissioner Himachal Pradesh refused to refer the labour dispute of petitioner to learned Labour Court-cum-Industrial Tribunal Himachal Pradesh. It is further pleaded that in the year 2007 petitioner again represented to non-petitioner No.2 namely Labour

Commissioner Himachal Pradesh to re-consider his case with further prayer to send the case to Labour Court-cum-Industrial Tribunal Kangra at Dharamshala for disposal. It is further pleaded that w.e.f. 28.03.2008 to 16.06.2008 petitioner suffered due to Jaundice. It is further pleaded that non-petitioner No.2 namely Labour Commissioner Himachal Pradesh had referred the cases of the similarly situated workmen to Labour Court-cum-Industrial Tribunal Himachal Pradesh for adjudication under Industrial Disputes Act 1947. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners No.1 & 2 pleaded therein that services of petitioner were dis-engaged in the year 2000 and petitioner raised the dispute in the year 2006 after a lapse of 4 years. It is further pleaded that writ petition be dismissed on the ground of delay and latches. It is further pleaded that petitioner was paid all dues as provided under the provisions of Industrial Disputes Act 1947. It is further pleaded that petitioner had accepted the dues. It is further pleaded that demand notice was served in the year 2006. It is further pleaded that services of petitioner were dis-engaged due to short budget provisions and due to non-availability of work. It is further pleaded that services of petitioner were terminated after compliance of provisions of Section 25-F of Industrial Disputes Act 1947 and strictly on the concept of 'last come first go'. It is further pleaded that compensation to the tune of Rs.4875/- was also paid to petitioner vide Cheque No.489936 dated 25.10.2000. Prayer for dismissal of civil writ petition sought.

4. Per contra separate response filed on behalf of non-petitioner No.3 pleaded therein that present civil writ petition is bad on account of delay and latches. It is further pleaded that the order was passed on dated 13.10.2007 by learned Labour Commissioner Himachal Pradesh and thereafter civil writ petition is filed on dated 14.07.2009 after two years and the same be dismissed on the ground of lapse. It is further pleaded that employment on the basis of daily wages cannot be claimed as a matter of right but it depends upon the availability of work as well as availability of funds. It is further pleaded that petitioner was not engaged as per R&P Rules. It is further pleaded that procedure was not followed. It is further pleaded that there was no regular vacancy against which petitioner was engaged. It is further pleaded that petitioner was engaged as complaint attendant on daily wages w.e.f. February 1996 and his services were dis-engaged w.e.f. 30.11.2000 alongwith 363 workers due to non-availability of work and non-availability of budgetary provision. It is further pleaded that services of petitioner were dis-engaged strictly as per provisions of Section 25-F of Industrial Disputes Act 1947 after giving proper compensation. Prayer for dismissal of civil writ petition sought.

5. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioners. Court also perused the entire records carefully.

6. Submission of learned Advocate appearing on behalf of petitioner that order of learned Labour Commissioner Himachal Pradesh dated 13.10.2007 (Annexure P-3) placed on record be quashed and non-petitioner No.2 i.e. learned Labour Commissioner Himachal Pradesh be directed to refer the dispute to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) is accepted for the reasons hereinafter mentioned. As per document Annexure R/3A placed on record issued by I&PH Department petitioner had worked (1) 240 days in the year 1996 (2) 357 days in the year 1997 (3) 322 days in the year 1998 (4) 363 days in the year 1999 (5) 244 days in the year 2000. Annexure R/3A placed on record remains un-rebutted. Document Annexure R/3A prepared by public servant in discharge of official duty and in relevant fact under Section 35 of Indian Evidence Act 1872. The observation of learned Labour Commissioner Himachal Pradesh that there is no dispute

between the employee and employer and further observation of learned Labour Commissioner Himachal Pradesh that the alleged dispute is frivolous and vexatious and further observation of learned Labour Commissioner Himachal Pradesh that services were terminated by the employer after giving proper notice and after payment of retrenchment compensation and on this ground there is no need to refer the dispute to Labour Court cannot be sustained. In the present case it is proved on record that petitioner had served in I&PH Department for 5 years w.e.f. 1996 to 2000 and it is also proved on record that in the year 1996 petitioner had worked for 240 days, in the year 1997 petitioner had worked for 357 days, in the year 1998 petitioner had worked for 322 days, in the year 1999 petitioner had worked for 363 days and in the year 2000 petitioner had worked for 244 days. Court is of the opinion that present case is a fit case to be referred to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) for adjudication in the ends of justice. It is proved on record that learned Labour Commissioner Himachal Pradesh had referred the case of S/Sh. Santosh Kumar s/o Keshru Ram, Jeewan Singh s/o Duni Chand, Charan Singh s/o Raunki, Fozi s/o Narad and Karnail Singh s/o Duni Chand to Labour Court for adjudication who were similarly situated. Court is of the opinion that even on the concept of equality before law as mentioned under Article 14 of Constitution of India it is expedient in the ends of justice to refer the case of petitioner to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) for adjudication.

7. Submission of learned Additional Advocate General appearing on behalf of non-petitioners that present case be dismissed on the ground of delay and latches is rejected being devoid of any force for the reasons hereinafter mentioned. It was held in case reported in (2014) 10 SCC 301 titled ***Raghubir Singh*** vs. ***General Manager Haryana Roadways Hissar*** that there is no limitation for reference to Labour Court under Section 10 of Industrial Disputes Act 1947. It was held that words 'at any time' mentioned in Section 10 of Industrial Disputes Act 1947 clearly mentioned that law of limitation would not be applicable qua proceedings of reference under Section 10 of Industrial Disputes Act 1947. Also see (2015) 4 SCC 458 titled ***Jasmer Singh*** vs. ***State of Haryana and Another.*** Also see AIR 1987 Apex Court 1353 titled ***Collector Land Acquisition Anantnag and another*** vs. ***Mst. Katiji & Others.***

8. Another submission of learned Additional Advocate General appearing on behalf of non-petitioners that services of petitioner were terminated after giving proper notice and after paying retrenchment compensation and on the ground civil writ petition be dismissed is also rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that petitioner had worked in I&PH Department continuously for 5 years w.e.f. 1996 to 2000 and as per certificate issued by Executive Engineer Irrigation-cum-PH-Division Dalhousie petitioner had worked for 240 days in the years 1996, 1997, 1998, 1999 & 2000 continuously. It is held that it is expedient in the ends of justice that matter in dispute be referred to Labour Court for adjudication in accordance with law on the concept of justice, equity and good conscience.

9. In view of the above stated facts and the case law cited supra petition filed under Article 226 of Constitution of India is allowed and non-petitioner No.2 i.e. learned Labour Commissioner Himachal Pradesh is directed to refer the case of petitioner to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) for adjudication as per Section 12(5) of Industrial Disputes Act 1947 within one month. No order as to costs. CWP No.2567/2009-E is disposed of. Pending application(s) if any also disposed of

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Lachman s/o Sh. Sarwan .....Petitioner
Versus
State of H.P. & Others .....Non-petitioners

CWP No. 10544/2012-E
Reserved on : 5th August 2015
Date of order: 4th September 2015

Constitution of India, 1950- Article 226- Petitioner has challenged the action of the Labour Commissioner to refer the dispute to the Labour cum Industrial Tribunal on the ground that the demand notice was raised after six years-held that law of limitation does not come in the way of making reference of the dispute and the relief cannot be denied to the workman on the ground of delay alone- petition allowed. (Para 7 to 9)

Cases referred:
Jasmer Singh vs. State of Haryana and Another, (2015) 4 SCC 458
Raghubir Singh vs. General Manager Haryana Roadways Hissar, (2014) 10 SCC 301
Collector Land Acquisition Anantnag and another vs. Mst. Katiji & Others, AIR 1987 Apex Court 1353

For the petitioner: Mr. Avinash Jaryal, Advocate
For non-petitioners : Mr. M. L. Chauhan, Addl. A.G. with Mr. J.S. Rana, Asstt. A.G.

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present petition is filed under Article 226 of Constitution of India against the order of learned Labour Commissioner Himachal Pradesh Shimla dated 15.05.2012 whereby learned Labour Commissioner Himachal Pradesh while exercising powers under Section 12(5) of Industrial Disputes Act 1947 refused to refer the dispute to Labour Court-cum-Industrial Tribunal Himachal Pradesh for adjudication.

BRIEF FACTS OF THE CASE

2. It is pleaded that petitioner was appointed as daily waged worker in H.P.P.W.D. department in the year 1996. In the year 1999 service of petitioner was dis-engaged. It is further pleaded that thereafter petitioner filed O.A.(D) No. 48/99 before H. P. State Administrative Tribunal and H. P. State Administrative Tribunal on dated 27.11.2001 disposed of O.A.(D) No. 48/99 with the directions that service of petitioner would be re-engaged as per his seniority as and when the work and funds would be available. Thereafter demand notice was issued by petitioner and matter could not be settled in conciliation proceedings before Labour-cum-Conciliation Officer and thereafter the matter was examined by learned Labour Commissioner Himachal Pradesh under Section 12(5) of Industrial Disputes Act 1947 and learned Labour Commissioner Himachal Pradesh held that petitioner had raised demand notice after a lapse of about 6 years. Learned Labour Commissioner Himachal Pradesh further held that petitioner did not keep the matter alive during intervening period and learned Labour Commissioner Himachal Pradesh held that the matter had faded away with the passage of time. Learned Labour Commissioner Himachal

Pradesh further held that demand notice is prima facie vexatious and frivolous. Learned Labour Commissioner Himachal Pradesh further held that there is no justification to refer the dispute to learned Labour Court-cum-Industrial Tribunal Himachal Pradesh for adjudication. Feeling aggrieved against the order of learned Labour Commissioner Himachal Pradesh petitioner filed present civil writ petition with the prayer to accept civil writ petition as mentioned in relief clause.

3. Per contra response filed on behalf of non-petitioners No.1 & 2 pleaded therein that petitioner had worked w.e.f. January 1998 to November 2002. It is further pleaded that demand notice was issued on dated 08.04.2008 after a lapse of 6 years. It is further pleaded that in view of rulings given by Hon'ble High Court of Himachal Pradesh in CWP No. 1619/2007 titled Kamlesh vs. State of H.P. & Ors. and in CWP No. 1486/2007 titled Liaq Ram vs. State of H.P. & Others present civil writ petition be dismissed.

4. Per contra separate response filed on behalf of non-petitioner No.3 pleaded therein that demand notice is prima facie vexatious and frivolous. It is further pleaded that petitioner had left the job without any intimation to the non-petitioners and non-petitioner No.3 has not retrenched service of petitioner. It is further pleaded that due to own conduct of petitioner present civil writ petition is not maintainable. It is further pleaded that petitioner cannot claim parity with others who have discharged their duties with punctuality and sincerity. It is further pleaded that present dispute is stale dispute and same cannot be referred to Labour Court for adjudication. Prayer for dismissal of civil writ petition sought.

5. Petitioner also filed rejoinder and re-asserted the allegations mentioned in the civil writ petition.

6. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioners. Court also perused the entire records carefully.

7. Submission of learned Advocate appearing on behalf of petitioner that order passed by learned Labour Commissioner Himachal Pradesh dated 15.05.2012 (Annexure R-III) placed on record be quashed and learned Labour Commissioner Himachal Pradesh be directed to refer the dispute to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) for adjudication under Section 12(5) of Industrial Disputes Act 1947 is accepted for the reasons hereinafter mentioned. Court has carefully perused the order passed by learned Labour Commissioner Himachal Pradesh dated 15.05.2012. Learned Labour Commissioner Himachal Pradesh had rejected the case of petitioner under Section 12(5) of Industrial Disputes Act 1947 simply on the ground that petitioner had raised demand notice after a lapse of about 6 years. It was held in case reported in (2015) 4 SCC 458 titled ***Jasmer Singh*** vs. ***State of Haryana and Another*** that provisions of Article 137 of Limitation Act 1963 would not be applicable to Industrial Disputes Act 1947 and it was held that relief would not be denied to workman merely on ground of delay. It was held in case reported in (2014) 10 SCC 301 titled ***Raghubir Singh*** vs. ***General Manager Haryana Roadways Hissar*** that there is no limitation on reference to Labour Court under Section 10 of Industrial Disputes Act 1947. It was held that words 'at any time' mentioned in Section 10 of Industrial Disputes Act 1947 would mean that law of limitation would not be applicable qua proceedings of reference under Section 10 of Industrial Disputes Act 1947. It was held in case reported in AIR 1987 Apex Court 1353 titled ***Collector Land Acquisition Anantnag and another*** vs. ***Mst. Katiji & Others*** that (1) Ordinarily a litigant does not stand to benefit by lodging matter late. (2) Refusing to condone delay can result meritorious matter thrown out at the very threshold and cause of justice defeated. It was held that if delay is condoned then highest that would happen would that case would be decided on merits after hearing the parties. (3) It was held that every day's delay must be explained does not mean that a

pedantic approach should be made. It was further held that doctrine must be applied in a rational common sense. (4) It was held that when substantial justice and technical considerations are pitted against each other then cause of substantial justice deserves to be preferred. (5) It was held that there is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. It was held that litigant does not stand to benefit by resorting to delay. (6) It was held that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice.

8. Submission of learned Additional Advocate General appearing on behalf of non-petitioners that petitioner did not agitate the matter for about 6 years and on this ground civil writ petition filed by petitioner be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioner is resident of village Kotti Post Office Kiri Tehsil and District Chamba (H.P.) which is interior village in District Chamba. Petitioner is rustic villager and he has sought appointment on the post of Beldar in H.P.P.W.D. department. Keeping in view the fact that petitioner is rustic villager residing in remote area of village and keeping in view the fact that petitioner has sought appointment on the post of Beldar in H.P.P.W.D. department Court is of the opinion that it is expedient in the ends of justice that matter in dispute be referred to Labour Court for adjudication in accordance with law on the concept of justice, equity and good conscience.

9. Another submission of learned Additional Advocate General appearing on behalf of non-petitioners that in view of decision of Hon'ble High Court of Himachal Pradesh announced in CWP No. 398/2001 titled M. C. Paonta Sahib vs. State of H.P. & Ors. and in view of order passed in CWP No. 1486/2007 titled Liaq Ram vs. State of H.P. & Others present civil writ petition be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that whenever there is conflict between rulings given by the High Court and Supreme Court then ruling given by Supreme Court always prevail. Hon'ble Apex Court of India had given latest ruling reported in (2015) 4 SCC 458 titled ***Jasmer Singh*** vs. ***State of Haryana and Another*** that provisions of Article 137 of Limitation Act 1963 would not be applicable to Industrial Disputes Act 1947.

10. In view of the above stated facts and the case law cited supra petition filed under Article 226 of Constitution of India is allowed. Order of learned Labour Commissioner Himachal Pradesh dated 15.05.2012 is set-aside. Learned Labour Commissioner Himachal Pradesh is directed to refer the case of petitioner to Labour Court-cum-Industrial Tribunal Dharamshala (H.P.) for adjudication as per Section 12(5) of Industrial Disputes Act 1947 within one month. No order as to costs. CWP No.10544/2012-E is disposed of. Pending application(s) if any also disposed of

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

M/s Kamla Enterprises .....Applicant/Plaintiff

Versus

Shamsher Singh & Ors. ...Non-applicants/Defendants

OMP No. 100/2015 in C.S. No. 99 of 2008
Reserved on: 29.10.2015
Order announced on: 6.11.2015

Code of Civil Procedure, 1908- Section 151- Order 1 Rule 10- Co-defendant No. 4 died during the pendency of the suit- an application was filed for deleting his name from the array of the defendants- record shows that the allegations against the co-defendant were personal relating to the commission of some personal act- cause of action against him is severable in nature- hence, his name ordered to be deleted from the array of the defendants.

(Para-7 to 9)

For applicant/plaintiff : Mr. G. C. Gupta, Sr. Advocate with Mr. Bhuvnesh Sharma and Ramakant Sharma, Advocates
For non-applicants/ defendants No.1 to 3 & 5 : Mr. Ajay Sharma, Advocate
For non-applicants/ defendants No.6 to 11 : Mr. Neeraj Gupta, Advocate

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present application was initially filed under Section 151 CPC which was later on converted into application under Order 1 Rule 10 read with Section 151 CPC vide interim order dated 29.10.2015 for permission to delete the name of deceased co-defendant No.4 Harnam Singh from the array of defendants.

BRIEF FACTS OF THE CASE

2. Plaintiff M/s. Kamla Enterprises Proprietor Kamlesh Thakur filed a civil suit for recovery of Rs.80 lacs alongwith interest @12% from *pendente lite* till date of decree and future interest till realization of the decretal amount and special cost of the suit also sought pleaded therein that defendants have obstructed the plaintiff from extracting the raw material from the leased land mentioned in the plaint.

3. Deceased Harnam Singh was impleaded as co-defendant No.4 in C.S. No.99/2008 titled M/s. Kamla Enterprises vs. Shamsher Singh & Others. It is pleaded that during pendency of the civil suit co-defendant No.4 Harnam Singh died and applicant filed the present application to delete the name of co-defendant No.4 Harnam Singh from the array of co-defendants in civil suit.

4. Per contra response filed on behalf of co-defendants/non-applicants No.6 to 11 pleaded therein that application under inherent powers is not maintainable in view of specific provisions in the Code of Civil Procedure. It is pleaded that date of death of co-defendant No.4 Harnam Singh is not mentioned in the application. It is further pleaded that name of LRs of co-defendant No.4 also not mentioned in the application and it is pleaded that applicant did not approach the Court with clean hands. It is pleaded that cause of action is joint and not severable and prayer for dismissal of application as well as C.S. No.99/2008 sought. Other non-applicants did not file any response despite opportunity granted.

5. Court heard learned Advocates appearing on behalf of applicant and non-applicants and Court also perused the entire records carefully.

6. Following points arise for determination :

Point No. (1) Whether C.S. No.99/2008 is abated qua deceased co-defendant No.4 Harnam Singh and whether cause of action against other co-defendants is severable?

Point No.(2) Relief.

REASONS FOR FINDNGS UPON POINT No.(1)

7. It is well settled law that no civil suit against dead person should continue as per law. It is admitted case of both the parties that co-defendant No.4 Harnam Singh has died. It is well settled law that if LRs of deceased co-defendant are not impleaded as party within time limited by law then civil suit automatically abates as per Order XXII Rule 4 (3) Code of Civil Procedure 1908.

8. Court has perused the contents of plaint and written statement carefully. Allegations against deceased co-defendant No.4 are personal in nature relating to commission of some personal acts. In view of the fact that allegations in the plaint are personal in nature it is held that cause of action against other co-defendants is severable in the present civil suit and civil suit against other co-defendants will continue. In view of the above stated facts point No. (1) is decided accordingly.

Point No.(2) (Relief)

9. In view of findings upon point No.1 above it is held that Civil Suit No.99/2008 titled M/s. Kamla Enterprises vs. Sh. Shamsher Singh & Others against co-defendant No.4 Harnam Singh is abated and it is held that cause of action against other co-defendants is severable and it is held that C.S. No.99/2008 against other co-defendants will continue and it is ordered that name of co-defendant No.4 Harnam Singh will be deleted from the array of co-defendants. OMP No.100 of 2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Subhash Thakur son of late Shri Nagnu Ram ....Applicant

Versus

Raja Ashok Pal Sen son of late Maharaja Joginder Sen & Others ....Non-applicants

OMP No. 217 of 2015 in Civil Suit No. 4 of 2007
Order Reserved on 29th October 2015
Date of Order 18th November 2015

Code of Civil Procedure, 1908- Order 22 Rule 10 & Order 1 Rule 10- Plaintiff claimed himself to be absolute owner in possession of the suit property deriving his title through a settlement deed - the plaintiff further challenged the sale deed executed by the defendant No. 1 in favour of defendant No. 9 to 11- sale deed in favour of defendants No. 4 to 11 was also challenged- the present applicant claims to have entered in an agreement to purchase the land with the defendant no. 9 during the pendency of suit and has paid sale consideration of Rs. 50 lacs- held that, in present case amount to the tune of Rs. 50,00,000/- (Rupees fifty lacs only) is involved and there are allegations against defendant No. 9 that he had received Rupees fifty lacs during pendency of suit from the applicant-

relief sought by plaintiff will directly affect the applicant because he has already paid Rs.50,00,000/- (Rupees fifty lacs only) to defendant No. 9 during the pendency of suit relating to suit land- application under Order 1 Rule 10 converted into application under Order 22 Rule 10 C.P.C and allowed. (Para 8 to 18)

Cases referred:

Thomson Press (India) Ltd. vs. Nanak Builders and Investors P. Ltd and others, AIR 2013 SC 2389

A. Nawab John and others vs. V.N. Subramaniyam, (2012)7 SCC 738

Sri Jagannath Mahaprabhu vs. Pravat Chandra Chatterjee and others (Full Bench), AIR 1992 Orissa 47

Bhaskaran vs. Vijayaraghan and others, AIR 2005 Kerala 133

For the Applicant:	Mr.G.R. Palsara Advocate.
For the Non-applicant/ plaintiff:	Mr. Ajay Kumar Sr. Advocate with Mr.Dheeraj K. Vashishat, Advocate.
For Non-applicants No.: Nos.1&2/co-defendants No. 1 & 2:	Ms. Seema Guleria Advocate.
For Non-applicant No.3/ co-defendant No.3:	Mr.Rakesh Dogra, Advocate.
For Non-applicants No. 4,10 and 11/co-defendants No. 4,10 and 11:	Ms. Leena Guleria,Advocate.
For non-applicants No. 5 to 8/co-defendants No. 5 to 8:	Mr. Surinder Saklani, Advocate.
For non-applicant No.9/ Co-defendant No.9:	Mr.H.S.Rangra, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Application filed under Order 1 Rule 10 of Code of Civil Procedure read with Section 151 CPC by applicant Subhash Thakur for impleading the applicant as co-defendant in civil suit No. 4 of 2007 titled Raja Ashok Pal Sen vs. Smt. Raj Kumari Indira Mahindra and others.

Brief facts of the case

2. Raja Ashok Pal Sen filed civil suit No. 4 of 2007 titled Raja Ashok Pal Sen vs. Smt. Raj Kumari Indira Mahindra and others pleaded therein that decree of declaration be passed in favour of plaintiff and against the defendants to the effect that plaintiff is absolute owner in possession of suit property on the basis of settlement deed dated 10.11.2000 and on the basis of acknowledgement made by co-defendant No.1 in her affidavit dated 11.5.2000. It is pleaded that defendants have no right title or interest in suit property and right title or interest of defendants in suit property ceased after execution of settlement deed and affidavit. Additional relief of declaration also sought to the effect that sale deed dated 24.4.2008 registered in the office of Registrar at Sr. No. 251 in favour of co-defendants Nos. 9 to 11 with respect to suit property is illegal null and void and did not effect right title or interest of plaintiff in the suit property. It is pleaded that plaintiff continuous to be absolute owner in possession of suit property on the basis of settlement deed dated 11.5.2000

followed by affidavit dated 11.5.2000. It is pleaded that defendants be restrained from interfering in any manner in possession of suit property. It is pleaded that co-defendants Nos. 1 to 3 have illegally wrongly and without jurisdiction manipulated cancellation of mutation No. 146 dated 18.8.2000 and it is pleaded that order of cancellation of mutation dt. 31.8.2005 is also illegal without jurisdiction and did not effect the right of plaintiff in suit property. Alternative additional relief also sought by plaintiff to the effect that sale deed executed by defendant No. 1 in favour of co-defendants No. 4 to 11 with respect to suit property is also illegal null and void and is not binding upon the plaintiff and prayer also sought that defendants Nos. 4 to 11 be directed to re-transfer the suit property in favour of plaintiff. It is pleaded that on the failure of co-defendants Nos. 4 to 11 to re-transfer the property in favour of plaintiff decree of injunction be also passed in favour of plaintiff along with costs of suit.

3. Per contra written statement filed on behalf of contesting defendants and issues framed in Civil Suit No. 4 of 2007 on 29.3.2011 and additional issues also framed on 20.3.2012. Thereafter as per request of learned Advocates civil suit No. 4 of 2007 referred to mediator for settlement of dispute inter se the parties. In the meanwhile present application under Order 1 Rule 10 CPC filed.

4. There is recital in OMP No. 217 of 2015 that during the pendency of civil suit applicant entered into an agreement to sale dated 4.7.2015 with co-defendant No.9 Shri Khub Ram and co-defendant No.9 Khub Ram agreed to sell land in consideration amount of Rs.5000000/- (Rupees fifty lacs only) and took whole consideration amount of Rs.5000000/- (Rupees fifty lacs only). It is pleaded that in view of agreement dated 4.7.2015 relating to suit property involved in civil suit No. 4 of 2007 applicant is assignee during pendency of civil suit No. 4 of 2007 and interest in suit property has devolved during pendency of civil suit and applicant be impleaded as co-defendant in civil suit No.4 of 2007.

5. Per contra response filed on behalf of non-applicant/plaintiff pleaded therein that application filed under Order 39 Rules 1 and 2 of CPC and ad-interim injunction was sought and ad-interim injunction was passed by Court in civil suit No. 4 of 2007 but despite interim injunction applicant has entered into an agreement with co-defendant No.9 Sh. Khub Ram and further pleaded that agreement executed by applicant is governed under the concept of lispendence as mentioned under section 52 of Transfer of Property Act 1882. It is pleaded that agreement is illegal null and void and applicant is not proper and interested party and further pleaded that non-applicant/plaintiff is dominus litis in civil suit No.4 of 2007. Prayer for dismissal of application sought.

6. Court heard learned Advocate appearing on behalf of the applicant and learned Advocates appearing on behalf of the non-applicants and also perused the entire record carefully.

7. Following points arise for determination in this bail application:-

1. Whether application filed under Order 1 Rule 10 read with Section 151 CPC to implead applicant as co-defendant is liable to be accepted as mentioned in memorandum of grounds of application and whether application filed under Order 1 Rule 10 CPC should be converted into application filed under Order XXII Rule 10 CPC in the ends of justice while exercising inherent powers under Section 151 of Code of Civil Procedure 1908?
2. Relief.

Findings upon Point No.1 with reasons

8. It is primafacie proved on record that vide agreement placed on record applicant executed sale agreement on 4.7.2015 with Khub Ram i.e. co-defendant No.9 for sale of suit property in consideration amount of Rs.5000000/- (Rupees fifty lacs only) during pendency of civil suit No. 4 of 2007 and whole amount stood paid to co-defendant No.9. It is well settled law that any right to immovable property relating to civil suit which is pending before competent Court of law is governed by concept of doctrine of lis pendence as mentioned in Section 52 of Transfer of Property Act 1882. ***See AIR 2013 SC 2389 titled Thomson Press (India) Ltd. vs. Nanak Builders and Investors P. Ltd and others. See (2012)7 SCC 738 titled A. Nawab John and others vs. V.N. Subramaniyam.***

9. As per Order XXII Rule 10 CPC if any assignment, creation or devolution of any interest during the pendency of suit is created then with leave of Court any interested person to whom such interest is devolved could be impleaded as co-defendant.

10. In present case amount to the tune of Rs.5000000/- (Rupees fifty lacs only) is involved and there are allegations against co-defendant No.9 that co-defendant No.9 Sh. Khub Ram had received Rupees fifty lacs during pendency of civil suit No. 4 of 2007 relating to suit property from applicant.

11. It was held in case reported in ***AIR 1992 Orissa 47 titled Sri Jagannath Mahaprabhu vs. Pravat Chandra Chatterjee and others (Full Bench)*** that plaintiff is not bound to implead lispendence transferee as co-defendant under Order 1 Rule 10 CPC. It is held that lispendence assignee is virtually interested in litigation and it was further held that lispendence assignee could be impleaded as an assignee under the provisions of Order XXII Rule 10(1) CPC even if application was filed under Order 1 Rule 10 CPC. It was held that Court should treat application filed under Order 1 Rule 10 CPC as application filed under Order XXII Rule 10(1) CPC. ***See AIR 2005 Kerala 133 titled Bhaskaran vs. Vijayaraghan and others.***

12. It is well settled law that assignee during the pendency of suit will not be allowed to set up a case inconsistent with one set of assigner. It is well settled law that all orders passed in suit are binding upon the assignee and assignee could not reopen the case as assignee deprived the right from assigner during the pendency of suit under Order XXII Rule 10 of Code of Civil Procedure 1908.

13. It is held that relief sought by plaintiff will directly effect the applicant because applicant has already paid Rs.5000000/- (Rupees fifty lacs only) to co-defendant No.9 during the pendency of suit relating to suit land and it is held that applicant is proper party in present suit because interest of applicant would directly effect the decision of Civil Suit No. 4 of 2007. It is well settled law that relief should not be denied to a party simply on the ground that wrong section is mentioned in application. It is well settled law that Court are under legal obligation to peruse the entire contents of application and Courts are under legal obligation to grant relief to parties in accordance with law.

14. It is well settled law that under Order XXII Rule 10 CPC any assignment, creation or devolution of interest should take place during the pendency of suit. It is well settled law that application filed under Order 1 Rule 10 CPC by an assignee pendente lite can be converted under Order XXII Rule 10 CPC in the ends of justice. It is also well settled law that Order XXII Rule 10 CPC covers the word “interest” of assignee and interest must be in subject matter of suit. It is well settled law that assignee of interest in suit property during pendency of civil suit is entitled to be impleaded as co-defendants under Order XXII Rule 10 CPC. In view of above stated facts application filed under Order 1 Rule 10 CPC is

converted into application filed under Order XXII Rule 10 CPC in the ends of justice keeping in view the fact that applicant has already paid Rs.5000000/- (Rupees fifty lacs only) to co-defendant No.9 relating to suit property involved in civil suit No. 4 of 2007 titled Raja Ashok Pal Sen vs. Smt. Raj Kumari Indira Mahindra and it is held that interest was devolved upon applicant in suit property during pendency of suit under Order XXII Rule 10 of CPC.

15. It is well settled law that interpleader suit is one in which real dispute is between co-defendant only and co-defendant pleads against each other instead of pleading against plaintiff.

16. Proviso to Section 88 of Code of Civil Procedure 1908 bars institution of fresh suit of interpleader where any former civil suit is pending in which rights of all parties can properly be decided.

17. It is held that rights of applicant can be properly decided in C.S. No. 4 of 2007. It is held that it is expedient in the ends of justice to allow application in order to avoid multiplicity of judicial proceedings inter se parties qua same property. Document of devolution of interest placed on record dated 04.07.2015 executed between applicant and co-defendant No.9 during pendency of C.S. No. 4 of 2007 relating to suit property. Plaintiff Raja Ashok Pal Sen and co-defendant Smt. Raj Kumari Indira Mahindra are close relatives. Point No.1 is decided accordingly.

Point No.2 (Relief)

18. In view of above stated facts application filed under Order 1 Rule 10 CPC is converted into application filed under Order XXII Rule 10 CPC in the ends of justice while exercising inherent powers under Section 151 of CPC and applicant namely Subhash Thakur son of late Shri Nagnu Ram is impleaded as co-defendant No. 15 in civil suit No. 4 of 2007. Observations will not effect merits of C.S. No. 4 of 2007 and will be confined only for disposal of OMP No. 217 of 2015. It is held that order under Section 151 of Code of Civil Procedure for conversion of application filed under Order 1 Rule 10 CPC to application filed under Order XXII Rule 10 CPC is necessary for the ends of justice. Applicant is impleaded as co-defendant No.15 in C.S. No. 4 of 2007. OMP No. 217 of 2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Vishal Chaddha son of Sh. Banwari Lal Chadha ....Applicant

Versus

Raja Ashok Pal Sen son of late Maharaja Joginder Sen & Others ....Non-applicants

OMP No. 24 of 2015
in Civil Suit No. 4 of 2007
Order Reserved on 29th October 2015
Date of Order 18th November 2015

Code of Civil Procedure, 1908- Order 22 Rule 10 & Order 1 Rule 10- Plaintiff claimed himself to be absolute owner in possession of the suit property - plaintiff further challenged the sale deed executed by the defendant No. 1 in favour of defendant No. 9 to 11- sale deed executed in favour of defendants No. 4 to 11 was also challenged- present applicant and two others claim to have entered in an agreement to purchase the land with the defendant no. 1 during the pendency of suit by paying Rs. 3.25 crores to defendant No. 1- applicant sought

impleadment in the suit -held that, in the present case amount of Rs. 3.25 crore is involved and there are allegations against defendant No.1 that she had received Rupees 3.25 crores during pendency of civil suit from applicant- relief sought by plaintiff will directly affect the applicant and others because they had already paid Rs.3.25 crores to defendant No. 1 during the pendency of suit - application under Order 1 Rule 10 converted into application under Order 22 Rule 10 C.P.C and allowed. (Para 9 to 18)

Cases referred:

Thomson Press(India) Ltd. vs. Nanak Builders and Investors P.Ltd and others, AIR 2013 SC 2389

A. Nawab John and others vs. V.N.Subramaniyam, (2012)7 SCC 738

Sri Jagannath Mahaprabhu vs. Pravat Chandra Chatterjee and others (Full Bench), AIR 1992 Orissa 47

Bhaskaran vs. Vijayaraghan and others, AIR 2005 Kerala 133

For the Applicant:	Mr.Sandeep Dutta & Ms.Bhavna Dutta.
For the Non-applicant/ plaintiff:	Mr. Ajay Kumar Sr. Advocate with Mr.Dheeraj K. Vashishat, Advocate.
For Non-applicants No.: 1&2/co-defendants No. 1 & 2:	Ms. Seema Guleria Advocate.
For Non-applicant No.3/ co-defendant No.3:	Mr.Rakesh Dogra, Advocate.
For Non-applicants No. 4,10 and 11/co-defendants No. 4,10 and 11:	Ms. Leena Guleria,Advocate.
For non-applicants No. 5 to 8/co-defendants No. 5 to 8:	Mr. Surinder Saklani, Advocate.
For non-applicant No.9/ Co-defendant No.9:	Mr.H.S.Rangra, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Application filed under Order 1 Rule 10 Code of Civil Procedure read with Section 151 CPC by applicant namely Shri Vishal Chaddha for impleading (1) Dinesh Kumar son of Yadvender Kumar (2) Shri Vishal Chaddha son of Shri Banwari Lal Chaddha (3) Madho Prasad son of Shri Govind Ram as co-defendants in civil suit No. 4 of 2007 titled Raja Ashok Pal Sen vs. Smt. Raj Kumari Indira Mahindra and others.

Brief facts of the case

2. Raja Ashok Pal Sen filed civil suit No. 4 of 2007 titled Raja Ashok Pal Sen vs. Smt. Raj Kumari Indira Mahindra and others pleaded therein that decree of declaration be passed in favour of plaintiff and against the defendants to the effect that plaintiff is absolute owner in possession of suit property on the basis of settlement deed dated 10.11.2000 placed on record and on the basis of acknowledgement made by co-defendant No.1 in her affidavit dated 11.5.2000. It is pleaded that defendants have no right title or interest in suit property and right title or interest of defendants in suit property ceased after execution of settlement deed and affidavit. Additional relief of declaration also sought to the effect that sale deed dated 24.4.2008 registered in the office of Registrar at Sr. No. 251 in favour of co-

defendants Nos. 9 to 11 with respect to suit property is illegal null and void and did not effect right title or interest of plaintiff in the suit property. It is pleaded that plaintiff continuous to be absolute owner in possession of suit property on the basis of settlement deed dated 11.5.2000 followed by affidavit dated 11.5.2000. It is pleaded that defendants be restrained from interfering in any manner in possession of suit property. It is pleaded that co-defendants Nos. 1 to 3 have illegally wrongly and without jurisdiction manipulated cancellation of mutation No. 146 dated 18.8.2000 and it is pleaded that order of cancellation of mutation dt. 31.8.2005 is also illegal without jurisdiction and did not effect the rights of plaintiff in suit property. Alternative additional relief also sought by plaintiff to the effect that sale deed executed by co- defendant No. 1 in favour of co-defendants Nos. 4 to 11 with respect to suit property is also illegal null and void and is not binding upon the plaintiff and prayer also sought that defendants Nos. 4 to 11 be directed to re-transfer the suit property in favour of plaintiff. It is pleaded that on the failure of co-defendants Nos. 4 to 11 to re-transfer the property in favour of plaintiff decree of injunction be also passed in favour of plaintiff along with costs of suit.

3. Per contra written statement filed on behalf of contesting defendants and issues framed in Civil Suit No. 4 of 2007 on 29.3.2011 and additional issues also framed on 20.3.2012. Thereafter as per request of learned Advocates civil suit No. 4 of 2007 referred to mediator for settlement of dispute inter se the parties. In the meanwhile present application under Order 1 Rule 10 CPC filed.

4. There is recital in OMP No. 24 of 2015 that Dinesh Kumar, Vishal Chaddha and Madho Prasad are interested and proper party in suit and they be impleaded as co-defendants in civil suit No. 4 of 2007. It is pleaded that proposed co-defendants have entered into an agreement dated 17.5.2014 relating to suit property and proposed co-defendants have already paid amount to the tune of Rupees three crores twenty five lacs to co-defendant No.1 namely Raj Kumari Indira Mahindra relating to suit property and further pleaded that balance amount to the tune of Rs. 75 lacs (seventy five lacs) will be paid at the time of registration of sale deed. It is pleaded that Dinesh Kumar, Vishal Chaddha and Madho Prasad are assignees during pendency of C.S. No. 4 of 2007 and interest in suit property has devolved upon them and they be impleaded as co-defendants No. 12 to 14 respectively in CS No. 4 of 2007. Prayer for acceptance of application sought.

5. Per contra response filed on behalf of co-defendant No.1 Raj Kumari Indira Mahindra pleaded therein that Dinesh Kumar, Vishal Chaddha and Madho Prasad are not proper and interested parties in civil suit. It is pleaded that application filed with malafide intention just to delay proceedings of civil suit.

6. Per contra separate response filed on behalf of plaintiff pleaded therein that proposed co-defendants have entered into an agreement during the pendency of CS No. 4 of 2007 and further pleaded that separate proceedings under Order 39 Rule 2 A CPC have been filed against co-defendant No.1. It is pleaded that co-defendant No.1 could not enter into an agreement of sale in view of injunction order passed by Court which is still operative. It is pleaded that co-defendant No.1 has also filed CS No. 38 of 2009 which is pending against co-defendant No.3 and co-defendant No.9 for setting aside and cancellation of sale deed No. 25 dated 24.4.2008 qua suit property. It is pleaded that co-defendant No.1 herself challenged sale deed No. 25 dated 24.4.2008 and thereafter she could not enter into subsequent agreement of sale. It is pleaded that subsequent agreement of sale is illegal null and void and is also against injunction order passed by High Court of H.P. It is also pleaded that agreement did not create any interest in suit property and prayer for dismissal of application sought.

7. Court heard learned Advocate appearing on behalf of the applicant and learned Advocates appearing on behalf of the non-applicants and also perused the entire record carefully.

8. Following points arise for determination in OMP No. 24 of 2015:-

1. Whether application filed under Order 1 Rule 10 read with Section 151 CPC to implead Dinesh Kumar, Vishal Chaddha and Madho Prasad as co-defendants is liable to be accepted as mentioned in memorandum of grounds of application and whether application filed under Order 1 Rule 10 CPC should be converted into application filed under Order 22 Rule 10 CPC in the ends of justice while exercising inherent powers under Section 151 of Code of Civil Procedure 1908?
2. Relief.

Findings upon Point No.1 with reasons:

9. It is primafacie proved on record that Dinesh Kumar, Vishal Chaddha and Madho Prasad have executed sale agreement on 17.5.2014 with Raj Kumari Indira Mahindra i.e. co-defendant No.1 for sale of suit property in consideration amount of Rs.4 crore (Rupees four crore only) and out of sale consideration amount Rs.32500000/- (Rupees three crore twenty five lacs only) stood paid to co-defendant No.1. It is also primafacie proved on record that sale agreement dated 17.5.2014 was executed between Dinesh Kumar, Vishal Chaddha and Madho Prasad and co-defendant No.1 during the pendency of civil suit No. 4 of 2007. It is well settled law that any right to immovable property relating to civil suit which is pending before competent Court of law is governed by concept of doctrine of lis pendence as mentioned in Section 52 of Transfer of Property Act 1882. ***See AIR 2013 SC 2389 titled Thomson Press(India) Ltd. vs. Nanak Builders and Investors P.Ltd and others. See (2012)7 SCC 738 titled A. Nawab John and others vs. V.N.Subramaniyam.***

10. As per Order XXII Rule 10 CPC if any assignment, creation or devolution of any interest during the pendency of suit is created then with leave of Court any interested person to whom such interest is devolved could be impleaded as co-defendant.

11. In present case amount to the tune of Rs.32500000/- (Rupees three crores twenty five lacs only) is involved relating to suit property and there are allegations against co-defendant that co-defendant Smt. Raj Kumari Indira Mahindra had received Rs.32500000/- (Rupees three crores twenty five lacs only) relating to suit property during the pendency of suit from Dinesh Kumar, Vishal Chaddha and Madho Prasad.

12. It was held in case reported in ***AIR 1992 Orissa 47 titled Sri Jagannath Mahaprabhu vs. Pravat Chandra Chatterjee and others (Full Bench)*** that plaintiff is not bound to implead lispendence assignee as co-defendant under Order 1 Rule 10 CPC. It is held that lispendence assignee is virtually interested in litigation and it was further held that lispendence assignee could be impleaded as an assignee under the provisions of Order XXII Rule 10(1) CPC even if application was filed under Order 1 Rule 10 CPC. It was held that Court should treat application filed under Order 1 Rule 10 CPC as application filed under Order XXII Rule 10(1) CPC. ***See AIR 2005 Kerala 133 titled Bhaskaran vs. Vijayaraghan and others.***

13. It is well settled law that assignee during the pendency of suit will not be allowed to set up a case inconsistent with one set by assigner. It is well settled law that all orders passed in suit are binding upon the assignee and assignee could not reopen the case as assignee deprived the right from assigner during the pendency of suit under Order XXII Rule 10 of Code of Civil Procedure 1908.

14. It is held that relief sought by plaintiff will directly effect Dinesh Kumar, Vishal Chaddha and Madho Prasad because proposed co-defendants have already paid Rs.32500000/- (Rupees three crores twenty five lacs only) to co-defendant No.1 during the pendency of suit relating to suit land and it is held that Dinesh Kumar, Vishal Chaddha and Madho Prasad are proper parties in present suit because interest of Dinesh Kumar, Vishal Chaddha and Madho Prasad would directly effect the decision of Civil Suit No. 4 of 2007. It is well settled law that relief should not be denied to a party simply on the ground of wrong mentioning of section in application. It is well settled law that Courts are under legal obligation to peruse the entire contents of application and Courts are under legal obligation to grant relief to parties in accordance with law.

15. It is well settled law that under Order XXII Rule 10 CPC any assignment, creation or devolution of interest should take place during the pendency of suit. It is well settled law that application filed under Order 1 Rule 10 CPC by an assignee *pendente lite* can be converted under Order XXII Rule 10 CPC in the ends of justice. It is also well settled law that Order XXII Rule 10 CPC covers the word "interest" of assignee during pendency of suit and interest must be in subject matter of suit. It is well settled law that assignee of interest in suit property during pendency of civil suit is entitled to be impleaded as co-defendants under Order XXII Rule 10 CPC. In view of above stated facts application filed under Order 1 Rule 10 CPC is converted into application filed under Order XXII Rule 10 CPC in the ends of justice keeping in view the fact that Dinesh Kumar, Vishal Chaddha and Madho Prasad have already paid Rs.32500000/- (Rupees three crore twenty five lacs only) to co-defendant No.1 relating to suit property involved in civil suit No. 4 of 2007 titled Raja Ashok Pal Sen vs. Smt. Raj Kumari Indira Mahindra and it is held that interest was devolved upon Dinesh Kumar, Vishal Chaddha and Madho Prasad in suit property during pendency of suit under Order XXII Rule 10 of CPC.

16. It is well settled law that interpleader suit is one in which real dispute is between co-defendants only and co-defendants plead against each other instead of pleading against plaintiff.

17. Proviso to Section 88 of Code of Civil Procedure 1908 bars institution of fresh suit of interpleader where any former civil suit is pending in which rights of all parties can properly be decided.

18. It is held that rights of Dinesh Kumar, Vishal Chaddha and Madho Prasad can be properly decided in C.S. No. 4 of 2007. It is held that it is expedient in the ends of justice to allow application in order to avoid multiplicity of judicial proceedings inter se parties qua same property. Document of devolution of interest placed on record executed between proposed co-defendants and co-defendant No.1 on dated 17.5.2014 during pendency of C.S. No. 4 of 2007 relating to suit property. Plaintiff Raja Ashok Pal Sen and co-defendant Smt. Raj Kumari Indira Mahindra are related to each other. Point No.1 is decided accordingly.

Point No.2 (Relief)

19. In view of above stated facts application filed under Order 1 Rule 10 CPC is converted into application filed under Order XXII Rule 10 CPC in the ends of justice while exercising inherent powers under Section 151 of Code of Civil Procedure 1908 and (1) Dinesh Kumar son of Yadvender Kumar (2) Vishal Chaddha son of Shri Banwari Lal Chaddha (3) Madho Prasad son of Gobind Ram are impleaded as co-defendants No. 12, 13 and 14 in civil suit No. 4 of 2007 under Order XXII Rule 10 CPC. Observations will not effect merits of C.S. No. 4 of 2007 and will be confined only for disposal of OMP No. 24 of 2015. It is held that order under Section 151 of Code of Civil Procedure for conversion of application

filed under Order 1 Rule 10 CPC to application filed under Order XXII Rule 10 CPC is necessary for the ends of justice. OMP No. 24 of 2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

M/s.Himalayan Store and others ....Applicant/Defendant No.1
Versus
Bharat Sanchar Nigam Limited ....Non-applicant/Plaintiff

OMP No. 1 of 2014
Civil Suit No. 4069 of 2013-B
Order Reserved in OMP on 18.11.2015
Date of Order in OMP: 9th December 2015

Code of Civil Procedure, 1908- Order 7 Rule 11- Plaintiff filed a suit for recovery of Rs.1,26,70,969/- (Rupees One crore twenty six lacs seventy thousands nine hundred sixty nine)- defendant No.1 filed application under Order 7 Rule 11(d) read with Section 151 CPC for rejection of plaint on the plea that Bharat Sanchar Nigam Limited is a separate legal entity distinct from its share holders - it does not fall within the definition of State as defined in Article 12 of the Constitution of India- plaintiff is not entitled to the limitation period available to the govt. and the suit was barred by limitation - held that, there is specific pleading in the plaint that Govt. of India is holding 100% of the share capital of the plaintiff and the plaintiff is the agency of the Govt. of India for providing basic telephone services- Article 112 of the Limitation Act 1963 provides a period of 30 years for filing a suit on behalf of Central or State Government from the date of cause of action- hence the suit is within limitation - petition dismissed. (Para 6 to 10)

Case referred:
Ajay Hasia vs. Khalid Mujib, AIR 1981 SC 487 (Five Judges Bench)

For Applicant/ co-defendant : Mr. B. C. Negi, Sr. Advocate with No.1
Mr. P. P. Singh, Advocate
For Non-applicant/plaintiff : Mr. Rajinder Dogra, Advocate.
For Non-applicants No.:
2&4/co-defendants No. 2 and 4 : Mr. Satyen Vaidya, Sr. Advocatewith Mr.Vivek Sharma, Advocate
For Non-applicant No.3/ co-defendant No.3: Ms. Seema Guleria, Advocate

The following order of the Court was delivered:

P.S. Rana, Judge.

Interim Order upon application filed under Order 7 Rule 11(d) read with Section 151 CPC:-

Present application filed under Order 7 Rule 11(d) read with Section 151 CPC for rejection of plaint filed in Civil Suit No. 4069 of 2013-B titled Bharat Sanchar Nigam Limited vs. M/s. Himalayan Store and others.

Brief facts of the case

2. Bharat Sanchar Nigam Limited through its General Manager (Mobile) plaintiff filed a suit for recovery of Rs.12670969/- (Rupees One crore twenty six lacs seventy thousands nine hundred sixty nine) including interest @12% per annum upto filing of the suit. It is pleaded that plaintiff is a Company incorporated under the Companies Act 1956 and having its registered office at Sanchar Bhawan 20 Ashoka Road New Delhi. It is further pleaded that plaintiff Company has also office in Himachal Pradesh. It is further pleaded that plaintiff is under the direct control of Department of Telecommunication Govt. of India. It is further pleaded that Department of Telecommunication has administrative and financial control over the plaintiff. It is further pleaded that Govt. of India is holding 100% capital share of the plaintiff company. It is further pleaded that SIMS (Subscriber Index Module) cards were sold through BSNL franchise as per agreement dated 14.11.2002. It is further pleaded that defendants approached the plaintiff for appointing as authorized dealer for marketing and distribution of cellular phones/ connections within the State of Himachal Pradesh subject to terms and conditions executed inter se parties. It is further pleaded that defendants also furnished unconditional Bank Guarantee in the sum of Rs.500000/- (Rupees five lacs). It is further pleaded that defendants appointed retailer/agents/sales executive force for the purpose of booking new connections and appointed many agents/sales executive/sales force for the expansion of business. It is further pleaded that defendants had caused financial loss to the plaintiff to the tune of Rs.12670969/- (Rupees One crore twenty six lacs seventy thousands nine hundred sixty nine). Prayer sought for grant of decree for recovery of Rs.12670969/- (Rupees One crore twenty six lacs seventy thousands nine hundred sixty nine).

3. Co-defendant No.1 did not file written statement in Civil Suit No. 4069 of 2013-B. Co-defendant No.1 filed application under Order 7 Rule 11(d) read with Section 151 CPC for rejection of plaint.

4. Court heard learned Advocates appearing on behalf of parties at length and also perused the entire record carefully.

5. Following points arise for determination in OMP No. 1 of 2014:-

1. Whether application filed under Order 7 Rule 11(d) read with Section 151 CPC for rejection of plaint is liable to be accepted as mentioned in memorandum of grounds of application?
2. Relief.

Findings upon Point No.1 with reasons:

6. Submission of learned Advocate appearing on behalf of applicant that present civil suit is filed by Bharat Sanchar Nigam Limited and Bharat Sanchar Nigam Limited is a separate legal entity distinct from its share holders and did not come within the definition of State as defined in Article 12 of the Constitution of India and it is submitted that Article 12 of the Constitution of India is relevant for the purpose of filing petition under Article 32 or Article 226 of the Constitution of India and on this ground plaint be rejected on the basis of Limitation Act 1963 is rejected being devoid of merits for the reasons hereinafter mentioned. There is specific pleading in the plaint that Govt. of India is holding 100% of the share of the capital of the plaintiff company. There is special recital in the plaint that plaintiff is the agency of the Govt. of India for providing basic telephone services. In the present case public exchequer to the tune of Rs.12670969/- (Rupees One crore twenty six lacs seventy thousands nine hundred sixty nine) is involved. As per Constitution of India word “State” has been defined in Article 12 of the Constitution of India. Article 12 of the Constitution of India is quoted in toto:

"**Article. 12 Definition**:- In this part unless the context otherwise requires "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

7. It is held that words "under the control of Government of India" mentioned in Article 12 of the Constitution of India are very material in the present civil suit. Plaintiff has submitted in the plaint that 100% shares are of Govt. of India. There is further recital in the plaint that plaintiff is the agency of the Govt. of India. There is further recital in the plaint that administrative and financial matters of plaintiff are governed by Central Govt. of India. In view of above stated facts it is held that plaintiff comes within the definition of "State" as defined in Article 12 of the Constitution of India. It was held in case reported in AIR 1981 SC 487 (Five Judges Bench) titled ***Ajay Hasia*** vs. ***Khalid Mujib*** that if entire share capital is held by Government then it would be deemed agency of Government or under control of Government as defined in Article 12 of Constitution of India.

8. Submission of learned Advocate appearing on behalf of applicant that Article 12 of the Constitution of India is applicable to writ jurisdiction Courts only is rejected being devoid of merits for the reasons hereinafter mentioned. It is held that Constitution of India is binding upon all Courts situated in India.

9. As per Article 112 of the Limitation Act 1963 limitation for filing a suit on behalf of Central Government or State Government is 30 years from the date of cause of action. In the present case as per para 12 of the plaint cause of action arose to plaintiff in the year 2002 when the agreement was executed between the parties and thereafter on 3.11.2003 when fraud to the tune of Rs.12670969/- (Rupees One crore twenty six lacs seventy thousands nine hundred sixty nine) was detected. Present civil suit was filed by the plaintiff on 4.10.2013. Hence it is held that it is not expedient in the ends of justice to reject plaint under Order VII Rule 11(d) of Code of Civil Procedure 1908. Point No.1 is decided against the applicant.

Point No.2 (Relief)

10. In view of above stated facts application filed under Order 7 Rule 11(d) read with Section 151 CPC for rejection of plaint is dismissed. Observations will not effect merits of C.S. No. 4069 of 2013-B in any manner and will be strictly confined for disposal of OMP No. 1 of 2014. OMP No. 1 of 2014 is disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Champa Devi w/o Sh. Pawan Kumar .....Petitioner

Versus

State of H.P. .....Non-petitioner

Cr.MP(M) No. 1701 of 2015
Order Reserved on 27.11.2015
Date of Order 10th December 2015

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 302, 323, 325, 452,

436, 427, 147, 148, 149, 109, 115, 117 and 120-B IPC petitioner filed a bail application pleading that she is a poor labourer having two minor children to be looked after and had no role in the alleged offence- held that, that petitioner is a woman and the investigation is complete - accused is presumed to be innocent till convicted by competent Court- in view of the fact that petitioner is mother of two minor children; it is expedient in the ends of justice to allow the application -interests of the general public and State will not be adversely effected by the release of the petitioner on bail- application allowed. (Para 2 to 9)

Cases referred:
Gurcharan Singh and others Vs. State (Delhi Administration), AIR 1978 SC 179
The State Vs. Captain Jagjit Singh, AIR 1962 SC 253
Sanjay Chandra Vs. Central Bureau of Investigation, 2012 Cri. Law Journal 702 SC
Mt. Choti vs. State, AIR 1957 Rajasthan page 10

For petitioner : Mr. G. R. Palsra, Advocate
For Non-petitioner : Mr. Rupinder Singh Thakur, Addl. A. G.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 Cr.PC for grant of bail in FIR No.56/2015 dated 20.06.2015 registered under Sections 302, 323, 325, 452, 436, 427, 147, 148, 149, 109, 115, 117 and 120-B IPC in Police Station Padhar Distt. Mandi (H.P.).

2. It is pleaded that petitioner is a poor lady working as daily waged Beldar in order to earn her livelihood and she has two minor children. It is further pleaded that role of the petitioner as alleged in the FIR is after thought and petitioner did not play any role in the criminal case. It is further pleaded that petitioner will not threat the prosecution witnesses in any manner. It is further pleaded that no recovery is to be effected from the petitioner. It is further pleaded that investigation is complete and final investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in the competent Court of law. It is further pleaded that complainant party was aggressor who came with deadly weapons. It is further pleaded that complainant Gurvinder Singh is accused in counter FIR No.55/2015 registered under Sections 307, 147, 148 IPC read with Sections 25 and 27 of Arms Act. Prayer for acceptance of bail petition sought.

3. Per contra police report filed. As per police report FIR No.56/2015 dated 20.06.2015 is registered under Sections 302, 323, 325, 452, 436, 427, 147, 148, 149, 109, 115, 117 and 120-B IPC in Police Station Padhar Distt. Mandi (H.P.). There is recital in police report that complainant Gurvinder Singh was working with Contractor Rajiv Sharma at place Shalgi/Kamand Distt. Mandi H.P. There is further recital in police report that complainant alongwith his friends Gagandeep, Balbinder Singh, Satbir Singh, Lovely, Hairy, Teja Singh, Simranjeet Singh and Jitender alias Sheru on dated 17.6.2015 came for work. There is further recital in police report that on dated 20.6.2015 at about 10.30 A.M. when the complaint and his friends were working then local labourers and other persons came and told them to stop the work. There is further recital in police report that when the complainant and his friends did not stop the work then accused persons inflicted injuries with stones and iron rods. There is further recital in police report that friend of the complainant party namely Simranjeet Singh in self defence fired with the pistol in the air. There is further recital in police report that thereafter the mob became aggressive and threw

the workers in rivulet and damaged the vehicle and also damaged the office. There is further recital in police report that Simranjeet Singh, Tanvinder Singh alias Hairy, Tejinder Singh and Jitender Singh have died. After registration of the case investigation was conducted, site plan prepared, photographs obtained and damaged vehicle, broken module of office took into possession vide seizure memo. Blood clotted sticks, stones and iron rods also took into possession vide seizure memo. Post mortem of deceased Simranjeet Singh, Tanvinder Singh alias Hairy, Tejinder Singh and Jitender Singh conducted and after post mortem dead bodies handed over to relatives of deceased. There is further recital in police report that injured Gurvinder Singh, Gagandeep, Baljinder Singh, Satbir Singh, Baljeet Singh alias Lovely were medically examined in Zonal Hospital Mandi and MLCs obtained. There is further recital in police report that investigation is complete and final investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in the competent Court of law. There is further recital in police report that petitioner Champa Devi is the effective leader of labour union and if she is released on bail then she would commit similar criminal offence. Prayer for rejection of bail application sought.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioner.

5. Following points arise for determination in present bail application.

(1) Whether petitioner is liable to be released on bail as per special provision of bail provided for women under proviso of Section 437 of Code of Criminal Procedure 1973 relating to criminal offence punishable with death or imprisonment for life?

(2) Final Order.

Findings upon Point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and she did not commit any offence as alleged by the prosecution cannot be decided at this stage. Same fact will be decided when case will be disposed of on its merits after giving due opportunity of hearing to both parties to lead evidence in support of their case.

7. Another submission of learned Advocate appearing on behalf of petitioner that petitioner is a woman and investigation is complete in the present case and final investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in the competent Court of law and petitioner be released on bail as per special provision of bail provided for women is accepted for the reasons hereinafter mentioned. It is well settled law that at the time of granting bail following factors are to be considered (i) Nature and seriousness of offence (ii) Character of the evidence (iii) Circumstances which are peculiar to the accused (iv) A reasonable possibility of the presence of accused not being secured at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. See AIR 1978 SC 179 titled ***Gurcharan Singh and others Vs. State (Delhi Administration.*** Also see AIR 1962 SC 253 titled ***The State Vs. Captain Jagjit Singh.*** It was held in case reported in 2012 Cri. Law Journal 702 SC titled ***Sanjay Chandra*** Vs. ***Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at trial. It was held that grant of bail is rule and committal to jail is an exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It was held that it is not in the interest of justice that accused should be kept in jail for an indefinite period. In the present case investigation is completed, final

investigation report under Section 173 Code of Criminal Procedure 1973 already stood filed in the competent Court of law, no recovery is to be effected from the petitioner and trial of the case will be concluded in due course of time. There is special provision of bail for woman, sick or infirm persons or persons under the age of 16 years as per proviso clause of Section 437 of Code of Criminal Procedure 1973 in non-bailable criminal offences punishable with death or imprisonment for life. In view of the fact that petitioner is a woman and in view of the fact that investigation is completed and in view of the fact that accused is presumed to be innocent till convicted by competent Court and in view of the fact that as per prosecution story offence of murder was committed by mob on provocation of fire and in view of the fact that petitioner is mother of two minor children Court is of the opinion that it is expedient in the ends of justice to allow the application. Court is also of the opinion that if the petitioner is released on bail at this stage then interests of the general public and State will not be adversely effected. It was held in case reported in AIR 1957 Rajasthan page 10 titled ***Mt. Choti*** vs. ***State*** that special treatment of women and children in bail matter is not inconsistent with Article 15 of Constitution of India.

8. Submission of learned Additional Advocate General that if the petitioner is released on bail at this stage then petitioner will induce and threat prosecution witnesses and on this ground bail application be declined is rejected being devoid of merits for the reason hereinafter mentioned. Court is of the opinion that conditional bail will be granted to the petitioner. Court is of the opinion that conditions will be imposed upon the petitioner in bail order that petitioner will not induce or threat prosecution witnesses during trial of the criminal case. Court is of the opinion that if petitioner will induce or threat prosecution witnesses after grant of bail then prosecution agency or investigating agency will be at liberty to file application for cancellation of bail provided under Section 439(2) of the Code of Criminal Procedure 1973 in accordance with law. In view of the above stated facts point No.1 is answered in affirmative.

Point No.2 (Final order).

9. In view of my findings on point No.1 bail application filed by petitioner under Section 439 of Code of Criminal Procedure 1973 is allowed as per special provision of bail for women. It is ordered that petitioner will be released on bail on furnishing personal bond in the sum of Rs.100000/-(One lac) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner shall make herself available for interrogation by a Police Officer as and when required. (ii) That petitioner will attend proceedings of the trial Court regularly till conclusion of the trial. (iii) That petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iv) That petitioner shall not leave India without prior permission of the Court. (v) That petitioner will not commit similar offence qua which she is accused. Observation made hereinabove will not effect merits of the case in any manner and will be strictly confined for disposal of the present bail application. Cr.MP(M) No.1701/2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Naag Devta Sewa Samiti, Dobri Salwala .....Appellant.
Versus
Sant Ram & ors. .....Respondents.

RSA No. 598 of 2015.
Decided on: 15.12.2015.

Specific Relief Act,1963- Section 34- Plaintiff, a society, registered under the Societies Registration Act, 1860 sought permanent prohibitory injunction against defendants for restraining them from taking over the affairs of Naag Devta Mandir on the plea that the temple is being looked after and managed by the Society for long- defendants claiming to be Pujaris of the temple from generations asserted their rights on the collection of the offering in the temple pleading that they had no means of livelihood and were collecting offerings for centuries-defendants challenged the existence of the society itself-the suit was dismissed-first appeal was also dismissed - in second appeal, held that the temple of Naag Devta is an ancient temple established by Maharaja Dhak Prakash- defendants No. 1 to 3 & 5 and other 11 families of village Kotga are the Pujaris/Priests/Shebait of the temple and before them, their ancestors were managing the affairs of the temple from generation to generation-they have a right to perform pooja at the temple, manage its affairs and appropriate offerings of the temple- residents of 14 villages offer part of their produce as "*Patha*" to the temple-fairs of the temple, are organized by the Panchayat- plaintiff-Society has no right, whatsoever, to interfere with the affairs of the temple- there is no evidence to suggest that the defendants are forcibly taking over the affairs of the temple- suit and first appeal were rightly dismissed- second appeal also dismissed. (Para-34 to 39)

For the appellant(s): Mr. Arvind Sharma, Advocate.
For the respondents: Nemo.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This regular second appeal is directed against the judgment and decree of the learned Addl. District Judge, Sirmaur at Nahan, H.P., dated 28.10.2015, passed in Civil Appeal No. 55-N/13 of 2013/12.

2. "Key facts" necessary for the adjudication of this regular second appeal are that the appellant-plaintiff (hereinafter referred to as the plaintiff), has instituted suit for permanent injunction against the respondents-defendants (hereinafter referred to as the defendants) to restrain the defendants from interfering in the management or taking forcible possession of the property of Naag Devta Mandir, situated at Village Dobri Salwala, Tehsil Paonta Sahib. The case of the plaintiff is that it is a society, registered under the Societies Registration Act, 1860, vide registration Certificate No. 668-SDM/P 2001, dated 5.10.2001, by the Registrar of Societies, Sub Division, Paonta Sahib. The plaintiff-society has its own Constitution, Memorandum and bye-laws, for the management of temple and for carrying out other welfare activities. The Society has formed a Managing Committee for carrying out its affairs. Sh. Depinder Singh Bhandari is the President and Sh. Varinder Singh Chaudhary is its General Secretary. According to the bye-laws of the Society, its General Secretary is competent to sue on behalf of the plaintiff and conduct legal proceedings. The

temple is being looked after and managed by the Temple Society since long. The Society has spent huge amount to preserve the property of the temple. The defendants have no right, title and interest in the management of the temple nor are they the members of the plaintiff-Society. The defendants in the month of March, 2002 provoked their close relations to take possession of the temple forcibly and filed suit for declaration and permanent injunction. The suit was filed by Sh. Atma Ram, Raghubir Singh, Chaman Lal Sharma and others, all resident of Village Kotga Kando. The civil suit bearing No. 35/2002 was filed against the plaintiff-Society. However, the suit was withdrawn under Order 23 Rule 1 CPC, on 4.1.2003. A fair (*Jaitha Itwar Mela*) is organized in the premises of the temple every year. On 19.5.2002, on the occasion of *Jetha Itwar Fair*, the defendants interfered in the smooth functioning of the fair and tried to take control of the management of the temple and offerings offered by the devotes. However, their interference was stopped.

3. The suit was contested by the defendants. According to the defendants, the plaintiff has no right in the management of the temple. The Society could be registered only for the promotion of literary, scientific and charitable purpose or for the improvement of fine arts or for the diffusion of useful knowledge, whereas the main object of the plaintiff-Society is religious and to take over the management of the temple. Hence, the Registrar of the Societies had no jurisdiction to register the plaintiff Society. Defendants No. 1 to 3 & 5 alongwith other 11 families of Pujaris are offering pooja in the temple, managing it, and are collecting the offerings from generation to generation since the time of Maharaja Dhak Prakash. The defendant No. 3 Sh. Deep Chand is the head priest of the temple. The Deity of Naag Devta/Nawna speaks through defendant No. 3. The temple of Naag Devta is centuries old. In the month of October, 2001, the plaintiff-Society with the aim to collect money from the shopkeepers had published pamphlets to auction the stalls at the fair. The Gram Panchayat Dobri Salwala passed a resolution on 7.10.2001, requesting the Deputy Commissioner, Sirmaur to stop the plaintiff and its members from indulging in illegal activities. The defendant No. 4 is the President of Gram Panchayat. The Deputy Commissioner, Sirmaur, vide order dated 8.10.2001 directed the plaintiff and its members not to indulge in illegal activities and informed that the management of fair is within the right of Gram Panchayat. The plaintiff has no right in the management of the affairs of the temple. The plaintiff and its members have a malafide intention to grab the offerings of the temple. The Priest/Shebait have nothing to do with the management of the fairs of the temple and the plaintiff has also no right in the management of the temple affairs. The plaintiff under the garb of present suit wants to collect the offerings without any right, title and interest.

4. The plaintiff filed replication reasserting the averments made in the plaint and denying the contention raised by the defendants in their written statement. It is admitted that the temple is situated in reserved forest and has got its history. The learned Civil Judge (Sr. Divn.), Court No. 1, Paonta Sahib, framed the issues on 18.2.2008. The suit was dismissed vide judgment dated 25.9.2012. The plaintiff, feeling aggrieved, preferred an appeal against the judgment and decree dated 25.9.2012. The learned Addl. District Judge, Sirmaur at Nahan, dismissed the same on 28.10.2015. Hence, this regular second appeal.

5. Mr. Arvind Sharma, Advocate, appearing on behalf of the appellant, on the basis of the substantial questions of law framed, has vehemently argued that both the Courts below have not correctly appreciated the oral as well as documentary evidence. He then contended that the courts below have not appreciated the outcome of the withdrawal of civil Suit No. 35/2002 on 4.1.2003.

6. I have heard the learned counsel and have also gone through the judgments and records of the case carefully.

7. PW-1 Roop chand has proved on record copy of previous suit filed titled as Atma Ram vrs. Naag Devta Samiti.

8. PW-2 Atma Ram Sharma, deposed that he had filed the previous suit titled as Atma Ram vrs. Naag Devta Samiti. He had withdrawn the suit with permission to file suit afresh. In his cross-examination, he admitted that he had withdrawn the suit on the basis of technical grounds. He is also resident of village Nagetha and his villagers used to offer a "*Patha*" of their produce to Naag Devta. He also admitted that he has seen the plaintiffs of previous suit at temple acting as *Pujaris*.

9. PW-4 Haminder Singh testified that he is running a shop in the name of M/S Unique Electricals and the plaintiff-Samiti has purchased electrical goods on 16.9.2006.

10. PW-5 Mehar Singh has proved copy of Panchayat Resolution Ext. PW-5/A.

11. PW-6 Devi Singh deposed that he had been working as Jr. Assistant in HPSEB and account No. AW-71 is in the name of Naag Devta Committee Salwala and this connection was taken by Deep Chand Bhandari.

12. PW-7 Prem Chand Sharma has deposed that in the year 2001, Anuj Chaudhary, member of Naag Devta Committee, Salwala has got registered some antique Idols with H.P. Language and Culture Department.

13. PW-8 Kanwar Vikram Singh deposed that Naag Devta Temple was established by his predecessor Maharaja Dhak Prakash. He was regular visitor of the temple. The Committee was managing the affairs since 2001 and before this, the temple was neglected and none was looking after its affairs. Various developmental works have been undertaken by the Committee. The Pujaris and he has not seen the defendants any time working as Pujaries in the temple. In his cross-examination, he admitted that he is not representing the royal family. He has not gone to attend any function of Naag Devta.

14. PW-9 Ram Chand Sharma is a contractor. According to him, the management of the Nag Devta temple is looked after by Pradhan Depinder Singh.

15. PW-10 Jagdish Sharma deposed that he was working as Pujari in the temple alongwith Shanti Swaroop. They were getting Rs. 2500/- per month as salary. In his cross-examination, he admitted that Ram Chand is his real brother. He also admitted that whole of the villagers used to offer the part of their cultivation in the Naag Devta temple in the shape of "*Patha*".

16. PW-11 Jeetu Ram is a mason. In his cross-examination, he admitted that he has not produced any documentary evidence regarding the engagement as mason.

17. PW-12 Rohit Kathuria has prepared site map Ext. PW-12/A.

18. PW-14 Virender Chaudhary is the Secretary of the Naag Devta Seva Samiti. It was registered and the Samiti has passed a resolution and authorized him to file the present suit and Depinder is the Pradhan of the Samiti. The Samiti was looking after the affairs of Naag Devta temple. He further deposed that prior to Committee, no one was looking after the affairs of the temple and the defendants have no right and title in the temple and they never remained Pujaris in the temple. Two functions are organized in the temple every year. One is celebrated after Dussehra and people used to offer part of their cultivation in the temple. In his cross-examination, he admitted that the Pradhan Deep Chand Bhandari is his brother-in-law. He also admitted that he was contesting the election

of Vidhan Sabha and he has not done any development work in the temple when he was Pradhan.

19. PW-16 Depinder Bhandari is the President of Naag Devta Temple Samiti. According to him, in the year 1999, the villagers of Dobri Salwala approached the Pradhan that the condition of Naag Devta temple is deteriorating and to constitute a management Committee. The Committee was constituted on 20.5.2001 to look after the affairs of the Naag Devta Temple. He proved resolutions Ext. PW-16/C, PW-16/D and PW-16/F. The committee has undertaken various developmental works, including construction, installation of electricity connection etc.

20. PW-17 Jagdish Chand deposed that he has seen Naag Devta temple and is regular visitor of the temple. He admitted that Naag Devta temple is the ancient temple and persons from various villages visit the temple and offer their part of the cultivation.

21. PW-18 Shanti Swaroop deposed that he is the Pujari by profession. He was original Pujari of Naag Devta Temple.

22. PW-19 Prithvi Singh deposed that he was local resident of Gorkhuwala. He knew plaintiff and defendants. According to him, the plaintiff-Committee was looking after the management of the temple since 7-8 years.

23. PW-20 Pradeep Kumar Sharma deposed that the Committee looks after the affairs of the temple and has undertaken various developmental works.

24. PW-21 Chatter Singh was examined in rebuttal evidence. He testified that he often visits the temple and he has never seen defendants working as Pujari in the temple for the last 40 years.

25. DW-1 Ajay Bahadur deposed that he is from the royal family. He is the representative of the royal family and participates in various functions of Naag Devta. Shri Naag Devta is their *kul devta* (main priest). The villagers came to him and asked him to register its antique Idols in H.P. Language and Culture Department and he had written letter for the same. Sant Ram and Deep Chand are working as Pujari in the temple since the time of their ancestors and they used to take offerings of the temple.

26. DW-2 O.P. Chauhan, deposed that he is an Advocate by profession. He often visits the temple. Villagers used to offer part of the cultivation to the Naag Devta in the shape of "*Patha*". Deep Chand defendant and other members of his family are Pujari of the temple. He denied the suggestion that on 21.12.1999, the villagers of Gram Panchayat Dobri Salwala formed a Committee for the management of the temple.

27. DW-3 Jaggi Ram deposed that he is Advocate and he also visits Naag Devta Temple. He visits the temple for the last 50 years. The defendants were Pujaries of the temple.

28. DW-4 Bishan Singh deposed that villagers of 14 adjoining villages come and pay their offerings. He used to visit the temple since his childhood.

29. DW-5 Sadhu Ram and DW-6 Jeet Singh have also deposed that they were visiting the temple from the time of their ancestors.

30. DW-7 Jogi Ram deposed that the villagers of adjoining villages offer their grain to the Naag Devta Temple and Deep Chand used to take such offerings. This temple is ancient temple and defendants used to maintain the temple.

31. DW-8 Tarun Deep Singh deposed that he also visits the temple regularly and Deep Chand is its hereditary Pujari.

31. DW-9 Inder Singh and DW-10 Sant Ram have also deposed that they used to offer "*Patha*" in the temple.

32. DW-13 Sant Ram has led his evidence by way of affidavit Ext. DW-13/A. He proved copy of *Sajra Nasab* Ext. DW-13/B. Its Hindi translation Ext. DW-13/D and DW-8/A writing of Depinder Singh and pedigree table (*Sajra Nasab*) of owners of the year 1994-95 Ext. DW-13/E. He has stated that the history of Naag Devta Temple is as narrated by the defendants in the written statement. According to him, first Pujari was appointed 100 years ago. He came to know about the history of temple from the forefathers.

33. DW-14 Deep Chand has also led his evidence by filing affidavit Ext. DW-14/A. He deposed that all the defendants are the decedents of common ancestor and their forefathers came from Jaisalmer with Rajmata Sundra and since then, they are performing as Pujari in the Naag Devta temple. For the last one year, the Committee is threatening to oust him from the temple. According to him, the temple is 200 years old.

34. The registration certificate of the Society is Ext. PW-6/C. Sh. Depinder Singh is the President of the Society. The case of the plaintiff, precisely, is that the temple is ancient and that the villagers of Gram Panchayat Dobri Salwala has passed resolution on 21.12.1999 vide Ext. PW-5/A, resolving that the management of the temple be either taken over by the Government or a Committee be formed for the purpose. Thereafter, Society was constituted. It is also stated in the resolution that the original Pujari of the temple would remain in the same capacity. The plaintiff has not led any tangible evidence to prove that from the year 2001, they were managing the income and expenditure of the temple. Though, as per the statements, as discussed hereinabove, some developmental work has been undertaken by the plaintiff-Society, but it has not been proved that the amount was spent from the income of the temple. The temple is ancient temple as per the evidence led by the parties. The villagers of adjoining 14 villages have tremendous faith in the Deity. They offer part of their cultivation in the shape of "*Patha*", since long. The plaintiff-Society has failed to prove as to how they came in possession of the temple. The defendants are the Pujaris of the temple.

35. DW-13 Sant Ram and DW-14 Deep Chand have categorically deposed that they were hereditary Pujaris. They have also testified about the history of the temple, including its traditions and rituals. DW-4 Bishan Singh, DW-5 Sadhu Ram, DW-6 Jeet Singh, DW-7 Jogi Ram, DW-9 Inder Singh, DW-13 Sant Ram and DW-14 Deep Chand have deposed that the villagers used to offer their grain in the shape of "*Patha*" in the temple. The Pujaris have no other source of income. They have settled in village Kotga. Their only livelihood is the offerings made by the people. The witnesses produced by the plaintiff themselves have admitted the tradition of offering of "*Patha*". It is also duly established from the pedigree table that defendants No. 1 to 3 and 5 and heads of 11 other families are the decedents of the common ancestor and are working as Pujaris. According to Ext. DW-8/A, the defendants No. 1 to 3, 5 and 11 families of village Kotga have been permitted to be Pujaris of the temple.

36. The Deputy Commissioner, Sirmaur was requested to restrain the plaintiff-society from indulging in illegal activities. The Deputy Commissioner, Sirmaur, vide order dated 8.10.2001, directed the plaintiff and its members not to interfere in the matter of Panchayat. The copy of order is Ext. DW-10/A. There is nothing on record to prove that the defendants are interfering in the management of the Naag Devta Temple and trying to take

movable and immovable property of the Naag Devta Temple illegally and forcibly. They are performing their duties as Pujaris. It is reiterated that the plaintiff-Society has failed to establish that they are running the affairs of the temple. The plaintiff-Society has also failed to prove as to how it came into possession when there is ample evidence on record that the temple is ancient.

37. Mr. Arvind Sharma, Advocate, has argued that earlier the relatives of defendants filed suit for declaration and permanent injunction. It was withdrawn. The fact of the matter is that it was withdrawn with liberty to file suit afresh. Moreover, the defendants were not parties in the earlier suit. The defendants No. 1 to 3 and 5 along with other 11 families of village Kotga are entitled to manage the affairs of the temple as "*Shebait*" and have right to its offerings. It is not the defendants but the plaintiff-Society, who is interfering in the management of the temple.

38. The temple of Naag Devta at Village Nansar is an ancient temple. It was established by Maharaja Dhak Prakash. The defendants No. 1 to 3 & 5 and other 11 families of village Kotga are the Pujaris/Priests/Shebait of the temple and before them, their ancestors were managing the affairs of the temple from generation to generation. They have a right to perform pooja at the temple and manage its affairs and appropriate offerings of the temple. DW-14 Deep Chand is the head priest of Naag Devta Temple. The residents of 14 villages offer part of their produce as "*Patha*" to the temple. The fairs of the temple, as noticed hereinabove, are organized by the Panchayat. The plaintiff-Society has no right, whatsoever, to interfere with the affairs of the temple. The Courts below have correctly appreciated Ext. PW-2/A copy of plaint, Ext. PW-2/B certified copy of order dated 4.1.2003 as well as PW-6/A to PW-6/F i.e. test report, copy of intimation letter, certificate, copy of application form, service estimate and service connection order. The substantial questions of law are answered accordingly.

39. Consequently, there is no merit in this appeal and the same is dismissed. No costs.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

State of H.P .....Appellant.
Versus
Harsh Sharma & another .....Respondents.

Cr. MP(M) No. 1460 of 2015
Decided on: 18th December, 2015.

N.D.P.S. Act, 1985- Section 18 and 20- Search of the vehicle of the accused was conducted during which one envelope was recovered which was containing 60 grams of opium and 500 grams of charas- accused were acquitted by the trial Court- prosecution case regarding the presence of PW-7 was not corroborated by rapat roznamcha- I.O. had not given name of the person who had written the document which shows that site and location where the document prepared was concealed by him- the fact that single vehicle was stopped shows that police had prior information- it was necessary to comply with the provision of Section

42- held, that in these circumstances, accused were rightly acquitted by the trial Court- application dismissed. (Para-7 to 15)

For the Appellant: Mr. Ramesh Thakur, Assistant Advocate General.
For the Respondent: Nemo.

The following judgment of the Court was delivered:

Per Sureshwar Thakur, Judge

The State of Himachal Pradesh is aggrieved by the findings of acquittal recorded in favour of the respondents/accused by the learned Special Judge, Shimla, Himachal Pradesh. Being aggrieved, it has sought the leave of this Court for instituting an appeal therefrom for assailing it.

2. Brief facts of the case are that on 22.10.2010, Sub Inspector Kamal Chand, Incharge SIU Shimla alongwith H.C. Manoj Kumar No. 47, H.C. Yashwant Singh No. 1674 and Constable Pawan Kumar No. 1213 were present at Cart Road near Gurudwara Singh Sabha, Shimla. The police party was there on patrolling duty and in order to detect the crime relating to narcotic etc. From the spot HHG Sunil Kumar No. 2/2-61 who, was on traffic duty, was also associated. I.O. had also associated two independent witnesses namely Kishori Lal and Dharam Singh on the spot. At about 3.30 P.M., they noticed a car No. HR-51U-0969 black coloured make Maruti Esteem coming from Lift side. The said vehicle was driven by its driver towards ISBT, Shimla. Sub Inspector Kamal Chand alongwith his other police officials stopped the vehicle on the basis of suspicion that said vehicle might be transporting some contraband in it. When the vehicle was stopped, the driver, on inquiry, had disclosed his name to be Harsh Sharma, S/o Sh. Om Parkash and the other person who was found sitting in the front seat disclosed his name to be Ashok Kumar (accused persons). The I.O. thereafter, given the option as per the provisions of Section 50 of the NDPS Act, in order to search the vehicle as well as search of accused. The police officials and independent witnesses have given their personal search to accused Harsh Sharma and Ashok Kumar but nothing incriminating was found from their personal search. Thereafter, vehicle was searched. During the search of vehicle aforesaid, a polythene envelop was found from the dashboard of the vehicle, upon which, the words "Kishor Chand & Sons" were printed on. When the said envelop was opened another white colored polythene envelop was found. The said envelop was having two strings of red colored. In the said envelop, the charas, in the shape of sticks, was found. In the same envelop, another polythene wrapper was found, in which, the opium was found. Both the contraband were identified by S.I. Kamal Chand on the basis of his experience. On weighment the charas were found to be 500 grams and opium was found to be 60 grams. During the personal search of accused Harsh Sharma, two mobile phones, one gun licence valid upto 31.3.2010 along with currency notes of Rs.10,000/- were found. Whereas, from the personal search of the accused Ashok Kumar, two mobile phones, one driving licence and a passport size photograph were found. The recovered charas and opium was put in the two separate parcels which were sealed with seal 'N'. Similarly, other articles were also put in the separate parcel. The recovered charas, opium mobile phones which were put in the three separate parcels were taken into possession alongwith the papers of vehicle No. HR-51U-0969 and photograph of acused Ashok Kumar. The vehicle was also taken into possession. I.O. also filled in the N.C.B. forms in triplicate. Thereafter, ruqua was sent for registration of the FIR, upon which, formal FIR was registered against the accused. Other codal formalities were completed in this case. The recovered contraband was sent for

chemical analysis in the State Forensic Science Laboratory, Junga. On conclusion of the investigation into the offence allegedly committed by the accused, a report under Section 173 of the Cr.P.C. was prepared and filed in the Court.

3. The trial Court charged the accused for theirs committing offences punishable under Sections 18, 20 readwith section 29 of the Act to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 15 witnesses. On closure of prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded, in which they pleaded innocence. On closure of proceedings under Section 313 Cr.P.C the accused were given an opportunity to adduce evidence in defence which they refused to avail.

5. The appellant-State is aggrieved by the judgment of acquittal recorded by the learned trial Court. Mr. Ramesh Thakur, learned Assistant Advocate General has concerted to vigorously contend before this Court qua the findings of acquittal recorded by the learned trial Court, being not based on a proper appreciation of evidence on record, rather, theirs being sequelled by gross mis-appreciation of material on record. Hence, he contends for leave being granted to the state of H.P to institute an appeal therefrom for assailing it.

6. We have heard the learned Assistant Advocate General at length and have also gone through the entire material on record.

7. Recovery of charas weighing 500 grams and opium weighing 60 grams stood respectively effected under recovery memos Ex. PW-7/F and PW-7/G from a polythene envelope kept on the dashboard of vehicle No. HR-51U-0969 occupied by both the accused at the relevant time. Even though the prosecution witnesses have deposed in tandem and in harmony qua each of the links in the chain of circumstances commencing from proceedings relating to search, seizure and recovery till the consummate link comprised in rendition of an opinion by the FSL on the specimen parcels sent to it for analysis, portraying proof of unbroken and unsevered links, in the entire chain of circumstances, hence it stands argued that given the factum of the prosecution case hence standing established, it would be legally unwise for this Court to acquit the accused.

8. Besides when the testimonies of the official witnesses, unravel the factum of theirs being bereft of any inter-se or intra-se contradictions hence, they too enjoy credibility for thereupon sustaining the recording of findings of conviction against the accused. Apparently, proof of the prosecution case is endeavored to be sustained on the strength of the unblemished testimonies of police witnesses. A close and studied perusal of the depositions of the police witnesses underscores the factum of theirs therein neither rendered any version qua the factum of recovery of the aforesaid items of contraband from the exclusive and conscious possession of the accused inconsistent with the manner thereof as recited in the F.I.R. for begetting a conclusion of hence their testimonies comprised in their respective examinations in chief being ridden with a vice of inter se contradictions vis-à-vis their testimonies comprised in their respective cross-examinations, rather lack of inconsistencies aforesaid render their respective testimonies on oath to be both unimproved as well as unblemished for hence implicit reliance being placed thereupon, nor when their depositions stand afflicted with any vice of intra se contradictions rather when they have deposed qua the manner of recovery of contraband aforesaid from the alleged conscious and exclusive possession of the accused bereft of any disharmony or inconsistency gives leverage to an inference of hence the prosecution succeeding in sustaining its charge against the accused of charas weighing 500 grams and opium weighing 60 grams respectively standing under the recovery memos aforesaid recovered from their conscious and exclusive

possession while theirs concealing them in a polythene envelop kept on the dashboard of vehicle bearing registration No. HR-51U-0969 occupied by both at the relevant time.

9. Even though the testimonies of the official witnesses who hence have proven the factum of recovery of the aforesaid items of contraband from the alleged conscious and exclusive possession of the accused while concealing them in a polythene envelop kept on the dashboard of the vehicle aforesaid occupied by both at the relevant time stand on a solemn legal pedestal, especially when their testimonies comprised in their respective examinations in chief are bereft of any taint of either inter se contradictions vis-à-vis their depositions comprised in their respective cross-examinations nor also when their testimonies stand un-ingrained with any vice of intra se contradictions necessarily when their testimonies inspire confidence reinforcingly render their testimonies being amenable to implicit reliance being placed thereupon for concluding qua the guilt of the accused. Nonetheless before proceeding to place implicit reliance upon their testimonies, it is imperative for this Court to gauge besides discern from the available evidence on record qua the highlighting of marked discrepancies in their respective testimonies besides of sharp discrepancies making pervasive inroads qua the veracity of the genesis of the prosecution version. In the event of this Court discerning on an incisive scrutiny of the depositions of the official witnesses of apposite proceedings standing launched and concluded at the site of occurrence with the simultaneous availability thereat of each of the prosecution witnesses it would stand goaded to conclude of the depositions of the official witnesses qua the initiation and conclusion of the apposite proceedings at the site of occurrence standing un-ingrained with any vice of falsity or prevarication. Contrarily on a close scrutiny of the depositions of the official witnesses unveiling a palpable disclosure of their simultaneous unavailability at the site of occurrence would constrain this Court to beget a conclusion therefrom of the entire prosecution version of the apposite proceedings standing initiated and concluded at the site of occurrence being in their entirety a concoction as well as an invention besides would succor a concomitant inference of their depositions being not amenable for implicit reliance being imputed thereupon. For rendering a determination qua the facets aforesaid an advertence to the testimony of PW-2 is imperative. She in her recorded deposition on oath has proved copy of Rapat Rojnamcha comprised in Ex. PW-2/A wherein no occurrence exists of PW-7 having departed from the security branch alongwith SI Kamal Chand. The non-occurrence of the name of PW-7 H.C Manoj Kumar in Ex. PW-2/A negates the testimony of PW-15 of the latter standing accompanied on 22.12.2010 by HC Yashwant Singh and HC Manoj Kumar and C Pawan Kumar at the stage of theirs purportedly performing patrolling duty at card road Shimla whereat the apposite proceedings stood initiated and concluded. With PW-2/A contradicting the deposition of PW-15 the Investigating Officer, of his at the apposite stage standing accompanied by HC Manoj Kumar sequels a conclusion, especially with PW-2/A standing proven by PW-2 besides when it constitutes the best evidence qua the departure of Manoj Kumar alongwith the investigating Officer from the security Branch, of PW-7 HC Manoj Kumar not simultaneously available alongwith the Investigating Officer at the site whereat the apposite proceedings stood launched and concluded. With the formation of the aforesaid inference the effect thereof is of the deposition of PW-7 being discardable, in proof of the prosecution case relating to search, seizure and recovery of the aforesaid items of contraband in the manner espoused by the prosecution. Further more, the purported association of PW-7 in the apposite proceedings appears to be in its entirety a contrivance of the Investigating Officer to camouflage the truth qua the occurrence or a stratagem deployed by him to smother the truth qua the genesis of the prosecution case of the apposite proceedings standing initiated and concluded at a place other than the one depicted in the FIR. Ensuably a colorable, invented besides a skewed proceedings qua recovery of items of contraband in the manner

espoused by the prosecution renders the bedrock of the genesis of the prosecution case to stand foundered.

10. Dehors the above, the Investigating Officer in his deposition has admitted therein qua the non-scribing by him of documents Ex. PW-7/A to PW-7/G and rukka Ex. PW-15/B**.** However he has also proceeded to depose of contents thereof standing on his dictation scribed by an official, whose name however he omits to disclose. The cumulative effect of his deposing of his not scribing Ex. PW-7/A to PW-7/G and PW-15/B whereas they on the latter's dictation standing scribed by an official whose name however he omits to disclose, is of the Investigating Officer cleverly feigning ignorance qua the personnel who on his dictation scribed the contents of the documents aforesaid for masking the place whereat they stood scribed which otherwise would have surfaced in the event of his naming the police official who on his dictation scribed the contents of the documents aforesaid. The arousal of the aforesaid inference lends sustenance to a deduction of an adverse inference being drawable against the prosecution of its actively suppressing besides concealing the site or location whereat the aforesaid documents stood prepared for obviously precluding the emergence of truth qua the location/site whereat they stood prepared, which evidence in case stood emerged would jettison the manner of espousal of the prosecution version.

11. Dehors the above a comparative reading of the depositions of PW-7 and PW-15 lends aggravated momentum to the factum of both being simultaneously unavailable at the site of occurrence whereat the apposite proceedings stood initiated besides concluded especially when PW-7 though in the initial part of his deposition unveils the factum of PW-7/A to PW-7/G and PW-15/B standing scribed on the spot by the Investigating Officer whereas on his being queried by the Court he unfolded therein the factum of theirs standing not scribed by the Investigating Officer. Now with PW-7 initially deposing qua PW-15 scribing them which factum stands contradicted by PW-15 whereas in the later part of his deposition on his being queried by the Court he disclosed the factum of PW-7 not scribing the contents thereof, cumulatively a wholesome reading of his deposition displays his equivocating qua the factum probandum of the author of the aforesaid documents. In sequel given the factum of the depositions of PW-7 and PW-15 being replete with rife intra-se contradictions as well as equivocations qua the person who scribed the aforesaid documents besides belying the factum of theirs simultaneous availability at the site of occurrence as espoused by the prosecution also while rendering their depositions qua the occurrence standing imbued with falsity necessarily too make a dent in the genesis of the prosecution version.

12. Cumulatively the factum of the apposite proceedings standing initiated besides concluded at the site of occurrence as projected by the prosecution stands enfeebled wherefrom a conclusion is drawable of the investigating officer holding/conducting them elsewhere with the ensuing effect of the prosecution version as embodied in the FIR foundering in its entirety.

13. The prosecution had canvassed qua the recovery of contraband aforesaid as disclosed in the FIR being a chance recovery hence there being no legal obligation enjoined upon the Investigating Officer to mete compliance to section 42(2) of NDPS Act comprised in his taking down any information in writing of contraband being carried or transported in a vehicle and such information standing transmitted or purveyed within 72 hours to his official superior**.** However, the aforesaid espousal of the prosecution suffers a causality given the factum of stoppage by the Investigating Officer in broad day light at a busy thoroughfare of vehicle bearing registration No.HR-51U-0969. The selective spotting besides stopping of the aforesaid vehicle at the purported site of occurrence with its purportedly at the relevant time standing occupied by both the accused or its being singled out for stopping

would not occur unless the Investigating officer had prior information of the accused while being aboard it carrying therein the items of contraband as purportedly stood recovered therefrom. Fortification to the inference aforesaid of the Investigating Officer holding prior information qua the carrying by the accused in the vehicle aforesaid, the aforesaid items of contraband, is lent by the deposition of PW-14 who therein has divulged the factum of when both him and Dharam Singh at about 3 p.m. were conversing near Cartroad Shimla whereat the police personnel were present theirs standing apprised of a black coloured car coming from Chotta Shimla side and it being suspected to be carrying contraband. Now when the colour aforesaid was borne on the car wherein the accused were aboard besides when it arrived at the spot from Chotta Shimla, moreso when the deposition of PW-14 unfolding the factum aforesaid of the police party while positioned at the purported site of occurrence holding prior to the arrival thereat of a black coloured car from Chotta Shimla information qua its arrival thereat, stands un-contradicted by the prosecution comprised in efforts standing concerted to by the PP when he unveiled the factum aforesaid constituted by his seeking permission of the learned trial court to declare him hostile for facilitating his cross-examination for belying the disclosures aforesaid galvanizes an inference of the prosecution acquiescing to the disclosure aforesaid by PW-14. In sequel with the Investigating Officer holding prior information about the carrying of items of contraband in a black coloured car wherein the accused were purportedly aboard he was enjoined to mete compliance to the provisions of Section 42(2) of the NDPS Act which stands extracted hereinafter:-

> *"where an Officer takes down any information in writing under sub-Section (1) or records grounds for his belief under the Proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."*

14. However in compliance thereof there exists no proof of his reducing the prior information thereto in writing besides his within 72 hours transmitting a copy thereof to his superior official. Since the phraseology of Section 42(2) of NDPS Act stands couched in mandatory terms, it enjoins strict compliance thereto by the Investigating Officer. However when there is open besides flagrant infraction thereof naturally warrants an inference of the entire proceedings relating to search, seizure and recovery of the contraband standing vitiated.

15. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court below has appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court does not suffer from any perversity or absurdity of mis-appreciation and non-appreciation of evidence on record, rather it has aptly appreciated the material available on record. Consequently, the instant application is dismissed, in sequel, the prayer of the State of Himachal Pradesh for grant of leave to appeal against the judgment of the learned trial court is refused.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Govind Ram & ors. .....Appellants.

Versus

Krishna Devi & ors. .....Respondents.

RSA No. 461 of 2004.
Reserved on: 17.12.2015.
Decided on: 19.12.2015.

Specific Relief Act, 1963- Section 20- One 'R' entered in to an agreement with the plaintiff to sell her share in the house, compound and the path – she had received earnest money as well-sale deed was to be executed within one year- R died in the meantime and was succeeded by the defendants No. 2 to 6-one T being the G.P.A of the defendants No. 2 to 6 sold the aforesaid property to defendant No. 1 in spite of being made aware of the agreement by the plaintiff- plaintiff sought specific performance of the agreement and possession of the land- the defendants denied the agreement - suit was partly decreed- appeal was dismissed- in second appeal, held that it is not in dispute that R owned the property- the plaintiff had duly proved the agreement - plaintiff has paid a sum of Rs. 5500/- as earnest money to R and had also served notices upon the defendants not to enter into agreement of the suit land- despite that the land was sold by General Power of Attorney of defendants No. 2 to 6 to defendant No.1- plaintiff was already ready and willing to perform his part of the agreement- the plea of the defendant No. 1 to the effect that he is a bonafide purchaser is not made out from the record as the plaintiff is proved to have apprised the defendant No. 1 in the presence of the witness that he had entered into an agreement to sell the suit property prior in time-appeal dismissed. (Para-19 to 23)

For the appellant(s): Mr. G.R.Palsra, Advocate.
For the respondents: Mr. Ashwani K. Sharma, Sr. Advocate, with Ms. Monika Shukla, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This regular second appeal is directed against the judgment and decree of the learned District Judge, Mandi, H.P. dated 28.7.2004, passed in Civil Appeal No. 7 of 2002.

2. "Key facts" necessary for the adjudication of this regular second appeal are that the predecessor-in-interest of respondents-plaintiffs, namely, Hari Krishan (hereinafter referred to as the plaintiff) has instituted suit for specific performance of contract dated 4.7.1993 and permanent prohibitory injunction and also for damages against the appellants-defendants (hereinafter referred to as the defendants). According to the plaintiff, the house comprised in khewat no. 400 min, khatauni No. 722, Kh. No. 1313, measuring 12.22 sq. meters, situated in upper Samkhetar Street, Mandi town, Tehsil Sadar, Distt. Mandi, H.P. was previously owned and possessed by Radha Devi. The compound comprised in Khewat No. 400 min, Khatauni No. 719 min, Kh. No. 1316 measuring 32.12 sq. meters and the paths comprised in Khewat No. 400 min, Kh. No. 1321 and 1322, measuring 18.00 sq. meters and 16.77 sq. meters, respectively, was previously owned and possessed by Smt. Radha Devi, Krishan Chand, Geeta, Himachali and Murari Lal and the plaintiff and the compound and paths were being used by these persons alongwith the plaintiff. It is also averred that the house comprised in Khewat No. 400 min, Khatauni No. 721 min, Kh. No. 1314, measuring 11.55 sq. meters was also previously owned and possessed by Radha Devi, Krishan Chand, Geeta, Himachali and the plaintiff in equal shares. It is averred that during her life time, Radha Devi executed a contract of sale in favour of the plaintiff on 4.7.1993 and agreed to sell the house owned and possessed by her as described in para 1 of the plaint and also agreed to sell her share of the compound and paths as mentioned in para 2 of the plaint to the plaintiff for a consideration of Rs. 40,000/- and had received Rs. 5000/- as earnest money. Radha Devi also agreed to sell her share of the house as mentioned in para 3 of the plaint to the plaintiff for a consideration of Rs.3000/- and had received

Rs.500/- as earnest money. The sale deed was to be executed and registered within one year and the balance amount of consideration was to be paid at that time before the concerned authorities. The possession was to be handed over at the same time. It was also agreed that the party who would breach any of the conditions of the agreement, that party would be liable to pay Rs. 10,000/- as damages to the other party. Radha Devi died on 28.8.1993. The defendants No. 2 to 6 inherited the suit property in equal shares. The defendants No. 2 to 6 appointed their father Sh. Tek Chand as General Power of Attorney regarding the suit property. The plaintiff, in the month of September, 1994, requested Tek Chand, General Power of Attorney showing agreement to receive the balance amount consideration and execute the sale deed as per the agreement and hand over the possession to the plaintiff. He agreed to do the needful within two months. On 26.10.1994, the plaintiff came to know that defendant No. 1 and Tek Chand, General Power of Attorney were executing an agreement to sell the suit property in favour of defendant no.1. The plaintiff requested them not to do so and showed them agreement to sell executed by Radha Devi in his favour. However, land comprised in Khewat No. 400 min, Kh. No. 1313 measuring 12.22 sq. meters was sold by the General Power of Attorney, Tek Chand to defendant No.1. Similarly, Tek Chand also got executed sale deed in favour of defendant No. 1 on behalf of defendants No. 2 to 6 to the extent of 1/3rd share of land comprised in Kh. No. 1314. It was for a consideration of Rs. 50,000/-. The plaintiff was always ready and willing to perform his part of the contract. He has requested the defendants to hand over the possession. Notices were sent to defendants on 28.11.1994, which were received on 28.11.1994 and 29.11.1994. However, defendants have not admitted the claim of the plaintiff and continued in their illegal possession. It is, in these circumstances, the plaintiff filed the suit.

3. The suit was contested by the defendants. According to them, whole of Kh. No. 1313 did not come under the constructed house and area of house was only 11.56 sq. meters and 0.66 sq. meters is a vacant portion. The area initially was owned by Radha Devi and thereafter by defendant Govind Ram on the basis of sale executed on 28.10.1994. The plaintiff has nothing to do with the property described in para 2 of the plaint. The plaintiff was neither co-owner in possession nor was in use of paths and compound. The plaintiff was also not in possession of Kh. No. 1314. Radha Devi has never executed any agreement. According to them, it is stated by the plaintiff in the plaint that Radha Devi had agreed to execute the sale deed within one year, however, there is no mention about this fact in the alleged contract. She was a teacher and receiving handsome pension. Radha Devi expired on 28.8.1993 and agreement dated 4.7.1993 has expired.

4. The replication was filed by the plaintiff. The learned trial Court framed the issues on 24.6.1995. The suit was partly decreed vide judgment dated 31.12.2001. The defendants, feeling aggrieved, preferred an appeal against the judgment and decree dated 31.12.2001. The learned District Judge, Mandi, dismissed the same with costs on 28.7.2004. Hence, this regular second appeal.

5. The regular second appeal was admitted on 27.4.2005, however, this fact was not brought to the notice of the Court. On 1.12.2015, the appeal was again admitted on the following substantial question of law:

> "1. Whether non-discussing the documentary evidence of the appellants Tatima Ext. DW-1/A, DW-1/B and Notice Ext. PC by the Courts below has resulted in mis-carriage and failure of justice to the appellants?"

6. Mr. G.R.Palsra, Advocate, on the basis of the substantial questions of law framed, has vehemently argued that the Courts below have not correctly appreciated the

oral as well as the documentary evidence on record. According to him, tatima Ext. DW-1/A and DW-1/B and notice Ext. PC have not been correctly appreciated by the Courts below. On the other hand, Mr. Ashwani K. Sharma, Sr. Advocate has supported the judgments and decrees passed by the learned Courts below.

7. I have heard the learned Advocates on both the sides and have also gone through the judgments and records of the case carefully.

8. PW-1 H.K. Sharma, testified that Radha Devi was his Massi (mother's sister). She has received property from her mother at Upper Samkhetar Mohalla and had no brother or sister. Radha Devi used to tell him that her husband was going to sell the property to some other person and she wanted to sell the same to her relatives. She used to come to her house. Radha Devi showed her willingness to execute the agreement. He called witnesses Tara Chand, Pushap Raj and Hem Raj for 4.7.1993. Accordingly, Radha Devi came to his office on 4.7.1993 at about 12:30 and at about 1:00 PM, witnesses also reached. Tara Chand scribed the agreement to sell Ext. P-A. It was signed by him and Radha Devi considering the same to be correct and it was also signed by witnesses Tara Chand, Pushap Raj and Hem Raj. Radha Devi told him that sale deed will be executed and registered within a period of one year, but such condition may not be incorporated in the agreement to sell, because it could affect their relationship. The house was agreed to be sold for Rs. 40,000/- and 1/3rd share of room for Rs. 3000/- and earnest money paid was Rs. 5500/-. It was also settled that the possession would be given at the time of registration and execution of sale deed and the balance amount would also be paid. Radha Devi died on 28.8.1993 due to her illness. Thereafter, he told defendants and their General Power of Attorney, Tek Chand about agreement Ext. P-A and asked them to execute the sale deed. However, despite that they executed the sale deed Ext. P-B. He sent registered notices to Govind Ram vide postal receipt and AD Ext. PD and PE. Similarly, notices were also issued to Tek Chand General Power of Attorney of defendants. The postal receipt and AD are Ext. PF and PG. However, despite that the sale was executed. He has proved jamabandi Ext. PH.

9. PW-2 Mohinder Pal testified that he knew the parties to the suit. Ext. PA was executed in his presence by Radha Devi in favour of plaintiff Hari Krishan for a sum of Rs.40,000/- and Rs.3000/-. She had received earnest money of Rs. 5500/-. The agreement was scribed by Tara Chand in presence of Radha Devi and Hari Krishan. Thereafter, the agreement was read over to both the parties in the presence of witnesses Pushap Raj and Hem Raj. Both the parties and witnesses put their signatures. Radha Devi had agreed to execute the sale deed within a period of one year but with the personal relation with the plaintiff asked not to write the condition of one year in the agreement. On 26.10.1994, he was called over telephone by plaintiff to the Court complex and he reached at 1:30 PM, when Govind Ram and Tek Chand were also present. The plaintiff apprised them of the agreement Ext. PA and asked them that he is ready to make balance payment to which Govind Ram and Tek Chand said that they would consider it. He has denied the suggestion in the cross-examination that Radha Devi was unable to move due to illness. He also denied that Radha Devi was not present at Mandi on 4.7.1993. He also denied the suggestion that Radha Devi has not executed agreement Ext. PA.

10. PW-3 Pushap Raj deposed that Ext. PA was prepared by Radha Devi and plaintiff in his presence. It was scribed by Tara Chand and other witnesses were Mohinder Pal and Hem Raj. The contents were read over and Radha Devi after considering it correct put her signatures at place Ext. PA/1. The plaintiff gave earnest money of Rs. 5500/-.

11. PW-4 Tara Chand deposed that agreement Ext. PA was scribed by him at the instance of Radha Devi and the plaintiff. Radha Devi agreed to sell one house and 1/3rd portion of room to plaintiff for a consideration of Rs. 40,000/- and 3,000/- and had received Rs. 5500/- as earnest money. The contents were read over to the parties and witnesses thereafter after considering them to be true put their signatures. Radha Devi put her signature at place Ext. PA/1. Thereafter, plaintiff and their witnesses also put their signatures and at last he put his signatures. Radha Devi told that she will execute the sale deed within a period of one year but stated that this condition may not be incorporated in the agreement for the relationship between plaintiff and Radha Devi. Radha Devi was in good health.

12. DW-1 Kehar Singh deposed that he on the orders of District Revenue Officer, Sadar, alongwith Kanungo went to Samkhetar Mohalla, Mandi and carried out the demarcation of land. He prepared tatima Ext. DW-1/A. He proved jamabandi Ext. DW-1/A and DW-1/C. In his cross-examination, he admitted that except Govind Ram, no other person was called by Kanungo for demarcation. He also admitted that the old house with Kh. No. 1313 was in the name of Radha Devi.

13. DW-2 Govind Ram deposed that he has purchased the suit land from the General Power of Attorney of defendants No. 2 to 6, Sh. Tek Chand through registered sale deed dated 28.10.1994. He has purchased house comprising two rooms, latrine, bathroom and one another room and another three rooms with possession. The plaintiff has not shown agreement to him in September, 1994. Radha Devi was unable to walk due to her illness. He proved copy of sale deed Ext. PB.

14. DW-3 Om Prakash deposed that the name of his mother was Radha Devi. She died on 28.8.1993. She had her house at Samkhetar and after her death, the property at Samkhetar came to him and his brothers and sisters, regarding which, they have given General Power of Attorney to their father Tek Chand. His father sold suit property to Govind Ram for a consideration of Rs. 50,000/- alongwith possession through sale deed dated 28.10.1994. His mother had never sold suit property to plaintiff. His mother has retired as teacher. She was not present at Mandi on 4.7.1993 and was away to Manali on 2.7.1993. She was unable to move.

15. DW-4 Tek Chand deposed that defendants No. 2 to 6 were his sons and daughters. Radha Devi was his wife. She was suffering from blood pressure and diabetes for many years and died on 28.8.1993. His sons and daughters inherited the property of his wife at Samkhetar. Radha Devi had given Power of Attorney about this property and thereafter his sons and daughters had given Power of Attorney vide Ext. DW-4/A. He sold the suit property to Govind Ram, defendant on 28.10.1994 for consideration of Rs. 50,000/- through sale deed Ext. PB. His wife had not executed agreement Ext. PA dated 4.7.1993 and had not received Rs. 5500/- as earnest money. He denied the suggestion that after the death of Radha Devi, agreement was shown to him and and his sons and daughters by the plaintiff, asking them to receive the balance amount and execute the sale deed.

16. DW-5 Krishan Swarup deposed that on 2.7.1993, Radha Devi and her husband were with him at Manali and came back on 6.7.1993 to Mandi. Radha Devi was not treated from any doctor at Manali.

17. DW-6 Hutashan Shastri deposed that he knew Radha Devi and Mohinder Pal.

18. DW-7 Ram Krishan deposed that he remained witness to sale deed dated 28.10.1994 vide which Tek Chand sold suit property to Govind Ram for a consideration of Rs. 50,000/-.

19. It is not in dispute that Radha Devi owned the property. The plaintiff had duly proved Ext. PA dated 4.7.1993. Ext. PA has been attested by the marginal witnesses as well as by the scribe. According to these witnesses, the contents of the agreement were read over and explained to the parties and thereafter after admitting the contents of the same to be true and correct, they have put their signatures. The plaintiff has paid a sum of Rs. 5500/- as earnest money to Radha Devi. He had also served notices upon the defendants not to enter into agreement of the same suit land, however, despite that the land was sold vide Ext. PB by General Power of Attorney of defendants No. 2 to 6 on 28.10.1994 to defendant Govind Ram.

20. Mr. G.R.Palsra, Advocate, has vehemently argued that Radha Devi was ill. However, no medical prescription has been produced on record. DW-5 Krishan Swarup deposed that on 2.7.1993, Radha Devi and her husband were with him at Manali and came back on 6.7.1993 to Mandi. Radha Devi was not got treated from any doctor at Manali. The plaintiff was already ready and willing to perform his part of the agreement. According to Mr. G.R.Palsra, Advocate, defendant No. 1 was bonafide purchaser of the suit land. He also argued that PW-3 could not identify Radha Devi on the basis of photograph.

21. PW-1 H.K.Sharma, has deposed that Radha Devi had come to his office. Witness PW-2 Mohinder Pal and PW-3 Pushap Raj and Hem Raj were called on the spot. It was scribed by PW-4 Tara Chand. Mr. G.R.Palsra, Advocate, has argued that signatures on Ext. PA were doubtful but the defendants have never moved an application before the trial Court for comparing the signatures of Radha Devi on Ext. PA. Mr. G.R.Palsra, Advocate, has also argued that the notices were received by his clients after the execution of sale deed on 28.10.1994. However, the fact of the matter is that the plaintiff in the presence of PW-2 Mohinder Pal has called the defendants in the Court premises and apprised about the agreement Ext. PA dated 4.7.1993. There is no merit in the contention of Mr. G.R. Palsra, Advocate that the plaintiff has obtained signatures on the blank papers from Radha Devi.

22. Now, as far as non-identification of photograph of PW-3 Pushap Raj is concerned, PW-1 H.K.Sharma, in his statement has deposed that he has brought his own witnesses and Radha Devi had brought her own witnesses. Merely that the agreement was scribed on simple paper, other than the judicial/bond paper, it cannot be said that it was not executed by Radha Devi. The plaintiff was relative of Radha Devi and according to him, she wanted to sell the property to her own relations.

23. It has come in the statement of DW-1 Kehar Singh that except Govind Ram, no other person was called by Kanungo for demarcation on the spot. All the interested parties ought to have been called on the spot for demarcation of the property. The Courts below have correctly appreciated the oral as well as documentary evidence available on record, including notice Ext. PC, Tatima Ext. DW-1/A and DW-1/B. The substantial question of law is answered accordingly.

24. Consequently, there is no merit in this appeal and the same is dismissed, so also the pending application(s), if any.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Jai Krishan and others. ...Appellants

Versus

State of H.P. ...Respondent

Cr.A No. : 366 of 2006
Reserved on: 17.12.2015
Decided on: 19.12.2015

Indian Penal Code, 1860- Section 363 and 366-A- Prosecutrix, a student of 10+1 class was returning from a local fair with another girl L- a Baloro camper stopped near the prosecutrix- two accused pushed the prosecutrix inside the same and the vehicle was driven away-the prosecutrix kept on raising hue and cry- official Vehicle of Local S.D.M was seen by the accused and the Bolero was turned in another direction- the S.D.M noticing that a girl was raising hue and cry in the vehicle, chased the Bolero - Bolero was stopped after some distance- the accused fled away from the spot-the girl was handed over to her guardian and the police was informed- the accused were convicted by trial court - in appeal held that girl L has deposed that the prosecutrix had boarded the jeep at her sweet will and she could not board the same due to rush- another witness being the occupant of the jeep also deposed that two girls gave signal to take lift in the Bolero - one girl boarded the Bolero and the other did not board as the jeep was full-in view of these facts the guilt of the accused not established- appeal allowed. (Para 8 to 16)

For the appellants: Mr. Vinay Thakur, Advocate.
For the Respondent: Mr. Neeraj Sharma, Dy. A.G.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This appeal is instituted against the judgment dated 31.10.2006 rendered by the Additional Sessions Judge, Shimla, Camp at Rohru in Sessions Trial No. 2-R/7 of 2005, whereby the appellants-accused (hereinafter referred to as the accused for convenience sake), who were charged with and tried for offences punishable under sections 363, 366-A and 34 of the Indian Penal Code were convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- each and in default of payment of fine, they were further ordered to undergo rigorous imprisonment for six months for committing offence under section 363 read with section 34 of the Indian Penal Code and were acquitted for offence under section 366 of the Indian Penal Code. Accused Dipender Rithwan was acquitted of all the charges.

2. Case of the prosecution, in a nutshell, is that PW-1 was student of plus one in Sanskrit College, Jangla. On 6.8.2003, she alongwith her friend Laxmi was returning to her village Dali after attending the 'Laila' fair at about 4.00 P.M. When they reached near transformer at Tikker, a vehicle No. HP-10-2813 came from behind and stopped in front of them. Accused Jai Krishan and Ashok Kumar got down from the vehicle and lifted her and pushed her inside the Bolero camper. The prosecutrix raised hue and cry and the accused drove the Bolero camper towards Badiara. On noticing the red light on the vehicle of S.D.M. at Khilocha Kainchi, driver remarked that the vehicle was of S.D.M. and he turned the Bolera camper towards Diswani road. The prosecutrix was raising cries inside the vehicle and the jeep of S.D.M. started chasing the Bolero camper. The driver stopped the Bolera and the accused decamped. Sh. Rajeev Rithwan kept standing at the spot and he also tried

to resist the accused from abducting the prosecutrix. On the basis of the statement of prosecutrix, FIR Ex.PW-6/B for offence under sections 363, 366-A and 34 of the Indian Penal Code was registered at Police Station, Rohru. The custody of prosecutrix was handed over to Smt. Raj Kumari maternal aunt. The date of birth of the prosecutrix was 10.6.1986. The police investigated the case and the challan was put up in the Court after completing all the codal formalities.

3. Prosecution examined number of witnesses to prove its case against the accused. Statements of accused under Section 313 Cr.P.C. were recorded. According to them, they were falsely implicated. Trial court convicted and sentenced the accused, as noticed hereinabove.

4. Mr. Neeraj Sharma has supported the judgment dated 31.10.2006.

5. I have heard the learned counsel for the parties and have gone through the judgment meticulously.

6. PW-1 has deposed that she was student of plus one in Sanskrit College, Jangla. On 6.8.2003, she alongwith her friend Laxmi was returning to her village Dali after attending the 'Laila' fair at about 4.00 P.M and when they reached near transformer at Tikker, a vehicle No. HP-10-2813 came from back side. The vehicle stopped in front of them. Accused Jai Krishan and Ashok Kumar got down from the vehicle and lifted her and pushed her inside the Bolero camper. She raised hue and cry and the accused drove the Bolero camper towards Badiara. At Khilocha Kainchi, on noticing the red light atop the vehicle, Pyare Lal remarked that the vehicle was of S.D.M. Thereafter, accused drove the Bolero camper towards Diswani road. She was raising hue and cry. S.D.M. vehicle chased them. The accused left the vehicle and fled away from the spot. In her cross-examination, she has admitted that 100 of people were present. People started leaving the fair at about 4.00 P.M. The S.D.M. inquired from her about the incident. She did not remember about the nature of inquiry made from her by the S.D.M.

7. PW-3 Rajeev Rithwan has deposed that he went to Laila fair in the Bolero. He returned from fair at about 4.00 P.M. Sh. Bihari Lal was the driver. Depinder, Ashok and Jai Kishan were in the cabin and many other persons were in the rear portion of the vehicle. Two girls gave signal in order to take lift in the Bolero. One girl boarded the Bolero and the other girl did not sit. There were number of passengers in the Bolero. When the Bolero reached near Khilocha Kainchi, S.D.M. stopped the same as it was over loaded. The S.D.M. inquired as to why the vehicle was over loaded, upon which the accused ran away from the place. He was declared hostile. He has denied that on the aforesaid day, accused Jai Kishan near Tikkri Nallah asked the driver to stop the Bolero and as soon as the Bolero was stopped, accused Jai Kishan alighted from the Bolero and put the prosecutrix, who was walking in the road, inside the Bolero and then they fled away from the place alongwith the girl as recorded in portion 'A' to 'A' of the statement mark 'X'. According to him, he made statement to the police under threat of S.D.M as he had told him that he would put him behind the bar. He has also denied the suggestion that Rekha was raising hue and cry inside the Bolero. He denied that thereafter the S.D.M. chased the Bolero. The S.D.M. got the statement from him under threat. He has also denied the suggestion that the prosecutrix was forcibly lifted from the road and put in the Bolero. In his cross-examination by the learned defence counsel, he has admitted that number of persons including ladies and children were walking at the relevant time. The prosecutrix did not raise any hue and cry during her journey from the place of boarding till the place where the Bolero was stopped near Khilocha Kainchi. She boarded the Bolero for Diswani of her own sweet will.

8. PW-8 Amarjit Singh has deposed that he had gone to attend Laila fair in the official vehicle. Sh. Kanwar Singh was the driver. At about 4.00 P.M., when their vehicle reached Tikkar Nullah, they saw that four boys were hanging from the Bolero camper. When they reached near Bolero camper, they heard the cries of a girl coming from Bolero. The driver of the Bolero took the vehicle from Khiloncha Kainchi towards Diswani road. They chased the Bolero. Bolero stopped and four boys alighted from the Bolero and one boy Rajeev Rithwan and a girl Rekha only remained inside the camper. Rekha told him that the boys had kidnapped her with intent to commit some offence. He alongwith Rekha and Rajeev and Bolero reached at Badiara and informed the S.H.O. Police Station, Rohru. S.H.O. reached the spot.

9. The most material witness in the present case is PW-9 Laxmi. She has testified that she alongwith Rekha was returning to their village in the evening at about 3/3.30 P.M. and when they were on the main road near Khachi's house and transformer, a Bolero came from bhind and they raised their hands to stop the vehicle. There was rush in the Bolero. Rekha boarded the Bolero and she could not board the Bolero due to rush and the vehicle left with her. She was declared hostile and was cross-examined by the learned Public Prosecutor. She has denied that the police made inquiry from her about the incident. She has also denied that the accused Jai Krishan and Ashok Kumar foricibly put Rekha inside the Bolero and fled towards Badiara. She disowned portion 'A' to 'A' of mark X-1.

10. PW-10 Gulab Singh has proved the date of birth certificate Ex.PW-10/A. The date of birth of the prosecutrix is 10.6.1986.

11. PW-12 Manohar Lal was the Investigating Officer. He reached Badiara and recorded the statement of Rekha Ex.PA. Thereafter, FIR was registered. Site plan Ex.PW-12/A was prepared. Bolero was taken into possession.

12. The prosecution case has not been supported by PW-3 Rajeev Rithwan and PW-9 Laxmi. PW-3 Rajeev Rithwan has deposed that on 6.8.2003, he went to Laila fair in the Bolero. He returned from fair at about 4.00 P.M. Bihari Lal was the driver. Depinder, Ashok and Jai Kishan were in the cabin and many other persons were in the Dalla. Two girls gave signal to take lift in the Bolero. One girl boarded the Bolero and the other did not board as the jeep was full. PW-9 Laxmi has also deposed that she had gone to attend the fair with the prosecutrix. She alongwith Rekha was returning to their village in the evening at about 3/3.30 P.M. When they were in the main road near Khachi's house and transformer, a Bolero came from behind and they raised their hands for stopping the vehicle. There was rush in the Bolero. The prosecutrix boarded the Bolero and she could not board the Bolero due to rush and the vehicle left. Case of the prosecution is that accused Jai Kishan and Ashok alighted from the Bolero and caught hold of prosecutrix and pushed her inside the Bolero. She raised hue and cry and the accused drove the vehicle towards Badiara. Statement of PW-1 prosecutrix has not been corroborated by PW-3 Rajeev Rithwan and PW-9 Laxmi. These two witnesses have categorically deposed that the girls gave signal to take lift in the bolero. The prosecutrix boarded the jeep but PW-9 Laxmi could not board the jeep due to rush. Case of the prosecution is that the prosecutrix was forcibly lifted and she raised hue and cry. PW-8 Amarjeet Singh heard the cries of the girl and the vehicle was chased. PW-3 Rajeev Rithwan has categorically denied in his cross-examination that PW-1 prosecutrix was raising hue and cry inside the Bolero.

13. Section 363 of the Indian Penal Code has following essentials:

(i) That the accused did:

a. Forceful compulsion or inducement by deceitful means;

b. The object of such compulsion or inducement must be the going of a person from any place;

(ii) That such kidnapping of any person was done from India or from the lawful guardianship.

14. What emerges from the discussion of the statements of the prosecution witnesses is that PW-1 prosecutrix alongwith PW-9 Laxmi signalled the Bolero to stop. PW-1 boarded the jeep but PW-9 Laxmi could not board the jeep due to rush. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubt.

15. Consequently, in view of analysis and discussion made hereinabove, the prosecution has failed to prove the case against the accused for offence punishable under section 363 of the Indian Penal Code.

16. Accordingly, in view of the analysis and discussion made hereinabove, the appeal is allowed. Judgment of conviction and sentence dated 31.10.2006 rendered by the Additional Sessions Judge; Shimla in Sessions Trial No. 2-R/7 of 2005 is set aside. Accused are acquitted of the charges framed against them by giving them benefit of doubt. Fine amount, if already deposited, be refunded to the accused. Bail bonds are discharged.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Himachal Road Transport Corporation and another ...Appellants.

Versus

Sh. Hem Parkash ...Respondent.

LPA No. 43 of 2011
Decided on: 22.12.2015

Constitution of India, 1950- Article 226- Writ petition filed by the petitioner was allowed by writ court and the order of removal of the petitioner was set aside- respondents were directed to re-instate the petitioner with liberty to proceed ahead with the inquiry from the stage of supplying the copy of the inquiry report to the petitioner- held, that Writ Court had rightly passed the order in terms of which liberty was granted to the respondents to proceed from the stage of supplying of the copy of inquiry report to the writ petitioner- no interference is required- appeal dismissed. (Para-1 and 2)

For the appellants: Mr. Adarsh Sharma, Advocate.
For the respondent: Mr. Dilip Sharma, Senior Advocate, with Mr. Manish Sharma, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice. *(Oral)*

This appeal is directed against the judgment and order, dated 06.09.2010, made by the Writ Court in CWP (T) No. 5173 of 2008, titled as Hem Parkash versus Himachal Road Transport Corporation and another, whereby the writ petition filed by the

respondent-writ petitioner came to be allowed, order of removal from service, dated 12.05.1998 (Annexure A-23) was quashed and the appellants-writ respondents were directed to reinstate the respondent-writ petitioner with liberty to the appellants-writ respondents to proceed ahead with the inquiry from the stage of supplying the copy of the inquiry report to the respondent-writ petitioner (for short "the impugned judgment").

2. We have gone through the writ record read with the impugned judgment and are of the considered view that the Writ Court has rightly passed the order, in terms of which liberty was granted to the appellants-writ respondents to proceed with the matter from the stage of supplying copy of the inquiry report to the respondent-writ petitioner, needs no interference.

3. Having said so, the impugned judgment is upheld and the appeal is dismissed alongwith all pending applications.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

State of Himachal Pradesh and others ...Appellants.
Versus
Smt. Karuna Devi ...Respondent.

LPA No. 45 of 2011
Decided on: 22.12.2015

Constitution of India, 1950- Article 226- Writ court allowed the writ petition and directed the respondents to consider the case of the petitioner for regularization from 2002 with all the consequential benefits- Writ Court has not discussed and marshalled out the facts of the case- respondents have to consider the case of the petitioner as per law applicable- appeal dismissed. (Para-1 to 3)

For the appellants: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. Vikram Thakur & Mr. Vivek S. Attri, Deputy Advocate Generals.
For the respondent: Ms. Archana Dutt, Advocate.

Mansoor Ahmad Mir, Chief Justice. *(Oral)*

Challenge in this appeal is to the judgment and order, dated 05.04.2010, made by the Writ Court in CWP (T) No. 15627 of 2008, titled as Smt. Karuna Devi versus State of Himachal Pradesh and others, whereby the writ petition filed by the respondent-writ petitioner came to be allowed and the appellants-writ respondents were directed to consider the case of the respondent-writ petitioner for regularization from the anterior date, i.e. 2002 with all consequential benefits (for short "the impugned judgment").

2. The Writ Court has not discussed and marshalled out the facts of the case. The appellants-writ respondents have to consider the case of the respondent-writ petitioner as per the law applicable.

3. Having said so, the Writ Court has not committed any irregularity in passing the impugned judgment, needs no interference.

4. Viewed thus, the impugned judgment is upheld and the appeal is dismissed alongwith all pending applications.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

RFA Nos. 27, 28 & 29 of 2007.
Reserved on: 22.12.2015.
Decided on: 28.12.2015.

1. RFA No. 27 of 2007.

H.P. Housing and Urban Development Authority & anr. .....Appellants.

Versus

Dina Nath Vaidya (dead through LRs Sulochna Vaidya & ors) & ors. .....Respondents.

2. RFA No. 28 of 2007.

H.P. Housing and Urban Development Authority & anr. .....Appellants.

Versus

Hari Singh & ors. .....Respondents.

3. RFA No. 29 of 2007.

H.P. Housing and Urban Development Authority & anr. .....Appellants.

Versus

Sher Singh & ors. .....Respondents.

Land Acquisition Act, 1894- Section 18- Land of the respondents was acquired for the construction of Housing Board Colony- Land Acquisition Collector assessed the compensation – respondent sought reference - reference Court assessed the market value of the land as Rs.18,000/- per biswa – in appeal held, that Court had rightly taken the sale deeds and the awards passed by the Court qua the adjoining land into account and had rightly ignored the sale deeds produced by the appellants as those pertained to the land located at a distance of 3-4 k.m. from the acquired land- appeal dismissed. (Para-28 to 35)

For the appellant(s): Mr. Bhupender Gupta, Sr. Advocate with Mr. Neeraj Gupta, Advocate for HIMUDA in all the appeals.

For the respondents: Mr. Satyen Vaidya, Sr. Advocate, with Mr. Vivek Sharma, Advocate, for respondents No. 1(a) to 1(c) in RFA No. 27 of 2007/

Mr. B.C.Verma, Advocate, for respondents No. 2(a)(i) to 2(a)(iii) in RFA No. 27 of 2007.

Mr. Parmod Thakur, Addl. Advocate General, for the respondent-State in all the appeals.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

Since these appeals arise from the common award dated 28.11.2006, all these were taken up together and are being disposed of by a common judgment. However, in order to maintain clarity, facts of RFA No. 27 of 2007 have been taken into consideration.

2. "Key facts" necessary for the adjudication of these regular first appeals are that the land of the respondents was acquired at Bajaura Mohal Fati-Hat, Mauja Bajaura, Tehsil and Distt. Kullu, H.P. for the purpose of construction of housing colony vide notification No. 16-(F)-6-8/1 dated 2.9.1999 under Section 4 of the Act. It was published in the official gazettee on 14.9.1999 and also published in local newspapers, namely, "Divya Himachal" and "Dainik Virpratap" on 21.10.1999 and wide publicity was also given. On 11.8.2000, notification under Sections 6 & 7 was made and it was published in the official gazettee on 21.8.2000. It was published in the daily edition of "Dainik Virpartap" and "Ajeet Samachar" on 14.9.2000. On 7.2.2002, notices were also issued by the Land Acquisition Collector to the claimants.

3. The Land Acquisition Collector assessed the acquired land as per the following rates:

"(1)

Classification of land	Rate per Bighas
1. Ropa Abal	Rs. 206060.00
2. Ropa Doam	Rs. 145960.00
3. Bathal Abal	Rs. 118060.00

(2)

Land under Acquisition with Classification (bighas)	Cost per bigha.	Total Compensation:
1. Bagichal Ropa 3-4-5	Rs. 206060.00	Rs. 6,61,697.00
2. Bagichal bathal 28-13-0	Rs.118060.00	Rs. 33,82,419.00
3. Bathal abal 0-02-12	Rs. 118060.00	Rs. 15346.00
4. Bathal Doam 8-19-0	Rs. 88000.00	Rs. 7,87,600.00
5. Gair Mumkeen 4-0-0	Rs. 60100.00	Rs. 2,40,400.00
	TOTAL:	**Rs. 5087,732.00"**

4. The claimants made reference to the learned Addl. District Judge (FTC), Kullu, bearing Nos. 111 of 2002, 112 of 2002 and 113 of 2002. These were decided by the learned Addl. District Judge (FTC), Kullu on 28.11.2006, by awarding sum of Rs. 3,60,000/- per bigha with statutory benefits. Hence, these appeals.

5. Mr. Bhupender Gupta, learned Sr. Advocate with Mr. Neeraj Gupta, Advocate, appearing for the appellants has vehemently argued that the Reference Court has committed grave error of law and acted with material illegality and irregularity in presuming the market value of the land as 18,000/- per biswa, on the date of acquisition. He then contended that awards vide Annexure PC and PE could not have been accepted to be true exemplar of prevalent market value of the land on the date of acquisition. He then contended that Ext. RW-2/A, RW-3/A and RW-4/A could not be ignored and the Reference Court has assessed the market value on irrelevant evidence. He lastly contended that the Reference Court could not give 10% appreciation every year. On the other hand, Mr. Satyen Vaidya, Sr. Advocate and Mr. B.C.Verma, Advocate, for the respective respondents have supported the award dated 28.11.2006.

6. I have heard learned Advocates for the parties and gone through the award and records of the case carefully.

7. PW-1 Mohd. Ali deposed that he has sold two biswas of land to Sunder Singh for a consideration of Rs. 40,000/- on 31.1.1992 vide Ext. PW-1/A. His land was situated at a distance of 100-150 yards from the acquired land. The acquired land abutted the national highway. The acquired land was of better quality vis-à-vis his land. His land and land of Dhani Ram, Bhungar, Ganga Ram etc. was also acquired by HPSEB for raising tower and for the construction of 132 KV Grid Sub-Station. The Land Acquisition Collector has awarded less compensation. The Court has awarded Rs.2,40,000/- per bigha to them. The department had filed appeal against the award made by the Reference Court to the High Court and the High Court has dismissed the same. Their land was acquired 10-11 years ago. In his cross-examination, he deposed that he has sold two biswas of land from Kh. No. 458.

8. PW-2 Tikhu Ram deposed that he has sold one biswa of land on 29.3.2001 to Kirtu for a consideration of Rs.50,000/- vide Ext. PW-2/A. His land was situated at a distance of 100 yards from the land of the claimants. The acquired land abuts the national highway.

9. PW-3 Jeet Ram deposed that Bhuntar Marketing Co-operative Society has sold 8 biswas of land on 24.1.1996 to H.P. State Handloom and Handicrafts Weavers Co-operative Society, Kullu for a sum of Rs.8,00,000/- vide Ext. PW-3/A. This land is situated at Bhuntar. The distance between Bhuntar and Bajoura is 5 kms. The land abutted Bhuntar bazaar. This land was purchased for commercial purposes.

10. PW-4 Inder Singh son of Palku Ram deposed that the Bhutti Weavers Society has purchased 4 biswas of land for a sum of Rs.4,00,000/- on 7.8.1997, vide Ext. PW-4/A. In his cross-examination, he admitted that the land was situated in Bhuntar on the side of national highway. He also admitted that Bhuntar is commercial centre.

11. PW-5 Inder Singh son of Jhambria, deposed that on 19.8.1999, he has sold three biswas of land for a sum of Rs. 61,000/- to Jaswant Kaur vide Ext. PW-5/A. This land was situated at a distance of half kilometer from the acquired land. In his cross-examination, he specifically deposed that this land also falls in Fati Bajaura and acquired land also falls in Fati Bajaura.

12. PW-6 Sher Singh deposed that his land is situated at Kothi. The land was acquired by H.P. Housing Board. The value of the land 4 years back was Rs. 1,00,000/- per biswa. The Land Acquisition Collector has awarded very less compensation to him. The value of the land appreciates every year. Bajaura town was expanding towards acquired land. The land abuts National Highway No. 21. Hotels, shops and houses situate near the acquired land. There is High School, Agriculture University, PWD Rest House and Indo-Italian Horticulture Project near the acquired land. He has raised orchard on the land. The award was not announced before them. He came to know about the award in the year 2002. The payment was accepted by them under protest. Their acquired land was near the land sold by Mohd. Ali. The land sold by Tikhu was at a distance of 100-200 yards. Their acquired land was of better quality. The land of Mohd. Ali, Dhani Ram, Bhungar, Ganga Ram etc. which was also acquired by HPSEB for raising tower and for the construction of 132 KV Grid Sub-Station, was situated at a short distance from their land. The Court has awarded them Rs. 2,40,000/- per bigha. The land which was acquired for the purpose of Kuhl by the I & PH Department was awarded Rs. 4,50,000/- per bigha by the Land Acquisition Collector. The Bhuntar Airport was at a distance of 2-3 km. from the acquired land. Suman Kumari and others were paid less compensation by the Land Acquisition Collector. They have made references to the Court and the Court has awarded Rs. 50,000/- per biswa to them as compensation.

13. PW-7 Teg Singh deposed that their land is situated near Bajaura bazaar. The land was acquired by the H.P. Housing Board and the value of the land 4 years back was Rs. 1,00,000/- per biswa and now-a-days, it was Rs. 2,00,000/- per biswa. The Bajaura town was extending towards their acquired land. The acquired land is suitable for construction of Hotel, shops and houses. There are Hotels, shops and houses situate near the acquired land. There is High School, Agriculture University, PWD Rest House and Indo-Italian Horticulture Project near the acquired land. He has raised the orchard on the acquired land. They came to know about the award on 24.7.2002. The land which was sold by Mohd. Ali to Sunder Singh was at a short distance from their land. The land of Mohd. Ali, Dhani Ram, Bhungar, Ganga Ram etc. which was also acquired by HPSEB for raising tower and for the construction of 132 KV Grid Sub-Station was at a distance of 200-300 yards from their land. The land which was acquired for the purpose of kuhl by the I & PH department was at a distance of 200 yards from their land. The Land Acquisition Collector has awarded Rs.4,50,000/- per bigha to Satish and others for acquiring land by H.P. Housing Board.

14. PW-8 Dina Nath deposed that he was the owner-in-possession of the acquired land alongwith his mother. The proforma respondents are neither owner nor in possession of the suit land since the partition has taken place 50 years back. The land abuts the Bajaura bazaar and national highway. The value of the land 4 years back was 1,00,000/- per biswa. They have been awarded less compensation by the Land Acquisition Collector. The town was expanding towards their acquired land. There is School, Dispensary, Bank, Horticulture University etc. near the acquired land. He has kept this land for the construction of Hotel, Shops and Houses. No notice was issued to them at the time of award. The award was not made in their presence. The land of Mohd. Ali, Dhani Ram, Bhungar, Ganga Ram etc. was also acquired by HPSEB for raising tower and for the construction of 132 KV Grid Sub-Station. It is near their land and abuts NH-21. Mohd. Ali and others were also awarded less compensation. However, The Court has awarded them Rs. 2,40,000/- per bigha. The land acquired by I & PH department for the purpose of kuhl was situated at a distance of 200 yards from their land. The Land Acquisition Collector has awarded less compensation to them. However, the Court has awarded Rs. 2,40,000/- to these claimants. The Housing Board has acquired the land of Satish Kumar which is situated at a distance of 200-250 yards from their land and compensation of Rs. 4,50,000/- per bigha was awarded.

15. PW-9 Sita Devi deposed that the land measuring 4 biswas was sold on 7.3.1994 for consideration of Rs. 1,90,000/- vide Ext. PW-9/A. In her cross-examination, she admitted that this land is situated in village Kalhali. The distance between Bhuntar and Kalhali is 2 ½ km. However, Bajaura to Kalhali is nearer but not at a distance of 1 ½ km.

16. PW-10 Sher Singh deposed that H.P. Housing Board has taken the possession on 14.9.1999. Fruit bearing trees were planted on the acquired land. The trees were healthy.

17. The claimants have also placed on record copy of award in reference No. 11 of 2001 Ext. PA, copy of award in reference No. 21 of 2002 Ext. PC, copy of award in reference No. 18 of 1999 Ext. PE, copy of award in reference No. 17 of 1999 Ext. PG, copy of award in reference No. 58 of 2002 Ext. PJ, copy of award No. 145 dated 30.12.1995 Ext. PK, copy of award No. 155 dated 28.2.1996 Ext. PL alongwith revenue record, including copy of awards/statements Ext. PZ-1 to PZ-10.

18. RW-1 Rita deposed that she has prepared map/lay out plan of Housing Board Colony vide Ext. RW-1/A. 60% of the land was used for residential and commercial

purposes and 40% was carved out for reserved green, community hall, school, water tank, septic tank etc.. In her cross-examination, she admitted that the acquired land abuts the national highway.

19. RW-2 Banita deposed that she has sold land measuring 5 biswas on 20.7.1998 for a sum of Rs. 23.000/- vide RW-2/A. In her cross-examination, she admitted that the acquired land abuts national highway No. 21 and was also in near proximity of Bajaura bazaar. She also admitted that the land sold by her was at a distance of 4-5 Km. from the acquired land. It was '*Banjar Kadim*'. She also admitted that near the acquired land, there are hotels, shops, High School, Indo Italian Project. She also admitted that 4 years back, the value of one biswa of land was 1,00,000/-.

20. RW-3 Jai Singh deposed that he and Prem Singh sold 6 biswas of land for a sum of Rs. 16,500/- on 21.9.1998, vide Ext. RW-3/A. In his cross-examination, he admitted that the acquired land abuts the national highway. It was also in close proximity of Bajaura town. He also admitted that the acquired land is the most suitable land of the area. The land sold by him is at a distance of 2-3 km. from the acquired land. It was of lesser value. He also admitted that the value of the acquired land was more.

21. RW-4 Jhabe Ram deposed that he has sold 14 biswas of land on 18.3.1999, for consideration of Rs. 25,000/- vide Ext. RW-4/A. In his cross-examination, he admitted that the land of Dina Nath and others was situated by the side of NH. The land sold by him was at a distance of 3-4 km. from the acquired land. The value of his land was less. The value of acquired land was more. He admitted that the value of acquired land was 1,00,000/- per biswa four years before.

22. RW-5 Chain Ram, Patwari has produced annual average Ext. RW-5/A. He also admitted that the acquired land abuts the NH. The Hotels, shops and houses situate near the acquired land. There is High School, Agriculture University, PWD Rest House and Indo-Italian Horticulture Project near the acquired land. It was near Bajaura market. The land of Satish Kumar was not near the NH.

23. RW-6 Narain Singh deposed that he has sold one bigha land situated in Fati Hat on 6.3.1999 for consideration of Rs. 35,000/-. In his cross-examination, he admitted that his land was situated at a distance of 4-5 km. from the acquired land.

24. RW-8 Ravinder Singh, in his cross-examination, admitted that the land of the claimants abuts national highway. He denied that Indo Italian Project, High School and shops were not in close proximity of the acquired land but volunteered that it was at a short distance. The acquired land was 400-500 meters from the Bajaura market.

25. RW-9 Upender Sharma has proved Ext. R-1, copy of award, R-2 copy of supplementary award, R-3 copy of sale deed and R-4 copy of sale deed.

26. RW-10 Amar Chand Sharma has proved RW-10/A and RW-10/B.

25. RW-11 Bhag Mal has proved supplementary award Ext. RW-11/A.

27. RW-12 Dinesh Kumar Sharma has made deposition about the manner in which the possession of the land was taken over.

28. What emerges from the evidence discussed hereinabove is that the land of the claimants is situated at Fati Hat. It is near Bajaura town. Indo Italian Project, High School, Dispensary, shops and hotels are in close proximity of the acquired area. It abuts National Highway No. 21. Mohd. Ali and others were paid Rs. 2,40,000/- per bigha. The

land of Mohd. Ali was inferior vis-à-vis the land of the claimants. One Satish Kumar was paid Rs. 4,50,000/- per bigha by the Housing Board for acquiring his land.

29. PW-1 Mohd. Ali has deposed that he has sold 2 biswas of land to Sunder Singh for a sum of Rs. 40,000/- vide Ext. PW-1/A. This land was situated only at a distance of 100-150 yards from the acquired land. PW-2 Tikhu Ram has though deposed that he has sold 1 biswa of land for 50,000/- but it was on 29.3.2001. The Reference Court has rightly not taken into consideration the statements while making assessment of the market value. PW-3 Jeet Ram has deposed that the Kullu Valley Regional Co-operative Marketing society has sold 8 biswas land to Bhuntar Marketing Co-operative Society on 24.1.1996 for consideration of Rs. 8,00,000/- vide Ext. PW-3/A. Similarly vide Ext. PW-4/A, land measuring 4 biswas was slold for a sum of Rs.4,00,000/-. PW-5 Inder Singh has sold 3 biswas of land for Rs. 61,000/- to Jaswant Kaur vide Ext. PW-5/A. PW-6 Sher Singh has categorically deposed that the acquired land abuts National Highway No. 21. The place was most suitable for the construction of hotels, shops and houses. High School, Indo-Italian project and PWD Rest House are also situated near the acquired land. The statement of PW-6 Sher Singh has been corroborated by PW-7 Teg Singh. PW-8 Dina Nath is one of the claimants. He has also deposed that the acquired land was near National Highway. School, Dispensary, Horticulture University and Bank were situated near the acquired land.

30. Now, as far as the land sold vide Ext. PW-3/A and PW-4/A are concerned, these were at a distance of 5 km. from Bajaura.

31. Mr. Bhupender Gupta, Sr. Advocate, has drawn the attention of the Court to Ext. RW-1/A, RW-2/A, RW-3/A, RW-4/A, RW-5/A and RW-6/A. The fact of the matter is that the land sold vide these sale-deeds were at a distance of more than 4-5 kms. from the acquired land. The witnesses who have proved the sale deeds have categorically admitted that the land of the claimants abuts National highway and value of 1 biswa of land was RS. 1,00,000/-. The value of the acquired land was more vis-à-vis their land. Thus, these cannot be taken into consideration for assessment of the value of the land. The Reference Court has rightly relied upon sale deeds Ext. PW-1/A and PW-5/A, duly proved by PW-1 Mohd. Ali and PW-5 Inder Singh, respectively.

32. The sale deed Ext. PW-1/A was taken into consideration by the learned Addl. District Judge (FTC), Kullu in order to determine the market value of land acquired by I & PH Department for the construction of *'kuhl'* in Land Reference Petition No. 21/02. The copy of the award is Ext. PC. This was also tendered in this case whereby the value of per bigha of land in Fati Hat was Rs. 2,40,000/-. This assessment was made after deduction of 40% departmental charges. The land was also acquired, as discussed hereinabove, of Mohd. Ali and others for the construction of Sub-Station Grid and raising of tower by the HPSEB. The award of the Collector was agitated before the learned District Judge, Kullu by way of Reference petition No. 18 of 1999. The learned District Judge, Kullu, has passed award vide Ext. PE. He has assessed the market value of the land in this Fati at Rs. 2,40,000/- per bigha. The sale deed Ext. PW-1/A was also discussed in this award Ext. PE by the learned District Judge, Kullu. The market value of per bigha of the land was determined after deduction of 40% towards departmental charges.

33. The learned District Judge, Kullu has made another award Ext. PG in respect of land acquired in Fati Hat for the purpose of construction of Transmission Line in Ref. petition No. 17 of 1999. He has assessed a sum of Rs. 2,40,000/- per bigha after deducting 40% of departmental charges. The award Ext. PE was affirmed by this Court in RFA No. 58 of 2002 decided on 30.4.2002 vide Ext. PJ. The learned Addl. District Judge (FTC), Kullu, in the instant case, has rightly come to the conclusion that the market value of

the land acquired was 18,000/- per biswa. The land under acquisition and the land concerning the award, as discussed hereinabove, are similarly situated. The potentiality was also the same or similar. The learned Addl. District Judge (FTC), Kullu, after taking into consideration the trend of land prices, has rightly given 10% appreciation in the market value of the land for the subsequent years by awarding Rs. 18,000/- per biswa and per bigha rate was assessed at Rs. 3,60,000/-. The learned Addl. District Judge (FTC), Kullu, has correctly awarded solatium @ 30% along with statutory benefits to the claimants. The learned Addl. District Judge (FTC), Kullu, has correctly relied upon the award as well as sale deeds produced by the claimants while making the award. The sale deeds Ext. RW-2/A, RW-3/A and RW-5/A have rightly not been taken into consideration by the learned Addl. District Judge (FTC), Kullu.

34. Mr. Satyen Vaidya, learned Sr. Advocate, has brought to the notice of this Court the order dated 15.10.2009 rendered in CMP Nos. 866 & 867 of 2008. He submitted that the decree has been passed in favour of his clients on 9.1.2015 in Civil Suit No. 19/09 and 29/11, titled as Jaya Devi & others Vrs. Dina Nath & others. Accordingly, they shall be entitled to compensation as per their shares in terms of decree dated 9.1.2015, in RFA No. 27 of 2007.

35. Consequently, there is no merit in these appeals and the same are dismissed, so also the pending application(s), if any.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Satish Sharma .....Appellant.

Versus

Hem Chand Sharma & anr. .....Respondents.

RFA No. 10 of 2005 with
C.O. No. 124 of 2005.
Reserved on: 22.12.2015.
Decided on: 29.12.2015.

Indian Partnership Act, 1932- Section 69(2)- Plaintiff claims to have entered into a partnership with defendant and one A for providing vehicles on rent to N.J.P.C - ratio of profit and loss was decided to be 40% , 40 % and 20%- A sum of Rs. 6,72,500/- was required to be deposited with M/S Anagram Finance Limited Company for getting the vehicles financed- the plaintiff paid a sum of Rs. 2,95,000/- - however, the defendant did not arrange his share- since the vehicles could not be arranged, N.J.P.C., terminated the contract vide letter dated 31.1.1997-plaintiff filed suit for recovery against the defendant-defendant contested the suit as being not maintainable having not been filed under the provisions of Indian Partnership Act- he also denied the payments and the acknowledgment-suit was dismissed- in first appeal, held that the partnership firm was not registered-although the payments of Rs. 2,95,000/- made by the plaintiff to the defendant are duly proved but since the partnership was not registered, therefore, the suit is not maintainable-learned trial court had rightly come to the conclusion that the suit was not maintainable in view of Section 69(2) of the Indian Partnership Act, 1932- appeal dismissed. (Para-2 to 19)

Cases referred:

Popsingh Mahadeo Prasad vrs. Dipchand Ray and another, AIR 1960 Orissa 123

Sunderlal and Sons vrs. Yagendra Nath Singh and another, AIR 1976 Cal. 471
Haldiram Bhujiawala and another vrs. Anand Kumar Deepak Kumar and another, (2000) 3 SCC 250
The Andhra Pradesh Co-operative Wool Spinning Mills Limited and another vrs. G. Mahanadi and Company Wool Merchants and others, AIR 2003 A.P. 418,
M/S Balaji Constructions Co., Mumbai and ors. vrs. Mrs. Lira Siraj Shaikh & ors., AIR 2006 Bombay 106
Sri Velji Narayan Patel vrs. Sri Jayanti Lal Patel, AIR 2009 Calcutta 164,

For the appellant(s):	Mr. Karan Singh Kanwar, Advocate.
For the respondents:	Mr. K.D.Sood, Sr. Advocate with Ms. Mahika Verma, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This regular first appeal is directed against the judgment of the learned Addl. District Judge, (P.O., Fast Track Court), Solan, H.P. dated 3.12.2004 in Civil Suit No. 7 FT/1 of 2004/99.

2. "Key facts" necessary for the adjudication of this regular first appeal are that the appellant-plaintiff (hereinafter referred to as the plaintiff) filed a suit for recovery of Rs. 4,64,875/- against the respondents-defendants (hereinafter referred to as the defendants). According to the averments made in the plaint, defendant No. 1 entered into partnership with the plaintiff for carrying on a business of supplying vehicles on hire basis to N.J.P.C. One Anoop Sharma, son of defendant No. 1, was also joined as a partner. Partnership in the name and style of M/S Cane Craft Cottage Industries came into existence. The plaintiff and defendant No. 1 had their share of profit and loss to the extent of 40% each and share of Anoop Sharma was 20%. The partnership came into existence on 31.8.1996. For the purpose of supplying the vehicles on hire to N.J.P.C., funds were required to purchase vehicles. Negotiations with M/S Anagram Finance Limited Company took place. A sum of Rs. 6,72,500/- was required to be deposited with M/S Anagram Finance Limited Company for getting the vehicles financed. The plaintiff made a total payment of Rs. 2,95,000/- to defendant No. 1 who was entrusted with job of raising finances and to deal with the N.J.P.C. The payments were acknowledged by defendant No. 1 vide receipt dated 25.9.1996, however, defendant No. 1 failed to contribute his share of the marginal money. Another sum of Rs. 65,000/- was required to be deposited with N.J.P.C. as earnest money. Defendant No. 1 failed to deposit earnest money with N.J.P.C. Since the vehicles could not be arranged, the N.J.P.C., terminated the contract vide letter dated 31.1.1997.

3. The suit was contested by defendant No. 1. Preliminary objection was taken that the suit was not maintainable. According to him, the share contributed to the partnership firm could not be claimed by way of suit for recovery. The provisions of Indian Partnership Act, 1932 were to be followed. He has denied that any earnest money was required to be deposited with N.J.P.C., though it was admitted that the partnership in the name and style of Cane Craft Cottage Industry came into existence. Defendant No. 1 also denied that the plaintiff paid a sum of Rs. 60,000/-, 70,000/-, 1,00,000/- and Rs. 65,000/- to him. He denied the acknowledgment of receipt.

4. Defendant No. 2 also filed the written statement. She took a specific preliminary objection that the share contributed to partnership firm by one partner could

not be claimed by way of suit for recovery. The plaintiff, in any case, if has contributed any amount to the partnership firm, he could file suit for rendition of account only.

5. The replication was filed and issues were framed by the learned trial Court on 11.7.2002. The suit was dismissed by the learned trial Court on 3.12.2004. Hence, this regular first appeal.

6. I have heard learned Advocates for the parties and gone through the judgment and records of the case carefully.

7. The partnership firm came into existence, as per the pleadings of the parties, on the basis of letter dated 31.8.1996, issued by the N.J.P.C. The partnership deed is Ext. PW-2/Z-3. It is deemed to have come into force on 2.9.1996. It was not registered.

8. PW-1 Ranjit Singh has produced the record of case registered under Section 420/406 IPC. PW-2 Bisheshwar Sharma has proved receipt dated 25.9.1996. The certified copy of report is Ext. PW-2/Z-4. PW-3 Jaideep Krishan has proved cheque dated 7.6.1996. The photo-copy of the draft which was issued in favour of defendant No. 1 is Ext. PW-3/B. PW-4 Goverdhan Singh has proved Exts. PW-4/A to PW-4/H and Ext. PW-4/J to PW-4/R. PW-5 Madan Lal has proved Ext. PW-5/A. PW-6 D.N.Parihar has proved copy of FDR Ext. PW-6/A to PW-6/C. PW-7 Om Parkash Gandhi was also from PNB. He deposed that DD No. 508256, UCO Bank was presented before the Branch for collection in the account of Hem Chand Sharma. PW-8 Satish Sharma, (wrongly mentioned as PW-9) plaintiff has led his evidence by filing affidavit vide Ext. PW-9/A. In his affidavit, he has specifically stated that the partnership was oral. He has paid a sum of Rs. 2,95,000/- to defendant No. 1. In his cross-examination, he also admitted categorically that at the time of drafting of the plaint, he has told his Lawyer that the partnership firm was oral. He has admitted that Ambassador car was supplied to N.J.P.C., though volunteered that it was on rent. The Ambassador car remained with N.J.P.C. for 2-3 months.

9. DW-2 Dharmender Kumar deposed that the partnership firm had opened its account on 17.11.1995. The cheque-book was also issued. Defendant No. 1 has led evidence by filing DX-1. It is admitted that the partnership was entered into and the partnership deed was prepared on 2.9.1996. He denied the execution of receipt Ext. PW-2/B. He also denied the receipt of other amounts. The Ambassador car was supplied and the plaintiff has raised claim vide Ext. PW-4/G. The Car was furnished vide Ext. PW-4/H. In his examination-in-chief, he deposed that he has sought compulsory retirement in the year 1993. He did not know how the receipt was prepared.

10. The plaintiff has duly proved that he has paid Rs. 2,95,000/- to defendant No. 1 vide receipt Ext. PW-2/B. His signatures were sent for comparison and as per the report of the handwriting expert Ext. PW-2/Z-4, the signatures were of defendant No. 1. However, the fact of the matter is that as per the evidence led by the parties, the partnership was oral. It was not registered. The defendants have taken a specific ground that suit in the present form was not maintainable.

11. Section 69(2) of the Indian Partnership Act, 1932, reads as follows:

> "**69. Effect of non-registration.-(2).** No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

12. Thus, in view of the specific bar under sub-section (2) of Section 69 of the Partnership Act, the suit by a non-registered firm could not be filed for the recovery of amount arising on the basis of contract between the parties.

13. Mr. Karan Singh Kanwar, Advocate, has vehemently argued that the partnership came into existence but no business was done. However, according to his own statement, Ambassador car remained with N.J.P.C. for 2-3 months. He himself has produced Ext. PW-4/G, whereby he has claimed amount to supply the vehicle to N.J.P.C., to be paid to him.

14. In the case of ***Popsingh Mahadeo Prasad vrs. Dipchand Ray and another,*** reported in ***AIR 1960 Orissa 123,*** the Division Bench of the Orissa High Court has held that where there is no specific plea under sub-section (2) of S. 69 taken in the written statement but the necessary facts for the application of that section have been brought to the notice of the Court, it cannot be a party to the perpetration of an illegality. The suit being by an unregistered firm must be held to be barred under sub-section (2) of S. 69. It has been held as follows:

> "7. An identical question came up for decisions before a Division Bench of this Court in the unreported case of the Balasore Textile Distributors Association v. Indian Union, First Appeal No. 20 of 1951: (AIR 1960 Orissa 119). In that case no specific plea under Sub-section (2) of Section 69of the Indian Partnership Act was taken in the written statement, but there was necessary evidence for the application of that Section to be found on the record. Thus the Division Bench to which I was a party, took the view that when the necessary facts for the application of that Section have been brought to the notice of the Court, it cannot be a party to the perpetration of an illegality.
>
> While arriving at this conclusion, we relied upon a decision of the Judicial Committee in the case of Surajmal v. Triton Insurance Co., AIR 1925 P. C. 83. The decision in the aforesaid Privy Council case was subsequently followed by the Nagpur High Court in the case of Mohanlal Jagannath v. Kashiram Gokul, AIR 1950 Nag 71. A passage from the judgment of Lindley, LJ. in the case of Soott v. Brown, Doering McNab and Co., (1892) 2 QB 724 (728) is worth quoting :
>
> > "It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality, the Court ought not to assist him."
>
> To the similar effect was a decision by the Calcutta High Court in the case of Gopinath Motilal v. Ram-das, AIR 1936 Cal 133. Mr. Dasgupta, however, contended that that decision of the Division Bench is not a correct decision. I cannot accept this contention. The above decision of a Division Bench of this Court is doubtless binding upon this Bench. Accordingly, there does not appear to be any merit in this contention of Mr. Dasgupta and the suit being by an unregistered firm must be held to be barred under Sub-section (2) of Section 69 of the Indian Partnership Act."

15. The learned Single Judge of the Calcutta High Court in the case of ***Sunderlal and Sons vrs. Yagendra Nath Singh and another,*** reported in ***AIR 1976 Cal. 471,*** has held that in view of the language of Section 69, a plaint filed by an un-registered firm would not be a plaint at all and all proceedings thereunder will be proceedings without jurisdiction. It has been held as follows:

"4. In this case the decree has been passed. If the decree is a nullity then of course this point can be taken. But the question is whether a decree passed without this point having been taken is nullity or not. In view of the language of the section, in my opinion, a plaint filed by an unregistered firm would not be a plaint at all. If that be so, all proceedings thereunder will be proceedings without jurisdiction. Support for this proposition can be had from the observations of the Division Bench of Madras High Court in the case of K.K.A. Ponnuchami Gounder v. Mathnsami Goundar. AIR 1942 Mad 252. Similar view was taken in the case of A. T. Ponnappa Chcttiar v. Podappa Chettiar, AIR 1945 Mad 146, Shriram Sardarmal Didwani v. Gourishankar, , Firm Laduram Sagarrnal v. Jamuna Prosad Chaudhuri, AIR 1939 Pat 239 and Dwijendra Nath Singh v. Govinda Chandra, . This contention, in my opinion, can also be taken at this stage. Reliance in this connection may be placed on the observations of the Judicial Committee in the case of Surajmall Nagoremull v. Triton Insurance Co. Ltd., 52 Ind App 126 - (AIR 1925 PC 83) and in the case of Gopinath Motilal v. Ramdas, AIR 1936 Cal 133. In the aforesaid view of the matter I am of the opinion that the firm not being registered the decree was a nullity and as such cannot be executed.

6. I am therefore, of the opinion that where execution is in respect of a claim arising out of a suit based on a contract, the prohibition indicated by Section 69 would apply. Furthermore, the fact that in Sub-clause (b) of Sub-section (4) of Section 69 of the Act proceedings in execution or other proceedings incidental to the execution of certain specified suit as indicated in that sub-clause have been excluded and no other proceeding of execution has been excluded, in my opinion, is clearly indicative of the fact that the proceedings in execution which are to enforce rights arising from contracts would be covered by Section 69 of the Indian Partnership Act. In that view of the matter I am unable to accept the contention that execution proceedings are not covered by the prohibition of Section 69 of the Indian Partnership Act. Counsel for the decree-holder contended, further, that prohibition was against the institution of the suit and the prohibition was not against the consideration of the suit by the court. In aid of this submission he relied on the observations of the Patna High Court in the case of Kuldip Thakur v. Sheomangal Prasad Thakur, and also on the Bench decision of the Madras High Court in the case of Jalal Mohammad v. Kakka Mohammad, . In the view I have taken of the nature of prohibition, with great respect, I am unable to accept this conclusion of the aforesaid two decisions. Jurisdiction as observed by Lord Reid in, the case ofAnisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147, at p. 171 of the report is the entitlement of the tribunal to enter upon the inquiry in question. That entitlement in my opinion can only arise from a competent plaint instituted by a plaintiff. If the plaint was incompetent, there was no plaint. There was no suit. Ex facie and without any dispute there was no valid suit. A decree based on such a patent and indisputable error would be an error of jurisdiction and decree passed on such error would be nullity. If, however, the error depends upon adjudication of disputes, either of fact or law different considerations would apply. After all as the Supreme Court has observed that the question whether there was an error within the jurisdiction or an error of jurisdiction depends upon the nature of the error. In view of the express provision and public policy indicated in Section 69 of the Partnership Act in my opinion entertaining a suit in derogation of that

mandatory provision would defeat the purpose of the statute and such an error would amount to an error of jurisdiction and a decree passed on such an error would be a nullity. In the aforesaid view of the matter, in my opinion, on this ground also this decree cannot be executed. In the premises, this application must fail. However, in view of the thoroughness with which this application was argued I direct that the parties should pay and bear their own costs. Interim order, if any, is vacated. Certified for counsel."

16. Their lordships of the Hon'ble Supreme Court in the case of ***Haldiram Bhujiawala and another vrs. Anand Kumar Deepak Kumar and another,*** reported in ***(2000) 3 SCC 250,*** have held while interpreting Section 69(2) of the Indian Partnership Act, 1932, that the purpose behind Section 69(2) was to impose a disability on the unregistered firm or its partners to enforce rights arising out of contracts entered into by the plaintiff firm with the third-party defendants in the course of the firm's business transactions. It has been held as follows:

"21. The above Report and provisions of the English Acts, in our view, make it clear that the purpose behind Section 69(2) was to impose a disability on the unregistered firm or its partners to enforce rights arising out of contracts entered into by the plaintiff firm with third party - defendant in the course of the firm's business transactions.

22. In Raptokas Brett and Co., [1998] 7 SCC 184 it was clarified that the contractual rights which are sought to be enforced by plaintiff firm and which are barred under section 69(2) are "rights arising out of the contract" and that it must be a contract entered into by the firm with the third party defendants. Majmudar, J. stated (at p.191) as follows :

> "A mere look at the aforesaid provision shows that the suit filed by an unregistered firm against a third party for enforcement of any right arising from a contract with such a third party would be barred....."

From the above passage it is firstly clear that contract must be a contract by the plaintiff firm not with anybody else but with the third party defendant.

23. The further and additional but equally important aspect which has to be made clear is that - the contract by the unregistered firm referred to in section 69(2) must not only be one entered into by the firm with the third party - defendant but must also be one entered into by the plaintiff firm in the course of the business dealing of the plaintiffs firm with such third party-defendant."

17. In the case of ***The Andhra Pradesh Co-operative Wool Spinning Mills Limited and another vrs. G. Mahanadi and Company Wool Merchants and others,*** reported in ***AIR 2003 A.P. 418,*** the Division Bench of the Andhra Pradesh High Court has held that the burden to plead and prove that the plaintiff is registered firm and therefore, is entitled to maintain suit against the third party, is always on the firm in view of the legislative mandate under Section 69(2) of the Partnership Act.

18. The Division Bench of the Bombay High Court in the case of ***M/S Balaji Constructions Co., Mumbai and ors. vrs. Mrs. Lira Siraj Shaikh & ors.,*** reported in ***AIR 2006 Bombay 106,*** has held that the firm not registered on the date of filing of suit and persons suing as partners now shown in register of firms, suit by such a firm is hit by Section 69(2) of the Partnership Act. It has been held as follows:

"10. Insofar as we are concerned, the Judgment of the Supreme Court in the case of M/S. Shreeram Finance Corporation (supra): (AIR 1989 SC 1769)

holds the field and binds us. In view of the decision in that case, the first Plaintiff-firm being not registered on the date of the filing of the suit, it has to be held and rightly so held by the trial Court that it was liable to be dismissed in view of Section 69(2) of the Indian Partnership Act, 1932."

19. The learned Single Judge of the Calcutta High Court in the case of ***Sri Velji Narayan Patel vrs. Sri Jayanti Lal Patel,*** reported in ***AIR 2009 Calcutta 164,*** has held that registration of firm is pre-requisite for entertainability of suit by Civil Court. The presentation of plaint by partners against an unregistered firm cannot be said to be a plaint worth the name. It has been held as follows:

"[9] Sub-section (1) of Section 69 disentitles a partner or a person on behalf of a partner to sue as a partner against the firm of a person allegedly to be a partner unless the firm is registered with the registrar of firms. Sub-section (2) similarly disentitles the firm to institute a suit against a third party unless the firm is registered. The common feature between Sub-section (1) and Sub-section (2) is that such suit must relate to enforcement of right arising out of a contract of conferred by the Act. If a suit by a partner against a partner or firm does not relate to enforcement of a right arising out of a contract then there is no legal prohibition because the spirit of Section 69 either of Sub-section (1) or of Sub-section (2) is that such suit must be related to enforcement of the right arising from a contract. Having gone through the plaint of the suit it clearly appears that the plaintiff instituted the suit as a partner for enforcement of his right arising out of the contract. The entire narrative of the plaint is for declaration that the plaintiff is the owner of 50 per cent of the share of the partnership business and for declaration that he is entitled to enjoy 50 per cent of the said business under the name and style of M/s. Bhagat & Company, for production of books of accounts, statement of accounts, balance-sheet and other documents and for declaration that the defendant is liable to disburse and pay plaintiffs share of profit in the business. Plaintiff does not sue in his individual capacity. The prayers in the plaint are basically for enforcement of his right as embodied in the partnership deed which was executed by and between the parties on 15th of April, 2000. In such circumstances, the provision of Sub-section (1) of Section 69 appears to have hit the plaint. Order 7, Rule 11(d) contains "where the suit appears from the statement in the plaint to be barred by any law". It is not the case in the plaint that the firm was registered with the Registrar of Firms.

[10] Presentation of the plaint by a partner against an unregistered firm cannot be said to be a plaint worth the name. In the decision in Sunderlal , AIR1976Cal471 (supra) this Court held as follows:

Jurisdiction as observed by Lord Reid in the case of Anisminic Ltd. v. Foreign Compensation Commission, 1969 2 AC 147 of the report is the entitlement of the tribunal to enter upon the inquiry in question. That entitlement in my opinion can only arise from a competent plaint instituted by a plaintiff. If the plaint was incompetent, there was no plaint. There was no suit. Ex facie and without any dispute there was no valid suit. A decree based on such a patent and indisputable error would be an error of jurisdiction and decree passed on such error would be nullity. If, however, the error depends upon adjudication of disputes, either of fact or law different considerations would apply. After all as the Supreme Court has observed that the question whether there was an error within the jurisdiction or an error of jurisdiction

depends upon the nature of the error. In view of the express provision and public policy indicated in Section 69 of the Partnership Act in my opinion entertaining a suit in derogation of that mandatory provision would defeat the purpose of the statute and such an error would amount to an error of jurisdiction and a decree passed on such an error would be a nullity.

[13] This being the legal position it has to be held that the, suit at the threshold is not maintainable and the provision of Order 7, Rule 11(d) of the CPC is applicable."

20. Thus, it can safely be concluded that after the registration of firm, there were business transactions. The learned Addl. District Judge, (P.O., Fast Track Court), Solan, H.P., has rightly come to the conclusion that the suit was not maintainable in view of Section 69(2) of the Indian Partnership Act, 1932.

C.O. No. 124 of 2005.

21. It is duly proved on the basis of record, oral as well as documentary, that the plaintiff has paid sum of Rs. 2,95,000/- to defendant No.1. The findings recorded by the learned Addl. District Judge (FTC), Solan are based on the correct appreciation of evidence adduced by the parties. The suit was within limitation and it was not bad for non-joinder of necessary parties. The plaintiff has duly proved receipt Ext. PW-2/B. The learned Addl. District Judge (FTC), Solan, has correctly appreciated the oral as well as documentary evidence available on record.

22. Accordingly, the appeal as well as the Cross-objections are dismissed.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

State of H.P. ..... Petitioner.

Versus

Amit Kumar ....Respondent.

Cr.MP(M) No. 1618 and 1619 of 2015.
Date of Decision: 30th December, 2015.

Code of Criminal Procedure, 1973- Section 378-**Indian Penal Code, 1860-** Section 366, 376- Prosecutrix was missing from her home- a complaint was lodged- the prosecutrix was subsequently found- she was medically examined- Medical Officer stated that possibility of sexual assault could not be ruled out – accused was charged with the commission of offences punishable under Section 366 and 376 IPC- he was acquitted by the trial Court- aggrieved from the acquittal, an appeal was preferred by the State- Date of Birth of prosecutrix shows that she was a major on the date of incident- accused was tenant of the father of the prosecutrix- the possibility of her developing intimacy with the accused cannot be ruled out – the prosecutrix had tried to conceal herself when her parents had arrived- she admitted that she had proceeded to the room of the accused on receiving the call which shows the intimacy between the accused and the prosecutrix- prosecutrix had not complained that she was forcibly taken by the accused – she had not made any complaint of sexual assault- held, that all these circumstances established that she was a consenting party and the accused was rightly acquitted by the trial Court- leave to appeal refused and application dismissed. (Para-9 to 12)

For the Appellant: Mr. Ramesh Thakur, Assistant Advocate General.
For the Respondent: Nemo.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

Cr.MP(M) No.1619 of 2015.

Heard. This application has been filed on behalf of the petitioner-State for condonation of delay of 33 days as has occurred in the institution of the appeal before this Court against the impugned judgment rendered on 24.06.2015 by the learned Additional Sessions Judge, Ghumarwin (Camp at Bilaspur), District Bialspur, Himachal Pradesh, in Sessions trial No.05/7 of 2015. Good, sufficient and abundant cause, which deterred or precluded the petitioner to move this Court within time stands detailed in paragraphs No.2 and 3 of the application, whose contents stand duly supported by an affidavit. The said ground does not divulge of there being any element of deliberateness on the part of the petitioner to not move this Court within time. Accordingly, delay in the institution of the appeal before this Court stands condoned and the application stands allowed.

Cr.MP(M) No. 1618 of 2015.

2. The State of Himachal Pradesh stands aggrieved by the findings of acquittal recorded in favour of the respondent/accused by the learned Additional Sessions Judge, Ghumarwin, Camp at Bialspur, District Bilaspur, Himachal Pradesh. Being aggrieved, it has sought the leave of this Court for instituting an appeal therefrom for assailing it.

3. Briefly stated the facts of the case are that prosecutrix was at home on 29.9.2014 up till 9.30 p.m. Thereafter, she went missing. She was not having any mobile phone or other articles. Nothing had been taken by her from home. She was searched by Prakash Chand every where including at the houses of his relatives, but she was not traceable. She had not been seen going away by any one. She had gone to ITI early in the morning at 8.30 a.m. and had returned back home at 5.30 p.m that day. Prakash Chand suspected some one to have kidnapped his daughter. A written complaint (Ex.PW7/A) was moved to Station House Officer, Police Station, Sadar, Bilaspur where FIR was registered. During the course of investigation, on 4.10.2014, SI Naresh Kumar along with L.C. Sarswati, C. Ranbir Singh, Parkash Chand Sanjay Kumar had gone to Pouri Gadwal, as they had received an information that accused and the prosecutrix were present there. However, they could not be traced that day and while they were returning back, Prakash Chand received a telephonic call from Kishore Kumar, the brother of the accused, who was residing at Kurukeshtra that he could lead them to the house of the accused at Pouri Gadwal in village Tamlag. The prosecutrix and the accused were found siting there in a room. The prosecutrix was identified by Prakash Chand. She was handed over to her father Prakash Chand. A bed sheet was seized vide seizure memo. Spot map was prepared. The prosecutrix was medically examined by Dr. Sonu Kumari and she opined that there were no external injuries on the body of the prosecutrix. Possibility of sexual assault was not ruled out. During the course of investigation, the preserved clothes, vaginal slides, vaginal swabs, pubic hair etc were sent for chemical and forensic examination and the Investigating Officer prepared the spot maps of the places where the prosecutrix was subjected to forcible sexual intercourse by the accused on the identification of the prosecutrix. The statements of the witnesses were recorded separately, copy of birth certificate and abstract of pariwar register were taken into possession and forensic report from FSL, was procured separately.

4. On conclusion of the investigation into the offences allegedly committed by the accused, a report under Section 173 of the Code of Criminal Procedure stood prepared and filed in the Court.

5. The accused was charged by the learned trial Court for allegedly committing offences punishable under Sections 366 and 376 of the Indian Penal Code. In proof of the prosecution case, the prosecution examined 15 witnesses. On conclusion of recording of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure stood recorded by the learned trial Court, wherein the accused claimed innocence and pleaded false implication.

6. On an appraisal of evidence on record, the learned trial Court, returned findings of acquittal in favour of the accused/respondent.

7. The State of H.P. stands aggrieved by the judgment of acquittal rendered by the learned trial Court. The learned Additional Advocate General has concerted to vigorously contend qua the findings of acquittal recorded by the learned trial Court being not based on a proper appreciation of evidence on record, rather, theirs being sequelled by gross mis-appreciation of material on record. Hence, he contends for leave being granted to the State of H.P. to institute an appeal therefrom for assailing it.

8. We have heard the learned Additional Advocate General at length and have also gone through the entire material on record.

9. Both copy of matriculation certificate and copy of pariwar register record the factum of the prosecutrix standing born on 08.03.1994. Consequently, at the stage contemporaneous to the ill-fated occurrence(s), she was a major, hence competent to accord consent to the forcible sexual intercourses, if any, performed with her by the accused. For determining whether the sexual intercourses performed by the accused with the prosecutrix had any grain or element of consensuality, the preeminent evidence on record thereto is constituted in the testimony of the prosecutrix. Only on unfoldments therein on a incisive reading thereto in a wholesome manner of hers rendering an inspiring and credible version qua the incident kindled by the factum of her testimony qua the incident constituted in her examination-in-chief vis-a-vis her cross-examination being consistent besides harmonious would leave it bereft of any taint of inter se contradictions whereupon it would for reiteration constitute formidable evidence of immense vigour and force for sustaining the guilt of the accused.

10. Primarily, an advertence to the testimony of the prosecutrix comprised in her cross-examination necessitates at the out set an immediate advertence thereto for determining therefrom the factum of the accused and the prosecutrix being on intimate terms with each other, prodding both to hence volitionally depart from Bilaspur to the native home of the accused at Pouri Gadwal. Even though the prosecutrix in the opening line of her cross-examination has denied the suggestion put to her by the learned defence counsel of the accused not tenanting the premises of her father. Nonetheless, when the said fact stood communicated by her to the Investigating Officer when the latter recorded her previous statement in writing belies the denial on the part of the prosecutrix of the accused not tenanting the premises of her father, wherefrom an inference stands bolstered of both on enjoying intimacy with each other prior to the ill-fated occurrence at Pouri Gadwal whereat the native village of the accused is situated proceeding thereto volitionally. With an inference standing aroused qua both the accused and the prosecutrix enjoying intimacy with each other belies the version constituted in the examination-in-chief of the prosecutrix of on 29.9.2014 whereon hers at the invitation of the accused visited the room of the latter, of the accused meteing threatenings of eliminating her for subduing her from raising an outcry and his concealing her under a cot besides the factum as communicated by her in her

examination-in-chief of hers falling unconscious and hers regaining consciousness on 30.09.2014 at Pouri Gadwal, is compatibly incredible besides is feeble in probative vigour especially when she in her cross-examination admits the factum of hers proceeding to the room of the accused on receiving a call from him, with whom therein she also concedes to be well acquainted given his residing in close vicinity to her homestead preponderantly when she also concedes in her cross-examination of on arrival of her parents in the room of the accused, hers taking to conceal herself underneath the cot concomitantly subjugates her testimony in her examination-in-chief of the accused concealing her under the cot whereafter she fell unconscious and hers regaining consciousness only on 30.09.2014 at Pouri Gadwal. Moreover, the fact deposed by the prosecutrix in her examination-in-chief of hers losing consciousness in the room of the accused at Bilaspur whereto she proceeded on 29.9.2014 and hers regaining consciousness on 30.9.2014 at Pouri Gadwal stands spurred from an omission of any communication in the testimony of Prakash Chand, the father of the prosecutrix of hers on his along with police officials and Sanjay Kumar visiting her at Pouri Gadwal making any disclosure to them qua hers standing carried forcibly or in an unconscious condition by the accused from Bilaspur to Pouri Gadwal or hers omitting to disclose to PW-7 when he met the prosecutrix at Pouri Gadwal qua the accused subjecting her to forcible sexual intercourses is connotative of hers consensually succumbing to the sexual overtures of the accused. The inference aforesaid is lent impetus by both PW-1 L.C. Sarswati Devi and PW-2 Sanjay Kumar, who along with PW-7 visited Pouri Gadwal to locate the prosecutrix at the house of the accused being both reticent qua any disclosure standing purveyed to them by the prosecutrix of hers standing carried forcibly or in an unconscious condition by the accused from Bilaspur to Pouri Gadwal also with theirs not articulating therein of the prosecutrix at Pouri Gadwal divulging to them of the accused thereat performing forcible sexual intercourses with her, with aplomb also constrains the conclusions (a) of the prosecutrix voluntarily departing in the company of the accused from Bilaspur to Pouri Gadwal and (b) of hers consensually scumbbing to the sexual overtures of the accused at Pouri Gadwal. Furthermore, the prosecutrix stayed for 4-5 days in the company of the accused at Pouri Gadwal yet despite hers conceding in her cross-examination to the suggestion put to her by the learned defence counsel of homesteads existing in the vicinity of the house of the accused at Pouri Gadwal she abstained to unfold any occurrence/occurrences of sexual intercourses performed purportedly forcibly with her by the accused clinches an inference of hers affording consent to the accused in his sexually accessing her. The effect of the aforesaid conclusions is of the prosecutrix voluntarily proceeding in the company of the accused from Bilaspur to Pouri Gadwal besides of hers consensually performing sexual intercourses, if any, with the accused at Pouri Gadwal.

11. The prosecutrix has faintly as well as feebly in her examination-in-chief unfolded the factum of the accused purveying an offer of marriage to her, in hope whereto she performed sexual intercourses with the accused, whereupon the prosecution espouses of the sexual intercourses which the accused performed with the prosecutrix at Pouri Gadwal obviously being under a pretext or allurement of marriage proffered by the accused to the prosecutrix whereupon the effect, if any, of consensuality of the prosecutrix to the accused in sexually accessing her stands striped off of its vigour. However, the aforesaid contention is feeble as well as tenuous arousable from the factum of (a) hers as imminent from a perusal of the testimonies of PW-7 Prakash Chand, PW-1 L.C. Sarswati Devi and PW-2 Sanajay Kumar being unarticulative in their respective depositions of the prosecutrix when stood located by them at the house of the accused at Pouri Gadwal of hers thereat purveying a disclosure to each of them of the accused under any allurement or enticement of marrying her carrying her from Bilaspur to Pouri Gadwal rather when they bespeak therein of thereat the prosecutrix being incommunicative even qua the accused thereat forcibly sexually accessing her renders her deposition in her examination-in-chief of hers

succumbing to the sexual overtures of the accused at Pouri Gadwal under any pretext or allurement of marriage proffered to her by the accused to be wholly engineered as well as an afterthought, whereupon no credibility is fastenable. Even her examination-in-chief wherein the factum occurs of the accused under a pretext of marriage performing sexual intercourses with her yet occurrence therein subsequent to hers precedingly deposing therein of the accused at Pouri Gadwal performing sexual intercourses with her at Pouri Gadwal whereat she stayed in his company for 4-5 days bespeaks of sexual intercourses which the accused performed with her thereat being not under any pretext of or allurement of marriage proffered by the accused to her, with a concomitant effect of the latter communications in her examination-in-chief of the sexual intercourses which she performed at Pouri Gadwal with the accused being under a pretext of marriage especially with their occurrence being subsequent to the communications therein of hers previously thereto performing sexual intercourses with the accused constrain an inference of no reliance being imputed thereto especially when the promise or allurement of marriage whereunder she succumbed to the sexual overtures of the accused warranted an articulation thereto at her instance prior to their perpetration upon her person rather than subsequent to hers permitting the accused to sexually access her. As a corollary hers in her examination-in-chief deposing later to hers precedingly deposing of the accused performing sexual intercourses with her, of the accused refusing to marry her is the least connotative of sexual intercourses which she performed with the accused carrying any trait of their performance labouring under any pretext or allurement of marriage proffered to her by the accused. The aforesaid inferences gets vigour from the factum of the prosecutrix omitting to record the aforesaid fact in her statement recorded under Section 164 of the Cr.P.C., before the learned Chief Judicial Magistrate, Bilaspur. With medical evidence not bespeaking the factum of any occurrence of any injury on the private parts of the prosecutrix in manifestation of hers resisting the sexually overtures of the accused compels an inference entwinement with the aforesaid inferences of the prosecutrix consensually succumbing to the sexual overtures of the accused. The upshot of the above discussion is of the prosecutrix voluntarily taking to join the company of the accused from Bilaspur upto Pouri Gadwal besides hers consensually succumbing to the sexual overtures of the accused at Pouri Gadwal.

12. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court below has appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court does not suffer from any perversity or absurdity of mis-appreciation and non appreciation of evidence on record, rather it has aptly appreciated the material available on record. Consequently, the instant application is dismissed, in sequel, the prayer of the State of Himachal Pradesh for grant of leave to it to appeal against the judgment of the learned trial Court is refused.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

State of H.P .....Appellant.

Versus

Vikram Singh & Others. .....Respondents.

Cr. Appeal No. 584 of 2015
Reserved on: 18.12.2015
Decided on: 30-12-2015.

Indian Penal Code, 1860- Section 148, 149, 307 and 427- Complainant party was standing near the Bus stand Shimla when 6-7 boys came and attacked them with swords – two persons were identified at the spot- complainant party suffered multiple injuries- accused were acquitted by the trial Court- testimonies of the prosecution witnesses are contradictory to each other- incident had taken place during the night – no test identification parade was conducted by the police- recovery of weapons was also not proved satisfactorily and the weapons were not connected to the accused- held, that in these circumstances, acquittal recorded by the trial Court does not suffer from any infirmity- appeal dismissed. (Para-6 to 10)

For the Appellant: Mr. M.A Khan, Additional Advocate General with Mr. Ramesh Thakur, Assistant Advocate General.
For the Respondent: Nemo.

The following judgment of the Court was delivered:

Per Sureshwar Thakur, Judge

This appeal is directed against the judgment rendered on 16.5.2015 by the learned Sessions Judge (Forest), Shimla, H.P. in Sessions trial RBT No. 40-S/7 of 2012/11, whereby the latter Court acquitted the accused/respondents herein (hereinafter referred to as "accused") for theirs having committed offences punishable under Sections 148, 307, 427 read with Section 149 of Indian Penal Code.

2. The facts of the case are that on 10.8.2008 at about 12.40 a.m. Jagdish Chand, Chaman Lal and Attar Singh were standing near the Bus stand Shimla and were likely to proceed to their houses. 6-7 boys after forming an unlawful assembly and in execution of the common object attacked them with swords. Out of these persons the complainant recognized only Sanjay, who is engaged in the business of traveling and Sonu who is residing towards Boileauganj and was driving a private van. The complainant could not recognize the other accused. He alongwith Chaman Lal, Jagdish and Attar Singh received multiple injuries on their person caused by the boys aforesaid with sharp edged weapon and blunt weapon. C Mahesh Kumar delivered the statement of the complainant at Police Station Sadar and on the basis of which FIR Ex. PW-4/B was registered. Site plan Ex. PW-20/A was prepared and broken glasses of vehicles were taken into possession vide memo Ex. PW-20/B. Dinesh Kumar, injured produced his pant and shirt, which were taken into possession vide memo Ex. PW-14/A. The clothes of Jagdish were also taken into possession vide memo Ex. PW-5/A. Accused Vikram Singh gave a disclosure statement Ex. PW-15/A. On the basis of which police got recovered the weapon of offences i.e sword, base ball stick and two dandas. The aforesaid weapons of offence were taken into possession under memo Ex. PW-15/D. Site plan of place of recovery was also prepared. After completion of the investigation, challan, under Section 173 of the Cr.P.C. was prepared and filed in the Court.

3. The trial Court charged the accused for theirs having committed offence punishable under Sections 148, 307, 427 readwith Section 149 of Indian Penal Code, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 23 witnesses. On closure of prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded, in which they pleaded innocence. On closure of

proceedings under Section 313 Cr.P.C the accused were given an opportunity to adduce evidence in defence which they refused to avail.

5. The appellant-State is aggrieved by the judgment of acquittal recorded by the learned trial Court. Mr. M.A khan, learned Additional Advocate General has concerted to vigorously contend before this Court qua the findings of acquittal recorded by the learned trial Court, being not based on a proper appreciation of evidence on record, rather, theirs being sequelled by gross mis-appreciation of material on record. Hence, he contends qua findings of acquittal being reversed by this Court, in the exercise of its appellate jurisdiction and theirs being replaced by findings of conviction.

6. The injured Attar Singh (PW-16), Jagdish Chand (PW-19) besides eye witnesses Dan Singh (PW-12) and Madan Lal (PW-18) did not lend support to the prosecution version. However, despite support standing not lent by the aforesaid to the prosecution case, the complainant Dinesh Kumar (PW14) in his examination-in-chief has deposed in tandem with the version qua the incident comprised in FIR (Ex. PW-4/B). Even though he hence proved by identifying them in Court the factum of presence of accused Vikram @ Sonu and Sanjay at the site of occurrence arising from the factum of theirs being known to him besides when yet the names of other accused standing un-recited by him in the FIR his identifying them in Court with his carrying in his mind an indelible impression of their characteristic features whereupon the prosecution concerts to impute strength to its version. Nonetheless with PW-14 in his cross-examination resiling from the recitals recorded in the FIR of accused Vikram @ Sonu holding sword in his hands and other accused wielding dandas, afflicts the role attributed in the FIR to accused Vikram @ Sonu besides to other co-accused with a malady of inter-se contradictions rendering the factum aforesaid standing de-established besides not proven. With the aforesaid emanation in the cross-examination of PW-14 qua his denying the ascribing by him in the FIR any role to accused Vikram @ Sonu of his wielding a sword in his hands and to other accused in as much as theirs wielding dandas also erodes the probative effect of his deposing in his examination-in-chief in tandem with the propagation in the FIR with an attribution therein of an incriminatory role aforesaid to accused Vikram @ Sonu and to other co-accused, besides belittles his creditworthiness. Consequently, with the pivotal fact of the incriminatory role constituted by PW-14 in the FIR besides in his examination-in-chief against accused Vikram @ Sonu and qua other co-accused standing discredited, any identification by PW-14 of accused Vikram @ Sonu and Sanjay in Court and of other co-accused is legally un-worthwhile. In aftermath, his testimony is discardable for reliance thereupon being placed for proving the guilt of the accused qua the incriminatory role ascribed respectively to them by him. Even though, the holding of a Test Identification Parade is not imperative yet especially given the factum of the ill-fated occurrence having taken place during night time besides with the testimony of PW-14 qua ascription by him of an inculpatory role to accused Vikram @ Sonu and Sanjay in his examination-in-chief whereat they stood identified besides to other co-accused who also stood identified by him in Court, standing for reasons aforesaid discredited, its holding does assume significance for uncovering and unmasking the identity of the accused. With the ascription of an inculpatory role to accused Vikram @ Sonu and accused Sanjay besides to other accused standing shrouded in an aura of doubt, concomitantly, the non-holding of a Test Identification Parade by the Investigating Officer for unearthing the identify of the assailants renders the identification in Court by PW-14 of accused Vikram @ Sonu and Sanjay besides thereat of other accused to be entirely surmisal and conjectural whereupon no reliance is to be imputed by this Court nor the identification by PW-14 in Court of accused Vikram @ Sonu and Sanjay besides of other co-accused attains any formidable evidentiary conclusivity.

7. Be that as it may with this Court disimputing credence to the testimony of PW-14, the testimony of PW-23 who has corroborated the testimony qua the occurrence rendered by PW-14 has likewise got to be closely evaluated for discerning its veracity. The deposition qua the occurrence of PW-23 stands effacement arising from the factum of PW-14 the victim of the offence in his deposition not unveling therein the prime fact qua the presence of PW-23 at the site of occurrence**.** In sequel, his presence at the site of occurrence is an invention on the part of the Investigating Officer. Hence credibility if any of his testimony suffers impairment. Coagulatedly, with injured Attar Singh and Jagdish Chand besides eye witnesses Dan Singh (PW-12) and Madan Lal (PW-18) not lending support to the prosecution case besides with the testimonies of PW-14 and PW-23 standing discredited, the entire vigor of the prosecution case gets sapped.

8. Preponderantly, when the further factum of the naming by PW-14 in the FIR accused Sanjay stood aroused from his standing engaged in the business of traveling whereas the naming therein of accused Vikram @ Sonu stood aroused from the factum of his residing towards Boileauganj stands dispelled by PW-20, the Investigating Officer, who rather has deposed of no evidence during his holding investigations qua the offences constituted in the FIR standing unearthed in depiction of the factum of accused Sanjay standing engaged in traveling business besides accused Vikram also carrying an alias of Sonu. In sequel, the occurrence of the names of the aforesaid in the FIR besides their identification in Court by PW-14 remains unconnected with the identity of accused Sanjay and Vikram. As a corollary, the names of the aforesaid in the FIR besides their identification in Court by PW-14 is entirely conjectural and surmisal, necessarily with pervasive doubt seeping qua the identity of the accused aforesaid, benefit thereof ought to stand afforded to them.

9. Preponderantly the recovery of weapon of offences i.e. sword, base ball stick and two dandas under memo PW-15/D stands vitiated in as much as PW-15 Baldev Singh, a witness to disclosure memo PW-15/A, in his deposition divulging of weapons of offence standing preceding the recording of the disclosure statement aforesaid located in the police station. The prime factum as stands unveiled by PW-15 a witness to disclosure statement Ex. PW-15/A of weapons of offence respectively recovered at the instance of the accused under memo Ex.PW-15/D by the Investigating Officer standing recovered preceding the preparation of disclosure memo Ex.PW-15/A renders the recovery of weapons of offence under memo Ex.PW-15/D to be in transgression besides in derogation of the mandate of law, of recoveries being a sequel or in succession to preparation of a disclosure statement than as has contrarily occurred in the instant case. The recovery of weapons of offence under an apposite memo prepared in regard thereto to attain formidable vigor, validation besides legal efficacy were enjoined to stand effectuated in succession to preparation of a disclosure memo comprised in Ex.PW-15/A rather than preceding its preparation as stands manifested by the deposition of PW-15. Contrarily when for reiteration PW-15 unveils the prime factum of its preparation preceding the recovery of weapons of offence aforesaid under memo aforesaid from the purported place of their hiding renders the depictions therein to be false invented or engineered, whereupon no reliance can be imputed. In sequel, weapons of offence remain unconnected with the accused.

10. The crux of the above discussion is of the prosecution having not adduced cogent and emphatic evidence in proving the guilt of the accused. The appreciation of evidence by the learned trial Court does not suffer from any infirmity as well as perversity. Consequently, reinforcingly, it can be formidably concluded, that, the findings of acquittal recorded by the learned trial Court do not merit interference.

11. In view of the above discussion, we find no merit in this appeal, which is accordingly dismissed, and, the judgment of the learned trial Court is maintained and affirmed.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

LPA Nos. 198 and 199 of 2015.
Reserved on: 21.12.2015.
Decided on: 31.12.2015.

LPA No. 198 of 2015.	
Himachal Pradesh University	…Appellant.
Versus	
Bardu Ram and another	…Respondents.
LPA No. 199 of 2015.	
Himachal Pradesh University	…Appellant.
Versus	
Babu Ram and another	…Respondents.

Constitution of India, 1950- Article 226- Writ petitioners filed an application before the Administrative Tribunal for seeking regular pay scale as was given to the respondent No. 3- name of respondent No. 3 was deleted subsequently- statement was made on behalf of respondents before the Tribunal that some of the applicants were regularized and other would be regularized on the occurrence of vacancy in the category- the Tribunal dismissed the application as infructuous- a Writ Petition was filed by one of the applicants subsequently, seeking regularization which was allowed and a direction was issued that petitioners would be deemed to have been regularized w.e.f. 8.6.1999 instead of 12.4.2006 with all consequential benefits- held, that writ petitioners were estopped from filing the writ petitions in view of order passed by the Tribunal – merely, because the relief was granted by the respondents in the contempt petition will not make the appeal infructuous- LPAs allowed and the judgment passed by Writ Court set aside. (Para-2 to 6)

Cases referred:
State Bank of India vrs. Ram Chandra Dubey and others, (2001) 1 SCC 73
Union of India and others Vs. Ram Kumar Thakur 2008 AIR SCW 7638

For the Appellant:	Mr. Shrawan Dogra, Sr. Advocate with Mr. J.L.Bhardwaj, Advocate, in both the appeals.
For the respondents:	Mr. K.D.Shreedhar, Sr. Advocate, with Mr. Ramakant Sharma & Bhuvnesh Sharma, Advocates, for respondent in LPA No.198 of 2015 Mr. Ramakant Sharma, Advocate, for respondent in LPA No. 199 of 2015.

The following judgment of the Court was delivered:

Per Sureshwar Thakur, Judge

Since both the Letters Patent Appeals pertain to a common subject matter hence are being disposed of by a common judgement. The controversy engaging the parties at lis before this Court has its advent in O.A. No. 957 of 1998 instituted before the learned H.P. State Administrative Tribunal (hereinafter referred to as 'the Tribunal') wherein respondent No.1 in both the LPAs stood respectively arrayed as applicants No. 10 and 27 (hereinafter in short referred to as the respondents). In the aforesaid O.A. the respondents had pressed for purveying in their favour the hereinafter extracted reliefs:-

> "(i) That the respondent-University may very kindly be directed to grant regular pay scale of Rs.2520-4140 as has been given to the respondent No.3.
>
> (ii) That the applicants may also be ordered to place on adhoc basis alike the respondent No.3 and they may further be considered for regularsiation."

The appellant had contested the claim of the respondents for the affording in their favour the hereinabove extracted reliefs which stood squarely anvilled on parity viz.a.viz Ram Singh arrayed therein as respondent No.3 since deleted vide orders of this Court of 21.12.2015, substratum of contest whereof stood embedded in the factum of Ram Singh standing freshly recruited on an adhoc basis against the post of Peon rendering him to be constituting a person distinct from the respondents who rather stood promoted as Mess Helpers. Given the distinctivity vis-à-vis the fresh appointment of Ram Singh on an adhoc basis against a post of peon with the respondents standing promoted as Mess Helpers stood canvassed in the reply furnished thereto by the appellant herein to be disentitling the respondents to claim parity with Ram Singh besides obviously disentitling them to press for the appellant being directed to afford in their favour the reliefs as embedded therein.

2. The learned "Tribunal" vide order of 31.7.2006, which stands reproduced hereinafter:-

> "Respondent No.3 has been served but not present in the Court. Hence he is proceeded against ex-parte. The learned counsel for the respondents states that applicants No. 1 to 5, 8 to 24 have since been regularized and cases of remaining applicants i.e. applicant No. 6, 7, 25 to 34 is under process and they will be regularized as and when the vacancy occurs in their respective category.
>
> In view of the above the Original Application has become infructuous and stands disposed of accordingly."

while accepting the statement made before it by the counsel for the appellant qua the services of applicants No. 1 to 5, 8 to 24 standing regularized and of the regularization in service of applicants 6,7, 25 to 34 being processed besides their services being amenable to regularization as and when a vacancy occurs in their respective category, accordingly disposed of the original application. Pertinently, with the name of Babu Ram occurring at Sr. No. 10 in the array of applicants in O.A. No. 957 of 1998 he hence stood covered by the statement made by the learned counsel for the appellant herein before the "Tribunal" qua his services standing regularized. Even with the name of Bardu Ram standing displayed at Sr. No. 27 in the array of applicants in the aforesaid O.A. he too also stood covered by the statement made before the "Tribunal" by the learned counsel for the appellant qua his case for regularization in service being processed and his services being amenable to regularization as and when a vacancy in his category occurs. Bardu Ram instituted Civil Writ Petition No. 2669 of 2010 claiming therein the hereinafter extracted reliefs:

> "1. The respondent may very kindly be directed to regularize the services of the petitioner as Mali/Class-IV w.e.f. the date of regularization of the services of the respondent No.2 with all consequential benefits."

Babu Ram also instituted before this Court Civil Writ Petition No. 878 of 2010 claiming therein the hereinafter extracted reliefs:

> "1. That the respondent No.1 may very kindly be directed to regularize the services of the petitioner w.e.f. the date of regularization of the services of respondent No.2 junior to the petitioner as daily wages Mess Helper with all consequential benefits."

3. Even when both the petitioners aforesaid respectively instituted the aforesaid writ petitions before this Court they suppressed and withheld the prima donna factum of theirs having previously instituted OA No. 957 of 1998 before the "Tribunal" claiming therein reliefs analogous to the one as stand ventilated in the writ petitions aforesaid instituted respectively by them before this Court. However, the effect thereof would stand adverted to hereinafter.

4. The learned Single Judge of this Court allowed the writ petitions respectively instituted by the respondents with a relief standing afforded therein to the petitioners/respondents qua theirs being deemed to have been regularized w.e.f. 8.6.1999 instead of 12.4.2006 with all ensuing consequential benefits. Uncontrovertedly, the lis comprised in O.A. No. 957 of 1998 wherein the respondents stood respectively arrayed as applicants No. 10 and 27, was a lis inter partes same, similar besides analogous contestants viz.a.viz contestants in CWP No. 878 & 2669 of 2010 instituted respectively before this Court by Babu Ram and Bardu Ram. Moreover the reliefs canvassed therein by the respondents as stand respectively reproduced hereinabove palpably on their perusal unearth the imminent fact of theirs being analogous besides being similar moreso upsurge the prime factum of theirs standing congruously anchored upon parity of treatment with one Ram Singh. This Court has reproduced hereinabove the orders rendered thereon by the "Tribunal" connotative of the services of Babu Ram standing regularized besides reflective of the services of Bardu Ram being processed for his regularization thereon which process would consummate on occurrence of a vacancy in the apposite category. The order of the "Tribunal" with portrayals therein stood unagitated at the instance of the respondents by theirs resorting to institute a Civil Writ Petition therefrom before this Court. The omission aforesaid of the respondents gives leeway to an inference of the legal embargo of waiver besides of estoppel standing hence germinated for forestalling them to through their respective civil writ petitions instituted before this Court canvass therein reliefs analogous to the one which stood canvassed by them in O.A. No. 957 of 1998 instituted by them as applicants No. 10 and 27 before the "Tribunal" and which reliefs stood purveyed in their respective favour in the manner as enshrined in the order of the "Tribunal" reproduced hereinabove. This Court would not eschew words to thereupon conclude of hence conclusivity standing fastened to the orders of the "Tribunal" recorded on 31.7.2006. Accentuated conclusivity standing fastened thereto wherefrom the principle of resjudicata stands engendered or stands awakened is borne by the factum of the previous lis wherein the respondents stood arrayed as applicants No. 10 and 27 respectively was inter partes same, similar or analogous contestants as are herein besides with commonality and analogity of reliefs ventilated therein with the ones pressed for redressal in civil writ petitions aforesaid instituted by the respondents, concomitantly snatched right if any subsisting or inhering in the respondents to respectively institute civil writ petitions before this Court embodying therein a claim for an analogous relief from a similar contestant to the one therein. It is vividly evident on a reading of the averments constituted by the

respondents in their respective writ petitions of theirs standing harboured upon same and similar subject matter vis.a.vis the one propagated in O.A.957 of 1998 whereto the rigour of the bar of estoppel against their institution by them before this Court was attractable in its fullest might yet they took to escape its invocation by suppressing therein the factum of theirs having previously instituted O.A embodying therein reliefs analogous to the one as constituted in the succeeding civil writ petitions. In sequel, with the respondents having committed legal misdemeanors of suppressio veri which suppression or withholding herein stood projected by the appellant herein in its reply furnished to the writ petition instituted by the respondents before this Court, was a sufficient dissuasive factor for the learned Single Judge to refuse relief to the respondents. However, the learned Single Judge of this Court proceeding to despite its hence surging forth with a marked vigour, having afforded reliefs to the respondents has untenably exercised equity in favour of the respondents despite the respondents for reasons aforesatated having not come to the writ Court with clean hands which otherwise beset them with a legal deterrent to stake any claim for relief from a writ Court which also exercises jurisdiction of equity. Moreover for the reasons aforestated with the might of the rigour of resjudicata besides of estoppel and of waiver arousable from the previous lis inter partes common contestants therein with ones herein besides all reliefs canvassed therein being squarely akin to the one as claimed from the writ Court hence rendered the order of the "Tribunal" recorded on 31.07.2006 to attain conclusivity. Obviously, the learned Single Judge also erred in undermining its attraction to the writ petition respectively instituted by the respondents whereupon relief was refusable to the respondents. In aftermath, the overlooking by the learned Single Judge of this Court of the aforesaid prime principle of law has led him to proceed to afford relief in favour of the respondents even when for the reasons aforestated it was not affordable in their favour.

5. Furthermore the reliefs, if any, as canvassed before the Tribunal standing not afforded in favour of the respondents are to be construable to have been denied to them with a concomitant effect of the writ court standing barred when it/they stood not afforded to them by the "Tribunal" to afford it/them in their favour. In coming to the conclusion of the writ Court standing barred to grant any reliefs to the respondents given theirs standing not granted to them by the "Tribunal" as apparent on a reading of its order as stands reproduced herein hence construable to be deemed to have been declined to them, this Court draws strength from a judgement of the Apex Court in ***State Bank of India vrs. Ram Chandra Dubey and others,*** reported in ***(2001) 1 SCC 73,*** wherein at paragraph 8, it has held as under:

> " The principles enunciated in the decisions referred by either side can be summed up as follows:
>
> Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a preexisting right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to

the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

6. The learned counsel for the respondents has canvassed with much force before this Court qua given under pain of contempt the implementation by the appellant herein of the orders of the learned Single Judge rendered in Civil Writ Petitions aforesaid estops this Court to adjudicate on the merits of instant LPAs arising therefrom. However, the aforesaid contention as reared before this Court by the learned counsel for the respondents is bereft of any legal vigour especially in the wake of a judgment titled as **Union of India and others Vs. Ram Kumar Thakur *2008 AIR SCW 7638*** wherein with their lordships having conclusively held of implementation under pain of contempt by the employer the orders made by the learned Single Judge not operating as a bar for the Division Bench seized of an LPA arising therefrom to proceed to decide it on merits especially when as in the extant case the orders of the learned Single Judge stand implemented by the appellant herein under pain of contempt. Consequently, even if the orders of the learned Single Judge as assailed by the appellant by its instituting an LPA therefrom though stand on pain of contempt implemented by it, this Court would not stand precluded to decide on merits the lis engaging the parties at contest before this Court. The outcome of the aforesaid discussion is that the present LPAs are allowed, the impugned judgements are set-aside and the writ petitions are dismissed.

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Roshan Lal Sharma s/o late Sh. Muni Lal Sharma .....Petitioner

Versus

CMD UCO Bank & Others .....Non-petitioners

CWP No. 7632/2012-D
Reserved on : 26th November 2015
Date of order: 31st December 2015

Constitution of India, 1950- Article 226- Petitioner was promoted to the Officers Cadre in Junior Management Grade Scale-I on 22.03.2006 - he was transferred from Dharamshala (Himachal Pradesh) to Hyderabad-he represented that since his father was 77 years old and had a mentally retarded son, therefore, he could not go to Hyderabad and he be adjusted in Dharmashala itself- non-petitioner reverted the petitioner to his substantive cadre and debarred him from promotion for next five years vide letter dated 10/11/2006- on 16.07.2012 new promotion policy was circulated amongst employees- Petitioner applied for promotion to the post of Junior Management Grade Scale-I but his application was rejected on the ground that as per latest promotion policy he was debarred by age for promotion-

petitioner took the plea that bar of promotion was for 5 years and thereafter his promotion was automatic as the promotion was kept in abeyance by non-petitioners-held that the plea is devoid of merits as petitioner was reverted to substantive cadre which he occupied prior to his promotion subject to availability of similar vacancy in the same seniority- moreover the petitioner has not impleaded the persons who have been declared successful as parties in the present civil writ petition and the petition was bound to fail for not following the principles of *audi alteram partem*- petition accordingly dismissed. (Para 7 to 9)

For the petitioner : Mr. Praneet Gupta, Advocate
For non-petitioners : Mr. Sanjay Dalmia, Advocate

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present Civil Writ Petition is filed under Article 226 of the Constitution of India.

BRIEF FACTS OF THE CASE

2. It is pleaded that petitioner was appointed as Assistant Cashier-cum-Godown Keeper on dated 17.11.1977. It is further pleaded that thereafter petitioner was promoted to the post of Officers Cadre in Junior Management Grade Scale-I on dated 22.03.2006 and he was transferred from Dharamshala Himachal Pradesh to Hyderabad. It is further pleaded that thereafter petitioner filed a representation to retain him at Dharamshala region and petitioner also mentioned in the representation that he would be compelled to seek his reversion because it would not be possible for him to join at Hyderabad due to 100% mental retardment of son of petitioner and due to the reason that father of petitioner aged 70 years confined to bed due to ill health.

3. Thereafter non-petitioners/UCO Bank on dated 10.11.2006 issued letter Annexure P-3 to petitioner Sh. Roshan Lal Sharma debarring the promotion of petitioner for five years from the date of refusal and petitioner was reverted to substantive cadre which was occupied by the petitioner prior to his promotion. Thereafter on 16.07.2012 new promotion policy was framed by the UCO Bank and circulated to its employees. Petitioner applied for promotion to the post of Junior Management Grade Scale-I but application of petitioner was rejected by non-petitioners/UCO Bank on the ground that as per latest promotion policy he was debarred by age for promotion. Petitioner sought following relief(s): (i) That petitioner be considered for the post of Officers Cadre in Junior Management Grade Scale-I w.e.f. 02.11.2011 and (ii) To direct the non-petitioners/ UCO Bank to treat the petitioner as eligible for promotion to the post of Junior Management Grade Scale-I on the basis of his seniority.

4. Per contra response filed on behalf of non-petitioners/UCO Bank pleaded therein that Civil Writ Petition is not maintainable as petitioner has suppressed the material facts from the Court. It is further pleaded that promotion process has concluded prior to the filing of the civil writ petition and results of promotion already stood declared on dated 10.09.2012. It is further pleaded that petitioner was granted promotion from Clerical Cadre to Officers Cadre in Junior Management Grade Scale-I but petitioner relinquished his promotion and thereafter petitioner was debarred for promotion for five years from the date of relinquishment. It is further pleaded that opportunity was granted to the petitioner for promotion but petitioner relinquished to avail the opportunity of promotion. It is further pleaded that now petitioner could not be considered for promotion from Clerical Cadre to

Officers Cadre in Junior Management Grade Scale-I because promotion of the petitioner is barred by age factor. It is further pleaded that as per promotion policy dated 16.07.2012 maximum age limit for promotion is prescribed as 56 years. It is further pleaded that age of the petitioner is 56 (fifty six) years 1 (one) month and 11 (eleven) days. It is further pleaded that petitioner was not eligible for promotional post. It is further pleaded that petitioner was promoted as Junior Management Grade Scale-I but petitioner himself refused to join at Hyderabad on 02.11.2006 and decided to forego his promotion. It is further pleaded that petitioner has crossed the maximum eligible age limit prescribed in the latest promotion policy and he is ineligible for participating in promotion process. It is further pleaded that vacancies were notified on 25.07.2012 and amended promotion policy came into operation on 16.07.2012. It is further pleaded that petitioner is not eligible for promotion as per latest promotion policy which came into operation w.e.f. 16.07.2012. Prayer for dismissal of Civil Writ Petition sought.

5. Court heard learned Advocates appearing on behalf of petitioner and non-petitioners and also perused the entire records carefully.

6. Following points arise for determination:

1) Whether civil writ petition filed under Article 226 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition and whether civil writ petition is bad for non-joinder of necessary party?

2) Final order.

Findings upon point No.1 with reasons:

7. Submission of learned Advocate appearing on behalf of petitioner that bar of promotion was for 5 years w.e.f. 02.11.2006 and 5 years expired on 02.11.2011 and thereafter promotion of petitioner was automatic in nature to the post of Officers Cadre in Junior Management Grade Scale-I because promotion was kept in abeyance by non-petitioners and on this ground Civil Writ Petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. It is held that promotion of the petitioner to the post of Officers Cadre in Junior Management Grade Scale-I after the expiry of 5 years was not automatic in nature and it is held that promotion of the petitioner was not kept in abeyance but petitioner was reverted to the post of Clerk as per Circular No.PER/MPTP/ COM/88/ 2006 dated 10.11.2006 issued by the UCO Bank Annexure P-3. There is recital in the letter dated 10.11.2006 issued by the UCO Bank Annexure P-3 that petitioner was reverted to substantive cadre which petitioner occupied prior to his promotion subject to availability of similar vacancy in the same seniority region. There is further positive recital in the letter dated 10.11.2006 issued by the UCO Bank that if no similar vacancy would available then petitioner would be reverted only as Clerk and he would be posted in the same seniority region. There is further positive recital in the letter dated 10.11.2006 issued by the UCO Bank that on reversion the petitioner would work in both Cash & Accounts Departments. In view of the above stated facts it is held that promotion of the petitioner was not kept in abeyance but petitioner was reverted back to his substantive cadre which he occupied prior to his promotion because petitioner himself voluntarily relinquished his promotion due to his family problem.

8. Another submission of learned Advocate appearing on behalf of petitioner that eligibility of the petitioner was to be considered w.e.f. 02.11.2011 even as per latest promotion policy to the post of Officers Cadre in Junior Management Grade Scale-I is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that vacancies were notified by the UCO Bank on dated 25.07.2012. It is also proved

on record that amended promotion policy came into operation on 16.07.2012. It is proved on record that on the date of notification of vacancies amended policy of 16.07.2012 was in operation.

9. Another submission of learned Advocate appearing on behalf of petitioner that amended promotion policy will operate prospectively and not retrospectively and on this ground Civil Writ Petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. It is held that in the present case only amended latest policy of promotion was to be implemented because vacancies were notified on 25.07.2012 and amended promotion policy came into operation on 16.07.2012 prior to the notification of vacancies. It is held that from the date of notification of amended policy of promotion all subsequent process of promotion after 16.07.2012 would be governed by latest amended promotion policy which came into operation on 16.07.2012. It is also proved on record that results as per latest promotion policy also stood declared by the non-petitioners/UCO Bank vide notification/circular No.CHO/PAS/05/ 12-13 dated 10.09.2012 and petitioner has not impleaded the persons who have been declared successful as co-party in the present civil writ petition. It is held that if present civil writ petition is allowed in favour of the petitioner then selected candidates would be adversely affected materially as of today. It is well settled law that no one should be condemned unheard on the concept of *audi alteram partem*. In view of the above stated facts it is held that present civil writ petition is bad for non-joinder of necessary party. Point No.1 is answered in negative against the petitioner.

Point No.2 (Final Order).

10. In view of findings upon point No.1 above CWP No.7632/2012-D is dismissed. No order as to costs. CWP No. 7632/2012-D is disposed of. Pending application(s) if any also disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Bir Pal Singh .....Petitioner.

Versus

Union of India and others .....Respondents.

CWP No. 4064 of 2015.
Reserved on: 18.12.2015.
Date of Decision: 1st January, 2016.

Constitution of India, 1950- Article 226- Petitioner was appointed as laboratory attendant on contract basis for 12 months initially and thereafter renewable for 12 months at a time up to and subject to attaining the maximum age prescribed/indicated in appendix A to Govt. of India Ministry of Defence letter NO.24 (6)/03/US (WE)/D (Res) dated 22 Sep. 2003, or as amended from time to time subject to continued good conduct and performance thereafter- after having completed more than four years of contractual appointment by the petitioner, the post was re-advertised on new terms and conditions-petitioner challenged this action on feeling aggrieved- held that, the action of the Respondent in re-advertising the post is against the basic policy and deterrent to the interest of the petitioner as the contract shall not be renewed as per initial terms and conditions- petition allowed the Annexure P-9 quashed with the directions to the Respondent to renew the contract of the petitioner as per the original terms and conditions. (Para- 2 to 6)

For the Petitioner: Mr. T.S. Chauhan, Advocate
For the Respondents: Mr. Angrez Kapoor, Advocate vice Mr. Ashok Sharma, Assistant Solicitor General of India

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge

The respondents with a view to cater to the medical care of all ex-servicemen in receipt of pension including disability pension and family pension besides of dependents including wife/husband, children and their wholly dependent parents, conveyed its sanction for the introduction of a scheme for the health care of the aforesaid nomenclatured as Ex-servicemen Contributory Health Scheme (ECHS). The aforesaid scheme was made effective w.e.f. 01.04.2003. For recruitment of staff in various capacities for the manning of polyclinics for carrying forward the spirit and mandate of ECHS, the respondents issued an advertisement comprised in Annexure P-6. The petitioner standing empowered with the qualifications ordained therein qua the post of Laboratory Assistant as stood advertised for being filled, applied for his being considered for selection and appointment to the post of Laboratory Assistant against which he aspired for his being considered for selection and appointment. The petitioner successfully withstood the rigor of a viva voce whereupon appointment letter comprised in Annexure P-7 stood issued to him by the competent appointing authority. In pursuance to the petitioner herein standing appointed against the post for which he had applied for in pursuance to the advertisement standing published by the respondents herein, he respectively in terms of his appointment letter comprised in the aforesaid annexure whereunder he stood enjoined to execute a contract of service with the designated/authorized officer of the respondents executed with the latter contract. The apt portion of the contracts of service respectively entered inter se the petitioner herein with the authorised officer of the respondents herein is extracted hereinafter:-

> **"2. The engagement of the engaged person for rendering his professional service shall be entirely contractual in nature and will be for a period of 12 months initially and thereafter renewable for 12 months at a time up to and subject to attaining the maximum age prescribed/indicated in appendix A to Govt. of India Ministry of Defence letter NO.24(6)/03/US(WE)/D(Res) dated 22 Sep. 2003, or as amended from time to time. The renewal of contract will be subject to continued good conduct and performance of the engaged person during the preceding 12 months and existence of the requirement for services of the engaged person at the ECHS Polyclinic. A fresh contract will be executed for each renewal."**

It is imminent from a perusal of the afore extracted relevant portion of the contract of service executed inter se the petitioner and the competent/authorized officer of the respondents, of the appointment of the petitioner against the post of Laboratory Assistant being entirely contractual in nature whose longevity was initially surviveable upto 12 months yet was successively thereafter renewable for 12 months each for a period upto and subject to his attaining the maximum age prescribed/indicated in appendix A to Govt. of India Ministry of Defence letter NO.24(6)/03/US(WE)/D(Res) dated 22 Sep. 2003, or as amended from time to time. The respondents though revered the mandate of the afore extracted clause embedded in the contract of service executed inter se its authorized officer and the petitioner herein upto September, 2015, yet thereafter omitted to mete compliance thereof besides have concerted to derogate from besides infract its mandate by re-advertising the post on the

anvil of clause (d) of Letter No.24(6)/03/US(WE)/D(Res), 22nd September, 20003 (hereinafter referred to in short "letter of 22nd September, 2003) comprised in Annexure-R, the relevant clause (d) whereof stands extracted hereinafter:-

> **"(d) Duration of Employment**.. The employment of the staff will be entirely contractual in nature and will be normally for a period of two years at the maximum, subject to review of their conduct and performance after 12 months"

3. Given the uncontroverted factum of the petitioner herein having completed more than four years of contractual appointment against the post of laboratory attendant whereon he stood appointed at polyclinic established under ECHS, hence, with the embargo aforesaid enshrined in Annexure R against the petitioner herein being barred to stake a claim for the affording of an extension in his contractual appointment by the respondents herein besides, hence his being not amenable for consideration for affording to him any further extension in his contractual appointment by execution of a contract of service inter se him and the authorised officer of the respondent constrained the respondents to not extantly accord any extension in the contractual service of the petitioner under the respondents besides constrained them to not execute with him a contract of service in terms of clause-2 as stand extracted hereinabove which clause stands embedded in the contract of service executed inter se the petitioner and the authorized officer of the respondents whereunder the respondents were rather obliged to successively after expiry of the initial contract of service of 12 months successively execute renewed or fresh contract of service with the petitioner upto his attaining the maximum age prescribed/indicated in appendix A to Govt. of India Ministry of Defence letter NO.24(6)/03/US(WE)/D(Res) dated 22 Sep. 2003, or as amended from time to time. Contrarily, the respondents proceeded to issue advertisement comprised in Annexures P-9 inviting applications from all eligible aspirants for theirs being considered for selection and appointment on a contractual basis against various posts existing at polyclinics including the post of Laboratory Assistant against which the petitioner herein stood previously appointed on a contractual basis by the respondents herein.

4. As above stated, the defensibility on the part of the respondents herein to not execute a further contract of service with the petitioner herein stands anchored upon the afore extracted letter/communication comprised in Annexure-R. However, the succor as concerted to be lent to the aforesaid defensibility to the act of the respondents herein to not revere the mandate of clause-2 of the contract of service executed by an authorized officer of the respondents herein with the petitioner herein would acquire vigour only in the event of there being demonstrable material on record of the petitioner herein having committed misdemeanors or his performance against the post against which he stood appointed on a contractual basis being abysmally poor besides with a palpable graphic disclosure by apposite material, of the post against which he stood appointed on a contractual basis no longer subsisting, rendering dispensable the services of the petitioner besides concomitantly disobliging the respondents herein to hence execute a contract of service with the petitioner. However, a close and incisive rummaging of the record omits to make any disclosure of (a) the petitioner herein having committed any misdemeanors or his having under performed or abysmally performed the callings of his avocation and (b) work of the post against which he stood appointed on a contractual basis no longer subsisting rather as stands manifested by the respondents herein taking to advertise the post against which the petitioner herein hitherto served or is serving bolsters an inference of the service of the petitioner herein being not amenable for dispensation. Contrarily with the inhibitions aforesaid cast in clause-2 of the contract of service executed by the authorised officer of the respondents herein with the petitioner herein not obviously warranting their attraction against the petitioner herein rather enjoined the respondents herein to in consonance therewith execute successive

renewed contracts of service with the petitioner herein. Dehors the aforesaid inhibitions existing in cluase-2 of the contract of service executed inter se the authorised officer of the respondents herein and the petitioner herein being unavailable for dependence by the respondents herein for validating their omission to execute a fresh contract of service with the petitioner herein, rather the existence of a mandate therein of the services of the petitioner herein being liable for retention by the respondents upto his attaining the maximum age prescribed/indicated in appendix A to Govt. of India Ministry of Defence letter NO.24(6)/03/US(WE)/D(Res) dated 22 Sep. 2003, or as amended from time to time contrarily inhibited the respondents herein to issue the aforesaid communication besides inhibited the attraction of its rigor qua the petitioner herein especially when for reiteration the prescription in Clause-2 therein qua the entitlement of the petitioner herein for his retention in service upto his attaining the maximum age prescribed/indicated in appendix A to Govt. of India Ministry of Defence letter NO.24(6)/03/US(WE)/D(Res) dated 22 Sep. 2003, or as amended from time to time would suffer abrogation or dwindlement only a proven amendment therein standing carried out by the respondents herein. As a corollary, no infraction of the mandate of Clause-2 of the contract of service qua the facet aforesaid was vindicable unless a proven amendment thereto stood effectuated by the competent authority. Though the learned Assistant Solicitor General of India relies upon a letter of 22nd September, 2003 clause (d) whereof stands extracted hereinabobve for succoring his contention qua given its embodiment in Clause-2 of the contract of service executed inter se the petitioner herein and the authorised officer of the respondents herein, the former standing debarred besides being baulked for staking any claim from the respondents of the latter being obliged to execute with him any renewed successive contracts of service beyond two years. However, the aforesaid espousal before this Court by the learned Assistant Solicitor General of India for disentitiling the petitioner claiming from the respondents of the latter renewing his contract of service with them, is of no avail to him rather its vigour get sapped given the existence on record of a letter No.B/49760/AG/ECHS(R) of 24th May, 2011(hereinafter referred to in short "letter of 24th May, 2011) wherein a mandate stands enjoined upon the Government of India to permit extension in the contractual employment of the petitioner herein inconsonance therewith. Preeminently, given the occurrence of a reference therein to letter of 22nd September, 2003 which stands incorporated in the contract of service executed inter se the petitioners and the authorized officer of the respondents herein, the rigour of a prescription therein comprised in clause (d) extracted herein above would stand relaxed besides abrogated in the event of a valid amendment thereto standing effectuated by the competent authority. Necessarily, when the issuance of letter of May, 2011 is rendered encompassable within the domain of clause 2 permitting amendments to letter of 22nd September, 2003, in sequel, with its issuance standing validation as a corollary it attains empowerment to hold the field qua the entitlement of the petitioner to in consonance therewith seek extension in his contractual appointment under the respondents upto his attaining the age of superannuation unless his performance is wanting or his conduct is reproachable especially when on an incisive reading of the words "as amended from time to time" succeeding the reference of letter of 22nd September, 2003 in clause-2 of the contract of service entered inter se the petitioner and the authorised officer of the respondents disinters besides unfolds an empowerment standing foisted in the employer to relax by its carrying an amendment thereto the rigidity of the tenure of two years of contractual appointment manifested in the afore referred letter of 22nd September, 2003. With an empowerment vested in the employer to relax the rigidity of the prescriptions constituted in clause (d) relied upon by the learned Assistant Solicitor General of India, which stands extracted hereinabove, qua the limited tenure of contractual appointment of the petitioner under the respondents, the respondents herein hence proceeding to in tandem thereto issue letter of 24th May, 2011 with an explicit prescription therein of the Government

of India purveying permission to the department concerned to accord extensions in the contractual employment of employees upto theirs attaining the age of superannuation subject to review of conduct and performance, obviously, benumbs the contention of the learned Assistant Solicitor General of India of the rigidity of a prescription in clause(d) of the tenure or duration of the contractual appointment of the petitioner when standing constituted in a contract of service executed by them with the petitioner herein, its force and vigour is unabrogable. On the contrary, with the existence of words "as amended from time to time" in succession to a reference of letter of 22nd September, 2003 in clause 2 of the contract of service executed inter se the petitioner herein and the authorised officer of the respondents herein rather tenably by a valid amendment thereto standing effectuated erases the rigidity of the prescription in clause 2 of the duration and tenure of the contractual appointment of the petitioner herein under the respondents being restricted upto a maximum of two years. The relevant portion of letter of 24th May, 2011, whereunder the prescription in clause (d) extracted hereinabove of the duration of the contractual appointment of the petitioners under the respondents being restricted upto two years stood amended or relaxed is extracted hereinafter:-

> "2. The Govt orders on the subject initially stipulated that the employment will be normally for a period of two years at the maximum. Subsequently owing to limited availability of candidates and consequent expenditure on advertisements etc., the Govt permitted extension of contractual employment upto age of superannuation subject to review of conduct and performance."

The effect thereof is with the letter of May, 2011 holding leverage in making a loud communication in the afore extracted portion thereof of a tenable amendment standing effectuated or carried out to the limit or duration of contractual appointment of the petitioner herein under the respondents prescribed under clause (d) of letter of 22nd September, 2003 whereunder in abrogation thereof by an amendment thereto standing effectuated in the manner aforesaid, the department concerned was permitted to extend the contractual appointment of the petitioner herein upto his attaining the age of superannuation naturally for reiteration nullifies the effect of clause (d) of letter of 22nd September, 2003. In sequel the main plank of the submission of the learned Assistant Solicitor General of India anchored upon clause (d) of letter of 22nd September, 2003, for restricting the contractual engagement of the petitioner herein under the respondents upto two years gets shaken. In nut shell, the respondents herein though adducing apposite material comprised in clause (d) which stands extracted hereinabove of the contractual appointment of the petitioner herein not surviving beyond two years yet with the respondents having, for reasons aforestated, effectuated a tenable amendment thereto comprised in a prescription in clause (2) of letter of 24th May, 2011, of the petitioner herein standing entitled for retention by the respondents as a contractual employee upto the age of superannuation subject to review of conduct and performance which however has not been portrayed by the respondents to be warranting reproach in any regard. Consequently, the mandate of clause-2 of the letter of 24th May, 2011 was enjoined to be adhered to by the respondents herein. Moreover, it dis-empowered them from (a) omitting to execute renewed successive contracts of service with the petitioner herein and (b) issue advertisements eliciting applications from eligible aspirants for their consideration for selection and appointment on contractual basis against post which stand manned by the petitioner herein under a validly executed contract of service inter se him and the authorised officer of the respondents herein. Obviously, the communication comprised in Annexure-R, the relevant portion whereof stands extracted hereinabove carries no force or tenacity to dilute the rigor of Clause-2 of the contract of service executed inter se the petitioner herein and the authorised officer of the respondents herein read with clause 2 of letter of 24th May, 2011

which letter/communication embeds therein a tenable amendment thereto standing embodied therein nor facilitates them to espouse for vindication besides for rendering defensible its act of not renewing the contractual appointment of the petitioner herein. Even otherwise given the manifestation in sub clause (f) to clause 4 of letter of 24th May, 2011 of the tenure or duration of the contractual appointments of paramedics and non paramedics being unrestricted and with the petitioner herein while standing appointed as a Laboratory Assistant hence falling in the category of paramedics stood foisted with a right in consonance with sub clause (f) to Clause 4 of letter of 24th May, 2011 to enjoin the respondents herein to successively after expiry of his initial period of contract of service with them, execute with him renewed successive contracts of service without any fetter qua any limit in its duration or tenure except up to his attaining the age of superannuation. More so when there is no material on record in portrayal of the performance or conduct of the petitioner while serving under the respondents being reproachable as a corollary with the retention of the petitioner in service under the respondents as a Laboratory Assistant not wanting in efficiency nor his conduct during his service under the respondents in the aforesaid capacity standing censured, interdicted besides proscribed the respondents to irrever the mandate of sub clause (f) to Clause 4 of letter of 24th May, 2011.

5. Preponderantly, the tenacity which the aforesaid communication may carry suffers emaciation in the face of the aforesaid communication borne in Annexure R standing amended under Annexure P-1 the relevant portion whereof is extracted hereinabove. In aftermath, the concert of the respondents herein to render defensible their act of not revering the mandate of Clause-2 of the contract of service executed by its authorised officer with the petitioner herein read with clause 2 of letter of 24th May, 2011 is wholly rudderless.

6. Furthermore, the inhibition cast by Clause-2 of the contract of service entered inter se the petitioner herein with the authorised officer of the respondents herein, the relevant portion whereof stand extracted hereinabove when for reasons afore-stated stands unattracted qua the petitioner herein obviously generated in the petitioner herein legitimate expectations on whose spurring the respondents herein stood concomitantly obliged to renew the contractual appointment of the petitioner herein by theirs executing contracts of service with the petitioner herein as a corollary with the arousal of legitimate expectations in the petitioner herein qua his entitlement for renewal of his contract of service by the respondents herein especially when its arousal stands for reasons aforesaid anchored upon the uneroded mandate of Clause-2 of the contract of service executed inter se the petitioner herein and the authorised officer of the respondents herein read with Clause-2 of letter of May, 2011 besides with its enjoying legal efficacy naturally it also then rears or nurses the sprouting therefrom of the principle of promissory estoppel with a legal effect thereof of the respondents herein being interdicted to contravene in the manner they concert the mandate enshrined in Clause-2 of the contract of service entered by its authorised officer with the petitioner herein.

7. The Hon'ble Apex Court in a catena of decisions has deprecated the endeavours on the part of the employer to displace contractual appointees by substituting them with appointees alike to the petitioners herein. It appears that the diktat of the verdicts of the Hon'ble Apex Court frowning upon the employer resorting to displace or dislodge the services of contractual appointees by concerting to substitute or replace them by appointees whose terms of appointments bear an affinity or are alike to the appointments on a contractual basis of the petitioner herein stands openly irrevered by the respondents herein. The irreverence meted by the respondents herein to the principle aforesaid encapsulated in verdicts of the Hon'ble Apex Court reproaching the employer against its

substituting contractual appointees by concerting their replacement by appointments on an alike basis, has led the respondents herein to make an indefensible endeavour to by issuing advertisements elicit applications from desirous aspirants for being considered for selection and appointment against post on a contractual basis which hitherto on an alike contractual basis was or stand manned by the petitioner herein. The said endeavour warrants its being baulked especially when its being permitted to be carried forward would overwhelm the experience gained by the petitioner herein on the post whereon he stood/stand appointed on a contractual basis defeating the salutary purpose of skilled man power manning the polyclinics established under ECHS for hence purveying optimum medical care to the stakeholders.

8. For the foregoing reasons the instant petition is allowed. In sequel, Annexure P-9 is quashed and set aside. The respondents herein are directed to within one month from today and successively thereafter execute with the petitioner herein fresh contract of service in consonance with Clause 2 of letter No. B/49760/AG/ECHS(R) of 24th May, 2011, unless the inhibitions cast therein against the renewal of his contract of service by the respondents stand attracted against the petitioner herein. All pending applications stand disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Cr. Appeal Nos. 313 and 316 of 2015
Reserved on: December 30, 2015.
Decided on: January 01, 2016.

1. Cr. Appeal No. 313 of 2015

Divesh Vaidya alias Mukhia .....Appellant.

Versus

State of H.P

. .....Respondent.

2. Cr. Appeal No. 316 of 2015

Ritesh Handa alias Bhau .....Appellant.

Versus

State of H.P. .....Respondent.

Indian Penal Code, 1860- Section 302, 201 and 34- Accused and deceased were sitting outside the Hanuman Shamshan Ghat- after sometimes the deceased went inside the Sarai- accused went to the place where the deceased was sitting- complainant heard the cries of the deceased but did not visit the place due to fear- when he saw in the morning, deceased was lying in a pool of blood- accused were convicted by the trial Court- testimonies of PW-1 and PW-2 show that place was not visible from the room of the complainant- the fact that complainant had not come out of his room on hearing cries is unusual on his part- it was admitted that many houses were located in the vicinity- however, no person had visited the spot on hearing cries- recoveries were also not proved- prosecution also relied upon the finger print analysis, however, there is no evidence that chance finger prints were properly lifted for the same- it was admitted that dead body was lying in the open space and anybody could approach the place- there is sufficient material on record that lot of people arrived on the scene before the police and the possibility of case property being touched by the other

person cannot be over ruled – the motive was not proved- held, that in these circumstances, prosecution version is not proved beyond reasonable doubt- accused acquitted.

(Para-25 to 54)

Cases referred:
Mahmood vrs. State of Uttar Pradesh, AIR 1976 SC 69
Manepalli Anjaneyulu vrs. State of A.P., 1999 Cri. L.J. 4375,
Ayyappan vrs. State of Kerala, reported in 2005 Cri. L.J. 57,
Ajit Singh Harnam Singh Gujral vrs. State of Maharashtra, (2011) 14 SCC 401
Dandu Jaggaraju vrs. State of Andhra Pradesh, (2011) 14 SCC 674
Sathya Narayan vrs. State rep. by Inspector of Police, (2012) 12 SCC 627
Majenderan Langeswaran vrs. State (NCT of Delhi) and another, n (2013) 7 SCC 192
Rishipal vrs. State of Uttarakhand, (2013) 12 SCC 551
Ram Lakhan Singh and others vrs. The State of Uttar Pradesh, AIR 1977 SC 1936

For the appellant(s): Mr. Anoop Chitkara, Advocate.
For the respondent/State: Mr. P.M.Negi, Dy. Advocate General.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

Since both these appeals have arisen from a common judgment, the same were taken together for hearing and are being disposed of by a common judgment.

2. These appeals are directed against the common judgment and order dated 29.6.2015 & 30.6.2015, respectively, rendered by the learned Addl. Sessions Judge(II), Mandi, H.P., in Sessions Trial No.36 of 2013, whereby the appellants-accused (hereinafter referred to as "accused"), who were charged with and tried for offences punishable under Sections 302 and 201 IPC read with Section 34 of the IPC were convicted and sentenced to undergo life imprisonment and to pay fine of Rs.20,000/- each for commission of the offence under Section 302 IPC and in default of payment of fine to undergo simple imprisonment for one year each. The accused were also sentenced to undergo imprisonment for a term of two years under Section 201 IPC and to pay fine of Rs.5,000/- each and in default of payment of fine to undergo simple imprisonment for a period of one month each. The substantive sentences were ordered to run concurrently. The period of detention undergone by each of the convict was set off as per the provisions of Section 428 Cr.P.C.

3. The case of the prosecution, in a nut shell, is that on 21.4.2013 at about 8:15 AM, PW-1 Dina Nath telephonically informed the police of Police Post, City Mandi that Govind Ram (since deceased) was lying dead in pool of blood in Hanumanghat Sarai at Mandi. The In-charge P.P. City Mandi, PW-26 SI Chet Ram, telephonically informed S.P. Mandi, Addl. S.P. Mandi, SHO PS Sadar Mandi, member of RFSL Mandi and rushed to the spot alongwith the police party. He recorded the statement of PW-6 Kedar Nath under Section 154 Cr.P.C. vide Ext. PW-6/A. According to him, he was resident of village Gaighat, PO Hathsar, Tehsil Dighata, Distt. Sant Kabir Nagar, U.P. and he was residing at Mandi for the last 20 years. He is a mason by profession. On 20.4.2013, at about 7:30 PM, after completing his day work, he along with Janardhan came to his quarter near to Hanumanghat Sarai. According to him, when he came back at that time Mukhiya (Divesh Vaidya) and Ritesh Handa alias Bhau were sitting outside Hanuman Shamshanghat. They were eating and drinking something and their presence was also visible from his quarter. At about 9:00 PM, he had gone to fetch water from *Bawri*. He noticed that Divesh Viadya alias

Mukhiya and Ritesh Handa alias Bhau were sitting at the same place under intoxicated condition and deceased Govind Ram was sitting inside the Sarai. Ritesh Handa and Mukhiya went inside the open space of Sarai where Govind Ram was sitting. At about 10:00 PM, he heard cries of Govind Ram but due to fear, he did not come out from his quarter. On 21.4.2013 at about 7:30 AM, when he had gone to attend the call of nature near Beas river, on his return he met with local residents Dina Nath and Parmod Kumar. They were standing outside the Sarai and Govind Ram was lying dead in a pool of blood. According to him, he disclosed to Dina Nath that during last night, Mukhiya and Bhau were there. On the basis of Ext. PW-6/A, FIR Ext. PW-26/A was registered. The team of RFSL, Mandi also visited the spot and inspected the dead body. The post mortem of the dead body of deceased was also got conducted. Dr. Rakesh Kumar and Dr. Hemant Kumar conducted the post mortem and the report is Ext. PW-8/B. The cause of death was opined that deceased died due to shock consequent upon excessive bleeding loss and head injuries sustained due to blunt and sharp edged weapons. The duration between injuries and death was within one hour and duration between death and postmortem was within 12 to 24 hours. The blood samples were also lifted from the spot. The accused were nabbed. Accused Ritesh Handa alias Bhau made disclosure statement Ext. PW-3/A in the presence of Karam Singh and Ravi Chandel qua identification of the spot and throwing of sharp edged weapon in Beas river. Similarly, he made disclosure statement Ext. PW-2/A with regard to the concealment of clothes in House No. 109/8, Darmayana Mohalla near Balakrupi temple, Mandi in the presence of PW-2 Parmod Kumar and Const. Krishan Chand. The clothes were recovered. The Investigating Agency also collected sample for DNA profiling and sent the same through PW-25 HHC Bhagat Ram and the report is Ext. PW-24/A. The investigation was completed and the challan was put up after completing all the codal formalities.

4. The prosecution, in order to prove its case, has examined as many as 27 witnesses. The accused were also examined under Section 313 Cr.P.C. They have denied the prosecution case. According to them, they were falsely implicated. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, these appeals on behalf of the accused persons.

5. Mr. Anoop Chitkara, Advocate has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. P.M.Negi, Dy. Advocate General, for the State has supported the judgment/order of the learned trial Court dated 29/30.6.2015.

6. We have heard learned counsel for both the sides and gone through the judgment and records of the case carefully.

7. PW-1 Dina Nath deposed that on 21.4.2013, at about 7:30 AM, he alongwith Yugal Kishore went to morning walk near the park where they met Parmod Kumar Vaidya. They paid obeisance in the temple of Mahakal. One Sh. Govind used to live in the Karamshala. He was also having a room. They found him soiled with blood. They shouted and called him. He did not wake up. He just walked two steps above and found him dead. Thereafter, they went near to a Peeple tree. They met one Kedar. Kedar used to stay in the Sarai. They asked him about Govind. He told that Govind was crying loudly in the night. He also told that two other boys were sitting there, where dead body of Govind was lying. Kedar also disclosed the name of two boys, namely, Mukhiya and Bhau. Thereafter, they informed the police. The police came on the spot. He further disclosed that on 20.4.2013, he had also gone on walk with Yugal Kishore near parking area in the evening and he met Mukhiya and Bhau in the park as they were sitting on the bench. In his cross-examination, he admitted that neither Karamshala nor courtyard of the Karamshala or park were visible from the room of Kedar Nath. He could not say with whom Govind Ram remained after they

left the spot. He disclosed to the police that he was told by Kedar Nath that Govind was crying in the night. Confronted with statement Mark D-1, where it is not so recorded.

8. PW-2 Parmod Kumar, deposed that on 21.4.2013, he went to morning walk at about 7:30 AM. He reached Hanuman Ghat within 5 minutes. He met Dina Nath and Yugal Kishore near Peepal tree. Thereafter, they came together towards Sarai. They called Govind Ram but he did not respond. Thereafter, they stepped up and found him soiled with blood. Kedar Nath was coming up from the khad (rivulet). They asked him as to whether any quarrel had taken place there. He named two persons, namely, Ritesh and Mukhiya, and told that both of them were with Govind Ram in the night of 20.4.2013. Dina Nath was having mobile phone and they asked him to inform the police. Police came on the spot. Accused Ritesh Handa made a disclosure statement in his presence stating that the clothes and shoes worn by him on the fateful day were kept by him in house No. 109/8 near Balakrupi Temple, Darmayana Mohalla. The disclosure statement is Ext. PW-2/A. Accused Ritesh Handa and Constable Krishan Chand also put their signatures over the same. Deceased Govind Ram used to complain to them that in the night, some boys used to come and used to misbehave with him. They usually used to meet him at Hanumanghat. In his cross-examination, he admitted that people used to go to take water from Darmayana Mohalla, which is nearby Hanumanghat. The space was open, where the dead body was lying and anybody could have easy access to the same. Volunteered that the space was covered with roof. Deceased Govind Ram was not mentally ill. However, he used to drink and used to abuse people and was troublesome person. He categorically admitted that park and Karamshala were not visible from the room in which Kedar Nath used to reside.

9. PW-3 Karam Singh is son of deceased Govind Ram. According to him, he came to Hanumanghat on 20.4.2013. On 21.4.2013, he was informed by people that death of his father occurred at Hanumanghat. On 21.4.2013, in the morning, he came to Hanumanghat and found dead body of his father lying there. The police was also present on the spot. He came to Mandi along with Up-Pradhan for taking death certificate of his father. Accused Ritesh was in the police custody. He disclosed to the police that he had killed Govind Ram with the help of Bamboo stick and with some sharp iron weapon and then he had thrown the sharp iron weapon into the river from the place near a place known as Visarjan at Hanumanghat and the bamboo stick was lying on the spot. He also disclosed that another accused Mukhia was sitting near the Peepal tree at that time. The statement was recorded by the police vide Ext. PW-3/A. He also signed the same. Thereafter, the accused led them to the place of occurrence but they could not trace the iron weapon.

10. PW-4 Ravi Chandel deposed that on 23.4.2013, he came to Mandi along with Karam Singh, son of deceased for taking death certificate of Govind Ram deceased. They straight way went to the Police Station for obtaining the death certificate. Accused Ritesh Handa was in the police custody. Accused Ritesh Handa disclosed that he offered a Biri containing Charas (Bhang) to deceased Govind Ram before killing him and gave beatings to him with kick and fist blows and also with bamboo stick. He disclosed that he attacked deceased Govind Ram with sharp iron weapon on 20.4.2013 and also disclosed that the sharp iron weapon was thrown by him in the river and the Bamboo stick was thrown by him on the spot. He also disclosed that the sharp iron weapon was thrown by him from a place i.e. where Visarjan takes place at Hanumanghat. Both the accused were with them. The police took them to the spot. He put his signatures over Ext. PW-3/A. It was also signed by accused Ritesh Handa and witness Karam Singh. Accused Ritesh Handa led them to the spot but sharp iron weapon was not found. He was declared hostile and cross-examined by the learned Public Prosecutor. He admitted that he has put his signatures over Ext. PW-3/A. He also admitted that he along with Vidya Devi were associated by the police at the

spot. He also admitted that the police prepared spot map Mark-X at the spot. He denied that he along with Vidya Devi put their signatures over Ext. PW-4/A at the spot. In his cross-examination, by the learned defence counsel, he admitted that no bamboo stick was taken into possession by the police on 23.4.2013 in his presence. He admitted that the death certificate is not issued by the police. He also admitted that on Fard Ext. PW-3/A, accused Ritesh Handa and witness Karam Singh did not sign in his presence.

11. PW-5 Smt. Vidya Devi deposed that accused Ritesh Handa disclosed that he had thrown one sharp iron weapon with which he had killed Govind Ram into the river. That place was near to Shamshanghat. Weapon was not found there. Document Ext. PW-4/A was prepared at the spot. She signed the same in red circle B. Witness Ravi Chandel and accused Ritesh also put their signatures on it at the spot. He alongwith Ravi Chandel remained associated in the investigation and accused Ritesh led them to the spot. In her cross-examination, she admitted that accused Ritesh Handa and witness Ravi Chandel did not sign in her presence on Ext. PW-4/A. Her signatures were taken by the police on blank paper. Thereafter, police came to her house. The statement given by the accused was gone through by her and she accepted the same as correct and then put her signatures. She was cross-examined by the learned Public Prosecutor. She denied the suggestion that she did not sign on blank papers on 23.4.2013. She also denied that she only put signatures on Ext. PW-4/A in red circle B on that day. In her cross-examination by the learned defence counsel, she admitted that she asked the police to go ahead with the proceedings and to take her signatures later on. She also admitted that this was the reason for her putting signatures on blank paper.

12. PW-6 Kedar Nath is the most material witness. He deposed that on 20.4.2013, he and Janardhan returned to quarter at about 7-7:30 PM after completion of their work. Mukhia and Ritesh Handa were sitting outside Hanuman Shamshanghat and were eating and drinking. He had gone to fetch water from Bawri. He prepared his dinner. A person named Govind Ram was sitting inside the Sarai. He used to reside there. Mukhia and Ritesh Handa had also gone inside the Sarai. At about 10:00 PM, he heard cries of Govind Ram but he could not come out from his room. On the next day, in the morning, he had gone to attend the call of nature near Beas river. He met with local residents Dina Nath and Parmod Kumar near Sarai. They were standing outside the Sarai and Govind Ram was lying dead in a pool of blood. According to him, he disclosed to Dina Nath that during last night, Mukhiya and Bhau were present. Dina Nath telephonically contacted the police. Police recorded his statement Ext. PW-6/A. In his cross-examination, he admitted that the dead body of deceased was lying in thickly populated area. He also admitted that the houses of Binu, Raju, Mahesh, Satya Sharma, Bhura and tea stall of Sanju are situated nearby that place. He also admitted that on the one side of Shamshanghat one park is situated and on the other side, one Bawri is situated. He also admitted that the people of the local area used to visit the park and Bawri frequently. He also admitted that there remains rush of people on the spot at 10:00 PM. He also admitted that the street light has been installed in the park by M.C. Mandi. He also admitted that when he came back from the work place at 7-7:30 PM, about 8-10 people were sitting at Bawri. He also admitted that on 21.4.2013, police had brought the accused persons at the spot. He also admitted that accused Ritesh Handa had helped to remove the dead body from the spot to the hospital. He also admitted that the people/Saint(Sadhu) used to stay in the Sarai during night. He also admitted in his cross-examination that after 7:30 PM, he did not see the accused at the spot.

13. PW-7 Tek Chand, Asstt. Director, RFSL, Mandi, has proved report Ext. PW-7/A. According to Ext. PW-7/A, human blood was detected on Ext. 5d (thread), Ext. 5f

(laces), Ext. 8d (piece of metal) and Ext. 9b (pants Ritesh Handa), which was insufficient for further serological examination.

14. PW-8 Dr. Rakesh Kumar has conducted the post mortem examination. According to him, the deceased died due to shock consequent upon excessive bleeding loss and head injuries sustained due to blunt and sharp edged weapons. The duration between injuries and death was within one hour and duration between death and postmortem was within 12 to 24 hours. The post mortem report is Ext. PW-8/B. On 1.7.2013, bamboo (danda) was shown to him and he and Dr. Hemant Kapoor opined that injuries No. 2,3, 6 & 7 could be caused by bamboo shown to them. However, injury No. 7 could also be caused with sharp weapon.

15. PW-9 Ashutosh Pal deposed that accused Ritesh Handa had got recovered pants, shoe and black coloured hood from his house in the custody of police. It was taken into possession vide memo Ext. PW-9/A.

16. PW-10 Dr. B.R.Rawat, Asstt. Director (retd.), RFSL, Mandi, has proved report Ext. PW-10/A.

17. PW-11 DSP Rahul Sharma, Finger Print Bureau, Shimla, has proved the opinion Ext. PW-11/B.

18. PW-19 Dr. Rajesh Verma, deposed that he visited the spot on 21.4.2013 and found dead body of male lying in a pool of blood. He was accompanied by Dr. Naresh Sharma and Sh. Sanjeev Singh. He found articles on the spot vide report Ext. PW-19/A.

19. PW-21 HHC Krishan Chand deposed that on 24.4.2013, Ritesh Handa was taken in the I.Os room for interrogation. During interrogation, accused disclosed that clothes which he had worn on the date of incident had been kept by him in Darmiana Mohalla near Bhoot Nath Gali on the slab of fifth storey. He was having knowledge about the clothes and could get those recovered. The statement was recorded vide Ext. PW-2/A. Accused Ritesh Handa led the police party to the spot and produced his blue jean pants. From third floor of his house, he produced his sports white shoes and hood, which was worn by him and it was produced after changing the same. The same were taken into possession vide memo Ext. PW-9/A. He signed the same. During interrogation, accused Divesh Vaidya alias Mukhiya disclosed that he had worn the same clothes which were worn by him at the time of occurrence. The clothes were taken into possession vide memo Ext. PW-13/A.

20. PW-26 Insp. C.S.Bhangalia, is the I.O. He recorded the statement of Kedar Nath vide Ext. PW-6/A under Section 154 Cr.P.C. FIR No. 94 dated 21.4.2013 Ext. PW-26/A was also registered at Police Station, Mandi. He called the photographer. He prepared the spot map. He sent the dead body for post mortem examination. He also recorded the supplementary statement of witness Kedar Nath and witnesses Yugal Kishore and Dina Nath. He had prepared docket regarding matching of finger prints and was handed over to MHC to send the same to Finger Print Bureau after the signature of SHO. Accused Ritesh Handa had made disclosure statement Ext. PW-3/A in the presence of Ravi Singh and Vidya Devi. On 24.4.2013, on the basis of disclosure statement of accused Ritesh Handa, the accused got recovered his pants from 5th storey of his house lintel. He also got recovered sports shoes from the 3rd storey. The hood which was worn by him was changed by him and handed over to him. Similarly, the clothes of accused Divesh Kumar were produced by his mother. In his cross-examination, he admitted that the dead body was lying in open place and anybody could approach that place. He also admitted that many houses were situated near the place of occurrence. He also admitted that no sharp edged weapon was recovered.

21. PW-27 Dr. Aparna Sharma has concluded that the DNA profile obtained from exhibit P-2d (blood lifted from body) completely matched with the DNA profile obtained from Ext. P-3b (pants of Ritesh Handa). She proved report Ext. PW-24/A.

22. The entire case of the prosecution is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, it is necessary to complete the entire chain of events and all the incriminating circumstances must point towards the guilt of the accused. In the case based upon circumstantial evidence, motive plays a very important role. The prosecution, in the present case, primarily relied upon 'last seen theory'.

23. PW-1 Dina Nath deposed that Govind Ram used to live in the Karamshala. They found him soiled with blood on 21.4.2013 in the morning. They met one Sh. Kedar Nath. Kedar Nath used to stay in the Sarai. They asked him about Govind. He told that Govind was crying loudly in the night. He also told that two other boys were sitting there, where dead body of Govind was lying. Kedar also disclosed the name of two boys, namely, Mukhiya and Bhau. Thereafter, they informed the police. In his cross-examination, PW-1 Dina Nath admitted that neither Karamshala nor courtyard of the Karamshala or park were visible from the room of Kedar Nath. Since this sentence was not properly constructed, we have gone through the statement of PW-1 in vernacular. His statement was recorded by the police. He disclosed to the police that he was told by Kedar Nath that Govind was crying in the night. Confronted with statement Mark D-1, where it is not so recorded.

24. PW-2 Parmod Kumar, also deposed that he noticed the dead body of Govind Ram in the morning. Kedar Nath was coming up from the *khad* (rivulet). They asked him as to whether any quarrel had taken place there. He named two persons, namely, Ritesh and Mukhiya, and told that both of them were with Govind Ram in the night of 20.4.2013. In his cross-examination, he categorically admitted that park and Karamshala were not visible from the room in which Kedar Nath used to reside. PW-6 Kedar Nath deposed that on 20.4.2013, he and Janardhan returned to quarter at about 7-7:30 PM after completing their work. Mukhia and Ritesh Handa were sitting outside Hanuman Shamshanghat and were eating and drinking something. He had gone to fetch water from Bawri. Thereafter, he went inside his room and prepared his dinner. A person named Govind Ram was sitting inside the Sarai. He used to reside there. Accused Mukhia and Ritesh Handa had also gone inside the Sarai. At about 10:00 PM, he heard noise of crying of Govind Ram but he did not come out from his room. On the next day, in the morning, he had gone to attend the call of nature near Beas river. He met with local residents Dina Nath and Parmod Kumar near Sarai. They were standing outside the Sarai and Govind Ram was lying dead in blood pool. According to him, he disclosed to Dina Nath that during last night, Mukhiya and Bhau were present. Thereafter, Dina Nath telephonically contacted the police. In his cross-examination, he admitted that after 7:30 PM, he did not see the accused at the spot.

25. What emerges from the statements of PW-1 Dina Nath and PW-2 Parmod Kumar is that neither Karamshala nor courtyard of Karamshala or Park were visible from the room of Kedar Nath. According to PW-6 Kedar Nath, he had gone to fetch water from Bawri. Thereafter, he went inside his room and prepared his dinner. A person named Govind Ram was sitting inside the Sarai. He used to reside there. Accused Mukhia and Ritesh Handa had also gone inside the Sarai. In his initial portion of the examination-in-chief, he deposed that he had seen accused Mukhiya and Ritesh Handa sitting outside the Hanuman Shamshanghat and they were drinking. If he had gone to his room after fetching water to prepare meals, how could he see accused going inside the Sarai since PW-1 Dina Nath and PW-2 Parmod Kumar have categorically deposed that from the room of PW-6 Kedar Nath, Karamshala, the courtyard of Karamshala and Park were not visible. Moreover, PW-6

Kedar Nath, in his cross-examination has deposed that he has not seen the accused on the spot after 7:30 PM and he has heard cries at about 10:00 PM of Govind Ram. In normal circumstances, once he has heard the cries of Govind Ram, he should have gone to look after him but he did not opt to come out of his room. It is unusual conduct of PW-6 Kedar Nath. There is a gap of about 2 ½ hours between 7:30 PM and 10:00 PM. Even in the morning hours, if he had heard cries of Govind Ram at night, at least he should have gone to enquire about his welfare. PW-1 Dina Nath, in his cross-examination, deposed that his statement was recorded by the police and he disclosed to the police that he was told by Kedar Nath that Govind was crying in the night. But, when confronted with statement Mark D-1, there it is not so recorded. In his statement recorded under Section 154 Cr.P.C. Ext. PW-8/A, PW-6 Kedar Nath stated that he had seen the accused sitting from his quarter. However, as discussed hereinabove, it has come on record that Karamshala, courtyard of Karamshala or park were not visible from his quarters. Thus, he had no opportunity to see the accused sitting at Hanuman cremation ground. PW-1 Dina Nath has also deposed that he had come back to his quarter with Janardhan but Janardhan was not examined by the prosecution.

26. PW-1 Dina Nath has admitted in his cross-examination that there were many houses near the Karamshala. PW-2 Parmod Kumar has admitted in his cross-examination that many houses were situated above the road at place Shamshanghat, such as houses of Binu, Raju, Satya, Mahesh, Satya Sharma and Bhura etc. PW-6 Kedar Nath has admitted that where the dead body of the deceased was lying, it is a thickly populated area. He also admitted that the houses of Binu, Raju, Mahesh, Satya Sharma, Bhura and tea stall of Sanju are situated nearby that place. He also admitted that on the one side of Shamshanghat one park is situated and on the other side, one Bawri is situated. He also admitted that the people of the local area used to visit the park and Bawri frequently. He also admitted that there remains rush of people on the spot at 10:00 PM. He also admitted that the street light has also been installed in the park by M.C.Mandi. PW-12 Parveen Sharma has also admitted in his cross-examination that there are many houses near Shamshanghat and street lights are installed surrounding the Sarai and Shamshanghat by the Municipal Committee. He also admitted that during summer season, people used to come to the park up to 10:00 PM. PW-13 Constable Surinder Kumar has also admitted in his cross-examination that the spot was situated in thickly populated area and towards one side of spot, there was park and on another side, there was well (Bawri). He also admitted that the dead body was lying at open space where every person could have access to it. Similarly, PW-2 Parmod Kumar also deposed that the space was open where the dead body was lying and anybody could have access to the area. PW-26 Insp. C.S.Bhangalia, is the I.O. He also admitted that many houses were situated near the place of occurrence. In case, as per the version of PW-6 Kedar Nath, the deceased Govind Ram was crying at 10:00 PM, it would have drawn the attention of the residents of the area residing near the vicinity. The cries, if were heard by PW-6 Kedar Nath, the same would have been heard by the people residing in the close vicinity of the place of occurrence.

27. PW-3 Karam Singh has proved disclosure statement Ext. PW-3/A made by accused Ritesh Handa qua the recovery of weapon of offence. Ext. PW-3/A was signed by him and by accused Ritesh Handa and PW-4 Up-Pradhan Ravi Chandel. Thereafter, the accused has led them to the place of occurrence and also shown the place from where he had thrown sharp iron weapon into the river. The sharp iron weapon could not be traced. The disclosure statement was recorded on 23.4.2013. PW-4 Ravi Chandel deposed that accused Ritesh Handa disclosed that he attacked deceased Govind Ram with sharp iron weapon on 20.4.2013 and disclosed that the sharp iron weapon was thrown by him in the river and the Bamboo stick was thrown by him on the spot. He put his signatures over

memo Ext. PW-3/A. It was also signed by accused Ritesh Handa and witness Karam Singh. Accused Ritesh Handa led them to the spot but sharp iron weapon was not found. He was declared hostile and cross-examined by the learned Public Prosecutor. PW-3 Karam Singh and PW-4 Ravi Chandel have gone to the Police Station to get the death certificate. The death certificate is not issued by the police. It is either issued by the Gram Panchayat or by the Municipal Committee, as the case may be. Thus, there was no occasion for them to be at Police Station. PW-4 Ravi Chandel, in his cross-examination by the learned defence counsel, has admitted that no bamboo stick was taken into possession by the police on 23.4.2013 in his presence. He admitted that the death certificate is not issued by the police. He also admitted that on memo Ext. PW-3/A, neither accused Ritesh Handa nor witness Karam Singh put their signatures. However, the fact of the matter is also that sharp iron weapon, which allegedly was used in the commission of offence, was not recovered by the police since it was allegedly thrown into the river near Hanumanghat. PW-5 Smt. Vidya Devi deposed that accused Ritesh Handa disclosed that he had thrown one sharp iron weapon with which he had killed Govind Ram into the river. That place was near to Shamshanghat. Weapon was not found there. Document Ext. PW-4/A was prepared at the spot. She signed the same in red circle B. Witness Ravi Chandel and accused Ritesh also put their signatures on it at the spot. However, in her cross-examination, she admitted that accused Ritesh Handa and witness Ravi Chandel did not sign in her presence over Ext. PW-4/A. Her signatures were taken by the police on blank papers. In her cross-examination by the learned defence counsel, she admitted that she asked the police to go ahead with the proceedings and to take her signatures later on. She also admitted that this was the reason for her putting signatures on blank paper. However, no document was scribed in her presence. It further casts doubt, the manner in which the statement Ext. PW-4/A was prepared qua the recovery of weapon of offence i.e. sharp iron weapon.

28. The clothes of accused Ritesh Handa were recovered on the basis of disclosure statement Ext. PW-2/A and clothes of accused Divesh Vaidya were produced by his mother. The recovery of stick is also doubtful since PW-4 Ravi Chandel has categorically deposed in his cross-examination that the stick was not recovered in his presence. As per Ext. PW-7/A, proved by PW-7 Tek Chand, Assistant Director, RFSL, Mandi, blood could not be detected on Ext. 9a (shoes Ritesh Handa), Ext. 9c (hood Ritesh Handa), Ext. 10a (chappal Divesh Vaidya), Ext. 10b (lower/pyjama Divesh Vaidya) and Ext. 10c (T-short Divesh Vaidya). The human blood found on Ext. 9b (pants Ritesh Handa) was insufficient for further serological examination.

29. The pants of the accused Ritesh Handa were taken into possession vide memo Ext. PW-9/A. It is not stated in this memo that the pants were smeared with blood. The DNA report is based on the blood lifted from the pants of accused Ritesh Handa. In case there was blood on the recovered pants of accused Ritesh Handa, it should not have gone unnoticed at the time of recovery. We have seen memo Ext. PW-9/A, whereby the pants were produced by the accused. PW-26 Insp.C.S.Bhangalia, I.O. has admitted in his cross-examination that he has not observed any blood stains on pant when it was recovered vide memo Ext. PW-9/A. How blood stains could be seen by PW-27 Dr. Aparna Sharma at the time of compiling of the DNA report. Even PW-9 Ashutosh Pal, in whose presence, the clothes were produced by accused Ritesh Handa has not disclosed that he has seen blood stains on the clothes. PW-21 HHC Krishan Chand has also not deposed that he has noticed any blood stains on the clothes of accused Ritesh Handa at the time of recovery from 5th storey of the house. It also makes report Ext. PW-24/A doubtful. The stains on the pants could not be overlooked at the time of recovery, being an important piece of evidence.

30. The post mortem report is Ext. PW-8/B. According to PW-8 Dr. Rakesh Kumar, the deceased died due to shock consequent upon excessive bleeding loss and head injuries sustained due to blunt and sharp edged weapons. The duration between injuries and death was within one hour and duration between death and postmortem was within 12 to 24 hours. According to him, he and Dr. Hemant Kapoor opined that injuries No. 2,3, 6 & 7 could be caused by bamboo shown to them. However, injury No. 7 could also be caused with sharp weapon. The recovery of bamboo stick (danda), as noticed hereinabove, in view of the statement of PW-4 Ravi Chandel is doubtful. The weapon of offence i.e. sharp iron weapon was never recovered.

31. According to PW-26 Insp. C.S.Bhangalia, inside the Sarai, in one room, two empty bottles of liquor, whereupon *"Darling"* label was printed, were lying at the radius of 20 feet from the body of deceased and red colour torch was at the radius of 17 feet from the dead body. One nip whereupon label "Master Blend" was printed and one glass cup were found on the spot. He has packed the bottles in two different boxes. Nip, torch, glass of cup were put in a third box in order to trace out the finger prints. Thereafter, he put the articles in a cloth parcel which was sealed with seal impression "T" at 15 places. PW-26 Insp. C.S.Bhangalia, has not deposed that while taking these articles into possession, he was wearing gloves. It was necessary for the I.O. to ensure that these articles were taken into possession by wearing gloves. Moreover, it was necessary to take precautions while packing up the case property since the place where the dead body was found was open and accessible to all.

32. PW-11 DSP Rahul Sharma, Finger Print Bureau, Shimla has proved report Ext. PW-11/B. According to this report, the decipherable chance prints (1) Marked as "II" and the sample prints of left ring finger and (2) marked as "IV" and sample prints of left middle finger (on the sample slips of Divesh Vaidya) were the prints of one and same finger of the same person. The finger prints of accused Ritesh Handa, the chance prints marked as "I, III, V, VI & VII" were either sufficiently faint, blurred, super imposed or smudged having no required data and the chance prints were unfit for comparison. PW-11 DSP Rahul Sharma, has admitted in his cross-examination that there should be proper handling of the material lying on the spot. The spot should not be disturbed in any manner prior to taking the material boxes and sending to the expert. The articles like glass and jar at the time of collection should not be touched with naked hands and if articles are touched by different persons from open space by the naked hands, there is possibility of identical marks of those persons.

33. Their lordships of the Hon'ble Supreme Court in the case of ***Mahmood vrs. State of Uttar Pradesh,*** reported in ***AIR 1976 SC 69,*** have held that when the specimen finger-prints of the accused were not taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act, it could not be read in evidence. It has been held as follows:

> "16. Furthermore, the specimen finger-prints of the appellant were not taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. This is another suspicious feature of the conduct of investigation. It has not been explained why this Magistrate was kept out of the picture.
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> 19. Lastly, it may be observe that Inspector Daryao Singh, P.W. 15, has not given any reasons in support of his opinion. Nor has it been shown that he has acquired special skill, knowledge and experience in the science of identification of finger-prints. It would be highly unsafe to convict one of a capital charge without any independent corroboration, solely on the bald and

dogmatic opinion of such a person, even if such opinion is assumed to be admissible under Section 45, Evidence Act."

34. The Division Bench of the Andhra Pradesh High Court in the case of ***Manepalli Anjaneyulu vrs. State of A.P.,*** reported in ***1999 Cri. L.J. 4375,*** has held that in case where chance prints found at scene of offence and developed and photographed, the non-filing of photographs and no evidence produced to show that finger prints of accused were taken before Magistrate, no sanctity can be attached to such evidence. It has been held as follows:

> "31. The prosecution relics on the evidence of finger print expert PW17. According to him, some chance prints were found at the scene of offence, which were developed and photographed. Five finger prints were found suitable for comparison and when they were compared with the finger prints of the accused, it was found that print 'A' tallied with the finger print of the left ring finger of the fourth accused and prints 'B' and 'D' tallied with the thumb impression of the 6th accused and chance print 'R' tallied with the left index finger impression of the 3rd accused and the photo of chance print T' tallied with the left middle finger print impression of A3. Exs.P35 to P39 are the comparative charts relating to the chance finger prints with the identical finger prints of the suspects. The learned trial Judge found that this evidence corroborates the other evidence of the prosecution to establish the participation of A3, A4 and A6 in the incident of dacoity. It may be mentioned that the photographer who took the chance finger prints has not been examined and the finger prints photographs taken have not been filed. There is nothing to show that the finger prints of the accused have been taken before the Magistrate. PW17 in his evidence merely slated that the finger print slips of five accused persons were received by him from the Inspector of Police, Tanuku on 15-10-1989 with which he compared the chance finger prints. His evidence docs not reveal as to who took the finger prints of the accused and where they were taken. The concerned Inspector PW37 has nowhere stated in his evidence whether he has taken finger prints of the accused and if so whether he has taken them on his own or he has taken them in the presence of the Magistrate, though he speaks of having taken the specimen handwriting of A1. In the absence of such evidence, no sanctity can be attached to the evidence of finger print expert inasmuch as there is no evidence to show that the finger prints with which the chance finger prints were compared were those of the accused."

35. PW-26 Insp. C.S.Bhangalia, testified that search slip Ext. PW-26/P and Ext. PW-26/Q were prepared by HC Bhup singh regarding rolled prints of deceased Govind Ram, but the fact of the matter is that Bhup Singh has not been examined by the prosecution.

36. The learned Single Judge of the Kerala High Court in the case of ***Ayyappan vrs. State of Kerala,*** reported in ***2005 Cri. L.J. 57,*** has held that when there was no authentic and safe data to show that chance finger prints were properly lifted from scene and was made available for examination of expert and expert's report not revealing nature of comparison effected or basis of opinion of expert as to how he reached conclusion that chance finger prints were that of accused, expert evidence and his report cannot be made foundation for conviction. It has been held as follows:

> "11. The prosecution attempted to support the evidence of PW2 with the evidence of PW6 finger print expert and Ext.P4 report submitted by him. I have been taken through the evidence of PW.6 and Ext.P4. I am in

> agreement with the learned counsel for the petitioner that except to indicate or explain why PW.9 suspected the petitioner/ accused, Ext.P4 and the evidence of PW.6 cannot be put to any other specific or satisfactory purpose. I am surprised to note the nature of the evidence tendered through PW.6. There is no authentic and safe data to show that chance finger prints were properly lifted from the scene and was made available for examination of PW6. The chance or specimen finger prints have not been proved in any manner known to law. Ext.P4 report does not reveal the nature of the comparison effected or the basis of the opinion of PW.6 as to how he reached the conclusion that the chance finger prints were that of the petitioner. In these circumstances, the evidence PWs.6 and Ext.P4 cannot also be of any crucial help to the prosecution. (sic) referred above identification by PW.2 or expert evidence in (sic) be made the foundation for conviction."

37. In the instant case, there is no evidence/data that chance finger prints were properly lifted from the scene and were made available for examination of expert. It has not come in the statement of PW-26 Insp. C.S.Bhangalia, I.O. that he was wearing gloves and the scene of crime was properly sensitized. PW-26 Insp. C.S.Bhangalia, has also admitted that the dead body was lying in the open space and anybody could approach the place. Thus, there is sufficient evidence that lot of people had arrived on the scene before the police came and thus, the case property being touched by other persons can also not be overruled.

38. PW-19 Dr. Rajesh Verma, Dy. Director, Physical Science Laboratory, Mandi visited the spot on 21.4.2013. He noticed dead body of male lying in a pool of blood. The articles lying on the spot were mentioned in his report Ext. PW-19/A. The place of occurrence was Hanumanghat Sarai near Victoria Bridge. He was accompanied by Dr. Naresh Sharma and Sh. Sanjeev Singh. He has prepared report of articles lying on the spot. According to his report, blood stains were observed on the side of cemented bench meant for sitting near the dead body. According to his report, it was a case of homicide. Though PW-19 Dr. Rajesh Verma in his report Ext. PW-19/A has noticed only one empty wine bottle but PW-26 Insp. C.S.Bhangalia, in his statement has deposed that in one room, two empty bottles of liquor, whereupon "Darling" label was there was lying at the radius of 20 feet from the dead body and red colour torch which was at the radius of 17 feet from the body of deceased were found and one nip whereupon "Master Blend" label was printed were found on the spot. In case two bottles and cups were lying on the spot, these could not skip the notice of PW-19 Dr. Rajesh Verma who has prepared report Ext. PW-19/A. In his report, there is mention of only one empty bottle and glass cups found on the spot. The statement of PW-26 Insp. C.S.Bhangalia is contrary to the details of case property given in Ext. PW-19/A. Thus, the possibility of two bottles planted on the spot cannot be ruled out and the finger prints lifted from these articles are to be discarded.

39. PW-27 Dr. Aparna Sharma has proved DNA profiling report Ext. PW-24/A. PW-27 Dr. Aparna Sharma has concluded that the DNA profile obtained from exhibit P-2d (blood lifted from body) completely matched with the DNA profile obtained from Ext. P-3b (pants of Ritesh Handa). According to her, there was only one stain on the back side of the pants. But, this was insufficient for further serological examination as per report Ext. PW-7/A and no blood stains were seen at the time of recovery of pants vide Ext. PW-9/A.

40. There is no evidence on record to prove as to who has searched for the weapon of offence i.e. sharp iron weapon in the water. The water shown in the photographs is apparently shallow and no one has entered the water. There is merit in the contention of Mr. Anoop Chitkara, Advocate for the accused that the theory of weapon has been introduced only after getting the opinion of the doctor qua injury No. 7. We have seen the

photographs Ext. PW-16/A27, PW-16/A28, PW-16/A33 and PW-16/A35. The water is shallow and if accused Ritesh Handa has thrown the weapon of offence into the water, it could easily have been traced out. Nobody has even entered the river to find out the presence of weapon of offence i.e. sharp iron weapon.

41. The entire case of the prosecution is based on circumstantial evidence. In the case based upon circumstantial evidence, motive plays a very important role. There was no enmity between the accused and the deceased. It is also not the case of the prosecution that quarrel has taken place on the spot. Had the quarrel taken place on the spot, it would definitely have been witnessed by the residents of the locality, as the place, according to PW-1 Dina Nath, PW-2 Parmod Kumar, PW-6 Kedar Nath, PW-12 Parveen Sharma, PW-13 Constable Surinder Kumar and PW-26 Insp. C.S.Bhangalia, Investigating Officer of the case, was thickly populated.

42. The Karamshala was not visible from the place where PW-6 Kedar Nath was residing. Thus, his statement that he has seen the accused entering Sarai from his quarter/room is not worth credence. The recovery of bamboo stick (danda) is also doubtful. The recovery of two bottles is also doubtful in view of the variance as per the details given in report Ext. PW-19/A. The statement made by the accused Ritesh Handa to the effect that he had thrown the weapon of offence in river is also doubtful, more particularly in view of statements made by PW-4 Ravi Chandel and PW-5 Smt. Vidya Devi. According to PW-5 Vidya Devi, she has signed the blank papers and accused Ritesh Handa and witness PW-4 Ravi Chandel did not sign in her presence.

43. The theory of 'last seen together' has also not been proved conclusively by the prosecution since scene of crime was not visible from the room/quarter of PW-6 Kedar Nath, as per the statements of PW-1 Dina Nath and PW-2 Parmod Kumar. It has also come on record that the Sarai was frequently visited by other Saints (Sadhus) and they used to stay there overnight.

44. Their lordships of the Hon'ble Supreme Court in the case of ***Ajit Singh Harnam Singh Gujral vrs. State of Maharashtra,*** reported in ***(2011) 14 SCC 401,*** have held that the duration of time between two events ought to be so small that possibility of any other person being author of crime can be ruled out. It has been held as follows:

> "27. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible, vide Mohd. Azad alias Samin vs. State of West Bengal 2008(15) SCC 449 = JT 2008(11) SC658 and State through Central Bureau of Investigation vs. Mahender Singh Dahiya 2011(3) SCC 109 = JT 2011(1) SC 545, S.K. Yusuf vs. State of West Bengal, J.T. 2011 (6) SC 640 (para14).
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> 28. In our opinion, since the accused was last seen with his wife and the fire broke out about 4 hours thereafter it was for him to properly explain how this incident happened, which he has not done. Hence this is one of the strong links in the chain connecting the accused with the crime.
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> 29. The victims died in the house of the accused, and he was there according to the testimony of the above witnesses. The incident took place at a time when there was no outsider or stranger who would have ordinarily entered the house of the accused without resistance and moreover it was most natural for the accused to be present in his own house during the night."

45. Their lordships of the Hon'ble Supreme Court in the case of ***Dandu Jaggaraju vrs. State of Andhra Pradesh,*** reported in ***(2011) 14 SCC 674,*** have held that in a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution. It is this circumstance which often forms the fulcrum of prosecution story. It has been held as follows:

> "9. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story."

46. Their lordships of the Hon'ble Supreme Court in the case of ***Sathya Narayan vrs. State rep. by Inspector of Police,*** reported in ***(2012) 12 SCC 627,*** have held that in the case of circumstantial evidence, motive also assumes significance since absence of motive would put Court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omissions or conjectures do not take place of proof. It has been held as follows:

> "42) In the case of circumstantial evidence, motive also assumes significance for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omission or conjecture do not take the place of proof. In the case on hand, the prosecution has demonstrated that initially, the deceased entered the Ashram in order to assist the devotees and subsequently became one of the Trustees of the Trust and slowly developed grudge with the appellants. PWs 35 and 36, sister and brother of the deceased Leelavathi deposed that since then she became a Trustee, there was a dispute with regard to the Management of the said Trust."

47. Their lordships of the Hon'ble Supreme Court in the case of ***Majenderan Langeswaran vrs. State (NCT of Delhi) and another,*** reported in ***(2013) 7 SCC 192,*** have held that onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court and all the circumstances must lead to the conclusion that accused is the only one who has committed crime and none else. It has been held as follows:

> "3. On 30th November, 1996, an altercation is stated to have taken place between the accused and the deceased L. Shivaraman. As the accused had sustained some cut injuries on his hands, he reported the matter to the officials. On 1st December, 1996 when the ship was on high seas, the appellant took off from his duty as helmsman on the ground of pain in his hands due to cut injuries and another helmsman Baria was asked to do the duty as replacement. As the accused and the deceased were staying in Cabin No. 25, the accused was temporarily shifted from that cabin to Cabin No. 23 due to the above incident of assault. At about 1510 hours, the accused allegedly approached IInd Officer Kalyan Singh (PW-6) with a blood- stained knife in his hand and his hands smearing in blood and is alleged to have

confessed before him that he had killed L. Shivaraman. On being asked by Kalyan Singh (PW-6), the appellant handed over the blood-stained knife to him which he placed in a cloth piece without touching the same. Kalyan Singh (PW-6) then intimated the Captain and other officers. The body of L. Shivaraman was found lying in Cabin No. 23 in such a way that half of it was inside the cabin and half of it outside. The officials of Shipping Corporation of India were informed. On incident being reported, pursuant to an instruction from concerned quarter, the ship was diverted to Hongkong. On being so directed by the Captain of the ship (PW-5), Kalyan Singh (PW-6) got the body of the deceased cleaned up for being preserved in the fish room with the help of Manjeet Singh Bhupal (PW-4) and Chief Officer V.V. Muralidharan (PW-18) took photographs. The blood-stained knife was kept in the safe custody of PW-5. The accused was then apprehended, tied and disarmed before being shifted to the hospital on board. Since the ship was having Indian Flag, as per the International Treaty of which India was a signatory, the act of the accused was subject to Indian laws. Accordingly, a case bearing R.C. No. 10(S) of 1996 was registered by the Central Bureau of Investigation (CBI) against the accused on 6th December, 1996.

16. Now, we have to consider whether the judgment of conviction passed by the trial court and affirmed by the High court can be sustained in law. As noticed above, the conviction is based on circumstantial evidence as no one has seen the accused committing murder of the deceased. While dealing with the said conviction based on circumstantial evidence, the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused, which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court.

17. In the case of Hanumant Govind Nargundkar vs. State of M.P., AIR 1952 SC 343, this Court observed as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. …."

18. In the case of Padala Veera Reddy vs. State of A.P., 1989 Supp (2) SCC 706, this Court opined as under:

"10. Before adverting to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken 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 none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra, (1982) 2 SCC 351)"

19. In the case of C. Chenga Reddy & Ors. vs. State of A.P., (1996) 10 SCC 193, this Court while considering a case of conviction based on the circumstantial evidence, held as under:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence."

20. In the case of Ramreddy Rajesh Khanna Reddy vs. State of A.P., (2006) 10 SCC 172, this Court again considered the case of conviction based on circumstantial evidence and held as under:

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. (See Anil Kumar Singh v. State of Bihar, (2003) 9 SCC 67 and Reddy Sampath Kumar v. State of A.P., (2005) 7 SCC 603)."

21. In the case of Sattatiya vs. State of Maharashtra, (2008) 3 SCC 210, this Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred

from those circumstances." This Court further observed in the aforesaid decision that:

"17. At this stage, we also deem it proper to observe that in exercise of power underArticle 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court—Bharat v. State of M.P., (2003) 3 SCC 106. In the light of the above, we shall now consider whether in the present case the prosecution succeeded in establishing the chain of circumstances leading to an inescapable conclusion that the appellant had committed the crime."

22. In the case of State of Goa vs. Pandurang Mohite, (2008) 16 SCC 714, this Court reiterated the settled law that where a conviction rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

23. It would be appropriate to consider some of the recent decisions of this Court in cases where conviction was based on the circumstantial evidence. In the case of G. Parshwanath vs. State of Karnataka, (2010) 8 SCC 593, this Court elaborately dealt with the subject and held as under:

"23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the

guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. 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 that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court."

24. In the case of Rajendra Pralhadrao Wasnik vs. State of Maharashtra, (2012) 4 SCC 37, while dealing with the case based on circumstantial evidence, this Court observed as under:

"12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person."

25. Last but not least, in the case of Brajendrasingh vs. State of M.P., (2012) 4 SCC 289, this Court while reiterating the above principles further added that:

"28. Furthermore, the rule which needs to be observed by the court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial. (Ref. Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220; Shivu v. High Court of Karnataka, (2007) 4 SCC 713 and Shivaji v. State of Maharashtra, (2008) 15 SCC 269)"

26. As discussed hereinabove, there is no dispute with regard to the legal proposition that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence as laid down by this Court. In such a case, all circumstances must

lead to the conclusion that the accused is the only one who has committed the crime and none else."

48. Their lordships of the Hon'ble Supreme Court in the case of ***Rishipal vrs. State of Uttarakhand,*** reported in ***(2013) 12 SCC 551,*** have held that motive does not have a major role to play in cases based on eye witnesses account of incident but it assumes importance in cases that rest entirely on circumstantial evidence. Their lordships have further held that circumstances sought to be proved against accused be established beyond reasonable doubt, but also that such circumstances form so complete a chain, as leaves no option for court, except to hold that accused is guilty of offences with which he is charged. It has been held as follows:

> "15. The second aspect to which we must straightaway refer is the absence of any motive for the appellant to commit the alleged murder of Abdul Mabood. It is not the case of the prosecution that there existed any enmity between Abdul Mabood and the appellant nor is there any evidence to prove any such enmity. All that was suggested by learned counsel appearing for the State was that the appellant got rid of Abdul Mabood by killing him because he intended to take away the car which the complainant-Dr. Mohd. Alam had given to him. That argument has not impressed us. If the motive behind the alleged murder was to somehow take away the car, it was not necessary for the appellant to kill the deceased for the car could be taken away even without physically harming Abdul Mabood. It was not as though Abdul Mabood was driving the car and was in control thereof so that without removing him from the scene it was difficult for the appellant to succeed in his design. The prosecution case on the contrary is that the appellant had induced the complainant to part with the car and a sum of Rs.15,000/-. The appellant has been rightly convicted for that fraudulent act which conviction we have affirmed. Such being the position, the car was already in the possession and control of the appellant and all that he was required to do was to drop Abdul Mabood at any place en route to take away the car which he had ample opportunity to do during all the time the two were together while visiting different places. Suffice it to say that the motive for the alleged murder is as weak as it sounds illogical to us. It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. [See Sukhram v. State of Maharashtra (2007) 7 SCC 502, Sunil Clifford Daniel (Dr.) v. State of Punjab (2012) 8 SCALE 670, Pannayar v. State of Tamil Nadu by Inspector of Police (2009) 9 SCC 152]. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside.
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> 19. It is true that the tell-tale circumstances proved on the basis of the evidence on record give rise to a suspicion against the appellant but suspicion howsoever strong is not enough to justify conviction of the appellant for murder. The trial Court has, in our opinion, proceeded more on the basis that the appellant may have murdered the deceased-Abdul Mabood. In doing so the trial Court over looked the fact that there is a long distance between 'may have' and 'must have' which distance must be traversed by the prosecution by producing cogent and reliable evidence. No such evidence is unfortunately forthcoming in the instant case. The legal position on the subject is well settled and does not require any reiteration. The decisions of this Court have on numerous occasions laid down the

> requirements that must be satisfied in cases resting on circumstantial evidence. The essence of the said requirement is that not only should the circumstances sought to be proved against the accused be established beyond a reasonable doubt but also that such circumstances form so complete a chain as leaves no option for the Court except to hold that the accused is guilty of the offences with which he is charged. The disappearance of deceased-Abdul Mabood in the present case is not explainable as sought to be argued before us by the prosecution only on the hypothesis that the appellant killed him near some canal in a manner that is not known or that the appellant disposed of his body in a fashion about which the prosecution has no evidence except a wild guess that the body may have been dumped into a canal from which it was never recovered."

49. The prosecution has failed to prove the chain of events in the instant case. The circumstantial evidence is too shaky, suspicious and fragile to render the sound foundation for conviction. The circumstances, from which the ends of guilt was to be drawn, has not been fully established by unimpeachable evidence, beyond shadow of doubt. Thus, the prosecution has failed to prove the case against the accused persons beyond reasonable doubt. This is a fit case, in our opinion, where the accused are entitled to benefit of doubt.

50. The learned trial Court while convicting the accused had come to the conclusion that accused had motive to kill the deceased since he had obstructed them not to have drinks in Hanumanghat Sarai. There is absolutely no evidence to come to this conclusion.

51. We have already noticed that the water where the weapon of offence allegedly was thrown was shallow and no effort at all has been made to trace the same. The weapon of offence, being sharp iron weapon, could not be carried away by the water. Thus, the findings recorded by the learned trial Court that the accused have tried to destroy the evidence is also contrary to evidence.

52. Mr. P.M.Negi, Dy. Advocate General, has vehemently argued that the accused are hardened criminals. FIR has been registered against accused Ritesh Handa in case FIR No. 174/11 under Sections 342, 504, 323 read with Section 34 IPC and in case FIR No. 1/12 under Sections 341, 382, 506, 457, 380 read with Section 34 IPC. Similarly, against accused Divesh Vaidya alias Mukhiya, two FIR Nos. 128/2006 and 204/2009 under Sections 20 & 21 of the ND & PS Act and FIR No. 309/10 under Section 20 of the ND & PS Act, FIR No. 205 /12 under Sections 457, 511 IPC and FIR No. 35/05 under Section 457, 380, 511 read with Section 34 IPC, have been registered. The bad conduct cannot be taken into consideration as laid down under Section 54 of the Indian Evidence Act unless and until the defence is taken that accused have good character.

53. Their lordships of the Hon'ble Supreme Court in the case of ***Ram Lakhan Singh and others vrs. The State of Uttar Pradesh,*** reported in ***AIR 1977 SC 1936,*** have held that in Indian system of law, an accused starts with a presumption of innocence. His bad character is not relevant unless he gives evidence of good character in which case by rebuttal, evidence of bad character may be adduced. It has been held as follows:

> "23. Although the judgment of the Sessions Judge is otherwise an exhaustive judgment it cannot be said from the instances which we have set out above that his appreciation is free from legal infirmity of some kind of prejudice against the accused who are described as "law breakers". In our system of law an accused starts with a presumption of innocence. His bad character is not relevant unless he gives evidence of good character in which

case by rebuttal, evidence of bad character may be adduced (Section 54 of the Evidence Act)."

54. There is absolutely no evidence on record to suggest even remotely that the accused had intention to rob the deceased. The deceased only used to collect scrap and there is no evidence that the accused had any motive to rob him. Nothing was found missing and no money etc. has been recovered from the accused.

55. Accordingly, in view of the analysis and discussion made hereinabove, the appeals are allowed. Judgment and order of conviction and sentence dated 29.6.2015 and 30.6.2015, respectively, rendered by the learned Addl. Sessions Judge(II), Mandi, H.P., in Sessions trial No. 36 of 2013, is set aside. Accused are acquitted of the charges framed against them by giving them benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to them. Since the accused are in jail, they be released forthwith, if not required in any other case.

56. The Registry is directed to prepare the release warrants of the accused and send the same to the Superintendent of Jail concerned, in conformity with this judgment forthwith.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Gauri Singh and another. ...Appellant.

Versus

Manghru and others. ...Respondents

RSA No. 78 of 2007
Reserved on: 14.12.2015
Decided on: 1.1.2016

Specific Relief Act, 1963- Section 34- Plaintiff claimed his exclusive possession as tenant over the suit land- plaintiff claims to have purchased the land for consideration of Rs. 450/- in the year 1957- plaintiff pleaded that defendants were neither inducted as tenants on the suit land nor in possession thereof- plaintiff challenged the order conferring proprietary rights on defendants on the plea that same was done behind his back - defendants claimed occupancy tenants-defendants denied exclusive possession as tenants by the plaintiff and the alleged subsequent purchase by him- trial Court dismissed the suit land- first appeal was also dismissed - in second appeal held, that plaintiff has miserably failed to prove himself as sole tenant- further, plaintiff has failed to prove that defendants were never inducted as tenants over the suit land- no documentary evidence was produced- predecessor-in-interest of the previous owner was also not examined in the witness box- plaintiff proved to have participated in the process and received compensation of Rs. 450/- - plaintiff also claimed to have become owner by adverse possession – both courts have correctly appreciated the oral and documentary evidence- appeal dismissed. (Para-21 to 26)

Case referred:
Tribhuvanshankar vs Amrutlal, (2014) 2 SCC 788

For the Appellants : Mr. Bhupender Gupta, Sr. Advocate with Mr. Neeraj Gupta, Adv.
For the Respondents: Mr. Sanjeev Kuthiala, Advocate for respondent Nos. 1 and 2.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This Regular Second Appeal is directed against the judgment and decree dated 2.12.2006 rendered by the Presiding Officer, Fast Track Court, Mandi in Civil Appeal No. 11/2004 / 111/2005.

2. "Key facts" necessary for the adjudication of this appeal are that predecessor in interest of the appellants-plaintiffs (hereinafter referred to as the "plaintiff" for convenience sake) filed a suit against the respondents-defendants (hereinafter referred to as the "defendants" for convenience sake) for declaration and perpetual injunction. According to the averments made by the plaintiffs, the land comprised under Khewat No 8/7, khatauni No.12 under Khasra Nos. 182, 232, 248, 307, 344, 797 kitas 6 measuring 6-10-12 bighas situated in Mauja Murah/560, Illaqua Nira, Sub-Tehsil Walichowki, District Mandi is recorded in the ownership of plaintiff, defendants and in exclusive possession of plaintiff. The suit land was previously in the possession of plaintiff as tenant. In the year 1957, the suit land was purchased by the plaintiff from its previous owner Sh. Mahant Ram for a consideration of Rs. 450/- and to this effect mutation No. 170 dated 16.01.1957 has been sanctioned in favour of the plaintiff. The suit land was given to the plaintiff exclusively and was in his possession as tenant during the time of his forefathers and vide aforesaid mutation, the plaintiff has become owner in possession of the suit land. The Land Reforms Officer, Chachiot entered the names of defendants and conferred proprietary rights to the defendants and plaintiff behind the back of plaintiff and as such the conferment of proprietary rights in favour of defendants was wrong, illegal and void *ab initio*. Defendants were neither tenants nor they were inducted as tenants at any time and the conferment of proprietary rights without any inquiry is against the provisions of H.P. Tenancy and Land Reforms Act and the Rules and to this effect mutation No.58 dated 26.7.1975 sanctioned in favour of defendants is wrong. Plaintiff, alternatively, has also taken the plea of adverse possession.

3. The suit was contested by defendant Nos.1 and 2. According to the averments made in the written statement, plaintiff and defendants were occupancy tenants of the land in questions and the land comprised in Khasra No.177 measuring 1-7-3 bighas and, as such, total tenancy land was 7-19-18 bighas. This land was jointly enjoyed and possessed by Parma Nand and defendants and after the death of their predecessor-in-interest and previously the predecessor-in-interest of the parties were possessing and enjoying the property jointly as occupancy tenants. It is denied that the plaintiff was in exclusive possession as tenant and thereafter he purchased the suit land from Mahant Ram for consideration of Rs. 450/-. The entries showing plaintiff in exclusive possession, are wrong and illegal because plaintiff during his life time was Lambardar and was a shrewd person. He had also been in the company of revenue officials and, as such, in connivance with the revenue officials, entries of possession were incorporated by him. The plea of adverse possession was also denied.

4. Issues were framed by the Civil Judge (Junior Division), Chachiot at Gohar on 14.1.2002. He dismissed the suit on 12.12.2003. Plaintiff preferred an appeal before the Presiding Officer, Fast Track Court, Mandi against the judgment and decree dated 12.12.2003. He dismissed the same on 2.12.2006. Hence, the present appeal. It was admitted on 25.4.2007 on the following substantial questions of law:

1. **Whether from the facts and circumstances brought on record, the appellants have become owner by way of adverse possession**

and in negating this plea of the appellant, whether the court below has not taken into consideration the law with regard to adverse possession?

2. **Whether a co-sharer in settled possession can be dispossessed, otherwise in due process of law, by other co-sharer?**

3. **Whether co-tenants out of possession, remains the tenant after the period of one year if remedy against dispossession is not assailed by them?**

5. Mr. Bhupender Gupta, learned Senior Advocate, on the basis of the substantial questions of law framed, has vehemently argued that the appellants have become owners by way of adverse possession. He then contended that a co-sharer in settled possession could not be dispossessed otherwise, i.e. by due process of law by other co-sharer. He lastly contended that the suit was within limitation.

6. Mr. Sanjeev Kuthiala, learned counsel for the respondents has supported the judgments and decrees passed by both the courts below.

7. I have heard the learned counsel for the parties and have gone through the records carefully.

8. Since all the substantial questions of law are interconnected and interlinked the same are taken up together for determination to avoid repetition of discussion of evidence.

9. PW-1 Gauri Singh has testified that previously Sh. Parma Nand was owner in possession of the suit land. He died on 25.1.1997 after executing a "will" in their favour Ex.PW-2/A and after his death they came in possession of the suit land as owners. Defendants or their predecessor-in-interest never remained in possession. He has admitted in his cross-examination that the Land Reform Officer has attested the mutation under section 94 of the H.P. Tenancy and Land Reforms Act in favour of defendants on 26.7.1975. He has also admitted that no appeal was filed against the order of the Land Reform Officer before the Collector either by them or by deceased Parma Nand. He has also deposed that during the life time of Parma Nand, defendant No.2 and others tried to take forcible possession of the suit land, but their act was foiled by the attempt of Parma Nand and they were not allowed to take possession from Parma Nand. The suit land was purchased by Parma Nand from Mahant Ram. The plaintiff had also instituted a suit but it was withdrawn to file fresh suit on the same cause of action. He has proved orders Ex.PW-1/C, copies of Jamabandi Ex.PB and Ex.PC, copy of mutation Ex.PD and copy of mutation No. 176 Ex.PE.

10. PW-2 Baghi Rath is the scribe of "will" Ex.PW-2/A. According to him, "will" was executed by Parma Nand and after writing the "will", its contents were read over to Parma Nand in the presence of witnesses Satya Prakash and Bhup Singh. It was signed by Parma Nand and thereafter witnesses signed the "will".

11. PW-3 Ram Singh has testified that the "will" was registered in their office.

12. PW-4 Balak Ram and PW-5 Bhag Chand have deposed that the suit land was in exclusive possession of the plaintiffs. They have never seen the defendants cultivating the suit land. Defendants have no right, title and interest over the suit land.

13. PW-6 Bhup Singh is the marginal witness of "will" Ex.PW-2/A. He has identified his signatures on "will", which are Ex.PW-6/A and Ex.PW-6/B. He has deposed

that the "will" was got written by Parma Nand from the petition writer. The "will" was read over to Parma Nand by the petition writer and after admitting its contents to be true he put his signatures and after his acknowledgement they signed the "will". When the "will" was written, Parma Nand was in sound disposing state of mind.

14. Defendants have examined Bhup Singh, Reader to SDM, Gohar. He has testified that in partition proceedings before AC-1st Grade dated 26.11.1991, he has recorded the statement of Parma Nand son of Jhali, Maghu son of Sh. Meshaku, Bhima son of Soju etc. on the instructions of AC-1st Grade. The statement was explained and read over to the witnesses and after admitting it to be correct, it was jointly signed by them. Thereafter, AC-1st Grade also put his signatures. He has proved Ex.DA. These were correct as per original order Ex.DB and Ex.DC and partition Ex.DE.

15. DW-2 Manghru has deposed that the suit land is situated in Mura Muhal. Previously the owner of the suit land was Sh. Mahant Ram, who belonged to Mandi City. Balak Ram was his father and after his death, he was in possession of the suit land. During the life time of his father Balak Ram, Jhali used to cultivate the suit land and after his death, it was inherited by the plaintiff, Parma Nand, Bashaku and Soju who were occupancy tenants of the suit land. They used to give 1/4th produce of the crop of Mahant Ram and in the year 1975 they have become owners in possession of their shares and they have deposited Rs. 450/- in the Treasury. Thereafter, mutation was attested in their favour by Tehsildar. At the time of mutation, Manghu, Parma Nand and others were present there. Parma Nand had received a sum of Rs. 450/-. He had moved an application for partition of the suit land before AC-1st Grade. Plaintiff Parma Nand had no objection to partition the suit land. Plaintiff had sold his share to Gumat Ram and Viri Singh and he has no right, title and interest over the suit land. As per partition, he is in possession of the field named as Gass, Swar, Tipra and Manghu got the field named as Nehra. Parma Nand was Lambardar during his life time.

16. DW-3 Uttam Chand has deposed that defendants are owners in possession of the suit land as per the local names of the fields named as Gass, Swar, Tipra and Nehra. Previously, defendants and plaintiffs were tenants of Mahant Ram and thereafter they became owners in possession.

17. DW-4 Chet Ram has deposed that previously the suit land was in the ownership of Mahant Ram and in possession of tenants Jhali and Balak Ram. Balak Ram and Jhali used to give 1/4th share to Mahant Ram about 40 years ago. He used to collect the crop from the tenants and used to give it to the owner. After the death of Balak Ram, it was inherited by Manghru and after the death of Jhali, the suit land was inherited by Parma Nand, Bashaku etc. After the death of Balak Ram and Jhali, the suit land was in possession of plaintiff and defendants. Thereafter, by way of law, they have become owners in possession. According to him, Halqua Patwari and Kanungo were present on the spot when the suit land was partitioned. At that time, both the parties were present on the spot. Parma Nand was Lambardar. Parma Nand consented for partition and the possession was handed over to both the parties irrespective of their local names.

18. DW-5 Narindera Kumari has brought register of conferment of occupancy rights vide Ex.DW-5/A and certificate Ex.DW-5/B. These were correct as per original record.

19. PW-6 Bhup Singh has deposed that in the year 1988, he was Reader to Tehsildar. He has personally identified Parma Nand, who was Lambardar at that time. Parma Nand being land owner was paid compensation of Rs. 453/- by tenants. Thereafter,

refund voucher was issued by the Land Reform Officer to Parma Nand and on that day he has identified Parma Nand. Thereafter, L.R.O. released a sum of Rs. 453/- to Parma Nand vide Ex.DW-5/A.

20. According to Jamabandi Ex.PA for the year 1987-88 and Ex.AZ-1 for the year 1992-1993, the suit land was recorded to be jointly owned by the plaintiff alongwith defendants. Plaintiff Parma Nand was recorded to be in possession of the suit land as co-sharer. These entries were reiterated in the copy of Jamabandi for the year 1997-98 Ex.AZ-2. In Missal Haquiat Bandobast Jadid Ex.PB, plaintiff has been recorded owner of the suit land, but in the column of possession, he has been recorded as tenant alongwith Soju and Basakhu, predecessor of the defendant Nos. 2 to 7 and Manghru defendant No.1. All of them have been recorded as occupancy tenants over the suit land. However, the suit land was recorded in possession of plaintiff Parma Nand as co-sharer being occupancy tenant and owner. In the copy of Jamabandi for the year 1971-72 Ex.PC and Ex.DX, plaintiff has been shown as owner of the suit land, but in the column of possession, defendants alongwith plaintiff have been recorded as occupancy tenants over the suit land. In the copy of Jamabandi for the year 1957-58 Ex.DZ, similar entry existed in which plaintiff Parma Nand has been recorded as owner of the suit land, but in the column of possession Soju and Basakhu, predecessors of defendant Nos. 2 to 7 and Manghru defendant No.1 along with plaintiff have been recorded as occupancy tenants over the suit land. It is, thus, evident from the revenue record produced on record that Soju and Basakhu predecessors of defendant Nos. 2 to 7 alongwith Manghru were recorded as occupancy tenants over the suit land alongwith plaintiff. According to mutation Ex.PE, Soju and Basakhu predecessors of defendant Nos. 2 to 7 alongwith defendant No.1 continued to be recorded as occupancy tenants over the suit land. The proprietary rights were conferred upon the defendants on 26.7.1975 vide Ex.PD.

21. The plaintiff has miserably failed to prove that he was sole tenant over the suit land and the defendants were never inducted as tenants over the suit land. The plaintiff has not produced any revenue record to the effect that he was recorded sole tenant over the suit land. He has not examined the legal heirs of Mahant Ram, previous owner, that it was the plaintiff Parma Nand, who was inducted as sole tenant and the predecessors-in-interest of the defendants were never inducted as tenants by the previous owner of the suit land. The entries showing the predecessors-in-interest of the defendants as occupancy tenants were continuous and remained un-rebutted. In the oral evidence, it has come that defendants were occupancy tenants over the suit land. The oral deposition has been duly supported by the revenue record. Parma Nand had agreed to the partition proceedings as per statement of DW-1 Gauri Singh. DW-2 Bhup Singh, Reader to SDM, Gohar has deposed that in partition proceedings before the AC-1st Grade on 26.11.1991, he has recorded the statement of Parma Nand son of Jhali, Maghu son of Bashaku son of Soju etc. on the instructions of AC-1st Grade. The statements were explained and read over to them and after admitting the same to be correct, it was jointly signed by them. While appearing again as DW-6 Bhup Singh has also deposed that he was Reader to Tehsildar in the year 1988. Parma Nand was Lambardar at that time and on 12.7.1988 refund voucher was issued in favour of Parma Nand by the Land Reform Officer regarding payment of Rs. 453/- vide Ex.PW-5/A. DW-6 Bhup Singh has not been cross-examined. It has come in the statement of DW-2 Manghru that ¼th of produce was paid as rent to the owners and during the year 1975 they became owners of the suit land on payment of compensation of Rs. 450/-. Mutation was also attested in their favour in the presence of Parma Nand and he also received the amount of compensation of Rs. 450/-. DW-4 Chet Ram has also deposed that he had been collecting the rent in the shape of produce from the tenants on behalf of Mahant Ram and the predecessors of the defendants have been paying rent to him regarding

cultivation of the suit land. DW-5 Narindera Kumari has proved copy of challan form Ex.PW-5/B and copy of refund voucher Ex.PW-5/A.

22. The plaintiff has taken a mutually contradictory stand, i.e. he was sole tenant over the suit land and alternatively he has prayed that he has become owner of the suit land by way of adverse possession. The plea of adverse possession could not be taken by the plaintiff. The plea of adverse possession is a shield and not a sword. Moreover, the plaintiff has not proved the ingredients of adverse possession. It was necessary to prove the ingredients of adverse possession. The plea of plaintiff simplicitor was that defendants tried to interfere in the suit land but their attempts were foiled by the plaintiff. Merely that the attempt of defendants of interfering in the suit land was foiled does not entitle the plaintiff and in no manner proves that the plaintiff has denied the title of the defendants over the suit land. The plaintiff has never denied the right of the co-sharers over the suit land. He has never asserted his own hostile possession over the suit land till the filing of the suit. The possession of one co-sharer is presumed to be on behalf of all the co-sharers until plea of adverse possession is taken and proved. The proprietary rights were conferred upon the defendants on 26.7.1975 and the mutation was also attested. As per pleadings, cause of action arose to the plaintiff in the year 1979 and the suit was filed in year 1995. The suit was filed beyond the period of limitation. The suit was required to be filed within one year from the date of conferment of proprietary rights by the Land Reform Officer on 26.7.1975. The conferment of proprietary rights cannot be set aside after a period of 20 years.

23. Their Lordships of the Hon'ble Supreme Court in ***Tribhuvanshankar*** vs ***Amrutlal***, (2014) 2 SCC 788 have laid down that the possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law. Their Lordships have held as under:

> **"34. The conception of adverse possession fundamentally contemplates a hostile possession by which there is a denial of title of the true owner. By virtue of remaining in possession the possessor takes an adverse stance to the title of the true owner. In fact, he disputes the same. A mere possession or user or permissive possession does not remotely come near the spectrum of adverse possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession. It has been held in Secy. Of State for India In Council v. Debendra Lal Khan, 1934 AIR(PC) 23 that the ordinary classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario.**
>
> **37. It is to be borne in mind that adverse possession, as a right, does not come in aid solely on the base that the owner loses his right to reclaim the property because of his willful neglect but also on account of the possessor's constant positive intent to remain in possession. It has been held in P.T. Munichikkanna Reddy and others v. Revamma and others, 2007 6 SCC 59."**

24. The order passed by the Land Reform Officer conferring proprietary rights upon the defendants and mutation No. 58 dated 26.7.1975 attested in favour of defendants is legal and valid. Defendants have become co-owners after conferment of the proprietary rights upon them on 26.7.1975 alongwith plaintiff. It was joint property of the parties.

25. Mr. Bhupender Gupta, learned Senior Advocate has vehemently argued that the proprietary rights have been conferred upon the defendants by AC-II Grade. This

question has been raised for the first time during the arguments. This plea is beyond the substantial questions of law framed at the time of admission of the appeal. This plea cannot be taken for the first time at the time of arguments before this Court. Moreover, the opposite side cannot be taken by surprise by raising a question, which was never formulated at the time of admission of the appeal.

26. Both the courts below have correctly appreciated the oral as well as documentary evidence led by the parties and there is no need to interfere with the well reasoned judgments and decrees passed by both the courts below.

27. The substantial questions of law are answered accordingly.

28. In view of the analysis and discussion made hereinabove, there is no merit in the present appeal and the same is dismissed.

CMP No. 16/2012

29. CMP No. 16/2012 was preferred by the respondents-defendants for modification of order dated 25.4.2007. The parties were directed to maintain status quo vide order dated 25.4.2007. Reply was filed by the plaintiffs. It was denied that they have changed the nature of the land. It was undertaken that they have no intention to do so till the appeal is finally decided by the Court. Consequently, the present application is disposed of. No costs.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Shri Hoshiyar Singh .....Appellant

Versus

Smt. Parmeshwari Devi & others ...Respondents

FAO No. 178 of 2009
Decided on : 1.1.2016

Motor Vehicles Act, 1988- Section 166- Claimant pleaded that he was taken to primary health Centre, Dhami and was under treatment at IGMC, Shimla- he had not examined any person from PHC, Dhami nor had he placed any document on record to prove that he had sustained injuries on the date of the accident- held, that in these circumstances, Tribunal had rightly dismissed the claim petition- appeal dismissed. (Para-9 to 11)

For the appellant : Mr. V.D. Khidtta, Advocate vice Mr. I.S. Chandel, Advocate.
For the respondents: Nemo for respondents No. 1 & 2.
Ms. Shilpa Sood, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

This appeal is directed against the award, dated 12th January, 2009, made by the Motor Accident Claims Tribunal, Shimla, Himachal Pradesh (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 39-S/2 of 2006, titled Shri Hoshiyar Singh versus Smt.

Parmeshwari Devi & others, whereby the claim petition came to be dismissed (hereinafter referred to as the "impugned award").

2. The insurer, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality so far it relates to them.

3. The claimant has questioned the impugned award on the grounds taken in the memo of appeal.

4. The claimant had invoked the jurisdiction of the Tribunal in terms of Section 166 of the Motor Vehicles Act, 1988, for granting compensation to the tune of Rs.3,00,000/-, as per the break-ups given in the claim petition.

5. It is averred in the claim petition that the accident was caused by driver, Madan Lal, respondent No. 2 in the claim petition, while driving truck bearing registration No. HP-51-4675, rashly and negligently, on 20.06.2004, at about 3.30 p.m., at Baghipul on Basantpur Dhami Road, District Shimla, in which, claimant sustained injuries, was taken to Primary Health Centre, Dhami and thereafter, was under treatment at Indira Gandhi Medical College, Shimla.

6. The respondents contested the claim petition on the grounds taken in their memo of objections.

7. Following issues came to be framed by the Tribunal:

"1) Whether the petitioner suffered injuries due to rash and negligent driving of truck No. HP-51-4675 by respondent No. 2 Madan Lal, as alleged? …OPP

2) If issue No. 1 is proved, whether the petition is entitled to compensation, if so, to what amount and from which of the respondents? ….OPP

3) Whether the petition is not maintainable, as alleged? ….OPR-3

4) Whether vehicle in question was being driven at the time of accident in violation of terms and conditions of the insurance policy?….OPR-3

5) Whether respondent No. 2 was not possessing a valid and effective driving licence at the time of accident? …OPR-3

6) Whether the petition has been filed by the petitioner in collusion with respondent No. 1, as alleged?...OPR-3

7) Whether the petitioner was traveling in the vehicle in question as a gratuitous passenger, if so its effect? …OPR-3

8) *Relief."*

8. The parties have led evidence.

9. The claimant has neither examined any person from the Primary Health Centre, Dhami nor has placed on record any document to prove that he has sustained injuries on the date of accident, i.e. 20.06.2004. Thus, has failed to prove the said fact.

10. The Tribunal has rightly made discussion in para-18 of the impugned award.

11. Having said so, the impugned award is well-reasoned, needs no interference. Accordingly, the same is upheld and the appeal is dismissed.

12. Send down the record after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Jagtar Singh and another .....Appellants
Versus
Sneh Lata and others ..... Respondents

FAO No.319 of 2009.
Decided on : 01.01.2016

Motor Vehicles Act, 1988- Section 149- Witnesses from Regional Transport Authority, Bilaspur clearly stated that the driving licence was never issued from their office- certificate and copy of driving licence also show that driver did not possess a valid licence on the date of accident- held, that Tribunal had rightly saddled the insurer with liability with right to recovery. (Para- 2 to 6)

For the appellants: Mr.Subhash Sharma, Advocate.
For the respondents: Mr.N.K. Thakur, Senior Advocate, with Mr.Rahul Verma, Advocate, for respondents No.1, 2 and 4.
Mr.J.S. Bagga, Advocate, for respondent No.5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 30th March, 2009, passed by the Motor Accident Claims Tribunal, Fast Track Court, Una, (for short, the Tribunal), whereby compensation to the tune of Rs.7,70,000/-, alongwith interest at the rate of 6% per annum, came to be awarded in favour of the claimants and the insurer was saddled with the liability, with right of recovery, (for short, the impugned award).

2. The claimants and the insurer have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to them.

3. Feeling aggrieved, the driver and the owner have questioned the impugned award on the ground that the Tribunal has fallen in error in saddling them with the liability and that the insurer has wrongly been exonerated.

4. I have heard the learned counsel for the parties and have gone through the impugned award as well as the pleadings of the parties.

5. It was for the insurer to prove that the driver of the offending vehicle was not having a valid and effective driving licence, has examined RW-3 Shri Umesh Tripathi, employee of Regional Transport Authority, Bilaspur in Chhattisgarh, who has clearly stated that the driving licence, in question, was never issued from their office. Certificate Ext.RW-3/A and copy of the driving licence Ext.RW-2/C clearly establish that the driver of the offending vehicle was not having a valid licence on the date of accident. The Tribunal has rightly made discussion on the said issue in paragraph 16 of the impugned award.

6. Having said so, no interference is required in the impugned award. Accordingly, it is held that there is no merit in the appeal and the same is dismissed. Consequently, the impugned award is upheld.

7. The Registry is directed to release the amount of compensation in favour of the claimants, strictly in terms of the impugned award.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Kailash Chand .....Petitioner.
Versus
State of H.P. & others ....Respondents.

Cr.WP No. 27 of 2015
Reserved on : 23.12.2015.
Date of Decision: 1st January, 2016.

Constitution of India, 1950- Article 226- Petitioner claimed that he and his cousin were illegally confined in the Police Station and were beaten for possessing mobile phone- he claimed that he had suffered fracture of leg due to the beating- his medical examination was conducted at the instance of the Court- it was reported that petitioner had old healed fracture of the head of 5th Metatarsal- held, that complicated question of facts are involved which cannot be adjudicated in the writ petition- petitioner directed to approach the Civil Court for seeking compensation/damages. (Para-1 to 5)

For the Petitioner: Mr. Sanjeev Bhushan, Senior Advocate with Ms. Abhilasha Kaundal, Advocate.
For Respondents No. 1 to 3: Mr. P.M. Negi, Deputy Advocate General.
For Respondents No.4 to 6: Mr. Ajay Mohan Goel, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge

The petitioner herein along with his cousin Balbir Singh stand alleged to be illegally detained in Police Station, Ghumarwin from the night of 25.10.2015 uptill 26.10.2015. Balbir Singh, the cousin of the petitioner was detected by respondents No. 4 to 6 to be in possession of a cell phone purportedly stolen from a shop owned by one Randeep Kumar located at Ghumarwin. When on 24.10.2015, both Balbir Singh and the petitioner were at Suni the former received a call on his mobile from Police Station, Ghumarwin, apprising him of the factum of his holding possessin of a mobile purportedly stolen from the premises of Randeep Kumar besides warranting hence his presence at Police Station, Ghumarwin for proceeding whereto a request was made upon Balbir Singh. However, the petitioner also accompanied Balbir Singh to Police Station, Ghumarwin. Both reached Police Station, Ghumarwin on 25.10.2015 at around 9/10 O'clock. The petitioner is alleged to be during his illegal confinement therein from the night of 25.10.2015 uptill 26.10.2015 mercilessly beaten by respondents No.4 to 6. The petitioner on 26.10.2015 as divulged by

prescription slip comprised in Annexure P-1 was advised intake of medicines recited therein for treatment of sprain. Under Annexure P-2, the petitioner made a complaint to the Director General of Police, Himachal Pradesh ventilating therein his grievance of his when he stood illegally detained from the night of 25.10.2015 to 26.10.2015 in Police Station, Ghumarwin his therein standing belaboured by respondents No.4 to 6. Under Annexure-D, appended to the reply furnished by respondents No.1 to 3, the Director General of Police, Himachal Pradesh, Shimla on his receiving the complaint of the petitioner comprised in Annexure P-2 forwarded it to respondent No.3 for appropriate action. The petitioner was medically examined at Civil Hopsital, Ghumarwin and as portrayed/unraveled by Annexure –E, appended to the reply furnished by respondents No.1 to 3, the petitioner stood opined therein to not have suffered any fracture or dislocation. However, the petitioner on visiting IGMC, Shimla on 31.10.2014 whereupon he stood examined by the doctor concerned was opined to have suffered a fracture of leg. On the doctor at IGMC, Shimla, who attended upon the petitioner on his visiting it on 31.10.2015 having opined under annexure P-3, of his having suffered fracture of leg led him to obtain treatment thereat inclusive of application of plaster on broken bone.

2. On the aforesaid factual matrix, the petitioner attributes to respondents No.4 to 6 the tortious act of theirs mercilessly belabouring him during his illegal detention from the night of 25.10.2015 to 26.10.2015 at Police Station, Ghumarwin sequeling fracture of bone of leg hence he claims compensation from them. However, there is a disclosure in Annexures-B, C and D appended to the reply furnished by respondents No.1 to 3 to the writ petition, especially in the statement of Balbir Singh alleged to be holding possession of a purportedly stolen cell phone from the premises of Randeep Kumar and who stood accompanied by the petitioner to Police Station, Ghumarwin of no beatings standing delivered on the person of the petitioner besides it unfolds the factum of his not standing illegally confined from the night 25.10.2015 till 26.10.2015 at Police Station, Ghumarwin. Moreover, when Annexure–E comprising the MLC prepared on 28.10.2015 by the Medical Officer of Civil Hospital, Ghumarwin records an opinion of the petitioner not suffering any fracture or dislocation does prima facie countervail the grievance of the petitioner of the fracture detected to be suffered by him by the doctor attending upon him at IGMC, Shimla on 31.10.2015 bearing any causal connection with the purported belabourings perpetrated upon his person during his alleged illegal confinement from the night of 25.10.2015 till 26.10.2015 at Police Station, Ghumarwin. With the preparation or scribing of Annexure-E, being prior to the visit of the petitioner to IGMC, Shimla on 31.10.2015, the omission of a revelation in Annexure-E of the petitioner suffering any fracture or dislocation also cannot when prepared in quick immediacy to his purported illegal confinement whereat he stood allegedly mercilessly beaten by respondents No.4 to 6, prima facie sequel any inference of the fracture or dislocation of his bone as stood subsequently detected at IGMC, Shimla on 31.10.2015 being relatable to any belabourings standing purportedly perpetrated upon his person by respondents No.4 to 6 during his illegal confinement w.e.f. 25.10.2015 to 26.10.2015 at Police Station Ghumarwin.

3. On 18th December, 2015 this Court had directed the Medical Superintendent, Deen Dayal Upadhyay Hospital, Shimla to examine the petitioner afresh and to also conduct his x-ray for establishing whether the petitioner has suffered any fracture or not on 25.10.2015. In compliance thereto, the apposite opinion has been placed on record by the Senior Medical Superintendent, DDU (Zonal) Hospital, Shimla, the relevant portion whereof stands reproduced hereinafter:-

> "The petitioner is old healed fracture of the head of 5th Metatarsal. Metatarsophalangeal Joint Appear Normal. No abnormal collection noted. Rest of the bones are unremarkable."

4. The Senior Medical Superintendent, DDU (Zonal) Hospital, Shimla has not categorically unraveled therein the factum of the fracture of the head of 5th Metatarsal as detected by him to stand suffered by the petitioner being relatable to 25.10.2015 or 26.10.2015, whereto it purportedly stood begotten by the petitioner during his alleged unlawful detention/confinement at Police Station, Ghumarwin in sequel to his purportedly standing belaboured thereat by respondents No.4 to 6. Dehors the above when the espousal by the petitioner of his standing detected on 31.10.2015 at IGMC, Shimla to suffer fracture of leg stands fragrantly contradicted by the opinion of the Senior Medical Superintendent, DDU (Zonal) Hospital, Shimla inasmuch as the latter on 18.12.2015 on examining the petitioner detected his suffering an old healed fracture of the head of 5th Metatarsal necessarily ingrains it with a vice of falsity. Moreover, this Court is faced with Annexure-E unfolding the factum of the petitioner on standing examined by the Medical Officer at Civil Hospital, Ghumarwin on 28.10.2015 not thereat standing detected to suffer any fracture or dislocation vis-a-vis the report of the Senior Medical Superintendent, DDU (Zonal) Hospital, Shimla though carrying a reflection therein of the petitioner herein suffering an old healed fracture yet it being reticent qua the time of its occurrence on the person of the petitioner precludes this Court to categorically determine with firmness qua its carrying any causal connection with the alleged tortious act of respondents No.4 to 6 belabouring the petitioner from the night of 25.10.2015 to 26.10.015 during his unlawful confinement at Police Station, Ghumarwin. With the obstacle aforesaid besetting this Court in relating the fracture suffered by the petitioner detected on 31.10.2015 at IGMC, Shimla by the doctor attending upon him to his standing belaboured by respondents No.4 to 6 during his purported unlawful confinement from the night of 25.10.2015 to 26.10.2015 at Police Station Ghumarwin rather with Annexure-E scribed in quick spontaneity to the commission of the alleged tort of assault and battery upon him by respondents No.4 to 6 during his purported illegal confinement from 25.10.2015 to 26.10.2015 at Police Station, Ghumarwin subjugating any inference of any fracture detected on 31.10.2015 at IGMC Shimla standing suffered thereat by the petitioner does also vigorously prima facie dispel the factum of its commission by respondents No.4 to 6. In aftermath with lack of connectivity or relatibility inter se the fracture of leg suffered by the petitioner and its standing detected on 31.10.2015 at IGMC, Shimla by the doctor attending upon him with the purported tort of assault and battery purportedly committed upon him by respondents No.4 to 6 during his illegal confinement from 25.10.2015 to 26.10.2015 at Police Station, Ghumarwin obviously also erodes any espousal for compensation by the petitioner for its commission on his person by respondents No.4 to 6. Moreover, with contradictions to the extent referred to hereinabove intra se the opinion of the Senior Medical Superintendent, DDU (Zonal Hospital), Shimla vis-a-vis the opinion of the doctor attending upon the petitioner on 31.10.2015 at IGMC, Shimla prima facie benumbs the efficacy of the propagation by the petitioner of any fracture of his leg standing detected at IGMC, Shimla on 31.10.2015 besides prima facie renders it to be bereft of any credence.

5. The learned counsel appearing for the petitioner contends qua Annexure-E being concocted. He also contends qua the statements of Balbir Singh and Chuni Lal comprised in Annexure-B and Annexure-C supporting the stand canvassed by the respondents in their reply too being ridden with falsity and of theirs being unamenable for any reliance being placed thereupon. The contest qua the authenticity or otherwise of Annexure-E or qua any falsity ingraining the statements of Chuni Lal and Balbir Singh who therein support the stand as espoused by the respondents in their reply cannot come to be tested by this Court in this writ petition. The contests espoused qua the aforesaid by the learned counsels arouse complex disputed questions of fact warranting receipt of conclusive evidence thereon. Adduction of firm and conclusive evidence thereon by the petitioner on his instituting a civil suit for damages or compensation arising from the purported

commission of tort of assault and battery on his person by respondents No.4 to 6 during his alleged illegal confinement from 25.10.2015 to 26.10.2015 at Police Station, Ghumarwin, is a sine qua non for the petitioner succeeding in his claim for damages or compensation anvilled upon the alleged commission of tort of assault and battery upon his person by respondents No.4 to 6. In sequitur , the engendering of disputed questions of fact in this writ petition as stand germinated from the aforesaid complicated complex questions of fact impinging upon the authenticity or otherwise of Annexure-E and upon the statements of Chuni Lal and Balbir Singh respectively comprised in Annexure-B and Annexure-C, wherein the role, if any, of respondents No.4 to 6 in allegedly perpetrating belabourings upon the petitioner during his purported illegal confinement from the night of 25.10.2015 till 26.10.2015 at Police Station, Ghumarwin, stands absolved, cannot in a short shrift manner merely on exchange of affidavits in support of the claim of the petitioner and in opposition thereto by the respondents stand adjudicated upon by the Writ Court as then it would tantamount to accepting the version spelt out in the respective affidavits of the contestants before this Court even when neither the Medical Officer, who prepared Annexure-E nor Balbir Singh and Chuni Lal have withstood the rigor of cross-examination for eliciting in course thereof the truth of portrayals therein. For unearthing the truth or otherwise of the recitals in Annexure-E and of portrayals in Annexures B and C the cross-examination of their respective authors is imperative which however cannot be held in proceedings before a Writ Court rather when their respective examinations-in-chief besides their cross-examinations for testing the vigour and veracity of portrayals in Annexures B to E, can obviously stand carried out only during the course of the trial of an apposite suit instituted by the petitioner herein before the Civil Court of competent jurisdiction claiming therein damages arising from the alleged commission of tort of assault and battery upon him by respondents No.4 to 6 during his alleged illegal confinement at Police Station, Ghumarwin, concomitantly constrains this Court to merely on affidavits of contestants before this Court existing on record hence not dwell upon the authenticity or otherwise of their rival assertions or qua the authenticity or otherwise of Annexure-E or the statements of Chuni Lal and Balbir Singh comprised in Annexures B and C. Also this Court deems it fit and proper to not grant the reliefs to the petitioner as prayed for by him in the instant writ petition. Contrarily this Court deems it fit and appropriate to reserve a right in favour of the petitioner to institute a suit for damages/compensation before the Civil Court of competent jurisdiction arising from the commission of tort of assault and battery upon his person by respondents No.4 to 6 during his alleged illegal confinement at Police Station, Ghumarwin, Bilaspur. Any observation made herein-above shall not influence the Civil Court of competent jurisdiction when seized of the apposite civil suit instituted before it by the petitioner herein. Writ petition stand disposed of, so also, the pending applications.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Krishanu Ram .....Appellant.

Versus

Bhagirath and others .....Respondents

FAO (MVA) No. 414 of 2009

Date of decision: 1st January, 2016.

Motor Vehicles Act, 1988- Section 166- Deceased was alighting from the bus- driver started the bus without getting a signal from the conductor- held, that driver was supposed

to wait for the signal of the conductor before starting the bus- finding recorded by the Tribunal that vehicle was in the state of slow pace and there was no negligence of the driver and conductor is not acceptable - claimant is not supposed to prove his case beyond reasonable doubt but has to prove a prima facie case- respondent No.3 had also stated that deceased had jumped out of the window of the moving bus- hence, finding recorded by the Tribunal cannot be accepted- deceased was 55 years of the age at the time of accident- she was managing household and her husband - she was looking after the children- her family contribution was not less than Rs. 5,000/- per month- 1/3rd of the amount has to be deducted - the claimant has lost source of dependency of Rs. 4,000/- per month- considering the age of the deceased, multiplier of '9' is applicable- thus, compensation of Rs. 4,32,000/- (Rs. 4000 x 12 x 9) is payable towards the loss of dependency- compensation of Rs. 10,000/- awarded each under the heads 'Loss of consortium', 'Funeral expenses', loss of 'love and affection' and 'loss of estate' – thus, total compensation of Rs. 4,72,000/- awarded along with interest @ 7.5% per annum from the date of the filing of the claim petition.

(Para-6 to 27)

Cases referred:

Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another, (2013) 10 Supreme Court Cases 646

N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc., AIR 1980 Supreme Court 1354

Oriental Insurance Co. versus Mst. Zarifa and others, AIR 1995 Jammu and Kashmir 81.

Cholamandlan MS General Insurance Co. Ltd. Versus Smt. Jamna Devi and others, : I L R 2015 (V) HP 207

Tulsi Ram versus Smt. Mena Devi and other, I L R 2015 (V) HP 557

Anil Kumar versus Nitim Kumar and others , I L R 2015 (IV) HP 445

Sarla Verma and others versus Delhi Transport Corporation and another AIR 2009 SC 3104

Reshma Kumari and others versus Madan Mohan and another, 2013 AIR SCW 3120,

Munna Lal Jain and another versus Vipin Kumar Sharma and others, 2015 AIR SCW 3105

For the appellant: Mr. K.S. Banyal, Sr. Advocate with Mr. Shivendera Singh, Advocate.

For the respondents: Mr.Jaggan Nath, Advocate, for respondent No.2.
Mr. S.C. Sharma, Advocate, for respondent No.3.
Nemo for respondent No.1.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral)*

This appeal is directed against the judgment and award dated 28.4.2009, made by the Motor Accident Claims Tribunal Bilaspur, H.P. in MAC No. 85 of 2007, titled *Krishanu Ram versus Bhagi Rath and others*, for short "the Tribunal", whereby the claim petition filed by the claimant came to be dismissed, hereinafter referred to as "the impugned award", for short.

2. Smt. Shanti Devi was traveling in the bus bearing registration No. HP-63-0467 owned by HRTC, on 21.8.2007, which met with an accident while she was de-boarding the said bus at Ghagus (Bridge) and died on the spot. The claimant Krishanu Ram-husband of the deceased, filed claim petition for the grant of compensation to the tune of Rs.10 lacs, as per the break-ups, given in the claim petition.

3. The claim petition was resisted and contested by the owner, driver and conductor and following issues came to be framed.

(i) Whether the deceased Smt. Shanti Devi died in a motor vehicle accident on account of rash and negligent driving of Bus No. HP-63-0467, owned by respondent No.3 and being driven by respondent No. 1 which took place on 21.8.2007, at about 10 a.m. at village Ghagus (Ghagus Bridge), OPP.

(ii) If issue No. 1 is proved in affirmative, to what amount of compensation, the petitioner is entitled to and from which of the respondents? OPP.

(iii) Whether the petition is bad for non-joinder of necessary party? OPR-2.

(iv) Relief.

4. The claimant has examined H.C. Jai Ram (PW2), Sh. Mast Ram (PW3), Sh. Rattan Lal (PW4) and himself stepped into the witness-box as PW1.

5. Respondents, on the other hand, have not led any evidence. However, driver Bhagi Rath stepped into the witness-box as RW1. Thus, the evidence led by the claimant has remained un-rebutted and despite that impugned award has been passed by the learned Tribunal.

6. It is an admitted fact that the deceased was traveling in the offending vehicle and was de-boarding rather alighting from the bus and in that process, without getting signal from the conductor, the driver drove the bus ahead. In terms of the Motor Vehicles Act, for short "the Act" read with Motor Vehicles Rules, conductor was supposed to give signal to the driver and driver was supposed to wait for the signal of the conductor before starting the bus.

7. The driver had to exercise due care and caution. It is beaten law of the land that it is the driver with whom the loss risk lies.

8. The Tribunal has recorded in the impugned award that the vehicle was in the state of slow pace and thus it is not the negligence of the driver or the conductor. Perhaps the learned Tribunal has lost sight of the fact that in the claim cases, the claimant has not to prove the case by preponderance of probabilities or beyond reasonable doubt but is supposed to prove the case by *prima facie* proof that the accident was outcome of the rash and negligent driving of the driver.

9. It is apt to record herein that the law on motor accidents claim has gone through the see change. Even police report can be treated as claim petition, under Sections 158 (6) and 166 (4) of the Motor Vehicles Act, for short "the Act". The copy of FIR Ext. PW2/A is on the record, which do disclose that the FIR was lodged against the driver and the conductor.

10. The claimant has stated in the FIR that on reaching at Ghagus Bridge he and his wife were about to alight from the bus and his wife was standing at the front window of the bus. The driver suddenly drove the bus due to which his wife fell down on the bridge out of the front window of the bus and was crushed by rear tyre of the bus and died on the spot.

11. Respondent No. 3 in reply to para 24 of the claim petition stated that the bus was about to stop to give the pass to another vehicle and the deceased had jumped out

of the window of the moving bus. It is apt to reproduce para 16 of the reply filed by respondent No. 3 herein.

> *"16. Para No. 24 of the petition is admitted to the extent boarded the bus No. HP63-0467 rest of the para is wrong and not admitted as correct. It is submitted that the deceased Smt. Shanti Devi had died due to her own negligence. In fact the bus was about to stop to give the pass to another vehicle coming from opposite direction and the deceased had jumped out of the window of the moving bus, as such there is no negligence on the part of the driver of the said bus."*

12. The Tribunal recorded the findings in para 12 (a) of the impugned award contrary to the pleadings contained in para 16 quoted supra. It is apt to reproduce para 12 (a) of the impugned award herein.

> *"12 (a)That no passenger other than the deceased had alighted from the bus at Ghagus Bridge and (b) that the deceased had on her own without any signal to stop alighted or disembarked from the vehicle driven by respondent No. 1 at Ghagus Bridge and that too when the vehicle driven byrespondent No. 1 had not fully halted, which in any case was not its regular place to stop, but, was then in a state of movement, though , ion a state of slow movement, which pace of the vehicle may have prompted the deceased to take to alight from the bus even when it was not the scheduled place for the vehicle owned by respondent No. 3 to stop, it, which scheduled place was rather a little ahead of Ghagus Bridge, till, which stage, the deceased ought to have waited to disembark from the vehicle. This issue is decided against the petitioner."*

13. It is apparent that the averments contained in the reply to para 24 of the claim petition, statement of the claimant recorded in the FIR and the findings recorded by the Tribunal to this effect are contradictory to each other. Thus, the respondents have failed to prove the defence taken by them in the reply. Thus, the evidence led by the claimant has remained unrebutted.

14. It is beaten law of the land that the claim petition is to be determined summarily and that is why the Code of Civil Procedure is not applicable. Some of the provisions of Code of Civil Procedure have been made applicable in terms of the provisions of the Rules framed by the Central Government as well as State Government. The State of Himachal Pradesh has also framed the Himachal Pradesh Motor Vehicles Rules, 1999 (for short "the Rules") in terms of Sections 169 and 176 (b) of the Motor Vehicles Act, and only some of the provisions of the Code of Civil Procedure have been made applicable.

15. The mandate of Chapter XI of the Motor Vehicles Act provides for the grant of compensation to the victim without succumbing to the niceties and technicalities of procedure. It is beaten law of the land that technicalities or procedural wrangles and tangles have no role to play.

16. My this view is fortified by the judgment delivered by the apex court in ***Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another***, reported in ***(2013) 10 Supreme Court Cases 646, N.K.V. Bros. (P.) Ltd. versus M. Karumai Ammal and others etc.,*** reported in ***AIR 1980 Supreme Court 1354*** **and** ***Oriental Insurance Co. versus Mst. Zarifa and others,*** reported in ***AIR 1995 Jammu and Kashmir 81.***

17. This Court has also laid down the similar principles of law in ***FAO No. 692 of 2008*** decided on 4.9.2015 titled ***Cholamandlan MS General Insurance Co. Ltd. Versus Smt. Jamna Devi and others***, ***FAO No. 287 of 2014*** along with connected matter,

decided on 18.9.2015 titled ***Tulsi Ram versus Smt. Mena Devi and others***, ***FAO No. 72 of 2008*** along with connected matter decided on 10.7.2015 titled ***Anil Kumar versus Nitim Kumar and others*** and ***FAO No. 174 of 2013*** decided on 5.9.2014 titled ***Kusum Kumari versus M.D. U.P Roadways and others.***

18. Having said so, it is held that the claimant has proved that the accident was outcome of the rash and negligent driving of the driver. Accordingly, findings returned on issue No. 1 are set aside and is decided in favour of the claimant.

19. The Tribunal has not discussed issues No. 2 and 3 in view of the findings recorded on issue No. 1. It has to be determined to what amount of compensation the claimant is entitled to.

20. Before I deal with issue No. 2, I deem it proper to deal with issue No. 3 at the first instance. Respondent No. 2, i.e., conductor of the offending bus had taken the plea in his reply that the claimant has not arrayed his legal representatives as party petitioner in the claim petition.

21. It is stated that deceased was 55 years of age at the time of accident. She has left behind her husband claimant Krishanu Ram, one son and two daughters. All are entitled to compensation for the simple reason that the son and daughters have also lost their mother. The loss of mother is irreparable. The claim petition cannot be dismissed on the said count. Accordingly, issue No. 3 is decided in favour of the claimant and against the respondents.

22. **Issue No. 2.** The question is what is just and appropriate compensation to be awarded in favour of the claimant. Admittedly, the deceased was a house wife, 55 years of age, was maintaining house hold goods, her husband and also looking after the children and her family. By a guess work, it can be safely held that her contribution towards the family was not less than Rs.5000/- per month for the simple reason that if a person has lost his wife he has to manage the house-holds and has to pay not less than Rs.4500/- per month to a labourer. Accordingly, it is held that the claimant has lost source of dependency to the tune of Rs.5000/- per moth.

23. Keeping in view ***Sarla Verma and others versus Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104*** and upheld in ***Reshma Kumari and others versus Madan Mohan and another***, reported in ***2013 AIR SCW 3120***, 1/3rd has to be deducted. Thus, the claimant has lost source of dependency to the tune of Rs.4000/- per month.

24. Admittedly, the age of the deceased was 55 years at the time of accident. Keeping in view the age of the deceased read with ***Munna Lal Jain and another*** versus ***Vipin Kumar Sharma and others*** reported in ***2015 AIR SCW 3105***, the multiplier is to be applied according to the age of the deceased. The multiplier of "9' is applicable, keeping in view ***Sarla Verma and others versus Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104*** and upheld in ***Reshma Kumari and others versus Madan Mohan and another***, reported in ***2013 AIR SCW 3120***, referred to supra and is applied accordingly. Thus, the claimant has lost total source of dependency to the tune of Rs.4000x12x9= Rs.4,32,000/-.

25. The claimant is also entitled to Rs.10,000/- each under the heads ***"Loss of consortium", "Funeral expenses"*** loss of ***"love and affection"*** and "***loss of estate".*** Total to the tune of ***Rs.40,000/-.***

26. The deceased had one son and two daughters. All are held entitled to compensation.

27. Thus, in all, the claimants are held entitled to Rs.4,72,000/-, alongwith interest @7.5% per annum from the date of claim petition till its realization.

28. The HRTC is directed to deposit the entire amount in this Registry within eight weeks from today. The Registry, on deposit of the amount, is directed to release 50% of the amount in favour of the claimant-husband and 50% to the son and daughters in equal sharers, through payees cheque account, or by depositing in their accounts.

29. The impugned judgment is set aside, claim petition is granted and award as indicated above is passed in favour of the claimants and against the owner-HRTC.

30. The appeal stands disposed of, as indicated hereinabove.

31. Send down the record forthwith, after placing a copy of this judgment.

****

BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Co. Ltd. ....Appellant

Versus

Shri Jhenta Ram and others ...Respondents

FAO (MVA) No. 3 of 2008.
Judgment reserved on 18.12.2015.
Date of decision: 01.1.2016.

Motor Vehicles Act, 1988- Section 166- Claimant pleaded that his truck was parked on the left side of the road- a Tata Mobile was parked in front of the truck- Tata Mobile suddenly started moving backward and hit the truck due to which truck fell into the gorge- compensation was sought from the owner of the Tata Mobile- Claimant had taken Rs. 2,02,000 from the insurance company- an amount of Rs. 60,000./- was received as salvage- he claimed that market value of the vehicle was Rs. 3,50,000/- and the claim was restricted to Rs. 2,02,000/- wrongly- held, that difference of the amount can be claimed from the owner/insurer of the offending vehicle, where the full and final payment has not been received - Tribunal had rightly directed the Insurer to pay the difference of the amount- appeal dismissed. (Para-9 to 25)

Cases referred:

United India Insurance Co. Ltd. versus K. Chandrasekharachari and another, 2008 ACJ 640.

National Insurance Co. Ltd. versus Bilaspur Gramudhyog Association and others 2008 ACJ 2058,

National Insurance Company Ltd. versus Sebastian K. Jacob (2009) 4 SCC 778

G. Md. Masoom vs. S.K. Khader Vali and another 2005 ACJ 1802

Harkhu Bai and others versus Jiyaram and others 2005 ACJ 1332,

Kerala High Court in case titled United India Insurance Co. Ltd. versus Sekhara Marar 2013 ACJ 1279

For the appellant: Ms. Devyani Sharma, Advocate.
For the respondents: Mr. Karan Singh Kanwar, Advocate, for respondent No.1.
Respondents No. 2 and 3 ex parte.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

This appeal is directed against the judgment and award dated 14.7.2006, made by the Motor Accident Claims Tribunal-II Solan, H.P. in MAC Petition No. 13-S/2 of 2004, titled *Shri Jhenta Ram versus Sh. Abhay Singh and others*, for short "the Tribunal", whereby compensation to the tune of Rs.2, 07,000/- alongwith interest @ 9% per annum was awarded in favour of the claimant and insurer was saddled with the liability, hereinafter referred to as "the impugned award", for short.

2. Claimant Jhenta Ram filed claim petition before the Tribunal for the grant of compensation to the tune of Rs.2,71,142/-, as per the break-ups, given in the claim petition, on the ground that he is owner of truck No. HP-18-A-0476 financed by the Himachal Pradesh Scheduled Caste and Scheduled Tribe Corporation Solan by raising loan of Rs.3,86,000/-. It is averred that on 14.5.2003, this truck was being driven by its driver Shri Dharam Vir from Giankot Tehsil Rajgarh to Solan and when it reached near Amar Koti near Dharja at about 11.10 A.M. the driver parked the truck on the left side of the road. It is averred that a vehicle Tata Mobile bearing registration No. HP-07- 4774, loaded with goods came from Giripul and the driver parked the said vehicle in front of the said Truck. Tata Mobile suddenly and abruptly started moving backwards and it struck with full force with the truck, as a result of which truck fell into the gorge and offending Tata Mobile turned turtle on the road side.

3. FIR of the said incident was registered with the police Station Solan. It is averred that the market value of the said truck was Rs.3,50,000/- at the time of accident and also Rs.10,000/- was spent to retrieve the truck for bringing the salvage to the road side. In addition, a sum of Rs.1,73,142/- is due to the Himachal Pradesh Scheduled Caste and Scheduled Tribe Corporation Solan as balance loan amount. It is stated that Rs.2,02,000 was paid to him by his own insurance company and a sum of Rs.60,000./- only on account of salvage, meaning thereby that he has received total amount of Rs.2,62,000/- against actual loss of Rs.3,50,000/-. The claimant has claimed the balance amount of Rs.88,000/-, Rs.10,000/- on account of retrieving expenses of the salvage and Rs. 1,73,142/- being the balance due to the loan account, details of which is given in the claim petition. It is apt to quote para 21 of the claim petition herein.

> *"21.A sum of Rs. 2,71,142/- is claimed as special and specific damages on different counts detailed hereinafter. After from his specific and special damages, the applicant is also entitled to General Damages for the loss, pain and suffering caused to him on account of the total loss/damage to his vehicle in the accident dated 14.05.03.*
>
> *The vehicle no. HP-18A-0476, a Swaraj Mazda Open Truck, June 2001 Model had a total market value of Rs. 3,50,000/- at the time of the accident. The said vehicle was got financed by the Applicant from H.P.S.C. and S.T. Corporation Solan after taking a loan of Rs. 1.93 lacs at the interest rate of 7% compound repayable in quarterly installments w.e.f. 31.12.2001 to 31.03.2006.*

In the unfortunate accident on 14.05.03, the vehicle of the Applicant was totally and completely damaged and the same was virtually reduced to scrap. Apart from the total and complete loss of the vehicle valuing Rs. 3,50,000/- the applicant spent Rs. 10,000/- as retrieving charges (Chainkupi) for brining the salvage of the vehicle to the roadside. In addition to the above, a sum of Rs. 1,73,142/- is still due and payable by the Applicant to the Financers of the Vehicle i.e. H.P.S.C. and S.T. Development Corporation in the loan account of the said vehicle.

The Applicant has received the payment of Rs. 2,02,000/- only from his own insurer i.e. The Oriental Insurance Company Ltd. Nahan as against his claim of Rs. 3,50,000/- on account of the total loss/total damage of the vehicle in question and this amount has been credited/paid by the Insurance Company directly into the loan account of the Applicant. The Applicant has further sold the salvage of the vehicle for Rs. 60,000/- and thus, has received payment of only Rs. 2,62,000/- as against the actual loss of Rs. 3.50,000/-

The Applicant claims the balance amount of Rs. 88,000/-, Rs. 10,000/- on account of retrieving expenses of the salvage and Rs. 1,73,142/- being the balance due to the loan account of the Financers inclusive of all taxes upto 31.12.03. Thus, the total compensation claimed by the Applicant from the respondents jointly and severally comes to Rs. 2,71,142/-.

Appropriate and adequate General Damage are also claimed by the Applicant against the Respondent."

4. Respondents No. 2 and 3 contested and resisted the claim petition whereas respondent No.1-owner was proceeded against ex parte.

5. The Tribunal, on the basis of the pleadings of the parties, framed the following issues.

"1. Whether the accident and consequent damage caused to the truck bearing No. HP-18-A-0476 was attributed to rash and negligent driving of the offending Tata Mobile bearing No. HP-07-4774 on 14-5-2003 at about 11.15 AM at place Amarkoti near Dharaja as alleged?....OPP

2. Whether the petitioner is entitled to compensation, if so to what extent and from whom? ....OPP

3. Whether the offending Tata Mobile bearing No. HP-07-4774 is not duly insured with the respondent No. 3 as alleged? ...OPR-3

4. Whether the respondent No. 2 Gian Singh was not having valid and effective driving licence at the time of the accident. If so, its effect? OPR-3

5. Whether the offending Tata Mobile bearing No. HP-07-4774 is not duly registered with R.L.A. as alleged, if so what its effect? OPR-3

6. *Relief.*

6. Claimant examined as many as six witnesses, namely Jeet Ram (PW1), Satish Kumar (PW2), Satinder Singh (PW3), Madan Singh (PW4), Devi Dayal (PW5) and Dharam Vir truck driver stepped into the witness box as (PW6).

7. On the other hand, respondents examined three witnesses, namely Lekh Ram (PW2), Arun Ahauliwaila (PW3) and Gian Singh driver of Tata Mobile appeared in the witness-box as PW1.

8. The Tribunal, after scanning the evidence and the documents on the file held that the claimants have proved that the accident was outcome of rash and negligent driving of driver Gian Singh who had driven the offending vehicle Tata Mobile rashly and negligently. The said findings are not in dispute and have attained the finality.

9. I have gone through the evidence and perused the record. I am of the considered view that the claimant has proved issue No.1. It is apt to record herein that the driver, owner and insurer-appellant herein have not questioned the findings returned on issue No.1 thus, the same have attained the finality. Accordingly the findings returned on this issue are upheld.

10. Before I deal with issue No. 2, I deem it proper to deal with issues No. 3 to 5, at the first instance. Though the learned counsel for the appellant has not questioned the findings returned on these issues however, onus was on the appellant-insurer to discharge, has not led any evidence to prove that the driver of offending vehicle Tata Mobile was not insured with it, driver Gian Singh was not having a valid license and the offending vehicle was not registered with Registration and Licensing Authority. Thus, the findings recorded on these issues are upheld.

11. The learned counsel for the appellant argued that the claimant had claimed compensation on two counts, i.e., (i) damages and; (ii) loss of income.

12. I have gone through the claim petition, replies and the evidence on record. The case of the claimant before the Tribunal was that in the said accident his truck got totally damaged and it was insured with his own insurance company, i.e. Oriental Insurance Company, which has granted only Rs.2,02,000/- as assessed by the insurer. He has also received Rs.60,000/- as salvage but claimed that he was also entitled to balance amount as compensation from the insured of the offending Tata Mobile, which has not been paid to him by his own insurance company, for the reasons that the vehicle was damaged and market value of the vehicle was Rs.3,50,000/- at the time of the accident but the insurance agency restricted his claim to the tune of Rs.2,02,000/-, as per the insurance cap read with the terms and conditions of the insurance policy. He has obtained the loan from the Corporation, as mentioned supra, details of which is already given in para 21 of the claim petition.

13. The Tribunal, after examining all the facts of the case held that the insurer of the Tata Mobile has to pay the said amount. Thus, it can be safely concluded that the claimant has not made claim for the loss of income. He has claimed damages and loss suffered by him.

14. The Truck was insured and insurer has granted the claim only viz-a-viz the risk covered, within the insurance cap. The said amount plus the amount of salvage cannot be claimed from another insurance company. But at the same time he has suffered loss because his vehicle has totally damaged and he is not in a position to ply it and earn income, in order to adjust the loan, the market value of which is stated to be Rs.3,50,000/-. He has claimed the balance amount of compensation from another insurance company which is the insurer of Tata Mobile in terms of a different insurance contract. Both the insurance contracts are different and claimant has laid claim for difference of amount and was entitled to the same. The insurance contracts are different and the claimant has to claim balance amount/difference of amount. My this view is fortified by the judgment delivered by the Andhra Pradesh High Court in case ***United India Insurance Co. Ltd. versus K. Chandrasekharachari and another*** reported in ***2008 ACJ 640***. It is apt to reproduce paras 13 and 15 of the said judgment herein.

"13. From a reading of Sections 165 and 166 of the Act it is clear that the State Government may constitute Claims Tribunal for the purpose of adjudicating claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party or both and such application can be filed by person sustain injury or by the owner of the property. In the present case, the claimant who is the owner of the damaged van who is a third party, filed petition for damages and in view of the above provisions, there cannot be any dispute with regard to the claim petition being filed under Section 166 of the Act and the same is maintainable.

14. ....

15. The Tribunal has recorded finding of fact that the accident occurred due to rash and negligent driving of the lorry by its driver. This being a finding of fact, cannot be interfered within the appeal. Because of the accident, the van of the claimant got damaged and the insurer of the lorry is jointly and vicariously liable to pay compensation along with the owner of the lorry and as per Sections 165 and 166, the claimant is entitled to claim damages. As the van of the claimant was covered under a comprehensive insurance policy with the National Insurance Company, the claim of the claimant was settled. As rightly observed by the Tribunal, with regard to the present accident, which was the result of the negligent driving of the driver of the lorry, the contract is between the insured and insurer and the insurer has to indemnify the insured. Further there is no contract between the National Insurance Company, which is the insurer of the van and the United Indian Insurance Company, which is the insurer of the lorry that in case of settlement of claim by the claimant with the National Insurance Company for repairs, he is not entitled to claim damages from the United India Insurance Company which is the insurer of the lorry responsible for the accident. Both the contracts are for different purposes and operate in different fields. In view of this reasoning, I answer the issue in favour of the claimant holding that the claimant is not barred from claiming damages from the insurer of the lorry which is responsible for the accident."

[emphasis supplied]

15. Again, in ***National Insurance Co. Ltd. versus Bilaspur Gramudhyog Association and others*** reported in ***2008 ACJ 2058***, this High Court has discussed the word "damages" It is apposite to reproduce para 15 of the judgment herein.

"15.The petitioner has also claimed damage to the building due to accident. Learned counsel for the insurer has submitted that under the policy and the Act, the insurer is liable to pay only Rs. 6,000 on account of third party property damage. She has relied on section 147 (2) (b) of the Act for advancing this argument. No doubt, under the Act, the statutory liability of the insurer is only to the extent of Rs. 6,000 but there is no bar to the insurer to cover more risk on account of third party property damage while insuring the vehicle. In the present case, the insurer has charged Rs. 75 extra for third party property damage. Insurer has not explained why even after charging Rs. 75 extra, the insurer is not liable to pay more than Rs. 6,000 for third party property damage resulting from the accident involving vehicle covered by policy, Exh. PC. In Oriental Insurance Co. Ltd. v. Balwant Singh (supra) the insurance company had charged Rs. 75 extra and in those circumstances, the learned single Judge of this court has allowed third party property damage amount to

> *Rs.42,454 in favour of the owner of the truck No. HIB 4653 which was damaged by truck No. HP 34-0421 insured with the insurance company. Therefore, in my view the insurer is liable to pay damage to the petitioner on account of damage to the building caused by truck No. HIA 6835."*

16. It is profitable to reproduce para 6 of the judgment delivered by the apex Court in ***National Insurance Company Ltd. versus Sebastian K. Jacob*** reported in ***(2009) 4 SCC 778.***

> *"5. It conceded that if there is difference of amount the appellant has to pay the same, but that is not the case in the present scenario. The claimant claims the whole amount. The earlier payment is not disputed. In fact, the Oriental Insurance Company Ltd. has clearly accepted that the vehicle collided with the stage carriage on 13.7.1995 and the damage claim was settled for Rs. 21,700/- on 6.12.1995. The High Court does not appear to have considered this aspect in the proper perspective. Therefore, we set aside the impugned order of the High court and remit the matter to it for fresh consideration."*
>
> *[Emphasis added]*

17. The point for discussion in Jacob's case referred to above, was when the damage is caused to the vehicle by another vehicle, the damages have to be paid by its own insurer, as per the terms and conditions contained in the insurance policy but difference of amount has to be paid by the insurer of the offending vehicle by which the damage has been caused and the Court held that the High Court has not decided the issue and remanded the case, in order to determine, whether the claimant can claim from both the insurance agency, but if there is difference that has to be paid by the insurer of the vehicle by which the damage has been caused.

18. In another case titled ***G. Md. Masoom vs. S.K. Khader Vali and another*** reported in ***2005 ACJ 1802,*** the word "damages" is discussed. In this case, the Court held that the claimant is entitled to damages and also incidental loss. The word "damages" has been discussed in para 10 of the judgment. In the case in hand, the claimant has not claimed loss of income or business. He has claimed damages which he has suffered because of the accident. It is apt to reproduce para 10 of the said judgment herein.

> *"10. In all the aforesaid decisions, it is clearly stated that the owner is entitled to claim damages for the vehicle involved in the accident. The Civil Court has no jurisdiction to award compensation after the amended provisions of Sections 165 and 166 of the Act which have come into force after the motor vehicle accident of 1988 as there is express bar of entertaining by Civil Court and the Civil Court cannot entertain a claim in respect of damage caused to the vehicle involved in the accident. The owner has been conferred with a right of presenting an application for compensation under Section 166 of the Act in respect of damages. The only thing that has to be decided is whether computation can be made in respect of business loss, which is part of the policy of insurance and whether the Tribunal has got jurisdiction under the head - Damages of compensation. It is clear from the principles laid down by the decisions rendered by the English Courts that the loss occasioned due to nonavailability of the vehicle under repair can be awarded during the period of repair. It is not stated in those decisions that the entire business loss of income can be entertained on awarded. What is contemplated under the law is that the loss of income sustained during the period of vehicle under repair is an incidental loss, which resulted due to the damages to the vehicle, and it can be*

awarded and the Tribunal alone can entertain such a thing. Section 166 mentioned about the application to be made for compensation. Section 165 says that compensation can be claimed for damages to any property of a third party so arising out of the use of motor vehicle. Does it cover the loss of incidental income of the owner? It must be held that loss of incidental income due to non-availability of vehicle, which is under repairs is covered. That has to be taken into consideration while awarding compensation. It cannot be stated that the incidental loss sustained by the owner due to the damage to the vehicle and due to non-availability of the vehicle cannot be taken into consideration. The Court has to take into consideration about the ousting of Civil Courts jurisdiction for claiming compensation in respect of damages to any property. The incidental loss of income has to be taken into consideration while awarding compensation for damages to the property. The Single Judge of this Court has rightly observed that there cannot be two forums for claiming compensation. The incidental loss of income is part of the damages to be awarded by way of compensation. The same view has been taken by the English Courts. The method that has to be adopted is to calculate the loss of income due to nonavailability of the vehicle. If the vehicle is insured with the Insurance Company, it is liable to pay damages which inclusive of incidental loss of income due to nonavailability of the vehicle. The incidental loss of income differs from business loss. The business loss has to be arrived at after taking into consideration of non-availability of the vehicle on the particular period and its availability after repairs. We are of considered view that just compensation has to be arrived at by calculating the compensation towards damages including the incidental loss occasioned during the period of non-availability of the vehicle. On a consideration of the entire law, we are of the view that the owner of the vehicle is entitled to claim incidental loss of income under the head Damages caused to the vehicle before the Tribunal and the Civil Court has no jurisdiction. We also state that the Insurance Company is liable to pay compensation towards damages caused to the vehicle, which includes the incidental loss of income being part by business loss."

19. In ***Harkhu Bai and others versus Jiyaram and others*** reported in ***2005 ACJ 1332***, it has been held that if the payment has been made as full and final settlement without any reservation by the company with which the vehicle was insured, second claim cannot be made against the insurer of the offending vehicle by which damage has been caused but if it is pleaded and proved by the material brought on record that only part payment was made by the insurer with which the vehicle was insured and rest of the claim has to be paid by the insurer of the offending vehicle by which the damage has been caused. It is apt to reproduce para 6 of the said judgment herein.

"6. That leaves us with the claim in M.V.C. No. 3 of 1990. The Tribunal has rejected the said claim on two grounds. Firstly, because no negligence on the part of the offending vehicle is proved and secondly, because the claimant, owner of the vehicle, has already received from the insurance company with which the vehicle was insured an amount representing the loss suffered by him. While the finding on the first of the said questions has been reversed by us, we see no reason to interfere with the view taken by the Tribunal on the second question. It is not in dispute that the vehicle owned by the claimant in M.V.C. No. 3 of 1990 had suffered extensive damage on account of the collision but it is also admitted that the vehicle being insured with one of the other insurance companies, the damage was assessed and paid. The order passed

by the Tribunal further shows that the payment was received by the claimant in full and final settlement of his claim without any reservation or demur. In the absence of any material to show that the claim paid by the other insurance company represented a part only of the total damage, the Tribunal was justified in rejecting the claim for any further payment. We, therefore, see no merit in the appeal filed by the owner which shall have to be dismissed."

[emphasis supplied]

20. Applying the tests in this case, the claimant has specifically pleaded damages, details of which has been given in para 21 of the claim petition which is reproduced supra.

21. It is also apt to reproduce paras 9 and 10 of the judgment delivered by the ***Kerala High Court in case titled United India Insurance Co. Ltd. versus Sekhara Marar*** reported in 2013 ACJ 1279.

"8.The learned counsel for the claimant would argue that the contract of the claimant with the insurer of the elephant is a separate contract and if any claim is received under the said contract, the same cannot be deducted from the compensation claimed from the owner or insurer of the offending vehicle/it is true that the claim amount realised by the claimant under a separate contract with the insurer of the property shall not be a bar from claiming compensation from the insurer of an offending vehicle, if the claimant could not receive just compensation from the insurer of the property. It is a settled law, that in cases claiming compensation for the death of individuals, the amount received by the claimants under a life insurance policy of the deceased shall not be taken into account while awarding compensation. However, in cases relating to damage to property, the amount received by the claimant under a separate policy insuring the property in question, has some relevance. This is because, in such cases, the compensation shall be subject to a cap, which is the actual value of the property. Otherwise, it will lead to an unjust enrichment. The claimant is also entitled to get other reasonable incidental expenses incurred by him. There may be instances, where the sum assured would be less than the actual value of the property. This may be because of the inability of the insured to pay a higher premium. In such cases, the amount which the claimant receives from his insurer may not be adequate compensation for the loss suffered and the same will not debar the claimant from realising the balance from the insurer of the offending vehicle as a third party.

9. In this case the appellant/claimant could not recover the full amount which he is entitled to from the insurer of the elephant. Thus, he is entitled to get the balance amount from the insurer of the offending vehicle. The Tribunal has assessed the actual value of the elephant at Rs. 3,65,000/-, on the basis of Ext. A11 sale deed under which, the claimant purchased the elephant From this amount, the amount of compensation which the claimant has received from the insurer of the elephant was deducted. Such a deduction is legally permissible." *[Emphasis added]*

22. Viewed thus, the insurer/appellant is liable to pay the difference of amount, as claimed by the claimant.

23. In view of the foregoing discussion and reasoning, the insurer/appellant is liable to pay the said amount as compensation along with interest, as awarded by the Tribunal.

24. The insurer/appellant is directed to deposit the entire amount in the Registry within six weeks from today, if not already deposited.

25. The Registry is directed to release the same in favour of the claimant, through payees' cheque account, strictly as per the terms and conditions contained in the impugned award.

26. Accordingly, the impugned award is upheld and the appeal is dismissed.

27. Send down the records forthwith, along with copy of this judgment.

****

BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Co. Ltd. .....Appellant
Versus
Sube Singh and others .....Respondents

FAO No.287 of 2009.
Decided on : 01.01.2016

Motor Vehicles Act, 1988- Section 149- Driver possessed a driving licence to drive the light motor vehicle and medium goods vehicle- registration certificate of the vehicle shows that unladen weight and gross weight of the vehicle was 4440 kg. and 6700 kg., respectively- thus, vehicle falls within the definition of 'Light Motor Vehicle'- held, that driver had valid and effective driving licence to drive the vehicle on the date of accident. (Para-2 to 6)

For the appellant: Mr.Ashwani K. Sharma, Senior Advocate, with Ms.Monica Shukla, Advocate.
For the respondents: Mr.Bhupender Singh, Advocate, for respondent No.1.
Mr.H.C. Sharma, Advocate, for respondents No.2 to 5 and 7.
Nemo for respondent No.6.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 6th January, 2009, passed by the Motor Accident Claims Tribunal(II), Shimla, (for short, the Tribunal), whereby compensation to the tune of Rs.4,60,000/- alongwith interest at the rate of 9% per annum, came to be awarded in favour of the claimant and the insurer was saddled with the liability, (for short, the impugned award).

2. It is apt to record herein that by the medium of this appeal, the parties are in second round of litigation before this Court. The claim petition was Initially decided by the Tribunal, vide award, dated 1st April, 2003, which was questioned by the insurer before this Court by the medium of FAO No.392 of 2003, titled National Insurance Company vs. Sube

Singh and others. This Court, vide order dated 23rd September, 2008, upheld the findings returned by the Tribunal on all the issues, except issue No.3. In order to determine issue No.3, the case was remanded to the Tribunal. It is apt to reproduce issue No.3 hereunder:

> *"3. Whether respondent No.3 was not having a valid driving license at the time of accident. As alleged, if so to what effect? OPR-2"*

3. On the date of accident, the driver of the offending vehicle was having a licence to drive a Light Motor Vehicle and Medium Goods Vehicle. Copy of the registration certificate of the offending vehicle has been proved on record as Ext.RW-1/A, which clearly shows that the unladen weight and the gross weight of the vehicle was 4440 kg. and 6700 kg., respectively.

4. Here, a reference may be made to Section 2(21) of the Motor Vehicles Act, 1988 as under:

> *"2. ....*
>
> *(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either or which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms."*

5. Thus, the above provision clearly shows that a vehicle, with unladen weight not exceeding 7,500 kilograms, would fall within the definition of "light motor vehicle".

6. In view of the above, the Tribunal has rightly held that the driver was having a valid and effective driving licence on the date of accident to drive the offending vehicle.

7. Having said so, no interference is required in the impugned award and the same is upheld. As a consequence, the appeal is dismissed. The Registry is directed to release the amount of compensation in favour of the claimant, strictly in terms of the impugned award.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

New India Assurance Company Limited ...Appellant.

Versus

Sushma Rani and others ...Respondents.

FAO No. 214 of 2009
Decided on: 01.01.2016

Motor Vehicles Act, 1988- Section 149- Driver possessed a driving licence to drive light motor vehicle – the offending vehicle is Mahindra Pick-up, which is a light motor vehicle- Tribunal had rightly held that driver of the vehicle had a valid and effective driving licence to drive the same- it was for the insurer to plead and prove that owner had committed willful breach of the terms and conditions of the policy which it had failed to do so- owner is not supposed to go beyond verification to the ascertain that driver was having a valid driving licence and to test the competence of the driver- appeal dismissed. (Para- 5 to 10)

Cases referred:

The New India Assurance Company versus Bihari Lal & others, I L R 2015 (IV) HP 1686

National Insurance Co. Ltd. versus Swaran Singh & others, AIR 2004 Supreme Court 1531
Pepsu Road Transport Corporation versus National Insurance Company, 2013 AIR SCW 6505

For the appellant:	Mr. B.M. Chauhan, Advocate.
For the respondents:	Mr. N.K. Thakur, Senior Advocate, with Mr. Rahul Verma, Advocate, for respondents No. 1 to 5. Nemo for respondents No. 6 and 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Challenge in this appeal is to the judgment and award, dated 23.01.2009, made by the Motor Accident Claims Tribunal, Una, Himachal Pradesh (for short "the Tribunal") in M.A.C. Petition No. 33 of 2006, titled as Sushma Rani and others versus Swarn Singh and others, whereby compensation to the tune of ₹ 6,45,636/- with interest @ 7% per annum from the date of the petition till its realization came to be awarded in favour of the claimants and against the insurer (for short "the impugned award").

2. The owner-insured, driver and claimants have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has questioned the impugned award on three counts:

(i) That the driver of the offending vehicle was not having a valid and effective driving licence;

(ii) That the owner-insured of the offending vehicle has committed willful breach; and

(iii) That the amount awarded is excessive.

4. All the three grounds are not tenable and are rejected for the following reasons:

5. Admittedly, the driver of the offending vehicle was having driving licence to drive a light motor vehicle. The offending vehicle is Mahindra Pick-up, which is a light motor vehicle, was also matter of discussion before this Court in a series of cases, including **FAO No. 135 of 2009,** titled as **The New India Assurance Company versus Bihari Lal & others,** decided on 28.08.2015.

6. Having said so, the Tribunal has rightly held that the driver of the offending vehicle was having a valid and effective driving licence to drive the offending vehicle.

7. It was for the insurer to plead and prove that the owner-insured has committed a willful breach, has failed to do so. Even otherwise, the insurer has not proved that the owner-insured has committed breach of the provisions of Section 147 and 149 of the Motor Vehicles Act, 1988 (for short "the MV Act") read with the terms and conditions contained in the insurance policy, not to speak of willful breach.

8. The Tribunal has rightly made the impugned award, needs no interference in view of the law laid down by the Apex Court in the case titled as **National Insurance Co. Ltd. versus Swaran Singh & others,** reported in **AIR 2004 Supreme Court 1531.** It is apt to reproduce relevant portion of para 105 of the judgment herein:

"105. .....

(i) .....

(ii) .....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

9. The Apex Court in another case titled as **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **2013 AIR SCW 6505,** held that the owner-insured is not supposed to go beyond verification to the effect that the driver was having a valid driving licence and the competence of the driver. It is profitable to reproduce para 10 of the judgment herein:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver

employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."

10. The amount of compensation awarded by the Tribunal is too meager. I wonder why the claimants have not questioned the quantum of compensation. Accordingly, the amount of compensation is reluctantly upheld.

11. Having said so, the impugned award merits to be upheld and the appeal is to be dismissed. Accordingly, the impugned award is upheld and the appeal is dismissed.

12. At this stage, learned counsel for the claimants stated at the Bar that respondents No. 2 and 3, i.e. Aman Deep and Gagan Deep, respectively, have attained majority during the pendency of the appeal, respondent No. 4, i.e. Navdeep, is still minor, and prayed that the shares of the major respondents No. 2 and 3 be ordered to be released in their favour.

13. In view of the above, Registry is directed to release the awarded amount in favour of the claimants in the following manner:

(i) All the claimants are held entitled to the awarded amount in equal shares;

(ii) The entire shares of the mother and widow of the deceased be released in their favour through payee's account cheque or by depositing the same in their respective accounts;

(iii) 50% of the shares of two sons, who have attained majority during the pendency of the appeal, namely Aman Deep and Gagan Deep, be released in their favour through payee's account cheque or by depositing the same in their respective accounts and the rest 50% be invested in FDRs for a period of five years; and

(iv) The entire share of minor son, namely Navdeep, be invested in the FDR, in terms of the impugned award.

14. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Oriental Insurance Co. Ltd. ...Appellant.

Versus

Man Kumari and others ...Respondents.

FAO No. 275 of 2009
Decided on: 01.01.2016

Motor Vehicles Act, 1988- Section 149- Insurer contended that driver of the vehicle was not having requisite endorsement of PSV in the driving licence and the insurer was not liable

to indemnify the insured- held, that driver having a driving licence to drive 'Light Motor Vehicle' requires no PSV endorsement- appeal dismissed. (Para-4 to 11)

Cases referred:
National Insurance Company Ltd. vs Annappa Irappa Nesaria & Ors., 2008 AIR SCW 906
Kulwant Singh & Ors. versus Oriental Insurance Company Ltd., JT 2014 (12) SC 110
National Insurance Co. Ltd. versus Swaran Singh and others, AIR 2004 Court 1531
Pepsu Road Transport Corporation vs National Insurance Company, (2013) 10 SCC 217

For the appellant: Mr. G.D. Sharma, Advocate.
For the respondents: Ms. Seema K. Guleria, Advocate, for respondents No. 1 to 3.
Nemo for respondent No. 4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Subject matter of this appeal is the judgment and award, dated 05.03.2009, made by the Motor Accident Claims Tribunal (II), Shimla, H.P. (for short "the Tribunal") in M.A.C.T. Petition No. 73-S/2 of 2006, titled as Smt. Man Kumari and others versus The Oriental Insurance Company Ltd., whereby compensation to the tune of ₹ 4,36,500/- with interest @ 9% per annum from the date of the petition till its realization came to be awarded in favour of the claimants and against the insurer (for short "the impugned award").

2. The owner-insured and the claimants have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has questioned the impugned award on the ground that the driver of the offending vehicle was not having the requisite endorsement of PSV on the driving licence and the Tribunal has fallen in an error in saddling it with the liability.

4. The argument of the learned counsel for the appellant is not tenable and the Tribunal has not fallen in an error in saddling the appellant-insurer with liability.

5. This Court in a series of cases has held that the driver, who is having driving licence to drive Light Motor Vehicle requires no PSV endorsement.

6. The Apex Court in a case titled as **National Insurance Company Ltd. versus Annappa Irappa Nesaria & Ors.,** reported in **2008 AIR SCW 906,** has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of 'light motor vehicle', 'medium goods vehicle' and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of the judgment herein:

> *"8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the 'light motor vehicle' as contained in Section 2(21) of the Motor vehicles Act, 1988 ('Act' for short), a light goods carriage would come within the purview thereof.*
>
> *A 'light goods carriage' having not been defined in the Act, the definition of the 'light motor vehicle' clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle. Strong reliance has been*

placed in this behalf by the learned counsel in Ashok Gangadhar Maratha vs. Oriental Insurance Company Ltd., [1999 (6) SCC 620].

9. .....

10. .....

11. .....

12. .....

13. .....

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

Clause (e) provides for 'Transport vehicle' which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which have been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein.

15. .....

16. From what has been noticed hereinbefore, it is evident that 'transport vehicle' has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time, to cover both, 'light passenger carriage vehicle' and 'light goods carriage vehicle'. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."

7. The Apex Court in the latest judgment in the case titled as **Kulwant Singh & Ors. versus Oriental Insurance Company Ltd.,** reported in **JT 2014 (12) SC 110,** held that PSV endorsement is not required.

8. The Apex Court in the case titled as **National Insurance Co. Ltd. versus Swaran Singh and others,** reported in **AIR 2004 Court 1531,** has laid down principles, how can insurer avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment herein:

"105. .....

(i) .....

(ii) .....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only the available defence(s) raised in the said but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

9. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **(2013) 10 Supreme Court Cases 217,** herein:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

10. Having said so, the Tribunal has not fallen in an error in saddling the appellant-insurer with liability. The impugned judgment is well reasoned, needs no interference.

11. Viewed thus, the impugned award is upheld and the appeal is dismissed.

12. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in their respective accounts.

13. Send down the record after placing copy of the judgment on Tribunal's file.

****

BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Oriental Insurance Company Ltd. .....Appellant

Versus

Smt. Suman Bala & others ...Respondents

FAO No. 122 of 2009
Decided on : 1.1.2016

Motor Vehicles Act, 1988- Section 149- Insurer contended that driver did not possess a valid and effective driving licence to drive heavy transport vehicle- record shows that driver did not possess effective driving licence to drive HTV- owner was under an obligation to engage the driver who possessed effective driving licence- he had committed willful breach of the terms and conditions of the policy- insurer directed to pay amount in the first instance and thereafter to recover the same from the owner. (Para-3 to 8)

For the appellant : Mr. Ashwani K. Sharma, Senior Advocate with Mr. Nishant Kumar, Advocate.

For the respondents: Mr. N.K. Thakur, Senior Advocate with Mr. Rahul Verma, Advocate, for respondents No. 1 to 5.
Nemo for respondent No. 6.
Mr. Satyen Vaidya, Senior Advocate with Mr. Vivek Sharma, Advocate, for respondent No. 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

This appeal is directed against the award, dated 29th November, 2008, made by the Motor Accident Claims Tribunal, Una, Himachal Pradesh (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 21 of 2006, titled Suman Bala & others versus Naresh Kumar & others, whereby compensation to the tune of Rs.3,80,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants-respondents No. 1 to 5 herein and the insurer-appellant herein came to be saddled with liability (hereinafter referred to as the "impugned award").

2. The claimants, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality so far it relates to them.

3. The insurer has questioned the impugned award on the ground that driver Naresh Kumar was not having valid and effective driving licence to drive Heavy Transport Vehicle, for short 'HTV'/truck/offending vehicle, thus, the owner has committed willful breach.

4. The owner of the truck is Himachal Pradesh State Electricity Board and in case, it has to appoint a driver to drive HTV/truck/offending vehicle, it has to ascertain during the selection process -whether the driver is having valid and effective driving licence to drive HTV/truck-offending vehicle.

5. Admittedly, the driver was not having valid and effective driving licence to drive HTV/truck/offending vehicle. Thus, it cannot lie in the mouth of the learned Counsel for respondent No. 7-owner that the owner has not committed any willful breach.

6. Having said so, it is held that the driver was not having valid and effective driving licence to drive the offending vehicle.

7. Keeping in view the facts of the case read with the pleadings and the law laid down by the Apex Court, owner-respondent No. 7 has committed willful breach.

8. Viewed thus, the insurer has to satisfy the impugned award, at the first instance, with right of recovery, from the insured.

9. The Registry is directed to release the entire amount deposited by the insurer in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in their account.

10. Respondent No. 7 is directed to deposit the award amount either before the Registry or before the Tribunal, within eight weeks from today. In default, the insurer is at liberty to lay a motion for recovery.

11. Accordingly, the impugned award is modified, as indicated above and the appeal is disposed of.

12. Send down the record after placing copy of the judgment on the Tribunal's file.

****

BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Ram Lal & another ...Appellants

Versus

Sameer & another ...Respondents

FAO No. 218 of 2015
Decided on : 1.1.2016

Motor Vehicles Act, 1988- Section 149- Tribunal held that driver did not possess a valid driving licence to drive heavy transport vehicle- driving licences were issued in favour of the driver by the competent Authority and the driver was competent to drive HTV- the burden was upon the insurer to prove the breach of the terms and conditions of the insurance policy- no evidence was led to prove the same- held, that Tribunal had fallen in error in absolving the Insurance Company of the liability- appeal accepted. (Para-10 to 15)

Cases referred:

National Insurance Co. Ltd. versus Swaran Singh & others, AIR 2004 Supreme Court 1531

Pepsu Road Transport Corporation versus National Insurance Company, (2013) 10 Supreme Court Cases 217

For the appellants : Mr. Vikrant Chandel, Advocate.

For the respondents: Mr. Ajay Chauhan, Advocate vice Mr. Ashok Verma, Advocate, for respondent No. 1.

Mr. Narender Sharma, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

Subject matter of this appeal is the award, dated 18th February, 2015, made by the Motor Accident Claims Tribunal, Bilaspur, Himachal Pradesh (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 17/2 of 2013, titled Sameer versus Ram Lal Thakur & others, whereby compensation to the tune of Rs.2,22,864/- alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till its realization was awarded in favour of the claimant and insured-owner and driver-appellants herein, came to be saddled with liability (hereinafter referred to as the "impugned award").

2. The claimant and insurer have not questioned the impugned award, on any count. Thus, it has attained finality so far it relates to them.

3. The insured-owner and driver have questioned the impugned award on the ground that the Tribunal has fallen in an error in saddling them with liability and discharging the insurer from the liability.

4. The claimant had invoked the jurisdiction of the Tribunal in terms of Section 166 of the Motor Vehicles Act, 1988, for short 'the Act', for granting compensation to the tune of Rs.10,00,000/-, as per the break-ups given in the claim petition.

5. The respondents contested the claim petition by the medium of the replies.

6. Following issues came to be framed by the Tribunal:

"(1) Whether on 16.02.2012 at about 3.10 p.m. at Swarghat the petitioner sustained injuries on account of the rash and negligent driving of the offending truck bearing No. HP-64-3946 by the respondent No. 2 as alleged? ….OPP

2. If issue No. 1 is proved in affirmative, to what amount of compensation and from whom the petitioner is entitled to? …OPP

3. Whether the petition is not maintainable, as alleged? …OPR-3

4. Whether the offending vehicle was being driven without valid documents as alleged, if so, its effect? ….OPR-3

5. Whether the offending vehicle was being driven by an un-authorized person who was not having valid and effective drving licence at the relevant time, as alleged.

6. *Relief."*

7. The claimant has examined Shri Ashok Kumar (PW-2). The guardian of the claimant, i.e. Shri Madan Lal also appeared in the witness box as PW-1. The driver and owner have examined Veena Thakur (RW-1) and Kehar Singh (RW-2). The insurer has not led any evidence.

Issues No. 1 to 3

8. There is no dispute regarding issues No. 1 to 3. Accordingly, the findings returned by the Tribunal on issues No. 1 to 3 are upheld.

Issue No. 4.

9. The onus to prove issue No. 4 was upon the insurer, has not led any evidence. Thus, it has failed to discharge the onus. This issue was to be decided against the

insurer, but the Tribunal has fallen in an error in deciding it in favour of the insurer. Accordingly, issue No. 4 is decided against the insurer and in favour of the owner and driver.

Issue No. 5.

10. The Tribunal has held that the driver was not having a valid and effective driving licence to drive the offending vehicle, which was a 'heavy transport vehicle', thus, was not competent to drive the same. I have gone through the record. Both the driving licences were issued in favour of the driver by the competent authority and their genuineness is not in dispute. Perusal of the driving licences does disclose that the driver was competent to drive the offending vehicle.

11. In the given circumstances, it was for the insurer to plead and prove that the owner has committed willful breach in terms of the mandate of Sections 147, 148 & 149 of the Act read with the terms and conditions contained in the insurance policy, as held by the Apex Court in **National Insurance Co. Ltd. versus Swaran Singh & others,** reported in **AIR 2004 Supreme Court 1531.** It is apt to reproduce relevant portion of para 105 of the judgment hereinbelow:

> *"105. .....*
>
> *(i) .....*
>
> *(ii) .....*
>
> *(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*
>
> *(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.*
>
> *(v).....*
>
> *(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of available the Act."*

12. It is also profitable to reproduce para 10 of the latest judgment of the Apex Court in the case of **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **(2013) 10 Supreme Court Cases 217,** hereinbelow:

> *"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."*

13. This Court in **FAO No. 322 of 2011**, titled as **IFFCO-TOKIO Gen. Insurance Company Limited versus Smt. Joginder Kaur and others**, decided on 29.08.2014 and **FAO No. 523 of 2007,** titled as **Oriental Insurance Company Ltd.** versus **Smt. Rikta alias Kritka & others,** decided on 19.12.2014, has laid down the same principle.

14. The factum of the insurance is not in dispute.

15. Having said so, it is held that the Tribunal has fallen in an error in discharging the insurer from liability. Accordingly, issue No. 5 is decided against the insurer and in favour of the owner-insured and driver.

16. The insurer is directed to deposit the award amount before the Registry, within eight weeks from today. On deposit, the Registry is directed to release the entire amount in favour of the claimant, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in the account.

17. The statutory amount to the tune of Rs.25,000/-, deposited by the appellants, is awarded as costs in favour of the claimant. The Registry also to release the same in favour of the claimant.

18. Accordingly, the impugned award is modified, as indicated above and the appeal is disposed of.

19. Send down the records after placing a copy of the judgment on record.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

FAO No.80 of 2009 with FAO No.162 of 2009.
Reserved on : 18.12.2015.
Pronounced on : 01.01.2016

1.	**FAO No.80 of 2009**	
	Rama Sood and others	.....Appellants
	Versus	
	Chavan Singh and others	..... Respondents
2.	**FAO No.162 of 2009**	
	The New India Assurance Company	.....Appellant
	Versus	
	Rama Sood and others	..... Respondents

Motor Vehicles Act, 1988- Section 166- Car of the deceased was hit by the truck- the age of the deceased was 44 years at the time of accident- Tribunal had applied multiplier of '12', whereas, multiplier of '14' is applicable keeping in view the age of the deceased- deceased was engineer and Class-A contractor- his widow will not be able to manage the business in the same manner as the deceased was doing- the net income of the deceased was reflected in the Income Tax Return and on the basis of the same, Tribunal had rightly held that deceased was earning not less than Rs.15.00 lacs per annum- after deducting 1/3rd amount towards his personal expenses, the annual loss of dependency will be Rs.10.00 lacs- thus, claimants are entitled to Rs.10.00 lacs x 14 = Rs.1.40 crore- in addition to this, the claimants are also entitled to Rs.10,000/- each, under the heads 'loss of love and affection', 'loss of estate', 'loss of consortium' and 'funeral expenses. (Para- 27 to 61)

Cases referred:

Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another, (2013) 10 SCC 646
Savita vs. Bindar Singh & others, 2014 AIR SCW 2053
Sohan Lal Passi v. P.Sesh Reddy and others, AIR 1996 Supreme Court 2627
Bimla Devi & Ors. versus Himachal Road Transport Corpn. & Ors., 2009 AIR SCW 4298
Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others versus Madan Mohan and another, 2013 AIR (SCW) 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105
State of Haryana and another vs. Jasbir Kaur and others, AIR 2003 Supreme Court 3696
The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another, AIR 2003 Supreme Court 4172
Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr., 2009 AIR SCW 3717
Ningamma & another versus United India Insurance Co. Ltd., 2009 AIR SCW 4916
A.P.S.R.T.C. & another versus M. Ramadevi & others, reported in 2008 AIR SCW 1213
Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service, 2013 AIR SCW 5800
Santosh Devi versus National Insurance Company Ltd. and others (2012) 6 SCC 421
National Insurance Co. Ltd. versus Indira Srivastava and others 2008 ACJ 614
Oriental Insurance Company Ltd. vs. Jashuben & Ors., 2008 AIR SCW 2393
Jagdish versus Rahul Bus Service and others , I L R 2015 (III) HP 299
Smt.Anubha Sood and others vs. Sh.Krishan Chand and others, I L R 2015 (III) HP 1127
New India Assurance Co. Ltd. versus Shanti Bopanna and others 2014 ACJ 219

V. Subbulakshmi and others versus S. Lakshmi and another (2008) 4 SCC 224,
Amrit Bhanu Shali and others versus National Insurance Company Ltd. and others, (2012) 11 SCC 738
Savita vs. Bindar Singh & others, 2014 AIR SCW 2053
Radhakrishna and another vs. Gokul and others, 2014 AIR SCW 548
Kalpanaraj and others versus Tamil Nadu State Transport Corporation (2015) 2 SCC 764

FAO No.80 of 2009:

For the appellants: Mr.C.N. Singh, Advocate.
For the respondents: Nemo for respondents No.1 to 3.
Mr.B.M. Chauhan, Advocate, for respondent No.4.

FAO No.162 of 2009:

For the appellant: Mr.B.M. Chauhan, Advocate.
For the respondents: Mr.C.N. Singh, Advocate, for respondents No.1 to 3.
Nemo for respondents No.4 to 6.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice

Both these appeals are directed against the award, dated 3rd October, 2008, passed by the Motor Accident Claims Tribunal-III, Shimla, (for short, the Tribunal), whereby compensation to the tune of Rs.1.21 crore, alongwith interest at the rate of 9% per annum, came to be awarded in favour of the claimants and the insurer came to be saddled with the liability, (for short, the impugned award).

2. Feeling aggrieved, the claimants have questioned the impugned award by the medium of FAO No.80 of 2009 on the ground of adequacy of compensation, while the insurer has assailed the impugned award in FAO No.162 of 2009 on the ground that the amount of compensation awarded by the Tribunal is excessive.

Facts:

3. Unfortunate claimants (appellants in FAO No.80 of 2009) have been brought to streets by the vehicular accident, which was caused by the driver, namely, Vinod Kumar, while driving truck bearing registration No.HR-58-1895 rashly and negligently near Saharanpur by hitting the car bearing No.HP03A-7997, being driven by deceased Ajay Kumar Sood. It was averred in the Claim Petition that on 10th October, 2003, the deceased alongwith other persons was going to Rishikesh and at about 2.45 a.m., when he reached at Saharanpur, the offending truck came from wrong side in a rash and negligent manner and struck with the car, as a result of which the deceased sustained head injury, was taken to the nearest hospital where he was declared as brought dead.

4. It was pleaded in the claim petition that the deceased was a qualified Engineer, was A-Class contractor, had constructed many prestigious projects of national repute in the State of Himachal Pradesh, had earned a good repute in the world of construction, was earning Rs.5.00 lacs per month and was an income tax payee. Thus, the claimants, being widow and minor daughter and son and being solely dependant upon the deceased, claimed compensation to the tune of Rs.12.00 crore as per the break-ups given in the Claim Petition.

5. Original respondents No.1 and 2 i.e. owner and the driver filed joint reply to the Claim Petition. Original respondent No.3/insurer also contested the claim petition by filing the reply.

6. On the pleadings of the parties, the following issues came to be settled by the Tribunal:

"1. Whether Ajay Sood died in accident of Car bearing registration No.HP-03A-7997 which was hit by truck bearing registration No.58-1895 while driving vehicle rashly and negligently by respondent No.2, if so, its effect? OPP

2. If issue No.1 is proved in affirmative to what amount of compensation and from whom the petitioners are entitled? OPP

3. Whether the driver of the truck was not having valid driving licence? OPR-3

4. Whether the truck was being plied in contravention of the terms and conditions of the Insurance Policy? OPR-3

5. Whether the deceased was negligent in driving the vehicle, if so, its effect? OPR-3

6. Whether the petition is bad for non-joinder of necessary parties, if so, its effect? OPR-3

7. Relief."

7. After filing the reply, the owner and the driver did not appear before the Tribunal and they were proceeded against exparte.

8. The claimants and the insurer led their evidence. Claimants examined as many as 12 witnesses, namely, claimant Rama Sood PW-1, Shri Sanjay Sood PW-2, Shri Shadi Lal PW-3, Shri Sudershan Dass PW-4, Shri Kuldeep Sharma PW-5, Shri Khem Chand PW-6, Shri Niraj Chand PW-7, Shri Ram Lal PW-8, Shri Asha Ram PW-9, Dr.Karan Singh PW-10, Shri Hari Ram Sharma PW-11 and Shri D.N. Vaidya PW-12. Claimants also proved on record documents Exts.PW-1/A, PW-1/B (degree and matriculation certificate), Exts.PW-11/A to PW-11/D, PW-12/A (income tax returns), Exts.PW-11/F, PW-11/G, PW-12/A-1 to A-3 (Copies of balance sheets, profit and loss account), including other documents.

9. On the other hand, Vinod Kumar, driver of the offending truck, was examined as RW-1. In addition to him, Laxmi Kumar, Mahinder Partap Singh and S.K. Soni were examined as RW-2 to RW-4, respectively.

10. The Tribunal after scanning the entire evidence held that the driver Vinod Kumar had driven the offending truck rashly and negligently and had caused the accident and awarded compensation, as detailed above.

11. Feeling aggrieved, the claimants are before this court seeking enhancement of the compensation, while the insurer has challenged the impugned findings on the ground of the award being highly excessive.

12. I have heard the learned counsel for the parties and have gone through the record of the case. PW-3 Shadi Lal Sood, one of the occupants in the car, which was being driven by the deceased, has categorically stated that the offending truck, all of a sudden came to the wrong side and hit the car as a result of which the deceased sustained injuries and succumbed to the same. PW-5 Kuldeep Sharma has also stated to the same effect. It has come on the record that the driver of the offending truck tried to go to the Dhaba, belonging to Laxmi Kumar (RW-2) and, therefore, had come on the wrong side. Photographs of the spot have also been proved on record as Exts.PA-8, PA-9 and PA-10, which disclose

the position of the offending truck and the car when the collision between the two had taken place.

13. RW-3 Shri Mohinder Partap Singh, who was working as Investigator with respondent No.3/Insurance Company, had gone to the spot and had prepared the report Ext.RW-3/A. He stated that, on inspection, the suspension of the offending truck was found damaged. The Tribunal has made detailed discussion in paragraph 12 of the impugned award and has rightly concluded in paragraph 13 that the suspension of the offending truck had broken as the said truck would have crossed the speed breaker, a little earlier, at a very high speed. It was also rightly concluded by the Tribunal that the offending truck was going to a wrong side, therefore, it was the duty of the truck driver to have taken every precaution that no vehicle was coming on the road.

14. About the accident, FIR No.135/2003 Ext.PW-9/A, under Sections 279, 337, 338, 304A and 427 of the Indian Penal Code, at police Station, Janpat (Saharanpur), also came to be registered against the driver of the offending truck, namely, Vinod Kumar and final report was also filed by the police against the said driver.

15. From the above, it can, prima facie, be inferred that the driver of the offending truck, namely, Vinod Kumar had driven the offending truck rashly and negligently on the said day and had caused the accident.

16. It is beaten law of the land that the Courts, while determining the cases of compensation in vehicular accidents, must not succumb to the niceties and hyper technicalities of law. It is also well established principle of law that negligence in compensation cases has to be decided on the hallmark of preponderance of probabilities and not on the basis of proof beyond reasonable doubt. Furthermore, the claimants claiming compensation in terms of Section 166 of the Act, is not to be seen as an adversial litigation, but is to be determined while keeping in view the aim and object of granting compensation.

17. My this view is fortified by the judgment of the Apex Court in ***Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another, (2013) 10 SCC 646***.

18. The Apex Court in **Savita vs. Bindar Singh & others, 2014 AIR SCW 2053,** has held that at the time of fixing compensation, courts should not succumb to niceties or technicalities of law. It is apt to reproduce paragraph 6 of the said decision hereunder:

> *"6. After considering the decisions of this Court in Santosh Devi (Supra) as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."*

19. A reference may also be made to the decision of the Apex Court in **Sohan Lal Passi v. P.Sesh Reddy and others, AIR 1996 Supreme Court 2627,** in which, in paragraph 12, it was observed that the courts, while deciding claim petitions, must keep in mind that the right of the claimants is not defeated on technical grounds. Relevant portion of paragraph 12 of the said decision is reproduced hereunder:

> *"12. ..... While interpreting the contract of insurance, the Tribunal and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."*

20. This Court also, in the recent past, in series of judgments, has followed the similar principle and held that granting of compensation is just to ameliorate the sufferings of the victims and compensation is to be granted without succumbing to the niceties of law, hyper-technicalities and procedural wrangles and tangles.

21. A Single Judge of this Court in FAO No. 127 of 1999, titled as Bimla Devi and others versus Himachal Road Transport Corporation and others, decided on 22.08.2005, held that the claimants have to prove the case by leading cogent evidence and applied the mandate of CPC read with the Evidence Act, was questioned before the Apex Court by the medium of Civil Appeal No. 2538 of 2009, titled as **Bimla Devi & Ors. versus Himachal Road Transport Corpn. & Ors.,** reported in **2009 AIR SCW 4298,** and the Apex Court set aside the said judgment and held that strict proof is not required. It is apt to reproduce paras 2 and 12 to 15 of the judgment herein:

> *"2. This appeal is directed against a judgment and order dated 22.8.2005 passed by the High Court of Himachal Pradesh, Shimla in FAO No. 127 of 1999 whereby and whereunder an appeal preferred against a judgment and award dated 28.10.1998 passed by the Motor Accident Claims TribunalII [MACT (I), Nahan] in MAC Petition No.21NL/2 of 1997, was set aside.*
>
> *xxx xxx xxx*
>
> *12. While dealing with a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, a Tribunal stricto sensu is not bound by the pleadings of the parties; its function being to determine the amount of fair compensation in the event an accident has taken place by reason of negligence of that driver of a motor vehicle. It is true that occurrence of an accident having regard to the provisions contained in Section 166 of the Act is a sine qua non for entertaining a claim petition but that would not mean that despite evidence to the effect that death of the claimants predecessor had taken place by reason of an accident caused by a motor vehicle, the same would be ignored only on the basis of a post mortem report vis.a.vis the averments made in a claim petition.*

13. The deceased was a Constable. Death took place near a police station. The post mortem report clearly suggests that the deceased died of a brain injury. The place of accident is not far from the police

station. It is, therefore, difficult to believe the story of the driver of the bus that he slept in the bus and in the morning found a dead body wrapped in a blanket. If the death of a constable has taken place earlier, it is wholly unlikely that his dead body in a small town like Dharampur would remain undetected throughout the night particularly when it was lying at a bus stand and near a police station. In such an event, the court can presume that the police officers themselves should have taken possession of the dead body.

14. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos. 2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the evidences of the claimant s witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos. 2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

22. Applying the tests to the instant case, the Tribunal has rightly held that the claimants have, *prima facie,* proved that the driver, namely, Vinod Kumar, had driven the offending truck rashly and negligently and had caused the accident.

23. It is apt to record herein that the driver of the offending truck and the owner have not questioned the findings recorded by the Tribunal, thus, the same have attained finality so far these relate to them.

24. In view of the above discussion, the findings of the Tribunal on issues No.1 and 5 are upheld.

25. Before issue No.2 is dealt with, I deem it proper to deal with issues No.3, 4 and 6. The onus to prove these issues was on the insurer. The insurer has not led any evidence to discharge the onus cast on it and to prove that the driver of the offending truck was not having a valid and effective driving licence or the offending truck was being plied in contravention to the terms and conditions of the insurance policy. The insurer has also failed to prove how the claim petition was bad for non-joinder and mis-joinder of necessary parties.

26. It is also worthwhile to mention here that all these issues were not pressed by the insurer before the Tribunal and accordingly, the same were decided against the insurer. Even, during the course of hearing, the learned counsel for the appellant-insurer

has not questioned the said findings of the Tribunal. However, I have gone through the record. As discussed above, the insurer has failed to prove any violation on the part of the owner on the basis of which the insurer can seek exoneration. Accordingly, the findings returned on these issues by the Tribunal are upheld.

27. Now, coming to issue No.2, the same runs into two parts, namely – i) To what amount of compensation the claimants are entitled to and; ii) From whom?.

28. I intend to answer the latter part of the issue at the first instance. The factum of insurance is admitted and, as has been held above, the insurer has failed to prove any breach on the part of the insured. Accordingly, it is held that the Tribunal has rightly saddled the insurer with the liability.

29. Now, coming to the first part of the issue as to what amount of compensation the claimants are entitled to, the Tribunal has awarded Rs.1.21 crore, with interest, in favour of the claimants. The claimants by the medium of FAO No.80 of 2009 has sought enhancement of the compensation. The insurer has challenged the impugned award on the ground of the same being excessive, by way of FAO No.162 of 2009, including other grounds. However, the grounds raised by the insurer, except the ground of the award being on the higher side, have been discussed above, are devoid of any force and accordingly, the findings returned by the Tribunal are upheld.

30. The question is whether the amount of compensation is on the higher side or otherwise?

31. Claimants have pleaded that the age of the deceased was 44 years at the time of death, which has not been denied by the respondents in their replies. However, the said fact has also been proved by the claimants by leading oral as well as documentary evidence. The claimants have proved on record the Matriculation certificate of the deceased as Ext.PW-1/B, wherein the date of birth of the deceased has been recorded as 30.1.1959. The accident had taken place on 10th October, 2003, meaning thereby that the deceased was 44 years of age at the time of accident, as has been pleaded by the claimants.

32. The Tribunal has fallen in an error in applying the multiplier of '12'. The multiplier of '14' is applicable, keeping in view the 2nd Schedule annexed to the Motor Vehicles Act, 1988 read with the law laid down by the Apex Court in **Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104**, upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others versus Madan Mohan and another,** reported in **2013 AIR (SCW) 3120,** read with the judgment rendered by the Apex Court in case titled as **Munna Lal Jain & another versus Vipin Kumar Sharma & others**, reported in **2015 AIR SCW 3105**.

33. The claimants in the claim petition has specifically pleaded that the deceased, at the time of death, was earning Rs.5.00 lacs per month. To prove the income, the claimants have led oral as well as documentary evidence to the effect that the deceased was a qualified Engineer, had adopted the profession of Contractor, was a budding Contractor, and was running the construction business under the name "Construction World".

34. In order to prove the income of the deceased, the claimants have placed on record the income tax returns. The income tax return Ext.PW-12/A, for the year 2001-02, shows that the gross income of the deceased was Rs.19,93,034/-, out of which he paid income tax to the tune of Rs.6,64,001/- and Rs.5,29,735/- were from interest on FDRs. The next income tax return proved on record was for the year 2002-2003, Ext.PW-11/A, wherein

the gross income of the deceased was proved to be Rs.33,99,280/- and the income tax paid was Rs.10,11,423/- out of the said total income and Rs.6,02,378/- was on account of interest. Similarly, the third income tax return was for the year 2003-04, in which the total income of the deceased was Rs.41,49,745/- and out of the same, a sum of Rs.12,43,013/- was paid by the deceased towards income tax and the amount on account of interest was Rs.17,60,280/-.

35. From the above, it is clear that the deceased had filed the income tax return for the year 2002-03 for a considerable higher amount than the one he had filed for the previous year. No doubt, in the income tax return for the next financial year 2003-04, the net income part (excluding interest and income tax paid), is on the lower side, but, one fact which cannot escape attention is that the deceased had expired in the mid of the financial year 2003-04, which may have proved a huge blow to the mighty business established by him. Thus, it can be easily inferred that the business of the deceased was flourishing by leaps and bounds and he had been shaping himself as a promising contractor and may have had touched the new heights, and by efflux of time, there would have been increase in his business, since the deceased lost his life at the prime age of 44 years because of the accident.

36. The learned counsel for the appellants/claimants in FAO No.80 of 2009 has argued that the Tribunal has fallen in error in making deductions from the income of the deceased and assessed the income in a cursory manner that the deceased was earning not less than Rs.15.00 lacs per annum.

37. On the other hand, the learned counsel for the appellant/insurer in FAO No.162 of 2009 argued that the income of the deceased was much below Rs.15.00 lacs per annum. It was also argued that due to the death of the deceased, there was no loss to his construction business as the same, even after the death, was being run by his wife and other relatives in the same manner.

38. Coming to the second part of the argument raised by the learned counsel for the appellant/insurer, the deceased was looking after the entire business and because of his death the heart and soul of the said project was also lost. Thus, it cannot be said that the widow would also manage the said business in the same manner as the deceased would have managed. As has come on the record, the children were minor at that particular time and they were also not in a position to look after the business set up by the deceased. Therefore, it does not lie in the mouth of the insurer to argue that the business of the deceased had not suffered.

39. Thus, the only question remained is as to what is the just compensation, keeping in view the facts of the instant case.

40. The word “just compensation” has been used in Section 168 of the Motor Vehicles Act, 1988. In order to award just compensation, the Tribunal has to weigh all the aspects to come to the conclusion as to what is the just compensation.

41. Expression “just” has been elaborated by the Apex Court in **State of Haryana and another vs. Jasbir Kaur and others,** reported in **AIR 2003 Supreme Court 3696.** It is apt to reproduce paragraph 7 of the said decision hereunder:

> *"7. It has to be kept in view that the Tribunal constituted under the Act as provided in S. 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can*

hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; nor a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191)."

42. Similar view has been taken by the Apex Court in a case titled as ***The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another*****,** reported in ***AIR 2003 Supreme Court 4172***.

43. The Apex Court in the case titled as ***Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr.,*** reported in **2009 AIR SCW 3717,** laid down the same principle while discussing, in para 27 of the judgment, the ratio laid down in the judgments rendered in the cases titled as *Nagappa v. Gurudayal Singh & Ors, (2003) 2 SCC 274; Devki Nandan Bangur and Ors. versus State of Haryana and Ors. 1995 ACJ 1288; Syed Basheer Ahmed & Ors. versus Mohd. Jameel & Anr., (2009) 2 SCC 225; National Insurance Co. Ltd. versus Laxmi Narain Dhut, (2007) 3 SCC 700; Punjab State Electricity Board Ltd. versus Zora Singh and Others (2005) 6 SCC 776; A.P. SRTC versus STAT and State of Haryana & Ors. versus Shakuntla Devi, 2008 (13) SCALE 621.*

44. The Apex Court in another case titled as **Ningamma & another versus United India Insurance Co. Ltd.,** reported in **2009 AIR SCW 4916,** held that it is the bounden duty of the Court to award "Just Compensation" in favour of the claimants to which they are entitled to, irrespective of the fact whether any plea in that behalf was raised by the claimants or not. It is profitable to reproduce para 25 of the judgment herein:

"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."

45. The Apex Court in the judgments delivered in the cases titled as **A.P.S.R.T.C. & another versus M. Ramadevi & others, reported in 2008 AIR SCW 1213** and **Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service,** reported in **2013 AIR SCW 5800,** has discussed as to what is the 'just compensation' in a Claim Petition filed under the Motor Vehicles Act**.** It is apt to reproduce para 9 of the judgment rendered in ***Sanobanu's*** case supra, herein:

> *"9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."*

46. The Apex Court in case titled ***Santosh Devi versus National Insurance Company Ltd. and others*** reported in **(2012) 6 SCC 421** discussed the issue of assessing compensation in regard to the salaried employees and the self-employed persons. It is profitable to reproduce para 11, 14 to 18 of the said judgment herein:

> *"11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.*
>
> *12-13. …. ….. …..*
>
> *14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.*
>
> *15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.*

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac.

17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

47. It is apt to record herein that the findings returned in Sarla Verma's case (supra) stand upheld by the larger Bench of the Apex Court in **Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 3120.**

48. The apex Court in case titled ***National Insurance Co. Ltd. versus Indira Srivastava and others*** reported in ***2008 ACJ 614*** has explained the term 'income', and has held in paragraphs 8, 9, 17 and 18 as under:

"8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetory terms.

9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income

on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :

"BASIC : 63,400.00CONVEYANCEALLOWANCE : 12,000.00RENT CO LEASE : 49,200.00BONUS (35% OF BASIC) : 21,840.00 TOTAL : 1,45,440.00

In addition to above, his other entitlements were :

Con. to PF 10% Basic Rs. 6,240/- (p.a.) LTA reimbursement Rs. 7,000/- (p.a.)Medical reimbursement Rs. 6,000/- (p.a.)Superannuation 15% of Basic Rs. 9,360/- (p.a.)Gratuity Cont.5.34% of Basic Rs. 3,332/- (p.a.)Medical Policy-self & Family @ Rs.55,000/- (p.a.)Education Scholarship @ Rs.500 Rs.12,000/- (p.a.)Payable to his two children Directly".

10 to 16. . .....

17. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

18. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under :

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

'INCOME' signifies 'what comes in' (per Selborne, C., Jones v. Ogle, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. Re Huggins, 51 LJ Ch.938.) income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921 Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR 1930 Mad 626 : 58 MLJ 337."

49. The Apex Court in **Oriental Insurance Company Ltd. vs. Jashuben & Ors., 2008 AIR SCW 2393,** while taking the similar view has held that it was not relevant to take into account the fact as to what would have been the income of the deceased at the time of retirement, had he retired on attaining the age of superannuation.

50. Following the above principles of law laid down by the Apex Court, this Court, in case titled ***Jagdish versus Rahul Bus Service and others*** **(FAO No. 524 of 2007)** decided on 15.5.2015 and in case **titled as Smt.Anubha Sood and others vs. Sh.Krishan Chand and others, (FAO No.254 of 2012), decided on 19th June, 2015,** has taken the similar view.

51. I, while dealing with a case of such a nature as Judge of Jammu and Kashmir High Court in case titled **New India Assurance Co. Ltd. *versus* Shanti Bopanna and others** reported in ***2014 ACJ 219***, have taken all these things in view and the ratio laid down in this case is squarely applicable to the facts of the present case and accordingly, the amount awarded merits to be enhanced.

52. The learned counsel for the insurance company has argued that the income tax return cannot be taken into consideration without proving the same in accordance with law, is not correct. The judgment relied upon by him in case ***V. Subbulakshmi and others versus S. Lakshmi and another*** reported in ***(2008) 4 SCC 224***, is not in his favour but in favour of the claimants. It is apt to reproduce paras 20 to 24 of the said judgment herein:

> *"20. So far as the question in regard to the quantum of compensation awarded in favour of the appellants is concerned, we are of the opinion that the High Court has taken into consideration all the relevant evidences brought on record.*
>
> *21. The accident took place on 7.5.1997. Income tax returns were filed on 23.6.1997.*
>
> *22. The Income Tax Returns (Exp. P-14), therefore, have rightly not been relied upon.*
>
> *23. Ex.P-8 is a deed of lease. It was an unregistered document. Although the document was purported to have been executed on 10.4.1993, the genuineness thereof was open to question. The stamp paper was purchased in the year 1983 but an interpolation was made therein to show that it was purchased in 1993. The purported receipts granted by the tenant were also unstamped.*
>
> *24. In the aforementioned fact situation, the High Court has not relied upon all the aforementioned documents, filed by the appellant. It may be true that there was no basis for the High Court to arrive at the conclusion that the income of the deceased was Rs.4,000/- from agricultural operation and Rs. 3,000/- from his commission business, but no reliable document having been produced to show that the deceased was earning an income of Rs.12,500/- per month, as claimed. The High Court, in our opinion, cannot be held to have, thus, committed any grave error in this behalf. There is no dispute as regards application of the multiplier."*

53. The apex Court in case titled ***Amrit Bhanu Shali and others*** versus ***National Insurance Company Ltd. and others,*** reported in ***(2012) 11 SCC 738*** has laid down the principles how to grant compensation and how to reach the victim of a vehicular accident. It is apt to reproduce para 17 of the said judgment herein:

> "17. The appellants produced Income Tax Returns of deceased-Ritesh Bhanu Shali for the years 2002 to 2008 which have been marked as Ext.P-10-C. The Income Tax Return for the year 2007-2008 filed on 12.03.2008 at Raipur, four months prior to the accident, shows the income of Rs.99,000/- per annum. The Tribunal has rightly taken into consideration the aforesaid income of Rs.99,000/- for computing the compensation. If the 50% of the income of Rs.99.000/- is deducted towards personal and living expenses' of the deceased the contribution to the family will be 50%, i.e., Rs 49,500/- per annum At the time of the accident, the deceased-Ritesh Bhanu Shali was 26 years old, hence on the basis of decision in Sarla Verma (supra) applying the multiplier of 17, the amount will come to Rs 49,500/- x 17 =Rs 8,41,500/- Besides this amount the claimants are entitled to get Rs.50,000/- each towards the affection of the son, i.e., Rs 1,00,000/- and Rs 10,000/- on account of funeral and ritual expenses and Rs 2,500/- on account of loss of sight as awarded by the Tribunal. Therefore, the total amount comes to Rs.9,54.000/- (Rs.8,41,500/- + Rs. 1,00.000/ - + Rs. 10.000/- + Rs.2,500/-) and the claimants are entitled to get the said amount of compensation instead of the amount awarded by the Tribunal and the High Court. They would also be entitled to get interest at the rate of 6% per annum from the date of the filing of the claim petition leaving rest of the conditions mentioned in the award intact."

54. The Apex Court in **Savita vs. Bindar Singh & others, 2014 AIR SCW 2053,** has held that it is the duty of the Court to award just compensation to the victims of a

vehicular accident and while fixing the just compensation, the Court should not succumb to the niceties or technicalities of law. It is apt to reproduce paragraph 6 of the said judgment hereunder:

> *"6. After considering the decisions of this Court in Santosh Devi as well as Rajesh v. Rajbir Singh , we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."*

55. The Apex Court in **Radhakrishna and another vs. Gokul and others, 2014 AIR SCW 548,** while keeping in view the age of the deceased and that of the parents, awarded a lump sum compensation to the tune of Rs.7,00,000/- in favour of the claimants.

56. The apex Court has also discussed this issue in ***Kalpanaraj and others versus Tamil Nadu State Transport Corporation*** reported in ***(2015) 2 SCC 764*** and held that there should be a judicial approach, while granting compensation to the victims of a vehicular accident. It was also held that the monthly income of the deceased can be assessed on the basis of income tax returns. It is apt to reproduce para 8 of the said judgment herein:

> *"8. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However, the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation, in the light of the principle laid down by this Court in the case of National Insurance Company Ltd. v. Indira Srivastava and Ors, 2008 2 SCC 763. The relevant paragraphs of the case read as under:*
>
> > *"14. The question came for consideration before a learned Single Judge of the Madras High Court in National Insurance Co. Ltd. v. Padmavathy and Ors. wherein it was held:*
> >
> > *'7 ..Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the*

employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.'

15. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in S. Narayanamma and Ors. v. Secretary to Government of India, Ministry of Telecommunications and Ors. holding:

12 .In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the tribunal that the deceased was getting Rs.1,401/- as net income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in Helen's case. The Supreme Court in Concord of India Insurance Co. v. Nirmaladevi and Ors, 1980 ACJ 55 held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'."

57. Coming to the instant case, as discussed supra, the Tribunal on the basis of income tax returns, after deducting the amount towards income tax and the interest on FDRs, held, and rightly so, that the net income of the deceased for the years 2001-02, 2002-03 and 2003-04 was Rs.7,99,298/-, Rs.17,18,479/- and Rs.11,46,492/-, respectively. On the basis of above, the Tribunal has rightly held that the deceased was earning not less than Rs.15.00 lacs per annum.

58. In view of the decision of the Apex Court in Sarla Verma's case (supra), after deducting 1/3rd amount from the total income of the deceased towards his personal expenses, the annual loss of dependency to the claimants can be said to be Rs.10.00 lacs, as has been held by the Tribunal.

59. Having said so, the Tribunal has rightly made the discussion in paragraphs 22 to 27 of the impugned award and has rightly assessed the income of the deceased and has also rightly held that the loss of source of dependency to the claimants was Rs.10.00 lacs per annum. However, the Tribunal has fallen in error in awarding interest at the rate of 9% per annum. Accordingly, I deem it proper to award interest at the rate of 7.5% per annum from the date of the claim petition till deposit.

60. Having glance of the above discussion, the claimants are held entitled to Rs.10.00 lacs x 14 = Rs.1.40 crore. In addition to it, the claimants are also held entitled to Rs.10,000/- each, i.e. Rs.40,000/- in all, under the heads 'loss of love and affection', 'loss of estate', 'loss of consortium' and 'funeral expenses'.

61. In view of the above, the claimants are held entitled to total compensation to the tune of Rs.1,40,00,000/- + Rs.40,000/- = Rs.1,40,40,000/-, alongwith interest at the rate of 7.5% per annum from the date of filing of the Claim Petition till realization.

62. The impugned award is modified as indicated above and both the appeals are disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Cr. Appeal No. 348 of 2011 along with Cr. Appeal No.235 of 2011.
Reserved on: 23rd December, 2015.
Date of Decision: 1st January, 2016.

1. Cr. Appeal No. 348 of 2011.	
Ravinder Singh	.....Appellant.
Versus	
State of H.P.	.....Respondent.
2. Cr. Appeal No. 235 of 2011.	
Santosh Kumari	.....Appellant.
Versus	
State of H.P.	.....Respondent.

Indian Penal Code, 1860- Section 376 and 506- Accused 'R' raped and criminally intimidated minor prosecutrix- she became pregnant- accused 'R' and 'S' administered a medicine to abort foetus being carried by her- they were convicted by the trial Court- there is no evidence that date of birth was got recorded by the parents of the prosecutrix- there are contradictions in the testimony of prosecutrix- she admitted in her cross-examination that she had disclosed the name of some other person at the time of recording of FIR- held, that in these circumstances, trial Court had wrongly convicted the accused- appeal accepted. (Para-10 to 16)

For the Appellants: Mr. Rajesh Mandhotra and Ms. Kanta Thakur, Advocates.
For the Respondent: Mr. P.M. Negi, Deputy Advocate General with Mr. Ramesh Thakur, Assistant Advocate General.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge

Since both the aforesaid appeals arise from a common judgment hence are being disposed of by a common judgment.

2. Both the appeals stand directed by the accused/appellants against the impugned judgment rendered on 10.06.2011 by the learned Sessions Judge, Kangra at Dharamshala in Sessions Case No. 33-J/VII-2010, whereby, the learned trial Court convicted and sentenced accused/appellant Ravinder Singh for his committing offences punishable under Sections 376(1) and 506 of the Indian Penal Code (hereinafter referred to in short as IPC) besides convicted and sentenced accused Santosh Kumari for hers committing offences punishable under |Sections 315 and 201 of the IPC.

3. Brief facts of the case which are necessary to determine the instant appeals are that in the month of April, 2008 and thereafter several times and on 22.11.2009 at Kut Talab, accused Arvind Kumar had perpetrated forcible sexual intercourses upon the person of the minor prosecutrix and criminally intimidated as also threatened her with dire consequences in the event of disclosure of the incident to her parents or elsewhere. On the prosecutrix being subjected to forcible sexual intercourses by the accused she became pregnant. The said occurrence was disclosed by the prosecutrix to her aunt. Accused Ravinder and Santosh Kumari administered to the prosecutrix a medicine to abort foetus carried by her in her womb. The matter was reported to the police and the FIR was registered against the accused in the police station. During the course of investigation, the preserved clothes, vaginal slides, vaginal swabs, pubic hair etc. were sent for chemical and forensic examination and the Investigating Officer prepared the spot maps of the places where the prosecutrix was subject to forcible sexual intercourse by the accused on the identification of the prosecutrix. The statements of the witnesses were recorded separately and forensic report from FSL, Junga was procured separately.

4. On conclusion of the investigations, into the offences, allegedly committed by the accused, a report under Section 173 of the Code of Criminal Procedure was prepared and filed in the competent Court.

5. Accused Ravinder Kumar was charged by the learned trial Court for committing offences punishable under Sections 376(1), 315, 506 and 201 of the IPC and accused Santosh Kumari was charged by the learned trial Court for committing offences punishable under Sections 315 and 201 of the IPC to which both pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined 19 witnesses. On closure of prosecution evidence, the statements of the accused, under Section 313 of the Code of Criminal Procedure, were recorded in which they pleaded innocence and choose not to lead any evidence in defence.

7. On an appraisal of evidence on record, the learned trial Court, returned findings of conviction against the accused/appellants.

8. The accused/appellants stand aggrieved by the judgment of conviction recorded by the learned trial Court, hence have instituted the instant appeals before this Court. The learned defence counsel has concerted to vigorously contend qua the findings of conviction recorded by the learned trial Court being not based on a proper appreciation of evidence on record, rather, theirs being sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of conviction being reversed by this Court in the exercise of its appellate jurisdiction and theirs being replaced by findings of acquittal.

9. On the other hand, the learned Deputy Advocate General has with considerable force and vigour, contended qua the findings of conviction recorded by the Court below being based on a mature and balanced appreciation of evidence on record and theirs not necessitating interference, rather meriting vindication.

10. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

11. The prosecutrix as underscored by her date of birth certificate comprised in Ex.PW4/B was born on 17.09.1996. Consequently, she was a minor at the stage contemporaneous to the alleged perpetration of forcible sexual intercourses upon her person by the accused. Being a minor, she was not competent to accord any valid consent to the sexual overtures, if any, perpetrated on her person by the accused. In sequel, her consent, if any to the sexual intercourses which she performed with the accused is wholly insignificant besides irrelevant. Even though Ex.PW7/G records the factum of the radiological age of the prosecutrix standing therein determined to be between 14 to 15 years. As a corollary with an occurrence of a margin of error of two years on either side and the benefit of error of two years beyond 14 to 15 years being affordable to the accused stands espoused by the learned counsel for the appellant to constrain an inference of the prosecutrix at the stage contemporaneous to the ill-fated occurrence standing arrived at the age of consent to mete a valid consent to the accused for his sexually accessing her. Thereupon, the learned counsel for the appellant canvasses qua given the factum of the prosecutrix being competent to accord a valid consent to the accused for his sexually accessing her at a stage contemporaneous to the sexual encounters inter se them purportedly commencing since April, 2008 upto November, 2009 conjunctively construed in tandem with her omission to report the matter promptly since April, 2008 uptill the date of lodging of an FIR, is a manifestation of hers consensually succumbing to the sexual overtures of the accused. However, the vigour of the aforesaid submission addressed before this Court by the learned counsel for the appellant stands dispelled in the face of their being a vivid and graphic display in Ex.PW4/B qua the prosecutrix being born on 17.9.1996 hence a minor at the stage contemporaneous to the alleged forcible perpetration of sexual intercourses upon her person by the accused. The portrayal in Ex.PW4/B inasmuch as its recording therein 17.9.1996 to be the date of birth of the prosecutrix when stood not assayed to be controverted by the learned defence counsel for the accused by cross-examining PW-4 telling upon the factum of the date of birth of the prosecutrix recorded in Ex.PW4/B being not at the instance of or at the behest of the parents of the prosecutrix whereupon an inference of its standing recorded at the whim or caprice of the person who scribed it was hence emanable, necessarily begets an inference of the date of birth of the prosecutrix recorded in Ex.PW4/B standing scribed therein at the instance of or at the behest of the parents of the prosecutrix whereupon it hence acquires conclusivity qua the factum of the prosecutrix standing born on 17.9.1996 as recorded therein. In after math it carries an imperative effect of the opinion of the radiologist comprised in Ex.PW7/G recorded with observations therein qua the radiological age of the prosecutrix being between 14 to 15 years being tenuous. Even otherwise when Ex.PW4/B has, for reasons aforestated,

attained conclusivity qua the factum of recording therein of 17.09.1996 being the date of birth of the prosecutrix, it stands on a sacrosanct pedestal vis-a-vis the opinion recorded in Ex.PW7/G which otherwise may be a mere assessment open to, as emanable on a reading of the cross-examination of PW-7, margin of error of two years, hence, leaving it open to infirmities of imprecision besides inexactitude ingraining it, which infirmities gripping it do not obviously constitute any firm determination therein with precision qua the radiological age of the prosecutrix. In principle the age of the prosecutrix as stands displayed in birth certificate Ex.PW4/B especially when the apt disclosure therein stands unshaken by potent evidence unveiling the fact of the scribing of the date of birth of the prosecutrix therein being not at the instance of the parents of the prosecutrix which evidence in displacement of the recitals of the date of birth of the prosecutrix in Ex.PW4/B when stands not upsurged, renders it to outweigh besides countervail the imprecise assessment of her age in Ex.PW7/G.

12. Having rendered a determination of the prosecutrix having not reached the age of consent for affording a valid consent to the accused for his sexually accessing her would not ipso facto advance the espousal of the prosecution of the charge against the accused standing sustained especially when the factum of the charge against the prosecution standing clinched warrants weighing besides assessing with a keen discernment by this Court of the testimony of the prosecutrix besides of other prosecution witnesses. Primarily, the solitary deposition of the prosecutrix would command sway for recording findings of conviction against the accused unless on a wholesome reading of her deposition besides the depositions of other prosecution witnesses unveil the prime fact of each in their respective examinations-in-chief vis-a-vis their cross-examinations rendering disharmonious besides inconsistent versions qua the incidents/incident or a close reading of their testimonies reveal each of the prosecution witnesses having mutually contradicted each other. Naturally, if inter se contradictions occurr in their testimonies comprised in their respective examinations-in-chief vis-a-vis their respective cross-examination or their respective depositions qua the ill-fated occurrence(s) stand afflicted with a malady of intra se contradictions, as a corollary, the testimony of the prosecutrix would enjoin this Court to discard it. Moreover, an inference of her deposition qua the occurrence(s) standing belied would surge-forth.

13. For gauging whether the testimony of the prosecutrix is reliable besides creditworthy, her testimony has to be conjunctively read along with the testimony of PW-3 Kumari Shivani who accompanied the prosecutrix to school enroute whereat the accused met them and beseeched the prosecutrix to meet him at place Kut-Talab. PW-3 Kumari Shivani had overheard entreaties made by the accused upon the prosecutrix for the latter joining him at Kut-talab. She had made a disclosure of the aforesaid entreaties made upon the prosecutrix by the accused, to her mother, Urmila Devi, PW-2. In the event of PW-3 Shivani supporting the prosecutrix and PW-2, Smt. Urmila qua the aforesaid entreaties having been made upon the prosecutrix by the accused for the latter joining him at Kut-talab would facilitate this Court for construing the testimonies of both, PW-2, Smt. Urmila as well as of the prosecutrix being creditworthy. However, in case, she contradicts them, both the prosecutrix as well as PW-2 would stand belied. PW-3 was a minor yet on her competence to depose as witness standing gauged by the learned trial Court by putting queries to her whereto on PW-3 meteing intelligible answers led it to declare her to be a competent witness to testify wherein she on standing subjected to a piercing cross-examination by the learned defence counsel has made unfoldments connotative of the fact of hers labouring under active tutorings standing meted to her by her uncle. Apart therefrom when a reading of her cross-examination unveils the factum of hers obeying the command of her paternal/maternal uncles clinches the factum of hers deposing a tutored version qua

the incident which factum is further unearthable arising from hers admitting a suggestion put to her by the learned defence counsel of her uncle being available outside the Court at the stage when she was recording her deposition qua the occurrence before the learned trial Court and of his having meted directions to her to name Ravinder to be the accused in the alleged incidents of sexual encounters inter se him and the prosecutrix. Preponderantly with hers conceding to suggestions put to her by the learned defence counsel of hers deposing against the accused at the instance of her paternal/maternal uncles renders her deposition being replete with vice of tutorings obviously rendering her version qua the incident comprised in her examination-in-chief being construable to be in-volitional rather standing prodded by active tutorings meted to her both by her uncle as well as her parents, with the ensuing sequel of her testimony not lending succor to either the deposition of PW-2 or to the testimony of the prosecutrix of the accused having met the prosecutrix on the ill-fated day when both were proceeding to school whereupon he beseeched the prosecutrix to meet him at Kut-Talab. For reasons aforestated with the testimony of the prosecutrix standing belied by PW-3 Shivani yet it would not also with immediacy foster any conclusion of exculpation of the guilt of the accused in the alleged forcible sexual intercourses he performed with the prosecutrix .

14. For firmly determining the prima donna factum of the prosecutrix rendering or not rendering a concocted tale qua the alleged forcible sexual encounters which she performed with the accused, her testimony has to be read in a wholesome manner. Only on a wholesome perusal of her testimony comprised both in her examination-in-chief and her cross-examination would unearth the factum of hers rendering a disharmonious or inconsistent version qua the incident hence her testimony standing ridden with a vice of interse contradictions would be construable to be neither trustworthy nor inspiring. In the endeavour to ferret from a whole some reading of the testimony of the prosecutrix comprised both in her examination-in-chief as well as in her cross-examination whether she therein has rendered a disharmonious version qua the incident, an incisive reading of her testimony in her cross-examination unfolds the factum of hers admitting (a) the suggestion put to her by the learned defence counsel of hers not having met the accused in the month of August, September, October, November, 2009 whereupon an inference sprouts of hers contradicting the version deposed by her in her examination-in-chief of the accused having met her in November, 2009. (b) The inter se contradictions qua the aforesaid factum in her examination-in-chief vis-a-vis her cross-examination erodes the solemnity or creditworthiness of the factum aforesaid constituted in her examination-in-chief besides with hers also admitting the further suggestion put to her during the course of her cross-examination by the learned defence counsel of a boy named Arvind resident of village Manoh Sihal having sexually accessed her, with aplomb lends vigour to an inference of hers exculpating the guilt of the accused for which he stood charged and convicted by the learned trial Court. (c) Moreover, hers conceding in her cross-examination of hers having disclosed the name of Arvind at the time of lodging EX.PW12/A; (d) in addition hers admitting the suggestion put to her by the learned defence counsel during the course of his subjecting her to cross-examination of hers on pressure standing exerted upon her by her parents to disclose whatever stood scribed by the police in the FIR, foments a conclusion of the FIR wherein the name of accused Ravinder occurs standing scribed by the police at their own behest even prior to any disclosure qua the incident standing purveyed to them by the prosecutrix contents whereof she was pressurised to accept. In aftermath, the occurrence of the name of accused Ravinder in the FIR palpably stands generated from pressure standing exerted upon her by her parents to name him therein even when she had disclosed to the police the name of Arvind to be the person who had sexually accessed her. Naturally the occurrence of the name of Ravinder in the FIR is an invention arising from mistaken identity. Also his naming therein is a stark unfoldment of his standing falsely implicated by

the prosecutrix. For reiteration, dehors the aforesaid inferences arising from the admissions aforesaid emanating in the cross-examination of the prosecutrix held by the defence counsel, the inevitable inference therefrom is also of despite hers having named Arvind to be the person who had perpetrated forcible sexual intercourses upon her person she was compelled to accept the scribing by the police in Ex.PW12/A of Ravinder Kumar being the person who had perpetrated forcible sexual intercourses upon her. Elicitations of the aforesaid admissions from the prosecutrix by the learned defence counsel while conducting her cross-examination impinging upon accused Ravinder standing mistakenly identified by the prosecutrix gains vigour from the factum of hers also in the latter part of her cross-examination admitting the suggestion put to her by the learned defence counsel of besides Arvind no other person having sexually accessed her besides from hers admitting the suggestion put to her by the learned defence counsel of hers on hers gaining pregnancy disclosing to her aunt, the factum of a boy named Arvind having sexually accessed her. In sequel, the aforesaid inferences with formadibility clinch a deduction of the guilt of the accused standing exculpation by the prosecutrix. Even when the testimony of PW-3 Shivani has been concluded to be ingrained with a vice of doctorings as well as tutorings standing meted to her both by her uncles as well as her parents vices whereof render her testimony to be discardable. Apart therefrom, when PW-3, for reasons aforestated contradicts the testimonies both of the prosecutrix as well as of PW-2, her mother and the aunt of the prosecutrix, especially with the latter deposing a version qua the occurrence only on a disclosure made to her by PW-3, hence, emaciates the credibility of PW-2 as also of the prosecutrix. In sequel, with the prosecution case standing ingrained with a vice of not only inter se contradictions aforesaid occurring in the testimony of the prosecutrix comprised in her examination-in-chief vis-a-vis her cross-examination besides when it also stands imbued with a vice of intra se contradictions preeminently, for reasons aforestated arising in the testimonies of the prosecutrix, PW-3 Shivani as well as PW-2 Smt. Urmila, the aunt of the prosecutrix sequelly for reiteration renders it to stand infected with a taint of intra se contradictions. As a sequitur with taints of inter se contradictions existing in the testimonies of the prosecution witnesses aforesaid arising from theirs deposing contrarily a version qua the incident in their respective examinations-in-chief vis-a-vis their respective cross-examinations besides with a taint of intra se contradictions ingraining their respective depositions concomitantly the prosecution version hence standing gripped with grave infirmities renders susceptible to doubt the version qua the incident spelt out by the prosecutrix, whereupon an inference is drawable of her creditworthiness standing belittled.

15. Be that as it may, with the infirmities aforesaid in the prosecution case, hence making pervasive inroads qua the veracity of the prosecutrix version, the learned trial Court at the end of the cross-examination of the prosecutrix queried the prosecutrix qua the contradictions which stood upsurged in her version qua the incident comprised in her examination-in-chief vis-a-vis her cross-examination whereupon the prosecutrix had named accused Ravinder to be the person who had perpetrated sexual intercourses upon her. However, even if the learned trial Court had elicited from the prosecutrix by its at the end of her cross-examination by the learned defence counsel querrying her, the name of the accused Ravinder to be the person who subjected her to forcible sexual intercourse yet the aforesaid elicitation surfacing from the prosecutrix would not subsume nor smother the effect of hers prior to the aforesaid elicitation of the name of accused Ravinder by the learned trial Court by querying her on conclusion of her cross-examination by the learned defence counsel, contradicting in her cross-examination the inculpatory role meted to the accused in her examination-in-chief. Any negation of exculpation of the guilt of the accused by the prosecutrix in her cross-examination wherein she has forthrightly unfolded the factum of a boy named Arvind having forcibly sexually accessed her merely on hers unfolding on hers being queried by the learned trial Court the name of accused Ravinder to

be the person who had forcibly sexually accessed her would tantamount to placing reliance upon the testimony of the prosecutrix even when she precedingly in her cross-examination had therein exculpated guilt of the accused. Rather the ditherings and vacillations therefrom at a stage when on conclusion of her cross-examination, the learned trial Court on querying her elicited from her the name of accused Ravinder to be the person who had forcibly sexually accessed her, only pronounce upon the factum of hers holding a wavering opinion qua the identity of the accused. Waverings and oscillations therein by the prosecutrix when obviously stand emerged in hers inculpating accused Ravinder on conclusion of her cross-examination on hers standing queried by the learned trial Court also obviously stand in stark departure to hers precedingly in a consistent and harmonious manner with aplomb naming Arvind to be the person who had forcibly sexually accessed her. Imperatively only when the prosecutrix had consistently besides harmoniously in her cross-examination had inclupated accused Ravinder therein would render her testimony to be inspiring besides creditworthy rather contrarily when she deviates and digresses from the norm of deposing throughout with consistency and harmony, necessarily this Court would not on an inconsistent besides disharmonious testimony of the prosecutrix harboured, for the reasons aforesaid, upon the identity of accused Ravinder fasten any inculpatory role to accused Ravinder. The fastening of an inculpatory role to accused Ravinder only on the prosecutrix at the end of her cross-examination on hers standing queried by the learned trial Court unfolding his name to be the accused would also be in detraction to the testimony of PW-3 Shivani, whose testimony on its incisive reading stands hereinabove marshalled to be ridden with a vice of tutorings and doctorings meted to her both by her parents and her uncles, hence discardable besides contradicting the version of the prosecutrix. In aftermath, for balancing the testimonies of both the prosecutrix and PW-3 Shivani they are to be read entwinedly rather than disjunctively. In sequel ascription of an inculpatory role to Ravinder by the prosecutrix on conclusion of her cross-examination by the learned defence counsel on the learned trial Court querying her whose inculpation is for reasons aforesaid construable to be discardable besides unamenable for any reliance thereupon constituted by its infracting the norm of her testimony standing appraisal in a wholesome rather than in a fragmentary besides in an isolated manner. In aftermath with deference and reverence to the rule of appraising her testimony in a wholesome manner rather than in a fragmentary or isolated manner, the exculpation of the accused by the prosecutrix in her cross-examination cannot be either scored off nor can stand effaced merely on hers on conclusion of her cross-examination on hers standing queried by the learned trial Court hers therein inculpating Ravinder. In nut shell this Court is constrained to conclude of the prosecutrix rendering an untruthful version qua the incident besides her version qua the incident being bereft of any credibility.

16. The prosecutrix had gained pregnancy and to abort the foetus carried by her in her womb, accused Ravinder and co-accused Santosh Kumari had purportedly administered a medicine to her bought from Laxmi Medical Store. On the aforesaid deposition of PW-2 as well as of the prosecutrix, the prosecution has concerted to connect the accused in the commission of the offence alleged. Also thereupon the prosecution has assayed for implicit reliance being placed upon elicitations by the learned trial Court on its querying her wherein an inculpatory role qua accused Ravinder stands purveyed by the prosecutrix. However, though the prosecution hence concerted to link the accused in the commission of the offences constituted against them yet its endeavour cannot mete with any success in the face of the prosecutrix in her cross-examination admitting the suggestion put to her by the learned defence counsel of hers consuming medicine at the instance of her mother and aunt concomitantly dispelling the role of the accused of theirs fetching medicines from Laxmi Medical Store for aborting the foetus carried by her in her womb. Moreover, with the mother of the prosecutrix in her cross-examination feigning ignorance

qua the prosecutrix disclosing to the police of medicines for aborting her pregnancy standing administered to her by her and her aunt besides hers also feigning ignorance qua the identity of the persons, who administered the medicines for aborting the foetus carried by the prosecutrix in her womb while hence hers not being categorical in naming Santosh Kumari (accused), the mother of accused Ravinder, to be the person who administered them rather when her testimony is both wavering as well as off the mark for clinching the factum aforesaid cannot constitute it to be rendering either conclusive or firm evidence qua the mother of the accused administering medicines to the prosecutrix for aborting her pregnancy. With shaky evidence existing qua the aforesaid factum, begets an inference of the endeavour of the prosecution to hence link the accused in the commission of the offence standing capsized. Even during her cross-examination, PW-17, the mother of the prosecutrix has feigned ignorance of the implication of accused Ravinder standing begotten by mistaken identity. Obviously, the mother of the prosecutrix again has been uncategorical about the identity of accused Ravinder. Lack of communication by her with firm categoricality qua the identity of accused Ravinder, renders infirm in-coagulation with the taint ridden testimony of the prosecutrix, any naming by her on the Court quering her of accused Ravinder being the person who forcibly sexually accessed nor it can hold any deference.

17. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court has not appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court suffers from perversity or absurdity of mis-appreciation and non appreciation of evidence on record. Consequently, the instant appeals are allowed and the judgment of the learned trial Court is set-aside. Accused/appellants are acquitted of the offences charged. They be set at liberty forthwith, if not required in any other case. Fine amount, if any, deposited by the accused/appellants, be refunded to them. Records be sent back.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Sh. Rikhi Ram & others .....Appellants

Versus

Shri Yogesh Kumar & others ....Respondents

FAO No. 229 of 2009
Decided on : 1.1.2016

Motor Vehicles Act, 1988- Section 166- Tribunal had taken the income of the deceased as Rs.3,000/- p.m. by guess work - his monthly income can be taken as Rs.4,000/- p.m.- 1/3rd amount was deducted towards personal expenses – deceased was bachelor- ½ of the amount was to be deducted towards personal expenses- thus, loss of dependency will be Rs.2,000/- per month- deceased was aged 18 years at the time of accident- multiplier of '14' will be applicable- claimants will be entitled to Rs.2000 x 14 x 12= Rs.3,36,000/-, under the head 'loss of dependency', in addition to this a sum of Rs.10,000/- each awarded under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses'- thus, total compensation of Rs. 3,66,000/- was awarded along with interest @ 7.5 % per annum from the date of the filing of the claim petition. (Para-6 to 12)

Cases referred:

Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104

Reshma Kumari & others versus Madan Mohan and another, 2013 AIR (SCW) 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105

For the Appellants : Mr. Vivek Dharel, Advocate, vice Mr. V.S. Chauhan, Advocate.
For the Respondents: Nemo for respondents No. 1 & 2.
Mr. Jagdish Thakur, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (oral)

This appeal is directed against award dated 23rd December, 2008, made by the Motor Accident Claims Tribunal-II, Solan, H.P. (hereinafter referred to as "the Tribunal") in Petition No. 2-S/2 of 2008, titled Rikhi Ram & others versus Yogesh Kumar and others, whereby compensation to the tune of Rs.2,62,000/- with interest @ 12% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants-appellants herein and the insurer came to be saddled with liability (for short, "the impugned award").

2. The insurer, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The claimants have questioned the impugned award on the ground of adequacy of compensation.

4. The only dispute in this appeal is -whether the amount awarded is inadequate. The answer is in the affirmative for the following reasons.

5. Admittedly, the deceased was 18 years of age at the time of accident, was a student and hope for parents.

6. The Tribunal has fallen in an error in taking the income of the deceased as Rs.3,000/- per month. By guess work, his monthly income can be taken as Rs.4,000/- per month.

7. The Tribunal has also fallen in an error in deducting 1/3rd towards the personal expenses of the deceased because he was a bachelor and 50% was to be deducted towards his personal expenses, in view the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others** versus **Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104,** upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others** versus **Madan Mohan and another,** reported in **2013 AIR (SCW) 3120** read with the judgment rendered by the Apex Court in case titled as **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.** Accordingly, it is held that the claimants have lost source of dependency to the tune of Rs.2,000/- per month.

8. The Tribunal has also fallen in an error in applying the multiplier of '16'. The multiplier of '14' is applicable in this case, as per the 2nd Schedule appended to the Motor Vehicles Act read with the ratio laid down by the Apex Court in ***Sarla Verma's, Reshma Kumari's and Munna Lal Jain's,*** cases, *supra.*

9. Having said so, the claimants are held entitled to the amount of Rs.2,000/- x 12 = Rs.24,000/- x 14 = Rs.3,36,000/-, under the head 'loss of dependency'.

10. Keeping in view the recent judgments of the Apex Court, a sum of Rs.10,000/- each, is also awarded under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses', in favour of the claimants.

11. Accordingly, the claimants are held entitled to total compensation to the tune of Rs.3,36,000/- + Rs.30,000/- = Rs.3,66,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

12. The amount of compensation is enhanced and the impugned award is modified, as indicated above. The appeal is accordingly disposed of.

13. The insurer is directed to deposit the enhanced amount alongwith interest, within a period of eight weeks from today before the Registry. On deposit, the Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in the account.

14. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Satya Devi and others ....Appellants

Versus

Shri Sher Singh and another .....Respondents

FAO (MVA) No. 152 of 2009.
Judgment reserved on 18.12.2015.
Date of decision: 01.1.2016.

Motor Vehicles Act, 1988- Section 149- Deceased was employee of contractor -he had hired the vehicle for carriage of plastic tanks and other articles- vehicle met with an accident in which the deceased suffered injuries and succumbed to them - legal representatives of the owner stated that contractor had not hired the vehicle and the deceased was their employee- Insurer directed to pay Rs. 50,000/- under no fault liability- legal representatives directed to pay Rs. 37,000/-. (Para-6 to 9)

For the appellants: Mr. Vijay Chaudhary, Advocate.
For the respondents: Mr. M.L. Chauhan, Advocate, for respondent No.1.
Mr. J.S. Bagga, Advocate, for respondent No.2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

This appeal is directed against the judgment and award dated 9.1.2009, made by the Motor Accident Claims Tribunal Kinnaur at Rampur Bushahr, H.P. in MAC Petition No. 5 of 2007, titled *Shri Sher Singh Gorang versus Satya Devi and others*, for short "the Tribunal", whereby compensation to the tune of Rs.87,000/- alongwith interest @ 9% per annum was awarded in favour of the claimant and insurer was directed to satisfy the

award with right of recovery from appellant herein, hereinafter referred to as "the impugned award", for short.

2. The claimant in the claim petition has pleaded that the deceased was employee of contractor, namely Tul Bahadur and he had hired Tata Tempo No. HP-06-0961, from Kaza to Rampur for carriage of plastic tanks and other articles, which was being driven by its driver rashly and negligently and met with an accident as a result of which deceased suffered multiple injuries and succumbed to the same.

3. The legal representatives of the owner have stated that the contractor had not hired the vehicle and the deceased was their employee. The insurer has denied the liability though admitted the factum of insurance.

4. It is apt to record herein that that the contractor is not party in this *lis*.

5. Parties have led evidence.

6. The Tribunal, after scanning the evidence, granted the compensation to the tune of Rs.87,000/- in favour of the claimant. The claimant has not questioned the same thus it has attained finality so far as it relate to him.

7. When the factum of insurance is admitted, the insurer had to pay Rs.50,000/-, on account of no fault liability, under Section 140 of the Motor Vehicles Act, for short "the Act." Thus, insurer is directed to deposit the amount of Rs.50,000/- with interest @ 7.5% per annum from the date of claim petition till its realization, in the Registry within six weeks from today.

8. The question is who has to pay the rest amount of Rs.37,000/-. Since the disputed facts are involved and pleadings are at variance, I deem it proper to direct the legal representatives of the registered owner of the vehicle, who have admitted that the deceased was their employee and not the employee of the contractor, to pay rest amount of Rs.37,000/-, with interest as awarded. Ordered accordingly.

9. The legal representatives of the owner-insured are directed to deposit rest amount of

Rs.37,000/- in the Registry within six weeks from today with interest @ 7.5% per annum from the date of claim petition till its realization.

10. In case, the insurer has already deposited the statutory amount plus balance amount in the Registry, the same be released to the insurance company, through payees' cheque account.

11. Having said so, the impugned award is modified as indicated hereinabove, and the appeal is disposed of.

12. Send down the records forthwith, along with copy of this judgment.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Brij Lal & others ...Appellants.

Versus

State of Himachal Pradesh ...Respondent.

Cr. Appeal No.: 4015 of 2013
Reserved on: 28.12.2015
Date of Decision: 02.01.2016

Indian Penal Code, 1860- Section 307 read with Section 149- complainant and accused had purchased the land from 'P'- complainant and the accused got separated in the year 1981 and the joint land was divided in a family partition- accused demanded upper portion of the land during the partition in June, 2010- a dispute arose between the parties - complainant found that two khair trees were cut from the land in his possession- he questioned the labour of the contractor and asked them not to convert the trees into logs- accused formed an unlawful assembly- accused 'B' was armed with a gun- accused started assaulting the complainant and accused B fired a gun at the complainant- accused 'D' assaulted the complainant with an axe on the right arm- complainant was taken to Hospital- accused were convicted by the trial Court – aggrieved from the acquittal, accused preferred an appeal- Medical Officer found gunshot injuries on the person of the complainant- injuries could be caused with blunt and sharp edged weapon like axe and darat- testimony of the injured was corroborated by other eye witnesses- testimonies of the prosecution witnesses were consistent –recovery of weapon was also proved- however, the complainant had not informed the police regarding the infliction of the injuries by accused 'I' and 'K' and the same will amount to improvement- however, they were present at the spot and were close relatives of the accused- hence, an inference can be drawn that they were sharing common object of the unlawful assembly- trial Court had rightly appreciated the evidence- appeal dismissed.

(Para-9 to 12)

For the Appellant: Mr. A.K. Pathania and Mr. Pawan Gautam, Advocates, for the appellants.

For the respondent: Mr. Vivek Singh Attri, Dy. AG, for the respondent.

The following judgment of the Court was delivered:

Per Sureshwar Thakur, Judge

This appeal stands directed against the judgement rendered on 18.06.2013 by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, Himachal Pradesh in Sessions trial No.10/7 of 2012, whereby the appellants stand convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- and in default to undergo simple imprisonment for five months for commission of offence punishable under Section 307 read with Section 149 of the Indian Penal Code. Each of the convicts stand further sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for one month for the commission of offence punishable under Section 148 of the Indian Penal Code. Accused Brij Lal in addition to his standing convicted in the aforesaid manner for committing offences afore-referred stands both convicted besides sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.3000/- for committing an offence punishable under Section 25 of the Indian Arms Act and in default to undergo simple imprisonment for a period of one month. All the substantive sentences of imprisonment were directed to run concurrently.

2. The prosecution story, in brief, is that PW-1 Sri Ram and Brij Lal (accused) from the years 1978 to 1990 had purchased land from Prem Singh. In the year 1981, the complainant and Brij Lal had got separated and the joint land was divided by way of family partition. They both started cultivating the lands in their respective possessions, but in June, 2010 during the partition, Brij Lal had demanded upper portion of the land, hence a dispute arose between the two. On 25.12.2011, when the complainant had come back home around 6:00 p.m., he found two khair trees to have been cut from the land under his

possession and from his share. On 26.12.2011, at about 8:00 a.m. the complainant had questioned the labour of the contractor and had asked them to refrain from converting the khair trees into logs. On this, Brij Lal, Indira Devi, Fullan Devi, Dev Raj and Kanta Devi (accused persons) appeared there forming an unlawful assembly and at that time Brij Lal was armed with a gun. In prosecution of the common object of the unlawful assembly, all the accused persons had started assaulting the complainant and accused Brij Lal had fired a gun shot on him. Resultantly, complainant had sustained an injury on his left jaw. Accused Dev Raj had assaulted the complainant with an axe on his right arm. Accused Brij Lal with an intention to kill the complainant had fired the gun shot. The injured was taken to Hospital where he made a statement Ext. PW-1/A to ASI Keshav Dutt. The statement was reduced into writing and was sent to police station, Ghumarwin for registration of FIR, where FIR Ext. PW-18/A was registered. Medical examination of Sri Ram was conducted by PW-1 Dr. Supriya Atwal. The nature of injuries No. 1 and 3 was stated to be grievous and that of injuries No. 2 and 4 was stated to be simple by PW-17 Dr. Supriya Atwal on the basis of report of Radiologist and on the basis of record of Govt. Dental College Shimla, and which could be caused within six hours of the examination by means of gun shot, blunt and sharp edged weapons, like 'darat' and an axe. She issued MLC Ext. PW-17/B. Further case of the prosecution is that during the course of investigation blood stained over pullover (Ext. P-1), shirt (Ext. P-2), vest (Ext.P-3) and trouser (Ext.P-4) of the complainant were taken into possession by the police. On 28.12.2011, an axe (Ext. P-6) was produced by Dev Raj which was taken into possession vide recovery memo Ext. PW-3/C prepared in the presence of witnesses. Axe was sealed in a parcel with seal 'S'. Seal impression Ext. PW-20/A was taken separately on a piece of cloth. A site plan Ext. PW-24/K of the place of recovery of axe and its khakha Ext. PW-3/D were prepared. PW-29 ASI Keshav Dutt had taken into possession gun licence of Brij Lal (Ext. P-12) from the office of A.D.M. Bilaspur vide memo Ext. PW-4/A, on being produced by Dev Nand (PW-4). It had been renewed uptill 22.12.2011 only. Statements of witnesses were recorded as per their versions.

3. On completion of investigation into the offences allegedly committed by the accused a report under Section 173 Cr.P.C. stood prepared and filed in the competent Court.

4. The accused/appellants herein stood charged for committing offences punishable under Sections 147, 148, 307 read with Section 149 of the Indian Penal Code. In addition thereto accused Brij Lal stood also charged for committing an offence under Section 25 of the Indian Arms Act. All the accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 24 witnesses. On closure of the prosecution evidence, the statements of accused persons, under Section 313 of the Code of Criminal Procedure, stood recorded wherein they pleaded innocence and claimed false implication. In defence they chose not to lead any evidence.

6. The accused/appellants stand aggrieved by the judgment of conviction recorded by the learned trial Court. Shri A.K.Pathania, learned Advocate has concerted to vigorously contend before this Court qua the findings of conviction, recorded by the learned trial Court, standing not anvilled on a proper appreciation by it of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of conviction being reversed by this Court, in the exercise of its appellate jurisdiction and theirs being replaced by findings of acquittal.

7. On the other hand, the learned Deputy Advocate General appearing for the State has with considerable force and vigour contended qua the findings of conviction

recorded by the Court below being based on a mature and balanced appreciation of evidence on record and theirs not necessitating any interference rather meriting vindication.

8. This Court with the able assistance of the learned counsel on either side, has with studied care and incision, evaluated the entire evidence on record.

9. MLC Ext.PW-17/B is reflective of the victim of the offence standing afflicted with gun-shot injuries besides injuries with blunt and sharp edged weapon like axe and Darat. She has opined therein of injuries No. 1 and 2 being grievous and of injuries No. 3 and 4 being simple. Gun exhibit P-5 recovered under memo Ext.PW-5/B, Axe Ext.P-6 recovered under memo Ext.PW-3/C and Darat Ext.P-7 recovered under memo Ext. PW-3/B stand espoused by the prosecution to stand used respectively by accused Brij Lal, accused Dev Raj and accused Fullan Devi for inflicting therewith injuries on the victim/complainant. Given the gravity of injuries borne on the person of the injured/victim hence endangering his life besides with proven recovery of weapons of offence afore-stated at the instance of the afore-referred accused by the Investigating Officer under recovery memos respectively comprised in Ext.PW-5/B, Ext.PW-3/C and Ext.P-3/B does tentatively inspire an inference of the charges framed against the accused for which they stood tried and convicted being sustainable. The learned counsel appearing for the accused appellants has adverted to the testimonies of PW-22 and PW-23 the purported eye witnesses to the occurrence whose reneging from their previous statements recorded in writing stand espoused by him to smother the effect of the testimony of the victim besides nullifying the effect of recoveries of weapons of offence i.e. Gun exhibit P-5 effectuated under memo Ext.PW-5/B, Axe Ext.P-6 effectuated under memo Ext.PW-3/C and Darat Ext.P-7 effectuated under memo Ext. PW-3/B, respectively effectuated at the instance of the accused aforesaid by the Investigating Officer. While testing the sinew of the aforesaid submissions addressed before this court by the learned counsel for the accused-appellant, it is imperative to advert to the testimony of the victim-complainant. His testimony in case free from any taint of inter se contradictions arising from his deposing a version qua it in his examination in chief inconsistent with a version thereof narrated in his cross examination would solitarily command sway especially with its comprising an inspiring besides creditworthy narration qua the incident of an injured/victim hence not warranting its standing corroboration by other purported eye-witnesses to the occurrence. Necessarily for reiteration if his testimony qua the occurrence comprised in his examination in chief is in harmony with his testimony qua it embodied in his cross-examination, it would both be inspiring and credible dehors the purported eye witnesses to the occurrence PW-22 and PW-23 reneging from their previous statements recorded in writing hence omitting to lend any succor to the prosecution case besides not corroborating the version qua the incident comprised in the testimony of PW-1 the injured, qua the assault standing launched on his person respectively by the accused aforesaid with theirs respectively wielding Gun exhibit P-5, Axe Ext.P-6 and Darat Ext.P-7 sequelling infliction of injures on his person opined by the doctor concerned to be dangerous to life. On an arousal of the aforesaid inference of the testimony of the victim/injured being both reliable as well as trustworthy would render unnecessary reliance if any by the prosecution upon the deposition of PW-3 which even otherwise is a rendition of an account by her qua the occurrence after its conclusion besides with its unfolding the factum of hers gaining knowledge qua the occurrence only on hers standing apprised by the victim/injured of accused Brij Lal firing a gun shot at him, Dev Raj inflicting a blow with an axe and Fullan Devi striking him with a darat, hence negates her presence at the site of occurrence at the stage contemporaneous to its initiation and conclusion thereat whereupon an inference stands fomented of hers not being an ocular eye witness to the occurrence, incapacitating her to render a vivid and credible account qua it for founding thereupon any attribution of an incriminatory role with conclusivity to accused Brij Lal, accused Dev Raj and accused

Fullan Devi arising from theirs respectively firing a gun shot, delivering an axe blow and a drat blow on the person of the victim. An incisive reading of the testimony of PW-1 evinces the prime factum of his purveying therein both in his examination-in-chief besides in his cross-examination a consistent and a harmonious version qua the accused aforestated respectively firing a gun shot at him besides inflicting an axe blow and striking a darat blow on his person. With PW-1 being consistent in his deposition comprised both in his examination-in-chief and in his cross-examination qua the ascription therein of an inculpatory role to accused Brij Lal, accused Dev Raj and accused Fullan Devi renders his testimony to be bereft of any taint of inter se contradictions. A reading of the cross-examination of PW-1 with a portrayal therein of suggestions standing meted to PW-1 by the learned defence counsel of an axe blow standing delivered on his person with force by accused Dev Raj and a blow of darat standing delivered upon him by accused Fullan Devi which suggestions elicited a response in the affirmative from him does ipso facto fillip an inference of the defence acquiescing to accused Dev Raj and accused Fullan Devi holding or wielding an axe and a darat respectively with user whereof they inflicted blows on his hands as noticed in MLC Ext.PW-17/B. The suggestions aforesaid by the learned counsel for the defence to PW-1 and theirs eliciting a response in the affirmative by PW-1 while connotative of an admission by the defence of both Dev Raj and Fullan Devi assaulting the victim with an axe and a darat, negates the effect, if any, of the purported eye witnesses to the occurrence Mohamad Ameen and Mohamad Meer reneging from their previous statements recorded in writing. Concomitantly, effect thereof is of omission on the part of the complainant to attribute in his previous statement recorded in writing an inculpatory role to Fullan Devi comprised in the latters holding a darat wherewith hers inflicting its blow on his hand cannot render it to stand imbued with any taint of an improvement or an embellishment for hence exculpating her incriminatory role especially when for reasons aforestated her inculpation stands conceded by the defence. Even the incriminatory role attributed by PW-1 in his examination in chief to accused Brij Lal of his with Gun Ext.P-5 firing its shot at him when stands uningrained with any taint of inter se contradictions arising from his not deviating therefrom in his cross-examination rather with formidability renders it amenable to credence, credibility whereof stands firmly clinched by the factum of the defence counsel while cross-examining PW-1 putting suggestions to him in portrayal of the factum of an admission on the part of the defence of accused Brij Lal holding gun Ext. P-5 wherefrom he fired a gun shot on the left side of PW-1 especially when elicitations thereon in the affirmative stood evinced from PW-1 wherefrom an inference of hence the defence conceding to the inculpation of accused Brij Lal stands firmly garnered. Dehors the suggestions qua the aforesaid facet put to PW-1 by the learned defence counsel while cross-examining him sequelling evincing therefrom an affirmative response from PW-1, with redoubled vigour is connotative of, especially when on an affirmative response thereto standing meted by PW-1, the learned defence counsel omitted to elicit an explanation from him, of hence the defence acquiescing to the inculpatory role propounded consistently by PW-1 qua accused Brij Lal.

10. The effect of the above discussion is of inefficacy, if any, in the recovery of weapons of offence Gun exhibit P-5 recovered under memo Ext.PW-5/B, Axe Ext.P-6 recovered under memo Ext.PW-3/C and Darat Ext.P-7 recovered under memo Ext. PW-3/B, standing waned. The upshot of the above discussion is of the prosecution succeeding in proving its case against accused Brij Lal of his with Gun recovered under memo Ext.PW-5/B, of accused Dev Raj with axe recovered under memo Ext.PW-3/C and of accused Fullan Devi with Darat recovered under memo Ext.PW-3/B respectively with user thereof inflicting injuries on the victim. In sequel the conviction of the accused aforesaid for theirs committing offences punishable under Sections 307 read with Sections 149 and 148 of the Indian Penal Code and under Section 25 of the Indian Arms Act merits no interference.

11. However, during his examination in chief PW-1 has attributed to accused Indira Devi and Kanta Devi an incriminatory role of theirs delivering kick and fist blows on his person. The attribution of the aforesaid incriminatory role by PW-1 to the aforesaid stands manifested only during the course of his recording his deposition in Court. It finds no occurrence in his previous statement recorded in writing. Consequently, omission on the part of PW-1 to state the aforesaid factum in his previous statement recorded in writing renders his deposition in Court wherein he has named Indira Devi and Kanta Devi as also has ascribed to them an incriminatory role of theirs belabouring him with kick and fist blows to be both an embellished as well as an improved version qua theirs inculpation, warranting its being hence discardable. In sequel the incriminatory role aforesaid attributed by PW-1 to Indira Devi and Kanta Devi is espoused to be both incredible and untrustworthy for anvilling thereupon any conclusion qua the aforesaid belabourings with kick and fist blows of PW-1 by accused Kanta Devi and accused Indira Devi. Even when the incriminatory role aforesaid ascribed by PW-1 to Indira Devi and Kanta Devi stands afflicted with a vice of improvement and embellishment rendering it to be unbelievable would not per se exculpate the guilt of the accused aforesaid in joining co-accused Brij Lal, Dev Raj and Fullan Devi in the latter respectively in the manner aforestated assaulting PW-1 unless potent evidence in display of theirs sharing a common object with the accused aforesaid stands emerged. Primarily, to conclude qua accused Kanta Devi and Indira Devi in joining accused Brij Lal, Dev Raj and Fullan Devi hence forming with them an unlawful assembly with both sharing a common object with the aforesaid assailants of the victim/injured, it is imperative to also gauge from evidence on record qua occurrence of a disclosure therein of theirs being present simultaneously alongwith the aforesaid accused at the site of occurrence. In case evidence unfolds the factum of their simultaneous presence thereat with the accused aforesaid who stand in close relations to them, it would be unnecessary to disinter, given their presence in the aforesaid capacity at the site of occurrence alongwith the co-accused aforesaid, from evidence on record qua existence of a display therein of theirs sharing a common object with the assailants of the victim/injured significantly when proximity in theirs relationship with the accused aforesaid magnifies theirs sharing a common object with them. For hence pronouncing upon the factum of the presence of accused Indira Devi and accused Kanta Devi at the site of occurrence the factum of the complainant enunciating in the F.I.R the names of both Kanta Devi and Indira Devi being contemporaneously present alongwith accused aforesaid at the apposite stage at the site of occurrence when fortifyingly establishes their presence thereat with the assailants of the victim/injured warrants a finding from this Court qua theirs sharing a common object with the accused aforesaid in theirs delivering injuries on PW-1 respectively with theirs wielding a gun, an axe and a darat. The mere presence of Kanta Devi and Indira Devi contemporaneously alongwith the aforesaid accused at the site of occurrence would ipso facto be not connotative of theirs sharing a common object with the accused aforesaid nonetheless when evidence exists of theirs being members of the family of the assailants of the victim/injured or of theirs being close relatives of the accused aforesaid hence not mere bystanders or spectators of the occurrence qua whom given their presence contemporaneously alongwith the aforesaid accused at the site of occurrence an inference of theirs sharing a common object with the assailants of the victim would hence stand not dispelled. In sequel, with theirs being close relatives of the accused aforesaid their presence contemporaneously alongwith aforesaid accused at the site of occurrence is rather construable especially with theirs being aware of Brij Lal, Dev Raj and Fullan Devi respectively wielding a gun, an axe and a darat of theirs also sharing a common object with the aforesaid accused qua perpetration of an assault by them on the person of the victim with their respective user. In aftermath even if there is an improvement or an embellishment by PW-1 arising from the fact of his only deposing in Court qua Kanta Devi

and Indira Devi belabouring him with kick and fist blows whereas it remained unpronounced in his previous statement recorded in writing nonetheless its effect would not detract from either the factum of their presence contemporaneously alongwith accused Brij Lal, Dev Raj and Fullan Devi at the site of occurrence nor would dispel the effect of given their close relationship with them of theirs for reasons afore-stated also sharing a common object with them in theirs respectively assaulting PW-1 with weapons i.e. Gun exhibit P-5 recovery whereof stood effectuated under memo Ext.PW-5/B, Axe Ext.P-6 recovery whereof stood effectuated under memo Ext.PW-3/C and Darat Ext.P-7 recovery whereof stood effectuated under memo Ext.PW-3/B.

12. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court below has appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court does not suffer from any perversity or absurdity of mis-appreciation and non appreciation of evidence on record, rather it has aptly appreciated the material available on record.

13. In view of the above, I find no merit in this appeal which is accordingly dismissed. In sequel, the impugned judgement is affirmed and maintained. Record of the learned trial Court be sent back forthwith.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Court on its own motion ...Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents.

CWPIL No. 7 of 2014
Reserved on: 14.12.2015
Decided on: 02.01.2016

Constitution of India, 1950- Article 226- 24 students drowned, when they were on a trip to Himachal –inquiry report shows the negligence of the in-charge officers/ officials of the Board- held that Court can grant compensation in exercise of the writ petition when there is a prima facie proof that incident had taken place due to the negligence of the authorities- writ petition for grant of compensation is maintainable irrespective of availability of alternative remedies- a person undertaking an activity involving hazardous or risky exposure to human life, is liable to compensate for the injuries suffered by any person irrespective of negligence or carelessness- inquiry report shows that all the authorities namely Board, College and State, had prima facie contributed to the cause of incident- they had failed to take precautions which were required to be taken- it was the duty of the State to monitor the functioning of the project - breach of guidelines snatched the young students from their parents- their earning capacities are to be kept in consideration while assessing the just compensation- students would have got better placement and would not have been earning not less than Rs. 10 lacs per annum- their monthly salary would not have been less than Rs. 25,000/- - Students were 19-20 years of age- multiplier of '15' has to be applied- 50% of the amount has to be deducted towards personal expenses- parents have lost dependency to the extent of 50%- hence, parents are entitled to compensation of Rs. 12,500/- x 12 x 15 =

Rs. 22,50,000/- under the head 'loss of income/dependency' – they are also entitled to Rs. 10,000/- each under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses'- thus, total compensation Rs. 22,80,000/- is payable- however, amount of Rs. 22,00,000/- awarded in lump sum along with interest @ 7.5% per annum- Board held liable to pay compensation to the extent 60%, College liable to pay compensation to the extent of 30% and State liable to pay compensation to the extent of 10%. (Para-20 to 119)

Cases referred:

Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) versus State of Orissa and others, (1993) 2 Supreme Court Cases 746

Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others versus Sukamani Das (Smt) and another, (1999) 7 Supreme Court Cases 298

Tamil Nadu Electricity Board versus Sumathi and others, (2000) 4 Supreme Court Cases 543

Syad Akbar versus State of Karnataka, (1980) 1 Supreme Court Cases 30

M.C. Mehta and another versus Union of India and others, (1987) 1 Supreme Court Cases 395

Indian Council For Enviro-legal Action and others versus Union of India and others, (1996) 3 Supreme Court Cases 212

Deep Chand Sood and others versus State of H.P. and others, 1996 (2) Sim. L.C. 332

M.S. Grewal and another versus Deep Chand Sood and others, (2001) 8 Supreme Court Cases 151

Delhi Jal Board versus National Campaign for Dignity and Rights of Sewerage and Allied Workers and others, (2011) 8 Supreme Court Cases 568

Charan Lal Sahu versus Union of India, (1990) 1 Supreme Court Cases 613

Chairman, Railway Board and others versus Chandrima Das (Mrs) and others, (2000) 2 Supreme Court Cases 465

M.P. Electricity Board versus Shail Kumari and others, (2002) 2 Supreme Court Cases 162

Sube Singh versus State of Haryana and others, (2006) 3 Supreme Court Cases 178

Union of India versus Prabhakaran Vijaya Kumar and others, (2008) 9 Supreme Court Cases 527

Rajkot Municipal Corporation versus Manjulben Jayantilal Nakum and others, (1997) 9 Supreme Court Cases 552

V. Krishnakumar versus State of Tamil Nadu & Ors., JT 2015 (6) SC 503

Dheeru versus Government of NCT of Delhi and others, 2010 ACJ 2593

Municipal Corporation of Delhi, Delhi versus Uphaar Tragedy Victims Association and others, (2011) 14 Supreme Court Cases 481

Sanjay Gupta and others versus State of Uttar Pradesh and others, (2015) 5 Supreme Court Cases 283

Syed Basheer Ahamed and others versus Mohammed Jameel and another, (2009) 2 Supreme Court Cases 225

Nagar Council, Rajpura versus Tajinder Singh and others, (2012) 12 Supreme Court Cases 273

Lata Wadhwa and others versus State of Bihar and others, (2001) 8 Supreme Court Cases 197

State of Haryana and another vs. Jasbir Kaur and others, AIR 2003 Supreme Court 3696

The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another, AIR 2003 Supreme Court 4172

Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr., 2009 AIR SCW 3717

Ningamma & another versus United India Insurance Co. Ltd., 2009 AIR SCW 4916
A.P.S.R.T.C. & another versus M. Ramadevi & others, 2008 AIR SCW 1213
Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service, 2013 AIR SCW 5800
Santosh Devi versus National Insurance Company Ltd. and others, (2012) 6 SCC 421
Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 3120
National Insurance Co. Ltd. versus Indira Srivastava and others, 2008 ACJ 614
Oriental Insurance Company Ltd. vs. Jashuben & Ors., 2008 AIR SCW 2393
V. Subbulakshmi and others versus S. Lakshmi and another, (2008) 4 SCC 224
Amrit Bhanu Shali and others versus National Insurance Company Ltd. and others, (2012) 11 SCC 738
Savita versus Bindar Singh & others, 2014 AIR SCW 2053
Radhakrishna and another versus Gokul and others, 2014 AIR SCW 548
Kalpanaraj and others versus Tamil Nadu State Transport Corporation, (2015) 2 SCC 764
Munna Lal Jain and another versus Vipin Kumar Sharma and others, 2015 AIR SCW 3105
Dinesh Singh versus Bajaj Allianz General Insurance Company Limited and another, (2014) 9 Supreme Court Cases 241
Gobald Motor Service Ltd. and another versus R.M.K. Veluswami and others, AIR 1962 SC 1
Santosh Devi versus National Insurance Company Ltd. and Ors., 2012 AIR SCW 2892
DAV Managing committee and another versus Dabwali Fire Tragedy Victims Association and others, (2013) 10 Supreme Court Cases 494

For the petitioner:	Mr. Dilip Sharma, Senior Advocae, as Amicus Curiae, with Mr. Manish Sharma, Advocate.
For the respondents:	Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 to 3, 5 to 9 and 12. Mr. Shrawan Dogra and Mr. Satyen Vaidya, Senior Advocates, with Mr. Satish Sharma, Advocate, for respondents No. 4, 10 and 11. Mr. Rajnish Maniktala, Advocate, for respondents No. 13, 23 and 24. Mr. V. Pattabhi and Mr. Rajnish Maniktala, Advocates, for respondent No. 22. Mr. Tek Chand Sharma, Advocate, for respondents No. 14 and 15. Mr. Bimal Gupta, Senior Advocate, with Mr. Vineet Vashisth, Advocate, for respondents No. 16 and 17. Mr. J.S. Bhogal, Senior Advocate, with Mr. Lovneesh Kanwar, Advocate, for respondent No. 18. Mr. Lalit K. Sharma, Advocate, for respondent No. 19. Mr. Bipin C. Negi, Senior Advocate, with Mr. Pranay Pratap Singh, Advocate, for respondent No. 20. Mr. Ajeet Sharma, Advocate, for respondent No. 21.

Mr. S.C. Sharma, Advocate, for the applicant in CMP No. 9126 of 2014.
Mr. Ajay Mohan Goel and Mr. Suneet Goel, Advocates, for the interveners.
Mr. Ashok Sharma, Assistant Solicitor General of India, with Mr. Nipun Sharma, Advocate, for Union of India.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

We are dealing with an unfortunate case, of which cognizance has been taken by this Court *suo motu* while going through a news item contained in Amar Ujala of issue, dated 09.06.2014. The news was so shocking and pricking that it shattered everyone. It was an unfortunate incident which has snatched away 24 budding Engineers alongwith one tour conductor. All the 24 students were undergoing the course of B. Tech in Electronic and Instrumentation in respondent No. 13-College in Hyberabad, which is one of the first grade Engineering College.

2. In terms of directions, dated 09.06.2014, status report was filed and FIR No. 61 of 2014 was registered at Police Station Aut, District Mandi, under Sections 336 and 304-A of the Indian Penal Code (for short "IPC"). The investigation was conducted by the police and by now, it has been taken to its logical end by presenting final report (challan) under Section 173 of the Code of Criminal Procedure (for short "CrPC") before the Court of competent jurisdiction.

3. The VNR Vigyan Jyoti Institute of Engineering and Technology, Hyderabad (for short "the College") came to be arrayed as party-respondent No. 13 in the array of respondents. Respondents No. 14 to 24 were also arrayed as party-respondents in terms of the orders passed by this Court from time to time.

4. The inquiry report was submitted by respondent No. 12-Divisional Commissioner in the open Court on 19.06.2014, in presence of respondents No. 4, 10 and 11.

5. Interim compensation to the tune of Rs.5,00,000/- came to be granted in favour of the parents of each of the deceased students vide order, dated 25.06.2014. The H.P. State Electricity Board Limited (for short "the Board") and the College were saddled with the liability in equal shares.

6. The State authorities have filed status reports from time to time. Respondents have also filed replies and affidavits, which are at pages No. 11 and 43 of the paper book, including the inquiry report at pages No. 52 to 152 of the paper book.

7. Respondent No. 1-Chief Secretary to the Government of Himachal Pradesh has also filed photocopy of the instructions issued by the Board, which were to be observed by the officials before discharge of water from the barrage/reservoir, which are at page No. 23 of the paper book.

8. After noticing the unfortunate incident, respondent No. 3-Principal Secretary (Power) to the Government of Himachal Pradesh has issued instructions relating to the issue, which are contained at page No. 41 of the paper book.

9. The inquiry report contains the details relating to the negligence, *prima facie,* committed by the in-charge officers/ officials of the Board at the relevant point of time . The said finding is recorded at page 77 of the paper book. It also contains suggestions to avoid such lapses/ recurrences and incidents, at pages No. 91 to 98 of the paper book.

10. Respondents filed response/objections/rejoinder to the said inquiry report, which are at pages No. 283, 417, 532 and 541 of the paper book.

11. In compliance to order, dated 25.06.2014, respondent No. 1-Chief Secretary to the Government of Himachal Pradesh has filed compliance report/affidavit, which is at page No. 575 of the paper book alongwith the inquiry report submitted by the Chief Engineer (Electrical), Directorate of Energy, H.P., Shimla, who was appointed as Inquiry Officer to enquire into the matter regarding the functioning of the H.P. State Load Discharge Centre (for short "HPSLDC") and The Northern Region Load Discharge Centre (for short "NRLDC"), which finds place at page No. 579 of the paper book, containing the details of the provisions of the Indian Electricity Act, 2003 (for short "Act") relating to the National Load Dispatch Centre (for short "NLDC"), Regional Load Dispatch Centre (for short "RLDC") and State Load Discharge Centre (for short "SLDC"); applicability of the provisions of the Rules and Regulations and the findings relating to the working of NRLDC, how State is running and manning the projects, its control and how the projects in the State continue to run on full or in some cases more than the capacity.

12. The said inquiry report also discloses the details of the working of HPSLDC, at pages No. 618 to 635 of the paper book; analysis of power availability, at pages No. 636 to 638 of the paper book; findings on functioning of SLDC relating to the incident specifically, at pages No. 639 to 642 of the paper book and the issues of importance and suggested remedial measures, at pages No. 643 to 646 of the paper book.

13. Respondents No. 5, 8 and 9 have filed status report of the case FIR No. 61 of 2014, at pages No. 866 to 871 of the paper book. Respondent No. 1-Chief Secretary to the Government of Himachal Pradesh has filed compliance report/affidavit (pages No. 873 to 891 of the paper book), in compliance to order, dated 09.07.2014, alongwith the minutes of the meeting held on 21.07.2014, to review implementation of Government instructions pursuant to the inquiry conducted by the Divisional Commissioner, Mandi and the inquiry report submitted by the Chief Engineer, Directorate of Energy, H.P., Shimla, contained at pages No. 880 to 888 of the paper book.

14. The responses/affidavits/status reports/compliance affidavits/additional documents/suggestions filed by the respective respondents are contained at pages No. 892 to 1606 of the paper book.

15. Respondent No. 13-College has also placed on record proposal with regard to integrated, intelligent, safety management system for monitoring the reservoir regulation.

16. One Shri Om Prakash Sharma had submitted a letter/suggestions in the open Court, contained at page No. 1446 of the paper book, which stands replied by respondent No. 4-Managing Director, HPSEBL at pages No. 1501 to 1504 of the paper book.

17. The unfortunate parents, by the medium of CMP No. 2792 of 2015, have placed on record the material relating to the placement, remunerations, fees and other emoluments, the students of the respondent-College were being afforded by the companies at the time of their placement, contained at pages No. 1505 to 1520 of the paper book, which is practice prevalent in the said College, but unfortunately, their bright future stands snatched away, rather cut short and the parents stand deprived of the said source/income,

hope and help in old age. They have also tried to assess the average loss to the parents per year. It is apt to reproduce para 2 of CMP No. 2792 of 2015 herein:

> *"2. That the applicants/intervenors seek to place on record the information regarding the placement of the students who have passed out from respondent No. 13 i.e. VNR Vignana Jyothi Institute of Engineer & Technology, Hyderabad. The year-wise campus placements of the students over the past few years is being placed on record as has been obtained by the applicants from the website of respondent No. 13 and the year-wise compilation w.e.f. 2006 till 2014 is being filed herewith as Annexure-I-1. the highest salary offered to the students who had passed out from respondent No. 13 institute in the year 2006 was Rs. 3.60 lacs and in the year 2014 the maximum salary offered was Rs. 7.10 lacs. the salary certificate issued by a US based firm in favour of Cherukuri Sandeep, who studied B. Tech in Electronic and Instrumentation branch of the respondent No. 13 show that the income of the said student is US $70,000/- per anum. The said certificate is filed along with the provisional certificate of the said student. The 24 deceased students were also studying B. Tech in Electronics and Instrumentation Branch and had similar ambition to go to US which has bright and promising career ahead of them which was cut short on account of the tragedy."*

18. The perusal of the information placed on record by the parents of the deceased students does disclose as to what is the status of the College, ranking of the students, which plays vital role in getting placement in job and also in society and other benefits. Thus, the compensation may not redress their grievances, but, may be a solace.

19. The question is - whether this Court has jurisdiction to entertain this writ petition and exercise powers under Article 226 of the Constitution of India to grant compensation?

20. The law has gone through a sea change and the Courts are intervening by invoking the jurisdiction under Article 226 of the Constitution of India and granting compensation.

21. In the cases titled as **Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) versus State of Orissa and others,** reported in **(1993) 2 Supreme Court Cases 746; Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others versus Sukamani Das (Smt) and another,** reported in **(1999) 7 Supreme Court Cases 298;** and **Tamil Nadu Electricity Board versus Sumathi and others,** reported in **(2000) 4 Supreme Court Cases 543,** the Apex Court has also laid down the parameters and held that the Court can grant compensation without relegating the parties to civil litigation provided there is *prima facie* proof on the file that the said incident/accident has taken place due to negligence of the respondents-authorities. It has further been held that the petitions under Article 226 of the Constitution of India are maintainable and the Courts are within their jurisdiction to intervene. It would be profitable to reproduce para 17 of the judgment in **Nilabati Behera's case (supra)** herein:

> *"It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights,*

and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to the remedy private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Arts. 32 and 226 of the Constitution. This is what was indicated in Rudul Sah (AIR 1983 SC 1086) and is the basis of the subsequent decisions in which compensation was awarded under Arts. 32 and 226 of the Constitution, for contravention of fundamental rights."

22. The Apex Court in the cases titled as **Syad Akbar versus State of Karnataka,** reported in **(1980) 1 Supreme Court Cases 30,** has dealt with the issue. It is apt to reproduce paras 24 and 25 of the judgment herein:

*"24. Though some decision, particularly of Courts in England, are inclined to adopt a somewhat different approach, the predominant view held by Courts in United States, Australia and Canada (See **Temple v. Terrace and Co.,** (1966) 57 DLR 2 d 63; **G. I. O. v. Fredrichberg,** (1968) 11 CLR 403; **United Motors Service v. Hutson,** 1937 SCR 294) seems to be that the maxim res ipsa loquitur raises only a 'Permissive Presumption' exemplifying merely "the general principle of inferring a fact in issue from circumstantial evidence where the circumstances are meagre but significant." On this reasoning, Fleming has opined that "the **maxim** is based merely on an estimate of logical probability in a particular case not on any overriding legal policy that controls initial allocation of the burden of proof or, by means of mandatory presumptions, its reallocation regardless of the probabilities of the particular instance." Fleming, then illustrates this proposition, by giving an example, which for our purpose, is pertinent :*

> *If a Truck suddenly swerves across the road and knocks into a car drawn up on the shoulder of the opposite side, this would **without more** raise an inference of negligence against the driver. Yet the plaintiff would fail, if the trier of the fact at the end of the case deems it no less probable that the accident was caused by an unexpectable break of the steering arm than by culpable maintenance of the wheel assembly." (emphasis supplied.)*

25. From what has been said above, it is clear that even in an action in torts, if the defendant gives no rebutting evidence but a reasonable explanation, equally consistent with the presence as well as with the absence of negligence, the presumptions or inferences based on res ipsa loquitur can no longer be sustained. The burden of proving the affirmative, that the defendant was negligent and the accident

> *occurred by his negligence, still remains with the plaintiff; and in such a situation it will be for the Court to determine* ***at the time of judgment*** *whether the proven or undisputed facts, as a whole, disclose negligence. [See* ***Ballard's*** *case (supra); The Kite, (1933) P. 154; Per Evatt J. in* ***Davis v. Bunn*** *(1936) 56 CLR 246, 267;* ***Mummary v. Irvings proprietary Ltd. (Australia),*** *(1956) 96 CLR 99;* ***Winnipeg Electrical Co. Ltd. v. Jacob Geat,*** *AIR 1932 PC 246. See also :* ***Brown v. Rolls Royace Ltd.,*** *(1960) 1 All ER 577;* ***Hendersons v. Henry E. Jenkins and Sons,*** *(1970) AC 282.]"*

23. The Apex Court and the other High Courts have discussed and explained the doctrine of *res ipsa loquitor* and have held that such a remedy is available in public law based on strict liability for breach of Fundamental Rights.

24. In the case titled as **M.C. Mehta and another versus Union of India and others,** reported in **(1987) 1 Supreme Court Cases 395,** the Apex Court, in para 31, held as under:

> *"31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in Rylands v. Fletcher, (1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1, apply or is there any other principle on which the liability can be determined? The rule in Rylands v. Fletcher was evolved in the year 1866 and it provides that a person who for his own purposes being on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury Laws of England, Vol. 45 para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modem industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry out part of the developmental programme. This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent*

with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in this context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build up our own jurisprudence and we cannot countenance an argument that merely because the new law does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in Rylands v. Fletcher as is developed in England recognises certain limitations and responsibilities. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concommitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently

dangerous activity as an appropriate item of its over-heads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher (supra).

25. In the case titled as **Indian Council For Enviro-legal Action and others versus Union of India and others,** reported in **(1996) 3 Supreme Court Cases 212,** the Apex Court held as under:

"65. On a consideration of the two lines of thought (one adopted by the English Courts and the other by the Australian High Court), we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak Case (AIR 1987 SC 1086)., is by far the more appropriate one- apart from the fact that it is binding upon us. (We have disagreed with the view that the law stated in the said decision is obiter). According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss cost to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the constitution bench, such an activity : (SCC p. 421, para 31)

> *".....can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity, indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not".*

The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise (carrying on the hazardous or inherently dangerous activity) alone has the resource to discover and guard against hazards or dangers and not the person affected and the practical difficulty (on the part of the affected person) in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise."

26. A Division Bench of this Court, while dealing with a case of similar nature in the case titled as **Deep Chand Sood and others versus State of H.P. and others,** reported in **1996 (2) Sim. L.C. 332,** after discussing the 'public law', doctrine of *'res ipsa loquitor'* and other attending factors, held that the Court has jurisdiction to grant compensation and granted compensation to the tune of Rs.5,00,000/- (Rupees five lacs) to the parents of each of the deceased students.

27. The said judgment was questioned before the Apex Court in the case titled as **M.S. Grewal and another versus Deep Chand Sood and others,** reported in **(2001) 8 Supreme Court Cases 151.** The Apex Court, after examining all aspects, has virtually affirmed the reasons given by this Court, also supplemented the reasoning and held that the Courts have to intervene in view of the development of law and other factors. It is apt to reproduce paras 8, 9 and 18 to 21 of the judgment herein:

> "8. Incidentally, this Court in C. K. Subramania Iyer v. T. Kunhikuttan Nair, (1969) 3 SCC 64, while dealing with the matter of fatal accidents laid down certain relevant guidelines for the purpose of assessment of compensation. Paragraph 13 of the report would be relevant on this score and the same is set out hereinbelow: (SCC p. 70, para 13)
>
> > "13. The law on the point arising for decision may be summed up thus : Compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. *As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the Appellate Court should be slow in disturbing the findings reached by the Courts below, if they have taken all the relevant facts into consideration."* (Emphasis supplied)
>
> 9. The observations as above, undoubtedly lays down the basic guidance for assessment of damages but one redeeming feature ought to be noted that compensation or damages cannot be awarded as a solatium but to assess the same with reference to loss of pecuniary benefits. In the decision last noted [(Subramania Iyer), (1969) 3 SCC 64], this Court placed strong reliance on two old decisions of the English Courts, to wit: Franklin v. South Eastern

Rly. Co., 157 ER 448 :(1858) 3 H&N 211, wherein Pollock, C. B. stated :

> "We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation might well exist, though from the father, not being in need, the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter, but ought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit which might have been reasonably expected from the continuance of life."

xxx xxx xxx

18. Be it noted that the doctrine of 'vicarious liability' has had a fair amount of judicial attention in the English Courts. By the end of 18th century, the idea began to grow up that some special importance ought to be attached to the relationship of master and servant and in 1849 it was officially held that existence of that relationship was essential. Thereafter, though primary liability on the part of anyone could be established on proof of direct participation in the tort, such direct participation was not even theoretically required to make a master liable for his servant's torts. The liability is derived from the relationship and is truly vicarious. At the same time, the phrase 'implied authority' which had been the cornerstone of the master's primary liability gives way gradually to the modern "course of employment" (vide Winfield and Jolowicz on Tort, 15th Edn.).

19. In recent years, the tendency has been however, towards more liberal protection of third party and so in establishing a particular 'course of employment' the Court should not dissect the employees basic task into component parts but should ask in a general sense : What was the job at which he was engaged for his employer ? And it is on this perspective Lord Wilberforce in Kooragang Investments Pty. Ltd. v. Richardson & Wrench Ltd., 1982 AC 462, stated : (All ER p. 69a-e)

> "Negligence is a method of performing an act : instead of it being done carefully, it is done negligently. So liability for negligent acts in the course of employment is clear. Cases of fraud present at first sight more difficulty : for if fraudulent acts are not directly forbidden, most relationship would carry an implied prohibition against them. If committed for the benefit of the employer and while doing his business, principle and logic demand that the employer should be held liable, and for some time the law rested at this point. The classic judgment of Wills J. in Barwick v. English Joint Stock Bank, (1867) LR Exch 259, Exch. at p. 266 stated the principle thus :
>
> > "In all these cases it may be said .... that the master has not authorised the act. it is true, he has not authorised the particular act but he has put the agent in his place to do that class of acts and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in."

> That was a case where the wrong was committed for the master's (viz., the bank's) benefit, and Willes J. stated this as an ingredient of liability (Exch at p. 265):
>
> > ".....the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved."
>
> 20. But a sharp distinction has been made as regards the group of cases which is concerned with the use of motor vehicles. These are the cases Lord Wilberforce observed : (All ER p. 70a-c)
>
> > "(i) where a servant has, without authority, permitted another person to drive the master's vehicle; (ii) where a servant has, without authority, invited another person on to the vehicle, who suffers injury; (iii) where a servant has embarked on an unauthorised detour, or , as lawyers like to call it, a "frolic of his own."
> >
> > These cases have given rise to a number of fine distinctions, the Courts in some cases struggling to find liability, in others to avoid it, which it is not profitable here to examine. It remains true to say that, whatever exceptions or qualifications may be introduced, the underlying principle remains that a servant, even while performing acts of the class which he was authorised, or employed, to do, may so clearly depart from the scope of his employment that his master will not be liable for his wrongful acts."
>
> 21. The English law, therefore, takes a softer attitude in cases where motor vehicles are involved in the matter of foisting of liability so far as the employer is concerned - the reason obviously being if the concerned employee acts in a manner contrary to the course of employment and on a "frolic of his own" - why should the employer be made responsible. It seems logical - but obviously there are cases and cases on the basis wherefor the liability of the employer ought to be fixed. The Privy Council in Kooragang Ltd. attributed "frolic of his own" to be the exonerating factor but this frolic has also to be considered from facts to facts in the matter of foisting of liability on to the employer. In any event, we need not devote much of our time to the excepted cases, since we have in this country several legislations covering the "excepted categories". The recognition of broader approach however, stands undisputed and has also our concurrence herewith."

28. An important case has arisen before the Apex Court titled as **Delhi Jal Board versus National Campaign for Dignity and Rights of Sewerage and Allied Workers and others,** reported in **(2011) 8 Supreme Court Cases 568.** It is apt to reproduce paras 38 and 39 of the judgment herein:

> *"38. In view of the principles laid down in the aforesaid judgments, we do not have any slightest hesitation to reject the argument that by issuing the directions, the High Court has assumed the legislative power of the State. What the High Court has done is nothing except to ensure that those employed/engaged for doing work which is*

inherently hazardous and dangerous to life are provided with life saving equipments and the employer takes care of their safety and health.

39. The State and its agencies/ instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system. The human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who may not be affected by poisonous gases in the manholes. The State and its agencies/ instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs. The argument of choice and contractual freedom is not available to the Appellant and the like for contesting the issues raised by Respondent No. 1."

29. It would also be profitable to reproduce para 92 of the judgment rendered by the Apex Court in the case titled as **Charan Lal Sahu versus Union of India,** reported in **(1990) 1 Supreme Court Cases 613,** herein:

"92. It was urged before us that there was an absolute and strict liability for an enterprise which was carrying on dangerous operations with gases in this country. It was further submitted that there was evidence on record that sufficient care and attention had not been given to safeguard against the dangers of leakage and protection in case of leakage. Indeed, the criminal prosecution that was launched against the Chairman of Union Carbide Mr. Warren Anderson and others, as indicated before, charged them along with the defendants in the suit with delinquency in these matters and criminal negligence in conducting the toxic gas operations in Bhopal. As in the instant adjudication, this court is not concerned with the determination of the actual extent of liability, we will proceed on the basis that the law enunciated by this court in M. C. Mehta v. Union of India, (1987) 1 SCC 395, case is the decision upon the basis of which damages will be payable to the victims in this case. But then the practical question arises: what is the extent of actual damages payable, and how would the quantum of damages be computed? Indeed, in this connection, it may be appropriate to refer to the order passed by this court on 4/05/1989 giving reasons why the settlement was arrived at at the figure indicated. This court had reiterated that it had proceeded on certain prima facie undisputed figures of death and substantially compensating personal injury. This court has referred to the fact that the High court had proceeded on the broader principle in M. C. Mehta case and on the basis of the capacity of the enterprise because the compensation must have deterrent effect. On that basis the High court had proceeded to estimate the damages on the basis of Rs. 2 lakhs for each case of death and of total permanent disability, Rs. 1 lakh for each case of partial permanent disability and Rs. 50,000. 00 for each case of temporary partial disability. In this connection, the controversy as to what would have the damages been if the action had proceeded, is another matter. Normally, in measuring civil liability, the law has

attached more importance to the principle of compensation than that of punishment. Penal redress, however, involves both compensation to the person injured and punishment as deterrence. These problems were highlighted by the House of Lords in England in Rookes v. Bamard, 1964 AC 1129 : (1964) 1 All ER 367, which indicate the difference between aggravated and exemplary damages. Salmond on the Law of Torts, emphasises that the function of damages is compensation rather than punishment, but punishment cannot always be ignored. There are views which are against exemplary damages on the ground that these infringe in principle the object of law of torts, namely, compensation and not punishment and these tend to impose something equivalent to fine in criminal law without the safeguards provided by the criminal law. In Rookes v. Bamard, 1964 AC 1129 : (1964) 1 All ER 367, the House of Lords in England recognised three classes of cases in which the award of exemplary damages was considered to be justifiable. Awards must not only, it is said, compensate the parties but also deter the wrongdoers and others from similar conduct in future. The question of awarding exemplary or deterrent damages is said to have often confused civil and criminal functions of law. Though it is considered by many that it is a legitimate encroachment of punishment in the realm of civil liability, as it operates a restraint on the transgression of law which is for the ultimate benefit of the society. Perhaps, in this case,had the action proceeded, one would have realised that the fall out of this gas disaster might have been the formulation of a concept of damages, blending both civil and criminal liabilities. There are, however, serious difficulties in evolving such an actual concept of punitive damages in respect of a civil action which can be integrated and enforced by the judicial process. It would have raised serious problems of pleading, proof and discovery, and interesting and challenging as the task might have been, it is still very uncertain how far decision based on such a concept would have been a decision according to 'due process of law acceptable by international standards. There were difficulties in that attempt But as the provisions stand these considerations do not make the Act constitutionally invalid. These are matters on the validity of settlement. The Act, as such does not abridge or curtail damage or liability whatever that might be. So the challenge to the Act on the ground that there has been curtailment or deprivation of the rights of the victims which is unreasonable in the situation is unwarranted and cannot be sustained."

30. The Apex Court in the case titled as **Chairman, Railway Board and others versus Chandrima Das (Mrs) and others,** reported in **(2000) 2 Supreme Court Cases 465,** held that writ petition under Article 226 of the Constitution of India against the State or its instrumentalities for payment of compensation is maintainable irrespective of availability of alternative remedies. It is apt to reproduce paras 6, 7 and 9 to 11 of the judgment herein:

"6. We may first dispose of the contention raised on behalf of the appellants that proceedings under Article 226 of the Constitution could not have been legally initiated for claiming damages from the Railways for the offence of rape committed on Smt. Hanuffa Khatoon

and that Smt. Hanuffa Khatoon herself should have approached the Court in the realm of Private Law so that all the questions of fact could have been considered on the basis of the evidence adduced by the parties to record a finding whether all the ingredients of the commission of tort against the person of Smt. Hanuffa Khatoon were made out, so as to be entitled to the relief of damages. We may also consider the question of locus standi as it is contended on behalf of the appellants that Mrs. Chandrima Das, who is a practicing Advocate of the High Court of Calcutta, could not have legally instituted these proceedings.

7. The distinction between "public law" and "private law" was considered by a three-Judge Bench of this Court in Common Cause. A Regd. Society v. Union of India, (1999) 6 SCC 667 : AIR 1999 SC 2979 : (1999) 5 JT (SC) 237 : 1999 AIR SCW 2899), in which it was, inter alia, observed as under: (SCC p. 701, paras 39-40)

"39. Under Article 226 of the Constitution, the High Court has been given the power and jurisdiction to issue appropriate Writs in the nature of Mandamus, Certiorari, Prohibition, Quo-Warranto and Habeas Corpus for the enforcement of Fundamental Rights or for any other purpose. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of Fundamental Rights but also for "any other purpose" which would include the enforcement of public duties by public bodies. So also the Supreme Court under Article 32 has the jurisdiction to issue prerogative writs for the enforcement of Fundamental Rights guaranteed to a citizen under the Constitution.

40. Essentially, under public law, it is the dispute between the citizen or a group of citizens on the one hand and the State or other public bodies on the other, which is resolved. This is done to maintain the rule of law and to prevent the State or the public bodies from acting in an arbitrary manner or in violation of that rule. The exercise of constitutional powers by the High Court and the Supreme Court under Article 226 or 32 has been categorised as power of "judicial review". Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Article 14 read with other Articles dealing with Fundamental Rights, every executive action of the Govt. or other public bodies, including Instrumentalities of the Govt., or those which can be legally treated as "Authority" within the meaning of Article 12, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of this Court under Article 32 or the High Courts under Article 226 and can be validly scrutinised on the touchstone of the Constitutional mandates."

8. .....

9. Various aspects of the public law field were considered. It was found that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the

law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The Public Law remedies have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Article 32 of the Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Govt. The causing of injuries, which amounted to tortious act, was compensated by this Court in many of its decisions beginning from Rudul Sah v. State of Bihar, (1983) 3 SCR 508 : (1983) 4 SCC 141 : AIR 1983 SC 1086. (See also Bhim Singh v. State of J&K, (1985) 4 SCC 577; Peoples' Union for Democratic Rights v. State of Bihar, (1987) 1 SCC 265; Peoples' Union for Democratic Rights v. Police Commr., Delhi Police Headquarters, (1989) 4 SCC 730; Saheli, A Women's Resources Centre v. Commr. of Police, (1990) 1 SCC 422; Arvinder Singh Bagga v. State of U.P., (1994) 6 SCC 565; P. Rathinam v. Union of India, 1989 Supp (2) SCC 716; Death of Sawinder Singh Grower in re, 1995 Supp (4) SCC 450; Inder Singh v. State of Punjab, (1995) 3 SCC 702, and D.K. Basu v. State of W.B., (1997) 1 SCC 416.)

10. In cases relating to custodial deaths and those relating to medical negligence, this Court awarded compensation under public law domain in Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 : (1993) 2 SCR 581 : AIR 1993 SC 1960 : (1993 AIR SCW 2366); State of M. P. v. Shyamsunder Trivedi; (1995) 4 SCC 262 : 1995 (3) SCALE 343 : (1995 AIR SCW 2793); People's Union for Civil Liberties v. Union of India, (1997) 3 SCC 433 : AIR 1997 SC 1203 : (1997 AIR SCW 1234) and Kaushalya v. State of Punjab, (1996) 7 SCALE (SP) 13; Supreme Court Legal Aid Committee v. State of Bihar, (1991) 3 SCC 482; Dr. Jacob George v. State of Kerala, (1994) 3 SCC 430 : 1994 (2) SCALE 563 : (1994 AIR SCW 2282); Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1995) 4 SCC 37 : AIR 1996 SC 2426 : (1996 AIR SCW 2964) and Mrs. Manju Bhatia v. N.D.M.C., (1997) 6 SCC 370 : AIR 1998 SC 223 : (1997) 4 SCALE 350 : (1997 AIR SCW 4190).

11. Having regard to what has been stated above, the contention that Smt. Hanuffa Khatoon should have approached the Civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law."

31. The Apex Court in the case titled as **M.P. Electricity Board versus Shail Kumari and others,** reported in **(2002) 2 Supreme Court Cases 162,** has held that a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person irrespective of any negligence or carelessness. It is apt to reproduce paras 7, 8, 11 and 13 of the judgment herein:

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human, being, who gets unknowingly trapped into if the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy of his private property and that the electrocution was from such diverted line. It is the look out the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. .....

10. .....

11. The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc., (1994) 1 All ER 53 (HL). The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in Charan Lal Sahu v. Union of India (1990 (1) SCC 613) and a Division Bench in Gujarat SRTC v. Ramanbhai Prabhatbhai (1987 (3) SCC 234) had followed with approval the principle in Rylands v. Fletcher, (1868) 3 HL 330. By referring to the above two decisions a two Judge Bench of this Court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd., (2001 (2) SCC 9).

12. .....

13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In Northwestern Utilities, Ltd. v. London Guarantee and Accident Company, Ltd. (1936 AC 108), the Privy Council repelled the contention of the defendant based on the aforecited exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage."

32. In the case titled as **Sube Singh versus State of Haryana and others,** reported in **(2006) 3 Supreme Court Cases 178,** the Apex Court held that the Courts may award compensation under Article 226 of the Constitution of India and the award of compensation against the State is an appropriate and effective remedy. It is apt to reproduce para 38 of the judgment herein:

"38. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Criminal Procedure."

33. The Apex Court in the case titled as **Union of India versus Prabhakaran Vijaya Kumar and others,** reported in **(2008) 9 Supreme Court Cases 527,** laid down the same proposition. It would be profitable to reproduce paras 22 to 36, 38, 41 to 43 and 48 to 52 of the judgment herein:

"22. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide Torts by Michael Jones, 4th Edn. p. 247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an

appropriate item of its overheads" (see Fleming on 'Torts' 6th Edn p. 302).

23. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is two fold: (i) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide 'Torts' by Michael Jones 4th Edn p. 267).

25. As pointed out by Clerk and Lindsell (see 'Torts', 14th Edn): "The fault principle has shortcomings. The very idea suggests that compensation is a form of punishment for wrong doing, which not only has the tendency to make tort overlap with criminal law, but also and more regrettably, implies that a wrongdoer should only be answerable to the extent of his fault. This is unjust when a wholly innocent victim sustains catastrophic harm through some trivial fault, and is left virtually without compensation".

26. Many jurists applaud liability without fault as a method for imposing losses on superior risk bearers. Their argument is that one who should know that his activity, even though carefully prosecuted, may harm others, and should treat this harm as a cost of his activity. This cost item will influence pricing, and will be passed on to consumers spread so widely that no one will be seriously effected (vide Article by Prof. Clarence Morris entitled 'Hazardous Enterprises and Risk Bearing Capacity' published in Yale Law Journal, 1952 p. 1172).

27. The rule in Rylands vs. Fletcher, (1868) LR 3 HL 330, was subsequently interpreted to cover a variety of things likely to do mischief on escape, irrespective of whether they were dangerous per se e.g. water, electricity, explosions, oil, noxious fumes, colliery spoil, poisonous vegetation, a flagpole, etc (see 'Winfield and Jolowicz on 'Tort", 13th Edn., p 425) vide National Telephone Co. vs. Baker, (1893) 2 Ch 186, Eastern and South African Telegraph Co. Ltd. vs. Cape Town Tramways Co. Ltd. (1902) AC 381, Hillier vs. Air Ministry, (1962) CLY 2084, etc. In America the rule was adapted and expressed in the following words " one who carried on an ultra hazardous activity is liable to another whose person, land or chattels the actor should recognize as likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultra hazardous, although the utmost care is exercised to prevent the harm" (vide Restatement of the Law of Torts, Vol. 3, p. 41).

28. Rylands vs. Fletcher (supra) gave English Law one of its most creative generalizations which, for a long time, looked destined to have a successful future. Yet, after a welcome start given to it by Victorian Judges the rule was progressively emasculated, until subsequently it almost became obsolete in England. According to

Dias and Markesins (see 'Tort Law' 2nd Edn., p. 355) one reason for this may well be that as a generalization justifying a shift from fault to strict liability it may have come prematurely. The 19th Century had not yet fully got over laissez faire, and it was only in the 20th Century that the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established.

29. As already mentioned above, the rule of strict liability laid down by Blackburn J. in Rylands vs. Fletcher (supra) was restricted in appeal by Lord Cairns to non-natural users, the word 'natural' meaning 'that which exists in or by nature, and is not artificial', and that was the sense in which it was used by Lord Cairns. However, later it acquired an entirely different meaning i.e. that which is ordinary and usual, even though it may be artificial' vide Rickards vs. Lothian, (1913) AC 263, followed in Read vs. Lyons, (1947) AC 156. Thus the expression 'non-natural' was later interpreted to mean 'abnormal', and since in an industrial society industries can certainly not be called 'abnormal' the rule in Rylands vs. Fletcher (supra) was totally emasculated in these subsequent rulings. Such an interpretation, as Prof. Newark writes, 'would have surprised Lord Cairns and astounded Blackburn, J' (see article entitled 'Non-natural User and Rylands vs. Fletcher,' published in Modern Law Review, 1961 vol. 24, p. 557).

30. In Read v. J. Lyons & Co. Ltd., (1947) AC 156, which was a case of injury due to a shell explosion in an ammunitions factory, Lord Macmillan while rejecting the claim of the plaintiff made further restrictions to the rule in Rylands vs. Fletcher (supra) by holding that the rule "derives from a conception of mutual duties of neighbouring landowners", and was therefore inapplicable to personal injuries. He also held that to make the defendant liable there should be escape from a place under the defendant's control and occupation to a place outside his occupation, and since the plaintiff was within the premises at the time of the accident the injury was not due to escape therefrom. In this way Read v. J. Lyons & Co. Ltd., (1947) AC 156, destroyed the very spirit of the decision in Rylands vs. Fletcher (supra) by restricting its principle to the facts of that particular case, instead of seeing its underlying juristic philosophy.

31. Apart from the above, some other exceptions carved out to the rule in Rylands vs. Fletcher (supra) are : (a) consent of the plaintiff; (b) common benefit; (c) Act of stranger; (d) Act of God; (e) Statutory authority; (f) default of plaintiff etc.

32. In Dunne vs. North Western Gas Board, (1964) 2 QB 806, Sellers L.J. asserted that the defendant's liability in Rylands vs. Fletcher, (1868) LR 3 HC 330 "could simply have been placed on the defendants' failure of duty to take reasonable care", and it seems a logical inference from this that the Court of Appeals considered the rule to have no useful function in modern times. As Winfield remarks, the rule in Rylands vs. Fletcher (supra), by reason of its many limitations and exceptions, today seldom forms the basis of a successful claim in the Courts (see Winfield and Jolowicz on Tort,

13th Edn., p. 442), and it seems that the rule "has hardly been taken seriously by modern English Courts", vide Attorney General v. Geothermal Produce N.Z. Ltd., (1987) 2 NZLR 348.

33. As Winfield remarks, because of the various limitations and exceptions to the rule "we have virtually reached the position where a defendant will not be considered liable when he would not be liable according to the ordinary principles of negligence" (see Winfield on Tort, 13th Edn., p. 443).

34. This repudiation of the principle in Rylands vs. Fletcher (supra) is contrary to the modern judicial philosophy of social justice. The injustice may clearly be illustrated by the case of Pearson vs. North Western Gas Board, (1968) 2 All ER 669. In that case the plaintiff was seriously injured and her husband was killed by an explosion of gas, which also destroyed their home. Her action in Court failed, in view of the decision in Dunne vs. North Western Gas Board (1964) 2 QB 806. Thus the decline of the rule in Rylands vs. Fletcher (supra) left the individual injured by the activities of industrial society virtually without adequate protection.

35. However, we are now witnessing a swing once again in favour of the principle of strict liability. The Bhopal Gas Tragedy, the Chernobyl nuclear disaster, the crude oil spill in 1988 on to the Alaska coast line from the oil tanker Exxon Valdez, and other similar incidents have shocked the conscience of people all over the world and have aroused thinkers to the dangers in industrial and other activities, in modern society.

36. In England, the Pearson Committee recommended the introduction of strict liability in a number of circumstances (though none of these recommendations have so far been implemented, with the exception of that related to defective products).

37. .....

38. The Court also observed that this strict liability is not subject to any of the exceptions to the rule in Rylands vs. Fletcher.

39. .....

40. .....

41. In America the U.S. Supreme Court in Lairds vs. Nelms, 32 L Ed 2d 499 : 406 US 797 (1971), following its earlier decision in Dalehite vs. U.S., 97 L Ed 1427 : 346 US 15 (1952), held that the U.S. was not liable for damages from supersonic booms caused by military planes as no negligence was shown. Schwartz regards this decision as unfortunate (see Schwartz Administrative Law, 1984). However, as regards private enterprises the American Courts award huge damages (often running into millions of dollars) for accidents due to hazardous activities or substances.

42. In France, the liability of the State is without fault, and the principle of strict liability applies (see C.J. Hanson "Government Liability in Tort in the English and French Legal Systems")

43. In India, Article 38(1) of the Constitution states "the State shall strive to promote the welfare of the people by securing and protecting

as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life".

xxx xxx xxx

48. It is recognized that the Law of Torts is not stagnant but is growing. As stated by the American Restatement of Torts, Art. 1; vide D.L. Lloyd: Jurisprudence:

> *"The entire history of the development of the tort law shows a continuous tendency, which is naturally not uniform in all common law countries, to recognize as worthy of legal protection, interests which were previously not protected at all or were infrequently protected and it is unlikely that this tendency has ceased or is going to cease in future."*

49. There are dicta both ancient and modern that the known categories of tort are not closed, and that novelty of a claim is not an absolute defence. Thus, in Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1 : JT (1994) 3 SC 492, the Supreme Court observed: (SCC p. 10, para 8)

> *"8. .....law of torts being a developing law its frontiers are incapable of being strictly barricaded".*

50. In Ashby vs. White, (1703) 2 Ld Raym 938, it was observed (vide Pratt C.J.):

> *"Torts are infinitely various, not limited or confined".*

51. In Donoghue vs. Stevenson, 1932 AC 562, it was observed by the House of Lords (per Macmillan, L.J.): (All ER p. 30A)

> *".....the conception of legal responsibility may develop in adaptation to altering social conditions and standards. The criterion of judgment must adjust and adapt itself to the changing circumstances of life."*

The above view was followed in Rookes vs. Barnard, 1964 AC 1129 and Home Office v. Dorset Yacht Co. Ltd., 1970 AC 1004.

52. In view of the above, we are of the opinion that the submission of learned counsel for the appellant there was no fault on the part of the Railways, or that there was contributory negligence, is based on a total misconception and hence has to be rejected."

34. Coming to the facts of the case, the Inquiry Officer has given the details, at pages 55 to 76 of the paper book, how the Board Authorities have not taken due care, has recorded findings on the cause of incident and the officers/officials responsible for the same, at pages 77 to 84 of the paper book. He has given post incidental activities, reactions and suggested remedial measures, at page 91 of the paper book.

35. While going through the inquiry report, one comes to *prima facie* conclusion that all the authorities, i.e. the Board, College and State, have *prima facie* contributed to the cause of incident. The said report and other factors are the foundation of this order.

36. The Inquiry Officer has *prima facie* come to the conclusion that it is the negligence, carelessness and recklessness of the authorities, which fact has been refuted by the authorities by the medium of affidavits, replies and other documents on the file.

37. The question is - whether the authorities have taken due care? What does 'due care' mean? It means that one has to take all steps to make every effort to save the lives of the public at large. They should also know that in case, 'due care' is not taken, what would be the result and consequences. The place of incident was unknown to the students, who were on tour/excursion. Had the authorities put boards, hoardings, sirens, signals and taken precautions at the relevant time, while discharging the water from the barrage/reservoir, the incident would have been avoided and the precious lives of all the students, who were at their budding age, would have been saved.

38. Due care in this case means that the authorities were supposed to take precautions while performing their duties, which, according to the Inquiry Officer, they have not taken.

39. The expression 'due care' has been discussed by the Apex Court and other High Courts in various judgments, as discussed hereinabove. It is profitable to reproduce paras 14 to 17 of the judgment rendered by the Apex Court in **M.S. Grewal's case (supra)** herein:

> "14. Negligence in common parlance mean and imply 'failure to exercise due care, expected of a reasonable prudent person'. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by with the negligent party is unaware of the results which may follow from his act. negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do (vide Black's Law Dictionary). Though sometimes, the word 'inadvertence' stands and used as a synonym to negligence, but in effect negligence represents a state of the mind which however is much serious in nature than mere inadvertence. There is thus existing a differentiation between the two expressions - whereas inadvertence is a milder form of negligence, 'negligence' by itself mean and imply a state of mind where there is no regard for duty or the supposed care and attention which one ought to bestow. Clerk and Lindsell on Torts (18th Ed.) sets out four several requirements of the tort of negligence and the same read as below :
>
> > "(1) The existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable.
> >
> > (2) Breach of the duty of care by the defendant, i.e. that it failed to measure up to the standard set by law.
> >
> > (3) A casual connection between the defendant's careless conduct and the damage.
> >
> > (4) That the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."
>
> 15. While the parent owes his child, a duty of care in relation to the child's physical security, a teacher in a School is expected to show

such care towards a child under his charge as would be exercised by a reasonably careful parent. In this context, reference may be made to a decision of Tucker, J. in Ricketts v. Erith Borough Council, (1943) 2 All ER 629 : 113 LJKB 269 : 169 LT 396, as also the decision of the Court of Appeal in Prince v. Gregory, (1959) 1 WLR 177 : (1959) 1 All ER 133 (CA).

16. Duty of care varies from situation to situation - whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the play-field. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to playground near a river for fun and swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for swim by reason of popular saying will not be sufficient compliance. As a matter of fact the degree of care required to be taken specially against the minor children stands at a much higher level than adults : children need much stricter care.

17. Incidentally, negligence is an independent tort and has its own strict elements specially in the matter of children - the liability is thus absolute vis-a-viz the children. The school authorities in the contextual facts attributed negligence to the two teachers who stands convicted under Section 304-A of the Indian Penal Code as noticed above and Mr. Bahuguna appearing in support of the appeal during the course of hearing, however, also in no uncertain terms attributed utter negligence on the part of the teachers and thus conceded on the issue of negligence Concession, if any, as noticed above, though undoubtedly a good gesture on the part of the school authority but can the school absolve its responsibility and corresponding culpability in regard to the incident : Would they be termed to be a joint tort feasors or would it be a defence that the school has taken all due care having regard to its duty and it is irrespective thereof by reason of utter neglect and callous conduct on the part of the two of the teachers escorting them that has caused the injury - Mr. Bahuguna contended that the school cannot be made liable under any stretch of imagination by reason of the happening of an event which is not within the school premises and has, in fact, happened by reason of the neglect of two of the teachers. It is on this score that Mr. Malhotra rather emphatically contended that the liability cannot simply be obliterated by reason of plea of utter neglect on the part of the two of the teachers : School concerned can be said to be liable even as a joint tort-feasor and in any event, Mr. Malhotra contended that applicability of the doctrine of vicarious liability cannot be doubted or be brushed aside, in any way whatsoever and since the issue of vicarious liability has been more emphatic and pronounced than the issue of joint tort-feasor, we deem it expedient to deal with the second of twin issues first as noticed above."

40. It was also the duty of the State to monitor the functioning of the projects. They have taken the steps and provided the guidelines and instructions, which have been issued thereafter, as discussed hereinabove, are suggestive of the fact that they had not taken due care and precaution, not to speak of their negligence and recklessness. Even otherwise, there is enough material on the record to *prima facie* hold that they have not taken due care, which is sufficient to grant compensation.

41. The Apex Court in the case titled as **Rajkot Municipal Corporation versus Manjulben Jayantilal Nakum and others,** reported in **(1997) 9 Supreme Court Cases 552,** has discussed what is negligence.

42. In the latest case titled as **V. Krishnakumar versus State of Tamil Nadu & Ors.,** reported in **JT 2015 (6) SC 503,** the issue of negligence has come up for consideration before the Apex Court, in which the Apex Court was dealing with a case of doctors' negligence and it has been held that as to what is due care, what is negligence and how the concerned doctors have given a go-bye to all precautions, which they were required to take. It is apt to reproduce paras 12 and 13 of the judgment herein:

> *"12. Having given our anxious consideration to the matter, we find that no fault can be found with the findings of the NCDRC which has given an unequivocal finding that at no stage, the appellant was warned or told about the possibility of occurrence of ROP by the respondents even though it was their duty to do so. Neither did they explain anywhere in their affidavit that they warned of the possibility of the occurrence of ROP knowing fully well that the chances of such occurrence existed and that this constituted a gross deficiency in service, nor did they refer to a paediatric ophthalmologist. Further it may be noted that Respondent Nos. 3 & 4 have not appealed to this Court against the judgment of the NCDRC and have thus accepted the finding of medical negligence against them.*
>
> ***Deficiency in Service***
>
> *13. In the circumstances, we agree with the findings of the NCDRC that the respondents were negligent in their duty and were deficient in their services in not screening the child between 2 to 4 weeks after birth when it is mandatory to do so and especially since the child was under their care. Thus, the negligence began under the supervision of the Hospital i.e. Respondent No.2. The Respondent Nos. 3 and 4, who checked the baby at his private clinic and at the appellant's home, respectively, were also negligent in not advising screening for ROP. It is pertinent to note that Respondent Nos. 3 and 4 carried on their own private practice while being in the employment of Respondent No. 2, which was a violation of their terms of service."*

43. While applying the tests to the instant case, the material on the record does disclose that the authorities have not taken all steps, as were required, and that was the reason for issuing additional guidelines as to what steps and precautions were to be taken in order to avoid recurrence.

44. The Apex Court was also dealing with such type of cases in **Dheeru versus Government of NCT of Delhi and others,** reported in **2010 ACJ 2593; Municipal Corporation of Delhi, Delhi versus Uphaar Tragedy Victims Association and others,** reported in **(2011) 14 Supreme Court Cases 481, and Sanjay Gupta and others versus State of Uttar Pradesh and others,** reported in **(2015) 5 Supreme Court Cases 283.**

45. It would be profitable to reproduce paras 21 to 24 of the judgment in **Dheeru's case (supra)** herein:

> *"21. The concept of compensation under public law, for injuries caused due to the negligence inaction or indifference of public functionaries or for the violation of fundamental rights is not a novelty in Indian jurisprudence. The power of the High Courts and the Supreme Court under Article 226 and Article 32 respectively, to mould the relief so as to compensate the victim has been affirmed by the Supreme Court on numerous occasions including Common Cause, A Registered Society v. Union of India, (1999) 6 SCC 667, Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 465, Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14, D.K. Basu v. State of W.B., (1997) 1 SCC 416, Rudul Shah v. State of Bihar, (1983) 4 SCC 141. The concept of compensation under public law must be understood as being different from the concept of damages under private law. Compensation under public law must not be merely seen as the moneyed equivalent of the injury caused, but must be understood in the context of the failure of the State to protect the valuable rights of the citizens, more so in the case of the marginalized and the oppressed.*
>
> *22. It has long been established that the right to life enshrined in Article 21 is not a right to mere vegetative ("animal") existence, but to a life with dignity and a decent standard of living. The injury, which an individual or citizen incurs as a result of the State or its agencies neglect to perform its duties, is as actionable in public law, as in tort. In this background the failure of the State to prevent the occurrence of negligent acts by its employees, or those who are accountable to it, within promises under its control, strikes at the very root of the right guaranteed under Article 21 of the Constitution of India.*
>
> *23. In Chandrima Das, (2000) 2 SCC 465, the Supreme Court mentioned about obligation of the States to ensure that women are not victims of violence, including rape and held that this right is consistent with the right to life under Article 21, of all who are protected by our Constitution. In that case, the aggrieved was a victim of rape committed upon her in a railway compartment. The Court brushed aside the Central Government's disclaimer of liability, and declared that the right of the victim under Article 21 had been violated. It awarded Rs. 10 lakh as public law damages. It is noteworthy to see that the Court did not see who was the real perpetrator, or what duty he owed to the Government; it was held sufficient that the wrong occurred in a railway coach, which was under the control of the railway authorities.*
>
> *[24] It would also be useful to notice the observations of the Supreme Court, in Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, at page 762:*
>
> > *"'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy*

> *provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle, which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers."*
>
> *As far as the argument of the respondents to the efficacy of the writ remedy, under Article 226 of the Constitution of India is concerned, the Supreme Court held, in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553, that merely because one party to the litigation raises a dispute in regard to the facts of the case, the Court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the disputants to a suit. The Court observed that in an appropriate case, the Court has the jurisdiction to entertain a writ petition involving disputed questions of fact, since there is no absolute bar for entertaining such cases."*

46. While applying the test to the instant case, the ratio laid down in these cases is applicable to the case in hand, which duly finds place in the inquiry report submitted by the Divisional Commissioner and the other officers, who have filed the inquiry reports.

47. The question is - how to grant compensation in such cases?

48. The Apex Court in the case titled as **Syed Basheer Ahamed and others versus Mohammed Jameel and another,** reported in **(2009) 2 Supreme Court Cases 225,** and **Nagar Council, Rajpura versus Tajinder Singh and others,** reported in **(2012) 12 Supreme Court Cases 273,** has discussed the issue.

49. Keeping in view the doctrine of *res ipsa loquitor,* public law, remedy available to the victims in public law, breach of guidelines, snatching the young Engineering students from their parents, the placements of other similarly situated students and their earning capacity are to be kept in mind while assessing the just compensation.

50. The Courts in the entire world, particularly in USA, UK and India, have tried to evolve the method to award compensation. An aggrieved person can file a civil suit and claim compensation. A workman can invoke the statutory remedy and can approach the Labour Court for compensation. A victim of traffic accident can approach Motor Accident Claims Tribunals (for short "the Tribunals"), which is now developing a new concept and really achieving its aim and object and compensation is being awarded after examining the *prima facie* negligence.

51. Now, the question is - what is the method, which is being applied, rather followed in order to grant compensation to the persons, who became or are becoming the victims of either the negligence or carelessness of the State, instrumentalities of the State, institutions, colleges, schools and other similarly situated bodies?

52. As discussed hereinabove, the Courts have discussed the strict liability and remedies of public law. In some cases the Courts have granted lump-sum compensation and in some cases, they have just exercised the guess work.

53. It is apt to reproduce para 54 of the judgment in **Deep Chand Sood's case (supra)** herein:

> *"54. Question is what compensation should be awarded to the parents of the deceased children, although, the loss sustained by the parents due to the negligence of the school management, Chairman and the staff is of great magnitude and cannot be exactly compensated in terms of money, however, we feel that awarding of reasonable amount of compensation may set off their agony to some extent. Therefore, taking into consideration all the facts and circumstances of this case, submissions of respective parties, the Chairman and management of the school are directed to pay compensation of Rs. 5,00,000/- to each parent of 14 students who died in this tragedy due to their sheer negligence and Rs. 30,000/- each to the parents of Varun Sharma and Utsav Mehrotra who could be saved but had to suffer tremendously. The amounts of compensation be paid within two months with interest at the rate of 12 per cent per annum from 28.5.1995 by depositing the same in the Registry of this Court."*

54. It would also be profitable to reproduce para 12 of the judgment rendered by the Apex Court in **M.S. Grewal's case (supra)** herein:

> *12. As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between 50,000 to one lakh in regard to unfortunate deaths of young children. We do deem it fit to record that while judicial precedents undoubtedly have some relevance as regards the principles of law, but the quantum of assessment stands dependent on the fact-situation of the matter before the Court, than judicial precedents. As regards the quantum no decision as such can be taken to be of binding precedent as such, since each case has to be dealt with on its own peculiar facts and thus compensation is also to be assessed on the basis thereof though however the same can act as a guide : Placement in the society, financial status differ from person to person and as such assessment would also differ. The whole issue is to be judged on the basis of the fact-situation of the matter concerned though however, not on mathematical nicety.*

55. In another case titled as **Lata Wadhwa and others versus State of Bihar and others,** reported in **(2001) 8 Supreme Court Cases 197,** the concept was also discussed and it has been held by the Apex Court that the Courts have to intervene. It is apt to reproduce paras 8 and 9 of the judgment herein:

> *"8. So far as the determination of compensation in death cases are concerned, apart from the three decisions of Andhra Pradesh High Court, which had been mentioned in the order of this Court dated 15-12-1993, this Court in the case of G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176, exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages*

to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The Court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants, and thereafter it should be capitalised by multiplying it by a figure representing the proper number of year's purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, "it is the overall picture that matters," and the Court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the Court observed :

> *"The multiplier method is logically sound and legally well established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases."*

The Court also further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce in consistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. The Court disapproved the contrary views taken by some of the High Courts and explained away the earlier view of the Supreme Court on the point. After considering a series of English decisions, it was held that the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last. In view of the aforesaid authoritative pronouncement of this Court and having regard to the determination made in the report by Shri Justice Chandrachud, on the basis of the aforesaid multiplier method, it is difficult for us to accept the contention of Ms. Rani Jethmalani, that the settled principle for determination of compensation, has not been

followed in the present case. The further submission of the learned counsel that the determination made is arbitrary, is devoid of any substance, as Shri Justice Chandrachud has correctly applied the multiplier, on consideration of all the relevant factors. Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way, as prospective loss of earnings. The basic figure, instead of being the net earnings, is the net contribution to the support of the defendants, which would have been derived from the future income of the deceased. When the basic figure is fixed, then an estimate has to be made of the probable length of time for which the earnings or contribution would have continued and then a suitable multiple has to be determined (a number of year's purchase), which will reduce the total loss to its resent value, taking into account the proved risks of rise or fall in the income. In the case of Mallett v. McMonagle, 1970 AC 166, Lord Diplock gave a full analysis of the uncertainties, which arise at various stages in the estimate and the practical ways of dealing with them. In the case of Davies v. Taylor, 1974 AC 207, it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real loss. But a practical approach to the calculation of the damages has been stated by Lord Wright, in a passage which is frequently quoted, in Davis v. Powell Duffryn Associated Collieries Ltd. (1942) 1 All ER 657, to the following effect : (All ER p. 665 A-B)

> *"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of year' purchase."*

9. It is not necessary for us to further delve into the matter, as in our opinion, Shri Justice Chandrachud, has correctly arrived at the basic figure as well as in applying the proper multiplier, so far as the employees of the TISCO are concerned, but the addition of conventional figure to the tune of Rs. 25,000/- appears to us to be inadequate and instead, we think the conventional figure to be added should be Rs.50,000/-."

56. It would also be profitable to reproduce para 40 of the judgment rendered by the Apex Court in **Delhi Jal Board's case (supra)** herein:

"40. We shall now consider whether the High Court was justified in issuing interim directions for payment of compensation to the families of the victims. At the outset, we deprecate the attitude of a public authority like the Appellant, who has used the judicial process for frustrating the effort made by Respondent No. 1 for getting compensation to the workers, who died due to negligence of the contractor to whom the work of maintaining sewage system was

> *outsourced. We also express our dismay that the High Court has thought it proper to direct payment of a paltry amount of Rs. 1.5 to 2.25 lakhs to the families of the victims."*

57. Before we determine what should be the compensation in the instant case, we deem it proper to discuss what are the latest pronouncements made by the Courts relating to granting of the compensation in the Motor Vehicles Act, 1988 (for short "MV Act") which are to be kept in mind while assessing just compensation.

58. Expression "just" has been elaborated by the Apex Court in **State of Haryana and another vs. Jasbir Kaur and others,** reported in **AIR 2003 Supreme Court 3696.** It is apt to reproduce para 7 of the said decision hereunder:

> *"7. It has to be kept in view that the Tribunal constituted under the Act as provided in S. 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; nor a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191)."*

59. Similar view has been taken by the Apex Court in a case titled as **The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another,** reported in **AIR 2003 Supreme Court 4172**.

60. The Apex Court in the case titled as **Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr.,** reported in **2009 AIR SCW 3717,** laid down the same principle while discussing, in para 27 of the judgment, the ratio laid down in the judgments rendered in the cases titled as *Nagappa v. Gurudayal Singh & Ors, (2003) 2 SCC 274; Devki Nandan Bangur and Ors. versus State of Haryana and Ors. 1995 ACJ 1288; Syed Basheer Ahmed & Ors. versus Mohd. Jameel & Anr., (2009) 2 SCC 225; National Insurance Co. Ltd. versus Laxmi Narain Dhut, (2007) 3 SCC 700; Punjab State Electricity Board Ltd. versus Zora Singh and*

Others (2005) 6 SCC 776; A.P. SRTC versus STAT and State of Haryana & Ors. versus Shakuntla Devi, 2008 (13) SCALE 621.

61. The Apex Court in another case titled as **Ningamma & another versus United India Insurance Co. Ltd.,** reported in **2009 AIR SCW 4916,** held that it is the bounden duty of the Court to award "Just Compensation" in favour of the claimants to which they are entitled to, irrespective of the fact whether any plea in that behalf was raised by the claimants or not. It is profitable to reproduce para 25 of the judgment herein:

> *"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."*

62. The Apex Court in the judgments delivered in the cases titled as **A.P.S.R.T.C. & another versus M. Ramadevi & others,** reported in **2008 AIR SCW 1213** and **Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service,** reported in **2013 AIR SCW 5800,** has discussed as to what is the 'just compensation' in a Claim Petition filed under the Motor Vehicles Act. It is apt to reproduce para 9 of the judgment rendered in **Sanobanu's case (supra)** herein:

> *"9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."*

63. The Apex Court in the case titled **Santosh Devi versus National Insurance Company Ltd. and others,** reported in **(2012) 6 SCC 421,** discussed the issue of assessing

compensation in regard to the salaried employees and the self-employed persons. It is profitable to reproduce para 11 and 14 to 18 of the said judgment herein:

> *"11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.*
>
> *12. .....*
>
> *13. .....*
>
> *14. We find it extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma's case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.*
>
> *15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.*
>
> *16. The salaries of those employed under the Central and State Governments and their agencies/ instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac.*
>
> *17. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of*

a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.

18. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

64. It is apt to record herein that the law laid down in the case titled as **Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104,** was referred to larger Bench by another co-ordinate Bench and was upheld in the case titled as **Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 3120.**

65. The Apex Court in case titled **National Insurance Co. Ltd. versus Indira Srivastava and others,** reported in **2008 ACJ 614,** has explained the term 'income', and has held in paragraphs 8, 9, 17 and 18 as under:

"8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetory terms.

9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :

"BASIC : 63,400.00

CONVEYANCEALLOWANCE : 12,000.00

RENT CO LEASE : 49,200.00

BONUS (35% OF BASIC) : 21,840.00

TOTAL : 1,45,440.00

In addition to above, his other entitlements were :

Con. to PF 10% Basic Rs. 6,240/- (p.a.) LTA reimbursement Rs. 7,000/- (p.a.) Medical reimbursement Rs. 6,000/- (p.a.) Superannuation 15% of Basic Rs. 9,360/- (p.a.) Gratuity Cont. 5.34% of Basic Rs. 3,332/- (p.a.) Medical Policy-self & Family @ Rs. 55,000/- (p.a.) Education Scholarship @ Rs.500 Rs. 12,000/- (p.a.) Payable to his two children Directly".

10 to 16. .....

17. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

18. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under :

> *"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."*

It has also been stated :

> *'INCOME' signifies 'what comes in' (per Selborne, C., Jones v. Ogle, 42 LJ Ch.336). 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. Re Huggins, 51 LJ Ch.938.) income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921 Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR 1930 Mad 626 : 58 MLJ 337."*

66. The Apex Court in the cases titled as **Oriental Insurance Company Ltd. vs. Jashuben & Ors.,** reported in **2008 AIR SCW 2393,** and **V. Subbulakshmi and others versus S. Lakshmi and another,** reported in **(2008) 4 SCC 224,** while taking the similar view, has held that it was not relevant to take into account the fact as to what would have been the income of the deceased at the time of retirement, had he retired on attaining the age of superannuation.

67. The Apex Court in another case titled as **Amrit Bhanu Shali and others versus National Insurance Company Ltd. and others,** reported in **(2012) 11 SCC 738,** has laid down the principles how to grant compensation, how to reach the victim of a vehicular accident and granted ` 9.50 lacs as compensation.

68. The Apex Court in the case titled as **Savita versus Bindar Singh & others,** reported in **2014 AIR SCW 2053,** has held that it is the duty of the Court to award just compensation to the victims of a vehicular accident and while assessing the just

compensation, the Court should not succumb to the niceties or technicalities of law. It is apt to reproduce paragraph 6 of the said judgment hereunder:

> *"6. After considering the decisions of this Court in Santosh Devi as well as Rajesh v. Rajbir Singh , we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."*

69. The Apex Court has also discussed this issue in the cases titled as **Radhakrishna and another versus Gokul and others,** reported in **2014 AIR SCW 548,** and **Kalpanaraj and others versus Tamil Nadu State Transport Corporation,** reported in **(2015) 2 SCC 764,** and held that the Courts, while granting compensation to the victims of a vehicular accident, have to keep in view all factors including income. It was also held that the monthly income of the deceased can be assessed on the basis of income tax returns. It is apt to reproduce para 8 of the judgment in **Kalpanaraj's case (supra)** herein:

> *"8. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However, the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation, in the light of the principle laid down by this Court in the case of National Insurance Company Ltd. v. Indira Srivastava and Ors, (2008) 2 SCC 763. The relevant paragraphs of the case read as under:*
>
> > *"14. The question came for consideration before a learned Single Judge of the Madras High Court in National Insurance Co. Ltd. v. Padmavathy and Ors. wherein it was held:*
> >
> > > *'7 ..Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the*

employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.'

15. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in S. Narayanamma and Ors. v. Secretary to Government of India, Ministry of Telecommunications and Ors. holding:

12 .In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers / periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the tribunal that the deceased was getting Rs.1,401/- as net income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in Helen's case. The Supreme Court in Concord of India Insurance Co. v. Nirmaladevi and Ors, 1980 ACJ 55 held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'."

70. In view of the above, just compensation can be granted while keeping in view the status of the parents, the prospects of the deceased students and loss of income to the parents, rather loss of source of dependency.

71. Admittedly, as discussed hereinabove, these students, after obtaining Engineering degree from the said reputed College, would have got better placements. It is known to everyone that an Engineer of said discipline and cadre would have been earning not less than about Rs. ten lacs per annum.

72. If we take a lenient view by, *prima facie,* holding that the deceased students, after obtaining the degree, would have become Government employees in the cadre of Assistant Engineer, meaning thereby, they would have been earning not less than Rs.30,000/- per month as salary. Even if they would have failed to get a better placement or appointment in Government employment, at least, they could have obtained their job in private firms and by guess work, it can be safely said and held that their monthly salary would not have been less than Rs.25,000/-.

73. The multiplier method, as discussed hereinabove, is the best method to assess the compensation. As per the law laid down by the Apex Court in the latest judgment rendered in the case titled as **Munna Lal Jain and another versus Vipin Kumar Sharma and others,** reported in **2015 AIR SCW 3105,** the age of the deceased is the criterion for applying the multiplier method.

74. Admittedly, all the deceased students were 19 and 20 years of age at the relevant point of time. Thus, keeping in view the Second Schedule appended with the MV Act read with the judgments in **Sarla Verma, Reshma Kumari and Munna Lal Jain's cases (supra),** multiplier of '15' is just and appropriate.

75. All the deceased students were unmarried, thus, 50% is to be deducted while keeping in mind the ratio laid down by the Apex Court in the judgments (supra). Viewed thus, it can be safely held that the parents have lost source of income/ dependency to the extent of 50%, i.e. Rs.12,500/- per month in each case.

76. In the cases of the like nature, the Apex Court and the other High Courts have granted lump-sum compensation. But at that point of time, the method of assessing compensation by applying multiplier method in claim cases under MV Act was in its infancy. Applying the same principle, how and what amount of compensation was granted by the Apex Court and other High Courts from 1960 upto 2014 has to be seen and what should be the compensation as on today.

77. This Court in **Deep Chand Sood's case (supra)** granted Rs.5 lacs in lump-sum to the parents of each of the deceased students in the year 1996 and the same was upheld by the Apex Court in **M.S. Grewal's case (supra).**

78. The Apex Court in **Dheeru's case (supra)** has awarded Rs.ten lacs as compensation. In **Uphaar Tragedy Victims Association's case (supra),** the Apex Court awarded Rs. ten lacs in case of the persons aged above 20 years, 7.5 lacs in case of those who were 20 years or below.

79. In the case titled as **Dinesh Singh versus Bajaj Allianz General Insurance Company Limited and another,** reported in **(2014) 9 Supreme Court Cases 241,** where an Engineer suffered permanent disability, the Apex Court awarded compensation to the tune of Rs.33 lacs.

80. It is to be kept in mind that the Apex Court in a latest judgment in **Sanjay Gupta's case (supra),** after discussing all the aspects, granted Rs.5 lacs as an interim, then what should be the amount at the final stage.

81. The Courts have to take into view the changing inflation in price rise, the pressing demands, family background of the deceased and other attending factors.

82. The Apex Court in the case titled as **Gobald Motor Service Ltd. and another versus R.M.K. Veluswami and others,** reported in **AIR 1962 SC 1,** has held how the compensation is to be granted and what is to be kept in mind. It is apt to reproduce paras 7 and 8 of the judgment herein:

> *"7. The next question is whether the courts below were right in awarding compensation of Rs. 25,200 for the pecuniary loss sustained by the respondents 2 to 7 by reason of the death of Rajaratnam, under S. 1 of the Act. Section 1 of the Act reads:*
>
> *"Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.*
>
> *Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor administrator or representative of the person deceased; and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the Defendant, shall be divided amongst the before mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct."*
>
> *This section is in substance a reproduction of the English Fatal Accidents Acts 9 and 10 Vict. Ch. 93, known as the Lord Campbell's Acts. The scope of the corresponding provisions of the English Fatal Accidents Acts has been discussed by the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601. There Lord Russell of Killowen stated the general rule at p. 606 thus:*
>
> *"The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately."*
>
> *Lord Wright elaborated the theme further thus at p. 611:*
>
> *"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing*

the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered . . . . The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other any pecuniary advantage which from whatever source comes to him by reason of the death."

The same principle was restated with force and clarity by Viscount Simon in Nance v. British Columbia Electric Railway Co. Ltd., 195l AC 601. There, the learned Lord was considering the analogous provisions of the British Columbia legislation, and he put the principle thus at p. 614:

"The claim for damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family?".

Viscount Simon then proceeded to lay down the mode of estimating the damages under the first head. According to him, at first the deceased man's expectation of life has to be estimated having regard to his age, bodily health and the possibility of premature determination of his life by later accident; secondly, the amount required for the future provision of his wife shall be estimated having regard to the amounts he used to spend on her during his lifetime, and other circumstances; thirdly, the estimated annual sum is multiplied by the number of years of the man's estimated span of life, and the said amount must be discounted so as to arrive at the equivalent in the form of a lump sum payable on his death; fourthly further deductions must be made for the benefit accruing to the widow from the acceleration of her interest in his estate; and, fifthly, further amounts have to be deducted for the possibility of the wife dying earlier if the husband had lived the full span of life; and it should also be taken into account that there is the possibility of the widow remarrying much to the improvement of her financial position. It would be seen from the said mode of estimation that many imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death that is, the balance of loss and gain to a dependant by the death must be ascertained.

8. The burden is certainly on the plaintiffs to establish the extent of their loss. Both the courts below found, on the evidence, the following facts: (i) The family owned a building worth Rs. 2,00,000/- at Palni, and 120 acres of nanja land worth about Rs.1,000/- per acre.(2) It was engaged in the business of manufacturing Indian patent

medicines from drugs and had been running a Siddha Vaidyasalai at Palni for a period of 30 years and had also branches in Colombo and Madras. (3) Rajaratnam studied in the Indian School of Medicine for two years and thereafter set up his own practice as a doctor, having registered himself as a practitioner in 1940. (4) He took over the management of the family Vaidyasalai at Palni. (5) Rajaratnam was earning in addition Rs.200/- to Rs.250 per month in his private practise. (6) He had a status in life, being Muncipal Councillor of Palni and sometimes its Vice-Chairman,and was maintaining a fairly good standard of life and owned motor cars. (7) He was aged 34 years at the time of his death and,therefore, had a reasonably long span of life before him. If the accident had not taken place. On the said findings the High court summarized the position thus:

".....the position is that there is here a man of age 34 carrying on business as a Doctor, with reasonable prospects of improving in his business. He was living in comfort and by his early death plaintiffs 2 to 7 have lost their prospects of education, position in society and even possible provision in their favour. Under the circumstances, the award of Rs. 25,000/- as damages must be accepted as quite reasonable."

When the courts below have, on relevant. material placed before them, ascertained the said amount as damages under the first head, we cannot in second appeal disturb the said finding except for compelling reasons. Assuming that Rajaratnam had not died, he would have spent, having regard to his means and status in life, a minimum of Rs. 250/- on respondents 2 to 7; and his income, as indicated by the evidence, would certainly be more than that amount. The yearly expenditure he had to incur on the members of the family would have been about Rs. 3,000/- and the sum of Rs. 25,200/would represent the said expenditure for just over 8 years."

83. The Apex Court in the case titled as **Santosh Devi versus National Insurance Company Ltd. and Ors., reported in 2012 AIR SCW 2892,** held that Courts should keep in mind the inflation of price rise, socio-economic conditions and other attending factors, while awarding compensation. It is apt to reproduce para 11 of the judgment herein:

"11. We have considered the respective arguments. Although, the legal jurisprudence developed in the country in last five decades is somewhat precedent-centric, the judgments which have bearing on socio-economic conditions of the citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters needs to be frequently revisited keeping in view the fast changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people."

84. The Apex Court in **V. Krishnakumar's case (supra)** has laid down the same principle. It is apt to reproduce para 24 of the judgment herein:

" 24. This Court has referred to case law from a number of other major common law jurisdictions on the question of accounting for inflation in the computation of awards in medical negligence cases. It

is unnecessary to discuss it in detail. It is sufficient to note that the principle of apportioning for inflationary fluctuations in the final lump sum award for damages has been upheld and applied in numerous cases pertaining to medical negligence. In the United States of America, most states, as in Ireland and the United Kingdom, require awards for future medical costs to be reduced to their present value so that the damages can be awarded in the form of a one-time lump sum. The leading case in the United States, which acknowledges the impact of inflation while calculating damages for medical negligence was Jones & Laughlin Steel Corporation v. Pfeifer,1983 462 US 523, wherein that court recognized the propriety of taking into account the factors of present value and inflation in damage awards. Similarly, in O'Shea v Riverway Towing Co., (1982) 677 F.2d 1194, at 1199 (7th Cir), Posner J., acknowledged the problem of personal injury victims being severely under-compensated as a result of persistently high inflation.

24.1. In Taylor v. OConnor, 1971 AC 115, Lord Reid accepted the importance of apportioning for inflation:

> *"It will be observed that I have more than once taken note of present day conditions - in particular rising prices, rising remuneration and high rates of interest. I am well aware that there is a school of thought which holds that the law should refuse to have any regard to inflation but that calculations should be based on stable prices, steady or slowly increasing rates of remuneration and low rates of interest. That must, I think, be based either on an expectation of an early return to a period of stability or on a nostalgic reluctance to recognise change. It appears to me that some people fear that inflation will get worse, some think that it will go on much as at present, some hope that it will be slowed down, but comparatively few believe that a return to the old financial stability is likely in the foreseeable future. To take any account of future inflation will no doubt cause complications and make estimates even more uncertain. No doubt we should not assume the worst but it would, I think, be quite unrealistic to refuse to take it into account at all."*

24.2. In the same case Lord Morris of Borth-y-Gest also upheld the principle of taking into account future uncertainties. He observed:

> *"It is to be remembered that the sum which is awarded will be a once-for- all or final amount which the widow must deploy so that to the extent reasonably possible she gets the equivalent of what she has lost. A learned judge cannot be expected to prophesy as to future monetary trends or rates of interest but he need not be unmindful of matters which are common knowledge, such as the uncertainties as to future rates of interest and future levels of taxation. Taking a reasonable and realistic and common- sense view of all aspects of the matter he must try to fix a figure which is neither unfair to the recipient nor to the one who has to pay. A learned judge might well take the view that a recipient would be ill-advised if he entirely ignored all inflationary trends and if he applied the entire sum awarded to him in the purchase of an*

> *annuity which over a period of years would give him a fixed and predetermined sum without any provision which protected him against inflationary trends if they developed."*
>
> *24.3. More recently the Judicial Committee of the UK Privy Council in Simon v. Helmot, 2012 UKPC 5, has unequivocally acknowledged the principle, that the lump sum awarded in medical negligence cases should be adjusted so as to reflect the predicted rate of inflation."*

85. Keeping in view the value of money in 1980s, 1990s and as on today, *prima facie,* it can be safely held that Rs.20-25 lacs can be awarded as compensation in favour of the parents of each of the deceased students.

86. It is also to be kept in mind that the unfortunate parents of the said students have relegated themselves to the remedy in hand, have given up, rather have waived off their right to press or lay a claim for seeking compensation by invoking any other remedy available to them, in addition to which is to be awarded by this Court. Meaning thereby, they have closed the doors for themselves to get compensation from other sources.

87. In the cases discussed hereinabove, the claimants had not given up the other remedies, but in the instant case, the parents of the deceased students have given up their remedies. Thus, this factor is also to be kept in mind, while awarding the compensation.

88. This Court, vide order, dated 25.06.2014, awarded interim compensation to the tune of ` five lacs. The College and the Board were saddled with liability in equal shares. They have satisfied the same.

89. Having said so, we are of the view that the multiplier method adopted by the Tribunals and the Appellate Courts, i.e. the Apex Court and the High Courts, is the best method to assess the compensation without any ambiguity and on the basis of the *prima facie* findings, in this case also and award just, reasonable and appropriate compensation.

90. Thus, it can be safely said that the parents of the deceased students are entitled to compensation to the tune of Rs.12,500/- x 12 x 15 = Rs.22,50,000/- under the head 'loss of income/dependency'. They are also entitled to Rs.10,000/- each under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses'.

91. Having said so, the parents of the deceased students are entitled to compensation to the tune of Rs.22,50,000/- + Rs.10,000/- + Rs.10,000/- + Rs.10,000/- = Rs.22,80,000/- with interest from the date of the accident.

92. But, keeping in view the observations made hereinabove and the amount, which was awarded by the Apex Court and other High Courts in the cases of the like nature, we deem it proper to award Rs.20,00,000/- in lump-sum to the parents of each of the students with interest @ 7.5% per annum from the date of the accident till its final realization.

93. The next question is - who has to satisfy the award and in which ratio?

94. The following facts are admitted:

(i) The cause of accident;

(ii) All the deceased students were the students of a prestigious college;

(iii) They would have got better placement; and

(iv) Death was because of sudden discharge of water from the barrage/reservoir.

95. The College and the Board Authorities had to exercise due care. In view of the inquiry report, as discussed hereinabove, it was a sheer carelessness of the Board Authorities and the College Authorities. Had they taken the precautions, as discussed hereinabove, had the College Authorities and the officers/officials, who were with the students anticipated where the students are going and what will be the result of the same, may be, their lives would have been saved.

96. Keeping in view the facts of the case read with the inquiry report, the other reports and the attending factors, one comes to *prima facie* conclusion that the Board Authorities and the College Authorities have not exercised due care.

97. The Board is an authority of the State. We have discussed hereinabove the action of the State Authorities and the officers in charge of the concerned department having issued the guidelines how to prevent such accidents/incidents and what steps are to be taken in future. Had the State Authorities taken these steps earlier, perhaps, this incident would not have been occurred.

98. The Board is the instrumentality of the State, it was the duty of the State to see whether the Boards and the other Authorities working under the State are functioning and discharging their duties properly, has failed to do so, thus, the State is also, *prima facie,* liable.

99. The Apex Court has discussed the 'strict liability' and who is liable, in the cases discussed hereinabove reported in *(2002) 2 Supreme Court Cases 162, (2011) 8 Supreme Court Cases 568, (2011) 14 Supreme Court Cases 481, (2015) 5 Supreme Court Cases 283,* and *JT 2015 (6) SC 503.* It would be profitable to reproduce para 27 of the judgment in **V. Krishnakumar's case (supra),** reported in **JT 2015 (6) SC 503,** herein:

> *"27. It is settled law that the hospital is vicariously liable for the acts of its doctors vide Savita Garg vs. National Heart Institute, (2004) 8 SCC 56, also followed in Balram Prasad's case. Similarly in Achutrao Haribhau Khodwa v. State of Maharashtra, 1996 2 SCC 634 this court unequivocally held that the state would be vicariously liable for the damages which may become payable on account of negligence of its doctors or other employees. By the same measure, it is not possible to absolve Respondent No. 1, the State of Tamil Nadu, which establishes and administers such hospitals through its Department of Health, from its liability."*

100. Applying the test to the instant case, all the three, i.e. the Board, the College and the State, are to be saddled with the liability.

101. The next question is - in what proportion the Board, the College and the State are to be saddled with the liability?

102. The **Uphaar Tragedy Victims Association's case (supra)** contains the guidelines how to fix the percentage.

103. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in the case titled as **DAV Managing committee and another versus Dabwali Fire Tragedy Victims Association and others,** reported in **(2013) 10 Supreme Court Cases 494,** herein:

> *"10. The High Court while examining the correctness and percentage of liability of compensation modified the percentage confined upon the appellants and respondent no.8 from 80% to 55% confining the negligence aspect upon the appellants and respondent no.8 has not been annulled. No doubt the composite negligence is fastened upon the appellants and respondent no.8, State of Haryana, the Haryana State Electricity Board and Municipal Committee Dabwali for the reasons recorded by the High Court. The correctness of the said finding not only examined in this appeal as the same is not questioned either by the appellants or by respondent No.8. While recording the finding on issue no.3 and reducing the liability of compensation to 55% out of 80% awarded by the Inquiry Commission, the High Court has held that the appellants and respondent no.8 namely Rajiv Marriage Palace would be jointly and severally liable to pay 55% of the total compensation payable to the claimants, the remaining tort-feasors referred to supra. It is not possible for this Court to apportion the liability of compensation between the appellants and respondent no.8, particularly in the absence of the material evidence on record either before the Inquiry Commission or before the High Court and particularly having regard to the fact that what is stated that economic capacity of the partners of Rajiv Marriage Palace. In the absence of such findings it is not proper for this Court to frustrate the judgment of the High Court which is based on the Commission of Inquiry Report submitted by a retired Judge of Allahabad High Court and further on behalf of respondent no.8 it is stated that out of six family members, two persons, namely Kewal Krishan and Chander Bhan died on account of the burn injuries in the said function and further the land where the Rajiv Marriage Palace was built up has been taken over by the District authorities and the same has been converted into 'Shahid Smarker Park' and what is the other properties left out of the partners of the Rajiv Marriage Palace and the evidence is not forthcoming by this Court or before the High Court or in these proceedings. In this way, in the absence of the same it is not possible for this Court to apportion the liability of compensation and confine the same upon the appellants and respondent no.8 out of 55% of the liability of compensation confined and holding both the appellants and respondent No.8 responsible for jointly and severally."*

104. The Apex Court in the cases, discussed hereinabove, has also laid down the principles what is the role of the State in the given circumstances and how State is to be fixed with liability.

105. Keeping all these factors in view read with the inquiry report of the Divisional Commissioner, the Board Authorities had the major role and they have failed to exercise due care and caution, thus, are to be saddled with liability at least to the extent of 60%.

106. The unfortunate students were on excursion and the role of the College Authorities was also important. They should have ascertained all facts including the circumstances and other factors prevailing in the area, where they were planning to visit.

107. In **Deep Chand Sood's case (supra),** the school had arranged picnic for the students, 15 boys met with the same fate and the Court held that the school concerned is

also liable, even though the school was not falling under the definition of State or instrumentality of the State as per the mandate of Article 12 of the Constitution of India.

108. Accordingly, we deem it proper to hold that the College is liable to the extent of 30%.

109. In view of the above, the State is also saddled with liability to the extent of 10%.

110. Learned Amicus Curiae and the learned counsel representing the parents of the deceased students have placed on record the material, which do disclose that in addition to Rs.5,00,000/- awarded as interim compensation, the insurance amount, the ex-gratia by the States of Himachal Pradesh, Andhra Pradesh and Telangana and also tuition fee has been refunded by the College, the details of which are as under:

Sl. No.	***Details***	***Amount (per student)***
1.	*State of H.P.*	Rs.*1.50 lac*
2.	*State of Telangana*	Rs.*5.00 lac*
3.	*State of Andhra Pradesh*	Rs.*5.00 lac*
4.	*Insurance amount*	`Rs.*2.00 lac*
5.	*Refund of tuition fee*	Rs.*45,000/-* - Rs.*1.74 lac*

111. The question is - whether this amount is to be adjusted towards the total amount of compensation? The answer is in the negative for the following reasons:

112. This issue was raised before the Apex Court and other High Courts in the cases discussed hereinabove and it was held that the perks, fee, the insurance amount and other such amounts cannot be deducted.

113. The tuition fee and the insurance amount was their own money. The other amounts granted by the State Governments of Telangana and Andhra Pradesh as ex-gratia have no role to play. It is just the gesture of the State Governments.

114. Applying the ratio laid down by the Apex Court and the other High Courts, this amount is to be excluded from the amount of compensation.

115. Having glance of the above discussions, Rs.20,00,000/-, including the interim compensation to the tune of Rs. 5,00,000/-, with interest @ 7.5% per annum from today till its final realization is awarded in favour of the parents of each of the deceased students and against the Board, College and the State of Himachal Pradesh in the ratio of 60:30:10.

116. They are directed to deposit the amount after making deduction of Rs.5,00,000/- awarded as interim compensation paid by the Board and the College within eight weeks before the Registry of this Court.

117. On deposition of the amount, the same be released in favour of the parents through payee's account cheque or by depositing in their respective accounts, the details of

which shall be furnished by the learned Amicus Curiae or the learned counsel representing the parents of the deceased students, in the Registry.

118. It is made clear that the findings recorded hereinabove are only *prima facie* in nature in order to grant compensation, as per the discussions made hereinabove, cannot be made basis for recording judgment(s) in any civil suit, criminal proceedings or departmental proceedings.

119. Before parting with, we deem it proper to place on record a word of appreciation for the valuable assistance rendered by the learned Amicus Curiae, learned Advocate General, learned Advocates who appeared in this case, the Divisional Commissioner-Inquiry Officer and the other officers, who have assisted this Court.

120. Having said so, the lis is disposed of alongwith all pending applications, as indicated hereinabove.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Prem Lal ...Petitioner.

Versus

The State of H.P. and others ...Respondents.

CWP No. 4839 of 2015
Decided on: 02.01.2016

Constitution of India, 1950- Article 226- The dispute raised in the writ petition has already been determined by the Apex Court in **Raghubir Singh versus General Manager, Haryana Roadways, Hissar, 2014 AIR SCW 5515-** hence, order dated 17.7.2006 quashed and Labour Commissioner directed to make reference to the Industrial Tribunal within six weeks. (Para-2 and 3)

Case referred:
Raghubir Singh versus General Manager, Haryana Roadways, Hissar, reported in 2014 AIR SCW 5515

For the petitioner: Mr. R.D. Kaundal, Advocate, vice Mr. Ashwani K. Gupta, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 to 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Issue notice. Mr. J.K. Verma, learned Deputy Advocate General, waives notice on behalf of the respondents.

2. The dispute raised in this writ petition is already determined by the Apex Court in the judgment titled as **Raghubir Singh versus General Manager, Haryana Roadways, Hissar,** reported in **2014 AIR SCW 5515,** and the same has been relied upon by this Court in a batch of writ petitions, **CWP No. 9467 of 2014,** titled as **Pratap Chand versus Himachal Pradesh State Electricity Board and others,** being the lead case, decided on 30.12.2014. Thus, the issue involved in the present writ petition is covered by the judgments (supra).

3. In the given circumstances, we deem it proper to quash impugned orders, dated 17.07.2006 (Annexure P-1) and direct the Labour Commissioner to make reference to the Industrial Tribunal-cum-Labour Court within six weeks from today. Ordered accordingly.

4. The writ petition is disposed of, as indicated hereinabove, alongwith all pending applications.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

Romesh Chand ...Petitioner.

VERSUS

Bharat Sanchar Nigam Ltd. and others ...Respondents.

CWP No.5611 of 2013.
Decided on: January 2, 2016.

Constitution of India, 1950- Article 226- During the pendency of the proceedings, Apex Court passed the judgment, upholding the judgment of Kerala High Court which deals with the controversy raised in the present matter- respondent directed to examine the case of the petitioner in the light of the judgment passed by the Apex Court.

For the petitioner: Mr.R.L. Chaudhary, Advocate.

For the Respondents: Mr.Ashok Sharma, Senior Advocate, with Mr.Angrez Kapoor, Advocate, for respondents No.1 to 4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

Learned counsel for the petitioner stated that during the pendency of the lis, the Apex Court has passed the judgment, dated 21st February, 2011, in Special Leave to Appeal (Civil) No.5603 of 2010, whereby the judgment passed by the Kerala High Court was upheld, which squarely applies to the case in hand. Further stated that the said judgment stands implemented by the respondents. Learned counsel for the petitioner also filed across the board copies of the judgments passed by the Apex Court and the Kerala High Court as also the copy of the implementation order, made part of the file.

2. In the given circumstances, we quash the judgment, dated 4th April, 2013, passed by the Central Administrative Tribunal, (Annexure P-4) and direct the respondents to examine the case of the petitioner in light of the judgment referred to above and make order

within a period of six weeks from today, after hearing the petitioner. It is made clear that in case the decision goes against the petitioner, he is at liberty to challenge the same.

3. Pending CMPs, if any, also stand disposed of.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

LPAs No. 4 to 6 of 2016
Decided on: 02.01.2016

LPA No. 4 of 2016
The State of H.P. and another ...Appellants.
versus
Shankar Lal ...Respondent.

LPA No. 5 of 2016
The State of H.P. and another ...Appellants.
versus
Karnail Singh ...Respondent.

LPA No. 6 of 2016
The State of H.P. and another ...Appellants.
versus
Raman Kumar ...Respondent.

Industrial Disputes Act, 1947- Section 25- Services of the workmen were terminated - disputes were raised under the Industrial Disputes Act- matter was referred to Competent Authority who allowed the Reference Petition- held, that awards passed by the Labour Court are based on facts and the evidence led by the parties- Writ Court cannot sit as an Appellate Court and set aside the award made by the Labour Court- writ petition dismissed.

(Para-7 to 14)

Cases referred:
Bhuvnesh Kumar Dwivedi versus M/s. Hindalco Industries Ltd., 2014 AIR SCW 3157
M/s. Delux Enterprises vs H.P. State Electricity Board Ltd. & others, ILR 2014 (IX) HP 270
Gurcharan Singh (deceaed) through his LRs vs. State of H.P. and others, I L R 2015 (VI) HP 938 D.B.

For the Appellants: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General.
For the Respondent(s): Mr. Naresh Kaul, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

CMP(M) No. 1686 of 2015 in LPA No. 4 of 2016
CMP(M) No. 1689 of 2015 in LPA No. 5 of 2016
CMP(M) No. 1688 of 2015 in LPA No. 6 of 2016

By the medium of these limitation petitions, the appellants-applicants have sought condonation of delay, which has crept-in in filing the present appeals.

2. We have gone through the limitation petitions read with the impugned judgments and are of the considered view that the appellants-applicants have carved out sufficient cause for condoning the delay. Accordingly, the delay is condoned. The limitation petitions are disposed of.

LPAs No. 4 to 6 of 2016

3. Appeals are taken on Board.

4. Issue notice. Mr. Naresh Kaul, Advocate, waives notice for the respondent(s) in all the appeals.

5. These appeals are directed against the judgments and orders made by the Writ Courts on different dates, whereby the writ petitions filed by the writ petitioners-appellants herein came to be dismissed (for short "the impugned judgments").

6. We have gone through the impugned judgments, which are legally correct for the following reasons.

7. Services of the respondents were terminated, disputes were raised under the Industrial Disputes Act, 1947, (for short "the Act"), the matters were referred by the competent Authority to the Labour Court-cum-Industrial Tribunal, (for short the "Labour Court").

8. The Labour Court entered into the references and issues were framed. Parties led their evidence and the Labour Court, after examining the pleadings and the evidence led by the parties, held vide the respective awards, that the workmen were entitled to the relief and made the awards.

9. The awards passed by the Labour Court are based on the facts and the evidence led by the parties. It is well settled principle of law that the Writ Court cannot sit as an Appellate Court and set aside the award made by the Labour Court, which is based on evidence and facts.

10. The Apex Court in case titled as **Bhuvnesh Kumar Dwivedi versus M/s. Hindalco Industries Ltd.,** reported in **2014 AIR SCW 3157,** held that the findings of fact recorded by Tribunal as a result of the appreciation of evidence cannot be questioned in writ proceedings and the Writ Court cannot act as an Appellate Court. It is profitable to reproduce para 18 of the judgment herein:

> *"18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant."*

11. This Court has also laid down the same principle in a batch of writ petitions, **CWP No. 4622 of 2013,** titled as **M/s Himachal Futuristic Communications Ltd. versus State of HP and another,** being the lead case, decided on 04.08.2014. It is worthwhile to reproduce para 13 of the judgment herein:

"13. Applying the test to the instant case, the question of fact determined by the Tribunal cannot be made subject matter of the writ petition and more so, when the writ petitioner(s) have failed to prove the defence raised, in answer to the references before the Tribunal. "

12. This Court in a series of cases, being **CWP No. 4622 of 2013 (supra)**; **LPA No. 485 of 2012,** titled as **Arpana Kumari versus State of H.P. and others,** decided on 11th August, 2014; **LPA No. 23 of 2006,** titled as **Ajmer Singh versus State of H.P. and others,** decided on 21st August, 2014; **LPA No. 125 of 2014,** titled as **M/s. Delux Enterprises versus H.P. State Electricity Board Ltd. & others,** decided on 21st October, 2014; and **LPA No.143 of 2015, titled Gurcharan Singh (deceaed) through his LRs vs. State of H.P. and others, decided on 15th December, 2015,** while relying upon the latest decision of the Apex Court in **Bhuvnesh Kumar Dwivedi's case (supra),** has held that question of fact cannot be interfered with by the Writ Court. However, such findings can be questioned if it is shown that the Tribunal/Court has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence which has influenced the impugned findings.

13. It is not the case of the writ petitioners-appellants that inadmissible evidence was recorded and that was made the foundation of the awards or the awards were passed without any evidence. The Writ Courts have rightly made the discussion and conclusions.

14. Having glance of the above discussion, we hold that the impugned judgments are speaking one, require no interference.

15. Viewed thus, the impugned judgments are upheld and the appeals are dismissed alongwith all pending applications.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Sanjiv Kumar .....Appellant.

Versus

State of H.P. .....Respondent.

Cr. Appeal No. 525 of 2015
Reserved on: January 01, 2016.
Decided on: January 04, 2016.

N.D.P.S. Act, 1985- Section 15**-** Accused a truck driver was intercepted by the police in a nakka while transporting eight bags carrying 226 kg poppy straw concealed in the tool-box- trial court convicted the accused - held that, the road was busy and lot of traffic was plying on the road- however no independent witness was associated by the investigation officer-5-6 vehicles were also checked during the nakka and the I.O could have joined the occupants of the vehicle during the search and seizure- the accused was apprehended on 18.2.2014 at 12:40 AM and PW-13 is stated to have proceeded to arrange the scales- however, PW-12 stated that police official visited his shop when he was closing it around 8 O' clock on 17.02.14- there is no entry when the case property was taken out from the malkhana and produced in the Court- no DDR was recorded when the case property was produced before the trial Court- no entry was made when the case property was re-deposited in the

malkhana after production in the trial Court - identity of the case property is also doubtful-accused acquitted. (Para 15 to 21)

For the appellant: Mr. Sanjeev K. Suri, Advocate.
For the respondent: Mr. Ramesh Thakur, Asstt. Advocate General.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 16.10.2015, rendered by the learned Special Judge-I, Una, H.P., in Sessions Case No. 31 of 2014, whereby the appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ND & PS Act), has been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs. 1,00,000/- and in default of payment of fine, he was further ordered to undergo simple imprisonment for one year.

2. The case of the prosecution, in a nut shell, is that on 17.2.2014, the police party headed by S.I./SHO Harjit Singh (PW-18) alongwith ASI Rajinder Singh, ASI Paras Ram etc. proceeded to Santoshgarh-Tahliwal side for setting up nakka at Swan bridge in government vehicle. At around 11:40 PM, the police party put Nakka and at around 12:40 AM, one vehicle came from Santoshgarh side. ASI Rajinder Singh gave signal to the driver for stopping the vehicle with the help of torch light. The truck driver stopped the vehicle and tried to jump out from the door but he was nabbed. He disclosed his name as Sanjiv Kumar. The truck was checked with the help of torch light and eight plastic white coloured bags which were tied were recovered. The recovered plastic bags were taken out from the tool box of the truck and were opened. The bags were found containing poppy straw and identification memo Ext. PW-14/A was prepared. PW-13 HC Shakti Nandan was deputed for arranging electronic scale. He brought the same after one hour. The bags were weighed with the help of electronic scale. Five bags were found containing 29.500 kg poppy straw each, one bag was found containing 25 kg and another bag was found containing 27.500 grams and last bag was found containing 26 kg poppy straw. The bags were marked as S-1 to S-8 and total weight of recovered stuff was 226 kgs. The I.O. took homogeneous samples i.e. 500 grams poppy straw from each bag in eight separate polythene bags and the samples were tied and sealed in eight cloth parcels and marked as T-1 to T-8. The plastic bags were sealed with seal “R”. The sample impression of seal “R” was taken on a piece of cloth vide Ext. PW-14/D. NCB form was filled in. No independent witness was available on the spot and only police officials were associated as witnesses. Rukka Ext. PW-18/A was sent to PS Haroli through PW-13 HC Shakti Nandan, on the basis of which FIR Ext. PW-17/A was registered. The I.O. prepared the site plan. The case property was re-sealed with seal impression “K” by PW-17 ASI Suresh Kumar. The case property was handed over with sample seals “R” and “K” alongwith truck, documents and keys to MHC Subhash Chand and PW-17 ASI Suresh Kumar issued the certificate of resealing Ext. PW-17/D. The case property was sent for chemical examination vide RC No. 37/17. The investigation was completed and the challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 18 witnesses. The accused was also examined under Section 313 Cr.P.C. The accused has denied the prosecution case. The learned trial Court convicted the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. Sanjeev K. Suri, Advocate, appearing on behalf of the accused, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. Ramesh Thakur, Asstt. Advocate General for the State has supported the judgment of the learned trial Court dated 16.10.2015.

5. We have heard learned counsel for both the sides and gone through the judgment and records of the case carefully.

6. PW-2 HHC Mukhwant Singh deposed that on 20.2.2014, MHC PS Haroli entrusted to him eight sealed parcels said to be containing 500 grams each poppy husk and having five impressions each of seal "R" and "K". These parcels were marked as T-1 to T-8. The case property was entrusted to him vide RC No. 37/14 to be delivered at FSL, Junga. He deposited all these parcels along with documents at FSL, Junga on 20.2.2014.

7. PW-3 Const. Sanjay Kumar deposed that on 21.2.2014, MHC PS Haroli handed over to him 8 sealed parcels marked as P-1 to P-8 having three seal impressions each of 'court seal' which were stated to be containing poppy husk 500 grams each. He deposited the parcels alongwith the documents at FSL, Junga on the same date. He returned back to Una on 22nd February late in the evening and handed over the RC to MHC on 23.2.2014.

8. PW-5 HHC Suresh Kumar brought back 16 parcels alongwith two envelopes from FSL Junga and deposited the same in PS Haroli on 23.5.2014.

9. PW-6 MHC Subhash Chand deposed that ASI Suresh Kumar deposited with him eight plastic sealed bags marked as S-1 to S-8 having one seal impression each of seals "K" & "R", eight sealed parcels marked as T-1 to T-8 having five seal impressions each of seals "R" & "K" stated to be containing 500 grams each of poppy husk and impression of sample seals "R" & "K", NCB form in triplicate etc. He made entry in the register No. 19 at Sr. No. 498/14. He proved extract of register vide Ext. PW-6/A (two leaves). On 20.2.2014, SHO deposited eight sealed bags containing sample of poppy husk having seal impressions of court seal and also another 16 sealed parcels having three seal impressions each of court seal marked as P-1 to P-8 and P-1A to P-8A and also one sealed parcel sealed with three seals of court. He made entry at Sr. No. 501 in the malkhana register.

10. PW-12 Harnam Singh deposed that on 17.2.2014, late in the evening one police official visited his shop and asked him for electronic scale. He delivered him the scale which he returned the very next day. In his cross-examination, he admitted that the police official had taken electronic scale when he was busy in closing the shop around 8 O' clock.

11. PW-13 HC Shakti Nandan deposed the manner in which the truck was apprehended at 12:40 AM and the contraband was taken into possession. He proceeded to arrange for electronic scale in the government vehicle and came after an hour. These bags were weighed in electronic scale. I.O. SI Harjeet Singh thereafter took 500 grams poppy husk from each bag for the purpose of chemical analysis and kept the same separately in eight polythene bags. Those polythene bags were tied and thereafter were sealed in eight cloth parcels which were also marked as T-1 to T-8. One seal "R" each was affixed on plastic bags S-1 to S-8, while five seals of the same impression were affixed on those eight small packets marked as T-1 to T-8. NCB form in triplicate was also filled up by the I.O. Thereafter, SI Harjeet, I.O. handed over to him rukka mark X-1 to deliver the same at PS Haroli for registration of FIR. On reaching PS Haroli, he handed over the rukka mark X-1 to MHC Subhash Chand. In his cross-examination, he deposed that there is 'Khawaza" temple and cremation ground near Swan bridge towards Santoshgarh side. He also admitted that there is Dreamland Palace near Tahliwal bazaar but he is not aware of its distance from the

place where Nakka was set up. They had checked about 5-6 vehicles in an hour during Nakka. They had not set up any barricade. He was deputed to arrange for electronic scale after lapse of 45 minutes when truck was intercepted. He made efforts to arrange the electronic scale in Tahliwal bazaar but all the shops were found closed due to odd hours and, therefore, he proceeded further and arranged the same from Samnal. He also admitted that PS Haroli falls on the way while approaching Samnal. He also admitted that just opposite to PS Haroli, there is hardware shop of Gurnam.

12. PW-14 ASI Paras Ram also deposed the manner in which the driver of the truck was apprehended at 12:40 AM, search, seizure and sealing proceedings were completed on the spot. In his cross-examination, he admitted that no barricade was affixed at the point of Nakka. He also admitted that on the way to PS Haroli, there are three markets/bazaars known as Tahliwal, Palakwah and Haroli.

13. PW-17 ASI Suresh Kumar also deposed the manner in which the driver of the truck was apprehended at 12:40 AM, search, seizure and sealing proceedings were completed on the spot. In his cross-examination, he deposed that his statement under Section 161 Cr.P.C. was recorded by the I.O. On the same day, i.e. on 18.2.2014 at 11:45 AM, the attention of the witness was drawn to the file. No statement of the witness under Section 161 Cr.P.C. was on the file. He has not produced the seal in the Court since he has lost the same. He has not entered in any rapat that the seal has been lost.

14. PW-18 SI Harjit Singh was the I.O. in this case. He also deposed the manner in which the driver of the truck was apprehended at 12:40 AM, search, seizure and sealing proceedings were completed on the spot. He prepared the rukka and handed over the same to be carried to the Police Station through PW-13 HC Shakti Nandan, on the basis of which FIR was registered. In his cross-examination, he admitted that there was no reference of making the contraband homogeneous before drawing sample marks T-1 to T-8 on record.

15. What emerges from the evidence discussed hereinabove is that the accused was apprehended on 18.2.2014 at 12:40 AM. The contraband was recovered from the truck. PW-13 HC Shakti Nandan, in his cross-examination, deposed that there is 'Khawaza" temple and cremation ground near Swan bridge towards Santoshgarh side. He also admitted that there is Dreamland Palace near Tahliwal bazaar but he is not aware of its distance from the place where Nakka was set up. They had checked about 5-6 vehicles in an hour during Nakka. They had not set up any barricade. The very fact that the Nakka was put up, pre-supposes that the road was busy and there was lot of traffic plying on the road. PW-13 HC Shakti Nandan has also deposed that 5-6 vehicles were checked during Nakka, however, the fact of the matter is that despite that the prosecution has not joined any independent witnesses to give credibility to search, seizure and sealing proceedings on the spot. It was neither secluded nor isolated place. There was "Khawaza' temple nearby and Dreamland Palace was also nearby. The I.O. has not made any efforts, whatsoever, to associate independent witnesses. The I.O. could have easily joined the occupants of the vehicles as independent witnesses by requesting the occupants of the vehicles plying on the road.

16. PW-17 ASI Suresh Kumar, in his cross-examination, has deposed that his statement under Section 161 Cr.P.C. was recorded by the I.O. on 18.2.2014 at 11:45 AM, however, the same is not on record. The same ought to have been on the file. PW-18 SI Harjit Singh, in his cross-examination, admitted that there was no reference of making the contraband homogeneous before drawing sample marks T-1 to T-8 on record.

17. The case of the prosecution is that the accused was apprehended on 18.2.2014 at 12:40 AM and PW-13 HC Shakti Nandan proceeded to bring electronic scale.

He returned after an hour. He has also admitted in his cross-examination that he made efforts to arrange the electronic scale in Tahliwal bazaar but all the shops were found closed due to odd hours and, therefore, he proceeded further and arranged the same from Samnal. He also admitted that Police Station Haroli falls on the way while approaching Samnal. He also admitted that just opposite to PS Haroli, there is hardware shop of Gurnam. He could not recollect the exact time of his return alongwith the electronic scale at the spot.

18. PW-12 Harnam Singh deposed that on 17.2.2014, late in the evening, one police official visited his shop and asked him for electronic scale. He delivered him the scale which he returned the next day. In his cross-examination, he admitted that the police official had taken electronic scale when he was busy in closing the shop around 8 O' clock. The accused was apprehended at 12:40 AM on 18.2.2014. Thus, PW-13 HC Shakti Nandan had gone to bring electronic scale after 12:40 AM, but PW-12 Harnam Singh stated that police official visited his shop when he was busy in closing the shop around 8 O' clock.

19. The case property was produced while recording the statement of PW-13 HC Shakti Nandan in the trial Court. The extract of copy of the malkhana register is Ext. PW-6/A & PW-6/B. There is entry of the deposit of the contraband on 18.2.2014 and when it was received back from the FSL Junga. There is no entry when the case property was taken out from the malkhana and produced in the Court. There is no DDR recorded when the case property was produced before the trial Court. Similarly, there is no entry when the case property after production in the trial Court was re-deposited in the malkhana register. It is necessary for the prosecution to prove that the case property was taken out from the malkhana for the production in the Court and also preparing DDR to this effect and the same process is to be undergone when the case property after its production in the Court is taken back and deposited in the malkhana. There has to be entry in the malkhana register when it is re-deposited and DDR is also prepared. The production of the case property in the Court is mandatory. There is doubt whether the case property which was produced in the Court was the same which was recovered from the accused and sent to FSL, Junga in the absence of any corresponding entries made at the time of taking it and re-deposit in the malkhana register or it was case property of some other case. It has caused serious prejudice to the accused. The nabbing of the accused, recovery and sealing proceedings in the instant case are doubtful. When the case property was produced in the Court, there is no reference as to who brought the case property to the Court from malkhana and by whom it was taken back. It is necessary to keep the case property in safe custody from the date of seizure till its production in the Court in ND & PS cases.

20. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubt for the commission of offence under Section 15 of the N.D & P.S., Act.

21. Accordingly, in view of the analysis and discussion made hereinabove, the appeal is allowed. Judgment of conviction and sentence dated 16.10.2015, rendered by the learned Special Judge-I, Una, H.P., in Sessions case No. 31 of 2014, is set aside. Accused is acquitted of the charges framed against him by giving him benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to him. Since the accused is in jail, he be released forthwith, if not required in any other case.

22. The Registry is directed to prepare the release warrant of the accused and send the same to the Superintendent of Jail concerned, in conformity with this judgment forthwith.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J. AND HON'BLE MR. JUSTICE P.S. RANA, J.

Avantor Performance Materials India Limited, (Formerly known as RFCL Limited). ...Appellant.

Versus

Commissioner of Income Tax, Shimla & another ..Respondents.

ITA No. 24 of 2014
Reserved on: 05.10.2015
Date of Decision: 4.1.2016

Income Tax Act, 1961- Section 143- Assessee filed a return with Income Tax Department- his case was selected for scrutiny- Assessing Officer reassessed the income by disallowing the depreciation of goodwill and claim of capital receipt- order was affirmed by the Commissioner of Income Tax (Appeals)- this order was affirmed by Income Tax Appellate Tribunal, Chandigarh- held, that whether receipt is a capital or revenue receipt has to be adjudged on the facts of each case- there cannot be any straitjacket formula to determine this question- according to assessee, the sellers had pledged their equity with 'C' – they were in debt to the company 'Z'- the Sellers agreed to transfer their entire shareholding in favour of the assessee for consideration of Rs. 72.5 crores vide Special Purchase Agreement - a sum of Rs. 24, 81, 68, 263/- was paid as earnest money by the assessee- Sellers also agreed to convince 'C' to sell the entire shareholdings in 'S' to the assessee- assessee deposited Rs. 15 crores with Escrow Agent- subsequently, sellers expressed their inability to sell their share and called upon the assessee to terminate the SPA- parties agreed to terminate the SPA by making by the payment of the various amounts- an amount of Rs. 2,25,91,587/- was received as compensation by the assessee for termination of the SPA- assessee had terminated the SPA- there was no breach necessitating payment of compensation to the assessee – in these circumstances, the amount of compensation was rightly held to be a revenue receipt and was rightly assessed to tax as business income. (Para-6 to 30)

Cases referred:

Dr. K.George Thomas Versus Commissioner of Income-Tax, Ernakulam, AIR 1986 SC 98

Commissioner of Income Tax, Gujarat Versus Saurashtra Cement Ltd., (2010) 11 SCC 84

P.H. Divecha (deceased) through LRs & Another Versus The Commissioner of Income-tax, Bombay City I, Bombay, AIR 1964 SC 758

Kettlewell Bullen and Co. Ltd. Versus Commissioner of Income-tax, Calcutta, AIR 1965 SC 65

Travancore Rubber & Tea Co. Ltd. Versus Commissioner of Income Tax, Trivendrum, (2000) 3 SCC 715

M/s Gillanders Arbuthnot and Company Ltd. Vs. Commissioner of Income Tax, Calcutta, AIR 1965 SC 452

Commissioner of Income Tax, West Bangal-II Versus Shri Kamal Behari Lal Singha, Etc. Etc., (1971) 3 SCC 540

M/s Empire Jute Co. Ltd. Versus Commissioner of Income Tax, (1980) 4 SCC 25

For the Appellant: M/s Chythanaya K.K. and Vijay Kumar Verma, Advocates.

For the Respondents: Mr. Vinay Kuthiala, Sr. Advocate with Ms.Vandana Kuthiala, Advocate.

The following judgment of the Court was delivered:

Sanjay Karol, J (oral)

The present appeal stands admitted on the following substantial questions of law:-

> "Whether in the facts and circumstances of the case and in law, the ITAT was correct in holding that the compensation of Rs.2,25,99,964 representing compensation received by the appellant towards cancellation of the SPA was a revenue receipt taxable in the hands of the appellant?"

2. In relation to the assessment year 2008-09, M/s RFCL Limited (hereinafter referred to as the assessee), filed return with the Income Tax Department. The case was selected for scrutiny through CASS and notices issued under the provisions of Sections 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. Vide order dated 28.12.2010 (Annexure P-1), the Assessing Officer, reassessed the income by disallowing (i) the depreciation of goodwill and (ii) claim of capital receipt. The order stood affirmed by the Commissioner of Income Tax (Appeals), Shimla, in terms of order dated 12.12.2011 (Annexure P-2). Findings of fact returned by such authorities, on the point in issue, came to be affirmed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B, Chandigarh, vide order dated 02.04.2013 (Annexure P-3).

4. In the instant appeal, we are only concerned with the second issue i.e. as to whether the amount of compensation so received by the assessee is required to be computed as a capital or a revenue receipt.

5. Facts already stand fully considered and appreciated by the authorities below. It is a settled position of law that the burden to establish as to whether the character of the amount received is revenue receipt or not, is always upon the revenue. However once it is so established, whether it comes under the clause of exemption or not is for the assessee to establish. Facts must be formed by the Tribunal and the High Court must proceed on the basis of such facts as may be determined by the Tribunal, for it is not the requirement of law that the High Court is to look into the facts afresh, overruling them, unless there is a question to that effect, challenging the facts formed by the Tribunal. [*Dr. K.George Thomas Versus Commissioner of Income-Tax, Ernakulam,* AIR 1986 SC 98].

6. Whether the receipt is capital or revenue in nature has to be adjudged on the basis of each case. There cannot be any straightjacket formula as has been so held by the Apex Court in *Commissioner of Income Tax, Gujarat Versus Saurashtra Cement Ltd.,* (2010) 11 SCC 84, wherein Court observed that:-

> "14. The question whether a particular receipt is capital or revenue has frequently engaged the attention of the Courts but it has not been possible to lay down any single criterion as decisive in the determination of the question. Time and again, it has been reiterated that answer to the question must ultimately depend on the facts of a particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a conclusion.
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> 15. In *CIT Versus Rai Bahadur Jairam Valji,* AIR 1959 SC 291, it was observed thus (AIR pp. 292-293, para 2:-
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> > "2. The question whether a receipt is capital or income has frequently come up for determination before the Courts. Various rules have been enunciated as furnishing a key to the solution of the

question, but as often observed by the highest authorities, it is not possible to lay down any single test as infallible or any single criterion as decisive in the determination of the question, which must ultimately depend on the facts of the particular case, and the authorities bearing on the question are valuable only as indicating the matters that have to be taken into account in reaching a decision. [Vide *Van Den Berghs Ltd. (Inspector of Taxes) vs. Clark,* (1935) 3 ITR (Eng Cas) 17 (HL)]. That, however, is not to say that the question is one of fact, for, as observed in *Davies (Inspector of Taxes) vs. Shell Company of China Ltd.* (1952) 22 ITR Supp 1 (CA):

> 'these questions between capital and income, trading profit or no trading profit, are questions which, though they may depend no doubt to a very great extent on the particular facts of each case, do involve a conclusion of law to be drawn from those facts.' " " (Emphasis supplied)

7. Further in *Shri P.H. Divecha (deceased) through LRs & Another Versus The Commissioner of Income-tax, Bombay City I, Bombay,* AIR 1964 SC 758, the Apex Court held that:-

> "12. In determining whether this payment amounts to a return for loss of a capital asset or is income, profits or gains liable to income-tax, one must have regard to the nature and quality of the payment. If the payment was not received to compensate for a loss of profits of business, the receipt in the hands of the appellant cannot properly be described as income, profits or gains as commonly understood. To constitute income, profits or gains, there must be a source from which the particular receipt has arisen, and a connection must exist between the quality of the receipt and the source. If the payment is by another person it must be found out why that payment has been made. It is not the motive of the person who pays that is relevant. More relevance attaches to the nature of the receipt in the hands of the person who receives it though in trying to find out the quality of the receipt one may have to examine the motive out of which the payment was made. It may also be stated as a general rule that the fact that the amount involved was large or that it was periodic in character have no decisive bearing upon the matter. A payment may even be described as "pay", "remuneration", etc., but that does not determine its quality, though the name by which it has been called may be relevant in determining its true nature, because this gives an indication of how the person who paid the money and the person who received it viewed it in the first instance. The periodicity of the payment does not make the payment a recurring income because periodicity may be the result of convenience and not necessarily the result of the establishment of a source expected to be productive over a certain period. These general principles have been settled firmly by this Court in a large number of cases. See, for example, *Commr. of Income-tax vs. Vazir Sultan & Sons,* 1959 Supp (2) SCR 375: (AIR 1959 SC 814), *Godrej & Co. vs. Commr. of Income-tax,* (1960) 1 SCR 527: (AIR 1959 SC 1352), *Commr. of Income-tax vs. Jairam Valji,* (1959) 35 ITR 148: (AIR 1959 SC 291), *Senairam Doongarmall vs. Commr. of Income Tax,* (1961) 42 ITR 392: (AIR 1961 SC 1579)."
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> (Emphasis supplied)

8. The Apex Court in *Kettlewell Bullen and Co. Ltd. Versus Commissioner of Income-tax, Calcutta,* AIR 1965 SC 65, has further held:-

> "11. Whether, a particular receipt is capital or income from business, has frequently engaged the attention of the courts. It may be broadly stated that what is received for loss of capital is a capital receipt: what is received as profit in trading transaction is taxable income. But the difficulty arises in ascertaining whether what is received in a given case is compensation for loss of a source of income, or profit in a trading transaction." … … …
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> … … …
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> "21. But payment of compensation for loss of office is not always regarded as capital receipt. Where compensation is payable under the terms of the contract which is determined, payment is in the nature of revenue and therefore taxable." … … …
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> … … …
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> "36. … … …Where on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated) the receipt is revenue : Where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt." (Emphasis supplied)

9. Also in *Travancore Rubber & Tea Co. Ltd. Versus Commissioner of Income Tax, Trivendrum,* (2000) 3 SCC 715, the Apex Court observed that:-

> "19. In determining whether compensation received for breach of a contract is a capital or trading receipt, the relevant rule has been formulated by Diplock L. , J. in *London and Thames Haven Oil Wharves Ltd. vs. Attwooll (Inspector of Taxes),* (1968) 70 ITR 460, 488 (CA) as :
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> > "Where, pursuant to a legal right, a trader receives from another person compensation for the trader's failure to receive a sum of money which, if it had been received, would have been credited to the amount of profits (if any) arising in any year from the trade carried on by him at the time when the compensation is so received, the compensation is to be treated for income-tax purposes in the same way as that sum of money would have been treated if it had been received instead of the compensation.""

10. The apex Court in *M/s Gillanders Arbuthnot and Company Ltd. Vs. Commissioner of Income Tax, Calcutta,* AIR 1965 SC 452, has held as under:

> "11. We may now address ourselves to the question, whether compensation paid by the principal company for cancellation of the agency may be regarded as a capital or revenue receipt. We have in a recent case in *Kettlewell Bullen and Co. vs. Commissioner of Income Tax,* C.A. No.226 of 1963 D/- 1-5-1964: (AIR 1965 SC 65) made a survey of the important cases which have arisen before the courts in the United Kingdom and an Indian in India about the principles which govern the determination of the nature of

compensation received on the termination of an agency. We observed in that case:

> "On an analysis of these cases which fall on two sides of the dividing line, a satisfactory measure of consistency in principle is disclosed where on a consideration of the circumstances, payment is made to compensate a person for cancellation of a contract which does not affect the trading structure of his business, nor deprive him of what in substance is his source of income, termination of the contract being a normal incident of the business, and such cancellation leaves him free to carry on his trade (freed from the contract terminated) the receipt is revenue : Where by the cancellation of an agency the trading structure of the assessee is impaired, or such cancellation results in loss of what may be regarded as the source of the assessee's income, the payment made to compensate for cancellation of the agency agreement is normally a capital receipt"."

11. Applying the aforesaid principles to the given facts, which we clarify we are not reappreciating, we do not find any justification to interfere with the order passed by the authorities below, as by no stretch of imagination can it be said to be perverse, illegal or founded on incorrect or incomplete appreciation of provisions of law, much less facts.

12. Assessee is a Company duly registered under the Companies Act, 1961, having its office at 1201 to 1206, 12th Floor, Pinnacle Business Tower, Shooting Range Road, Surajkund, Faridabad – 121 009, Haryana. Its aim and object being diagnostic, laboratory solutions and chemical research.

13. M/s Sarabhai Zydus Animal Health Limited (hereinafter referred to as Zydus) was incorporated in the year 2000. The equity participation of the said company was in the following manner: (i) 50% with M/s Cadila Healthcare Limited (Cadila Group engaged in the business of Pharmaceuticals and Allied Industries – hereinafter referred to as Cadila) and (ii) 50% with: (a) Ambalal Sarabhai Enterprises Limited, a company incorporated under the Companies Act, 1956, having its registered office at Dr. Vikram Sarabhai Marg, Wadi Wadi, Vadodara 390 023; (b) Mautik Exim Limited, a company incorporated under the Companies Act, 1956, having its registered office at Shantisadan, Mirzapur Road, Ahmedabad; (c) Haryana Containers Limited, a company incorporated under the Companies Act, 1956, having its registered office at Dr. Vikram Sarabhai Marg, Wadi Wadi, Vadodara 390 023; and (d) Mr. Kartikeya V. Sarabhai, S/O Dr. Vikram Sarabhai, currently residing at Chidambaram, Usmanpura, Ahmedabad (hereinafter referred to as the Sellers).

14. It is the case of the assessee that the sellers had pledged their equity with Cadila, against a loan of Rs.21,71,68,263/-. Also they were in debt to the company (Zydus). Vide Special Purchase Agreement dated 10.03.2007 (hereinafter referred to as SPA), the Sellers agreed to transfer their entire shareholdings (50% of Zydus) in favour of the assessee. This was for a valuable consideration of Rs.72.5 crores. In terms of the SPA, a sum of Rs.24,81,68,263/- was paid as earnest money by the assessee. Undisputedly, as per *inter se* arrangement amongst the shareholders of Zydus, Cadila had a Right of First Refusal (hereinafter referred to as ROFR), which fact is evident from Clause-5 of the SPA.

15. SPA could be terminated in terms of Clause-7.6, which reads as under:-

> "7.6 <u>Termination of this Agreement</u>

This Agreement shall not be terminable except in the manner specified herein and this shall continue to be valid and in force till it is terminated.

(i) The Vendors shall not be entitled to terminate this Agreement on any grounds whatsoever.

(ii) In the event the Condition Precedent (i.e. the due diligence) to Closing, as specified in Article 6 above, is not completed on or prior to the Closing Date, to the satisfaction of the Purchaser, then the Purchaser shall be entitled to forthwith terminate this Agreement by a written notice to the Vendors.

(iii) In the event the Other Shareholder exercises its rights to purchase the Shares offered by the Vendors under its Right of First Refusal, on terms and conditions no more beneficial than the terms as set out in this Agreement, then the Purchaser shall forthwith terminate this Agreement by a written notice to the Vendors.

(iv) In the event any litigation / proceedings is initiated which impacts the ability of the Parties to achieve Closing under this Agreement, then the Purchaser shall be entitled to forthwith terminate this Agreement by a written notice to the Vendors."

(Emphasis supplied)

16. Agreement contemplated consequence of termination in the following manner:-

"7.7 Consequences of termination:

(i) In the event of termination of this Agreement by the Purchaser, the Vendors shall repay the Earnest Deposit Amount and separately, pay a penalty equivalent to 25% annualized return on pro rata basis on the Earnest Deposit Amount or 5% of the Earnest Deposit Amount, whichever is higher, to the Purchaser, as follows:

(a) where the Agreement is terminated in accordance with the provisions of Article 7.6(ii) above, then within 30 days of the date of such termination;

(b) where the Agreement is terminated in accordance with the provisions of Article 7.6(iii) above, then within the 60-day period referred to in clause 14.2.2 of the shareholders agreement dated January 29, 2000 executed between the Other Shareholder and Ambalal Sarabhai Enterprises Limited (one of the Vendors herein) or the date on which the Other Shareholder purchases the Shares from the Vendors, pursuant to its Right of First Refusal, whichever is earlier;

(c) where the Agreement is terminated in accordance with the provisions of Article 7.6(iv) above, then within 30 days of the date of such termination.

(ii) Upon the actions specified in Clauses 7.7 (i) above, being completed to the full satisfaction of the Purchaser, the Escrow Agent will release, upon receipt of a written intimation from the Purchaser in this respect, to the Vendors the duly executed blank share transfer forms and the original share certificates relating to the Shares

deposited by the Vendors in the manner specified in Article 1.3(v) above."

17. Vide another agreement of the same date, which is termed as a supplementary agreement, Sellers also agreed to convince Cadila to sell their entire shareholding i.e. balance 50% in Zydus, to the assessee. In terms thereof, assessee also deposited Rs.15 crores with the Escrow Agent.

18. Vide communication dated 10.05.2007, the Sellers expressed their inability to sell their shares, conveying Cadila's intention of purchasing the same by virtue and in exercise of their pre-existing contractual Rights of Refusal. Accordingly Sellers, categorically called upon the assessee to terminate the SPA and accept the following sums, in terms of Clause-7 of the SPA:-

(i)	Earnest Deposit Amount:	Rs.24,81,68,263.00
(ii)	Interest:	Rs.59,01,645.27
(iii)	Penalty:	Rs.1,24,08,413.15

19. There is nothing on record to establish as to what transpired thereafter, save and except that another supplementary agreement was executed on 22.05.2007 between the assessee and the Sellers, wherein the parties agreed to terminate the SPA by making payments to the assessee in the following manner:-

Sr.No.	**Particulars of Payment**	**Amount**
(i)	Repayment of Earnest Deposit Amount under the SPA	Rs.24,81,68,263/-
(ii)	Interest for 63 days (i.e. 9 March 2007 to 10 May 2007 both days inclusive) on the amount specified in para (i) above, calculated @ 14% p.a.	Rs.59,96,833/-
	Less: TDS on interest @ 22.44% (One TDS certificate for interest upto 31.03.07 and another TDS certificate from 01.04.07 to 10.05.07 will be provided within 7 days)	Rs.13,45,689/-
	Net Interest payable now	Rs.46,51,144/-
(iii)	Payment of Penalty as per the SPA	Rs.1,24,08,413/-
(iv)	**Compensation for Termination of SPA**	**Rs.2,25,91,587/-**
	Aggregate amount payable	Rs.28,78,19,407/-

20. This amount of Rs.2,25,91,587/-, received as compensation by the assessee for termination of the SPA, was so claimed as a capital receipt, but assessed by the revenue as revenue receipt and subjected to payment of tax.

21. Now SPA provided for the consequences of the termination of the agreement and in terms thereof, assessee did receive the amounts towards payment of interest and penalty. Compensation for termination was nowhere in contemplation in the SPA. What was the basis for arriving such compensation remains a shrouded secret.

22. It has been rightly held by the authorities that Zydus was engaged in the business, similar to that of the assessee, who was exploring the possibility of expanding its business interests. Compensation is not on account of any injury to any of the capital assets of the assessee. The assessee, as is evident from the order dated 28.12.2010

(Annexure P-1) had also entered into business acquisition agreement with M/s Wipro and Godrej Industries Ltd. The assessee was pursuing strategic inorganic growth through acquisitions. Zydus was in the similar business as that of the assessee. The intent was not to purchase the shares of Zydus but takeover its business for expansion. As observed by Assessing Officer even the view of the statutory auditors was similar to that of the revenue.

23. Noticeably it is the assessee, who had terminated the SPA and not the Sellers and as such there was no breach thereof, necessitating payment of compensation to the assessee. The SPA was conditional and subject to approval by Cadila.

24. Even otherwise it is well settled legal position that in order to find out whether a receipt is a capital or revenue receipt, one has to see it in the hands of the receiver and in order to find out whether an expenditure is a capital or revenue expenditure, one has to see what it is in the hand of the payer. In the case of *Commissioner of Income Tax, West Bangal-II Versus Shri Kamal Behari Lal Singha, Etc. Etc.,* (1971) 3 SCC 540, the Apex Court has stated the legal position in the following words:

> "4. It is now well settled that, in order to find out whether a receipt is a capital or revenue receipt, one has to see what it is in the hands of the receiver and not its nature in the hands of the payer. In other words, the nature of receipt is determined entirely by its character in the hands of the receiver and the source from which the payment is made has no bearing on the question. Where an amount is paid which, so far as the payer is concerned, is paid wholly or partly out of the capital, and the receiver receives it as income on his part, the entire receipt is taxable in the hands of the receiver. Therefore, the fact that the amount sought to be taxed in these appeals was capital gains in the hands of the company is not a relevant circumstance. What we have to see is what it was in the hands of the assessee." … … …

25. If a receipt is a capital receipt in the hands of a recipient, it does not necessarily follow that expenditure is capital expenditure in the hand of a payer. Whether it is capital expenditure or revenue expenditure would have to be determined having regard to the nature of the transaction and other relevant factors. [*M/s Empire Jute Co. Ltd. Versus Commissioner of Income Tax,* (1980) 4 SCC 25].

26. The assessee knew from the very beginning the conditionality Clause. He was conscious that no injury would be caused to his business in the event of SPA not being materialized and its non execution would in no manner impair its revenue.

27. In the aforesaid factual background, in our considered view, the authorities below have rightly held the amount of compensation to be a revenue receipt. Income earned from such sources was to be taxed as business income.

28. Now in the instant case as already observed, it is not the case of the assessee that his business had come to a halt or impaired the source of income. Hence applying the principle of law laid down in the decisions referred to herein supra (including *Kettlewell Bullen*), we see no reason to interfere with the orders passed by the authorities below.

29. Learned counsel for the parties have cited various decisions, which is only reflective of their industry. We have considered them and having minutely gone through the same, we do not find necessity of dealing with each one of them individually for they are based on given fact situation. In the decisions referred to by the learned counsel for the appellant, which do not find mention herein, it be only observed, that the courts were

dealing with cases where there was termination of an agreement, bringing the business of the assessee to a halt or impairing income or source of income.

30. Hence for all the aforesaid reasons, it cannot be said that the authorities below, and more particularly the Tribunal erred in holding the amount of compensation received by the assessee as a revenue receipt taxable in the hands of the assessee. Substantial question of law is answered accordingly. Present appeal stands disposed of accordingly, so also pending application(s), if any.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Des Gautam .....Petitioner.
Versus
State of H.P. & another .....Respondent.

Criminal Revision No. 159 of 2015.
Decided on: 4th January, 2016.

Indian Penal Code, 1860- Section 420 read with section 120-B- Accused 'B' obtained loan of Rs. 25 lacs from SBI Patiala - branch was taken over by Dena Bank- Dena bank also disbursed a loan of Rs.1 crore 25 lacs to the accused 'B'- legal opinion was sought from the petitioner/accused - accused 'B' handed over a jamabandi showing that his property was mortgaged with Dena Bank- petitioner gave his opinion which was found to be false- an FIR was lodged against the petitioner and others for the commission of offences punishable under Sections 420, 467, 468, 471 read with Section 120-B IPC - trial Court framed charges for the commission of offence punishable under Section 420/120-B IPC against the petitioner- Order challenged by way of revision- held, that no wrongful loss or gain was caused by the accused to the bank as the loan stood already disbursed- there is no material on record which can suggest that petitioner had colluded or entered into conspiracy with accused B or with the Patwari for preparation of fictitious jamabandi on the basis of which opinion was given- no ground to frame charges for the commission of offences punishable under Section 420 read with Section 120 I.P.C - charges quashed and set aside - petitioner discharged. (Para-2)

For the Appellant: Mr. J.L. Bhardwaj, Advocate.
For Respondent No.1: Mr. Vivek Singh Attri, Dy. A.G.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

An FIR No. 41 of 2010 of 7.04.2010 stood registered with Police Station Dharampur, District Solan, H.P. constituting therein commission of offences by the accused/petitioner herein under Sections 420, 467, 468, 471 read with Section 120-B of the Indian Penal Code.

2. The Investigating Officer initiated investigations thereon. On his holding investigations into the matter, he in his final report submitted under Section 173 of the Cr.P.C. before the Court concerned disclosed therein of the petitioner-accused committing

offences under Section 420 read with Section 120-B of the IPC. The Court concerned ordered the framing of a charge against the accused/petitioner herein for committing offences punishable under Section 420 read with Section 120-B of the IPC. The record maintained by the Investigating Officer has been placed before this court for its perusal by the learned Deputy Advocate General. The principal accused/loanee Balbir Singh applied to the State Bank of Patiala, Dharampur, District Solan, H.P. for the sanctioning of in his favour a loan in a sum of Rs. 25,00,000/-. The sum aforesaid stood disbursed by the bank aforesaid in favour of the accused. However, the entire loan liabilities and assets of the State Bank of Patiala, Dharampur were on 22.05.2008 taken over by Dena Bank, Solan. The latter bank on the very same day disbursed a loan in a sum of Rs.1,25,00,000/- to the principal accused/loanee Balbir Singh. However, the management of Dena Bank, Solan elicited a legal opinion from the accused/petitioner herein qua occurrence/reflection in the apposite jamabandi of the property of the principal accused/loanee Balbir Singh standing mortgaged with it. The petitioner/accused on a perusal of the jamabandi placed before him by principal accused/loanee Balbir Singh reflecting therein a charge standing created upon the landed assets of the latter in favour of the bank aforesaid thereupon in consonance therewith purveyed an opinion to Dena Bank, Solan. However, the said opinion rendered by the petitioner herein/accused was found false sequeling the lodging of FIR against him. The Investigating Officer has palpably slighted the effect of disbursement of loan by Dena Bank, Solan to the principal accused/loanee Balbir Singh occurring prior to the rendition of an opinion by the petitioner herein/accused to it with a concomitant effect of its negating the inculpation of the petitioner/accused arising from the factum of hence no wrongful loss or wrongful gain sprouting from its rendition by the petitioner/accused. The aforesaid fact gathers vehemence, vibrancy besides vigour from the imminent fact of the opinion if any subsequent to the disbursement of loan by Dena Bank Solan, in the sum aforesaid to the principal accused/loanee Balbir Singh, elicited by it from the petitioner/accused if false yet falsity if any ingraining it forestalls the inculpation of the petitioner herein/accused arouseable from the prima dona factum of its neither facilitating nor aiding the management of Dena Bank to preceding its rendition by the accused/petitioner disburse a loan constituted in the sum of Rs.1,25,00,000/- in favour of principal accused/loanee Balbir Singh. With the inference aforesaid standing gathered in negation of the petitioner/accused holding a conspiracy with principal accused/ loanee Balbir Singh for facilitating the latter to in his favour secure disbursement of a loan of Rs.1,25,00,000/- from Dena Bank, Solan, it was grossly inapt for the Investigating Officer merely on rendition of an opinion subsequent to the disbursement of a loan in favour of the principal accused/loanee Balbir Singh fasten an inclupatory role to the petitioner/accused, especially when no wrongful loss or wrongful gain occurred on its rendition by the petitioner herein/accused. Even if, falsity stood ingrained in the rendition of an opinion by the petitioner herein/accused to the management of Dena Bank, constituted by his rendering it on perusal of jamabandi placed before him by the principal accused Balbir Singh with a display therein of the assets of the latter standing mortgaged with Dena Bank, Solan yet with evidence standing not evinced from the material placed on record, of the petitioner herein colluding or holding a conspiracy with principal accused Balbir Singh or with the patwari concerned in the preparation of the fictitious jamabandi by the latter imperatively fillips a deduction of the petitioner herein/accused on principal accused/loanee Balbir Singh producing the relevant jamabandi before him with a display therein of his landed assets standing mortgaged with Dena Bank, Solan hence bonafide construing the apposite display therein to be authentic whereupon he obviously rendered an opinion bereft of any malafides. In sequel, his placing reliance upon the jamabandi produced before him by principal accused/loanee Balbir Singh stands uningrained with any malafides rather it appears to stand prodded by the imminent fact of the principal accused Balbir Singh procuring for

perusal by the petitioner herein/accused a fictitious jamabandi from the patwari concerned in preparation whereof he had no evident role as a conspirator. Even otherwise, the management of Dena Bank, Solan still can proceed to incorporate an apposite reflection in the jamabandi qua the assets of principal accused/loanee Balbir Singh of his assets standing mortgaged with it dehors a false display therein which bonafide stood relied upon by the petitioner herein/accused. Consequently, the instant petition is allowed and impugned order of 12.03.2015 rendered by the learned trial Court in Criminal Case No.773 of 2013, titled as State of H.P. versus Balbir Singh and others, so far as it orders for the framing of a charge against accused/petitioner Des Gautam for committing offences punishable under Section 420 read with Section 120-B of the IPC is quashed and set aside and he stands discharged. All pending applications also stand disposed of.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Des Gautam .....Petitioner.

Versus

State of H.P. & another .....Respondent.

Criminal Revision No. 160 of 2015.
Decided on: 4th January, 2016.

Indian Penal Code, 1860- Section 420 read with section 120-B- Accused 'B' obtained loan of Rs. 25 lacs from SBI Patiala - branch was taken over by Dena Bank- Dena bank also disbursed a loan of Rs. 1 crore 25 lacs to the accused 'B'- legal opinion was sought from the petitioner - accused 'B' handed over a jamabandi showing that his property was mortgaged with Dena Bank- petitioner gave his opinion, which was found to be false- an FIR was lodged against the petitioner and others for the commission of offences punishable under Sections 420, 467, 468, 471 read with Section 120-B IPC - trial Court framed charges for the commission of offence punishable under Section 420/120-B IPC against the petitioner- Order challenged by way of revision- held, that no wrongful loss or gain was caused by the accused to the bank as the loan stood already disbursed- further held, that there is no material on record which can suggest that petitioner had colluded or entered into conspiracy with accused B or with the Patwari for preparation of fictitious jamabandi on the basis of which opinion was given- no ground to frame charges under Section 420 read with Section 120 I.P.C - charges quashed and set aside - petitioner discharged. (Para-2)

For the Appellant: Mr. J.L. Bhardwaj, Advocate.
For Respondent No.1: Mr. Vivek Singh Attri, Dy. A.G.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

An FIR No. 41 of 2010 of 7.04.2010 stood registered with Police Station Dharampur, District Solan, H.P. constituting therein commission of offences by the accused/petitioner herein under Sections 420, 467, 468, 471 read with Section 120-B of the Indian Penal Code.

2. The Investigating Officer initiated investigations thereon. On his holding investigations into the matter, he in his final report submitted under Section 173 of the Cr.P.C. before the Court concerned disclosed therein of the petitioner-accused committing offences under Section 420 read with Section 120-B of the IPC. The Court concerned ordered the framing of a charge against the accused/petitioner herein for committing offences punishable under Section 420 read with Section 120-B of the IPC. The record maintained by the Investigating Officer has been placed before this court for its perusal by the learned Deputy Advocate General. The principal accused/loanee Balbir Singh applied to the State Bank of Patiala, Dharampur, District Solan, H.P. for the sanctioning of in his favour a loan in a sum of Rs. 25,00,000/-. The sum aforesaid stood disbursed by the bank aforesaid in favour of the accused. However, the entire loan liabilities and assets of the State Bank of Patiala, Dharampur were on 22.05.2008 taken over by Dena Bank, Solan. The latter bank on the very same day disbursed a loan in a sum of Rs.1,25,00,000/- to the principal accused/loanee Balbir Singh. However, the management of Dena Bank, Solan elicited a legal opinion from the accused/petitioner herein qua occurrence/reflection in the apposite jamabandi of the property of the principal accused/loanee Balbir Singh standing mortgaged with it. The petitioner/accused on a perusal of the jamabandi placed before him by principal accused/loanee Balbir Singh reflecting therein a charge standing created upon the landed assets of the latter in favour of the bank aforesaid thereupon in consonance therewith purveyed an opinion to Dena Bank, Solan. However, the said opinion rendered by the petitioner herein/accused was found false sequeling the lodging of FIR against him. The Investigating Officer has palpably slighted the effect of disbursement of loan by Dena Bank, Solan to the principal accused/loanee Balbir Singh occurring prior to the rendition of an opinion by the petitioner herein/accused to it with a concomitant effect of its negating the inculpation of the petitioner/accused arising from the factum of hence no wrongful loss or wrongful gain sprouting from its rendition by the petitioner/accused. The aforesaid fact gathers vehemence, vibrancy besides vigour from the imminent fact of the opinion if any subsequent to the disbursement of loan by Dena Bank Solan, in the sum aforesaid to the principal accused/loanee Balbir Singh, elicited by it from the petitioner/accused if false yet falsity if any ingraining it forestalls the inculpation of the petitioner herein/accused arouseable from the prima dona factum of its neither facilitating nor aiding the management of Dena Bank to preceding its rendition by the accused/petitioner disburse a loan constituted in the sum of Rs.1,25,00,000/- in favour of principal accused/loanee Balbir Singh. With the inference aforesaid standing gathered in negation of the petitioner/accused holding a conspiracy with principal accused/ loanee Balbir Singh for facilitating the latter to in his favour secure disbursement of a loan of Rs.1,25,00,000/- from Dena Bank, Solan, it was grossly inapt for the Investigating Officer merely on rendition of an opinion subsequent to the disbursement of a loan in favour of the principal accused/loanee Balbir Singh fasten an inclupatory role to the petitioner/accused, especially when no wrongful loss or wrongful gain occurred on its rendition by the petitioner herein/accused. Even if, falsity stood ingrained in the rendition of an opinion by the petitioner herein/accused to the management of Dena Bank, constituted by his rendering it on perusal of jamabandi placed before him by the principal accused Balbir Singh with a display therein of the assets of the latter standing mortgaged with Dena Bank, Solan yet with evidence standing not evinced from the material placed on record, of the petitioner herein colluding or holding a conspiracy with principal accused Balbir Singh or with the patwari concerned in the preparation of the fictitious jamabandi by the latter imperatively fillips a deduction of the petitioner herein/accused on principal accused/loanee Balbir Singh producing the relevant jamabandi before him with a display therein of his landed assets standing mortgaged with Dena Bank, Solan hence bonafide construing the apposite display therein to be authentic whereupon he obviously rendered an opinion bereft of any malafides.

In sequel, his placing reliance upon the jamabandi produced before him by principal accused/loanee Balbir Singh stands uningrained with any malafides rather it appears to stand prodded by the imminent fact of the principal accused Balbir Singh procuring for perusal by the petitioner herein/accused a fictitious jamabandi from the patwari concerned in preparation whereof he had no evident role as a conspirator. Even otherwise, the management of Dena Bank, Solan still can proceed to incorporate an apposite reflection in the jamabandi qua the assets of principal accused/loanee Balbir Singh of his assets standing mortgaged with it dehors a false display therein which bonafide stood relied upon by the petitioner herein/accused. Consequently, the instant petition is allowed and impugned order of 12.03.2015 rendered by the learned trial Court in Criminal Case No.771 of 2013, titled as State of H.P. versus Balbir Singh and others, so far as it orders for the framing of a charge against accused/petitioner Des Gautam for committing offences punishable under Section 420 read with Section 120-B of the IPC is quashed and set aside and he stands discharged. All pending applications also stand disposed of.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

Suresh Kumar .....Appellant.

Versus

State of H.P and others .....Respondents.

LPA No.6 of 2015
Decided on: January 04, 2016.

Constitution of India, 1950- Article 226- It was contended by the private respondents that they are in place for the last about five years - they have earned status in the society- they were appointed by the Government on the basis of the selection process undertaken by the Selection Authority- they had no role to play in their selection and appointment- Competent Authority directed to give appointment to the appellant on notional basis from the date of the appointment of the private respondents in the peculiar facts of the case. (Para-3 to 6)

Cases referred:

Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others, (2007) 8 SCC 785

Abhay Kumar Singh and others vs. State of Bihar and others, (2015) 1 SCC 90

For the Appellant: Mr. Dilip Sharma, Senior Advocate, with Mr.Umesh Kanwar, Advocate, for the appellant.

For the Respondents: Mr.Shrawan Dogra, Advocate General, with Mr. Romesh Verma and Mr.Anup Rattan, Addl.A.Gs. and Mr.J.K. Verma, Dy.A.G., for respondents No.1 and 2.
Ms.Archana Dutt, Advocate, for respondent No.3.
Mr.Rakesh Chandel, Advocate, for respondents No.4 and 5.
Mr.Ankush Dass Sood, Senior Advocate, with Mr.Saurav Rattan, Advocate, for respondent No.6.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

Learned counsel for the appellant stated that the case of the appellant is squarely covered by the judgment of the Apex Court in **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others, (2007) 8 SCC 785.**

2. We have gone through the judgment supra, which applies to the facts of the instant case, but the question is as to which incumbent is to be shown the door.

3. At this stage, the learned counsel for the parties stated at the Bar that the private respondents, in the Letters Patent Appeal, are in place for the last about five years and by now, they have earned status in the society. It was also stated that the families of the respondents are dependant upon them.

4. It was further stated that the private respondents were appointed by the Government on the basis of the selection process undertaken by the Selection Authority and in their selection and appointment, they had no role to play. Therefore, it would be too severe and harsh, at this stage, to dislodge any of the private respondents. Their statements are taken on record.

5. Mr.Ankush Dass Sood, learned Senior Advocate, appearing for respondent No.6, relied upon the observations made by the Apex Court in paragraph 12 of the judgment in case **Abhay Kumar Singh and others vs. State of Bihar and others, (2015) 1 SCC 90.**

6. Keeping in view judgments supra and all other factors, the impugned judgment is set aside and the respondents/competent Authority is directed to give appointment to the appellant, on notional basis, from the date the private respondents were appointed, within a period of six weeks from today. To clarify further, the appellant will be entitled to actual monetary benefits from the date of his joining. It is also made clear that this order has been made in the given circumstances of the case and shall not be treated as precedent.

7. The Letters Patent Appeal and the writ petition stand disposed of accordingly, so also the pending CMPs, if any. Copy dasti.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

Ashok Kumar ...Petitioner.

VERSUS

State of H.P. and others ...Respondents.

CWP No.61 of 2016.
Decided on: January 5, 2016.

Constitution of India, 1950- Article 226- Candidature of the petitioner in the Panchyat election was rejected on the ground that his father has encroached upon the government land- petitioner challenged the order on the ground that his father had not encroached upon any such land- petitioner has himself annexed a copy of the application, dated 31st July, 2002, whereby his father had sought regularization of the encroachment over the

government land-thus the candidature of the petitioner has been rightly rejected- writ petition is devoid of any merits, hence dismissed. (Para 2 to 5)

For the petitioner:	Mr.Dushyant Dadwal, Advocate.
For the Respondents:	Mr.Shrawan Dogra, Advocate General, with Mr.Anup Rattan and Mr.Romesh Verma, Addl.A.Gs. and Mr.J.K. Verma, Dy.A.G., for respondents No.1 to 4. Ms.Nishi Goel, Advocate, for respondent No.6.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

The petitioner, by the medium of the instant writ petition, has questioned the rejection order, dated 30th December, 2015, made by respondent No.4, on the ground that the father of the petitioner has not encroached upon any government land. The petitioner has also annexed alongwith the writ petition a copy of the application, dated 31st July, 2002, whereby the father of the petitioner had sought regularization of the encroachment over the government land.

2. It is apt to record herein that the petitioner has filed reply to the objections before respondent No.4, wherein in paragraphs No.3 and 4, it was specifically contended by the petitioner that the father of the petitioner never applied for regularization of encroachment. It is apt to reproduce paragraphs No.3 and 4 hereunder:

> *"3. That the objections are not supported with any copies of the alleged application. The father of the replying respondent never applied for regularization of any encroachment as alleged in the report of the Patwari Halqa Baijnath annexed with the objections.*
>
> *4. That no proceedings under section 163 or any other law were ever initiated against the father of the replying respondent nor he was ever evicted from any Government land during his life time."*

3. Thus, paragraphs 3 and 4, referred to hereinabove, are contradictory to the application moved by the father of the petitioner in the year 2002.

4. Section 122(1)(c) of the Himachal Pradesh Panchayati Raj Act, 1994, (for short, the Act), specifically provides that a person would be disqualified for being elected an office bearer of a Panchayat in case he or any of his family member(s) has encroached upon any government land. It is apt to reproduce Clause (c) of Sub Section (1) of Section 122 of the Act, hereunder:

> *"122.* ***Disqualifications. –*** *(1) A person shall be disqualified for being chosen as, and for being, an office bearer, of a Panchayat –*
>
> *(a) ……. …… ……*
>
> *(b) ……. …… ……*
>
> *(c) if he or any of his family members(s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed with the date on which he or any of his family member, as the case may be, is ejected therefrom or ceases to be the encroacher.*
>
> *……. …… ……"*

5. Having said so, there is no merit in the writ petition and the same is dismissed in limine, alongwith pending CMPs, if any. However, the petitioner is at liberty to seek appropriate remedy at appropriate stage.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE P.S.RANA, J.

State of H.P. .....Appellant.

Versus

Balwinder Kumar alias Jagga .....Respondent.

Cr. Appeal No. 02 of 2016.
Reserved on: December 29, 2016.
Decided on: January 05, 2016.

N.D.P.S. Act, 1985- Section 15- Accused was driving a motor cycle without registration- he tried to run away on seeing the police- he was apprehended - plastic bag being carried by the accused was checked and was found to be containing 10 kg. 500 grams of poppy husk- he was acquitted by the trial Court- State preferred an appeal- it has come on record that Satsang Ghar was in a close vicinity of the spot- there were three villages at the distance of half kilometer from the spot- however, no independent witness was associated- seal was not produced before the Court – prosecution version was not supported by PW-13- held, that in these circumstances, prosecution version was not proved- accused was rightly acquitted by the trial Court. (Para-9 to 11)

For the appellant: Mr. V.S.Chauhan, Addl. Advocate General.
For the respondent: Nemo.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted by the State against the judgment dated 24.6.2015, rendered by the learned Special Judge, Una, H.P., in Sessions trial No. 39 of 2014, whereby the respondent-accused (hereinafter referred to as the accused), who was charged with and tried for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ND & PS Act), has been acquitted.

2. The case of the prosecution, in a nut shell, is that on 9.6.2014, police party headed by ASI Suresh Kumar was on patrolling and traffic checking and at about 7:40 PM, he was present near Satsang Ghar on Sanoli-Santoshgarh road, where a motorcycle without registration number came from Sanoli side towards Santoshgarh having one plastic bag on the fuel tank of motorcycle between his legs. ASI Suresh Kumar signaled him to stop but the person got frightened and tried to turn back. He was apprehended. The plastic bag was checked in the presence of witness Mohinder Pal. It was found containing four plastic envelopes. These envelopes were opened and on smelling, it was found to be poppy husk. On weighing, one envelope was found containing 5 kg, second 1 kg 500 grams, third and fourth 2 kg each and total 10 kg 500 grams of poppy husk was recovered. The recovered envelopes were again put in the same plastic bag and the bag was put in a cloth parcel which was sealed with nine seals of impression "M". The I.O. took separate seal impressions

on a piece of cloth and filled up the NCB forms in triplicate. Seal "M" was also affixed on the NCB forms and seal after its use was handed over to witness Mohinder Pal. The case property, as per seizure memo, was handed over to SHO Police Station. The SHO of the Police Station resealed the parcel with seal impression "T" and filled the NCB form columns. The case property was deposited in the Malkhana. The samples were sent to FSL Junga for chemical examination. The investigation was completed and the challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 13 witnesses. The accused was also examined under Section 313 Cr.P.C. The accused has denied the prosecution case. The learned trial Court acquitted the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. V.S.Chauhan, learned Addl. Advocate General for the State has vehemently argued that the prosecution has proved its case against the accused.

5. PW-1 HC Sushil Kumar deposed that on 9.6.2014, he alongwith ASI Suresh Kumar, LHC Jagtar, LHC Bodh Raj, Const. Jasbir and others started from Police Post Santoshgarh for patrolling at 6:00 PM. At about 7:40 PM, when he was present near Satsang Ghar on Sanoli-Santoshgarh road, a motorcycle without registration number came from Sanoli side towards Santoshgarh. ASI Suresh Kumar signaled the motorcycle to stop. The person tried to run away. He was nabbed. He was carrying one plastic bag in his lap on the fuel tank of motorcycle. It was checked. It contained 4 envelopes. Two were of sky blue colour and on the other two packets "Khazana Gold" was printed. Mohinder Pal, independent witness, was also present on the spot. He was associated in the search. The packets contained poppy husk. The contraband weighed 10 kg. 500 grams in total. The sealing proceedings were completed on the spot. The impression of the seal was taken on separate piece of cloth and seal after its use was handed over to witness Mohinder Pal. The case property, as per seizure memo Ext. PW-1/A, was taken into possession. In his cross-examination, he admitted that Satsang Ghar is on the main road leading from Santoshgarh to Sanoli and there are houses situated. The road leads to Majara, Puna and Malookpur. He also admitted that these villages are just near to the boundary of Punjab.

6. PW-2 Const. Jasvir Singh and PW-3 Const. Kamal Krishan have corroborated the statement of PW-1 HC Sushil Kumar. PW-2 Const. Jasvir Singh has admitted that villages Majara, Puna etc. are situated on the boundary of the State.

7. PW-10 ASI Suresh Kumar is the I.O. He has also deposed that the abadi was at a distance of half kilometer from Satsang Ghar. The case property was deposited with PW-4 HC Subhash Chand. PW-5 Const. Sukhwinder Singh has carried the case property alongwith the sample seals and documents to FSL, Junga. PW-8 HHC Surinder Kumar has brought the chemical report alongwith the case property from FSL, Junga. PW-9 Kapil Sharma, Asstt. Director has proved report Ext. PW-9/A.

8. The case of the prosecution has not been supported by PW-13 Mohinder Pal. He has denied the recovery as well as nabbing of accused by the police in his presence. Rather, he was declared hostile and cross-examined by the learned Public Prosecutor. We have gone through the statement of PW-13 Mohinder Pal, with the assistance of the record produced by the State during the course of hearing. PW-13 Mohinder Pal has denied that one motorcycle, without number, came from Sanoli side and was going towards Santoshgarh side, in which one plastic sack was being carried by the driver. He also denied that the police on checking the sack in his presence found four envelopes containing poppy husk.

He also denied that the contraband weighed 10 kg 500 grams. He denied that the NCB forms were filled in on the spot and seals were affixed on it.

9. PW-10 ASI Suresh Kumar is the I.O. in this case. It has come on record that Satsang Ghar was in the close vicinity of the spot. There were three villages, namely, Majara, Puna and Malookpur at a distance of half kilometer from the spot and despite that the I.O. has not joined independent witnesses. PW-10 ASI Suresh Kumar submits that he has sent Const. Jagtar Singh to find out independent witnesses, however, the fact of the matter is that Const. Jagtar Singh has not been examined.

10. Seal "M" was handed over to witness PW-13 Mohinder Pal. He has not produced the same before the Court. Similarly, seal "T", which was allegedly used for resealing of the contraband by the SHO has also not been produced in the Court.

11. In the instant case, we have already noticed that the prosecution case has not been supported by PW-13 Mohinder Pal. The independent witnesses, though available, were not associated to give credibility to the search, seizure and sealing proceedings on the spot. Thus, there is no occasion for us to interfere with the well reasoned judgment of the learned trial Court dated 24.6.2015.

12. Accordingly, there is no merit in this appeal and the same is dismissed.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J. AND HON'BLE MR. JUSTICE P.S. RANA, J.

State of Himachal Pradesh ...Appellant.
Versus
Sukh Ram and others ...Respondents.

Criminal Appeals No.479 of 2009
Reserved on : 22.12.2015
Date of Decision: 5.1.2016

N.D.P.S. Act, 1985- Section 20 & 29- Accused S was suspected by a police constable to be carrying contraband - superior officer of police was informed- a raiding team was formed - personal search of the accused was conducted in presence of Independent witnesses - 1.900 kg charas was recovered from the accused which was tied around the waist of the accused with a cello tape- trial court acquitted all the accused- in appeal held that, independent witnesses had not supported the prosecution case -statements of the official witnesses were contradictory to each other on material particulars- co-accused also not connected to the offence as the independent witnesses had not supported the case- 'D' stated that the charas was in the shape of sticks and balls, while 'M' stated that the charas was in the shape of sticks only-PW5 was suspected by the prosecution still he was joined as a witness – no explanation was given for the same- trial court has rightly acquitted the accused persons- appeal dismissed. (Para 10 to 26)

Cases referred:
Prandas v. The State, AIR 1954 SC 36

Mohammed Ankoos and others versus Public Prosecutor, High Court of Andhra Pradesh, Hyderabad (2010) 1 SCC 94

For the State	:	Mr. V.S. Chaudan, Additional Advocate General; Mr. Kush Sharma, Deputy Advocate General; and Mr. J.S. Guleria, Assistant Advocate General.
For the Respondent	:	Mr. N.K. Bhardwaj, Advocate, for respondent No.1. Mr. Ajay Chandel, Advocate, for respondent No2.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

State has appealed against the judgment dated 18.4.2009, passed by the learned Special Judge, Fast Track, Kullu, Himachal Pradesh, in Sessions Trial No.28 of 2007, titled as *State v. Sukh Ram and othes,* challenging the acquittal of accused-respondents Sukh Ram, Chhape Ram and Som Dutt, of the charged offences.

2. It is the case of prosecution that on 11.10.2006, Constable Hari Singh (not examined), informed SI Dorje Ram (PW-18) that one person, wearing green coloured jacket and red coloured T-shirt, carrying Charas, was present at Dhalpur Chowk. Entry of the information was made in the *Rojnamcha* (Ex. PL) and information sent to Dy.S.P Shri Ahmad Sayeed (PW-2), through Constable Inder Singh (PW-16). SI Dorje Ram requested Gian Chand and Charanjit Singh, member of the community policing, to associate themselves as witnesses, to which they declined. Thereafter, by associating Kishori Lal (PW-1) and Amar Singh (not examined), as independent witnesses, SI Dorje Ram alongwith police officials HC Upender (not examined), HC Narain Singh (not examined) and Constable Pritam Singh (PW-3) proceeded to the spot and apprehended accused Sukh Ram. This was at 7.10 p.m. For the purpose of questioning, accused was brought to the Office of the Traffic Police at Dhalpur. After apprising him of his statutory rights and obtaining his consent (Ex.PZ), he was searched. On search, it was found that he had tied the contraband substance around his body with cello tape. Upon weighment, it was found to be 1.900 kg. Two samples, each weighing 25 grams, were drawn. Thereafter, the samples and the bulk contraband substance were made into separate parcels and sealed separately with three seals of seal impression 'T'. NCB form, in triplicate, was filled up on the spot. Contraband substance was taken into possession vide Memo (Ex. PB). Ruka (Ex.PA/D), so carried by Constable Pritam Singh, led to registration of FIR No.521/06, dated 11.10.2006 (Ex.PT), for commission of offence, punishable under the provisions of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act), at Police Station Kullu, Himachal Pradesh. Case property was produced before SHO Joginder Singh, who resealed the same with three seals of seal impression 'A' and deposited the same in the Malkhana with MHC Rup Singh (PW-15). Sealed sample was sent for chemical analysis to the Forensic Science Laboratory through Constable Diwan Chand (PW-12) and report of the Laboratory (Ex.PY) taken on record.

3. During investigation, on 12.10.2006, accused Sukh Ram made a disclosure statement (Ex. PH) in the presence of independent witnesses Dhian Singh (PW-4) and Piare Lal (PW-7) to the effect that he had purchased the contraband substance from accused Chhape Ram, an employee of Sheep Farm, Garsa. SI Mahinder Kumar (PW-19) formed a raiding party by associating Yashwant Singh (PW-8) and Chaman Lal (PW-13) and searched the premises of co-accused Chhape Ram. Investigating further revealed that accused Som Dutt was also involved in the crime. Accused Chhape Ram and Som Dutt were carrying on

the trade of contraband substance and as such had sold the same to accused Sukh Ram. Allegedly, the contraband substance was delivered to accused Sukh Ram by Gautam (PW-5). Accused were arrested. With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

4. Accused Sukh Ram was charged for having committed an offence punishable under the provisions of Section 20 of the Act; and accused Chappe Ram and Som Dutt were charged for having committed offence, punishable under the provisions of Section 20 read with Section 29 of the Act, to which all the accused did not plead guilty and claimed trial.

5. In order to establish its case, prosecution examined as many as 19 witnesses and statements of the accused, under the provisions of Section 313 of the Code of Criminal Procedure, were also record, in which they took the plea of innocence and false implication.

6. Based on the testimonies of witnesses and the material on record, trial Court acquitted all the accused persons of the charged offence. Hence, the present appeal by the State.

7. We have heard Mr. V.S. Chauhan, learned Additional Advocate General; Mr. Kush Sharma, learned Deputy Advocate General; and Mr. J.S. Guleria, Assistant Advocate General, on behalf of the State as also Mr. N.K. Bhardwa & Mr. Ajay Chandel, Advocates, on behalf of accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice.

8. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offence.

9. In *Prandas v. The State*, AIR 1954 SC 36, Constitution Bench of the apex Court, has held as under:

> "(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.c., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.c. in an appeal from an order of acquittal has been stated in – 'Sheo Swarup v. Emperor', AIR 1934 PC 227 (2) at pp.229, 230 (A), in these words:
>
> > "Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such

> matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice." "

10. We find that independent witnesses, Kishore Lal (PW-1), Yashwant Singh (PW-8), Chaman Lal (PW-13) and Piare Lal (PW-7) have not supported the prosecution case at all. They were declared hostile and despite their extensive cross-examination, nothing fruitful could be elicited from their testimonies.

11. It is a settled proposition of law that merely because a witness has turned hostile, his entire evidence cannot be termed to be unworthy of credence. It is for the Court to consider, whether as a result of contradiction, witness stands fully discredited or part of his testimony can still be believed. If the credit of a witness is not fully shaken, Court can rely upon that part of the testimony which appears to be creditworthy.

12. It is a settled position of law that conviction can be based on the evidence of police officials, provided their statements are reliable and trustworthy in nature. It is neither rule of law nor rule of prudence that conviction cannot be based on the evidence of police officials, but, at the same time, it has to be borne in mind that the evidence of police officials must be reliable and confidence inspiring.

13. SI Dorje Ram furnished secret information to Shri Ahmad Sayeed (PW-2), Deputy Superintendent of Police, who questioned accused Sukh Ram (apprehended on the spot). In his presence, the contraband substance, which was tied around the body of the accused, was recovered. We do not find the version of the witness to be inspiring in confidence, for there are embellishments, exaggerations and improbabilities, rendering the same to be doubtful. He appears to have not prepared any memo of questioning this accused. Now, if the Dy.S.P. had questioned the accused on 11.10.2006 and undisputedly nothing was disclosed to him, where was the question of the accused disclosing identity of co-accused Chhape Ram and Som Dutt.

14. Be that as it may, we find this witnesses to have been confronted with his previous statement Mark 'C', so recorded under the provisions of Section 161 of the Code of Criminal Procedure, wherein it is not so recorded that SI Dorje Ram had disclosed his apprehension of the accused carrying the contraband substance or the accused being informed of his statutory right of being searched before a Magistrate or a Gazetted Officer. Witness to the memo of search has not supported the prosecution case at all. Dy.S.P. Ahmad Sayeed ought to have prepared some documents of search, for we do not find his name to have been recorded in the documents.

15. As already observed, independent witnesses Kishori Lal has given a different version of the accused not being searched in his presence and also that nothing was recovered from the accused. All that he states is that the contraband substance was weighed in his presence and that he was called to the Chowki at Dhalpur and no proceedings of search and seizure took place in his presence. We do not find the version of

the police officials, who conducted the search and seizure operations, to be inspiring in confidence.

16. With regard to the complicity of the other co-accused on the basis of alleged disclosure statement (Ex.PH), we find that both the independent witnesses Dhian Singh and Piare Lal have only deposed that accused informed the police of having purchased the Charas from an "employee of Sheep Farm, Garsa". Both the witnesses were declared hostile and despite extensive cross-examination, nothing fruitful could be elicited from their testimony. Who is the person, from whom the contraband substance was purchased, was not disclosed. In fact, Dhian Singh is categorical that no name was disclosed.

17. Be that as it may, we find the witnesses not to be local residents. Dhian Singh resides at a distance of 55 kms from the Police Station. From the testimony of Piare Lal, it is apparent that the Judicial Complex, Tehsil Office and Sub-Jail are just next to the Police Station. Why was not accused produced before the Magistrate or disclosure statement recorded in his presence? remains unexplained.

18. SI Dorje Ram and SI Mohinder Kumar, who conducted the investigation, want the Court to believe that pursuant to the disclosure statement, police party took the accused to the Garsa Farm, where he identified accused Chhape Ram. We do not find his version to be true. Tikkam Ram (PW-6), who produced the register, so maintained at the entrance of the Farm, states that no entry with regard to the police party having entered the Farm was recorded. Now, this totally belies the version of police officials, according to whom, entry was got recorded. This fact may or may not be significant or relevant for doubting the prosecution case, but then the independent witnesses Yashwant Singh and Chaman Lal, who were associated by the police, while conducting the search of the house of accused Chhape Ram, have not supported the prosecution. According to the witnesses, neither did accused Sukh Ram take the police to the residence of accused Chhape Ram nor did he identify the accused. Also, no recovery took place from the house of Chhape Ram, rendering the disclosure statement to be insignificant and inconsequential.

19. We find the version of SI Dorje Ram, or SI Mohinder Kumar to be uninspiring in confidence. SI Dorje Ram wants the Court to believe that the information was received from Constable Hari Singh, who has not been examined in Court. He states that the contraband substance was in the shape of sticks and balls, which is not so stated by SI Mohinder Kumar, according to whom, it was in the shape of sticks only. Further, SI Dorje Ram admits to have called Gian Chand to Dhalpur Chowk on his telephone. Gian Chand has not been examined nor has the police placed on record the record of the telephone call.

20. SI Mohinder Kumar wants the Court to believe that scales used by accused Chhape Ram for weighing the contraband substance were recovered, on the asking of the accused and Memo (Ex.PA/G) was prepared to such effect. But then, as we have already discussed, such version stands contradicted by independent witnesses.

21. Gautam (PW-5) himself was a suspect, as according to the prosecution, he was a carrier. Why is it that he was not arrayed as an accused? has not been explained. Be that as it may, even this witness has not supported the prosecution and has categorically deposed that no Charas was recovered in his presence, which fact he disclosed to the police, but was subjected to beatings and kept in the Police Station for two days.

22. We find that even by way of corroborative evidence, prosecution has not proved its case beyond reasonable doubt. In the report of the FSL (Ex. PY), only one sealed parcel bearing three seals of seal impression 'T' was examined. But, it is the case of

prosecution that contraband substance was also resealed by the SHO with seal impression 'A'.

23. Version of SI Dorje Ram of having informed the Superior Officers about the incident is rendered doubtful from the testimony of Kashmi Ram (PW-11), according to whom no entry of such information was recorded in the Register (Ex. PL).

24. We further find that Diwan Chand did not promptly deposit the case property in the Laboratory. Whereas the same was entrusted to him on 11.10.2006, but he deposited it only on 13.10.2006. Where he remained in between, remains unexplained by him, which further renders the prosecution case to be doubtful.

25. MHC Rup Singh was also confronted with his previous statement, recorded under the provisions of Section 161 of the Code of Criminal Procedure (Mark 'H'), wherein the factum of contraband substance having been handed over to him as also the parcel (containing scales), so recovered by the police, was not found to have been recorded therein.

26. Constable Pritam Singh has not corroborated the version of SI Dorje Ram to the effect that the information was received by him (SI Dorje Ram), by stating that on 11.10.2006, at 6.35 p.m., a telephonic message was received at Police Station, Kullu from Security Branch of S.P. Office and the said message was entered in the *Rojnamcha.* He has further clarified that the message was received by MHC.

27. From the material placed on record, prosecution has failed to establish that the accused are guilty of having committed the offence, they have been charged with. The circumstances cannot be said to have been proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused does not stand proved beyond reasonable doubt to the hilt. The chain of events does not stand conclusively established, leading only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered do not fully establish completion of chain of events, indicating to the guilt of the accused and no other hypothesis other than the same.

28. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so as to prove that accused Sukh Ram was found in conscious and exclusive possession of Charas, and accused Chhape Ram and Som Dutt conspired with their co-accused Sukh Ram in committing the crime.

29. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence so placed on record by the parties.

30. The accused have had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Mohammed Ankoos and others versus Public Prosecutor, High Court of Andhra Pradesh, Hyderabad (2010) 1 SCC 94*, it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged. Appeal stands disposed of, so also pending application(s), if any.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J. AND HON'BLE MR. JUSTICE P.S. RANA, J.

State of Himachal Pradesh ...Appellant.

Versus

Tek Chand ...Respondent.

Criminal Appeals No.508 of 2009
Reserved on : 21.12.2015
Date of Decision: January 5, 2016

N.D.P.S. Act, 1985- Section 20- Accused was apprehended by the police party with a bag carrying 4.400 kgs of Charas- he was acquitted by the trial court- in appeal held that, both the witnesses associated by the police have not supported the prosecution case- one of the witnesses is a stock witness having been associated in many other cases- no explanation on the record as to why he was chosen by the I.O - testimonies of the official witnesses are contradictory to each other and do not inspire confidence – R says that vehicle of witness K was used for transportation; whereas, witness K states that he does not have any vehicle nor he drives any vehicle - his driving licence was not taken in possession-police party not remembering the types of the vehicles checked before the interception of accused - entire operation was carried out in the night but there is no evidence on the record to show the use of the search light-no evidence that police team carried the scales – seal was not produced in Court nor it was mentioned in the report of the Laboratory that impression of the seal was also deposited alongwith the sample- the trial court has rightly acquitted the accused- appeal dismissed. (Para 10 to 34)

Cases referred:

Prandas v. The State, AIR 1954 SC 36
Ashok alias Dangra Jaiswal vs. State of Madhya Pradesh, (2011) 5 SCC 123
Yomeshbhai Pranshankar Bhatt vs. State of Gujarat, (2011) 6 SCC 312
Bhajju alias Karan Singh vs. State of Madhya Pradesh, (2012) 4 SCC 327
Ramesh Harijan vs. State of Uttar Pradesh, (2012) 5 SCC 777
Govindaraju alias Govinda v. State by Srirampuram Police Station and another, (2012) 4 SCC 722
Tika Ram v. State of Madhya Pradesh, (2007) 15 SCC 760
Girja Prasad v. State of M.P., (2007) 7 SCC 625)
Aher Raja Khima v. State of Saurashtra, AIR 1956
Tahir v. State (Delhi), (1996) 3 SCC 338
Mohammed Ankoos and others versus Public Prosecutor, High Court of Andhra Pradesh, Hyderabad (2010) 1 SCC 94

For the State : Mr. Kush Sharma, Deputy Advocate General, and Mr. J.S. Guleria, Assistant Advocate General.

For the Respondent : M/s Ramesh Shamra and Rahul Verma, Advocates.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

State has appealed against the judgment dated 21.8.2009, passed by learned Additional Sessions Judge, Fast Track Court, Chamba, Himachal Pradesh, in Sessions Trial No.11/2009, titled as *State of Himachal Pradesh v. Tek Chand,* challenging the acquittal of

respondent Tek Chand (hereinafter referred to as the accused), for having committed an offence, punishable under the provisions of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act).

2. It is the case of prosecution that on 23.12.2008, police party comprising HC Dev Raj (PW-3), HC Anirudh, headed by Inspector R.P. Jawal (PW-11), was present at Majra Mor on a traffic checking duty. At about 9.30 p.m., they noticed accused, carrying a bag, coming from Kiyani side. On suspicion that he may be carrying some contraband substance, he was apprehended and informed of his right of being searched before a Magistrate or a Gazetted Officer. However, vide Memo (Ex.PW-4/A), accused consented to be searched by the Police Party present on the spot. From the bag, 4.400 kgs of Charas was recovered. Two samples, each weighing 25 grams, were drawn. The samples and the bulk contraband substance were made into separate parcels and sealed separately with three seals of seal impression 'S' and taken into possession vide Memo (Ex.PW-4/C). Ruka (Ex.PW-11/A) was sent, through HC Dev Raj, to Police Station, Sadar (Chamba), on the basis of which FIR No.264, dated 24.12.2008 (Ex.PW-8/A) was registered by SI Diwan Chand (PW-8), for having committed an offence punishable under the provisions of Section 20 of the Act. NCB form (Ex.PW-4/E) was filled up in triplicate. Accused was arrested on the spot. Case property was entrusted to MHC Kailash Chand (PW-9), who sent a sealed sample, through Constable Prabhat Singh (PW-5), to the Forensic Science Laboratory for analysis and report (Ex. PX) taken on record. During investigation, statements of independent witnesses, Kewal Krishan (PW-1) and Bhagmal (PW-2), in whose presence, search and seizure operations were carried out, were also recorded. With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

3. Accused was charged for having committed an offence, punishable under the provisions of Section 20 of the Act, to which he did not plead guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as 11 witnesses and statement of the accused, under the provisions of Section 313 of the Code of Criminal Procedure was also recorded, in which he took plea of innocence and false implication.

5. Based on the testimonies of witnesses and the material on record, trial Court acquitted the accused of the charged offence. Hence, the present appeal by the State.

6. We have heard Mr. Kush Sharma, learned Deputy Advocate General and Mr. J.S. Guleria, learned Assistant Advocate General, on behalf of the State as also M/s Ramesh Sharma and Rahul Verma, Advocates, on behalf of the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice.

7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, we are of the considered view that prosecution has failed to establish essential ingredients so required to constitute the charged offence.

8. In *Prandas v. The State*, AIR 1954 SC 36, Constitution Bench of the apex Court, has held as under:

> "(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.c., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.c. in an appeal from an order of acquittal has been stated in – 'Sheo Swarup v. Emperor', AIR 1934 PC 227 (2) at pp.229, 230 (A), in these words:
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> > "Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice." "

9. Record reveals that from the Memo (Ex.PW-8/A), in compliance with the provisions of Section 50 of the Act, and the recovery memo (Ex.PW-4/C), it is apparent that police has associated two independent witnesses Kewal Krishan and Bhagmal. Both these witnesses, in Court, have not supported the prosecution case at all. They were declared hostile and extensively cross-examined, but nothing fruitful could be elicited from their testimonies.

10. Bhagmal is involved in several cases. This he admits in his unrebutted testimony. He admits to have been summoned by the police regularly. Now, why would the police associate an accused as a witness? is not clear. After all, it not the case of prosecution that identity of the witness was not known to the police from before. The witness categorically states that police obtained his signatures on the documents, without letting him know the purpose thereof.

11. It is a settled proposition of law that merely because a witness has turned hostile, his entire evidence cannot be termed to be unworthy of credence. It is for the Court to consider, whether as a result of contradiction, witness stands fully discredited or part of his testimony can still be believed. If the credit of a witness is not fully shaken, Court can rely upon that part of the testimony which appears to be creditworthy.

12. Their Lordships of the Hon'ble Supreme Court in *Ashok alias Dangra Jaiswal vs. State of Madhya Pradesh,* (2011) 5 SCC 123 have held that seizure witnesses turning hostile may not be very significant by itself, as it is not an uncommon phenomenon in criminal trials, particularly in cases relating to NDPS Act.

13. Their Lordships of the Hon'ble Supreme Court in *Yomeshbhai Pranshankar Bhatt vs. State of Gujarat,* (2011) 6 SCC 312 have held that evidence of hostile witness may contain elements of truth and should not be entirely discarded. Their Lordships have held as under:

> "22. The learned counsel for the appellant further submitted the doctor had not given his written opinion that the deceased was fit enough to give her statement. Though orally, the doctor said so. Relying on this part of the evidence especially the evidence of the husband of the deceased, the learned counsel for the appellant submitted that even though the husband may have been declared hostile, the law relating to appreciation of evidence of hostile witnesses is not to completely discard the evidence given by them. This Court has held that even the evidence given by hostile witness may contain elements of truth.
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> 23. This Court has held in State of U.P. vs. Chetram and others, AIR 1989 SC 1543, that merely because the witnesses have been declared hostile the entire evidence should not be brushed aside. [See para 13 at page 1548]. Similar view has been expressed by three-judge Bench of this Court in Khujji alias Surendra Tiwari vs. State of Madhya Pradesh, [AIR 1991 SC 1853]. At para 6, page 1857 of the report this Court speaking through Justice Ahmadi, as His Lordship then was, after referring to various judgments of this Court laid down that just because the witness turned hostile his entire evidence should not be washed out."

14. Their Lordships of the Hon'ble Supreme Court in *Bhajju alias Karan Singh vs. State of Madhya Pradesh,* (2012) 4 SCC 327 have held that evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. Their Lordships have held as under:

> "36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.
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> 37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled cannon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the cases:
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> (a) Koli Lakhmanbhai Chanabhai v. State of Gujarat (1999) 8 SCC 624
>
> (b) Prithi v. State of Haryana (2010) 8 SCC 536
>
> (c) Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1

(d) Ramkrushna v. State of Maharashtra (2007) 13 SCC 525"

15. Their Lordships of the Hon'ble Supreme Court in *Ramesh Harijan vs. State of Uttar Pradesh,* (2012) 5 SCC 777 have again reiterated that any portion of evidence consistent with case of prosecution or defence can be relied upon. Their Lordships have further held that seizure/recovery witnesses though turning hostile, but admitting their signatures/thumb impressions on recovery memo, they could be relied on by prosecution. Their Lordships have held as under:

> "23. It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide: Bhagwan Singh v. The State of Haryana, AIR 1976 SC 202; Rabindra Kumar Dey v. State of Orissa, AIR 1977 SC 170; Syad Akbar v. State of Karnataka, AIR 1979 SC 1848; and Khujji @ Surendra Tiwari v. State of Madhya Pradesh, AIR 1991 SC 1853).
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> a. In State of U.P. v. Ramesh Prasad Misra & Anr., AIR 1996 SC 2766, this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543; Gagan Kanojia & Anr. v. State of Punjab, (2006) 13 SCC 516; Radha Mohan Singh @ Lal Saheb & Ors. v. State of U.P., AIR 2006 SC 951; Sarvesh Narain Shukla v. Daroga Singh & Ors., AIR 2008 SC 320; and Subbu Singh v. State by Public Prosecutor, (2009) 6 SCC 462. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence. (See also: C. Muniappan & Ors. v. State of Tamil Nadu, AIR 2010 SC 3718; and Himanshu @ Chintu v. State (NCT of Delhi), (2011) 2 SCC 36)"

16. It is a settled proposition of law that sole testimony of police official, which if otherwise is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, cannot be discarded only on the ground that he is a police official and may be interested in the success of the case. It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and if required duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness.

17. It is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. Rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude

which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of police administration.

18. Wherever, evidence of a police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. No infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction.

[See: *Govindaraju alias Govinda v. State by Srirampuram Police Station and another,* (2012) 4 SCC 722; *Tika Ram v. State of Madhya Pradesh,* (2007) 15 SCC 760; *Girja Prasad v. State of M.P.,* (2007) 7 SCC 625); and *Aher Raja Khima v. State of Saurashtra,* AIR 1956].

19. Apex Court in *Tahir v. State (Delhi)*, (1996) 3 SCC 338, dealing with a similar question, held as under:-

> "6. ... .In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

20. In view of the aforesaid statement of law, we shall now examine the testimonies of police officials present on the spot.

21. According to Inspector R.P. Jaswal, Kewal Krishan was associated as a witness, as he was driving the vehicle and was present on the spot at the time when the search and seizure operations were carried out, but then, this witness denies such fact. He does not own any vehicle nor is he a driver. Police did not take his driving licence or documents on record. Why is it that police did not associate any respectable person from the locality? remains unexplained on record.

22. It has come in the testimony of HC Anirudh that in close vicinity there is a Poultry Farm, where someone is always available. Why is it that police did not associate any local person? remains unexplained on record. It is not the case of prosecution that Kewal Krishan and Bhagmal were local residents.

23. Thus, a version other than the one, which the prosecution wants the Court to believe, has emerged.

24. Version of the prosecution of having set up a Naka at the place of crime does not appear to be inspiring in confidence. According to police officials, Inspector R.P. Jaswal, HC Dev Raj and HC Anirudh, several vehicles were checked, but none was challaned. Also, they do not remember the type of the vehicles checked, and there is contradiction with

regard to the number of vehicles checked. The police party wants the Court to believe that the search and seizure operations were carried out with the help of search-light, but then where is it? remains unexplained.

25. Further, according to Inspector R.P. Jaswal, NCB form, in triplicate, was filled up, which was handed over to the MHC. Record reveals that neither in the Malkhana register (Ex.PW-9/A) nor in the Road Certificate (Ex.PW-9/B), there is reference of any NCB form. Constable Prabhat Chand (PW-5), who took the contraband substance to the FSL, does not categorically depose to such effect. According to HC Kailash Chand, both the samples were sent to the FSL for analysis, whereas according to Constable Prabhat Chand only one sample was taken.

26. We further find that the seal has not been produced in Court. It is not mentioned in the report of the Laboratory that impression of the seal was also deposited alongwith the sample.

27. Contradictions and discrepancies acquire significance, when we notice that in the Road Certificate (Ex.PW9/B), number of the FIR is mentioned as 264/08, dated 23.12.2008, but then the FIR No.264 was registered on 24.12.2008 and the discrepancy in the date has not been explained by the prosecution.

28. Non-mentioning of NCB form in the documents on record acquires significance, in view of the unrebutted testimony of HC Dev Raj that after the registration of the FIR the file was handed over to the Investigating Officer (SHO) in the Police Station at 3.40 a.m. on 24.12.2008. But when we peruse the version of Inspector R.P. Jaswal, it is apparent that the documents, including the NCB form, were filled up on the spot. It is not the case of this witness that any of the forms were filled up in the Police Station. Then how is it that the number of the FIR stands recorded in Column No.1 of the NCB form. Also, even as per version of MHC Kailash Chand there is no entry of NCB form in any of the documents. All this renders the prosecution case to be doubtful. The documents appear to have been prepared not on the spot, but at the Police Station.

29. In fact, we do not find version of the police officials of having carried the scales with themselves. There is no record to the effect that the Investigating Officer had taken the kit alongwith him or that scales and weights formed part of the same. Also, there is nothing on record to establish as to how HC Dev Raj went to the Police Station, carrying the Ruka.

30. We find that there is contradiction in the statements of SI Diwan Chand and HC Dev Raj, with regard to the time when the ruka was received and the case file handed over to the SHO.

31. According to Inspector R.P. Jaswal, prior to the accused being searched, accused had searched the police party, but then there is no memo on record to this effect. The police could prepare a memo, under the provisions of Section 30 of the Act. Why is it that the same was not prepared? Explanation is not forthcoming. All this renders the prosecution case to be doubtful. Version of the police party of having set up Naka also has not been corroborated by site plan (Ex.PW-11/B).

32. From the material placed on record, prosecution has failed to establish that the accused is guilty of having committed the offence, he has been charged with. The circumstances cannot be said to have been proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused does not stand proved beyond reasonable doubt to the hilt. The chain of events does not stand conclusively

established, leading only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered do not fully establish completion of chain of events, indicating to the guilt of the accused and no other hypothesis other than the same.

33. Hence, it cannot be said that prosecution has been able to prove its case, by leading clear, cogent, convincing and reliable piece of evidence so as to prove that the accused was found in conscious and exclusive possession of Charas.

34. The accused has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Mohammed Ankoos and others versus Public Prosecutor, High Court of Andhra Pradesh, Hyderabad (2010) 1 SCC 94*, it cannot be said that the Court below has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged. Appeal stands disposed of, so also pending application(s), if any.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Union of India & ors ...Petitioners

Versus

Central Administrative Tribunal & anr ...Respondents

CWP No. 1246 of 2011
Date of decision: 5.1.2016

Constitution of India, 1950- Article 226- Respondent was initially appointed as Khalasi - he superannuated on 31.12.2006 and was given the benefit of full grade Wireman-he was paid all his retiral benefits, except the leave encashment- Respondent approached Central Administrative Tribunal; and relying upon an order of the petitioners in which the amount was worked out, the Tribunal ordered the payment of leave encashment of Rs. 93,460/- with interest @ 8% - petitioners feeling aggrieved approached the court in a writ petition- held that, Rs. 14, 954/- calculated towards interest can by no stretch of imagination, be said to be 'huge liability'- further held that, even if the Tribunal had no jurisdiction to grant interest even then the employee can claim interest on the delayed payment - grant of pensionary benefits is not a bounty, but is a valuable right and is property in the hands of the employee –petition dismissed. (Para 7 to 10)

Cases referred:

State of Kerala & ors Vs. M. Padmanabhan Nair (1985) 1 SCC 429

D.D. Tewari (D) Thr. L.Rs Vs. Uttar Haryana Bijli Vitran Nigam Ltd & ors, AIR 2014 SC 2861

For the Petitioners: Mr.Pawan Gautam, CGS.

For the Respondent: Mr. Sanjeev Bhushan, Sr. Advocate with Ms. Abhilasha, Advocates for respondent No.2

The following judgment of the Court was delivered:

Tarlok Singh Chauhan J.

By the medium of this writ petition, the petitioner has called in question the judgment passed by the Central Administrative Tribunal, Chandigarh Bench on 22.10.2008, whereby it allowed the original application filed by the respondent and directed the implementation of the order dated 8.1.2007 regarding payment of leave encashment to the respondent to the tune of Rs.93,460/- with interest.

2. The respondent was appointed as Khalasi on 6.10.1969 and joined Grand Hotel, Shimla.He was superannuated on 31.12.2006 and with effect from 1973, he was given the benefit of full grade Wireman. Upon retirement, he was paid all his retiral benefits, except the leave encashment for which he was constrained to approach the Central Administrative Tribunal.

3. Petitioners filed their reply and the only explanation offered therein was that the case of the respondent for his leave encashment was being pursued with the Pay & Accounts Office (NZ), New Delhi for rectification of leave account.

4. The learned Tribunal, after placing reliance upon the order passed by the petitioners themselves on 8.1.2007, wherein the leave encashment due towards the respondent had been worked out at Rs.93,460/, directed its payment along with interest @ 8% p.a. from the date of his retirement to the date of actual payment.

5. It is against this order that the present writ petition has been filed mainly on the ground that the respondent should not have been held entitled to interest on the amount due as this would result in huge financial liability upon the petitioners.

We have heard the learned counsel for the parties and have gone through the records of the case.

6. It is vehemently argued by Sh.Pawan Gautam, learned counsel for the petitioners that in case the impugned order is allowed to stand, then the petitioners would unnecessarily be burdened with a huge liability towards interest on the amount due i.e. Rs.93,460/.

7. We find no force in this submission for the reason that admittedly the learned Tribunal pronounced its judgment on 22.10.2008 whereby it directed the payment of 8% interest from the date of retirement of the respondent till the date of actual payment. The respondent admittedly retired on 31.12.2006 and even if the interest is calculated on the amount due even beyond the date of the judgment uptil 31.12.2008, the same would still hardly work out to be Rs.14,954/-,which by no stretch of imagination, can be said to be 'huge liability'. Apart from the above, it would also be noticed that it were the petitioners themselves who vide order dated 8.1.2007 had worked out the amount due towards respondent, but had failed to release the same without there being any valid explanation.

8. It is thereafter contended by the learned counsel for the petitioners that the learned Tribunal had no jurisdiction to grant interest. This contention too is equally without any force as it is more than settled that even in absence of there being any statutory rules, administrative instructions or guidelines prescribed for the purpose of claiming benefit of interest on delayed payment, even then an employee can claim interest under Part-III of the Constitution relying upon Articles 14, 19 and 21 of the Constitution. After all, the grant of pensionary benefits is not a bounty, but is a valuable right and is property in the hands of

the employee and any culpable delay in disbursement thereof must be dealt with penalty of payment of interest at current market rate till actual payment to the employee. Reference in this regard can conveniently be made to the judgment of the Hon'ble Supreme Court in **State of Kerala & ors** Vs. **M. Padmanabhan Nair (1985) 1 SCC 429.**

9. It is not necessary to refer multiple decisions on this subject and it shall suffice to refer to a recent judgment of the Hon'ble Supreme Court in **D.D. Tewari (D) Thr. L.Rs** Vs. **Uttar Haryana Bijli Vitran Nigam Ltd & ors, AIR 2014 SC 2861,** wherein, after relying upon the judgment in Padmanabhan Nair's (supra), it was held:

> *"4. Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.*
>
> *5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C. but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public."*

10. Having said so, there is no merit in this petition and the same is accordingly dismissed, leaving the parties to bear the costs.

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Chairman Managing Committee ARTRAC and Anr. .....Petitioners

Versus

Devki Nand Kalta s/o Sh. Kewal Ram Kalta ...Non-petitioner

CWP No. 8724/2014-C
Reserved on : 27th November 2015
Date of order: 6th January 2016

Constitution of India, 1950- Articles 226 and 227- Respondent was working as salesman in ARTRAC Canteen at Shimla on temporary basis - he was transferred to Mandi, but he did not join his new place of posting and obtained stay order from CAT- later on the OA was withdrawn by him and CWP was filed in Hon'ble High Court which was disposed off with the observations that it had no jurisdiction to deal with it- Ministry of Labour referred the dispute to Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh for adjudication - action of the petitioners in terminating the service of non-petitioner was held to be unjustified and illegal by the tribunal –writ petition was filed challenging the order - held that, refusal to join at the place of posting on transfer amounts to misconduct and the

services of the non-petitioner could not have been terminated without conducting an enquiry-petitioner has not followed the procedure to be followed in case of the misconduct and has terminated the services of non-petitioner in a wrong manner- the order was rightly set aside on reference- petition dismissed. (Para 6 to 18)

Case referred:
Novartis India Ltd. vs. State of West Bengal & Others, (2009) 3 Supreme Court Cases 124

For petitioners: Mr. Sandeep Sharma, Sr. Advocate with Mr. Pankaj Negi, Advocate
For non-petitioner: Mr. C. N. Singh, Advocate

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Present civil writ petition is filed under Article 226/227 of Constitution of India with the prayer to quash and set-aside the award dated 03.9.2014 passed by learned Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh in Case No. ID83 of 2013 titled Devki Nand Kalta vs. Chairman Managing Committee ARTRAC Canteen Shimla (H.P.) & Another.

BRIEF FACTS OF THE CASE

3. It is pleaded that on 07.06.2002 non-petitioner Devki Nand Kalta was appointed as Salesman in Unit Run Canteen (URC) ARTRAC Shimla on temporary basis. It is further pleaded that on 15.11.2011 non-petitioner was transferred to URC Mandi. It is further pleaded that on 30.11.2011 non-petitioner obtained stay order from CAT against the transfer order dated 15.11.2011 and did not join his posting station. It is further pleaded that thereafter in the month of April 2012 petitioner filed CMPMO No. 112/2012 assailing the order dated 30.11.2011 passed by Central Administrative Tribunal in OA No.1266/HP/11. It is further pleaded that thereafter non-petitioner filed CWP No.4481/2012 after withdrawing OA No.1266/HP/11 from CAT in the Hon'ble High Court. It is further pleaded that thereafter on 27.09.2012 Hon'ble High Court disposed of CWP No.4481/2012 filed by non-petitioner with the observation that Hon'ble High Court had no jurisdiction to adjudicate upon the controversy inter se parties. It is further pleaded that thereafter on 20.06.2013 Govt. of India Ministry of Labour referred the dispute to Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh for adjudication. It is further pleaded that thereafter Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh held that action of the petitioners in terminating the service of non-petitioner w.e.f. 30.9.2012/8.1.2013 is unjustified and illegal. Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh directed to re-instate the non-petitioner at Mandi Canteen within one month from the date of publication of award alongwith 60% of the back wages. Feeling aggrieved against the award passed by Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh petitioners filed the present civil writ petition. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioner pleaded therein that non-petitioner falls under the Industrial Disputes Act 1947. It is further pleaded that service of non-petitioner terminated w.e.f. 30.9.2012/8.1.2013 without following the procedure laid down under Section 25(F) of Industrial Disputes Act 1947. It is further pleaded that action of the petitioners to terminate the service of non-petitioner has been rightly held to be illegal. It is further pleaded that learned Central Govt. Industrial Tribunal-cum-Labour Court-I

Chandigarh has passed well reasoned order in accordance with law. Prayer for dismissal of civil writ petition sought.

4. Court heard learned Advocates appearing on behalf of petitioners and non-petitioner at length and also perused the entire records carefully.

5. Following points arise for determination:

1) Whether petition filed under Article 226/227 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?

2) Final order.

Findings upon point No.1 with reasons:

6. It is proved on record that Government of India Ministry of Labour vide notification No.1-42012/22/2013-IR(DU) dated 20.06.2013 has referred the following dispute to Central Govt. Industrial Tribunal-cum-Labour Court-I Chandigarh for adjudication:

> "Whether the action of the Managing Committee of ARTRAC Canteen Shimla in terminating the service of Sh. Devki Nand Kalta w.e.f. 30.09.2012/08.01/2013 without following the procedure laid down u/s 25-F of the ID Act 1947 is just and legal? To what relief the workman is entitled and from which date?"

7. It is also proved on record that Brigadier Chairman Canteen Managing Committee HQ ARTRAC issued notice to non-petitioner for termination of service on dated 24.12.2011 which is quoted in toto:

> "BY REGISTERED POST
> Headquarters
> Army Training Command
> Shimla (HP) -177 003
> 24 Dec.2011
>
> 500195/47/SML/Q/CC
> Ex Sub & Hony Sub Maj Devki Nand Kalta
> Vill- Khalantu,
> Post Office – Mohri
> Tehsil – Theog
> Distt- Shimla (HP)
>
> NOTICE FOR TERMINATION OF SERVICE
>
> 1. Refer to HQ ARTRAC Canteen, Shimla movement order No.40/SML/Can dt 13 Dec 2011.
>
> 2. You were ordered to move on permanent transfer to ARTRAC Canteen Mandi vide movement order quoted in para 1 above. It has been intimated by the Manager ARTRAC Canteen Mandi that you have failed to report on duty so far.
>
> 3. You are hereby notified that if you do not report to ARTRAC Canteen Mandi by 22 Jan 2012 i.e. 30 days from the signing of this notice, your services in the ARTRAC Canteens will be terminated.
>
> Sd/-
> Brigadier
> Chairman Canteen Managing Committee

HQ ARTRAC"

8. Thereafter again Lt. Col. O/C Canteen HQ ARTRAC issued show cause notice to non-petitioner on dated 02.02.2012 which is also quoted in toto:

"BY REGISTERED POST
Headquarters
Army Training Command
Shimla (HP) -177 003
02 Feb. 2012

500195/47/SML/Q/CC
Ex Sub & Hony Sub Maj Devki Nand Kalta
Vill- Khalantu,
Post Office – Mohri
Tehsil – Theog
Distt- Shimla (HP)

ORDER FOR TERMINATION OF SERVICE

1. Refer to
(a) HQ ARTRAC Canteen, Shimla movement order No.40/SML/Can dated 13 Dec 2011.
(b) HQ ARTRAC letter No. 500195/47/SML/Q/CC dated 24 Dec 2011

2. In spite of adequate notice given to you, you have failed to report on duty at ARTRAC Canteen Mandi till date.

3.You are hereby directed to **show cause** as to why your services should not be terminated with immediate effect. Your reply should reach this office by 20 Feb 2012 positively.

Sd/-
Lt Col.
O/C Canteen
HQ ARTRAC"

9. Thereafter Brigadier Chairman Canteen Managing Committee HQ ARTRAC issued order for termination of service of non-petitioner dated 08.01.2013 which is quoted in toto:

"BY REGISTERED POST
Headquarters
Army Training Command
Shimla (HP) -177 003
08 Jan. 2013

500195/47/SML/Q/CC
Ex Sub & Hony Sub Maj Devki Nand Kalta
Vill- Khalantu,
Post Office – Mohri
Tehsil – Theog
Distt- Shimla (HP)

ORDER FOR TERMINATION OF SERVICE

1. Refer to
(a) HQ ARTRAC Canteen Shimla movement order No.40/SML/Can dated 13 Dec 2011.
(b) HQ ARTRAC letter No. 500195/47/SML/Q/CC dated 24 Dec 2011

(c) HQ ARTRAC letter No. 500195/47/SML/Q/CC dated 02 Feb 2012

2. Despite clear directions and explicit dates given there at you have not reported for duty at ARTRAC Canteen Mandi.

3. Your services are hereby terminated in keeping with the provisions of the SOP for ARTRAC Canteen employees.

4. This order is being issued consequent to disposal of CWP No. 4484 of 2012 by Hon'ble High Court of Himachal Pradesh.

Sd/-
Brigadier
Chairman Canteen Managing Committee
HQ ARTRAC"

10. It was held in case reported in ***(2009) 3 Supreme Court Cases 124 titled Novartis India Ltd. vs. State of West Bengal & Others*** that if employee did not join at transferred place then dismissal of employee from service without holding any domestic inquiry/disciplinary proceedings is void ab initio.

11. In the present case there is no evidence on record in order to prove that petitioners conducted domestic inquiry/disciplinary proceedings against non-petitioner. It is well settled law that non-joining at transferred place by the employee amounts to mis-conduct.

12. As per Article 141 of Constitution of India law declared by Supreme Court of India is binding upon all Courts within the territory of India. Present dispute inter se parties is relating to non-joining at transferred place by non-petitioner. It is proved on record that non-petitioner was transferred to URC Mandi.

13. As per Rule 28 of Rules regulating the terms and conditions of service of civilian employees of Unit Run Canteen paid out of non public fund which came into force w.e.f. 04.01.2001 joining time is seven days with full pay and one month's basic pay as transfer grant.

14. As per Rule 24 of Rules regulating the terms and conditions of service of civilian employees of Unit Run Canteen paid out of non public fund there is procedure for dealing with case of misconduct of employee. Rule 24 is quoted in toto:

"24. <u>PROCEDURE FOR DEALING WITH CASE OF</u>

<u>MISCONDUCT:</u> Before awarding to an employee any of the punishment mentioned in Rule 24, following procedure shall be followed by the disciplinary authority:-

(a) The employee shall be served with a charge sheet, clearly stating the details of misconduct against him and calling upon him to show cause as to why one or more of the punishment is included in these Rules should not be awarded to him.

(b) The reply to the charge sheet if any shall be duly considered by the disciplinary authority.

(c) If the employee so desires, he is to be heard in person and is also to be allowed to cross examine witness(es) against him or produce witnesses in his defence. The disciplinary procedure is laid down in Schedule 'B'."

15. Procedure mentioned in Schedule 'B' is quoted in toto:

"Schedule 'B'

PROCEDRUE FOR DISMISSAL/DISCAHRGE

The procedure for dismissal/discharge on account of misconduct/indiscipline is as follows:

(a) Before the employee is dismissed or discharged from service following procedure shall be adopted in accordance with the principle of natural justice as applicable from case to case:-

(i) Issuance of Charge-sheet.

(ii) Appointment of Inquiry Officer.

(iii) Holding of any inquiry.

(iv) Perusal of the report of Inquiry Officer by the Disciplinary Authority.

(v) Issuance of show cause notice.

(vi) Issuance of order of punishment.

(b) In the event of the services of a legally qualified person being utilized by the management/establishment to present their case before the Inquiry Officer, the same opportunity must be offered/afforded to the delinquent employee. However the employee can utilize the services of one of his colleagues to present his case before the inquiry Officers.

(c) After considering the inquiry report, if misconduct is established the disciplinary authority shall proceed to take appropriate action. However the disciplinary authority is not bound to accept the inquiry report but while awarding the punishment the authority must state its reasons for not accepting the inquiry report."

16. In the present case it is proved on record that petitioners while terminating the service of non-petitioner did not follow the procedure for dismissal on account of misconduct mentioned in Schedule 'B'. There is no evidence on record that charge sheet was issued to the non-petitioner. There is no evidence on record that Inquiry Officer was appointed and inquiry was conducted. There is no evidence on record that Disciplinary Authority has perused the report of Inquiry Officer.

17. In view of the above stated facts it is held that while issuing order dated 08.01.2013 learned Brigadier Chairman Canteen Managing Committee HQ ARTRAC did not adopt the procedure for dismissal as mentioned in Rules regulating the terms and conditions of service of civilian employees of Unit Run Canteen paid out of non public fund as mentioned in Schedule 'B' Procedure for dismissal on account of misconduct. Point No.1 is answered accordingly.

Point No.2 (Final Order).

18. In view of findings upon point No.1 above order for termination of service of non-petitioner dated 08.01.2013 issued by learned Brigadier Chairman Canteen Managing Committee HQ ARTRAC Shimla (H.P.) is set-aside and is held to be illegal and void ab initio and Chairman Canteen Managing Committee HQ ARTRAC is directed to decide the matter afresh within three months after following the procedure for dismissal/discharge on account of misconduct mentioned in Schedule 'B' and Rules regulating the terms and conditions of service of civilian employees of Unit Run Canteen paid out of non public fund which came into force w.e.f. 04.01.2001. Award dated 03.9.2014 passed by learned Central Govt.

Industrial Tribunal-cum-Labour Court-I Chandigarh in Case No. ID83 of 2013 titled Devki Nand Kalta vs. Chairman Managing Committee ARTRAC & Another is modified to this extent only. Observations will not effect merits of case in any manner and will be strictly confined for disposal of CWP No.8724/2014-C. No order as to costs. Parties are directed to appear before Chairman Canteen Managing Committee HQ ARTRAC Shimla (H.P.) on 2nd February 2016. Learned Registrar (Judicial) will send certified copy of this order forthwith for compliance to Chairman Canteen Managing Committee HQ ARTRAC Shimla (H.P.). CWP No. 8724/2014-C is disposed of. Pending application(s) if any also disposed of.

****

BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Jagar s/o Sh. Sukhu .....Applicant
Versus
Nikka Ram s/o Sh. Babu Ram .....Non-applicant

CMP No. 6943/2015
Date of order: January 06, 2016

Code of Civil Procedure, 1908- Order 23 Rule 1- Learned Counsel for the petitioner does not press the petition- hence, petition under Order 39 Rule 2-A is dismissed as withdrawn.

For applicant : Mr. Rupinder Singh Thakur, Advocate
For non-applicant : Mr. Dhanaanjay Sharma, Advocate vice Mr. Ashok K. Tyagi, Advocate.

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Learned Advocate appearing on behalf of applicant submitted that applicant does not want to continue with present application filed under Order 39 Rule 2-A CPC and same be dismissed as withdrawn. In view of submission of learned Advocate appearing on behalf of applicant CMP No. 6943/2015 is dismissed as withdrawn. No order as to costs. CMP No.6943/2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Cr. Appeal No.358 of 2014 along with
Cr. Appeal No.440 of 2014.
Reserved on: 30.12.2015.
Decided on : 06.01.2016

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1. Criminal Appeal No. 358 of 2014

Marvelous Osaza .....Appellant.
Versus
State of H.P. .....Respondent.

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2. Criminal Appeal No. 440 of 2014.

State of H.P. .....Appellant.

Versus

Marvelous Osaza .....Respondent.

N.D.P.S. Act, 1985- Section 21- Accused tried to run away on seeing the police- police became suspicious and gave option to the accused to be searched before police or gazetted officer- accused consented to be searched before Gazetted Officer- Dy.SP was informed who arrived at the spot- I.O. associated two independent witnesses- accused was taken to police post where his search was conducted- accused had kept one plastic envelope in his socks- 4 smalls packets containing white coloured powder were recovered – powder was tested and was found to be cocaine- total 65 grams of cocaine was found in all the four packets- one 'P' was arrested as co-accused on the basis of telephonic conversation- accused was convicted by the trial Court – in appeal held, that there were contradictions in the testimonies of official witnesses and trial Court had wrongly relied upon such testimonies- appeal accepted- accused acquitted. (Para-11 to 16)

For the Appellant/accused: Mr. Sanjeev Kuthiala, Advocate.
For the Respondent/State: Mr. P.M.Negi, Deputy Advocate General.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge

Since, both these appeals arise from a common judgment rendered on 17/09/2014-18/09/2014 in Session trial No. 151 of 2013 (309 of 13) by the learned Special Judge, Kullu, hence, are proposed to be decided by a common judgment.

2. Criminal Appeal No. 440 of 2014 stands instituted by the State of H.P. for enhancement of sentence while its standing aggrieved by the judgment of the learned trial Court, whereby on its convicting the accused qua charge framed against him under Section 21 of the NDPS Act sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.50,000/- and in default of payment of fine he stood sentenced to undergo rigorous imprisonment for one year. The sentence of imprisonment imposed upon the accused/convict Marvelous Osaze is concerted by the State of Himachal Pradesh to be disproportionate vis.a.vis the gravity of the offence for which he stood convicted hence a prayer is made in the appeal aforesaid instituted by the State of Himachal Pradesh of the sentence aforesaid on its modification being enhanced. On the other hand, Criminal appeal No.358 of 2014 stands instituted before this Court at the instance of the accused, who stands aggrieved by the findings of conviction recorded against him for his committing an offence punishable under Section 21 of the NDPS Act.

3. Briefly stated the facts of the case are that on 1.8.2013, the police party headed by SI Shiv Singh had left police Post City, Akhara Bazar, Kullu for routine patrolling and detection of crimes and at about 11:45 a.m. they were present at bus stand Sarwari Kullu where they noticed accused Marvelous roaming, who on seeing the police party tried to run away. This act on part of accused raised suspicion in the mind of police, so he was intercepted and his name and address etc. was inquired. I.O. got suspicious that the accused might be in possession of some contraband, so I.O. apprised the accused about his legal right to be searched either before a Gazetted Officer or a Magistrate. The accused Marvelous opted and gave his consent to be searched before a Gazetted Officer, so I.O.

telephonically informed the Dy. S.P. Sanjay Kumar about this fact. Upon this Dy. S.P. Sanjay Kumar reached the bus stand. I.O. associated PW1 Deepak Sharma Adda Incharge of HRTC bus stand, Kullu and one tea vendor Vijay Kumar as witnesses. Thereafter the accused was taken to Police Assistance Room located at bus stand, Sarwari Kullu where I.O. first gave his personal search to the accused in presence of aforesaid witnesses and Dy. S.P. Sanjay Sharma and nothing was recovered from his possession. Thereafter search of bag of accused which he was carrying on his left shoulder was carried in presence of aforesaid witnesses and Dy. S.P. Sanjay Kumar. During search of bag, one jacket, one camera, one pair of shoes, one charger were recovered. And from the right foot shoe kept in side the bag, one sock was removed in which accused Marvelous had kept one plastic envelope. On opening of said plastic envelope, four small packets containing white colour powder were recovered along with another packet. The recovered white coloured powder was tested by the I.O. with the help of detection kit and it was found to be cocaine. It was weighed and found to be 34 grams, 10 grams, 9 grams and 12 grams (total 65 grams) from all the four packets. Thereafter all the four packets containing cocaine were marked as mark A, B, C and D and were put in the same plastic envelope and the said plastic envelope was sealed in one cloth parcel with five seals of letter-P. The other articles along with red colour bag recovered from the accused were put in another parcel and sealed with six seals of letter-P. I.O. also drew sample seal of P and also filled in NCB forms in triplicate. Thereafter, both the parcels were taken into possession and in this regard a seizure memo was prepared. A ruqa was prepared by the I.O. and sent to the police station through Const. Varun Kumar, upon which relevant FIR was registered. I.O. prepared spot map and recorded statements of witnesses. Then accused Marvelous Osaze was arrested. It is further case of the prosecution that the police party on completion of proceedings on the spot came to the police station, where I.O. produced the sealed parcels of case property along with relevant documents before SHO Raj Kumar who resealed the same with seal-R. He also filled in relevant columns of NCB form and drew sample seal of R. Thereafter he deposited the same in his Register. On 3.8.2013, MHC had sent the sealed parcel of cocaine along with sample seals, NCB form and other relevant documents to FSL Junga, through Const. Chet Ram and FSL report was received which confirmed the contents of exhibit to be sample of cocaine. On 2.8.2013, I.O. prepared special report and submitted the same to Addl. S.P. Kullu Nihal Chand.

4. At bus stand accused Marvelous Osaze was receiving calls on his mobile phone from some local number and at that time Inspector Feroz Khan was present who had also come to the spot. Inspector Feroz Khan informed Dy. S.P. about the telephone calls being made on the mobile phone of accused Marvelous. Subsequently S.P. Kullu was also informed. Accused was receiving telephone calls from AIRTEL mobile No. 98161-48400. So after inquiry it was found that the said mobile was of co-accused Prem Singh resident of Manali, however at the relevant time, location of Prem Singh was found to be at Kasol. Consequently, Inspector Feroz Khan alongwith other police officials went to Kasol where co-accused Prem Singh was staying in one house. On checking of his room, two weighing machines were recovered which were sealed with seal-T and taken into possession. Consequently accused Prem Singh was also arrested. Thereafter Inspector Feroz Khan came to Kullu and handed over all the documents to SI Shiv Singh.

5. On conclusion of the investigation, into the offences, allegedly committed by the accused a final report under Section 173 of the Code of Criminal Procedure was prepared and presented in the competent Court.

6. The accused stood charged for his committing an offence punishable under Section 21 of the NDPS Act to which he pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution examined 11 witnesses. On closure of prosecution evidence, the statement of the accused, under Section 313 of the Code of Criminal Procedure, stood recorded in which he pleaded innocence and claimed false implication. In defence, he chose not to lead any evidence.

8. The accused stands aggrieved by the findings of conviction recorded by the learned trial Court for his committing an offence punishable under Section 21 of the NDPS Act. The learned counsel appearing for the accused has concerted to vigorously contend qua the findings of conviction recorded by the learned trial Court standing not based on a proper appreciation of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of conviction being reversed by this Court, in the exercise of its appellate jurisdiction and theirs being replaced by findings of acquittal.

9. On the other hand, the learned Additional Advocate General appearing for the State has with considerable force and vigour, contended qua the findings of conviction recorded by the Court below standing based on a mature and balanced appreciation of evidence on record and theirs not necessitating any interference rather meriting vindication. However, the sentence imposed upon the accused by the learned trial Court is canvassed to be inadequate vis-à-vis the gravity of offence qua which the accused/convict stood convicted and is espoused to be hence necessitating enhancement by this Court while exercising its appellate jurisdiction.

10. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

11. Recovery of cocaine Ext.P-2 weighing 65 grams stood effected under recovery memo Ext.PW-1/B from a bag slung on the left shoulder of the accused. Even though the prosecution witnesses have deposed in tandem and in harmony qua each of the links in the chain of circumstances commencing from the proceedings relating to search, seizure and recovery till the consummate link comprised in the rendition of an opinion by the FSL on the specimen parcels sent to it for analysis, portraying proof of unbroken and unsevered links, in the entire chain of circumstances, hence it stands argued that given the prosecution case hence standing established, it would be legally unwise for this Court to acquit the accused.

12. The prosecution version qua the genesis of recovery of cocaine from the accused under memo Ext.PW-1/B would stand imputed credence by this Court only in the event of an wholesome appraisal of the testimonies of each of the prosecution witnesses unfolding theirs standing uningrained with any vice of inter se or intra se contradictions. For determining qua the prosecution witnesses in their respective examinations in chief vis-à-vis their respective cross examinations unfolding therein a version qua the genesis of the prosecution story bereft of any disharmony or inconsistency, it is imperative to advert to the testimonies of PW-9, PW-10 and PW-11. However, before adverting thereto it is at the outset deemed fit to allude to the factum of the accused under Memo Ext.PW-1/A consenting to his search being held by a Gazetted Officer. In sequel, to his manifesting in Ext.PW-1/A of his search being held by a Gazetted Officer Dy.S.P. Sanjay Sharma PW-9 (a Gazetted Officer) had through a telephonic message purveyed to him by SI Shiv Singh, Incharge Police Post, Akhara Bazar, Kullu proceeded to the site of occurrence. However, the anchor of the prosecution version is of simultaneity of presence thereat of both PW-9 and SHO Feroz Khan. Consequently, a keen discernment of evidence on record is imperative for gathering therefrom of both PW-9 and Feroz Khan being contemporaneously present at the site of occurrence whereat the apposite proceedings stood initiated and concluded. In case a thorough rummaging of the record dispels their simultaneous presence at the site of

occurrence at the apposite stage it would as a corollary sequel an inference of the entire prosecution version being amenable to its being thrown overboard whereupon no credence is imputable especially when the prosecution version stands hence hinged upon discrepant evidence. In the aforesaid endeavour to gauge the presence with simultaneity of both PW-9 and SHO Feroz Khan at the site of occurrence an allusion to the testimony of PW-9 is preeminently significant. PW-9 in his cross examination has feigned ignorance qua the factum of SHO Feroz Khan departing from the site of occurrence subsequent to his departure there-from. Moreover he has also feigned ignorance qua the factum of Feroz Khan remaining present at the site of occurrence even when he had departed therefrom. He therein feigns ignorance qua the factum of the accused knowing Hindi or not. However, he has proceeded to in his cross examination depose of the accused standing apprised by him in English qua the disclosures in seizure memo Ext.PW-1/B. Now adverting to the deposition comprised in the cross examination of PW-10 wherein he bespeaks of SHO Feroz Khan simultaneously not being present alongwith PW-9 at the site of occurrence when seizure memo Ext.PW-1/B thereat stood prepared while hence openly contradicting the testimony of PW-9 of SHO Feroz Khan being thereat simultaneously throughout present along with him during the holding of the apposite proceedings thereat besides his in his cross examination disclosing therein the factum of departure of Inspector Feroz Khan from the site of occurrence being previous or prior to the departure therefrom of PW-9 also stands in sharp contradiction to the deposition comprised in the cross examination of PW-9 wherein he has feigned ignorance qua the departure therefrom of Feroz Khan being prior to his departure therefrom hence while his evincing an obvious equivocation qua the factum aforesaid, as such, constrains this Court to conclude of his not deposing consistently with PW-10 rather his standing contradicted by the latter of inspector Feroz Khan departing from the site of occurrence prior to the departure therefrom of DSP PW-9. Contradictions intra se PW-9 and PW-10 qua the departure of SHO Feroz Khan from the site of occurrence being prior to or later to the departure therefrom of PW-9 besides qua the availability thereat of SHO Feroz Khan at the time of preparation of seizure memo Ext.PW-1/B more especially qua their contemporaneous presence thereat at the stage of preparation of Ext.PW-1/B cannot stand slighted as it bears a telling effect upon the veracity of the prosecution version qua the simultaneous presence thereat of both PW-9 and SHO Feroz Khan. Contradictions for reasons aforesaid qua the aforesaid factum probandum dispel the factum of the simultaneous presence of both PW-9 and PW-11 at the site of occurrence at the stage contemporaneous to the holding thereat of the apposite proceedings. With evidence dispelling the aforesaid factum probandum effect thereof is of doubt seeping besides percolating into the genesis of the prosecution version also its making deep and pervasive inroads qua the propagation by the prosecution of the entire proceedings standing initiated and concluded at the site of occurrence with both PW-9 and SHO Firoz Khan simultaneously present thereat. Obviously, the aforesaid inroads render discrepant besides ingrain the prosecution version with a vice of intra se contradictions vis-à-vis the testimonies of PW-9 and PW-10 rendering dis-imputable to credence the prosecution story of seizure memo Ext.PW-1/A standing prepared in their simultaneous presence whereupon an inference is marshalable of the veracity of the testimonies of each of the prosecution witnesses unfolding therein qua its preparation with simultaneity of presence thereat of PW-9 with SHO Feroz Khan suffering a deep erosion. Apart therefrom for reiteration the vigour of the prosecution version of SHO Feroz Khan remaining contemporaneously present with PW-9 throughout the stages of initiation and conclusion of the apposite proceedings at the site of occurrence when for reasons aforesaid standing dispelled also gains momentum from the factum of PW-9 though deposing qua the aforesaid factum of Feroz Khan remaining present throughout the holding of the apposite proceedings at the site of occurrence whereas in contradiction thereof with PW-10 in his cross-examination deposing qua at the time contemporaneous to

the preparation of seizure memo Ext.PW-1/B SHO Feroz Khan being unavailable at the site of occurrence erodes the genesis of the prosecution version of seizure memo Ext.PW-1/B whereunder cocaine Ext.P-2 weighing 65 grams stood effected from the bag slung on the left shoulder of the accused standing infected with doubt qua its recovery in the manner espoused by the prosecution. In sequel, the preparation of seizure memo Ext.PW-1/B appears to be concocted as well as invented whereupon no credibility is to be fastened.

13. The inference aforesaid galvanizes additional strength from the deposition comprised in the cross-examination of inspector Feroz Khan whereunder he has deposed of recovery of cocaine, Ext.P-2 weighing 65 grams standing effectuated under recovery memo Ext.PW-1/B even prior to his arriving at the site of occurrence. Moreover, his feigning ignorance qua the factum wherefrom it stood recovered gives latitude to a deduction therefrom of recovery of cocaine Ext.P-2 weighing 65 grams standing not effectuated from the conscious and exclusive possession of the accused in the manner espoused by the prosecution. As a corollary, the ensuing deduction therefrom is of its standing recovered in a manner other than the one as portrayed by the prosecution. In aftermath, the prosecution version suffers from an infirmity of discrepant evidence qua its recovery occurring in the manner afore-stated in the testimonies of the official witnesses wherefrom an inference emerges of its standing denuded of its vigour.

14. The summum bonum of the above discussion is that the prosecution has not been able to adduce cogent and emphatic evidence in proving the guilt of the accused. The appreciation of the evidence as done by the learned trial Court suffers from an infirmity as well as perversity. Consequently, reinforcingly, it can be formidably concluded, that, the findings of the learned trial Court merit interference.

15. In view of above discussion, appeal bearing No.358 of 2014 filed by the accused stands allowed. However, the appeal preferred by the State for enhancement of sentence imposed by the learned trial Court upon the accused stands dismissed. In sequel, the impugned judgment of 17.09.2014 rendered by the learned Special Judge, Kullu, insofar as it convicts and sentences the accused Marvelous Osaza is set-aside. The appellant/accused is acquitted of the offence charged. The fine amount, if any, deposited by the accused is ordered to be refunded to him. Since the accused is in jail, he be released forthwith, if not required in any other case.

16. The Registry is directed to prepare the release warrants of the accused and send the same to the Superintendent of the jail concerned, in conformity with the judgment forthwith. Records be sent back forthwith

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Naresh Kumar and others ...Appellants.

Versus

State of H.P. ...Respondent.

Criminal Appeal No.89 OF 2015
Reserved on : 23.12.2015
Date of Decision : January 6, 2016

N.D.P.S. Act, 1985- Section 18 and 20- A secret information was received by police that contraband substances could be recovered from the dhaba being run at National Highway-

two witnesses were associated - appellants were found working in the Dhaba- search of dhaba was conducted - 500 grams charas, 3.500 kgs of Poppy straw, ten bottles of bearing mark Green Label each containing 750 ml of IMFL and 20 bottles of country liquor bearing mark *Suroor* were recovered from the dhaba - trial Court convicted the accused for the commission of offences punishable under Sections 18 and 20 of N.D.P.S. Act and 30 of Excise Act - in appeal held, that independent witnesses have categorically spoken about the search and recovery- there were no material contradictions in the testimonies of witnesses – non production of the original seal would not render the prosecution case doubtful- accused had failed to rebut the presumption under Section 35 of N.D.P.S. Act- guilt of the accused fully established- appeal dismissed. (Para-9 to 22)

Case referred:
State of H.P. v. Sunder Singh, 2014(2) HLJ 1293

For the Appellants	:	Mr. Manoj Pathak, Advocate.
For the Respondent	:	Mr. R.S. Verma, Additional Advocate General and Mr. R.M. Bisht, Deputy Advocate General.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

Appellants-convict Naresh Kumar, Hariman Sharma, and Sandeep Kumar, hereinafter referred to as the accused, have assailed the judgment dated 7.3.2015, passed by Special Judge (Additional Sessions Judge-II), Shimla, Himachal Pradesh, in Sessions Trial No.17-S/7 of 2014/13, titled as *State of Himachal Pradesh v. Naresh Kumar and others,* whereby they stand convicted for the offence, punishable under the provisions of Sections 18 & 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act), and Section 39 of the H.P. Excise Act, 2011 (hereinafter referred to as the Excise Act), and each of the accused stands sentenced as under:

Section	Sentence
18 of the Act	Simple imprisonment for a period of four years and fine of Rs.20,000/-, and in default thereof to further undergo simple imprisonment for a period of one year.
20 of the Act	Simple imprisonment for a period of four years and fine of Rs.20,000/-, and in default thereof to further undergo simple imprisonment for a period of one year.
39 of the Excise Act.	Simple imprisonment for a period of one year and fine of Rs.25,000/-, and in default thereof to further undergo simple imprisonment for a period of three months.

All the sentences have been ordered to run concurrently.

2. It is the case of prosecution that on 4.5.2013, at about 4 p.m., a police party, headed by SI Chet Ram (PW-14) and comprising of ASI Liaq Ram (PW-2), HC Sahi Ram (PW-4) and Constable Kewal Krishan (PW-9), was present at a palce known as Apple Control room, Fagu, where Chet Ram received a secret information that business of contraband substance was being carried out at the IBX Dhaba, situate on the National Highway at a place known as Rewag. The information was reduced into writing and sent to the Superior

Officer. Raiding party was constituted and in the presence of Atma Ram (PW-1) and Sunder Lal (not examined), raid was conducted. Accused persons, as employees of Laxmi Kant (PW-3), were running the Dhaba. Accused were given option of being searched before a Magistrate or a Gazetted Officer. Police searched the premises and found 500 grams of charas; 2.250 kgs and 1.250 kgs (total 3.500 kgs) of Poppy straw; ten bottles of English wine (Green Level), each containing 750 ml and 20 bottles of country liquor of *Suroor* brand, kept inside the Dhaba. Charas, poppy straw and liquor were made into separate parcels and sealed separately with seven seals of seal impression 'R' and taken into possession vide Memo (Ex.PW-1/C & 1/E). Impression of seal 'R' was also taken on a piece of cloth (Ex.PW-1/D). NCB form (Ex.PW-6/E & 12/E) was filled up on the spot. HC Sahi Ram (PW-4) took the Ruka (Ex.PW-12/A), on the basis of which FIR No.6 dated 4..5.2013 (Ex.PW-12/B), for commission of offences, punishable under Sections 15 & 20 of the Act and 39 of the Excise Act, was registered at Police Station, CID, District Shimla, Himachal Pradesh. The contraband substance was produced before Inspector Kamal Chand (PW-12), who resealed the same with his own seal of seal impression 'N' and deposited with MHC Prakash Chand (PW-6). Charas, Poppy straw and samples of English and Country liquor were taken for chemical analysis by Constable Joginder Singh (PW-7). Special Report (Ex. PW-13/A) was also sent to the Superior Officer, which was received by HC Aditya Ram (PW-13). On receipt of the report of the Chemical Examiner (Ex.PW-14/C) and with the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

3. All the accused were charged for having committed offences, punishable under the provisions of Sections 18 & 20 of the Act and 39 of the Excise Act, to which they did not plead guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as 14 witnesses and statements of the accused, under the provisions of Section 313 of the Code of Criminal Procedure, were also recorded, in which they took plea of innocence and false implication.

5. Based on the testimonies of witnesses and the material on record, trial Court convicted all the accused of the charged offences. Hence, the present appeal by the accused.

6. Having heard learned counsel for the parties as also perused the record, I am of the considered view that no case for interference is made out in the present appeal. It is found that the judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice. Also, there is proper reasoning.

7. From the conjoint reading of the testimonies of ASI Laiq Ram (PW-2), Constable Kwal Krishan (PW-9), ASI Kalyan Singh (PW-10) and SI Chet Ram (PW-14), it is apparent that SI Chet Ram received secret information, which was reduced into writing and information sent to the Superior Officer. Constable Kewal Krishan took the Special Report to the office of the Superintendent of Police, CID. Thus, there is sufficient compliance of provisions of Section 42 of the Act. Noticeably, ocular version stands corroborated by supporting document (Ex.PW-9/A).

8. By leading credible evidence, prosecution has to establish that the contraband substance in question stood recovered from the conscious possession of the accused. This has to be beyond reasonable doubt. It is a settled position of law that with the discharge of the initial burden, onus to disprove the same, in terms of provisions of Section 35 of the Act, would rest upon the accused.

9. Now, it is noticed that the contraband substance was seized vide seizure memos (Ex.PW-1/C & 1/E), which stands witnessed by independent witnesses Atma Ram (PW-1) and Sunder Lal. These witnesses were associated by the police party, as is so disclosed by SI Chet Ram. Also, police official Sahi Ram (PW-4) was present on the spot. From the reading of the testimonies of these witnesses, it is evident that SI Chet Ram formed a raiding party and conducted the raid. Fard Jamatalashi (Ex.PW-1/A) was also prepared. Police found the charas to have been concealed inside the bed box in one of the rooms of the Dhaba. It was in the shape of sticks and balls. Also, poppy straw kept in two carry bags (red and green coloured) was recovered. It was weighed and total weight was found to be 3.5 kgs. Also, ten bottles of English wine (Green Level) and 20 bottles of Country liquor (*Suroor*) were recovered. They were kept in separate cartons. The contraband substance was sealed separately with seal of impression 'R' and seized vide memos (Ex.PW-1/C & 1/E). Impression of the seal was also taken on a piece of cloth (Ex.PW-1/D). Independent witness Atma Ram has duly supported the prosecution case on this count.

10. Vehemently, it is argued that there is contradiction, with regard to the place from where the recovery stood effected. Confusion arose from the testimony of HC Sahi Ram, according to whom, recovery was effected from the ground floor, unlike the version of other witnesses, who state that the recovery was effected from the third floor. We do not find this contradiction to be material at all, for presence of the accused on the spot stands duly established by the witnesses. It is also not disputed, as is evident from the line of cross-examination. Polie had no animosity against the accused.

11. No doubt, the accused were employees of Laxmi Kant (PW-3), but it is evident from his testimony that the accused used to run the Dhaba and he learnt about recovery of the contraband substance lateron. Even this witness states that Dhaba is being run on the third and fourth storeys, which fact is so admitted by Atma Ram. Now, the fact of the matter is that Court below has succinctly dealt with this issue in Para-47 of the judgment. When Paras-47, 48 & 49 of the judgment of the trial Court are perused, one finds the findings recorded therein to have been borne out from the record. What matters is how one counts the floors, is it from the level of the National Highway or the base of the building, which is much below the road level. Two floors of the building are at the level of the National Highway, whereas the other floors are below the National Highway.

12. When, testimonies of the witnesses are minutely read, one finds only confusion and certainly not contradiction. The confusion does not render the case to be doubtful. With the prosecution having discharged its burden of having recovered the contraband substance from the exclusive and conscious possession of the accused, record reveals the burden to disprove the same, cast upon the accused, remains undischarged.

13. There is also some contradiction with regard to the breaking of the lock of the place from where the contraband substance was recovered. Attention is drawn to the testimony of Atma Ram and Laxmi Kant. The contradiction cannot be said to be material, rendering the prosecution case to be fatal. After all, there is a time gap between the recovery of the contraband substance and the statement made in the Court.

14. It is further urged that the recovery was effected from the floor, which was in possession of the owner of the building, i.e. Atma Ram. It is a matter of record, as stands proved by Purshottam Sharma (PW-8) that the third and the fourth floors of the bulding are let out by Atma Ram to Laxmi Kant. Reference of the floors in the statement is made by counting the number of storeys from the level below the road. Hence, there is no contradiction at all.

15. It is not the case of the accused that the contraband substance actually belonged to Laxmi Kant or Atma Ram. Prosecution has been able to establish that the accused were running the Dhaba.

16. Not only that, Court finds the prosecution case to have been supported by other corroborative evidence. FIR (Ex.PW-12/B) stood promptly recorded, as is evident from the testimony of HC Sahi Ram and Inspector Kamal Chand. Also Special Report (Ex.PW-13/A) stood sent to the Superior Authorities, which fact is evident from the testimony of HC Aditya Ram.

17. Contraband substance was resealed, as is evident from the testimony of Inspector Kamal Chand, who states that upon receipt of the contraband substance, he resealed the same with his own seal of seal impression 'N' and resealing certificate (Ex.PW-12/F) was prepared to such effect. From the testimony of HC Prakash Chand and Constable Joginder Singh, it is apparent that the contraband substance was deposited in the Malkhana and entries in the Malkhana Register ((Ex.PW6/A & 6/B) were also made. NCB form (Ex.PW-6/#E) also stood deposited with him. The case property was sent to the Forensic Science Laboratory, Junga, through Road Certificate. Report of the Expert (Ex.PW-14/C) reveals that the case property, sealed with separate seal impressions, was received in the Laboratory. The seals were intact. The witnesses have deposed that the case property remains safe and untampered.

18. It is further urged that in the statement, under the provisions of Section 313 of the Code of Criminal Procedure, no specific question on recovery of the contraband substance was put to the accused. The contention only needs to be repelled. Perusal of the statement, under the provisions of Section 313 of the Code of Criminal Procedure, reveals that the accused was informed of the recovery of the contraband substance vide seizure memos (Ex.PW-1/C & 1/E) and recovery of the contraband substance from the Dhaba, where the accused were found. As such, the accused were fully aware of the prosecution case.

19. Contention that the accused was charged under different Section of the Act, is also of no merit. Simply because wrong Section is referred to in the chargesheet, itself cannot be a ground to acquit the accused, more specifically when no prejudice is caused, as they were fully aware of the prosecution case.

20. Submission to the effect that non-production of the original seal would render the prosecution case to be fatal, in the light of the law laid down in *State of H.P. v. Sunder Singh,* 2014(2) HLJ 1293, is tenable in law, in view of the fact that the prosecution has proved on record and samples of the seal (Ex.PW-1/D).

21. From the material placed on record, it stands established by the prosecution witnesses that the accused are guilty of having committed the offences charged for. There is sufficient, convincing, cogent and reliable evidence on record to this effect. The circumstances stand conclusively proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of the accused stands proved beyond reasonable doubt to the hilt. The chain of events stand conclusively established and lead only to one conclusion, i.e. guilt of the accused. Circumstances when cumulatively considered fully establish completion of chain of events, indicating the guilt of the accused and no other hypothesis other than the same. It cannot be said that accused are innocent or not guilty or that they have been falsely implicated or that their defence is probable or that the evidence led by the prosecution is inconsistent, unreliable, untrustworthy and unbelievable. It

cannot be said that the version narrated by the witnesses in Court is in a parrot-like manner and hence is to be disbelieved.

22. In my considered view, prosecution has been able to establish the guilt of the accused, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence.

23. In the alternative, learned counsel for the accused has submitted that the sentenced imposed by the trial Court is on the higher side and that the same be reduced to imprisonment for a period of 2½ years. Keeping in view the nature of the offence and the quantity so recovered from the accused persons, no case for reduction in sentence is made out.

24. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties. There is no illegality, irregularity, perversity in correct and/or in complete appreciation of the material so placed on record by the parties. Hence, the appeal is dismissed. Appeal stands disposed of, so also pending application(s), if any.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

NTPC Ltd. .....Appellant.
Versus
Kirpa and others .....Respondents.

RFA No. 98 of 2009 with
RFA Nos. 99 to 109 of 2009.
Reserved on: 04.01.2016.
Decided on: 06.01.2016.

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for the construction of Kol Dam- compensation at the flat rate of Rs. 3,25,528.37/- per bigha was awarded by the Land Acquisition Collector- the claimant sought reference and Reference Court enhanced the compensation to Rs. 5 lacs per bigha with statutory benefits- it was admitted case of the parties that no sale transaction had taken place in Mohal Ropa at the time of publication of Notification- ACC Cement plant is at a distance of of 2 ½ -3 km. from the acquired land and Power House Dehar is situated at a distance of 2.5-3 kms from the acquired land- Villagers had sold their land by way of private negotiation in favour of HP PWD for consideration of Rs. 4,62,000/- per bigha- in adjacent Mohal, the compensation was awarded @ Rs. 4,35,447.26 /- per bigha- held, that in these circumstances, the compensation was correctly assessed by the Reference Court- appeal dismissed.

(Para-16 to 19)

For the appellant(s): Mr. Neeraj Gupta, Advocate.
For the respondents: Mr. N.K. Sood, Sr. Advocate with Mr. Aman Sood and Mr. Varun Rana, Advocates for respondents No. 1 to 3.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

Since common questions of law and facts are involved in these regular first appeals, the same were taken up together for hearing and are being disposed of by a common judgment.

2. These regular first appeals are directed against the common judgment of the learned Presiding Officer, Fast Track Court, Mandi, Distt. Mandi, H.P., dated 17.1.2009 in Ref. Petition Nos. 78 of 2002, 74 of 2005, 82 of 2002, 76 of 2005, 79 of 2002, 75 of 2005, 83 of 2002, 77 of 2005, 81 of 2002, 132 of 2005, 80 of 2002, 133 of 2005, 89 of 2002, 134 of 2005, 88 of 2002, 135 of 2005, 87 of 2002, 137 of 2005, 84 of 2002, 136 of 2005, 85 of 2002, 138 of 2005, 86 of 2002, 139 of 2005.

3. "Key facts" necessary for the adjudication of these regular first appeals are that the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued on 7.12.2000. It was published in the Rajpatra on 12.12.2000. It was also published in the Newspapers "Amar Ujala" and "The Tribune" on 14.12.2000 and 15.12.2000, respectively. Public notice was issued on 8.1.2001. Consequently, notification under Sections 6 & 7 of the Act were issued on 23.4.2001 and published in Rajpatra on 12.5.2001. It was also published in two newspapers i.e. "Divya Himachal" and "Indian Express" on 2.5.2001. Notices under Section 9 of the Act were issued to the interested holders on 12.7.2001. The Land Acquisition Collector awarded a flat rate of Rs. 3,25, 528.37/- per bigha to the respondents claimants on 12.10.2001.

4. The claimants, feeling aggrieved by the award dated 12.10.2001, filed reference petitions before the learned Presiding Officer, Fast Track Court, Mandi, Distt. Mandi, H.P. According to them, they were given inadequate compensation by the learned Collector. The value of their land was Rs. 25,00,000/- per bigha. The land acquired from the claimants would be submerged in the water by Kol Dam. The land adjacent to Sundernagar Tatapani road is rich in minerals. The sale transactions of Mohal Dhawal, which land is not similar to the acquired land was wrongly considered to work out the market value of the land by the Collector. The sale transaction of Mohal Kyan which land is same vis-a-vis land of Mohal Ropa and higher in value were wrongly ignored by the Collector while assessing the market value of the land.

5. The appellants contended that the market value worked out by the Collector was correct, adequate and just. The Collector while working out the market value of the land of this Mohal has taken into consideration all aspects and surrounding circumstances.

6. The issues were framed by the learned Reference Court on 18.6.2004. The learned Reference Court enhanced the compensation from Rs. 3,25,528.37/- per bigha to Rs. 5,00,000/- per bigha, with statutory benefits. Hence, these regular first appeals.

7. Mr. Neeraj Gupta, Advocate, has vehemently argued that the Reference Court has wrongly relied upon sale deeds Ext. P-1 to Ext. P-9, Ext. PA, Ext. P-10 to Ext. P-14 and Ext. PW-5/A, while determining the market value of the acquired land. According to him, the transactions pertaining to contiguous Mohals Kyan and Dhawal were required to be taken into consideration by the learned Reference Court. He has supported the award made by the Collector. On the other hand, Mr. N.K.Sood, Sr. Advocate, has supported the award dated 17.1.2009.

8. I have heard learned Advocates for the parties and gone through the award and records of the case(s) carefully.

9. PW-1 Khazana Ram deposed that their land was acquired by the Kol Dam Project. It was situated in Mohal Ropa. The possession of the land was taken about 4-5 years back i.e. in December, 2000. The land was irrigated. There is BBMB Power House, Slapper and ACC Cement Plant at Barmana, in close vicinity of the acquired land. The price of the land was 10-11 lacs per bigha. They have been awarded compensation of the land at the rate of Rs. 3.20 lacs per bigha. Kyan Mohal is adjacent to their Mohal, having common

boundary and having land of lesser quality than their land and for Mohal Kyan compensation has been awarded at the rate of Rs. 6 lac per bigha. In his cross-examination, he admitted that Kol Dam authorities started visiting their area about 10-11 years back. He denied the suggestion that in the year 2000, the land prices in their Mohal was not more than Rs. 15-20,000/- per bigha. The ACC Cement Plant, Barmana is at a distance of about 2 ½ - 3 kms from their Mohal.

10. PW-2 Ganpat Ram deposed that they were having four gharats (water mill) in village Ropa belonging to Kirpa Ram, Raghu Ram, Sher Singh and Sarvan Kumar etc. They have not been paid any compensation for loss of income and only price of structures has been paid. Paddy, ginger and vegetables etc. are sown in the area. Their land is near to ACC Barmana, Dehar Power Plant. The price of land in their area is Rs. 10-12 lacs per bigha. In the adjoining Mohal, compensation was awarded at the rate of Rs. 5 lacs per bigha. They should be paid compensation on the value of land of Kyan.

11. PW-3 Lekh Ram deposed that he has purchased land in village Kyan vide sale deed Ext. PA for sale consideration of Rs. 1,20,000/-. He had enquired about the land price at village Ropa and was told that the value of the land was Rs. 8 lacs per bigha and then he went to village Kyan and found the rate of Rs. 40,000/- per biswa. He, therefore, purchased 3 biswas of land for Rs. 1,20,000/-.

12. PW-4 Sarvan deposed that in village Ropa, Government purchased land from him. 15 families sold land to the Government at the rate of Rs. 4,62,000/- per bigha for the construction of the road. The agreement was executed in December, 2002 and the same was made in 2003. They were demanding price at the rate of Rs. 10,00,000/- per bigha but for want of budget, Government insisted at the rate of Rs. 4,62,000/-. The Government purchased 8-10 bighas of land.

13. PW-5 Sant Ram deposed that he remained Pradhan w.e.f. 1985 to 22.1.2006. According to him, the acquired land falls in his Panchayat. In the year 1998-99, there was an agreement between HP PWD and the villagers for selling the land to HP PWD and they were demanding Rs. 10 lacs per bigha in Mohal Ropa. Their land in Mohal Ropa is irrigated one and they have been growing vegetables etc and finally in the year 1999, the land was agreed to be sold for Rs. 4,62,000/- per bigha. He proved sale deed vide Ext. PW-5/A.

14. PW-6 Sarvan Kumar and PW-7 Sher Singh deposed that they were earning Rs. 4,000/- to 5,000/- per month from the Gharats (water mill). The acquired land price was Rs. 10 lacs per bigha.

15. RW-1 Partap Singh deposed that he remained Tehsildar at Sundernagar w.e.f. March, 2000 to November, 2002. He proved Notifications Ext. RW-1/A to Ext. RW-1/O, Notices under Section 9 of the Act Ext. R-1 to R-3 and sale deeds Ext. RA to RD. In his cross-examination, he deposed that he has no knowledge on what basis the market value of the acquired land was assessed by the Collector.

16. It is admitted case of the parties that no sale transaction has taken place in Mohal Ropa at or about the time of publication of Notification under Section 4 of the Act and the Collector had awarded flat rate of Rs. 3,25,828.37 paise per bigha. It has come on record that ACC Cement plant is at a distance of 2 ½ -3 km. from the acquired land. Power House Dehar is also situated at a distance of 2.5-3 kms from the acquired land.

17. It is duly proved that the villagers of Ropa have sold their land to HP PWD vide sale deeds Ext. P-1 and Ext. PW-5/A dated 25.10.2002 for consideration of Rs. 4,62,000/- per bigha by private negotiations. The sale deeds were executed by HP PWD in

the year 2002. It establishes that in Mohal Ropa, the market value of land has substantially increased. In this case, the notification has been issued under Section 4 of the Act on 7.12.2000. The sale deeds Ext. P-1 and Ext. PW-5/A were in close proximity of acquired land of notification issued under Section 4 of the Act.

18. Mr. N.K.Sood, Sr. Advocate, has drawn the attention of the Court to Award No. 2 of 2002 vide Ext. P-15. Award No. 2 of 2002 pertains to the acquisition of land in village Kyan for Kol Dam Hydel Project. The compensation was awarded at the rate of Rs. 4,35,447.26 paise per bigha. The notification under Section 4 of the Act, as noticed hereinabove, by acquiring the land of Village Ropa, was also published on 11.12.2000. Mohal Kyan is adjoining to Mohal Ropa. It has also come on record that village Ropa is having better quality of land, since it is irrigated vis-à-vis Mohal Kyan. The HP PWD has already purchased land at village Ropa for a consideration of Rs. 4,62,000/- per bigha. The land of Mohal Kyan was though sold in small plots, in the year 2000, but for approximate price of Rs. 40,000/- 50,000/- per biswa. The learned Reference Court has correctly taken into consideration the sale transactions made vide sale deeds Ext. P-1 and Ext. PW-5/A and award No. 2 of 2002 Ext. P-15, while determining the market value of the acquired land of the claimants.

19. Mr. Neeraj Gupta, Advocate, has placed strong reliance upon sale deeds Ext. RA to Ext. RD. These sale deeds were placed on record by RW-1 Partap Singh. RW-1 Partap Singh, in his cross-examination, has admitted that he has no knowledge on what basis the market value of the acquired land was assessed by the Collector. Sale deed Ext. RA pertains to Mohal Kyan, Ext. RB pertains to Mohal DPF Dhawal, Ext. RC pertains to village Kyan and Ext. RD pertains to Mohal Kyan. The Court has already noticed that the land of village Ropa was superior vis-à-vis Kyan. Village Ropa and Kyan share common boundary. The land at village Ropa itself has been purchased by the State Government for consideration of Rs. 4,62,000/- vide sale deed Ext. P-15, which also pertains to village Kyan. This land was also acquired for the construction of Kol Dam. The Reference Court has correctly assessed the market value of the land. There is no occasion for this Court to interfere with the well reasoned award of the Reference Court dated 17.1.2009.

20. Accordingly, there is no merit in these appeals and the same are dismissed. Pending application(s), if any, shall also stand disposed of. No costs.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Sanjay Kumar ... Petitioner
Versus
Smt. Pushpa Devi ... Respondent

CMPMO No. 156 of 2015
Reserved on : 5.1.2016
Date of Decision : January 6, 2016

Constitution of India, 1950- Article 226- **Himachal Pradesh Urban Rent Control Act, 1987-** Section 14- Rent Controller found the respondent in arrears of rent and ordered the eviction on the ground of non-payment of rent- Rent Controller directed that tenant will not be evicted from the premises if he pays the arrears within a period of 30 days from the date of the order- Rent Controller further directed that memo of cost be prepared - an amount of Rs.117/- was shown as cost in the memo of the cost- landlord claimed that tenant had not

deposited the amount of the cost and the interest from the date of order- Rent Controller accepted the plea and ordered the issuance of warrant of possession- held, that Rent Controller had not quantified the amount of cost but had only shown the arrears of rent along with interest- the tenant is under an obligation to pay the arrears of rent, cost and interest- once the cost of Rs.117 was shown in the memo of cost, which was supplied along with order, the tenant was under obligation to pay the amount of cost to the landlord- failure to pay the amount of cost will result in the eviction of the tenant- tenant was also bound to pay the interest on the amount due till the payment of the same- Rent Controller had rightly ordered the eviction- petition dismissed. (Para-8 to 38)

Cases referred:

Madan Mohan & another vs. Krishan Kumar Sood [1994 Supp. (1) SCC 437
Shrimati Asha Gupta vs. Shri Yas Paul, 2000 (3) Shim. L.C. 183
Bilasi Ram vs. Bhanumagi, 2007 (1) Shim. L.C. 88
Wazir Chand vs. Ambaka Rani & another, reported in 2005 (2) Shim. L.C. 498
Rewat Ram vs. Ashok Kumar & others, 2012 (3) Shim. L.C. 1265
Om Parkash v. Sarla Kumari and others, 1991(1) Shim LC 45
Satsang Sabha, Akhara Bazar, Kullu vs. Shrimati Kartar Kaur, Latest HLJ 2003 (HP) 1006
Jang Singh vs. Brij Lal & others, AIR 1966 SC 1631
A. R. Antulay vs. R. S. Nayak & another, (1988) 2 SCC 602
Johri Singh vs. Sukh Pal Singh & others, (1989) 4 SCC 403
Rajasthan & another vs. Surendra Mohnot & others, (2014) 14 SCC 77
Hindustan Petroleum Corporation Limited vs. Dilbahar Singh, (2014) 9 SCC 78

For the petitioner : Mr. G. C. Gupta, Senior Advocate with Mr. Ramakant Sharma, Advocate, for the petitioner.
For the respondent : Mr. Bhupinder Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate, for the respondent.

The following judgment of the Court was delivered:

Sanjay Karol, J.

Smt. Pushpa Sharma (landlady) filed a petition for ejectment against Prabhat Kumar (tenant) and Sanjay Sharma under the provisions of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as the "Act").

2. The Rent Controller-II, Dehra, Distt. Kangra, HP, in terms of judgment dated 19.6.2014, passed in Rent Petition No. 3/11/06, titled as *Pushpa Sharma vs. Prabhat Kumar & others*, allowed the petition on a limited ground of non payment of rent. Operative portion of the order reads as under:-

> "As a sequel to my findings on various issues that have been framed between the parties, the Respondents are found in arrears of rent at the rate of Rs. 700/- per month with interest @ 9% per annum since April, 2004 and therefore the total arrear is calculated to be a sum of Rs. 1,24,790/-, which is due and payable by the Respondents to the applicant regarding the demised premises and for non-payment of these arrears the respondents are ordered to be evicted from the demised premises. It is made clear that in case the Respondents pay the rent due from them to the applicant regarding the demised premises as calculated above, within a period of 30 days from the

date of this order, this order of eviction shall not be available for execution. The application accordingly stands disposed of. Let a Memo of Costs be drawn."

3. Undisputedly, pursuant thereto, memo of costs was drawn which in toto, is reproduced as under:-

"DECREE SHEET IN ORIGINAL SUIT/MEMO OF COSTS"

IN THE COURT OF AKSHI SHARMA, CIVIL JUDGE (JUNIOR DIVISION)-CUM-RENT CONTROLLER COURT NO. II, DEHRA, DISTRICT KANGRA-H.P.

RENT PETITION No. 3/11/06

Smt. Pushpa Sharma D/o Sambhu Ram Sharma, Resident of Jawalamukhi, Tehsil Dehra, District Kangra, H.P. ... ... Petitioner.

-vs-

1. Parbhat Kumar s/o Bakshi Ram, Mandir Road, Ward No. 2, Jawalamukhi, Tehsil Dehra, District Kangra, H.P. at present R/o Rainkha P.O. Sihorpain, Tehsil Dehra, District Kangra, H.P.

2. Sanjay Sharma s/o Shri Bakshi Ram, Mandir Road, Ward No. 2 Jawalamukhi Tehsil Dehra, District Kangra, H.P. ... ... Respondents.

Claim for petition for eviction of tenant for non-payment of rent from April, 2004 to Aug., 2006 to the tune of Rs. 20,300/- Under Sec. 14(2)(i) and also for sub-letting of premises U.S. 14(2)(ii)(a) of the H.P. Urban Rent Control Act, 1987.

This petition coming on this day for final disposal before me (Akshi Sharma, Civil Judge (Jr. Div.)-cum-Rent Controller Court No. 2, Dehra District Kangra, H.P. in the presence of Shri H.C. Uppal, Adv. for the petitioner and Shri. K.K. Sarmai, Advocate, for the respondents. It is ordered that the Respondents are found in arrears of rent at the rate of Rs. 700/- per month with interest @ 9% per annum since April, 2004 and therefore the total arrear is calculated to be a sum of Rs. 1,24,790/-, which is due and payable by the respondents to the applicant regarding the demised premises and for non-payment of these arrears the respondents are ordered to be evicted from the demised premises. It is made clear that in case the Respondents pay the rent due from them to the applicant regarding the demised premises as calculated above, within a period of 30 days from the date of this order, this order of eviction shall not be available for execution. The application accordingly stands disposed of.

Given under my hand and the seal of the court, this 19th day of June, 2014.

Sd/-
Rent Controller-II,
Dehra, District Kangra, H.P.

MEMO OF COSTS.

Petitioner		Respondents	
1. Stamps on petition	**80.00**	**1. Stamps on petition**	**Nil.**
2. Stamp for service	**13.00**	**2. Stamp for service**	**10.00**
3. Stamp on P.A.	**06.00**	**3. Stamp on Power**	**12.00**

4. Rent Arrears	**124790.00**	**4. Miscellaneous**	**42.00**
5. Miscellaneous	**18.00**		
Total	**124907.00**	**Total**	**64.00**

Sd/-
Rent Controller-II,
Dehra, District Kangra, H.P."
[Emphasis supplied]

4. Finding the tenant to have defaulted in complying with the statutory provisions, the landlady filed an application for execution of the order/decree, pleading non payment of Rs.117/- as cost and Rs.936.80p as interest (this being the amount from the date of passing of the order till the date of deposit), which was resisted by the tenant on the ground that in terms of order dated 19.6.2014 so passed by the Rent Controller (Civil Judge, Jr. Division) a sum of Rs.1,24,790/- stood deposited on 15.7.2014, which was within the statutory period of 30 days.

5. Vide impugned order dated 6.5.2015 passed by the Rent Controller Dehra, Distt. Kangra, H.P., in Execution Petition No. 37/2014, titled as *Smt. Pushpa Devi vs. Sanjay Kumar*, such application stands allowed with the issuance of warrants of possession.

6. Assailing the same, Mr. G.C. Gupta, learned Senior Advocate, assisted by Mr. Ramakant Sharma, learned counsel for the petitioner, argues that:-

(i) The amount due, as quantified by the learned Rent Controller stood deposited by the tenant. This was in line with the ratio of law laid down by the apex Court in *Madan Mohan & another vs. Krishan Kumar Sood* [1994 Supp. (1) SCC 437].

(ii) Failure on the part of the Rent Controller to quantify the component of costs and the interest (from the date of passing of the order up to the date of deposit) cannot be a ground or reason good enough to evict the tenant.

(iii) Costs quantified in the decree sheet/memo of costs, was a ministerial function and cannot be said to be an order passed by the Rent Controller indicating the 'amount due' as explained in *Madan Mohan (supra).*

7. On the other hand Mr. Bhupinder Gupta, learned Senior Advocate, assisted by Mr. Janesh Gupta, learned counsel for the respondent, while supporting the order for the reasons assigned therein, elaborated that preparation of a decree sheet, detailing the memo of costs, is part of a judicial function and that memo of costs is part of an order of eviction. In any event and regardless of the directions contained in the order, statutory interest was required to be paid from the date of passing of the order, till the time of deposit of the amount due, which, in any case, was not done.

8. Evidently in the order dated 19.6.2014, the Rent Controller did not quantify the amount of costs payable by the tenant. Only the amount of arrears of rent, alongwith interest @ 9%, due and payable w.e.f. April, 2004, till the date of passing of the order, were calculated and quantified to be a sum of Rs.1,24,790/-. This amount was determined to be the total arrears due and payable by the tenant. To this extent submission made by Mr. G. C. Gupta, learned Senior Advocate is factually correct.

9. However, contention that the tenant was under an obligation to pay only this amount is legally unsustainable.

10. Statutory provisions are unambiguously clear. (i) There is a legal obligation upon the tenant to comply with the statutory provisions to avoid ejectment from the premises. (ii) The Rent Controller had also directed the memo of costs to be drawn, which undisputedly was so done, the very same day, wherein not only the amount of arrears due and payable but also the costs stood quantified. Thus the total amount which the Rent Controller himself quantified was Rs.1,24,907/- [Rs.1,24,790/- (arrears) plus Rs.117 (costs)] and not Rs.1,24,790/-.

11. It is not the case of the tenant that memo of costs was not supplied to him alongwith the copy of the order passed by the Rent Controller. In fact, memo of cost is part and parcel of the order, which in fact becomes executable.

12. For determining the controversy in issue, the relevant provision of the "Act" is reproduced as under:-

> "Section 14 (1). A tenant in possession of a building or rented land shall not be evicted there from in execution of a decree passed before or after the commencement of this Act or otherwise, whether before or after the termination of the tenancy, except in accordance with the provisions of this Act.
>
> (2). A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied –
>
> (i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:
>
> Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at the rate of 9 percent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;
>
> Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 percent per annum:
>
> Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non payment of rent due from him, shall not be evicted as a result of his order, if the tenant pays the **amount due** within a period of 30 days from the date of the order; or
>
> (ii) to (iv) … … ; or
>
> (v) … … ;
>
> The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:"
>
> **[Emphasis supplied]**

13. There is no ambiguity in the statutory provisions, which are clear, self explanatory and self serving. If the amount of arrears alongwith interest is paid/tendered by the tenant within the statutory period, he is saved from being evicted from the demised

premises. The "Act" itself provides two opportunities to the tenant for avoiding the order of ejectment. First, prior to the passing of the order of ejectment and second after it is so done.

14. The apex Court in *Madan Mohan (supra)* qualified the "amount due" occurring in the third proviso to clause (i) of sub-Section (2) to mean the amount due on and up to the date of passing of the order of eviction. It would not only take into account the arrears of rent giving rise to the cause of action for filing a petition for ejectment, but also include the rent accumulated till the passing of the order in such petition for ejectment. The Court further held that the third proviso to clause (i) of sub-section (2) of Section 14 should also receive an interpretation which would safeguard the rights of both the landlord and tenant, for, the protection given in the Act is not to give licence for continuous litigation and bad blood. To avoid any ambiguity, Court observed as under:

> "15. In such cases it will be advisable if the controller while passing the order of eviction on the ground specified in clause (i) of sub-Section (2) of Section 14 of the Act specifies the "amount due" till the date of the order and not merely leave it to the parties to contest it after passing of the order of eviction as to what was the amount due.
>
> 16. Surely the Rent Control Acts, no doubt, are measures to protect tenants from eviction except on certain specified grounds if found established. Once the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood."
>
> [Emphasis supplied]

15. In *Shrimati Asha Gupta vs. Shri Yas Paul,* 2000 (3) Shim. L.C. 183, this Court had to deal with a case where the Rent Controller, while passing the final order failed to quantify the amount fallen due during the pendency of the eviction petition. In an appeal filed by the landlord, the error stood corrected and as such the tenant was directed to pay the amount due, including the rent due and payable up to the date of passing of the order, alongwith interest and cost, within a period of 30 days. Alleging that the appellate Authority had no jurisdiction to extend the statutory period of time, the Court on the doctrine of merger, repelled the same. (Para – 31)

16. While dealing with the case of a tenant where there was non compliance of the statutory provisions, in depositing the entire amount due, this Court in *Bilasi Ram vs. Bhanumagi,* 2007 (1) Shim. L.C. 88 observed that in the light of authoritative pronouncement in the case of *Wazir Chand vs. Ambaka Rani & another,* reported in 2005 (2) Shim. L.C. 498, based upon and in the light of law laid down in *Madan Mohan (supra)*, the expression "amount due" occurring in the third proviso includes the arrears of rent, the interest thereupon @ 9% per annum and the amount of costs. If the tenant fails to deposit the same within a period of 30 days from the date of the order, the only option available in law is to enforce the eviction order. The Court observed that "whether the shortfall is Rs.1/- or the shortfall is more than Rs. 1/-, if there is any shortfall in the deposit of the amount, the eviction order has to be executed, because by not depositing the amount due in its entirety, the tenant forfeits the concession granted to him under the aforesaid third proviso and the only option thereafter is to execute the eviction order".

17. In *Rewat Ram vs. Ashok Kumar & others,* 2012 (3) Shim. L.C. 1265, this Court was dealing with a case where the tenant was in default of Rs.8.62 paise. Since the default was in breach of the statutory protection, it directed execution of the order passed by

the Rent Controller and while doing so, it reiterated the formula for calculating interest on the arrears of rent, by observing as under:

> "13. In fact as per the law now laid down it is obvious that the amount due shall not only include arrears up to the date of the filing of the petition but must include the arrears of rent up to the date of deposit of the amount. However, I cannot loose sight of the fact that the present petition was decided by the Rent Controller in the year 1999 and he did not have the advantage of the judgments which are being relied by me. He, therefore, worked out the arrears from the date when the rent was not paid till the date of institution of the petition and he in clear cut terms held that the tenant was in arrears of rent of Rs. 1050/-. The tenant has deposited this amount of Rs. 1050/- along with interest. The only question is whether he has deposited the full amount of interest or not since, there was a clear cut order that the amount due as arrears is only Rs. 1050/-. In case the landlord was aggrieved by such an order he could have approached the Appellate Court but in an execution proceedings cannot claim that the amount due more than Rs. 1050/-. Therefore, the amount due as per the order of the Tribunal was Rs. 1050/- as arrears of rent, the interest thereupon and costs of Rs. 400/-. There is an acknowledged formula for calculating interest on arrears of rent because rent accrues at the end of every month and interest on each month's rent will be different. <u>This formula reads as follows:</u>
>
> <u>Rent x No. of months x (No. of months+1) x 9/2 x 12 x 100</u>.
>
> 14. In this case, the arrears of rent have been calculated Rs. 1050/-. The only question is with regard to the interest payable on such amount. Admittedly, the rent was paid after 42 months. Therefore, the interest payable is 50 x 42 x 43 x 9/2 x 12 x 100 = 338.62. Costs of Rs. 400/- were also awarded.
>
> Therefore, the total amount payable was Rs. 1050+costs of Rs. 400 + interest on the arrears of rent Rs. 338.62 i.e. Rs. 1788.62/-. As against this only an amount of Rs. 1780/- was deposited and the calculations given by the learned Court are totally wrong. Therefore, the short fall was of Rs. 8.62 paise." [Emphasis supplied]

18. To settle the incongruous situation, which had arisen, owing to an apparent conflict between the judgment rendered by a Two-Judge Bench of this Court in *Om Parkash v. Sarla Kumari and others,* 1991(1) Shim LC 45, wherein it was held that the expression 'the amount due' occurring in the third proviso to Section 14(2)(i) comprises only the arrears of the 'rent due' and not the arrears of rent together with interest at the rate of 9 per cent per annum on such arrears and the cost of eviction petition as assessed by the Controller, and the subsequent decision rendered by the Apex Court in *Madan Mohan (supra)*, a three-Judge Bench of this Court in *Wazir Chand (supra)*, observed as under:

> "7. The legislative intent can also be clearly discerned from the fact that in the third proviso the Legislature advisedly did not use the expression "rent due" or "arrears of rent due". Had the Legislature used either of these two expressions or any other similar expression in the third proviso, perhaps one could argue that the legislative intent was that the tenant should be held liable to pay the rent or the arrears of rent only. But by using the expression "amount due" in the third proviso the Legislature clearly intended that the arrears of rent alongwith interest and costs, as has been stipulated in the first proviso, should be paid by the tenant after the eviction order is passed

against him if the tenant wanted to avoid the enforcement or the execution of the eviction order.

Based upon the aforesaid observations, therefore, we have no hesitation in holding that the expression "amount due" as occurring in the third proviso includes the arrears of rent uptil the date of the passing of the final eviction order, as also the interest upon such arrears of rent at the rate of 9 per cent per annum and the costs of the application as would be assessed by the Rent Controller. The Division Bench judgment of this Court in the case of Om Parkash v. Sarla Kumari and Ors. (supra) laying down ratio to the contrary and giving contrary interpretation to the expression "amount due", not being a good law is hereby over-ruled by us. We also declare that any other judgment of this Court adopting a contrary view or giving a contrary interpretation of the expression "amount due", not being a good law, shall stand over-ruled."

... ...

"9. Taking a cue from the aforesaid observations of their Lordships of the Supreme Court in Madan Mohan and Anr. v. Krishan Kumar Sood (supra), we hereby issue a binding direction to all the Rent Controllers in the State that whenever a Rent Controller passes an eviction order in terms of Section 14(2)(i) of the 1987 Act, it must in the same eviction order, in its concluding part specify the exact amount of rent payable by the tenant to the landlord, of course, alongwith interest and costs. Undoubtedly, based on the ratio in Madan Mohan and Anr. v. Krishan Kumar Sood (supra), the rent payable by the tenant to the landlord, which the Rent Controller would be specifying in the order of eviction would be the arrears of rent uptil the filing of the eviction petition under Section 14(2)(i) as well as the arrears of rent which have accumulated during the pendency of eviction petition, right up to the date of passing of the eviction order. The purpose behind the Rent Controller specifying in the eviction order the exact amount of rent payable by the tenant is to directly link it with the third proviso so as to effectively enable the tenant to know with certainty the amount that he is liable to pay to save his eviction."

19. In compliance of the aforesaid directions, in terms of the first proviso, the Rent Controller, in the operative portion of the order, has quantified the amount of arrears of rent and the interest due and payable thereupon, upto the date of passing of the order.

20. It is true that the amount of costs is not so quantified in the order, but then when one peruses the Memo of Costs, prepared on the same date and by the Rent Controller himself, one finds it to have been quantified. The expression "cost of application assessed by the Controller" evidently stands complied with. The Memo of Costs, under different heads does specify the amount due and payable by the tenant to be Rs.1,24,907/-, which, in the instant case, undisputedly was not deposited. Only a sum of Rs.1,24,790/- stood deposited by the tenant, in the Treasury, vide challan dated 15.7.2014. Thus, there was a shortfall of Rs.117/- on this count.

21. In the proceedings under the Act, the Rent Controller as also the appellate authority do pass the order on the application/appeal and prepare memo of cost(s). The order is only formal expression of a decision. To a limited extent, Section 25 of the Act makes certain provisions of the Code of Civil Procedure, applicable. Though technical rules and procedural law are not applicable to the proceedings before the Rent Controller, yet

general principles of CPC are made applicable. In the State of Himachal Pradesh, in terms of the Rules and Orders of the Punjab & Haryana High Court, as made applicable to the State of Himachal Pradesh [Volume (1), Chapter 11 Part C], expenses to be included in cost are defined. They are in Rule-6. In exercise of its powers, the Rent Controller quantifies the costs and prepares a memo which is formally known as "memo of costs". To this effect even a form is also circulated by the concerned authorities. Hence preparing of memo of costs cannot be said to be a ministerial act. Section 26 of the Act makes the order passed by the Controller executable as a decree of a civil court, which is also to exercise all powers as such. It is in this backdrop that the decree sheet/memo of costs is prepared by the Controller.

22. The words "tender" and "pay" have not been defined under the Act. This Court in *Satsang Sabha, Akhara Bazar, Kullu vs. Shrimati Kartar Kaur,* Latest HLJ 2003 (HP) 1006, observed as under:

> "16. In *Sheo Ram vs. Thabar* (AIR 1951 Punjab 309), the word tender has been defined to be offer of lawful money which must be actually produced to the creditor by producing and showing the amount to the creditor or to the person to whom the money is to be paid. A mere offer to pay does not constitute a valid tender. The law insists upon an actual, present physical offer.
>
> 17. The word 'pay' has been defined in *Parmeshri v. Atti,* (1957 PLR 318) to mean to give money or other equivalent in return for something or in discharge of an obligation."

23. The expression used in the third proviso is "pays" and not deposit. The Section itself does not provide for depositing the amount in the Court after passing of the order. As such the only meaning which can be given to the expression "pay" and "tender" is that the rent is to be directly paid to the landlady and not deposited in the Court. At this juncture it be only observed that the Act does provide a mechanism for depositing the rent in the Court. Sections 20 and 21 of the Act deal with the same. But then in the given facts and circumstances these provisions cannot be invoked, for there was neither any tender by the tenant nor any refusal by the landlady to accept the rent. Significantly no intimation of deposit of rent was sent to the landlady within thirty days from the date of passing of the order.

24. Conjoint reading of the first and the third proviso of Section 14(2)(i) of the Act mandates that the tenant is also required to pay the stipulated interest, not only till the date of the passing of the order, but till the date of payment of the amount due, which could not have been calculated by the Rent Controller for want of certainty, as it was left to the discretion of the tenant to deposit the same within thirty days from the date of passing of the order. As such, the tenant was duty bound to calculate interest thereupon, and pay or tender the same to the landlady.

25. This question of payment of interest for the period up to thirty days, from the date of passing of the order never came up for consideration in any of the decisions referred to hitherto before.

26. It is neither the intent nor the mandate of the legislature that after the parties finish off one round of litigation, they would be relegated to another round of litigation for recovery of the amount due, which would include the costs and interest.

27. Once the order of eviction is passed, the executing Court is duty bound to execute its orders and as laid down in *Madan Mohan (supra), Bilasi Ram (supra)* and *Rewat Ram (supra),* no question of equity or hardship would arise for consideration, at this stage.

28. Interest on the rent has to be calculated from the date when the amount of rent fell due and not the date of the institution of the petition or the passing of the order. Now in the instant case, the tenant was liable to pay interest, till the date of payment of the amount due. What is "amount due" is the arrears of rent, interest and the costs, as is so specified in the first proviso and clarified in *Madan Mohan (supra)*, wherein the Court held that the purpose behind the Rent Controller, specifying in the eviction order, the exact amount of rent payable by the tenant is to directly link it with the third proviso so as to effectively enable the tenant to know with certainty the amount that he is liable to pay to save eviction.

29. It is submitted on behalf of the petitioner that litigant cannot be allowed to suffer on account of the fault of the Judicial Officer who did not quantify the cost. Though not specifically argued but in effect maxim "*Actus curiae neminem gravabit*" is invoked.

30. What is this maxim, came up for consideration before the apex Court in its various judicial pronouncements. In *Jang Singh vs. Brij Lal & others,* AIR 1966 SC 1631 the apex Court held as under:-

> "6. ... ... It is therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is at least shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "*Actus curiae neminem gravabit*"."

31. A Constitution Bench of the apex Court in *A. R. Antulay vs. R. S. Nayak & another,* (1988) 2 SCC 602 has reiterated the principle by holding that an act of the Court shall prejudice no man as the maxim "*Actus curiae neminem gravabit*" is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. It further held as under:-

> "82. Lord Cairns in *Rodger v. Comptoir D'escompte De Paris* [(1869-71) LR 3 PC 465, 475: 17 ER 120] observed thus:
>
> > Now, their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression 'the act of the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case. It is the duty of the aggregate of those tribunals, if I may use the

> expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court.
>
> 83. This passage was quoted in the Gujarat High Court by D. A. Desai, J. speaking for the Gujarat High Court in *Soni Vrajlal v. Soni Jadavji* (AIR 1972 Guj. 148), as mentioned before. It appears that in giving directions on 16/02/1984, this court acted *per incuriam* inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger bench decision in *Anwar Ali Sarkar* case (1952 SCR 284) which was not adverted to by this court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiae,* we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."
>
> ... ...
>
> "103 The Privy Council in *Dehi Bakhsh Singh v. Habid Shah*, {(1913) ILR 35 All 331} pointed out that an abuse of the process of the court may be committed by the court or by a party. Where a court employed a procedure in doing something which it never intended to do and there is an abuse of the process of the court it can be corrected. Lord Shaw spoke for the Law Lords thus :
>
> > Quite apart from S. 151, any court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made.
>
> It was pointed out by the Privy Council in *The Bolivar* (AIR 1916 PC 85) that :
>
> > Where substantial injustice would otherwise result, the court has, in their Lordships' opinion, an inherent power to set aside its own judgments of condemnation so as to let in bona fide claims by parties. . . .
>
> Indian authorities are in abundance to support the view that injustice done should be corrected by applying the principle *actus curiae neminerm gravabit* - an act of the court should prejudice no one."

32. The apex Court in *Johri Singh vs. Sukh Pal Singh & others,* (1989) 4 SCC 403 had an occasion to deal with a case where there was a shortfall of deposit in the decretal amount. Dealing with the situation the Court observed as under:

> "20. In the third category of cases, namely, non-deposit of only a relatively small fraction of the purchase money due to inadvertent mistake whether or not caused by any action of the Court, the Court has the discretion under S. 148, C.P.C. to extend the time even though the time fixed has already expired provided it is satisfied that the mistake is bona fide and was not indicative of negligence or inaction as was the case in *Jogdhayan* vs. Babu Ram [(1983) 1 SCC 26]. The Court will extend the time when it finds that the mistake was the result of, or induced by, an action of the Court applying the maxim *'actus curiae neminem gravabit'* - an act of the Court shall prejudice no man, as was the case in *Jang Singh* (AIR 1966 SC 1631) (supra). While it would be necessary to consider the facts of the case to determine whether

> the inadvertent mistake was due to any action of the Court it would be appropriate to find that the ultimate permission to deposit the challaned amount is that of the Court."

33. In *State of Rajasthan & another vs. Surendra Mohnot & others,* (2014) 14 SCC 77, Hon'ble Mr. Justice Dipak Misra, J. speaking for the Bench observed as under:

> "28. We have already stated the legal position with regard to legal impact as regards the concession pertaining to the position in law. That apart, we think that an act of the Court should not prejudice anyone and the maxim *actus curiae neminem gravabit* gets squarely applicable. It is the duty of the Court to see that the process of the court is not abused and if the court's process has been abused by making a statement and the same court is made aware of it, especially the writ court, it can always recall its own order, for the concession which forms the base is erroneous."

34. The doctrine cannot be invoked in the instant case as there is no fault of the Court. It is true that the act of the Court should not prejudice anyone but it is also true that the process of the Court cannot be allowed to be abused by any person.

35. In the instant case can it be said that the petitioner is prejudiced on account of any of the acts of the Court? In my considered view – no, for the memo of cost so prepared by the Court is evidently clear. The lapse, if at all, is on the part of the petitioner who either under ill-advise or on account of his callous conduct deposited such amount which is not in consonance with the order and the Act.

36. As stands laid down by the Full Bench of this Court in *Wazir Chand (supra),* it is the duty of the tenant to be vigilant and explain the reason or cause for shortfall in the amount of deposit.

37. At the cost of repetition it is reiterated that protection under the Act is only till such time the tenant dutifully complies with the same. The third proviso necessarily has to be read conjunctively with the first proviso to the sub-Section. In the instant case, tenant did not pay the amount to the landlady. He directly, without tendering it to her and not on account of her refusal, deposited the amount in the Court, which he did purely at his risk, responsibility, so also consequences. It is not his case that on account of any legal advise it was so done.

38. A Constitution Bench of the Apex Court in *Hindustan Petroleum Corporation Limited vs. Dilbahar Singh,* (2014) 9 SCC 78 had an occasion to deal with the powers of the Court to examine the correctness or legality of the decisions rendered by the subordinate courts/tribunals. The Court observed as under:-

> "Whether or not a finding of fact recorded by the subordinate court/tribunal is "according to law", is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice." .....

39. There is neither any illegality nor any perversity warranting interference by this Court. In view of the aforesaid discussion, present petition is dismissed. Pending application(s), if any, also stand disposed of accordingly.

****

BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Sanju Ram S/o Sh. Bachitar Singh. ....Petitioner

Versus

State of H.P. ....Non-Petitioner

Cr.MPM No. 1864 of 2015
Order Reserved on 31.12.2015
Date of Order 06.01.2016

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 326 and 307 of the Indian Penal Code - petitioner filed an application for seeking bail -held that, bail is the rule and jail is the exception- taking into account the fact that the injured has also been discharged from the hospital, the petitioner is entitled for bail- the petition allowed. (Para 6 to 8)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration), AIR 1978 SC 179
The State Vs. Captain Jagjit Singh, AIR 1962 SC 253
Sanjay Chandra vs. Central Bureau of Investigation, 2012 Criminal Law Journal 702

For the petitioner: Mr. R.L. Thakur, Advocate
For the Non-petitioner: Mr. R.S. Verma, Additional Advocate General.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present petition is filed under Section 439 Code of Criminal Procedure for grant of bail in FIR No. 111 of 2015 dated 1.10.2015 registered under Section 324, 326 and 307 of the Indian Penal code in Police Station Lambagaon District Kangra H.P.

2. It is pleaded that petitioner is innocent and petitioner is not connected with any criminal offence. It is further pleaded that there is no independent witness to corroborate the version of the complainant. It is further pleaded that petitioner is falsely implicated in the present case. It is further pleaded that no recovery is to be effected from petitioner and no fruitful purpose will be served in case petitioner is kept in judicial custody. It is further pleaded that investigation is complete in the present case. It is further pleaded that petitioner is only bread earner of his large family consisting of his wife minor children and old parents. It is further pleaded that petitioner will not tamper with prosecution witnesses and will cooperate investigating agency. It is further pleaded that petitioner will abide all terms and conditions imposed by the Court. Prayer for acceptance of bail application is sought.

3. Per contra police report filed. As per police report FIR No. 111 of 2015 dated 1.10.2015 registered under Section 324, 326 and 307 of Indian Penal Code in Police Station Lambagaon District Kangra H.P. There is further recital in police report that Onkar Chand injured aged 45 years is driver by profession. There is further recital in police report that on 30.9.2015 at 8.30 A.M. injured Onkar Chand approached the shop at Maila in order to bring household articles. There is further recital in police report that when injured Onkar Chand was sitting upon bench outside the shop of Jameet Singh then Sanju Ram petitioner who is

mason by profession came and started altercation with injured Onkar Chand. There is further recital in police report that thereafter petitioner has inflicted injuries upon left arm and back portion of the body of injured Onkar Chand with iron Karandi (Sharp weapon). There is further recital in police report that thereafter blood oozed out from the arm of injured Onkar Chand. There is further recital in police report that thereafter wife of injured namely Reeta Devi brought the injured Onkar Chand in Ambulance to hospital situated at Jaisinghpur. There is further recital in police report that after discharge of injured Onkar Chand from hospital injured was associated with investigation process and site plan was prepared and photographs were obtained. There is further recital in police report that blood clot clothes of injured Onkar Chand took into possession vide seizure memo. There is further recital in police report that statements of prosecution witnesses recorded under Section 161 Code of Criminal Procedure. There is further recital in police report that opinion of Medical Officer obtained and as per opinion of Medical Officer injury No.1 was grievous in nature which was endanger to life of injured Onkar Chand. There is further recital in police report that petitioner will induce and threat prosecution witnesses. There is further recital in police report that there is resentment in the locality. Prayer for rejection of bail application sought.

4. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of non-petitioner and also perused the record carefully.

5. Following points arise for determination in this bail application:-

Point No. 1

Whether bail application filed under Section 439 Code of Criminal Procedure is liable to be accepted as mentioned in memorandum of grounds of bail application?

Point No. 2

Final Order.

Findings upon Point No.1 with reasons:

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and he did not commit any criminal offence cannot be decided at this stage. Same facts will be decided by learned trial Court after giving due opportunity to both the parties to adduce evidence in support of their version.

7. Submission of learned Advocate appearing on behalf of petitioner that investigation is complete and injured Onkar Chand stood discharged from hospital and on this ground bail application be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh. It was held in case reported in 2012 Criminal Law Journal 702 titled Sanjay Chandra vs. Central Bureau of Investigation*** **(Apex Court)** that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. In the present case injured Onkar Chand already stood discharged from the hospital and criminal trial will be concluded in due course of time Court is of the opinion that it is expedient in the ends of

justice to release the petitioner on bail. Court is also of the opinion that if the petitioner is released on bail at this stage then interest of State and general public will not be adversely affected.

8. Submission of learned Additional Advocate General appearing on behalf of non-petitioner that if petitioner is released on bail at this stage then petitioner will induce and threat the prosecution witnesses and will also commit similar offence and on this ground bail application be rejected is devoid of any force for the reasons hereinafter mentioned. Conditional bail will be granted to petitioner and condition will be imposed in bail order that petitioner will not induce and threat the prosecution witnesses. Court is of the opinion that if petitioner will flout the terms and conditions of bail order at later stage then prosecution will be at liberty to file application for cancellation of bail order in accordance with law as provided under Section 439 (2) Code of Criminal Procedure. Court is of the opinion that it is not expedient in the ends of justice to keep petitioner in judicial custody because investigation is complete and trial will be concluded in due course of time. In view of the above stated facts point No.1 is answered in affirmative.

Point No. 2 (Final Order):

9. In view of findings upon point No.1 bail application filed by petitioner under Section 439 Cr.P.C. is allowed and it is ordered that petitioner will be released on bail subject to furnishing personal bond to the tune of Rs. 1 lac with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner will join the proceedings of learned trial Court regularly till conclusion of trial in accordance with law. (ii) That petitioner will join investigation whenever and wherever directed to do so. (iii) That petitioner will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iv) That petitioner will not leave India without the prior permission of the Court. (v) That petitioner will not commit similar offence qua which he is accused. Petitioner will be released only if he is not required in any other criminal case. Bail application filed under Section 439 Cr.P.C. stands disposed of. Observations made in this order will not affect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

State of H.P .....Petitioner.
Versus
Dharam Chand .....Respondent.

Cr. MP(M) Nos. 1451 & 1452 of 2015.
Reserved on: 30.12.2015.
Decided on: 6th January, 2016.

Code of Criminal Procedure, 1973- Section 378(1) (b) & **NDPS Act, 1985** -accused was seen carrying a bag on his left shoulder, who turned back swiftly at the sight of the police- accused was apprehended on suspicion - search of the bag was conducted during which 3.500 kilograms of cannabis was recovered – trial Court acquitted the accused- held, that

despite availability of independent witnesses, none was associated by the Investigating Officer- the evidence regarding the retrieval of the case property from Malkhana to Court and back is also lacking which creates doubt regarding the identity of the case property – accused was rightly acquitted by the trial court - no ground made for granting leave to appeal- hence, leave to appeal refused- petition dismissed. (Para-9 to 14)

For the Appellant: Mr. P.M. Negi, Deputy Advocate General.
For the Respondent: Nemo.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge.

Cr.MP(M) No.1452 of 2015.

Heard. This application has been filed on behalf of the petitioner-State for condonation of delay of 10 days as has occurred in the institution of the appeal before this Court against the impugned judgment rendered on 02.06.2015 the learned Special Judge (II), Mandi, District Mandi, H.P. in Session Trial No.4/2013. Good, sufficient and abundant cause, which deterred or precluded the petitioner to move this Court within time, stands detailed in paragraphs No.2 and 3 of the application, whose contents stand duly supported by an affidavit. The said ground does not divulge of there being any element of deliberateness on the part of the petitioner to not move this Court within time. Accordingly, delay in the institution of the appeal before this Court stands condoned and the application stands allowed.

Cr.MP(M) No. 1451 of 2015.

2. The State of Himachal Pradesh stands aggrieved by the findings of acquittal recorded in favour of the respondent/accused by the learned Special Judge, (II), Mandi, Himachal Pradesh. Being aggrieved, it has sought the leave of this Court for instituting an appeal therefrom for assailing it.

3. Brief facts of the case are that on 1.1.2014, HC Jagdish, HC Hari Singh, HHC Suresh Kumar, HHC Sanjay Kumar, C. Vijay Kumar and C. Kamal Kishore were on patrolling duty who were going from Pandoh Dam to Deod side on foot. At about 4.30 p.m., when they reached near Pandoh Dam towards Kenchimore, the accused came from Kullu side having bag on his left shoulder. The accused stopped after seeing the police and started moving back swiftly. On suspicion, the accused was apprehended. No independent witnesses were there and therefore the bag of the accused was searched in front of police officials. On search 3kgs. And 800 grams of cannabis was recovered from the bag. The bag itself was sealed at the spot and case property was taken into possession. The NCB form-1 in triplicate was filled at the spot. Rukka was sent to the police station and FIR was registered. Other formalities were completed during investigation as required under the Narcotic Drugs and Psychotropic Substances Act (hereinafter to be referred as ND&PS Act for short).

4. On conclusion of the investigation into the offence allegedly committed by the accused, a report under Section 173 of the Code of Criminal Procedure stood prepared and filed in the Court.

5. The accused was charged by the learned trial Court for allegedly committing offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to in short as the Act). In proof of the prosecution case, the prosecution

examined 9 witnesses. On conclusion of recording of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure stood recorded by the learned trial Court, wherein the accused claimed innocence and pleaded false implication. The accused opted to lead defence evidence and in his defence he examined Inder Singh as DW-1.

6. On an appraisal of evidence on record, the learned trial Court, returned findings of acquittal in favour of the accused/respondent.

7. The State of H.P. stand aggrieved by the judgment of acquittal rendered by the learned trial Court. The learned Additional Advocate General has concerted to vigorously contend qua the findings of acquittal recorded by the learned trial Court being not based on a proper appreciation of evidence on record, rather, theirs being sequelled by gross mis-appreciation of material on record. Hence, he contends for leave being granted to the State of H.P. to institute an appeal therefrom for assailing it.

8. We have heard the learned Additional Advocate General at length and have also gone through the entire material on record.

9. Three Kilograms, 800 grams of cannabis stood recovered from bag, Ex.P-2 slung on the left shoulder of the accused. Recovery of the aforesaid item of contraband stood effectuated under recovery memo comprised in Ex.PW1/A. Even though the prosecution witnesses have deposed in tandem and in harmony qua each of the links in the chain of circumstances commencing from the proceedings relating to search, seizure and recovery till the consummate link comprised in the rendition of an opinion by the FSL on the specimen parcels sent to it for analysis, portraying proof of unbroken and unsevered links, in the entire chain of circumstances, hence it stands argued that given the prosecution case hence standing established, it would be legally unwise for this Court to acquit the accused.

10. Besides when the testimonies of the official witnesses, unravel the fact of theirs being bereft of any inter-se or intra-se contradictions hence, consequently they too stand espoused to enjoy credibility for sustaining thereupon findings of conviction recorded against the accused by the learned trial Court. Apparently, proof of the prosecution case is endeavored to be sustained on the strength of the unblemished testimonies of police witnesses. A close and studied perusal of the depositions of the police witnesses underscores the factum of theirs neither rendering a version qua the factum of recovery of contraband from the exclusive and conscious possession of the accused inconsistent with the manner thereof as recited in the F.I.R. for begetting a conclusion of hence their testimonies comprised in their respective examinations in chief being ridden with a vice of inter se contradictions vis-à-vis their testimonies comprised in their respective cross-examinations, rather lack of inconsistencies aforesaid render their respective testimonies on oath to be both unimproved as well as unblemished for hence implicit reliance being placed thereupon, nor when their depositions stand afflicted with any vice of intra se contradictions rather when they have deposed qua the manner of recovery of contraband from the alleged conscious and exclusive possession of the accused bereft of any disharmony or inconsistency gives leverage to an inference of hence the prosecution succeeding in sustaining its charge against the accused of cannabis weighing 3 Kgs. 800 grams standing recovered under recovery memo (PW-1/A) from his conscious and exclusive possession while his carrying it in a bag slung on his left shoulder.

11. However, even though the unblemished testimonies of the official witnesses who have hence proven the factum of recovery of Cannabis from the alleged conscious and exclusive possession of the accused while his carrying it in a bag slung on his left shoulder

stand on a solemn legal pedestal especially when their testimonies comprised in their respective examinations in chief are bereft of any taint of either inter se contradictions vis-à-vis their depositions comprised in their respective cross-examinations nor also when their testimonies stand un-ingrained with any vice of intra se contradictions necessarily then when their testimonies inspire confidence reinforcingly render their testimonies being amenable to implicit reliance being placed thereupon for concluding qua the guilt of the accused. Nonetheless before proceeding to place implicit reliance upon their testimonies, it is also imperative for this Court to gauge or discern from the available evidence on record qua availability of independent witnesses in the immediate vicinity of the locality where the proceedings relating to search, seizure and recovery of contraband from the alleged conscious and exclusive possession of the accused in the manner as deposed by the official witnesses stood launched and concluded. The Investigating Officer, is not obliged to associate independent witnesses in his holding proceedings for carrying out search and recovery of contraband from the alleged conscious and exclusive possession of the accused nor also the non- association of independent witnesses by the investigating officer in the proceedings relating to search and recovery of contraband from the alleged conscious and exclusive possession of the accused would oust or discount the probative worth of the testimonies of the official witnesses. However, when independent witnesses despite proven evidence of their availability in close proximity to the location where the proceedings relating to search and recovery of contraband from the conscious and exclusive possession of the accused stood launched or were concluded, stand not associated, such non association of independent witnesses by the Investigating Officer despite their proven availability would nurse an inference of their non association in the apposite proceedings by the Investigating Officer being both deliberate or intentional. Concomitantly also it would give succor to an inference of the Investigating Officer omitting to join independent witnesses despite their availability in the vicinity of the location where the proceedings relating to search and recovery of contraband from the conscious and exclusive possession of the accused stood launched or concluded, as he intended to smother the truth qua the genesis of the prosecution version. The genesis of the prosecution version would gain credence with this Court only when it is free from any taint of its standing reared by a partisan or a slanted investigation standing conducted by the investigating officer. The investigation carried out by the Investigating Officer would garner an element of slantedness or distortion when the investigating officer despite proven availability of independent witnesses in proximity to the site of occurrence deliberately omits to join them in the proceedings relating to search and recovery of contraband from the purported exclusive and conscious possession of the accused. Consequently, a slanted or a distorted investigation by the Investigating Officer would erode the genesis of the prosecution story. Now the apt evidence for discerning the factum of availability of independent witnesses in the immediate vicinity or in close proximity to the location or the site of search and recovery of contraband from the conscious and exclusive possession of the accused besides concomitantly of any omission to join them being deliberate as well as intentional, for sprouting a further inference of hence the investigation held by the Investigating Officer being both slanted and tainted besides distorted whereupon no reliance can be placed by this Court, stands comprised in the testimonies constituted in the cross-examination of PW-1 and PW-2**.**

12. A reading of the cross-examination of PW-1 surges forth an inference of the site of occurrence standing located on a National Highway and of thereon being a regular flow of traffic. Even though therein he has deposed of the Investigating Officer concerting to by stopping vehicles plying on the national highway solicit their participation in the apposite proceedings yet his efforts proving abortive arising from theirs refusing to accede to the solicitations of the Investigating Officer for their participation as witnesses in the apposite proceedings. Nonetheless, when there is no evidence on record denoting the factum of any

action standing initiated by the Investigating Officer against the passengers occupying vehicles stopped by him, who refused to accede to the entreaties purportedly made upon them by the Investigating Officer for their participation in the apposite proceedings constrains, an inference of PW-1 standing falsified when he communicates in his cross-examination, of the Investigating Officer by stopping vehicles plying on the national highway hence making serious beside arduous efforts to associate passengers occupying vehicles stopped by him at the national highway as witnesses in the apposite proceedings. In sequel, with falsity percolating the testimony of PW-1 comprised in his cross-examination of the Investigating Officer making concerted efforts to solicit the participation in the apposite proceedings of passengers occupying the vehicles which at the relevant stage plied on the national highway whereat apposite proceedings relating of search, recovery and seizure of the contraband were initiated and concluded by stopping the vehicles occupied by them. In aftermath, the ensuing effect thereof is of palpably the Investigating Officer not ever endeavouring in making any efforts to solicit the participation in the apposite proceedings of any independent witnesses despite their proven availability in the close proximity to the site of occurrence as a corollary arouses an inference of his deliberately and intentionally omitting to despite their availability join them as witnesses in the apposite proceedings. Even otherwise falsity to the aforesaid fact is lent by PW-2 contrarily in his cross-examination deposing of the Investigating Officer not concerting to join independent witnesses comprised in his stopping vehicles plying on the national highway for beseeching passengers occupying them to participate in the apposite proceedings. Moreover, with an emanation in the cross-examination of PW-2 of one or two dhaba's standing located in close proximity to the site of occurrence besides bespeaking therein of theirs incessantly standing frequented by customers whereas his underscoring in his cross-examination of the Investigating Officer omitting to join the customers thronging the dhabas located in close vicinity to the site of occurrence constrains an inference of the Investigating Officer deliberately and intentionally omitting to join them as witnesses in the apposite proceedings. Furthermore, the omission on the part of the Investigating Officer to join independent witnesses in the apposite proceedings despite their availability at the site of occurrence engulfs the prosecution case with a shroud of doubt besides renders it to display a slanted version emanating qua the genesis of the prosecution case whereupon no reliance is imputable.

13. The further omission on the part of the Police Officials as evident from their testimonies of theirs not purveying an opportunity to the accused for his holding their personal search prior to the Investigating Officer holding search of the bag held by him wherefrom 3 kg, 800 grams of cannabis stood recovered, especially when the aforesaid opportunity to the accused to hold a personal search of the police officials would subdue and mitigate any inference of the police officials planting 3 Kg, 800 grams of cannabis in bag, Ex.P-2 wherefrom it stood recovered under memo Ex.PW1/A. As a corollary its non affording to the accused boosts an inference of the entire proceedings being invented and manipulated and of 3 kg, 800 grams of cannabis standing recovered in a manner other than as portrayed by the prosecution.

14. Further more, the prosecution was required to prove the fact that the case property, as shown to PW—2, PW-7 and identified by them on its production in court by the learned P.P, being linkable to the case property as stood recovered from the site of occurrence in the manner as alleged by the prosecution. However, there is an omission in the statement of the learned PP while his seeking permission of the Court to open it in court for its being shown to PW-2 and PW-7, of it standing received by him from an official on its retrieval from the Malkhana concerned. Moreover, there is no evidence comprised in apposite entries qua its retrieval standing displayed in the apposite record of the Malkhana

concerned contemporaneous to its production in Court at the instance of the learned PP for its being shown to PW-2 and PW-7. Consequently, for omission on the part of learned PP while seeking the permission of the Court to open it for its being shown to PW-2 and PW-7 to make a statement before it of its standing received by him from the Malkhana concerned through a named official after its retrieval therefrom with an apposite contemporaneous entry standing recorded therein, facilitates an apt conclusion of the case property as shown to PW-2 and PW-7 being vulnerable to skepticism, in as much, as, it being not the case property as stood recovered at the site of occurrence from the conscious and exclusive possession of the accused. In addition a formidable conclusion is of the testimonies of PW-2 and PW-7 being ridden with a taint of theirs deposing dis-harmoniously qua the case property vis-a-vis PW-1 and PW-9 warranting an inference of the prosecution adducing discrepant evidence in display of the case property as shown in Court being linkable to the one as stood purportedly recovered from the alleged exclusive and conscious possession of the accused.

15. For the reasons which have been recorded hereinabove, this Court holds that the learned trial Court below has appraised the entire evidence on record in a wholesome and harmonious manner apart therefrom the analysis of the material on record by the learned trial Court does not suffer from any perversity or absurdity of mis-appreciation and non-appreciation of evidence on record, rather it has aptly appreciated the material available on record. Consequently, the instant application is dismissed, in sequel, the prayer of the State of Himachal Pradesh for grant of leave to appeal against the judgment of the learned trial court is refused.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE P.S. RANA, J.

Bimla Devi. ...Petitioner.

Versus

State of Himachal Pradesh and others. ...Respondents.

CWP No. 3204/2009
Reserved on: 2.1.2016
Decided on: 7.1.2016

Constitution of India, 1950- Article 226- 'R' husband of the petitioner was initially appointed as Forest Guard- he was promoted as Deputy Ranger on 3.7.1970- he was convicted of the commission of offences punishable under sections 41 and 42 of the Indian Forest Act - appeal was dismissed – he filed a Criminal Revision and same was allowed on 5.12.1997 - consequently, his suspension was revoked – DPC was also held to consider him for the post of Ranger- he was promoted notionally on 21.7.2000- feeling aggrieved, he approached Tribunal by filing an original application which was dismissed – writ petition was filed assailing the order - held, 'R' was acquitted as prosecution had failed to prove its case beyond reasonable doubt- there is no evidence that any departmental proceedings were conducted against 'R'- DPC was held in the year 1998 and 'R' was acquitted on 5.12.1997- he could not have been promoted on 21.7.2000 on notional basis as he was ready and willing to discharge his duties as Ranger but was prevented from doing so because recommendations of the DPC were kept in sealed cover which was opened on 21.7.2000-

petition allowed- letter dated 21.7.2000 quashed by applying principles of severability and legal heirs of 'R' held entitled to all consequential monetary benefits of the promotional post of Ranger with effect from 8.2.1989 along with interest @ 9% per annum. (Para-3 to 19)

Cases referred:
Jogendra Garabadu and others vs. Lingaraj Patra and others, AIR 1970 Orissa 91
State of U.P. vs. Iftikhar Khan and others, (1973) 1 SCC 512
Pratul Bhattacharjee vs. The State of Assam, Crimes 1987 (2) 816
Sita Ram Dixit vs Divisional Commissioner, Allahabad Division, 1991 Law Suit (All) 322
Bank of India and another vs. Degala Suryannarayana, (1999) 5 SCC 762
Deputy Inspector General of Police and another vs. S. Samuthiram, (2013) 1 SCC 598
Union of India and others vs. K.V. Jankiraman and others, (1991) 4 SCC 109

For the Petitioner: Mr. Sanjeev Bhushan, Sr. Advocate with Ms. Abhilasha Kaundal, Advocate.
For the Respondents: Mr. J.S. Guleria, Assistant Advocate General for the respondent-State.

The following judgment of the Court was delivered:

Per Justice Rajiv Sharma, Judge:

The petitioner has sought judicial review of the judgment rendered by the Himachal Pradesh Administrative Tribunal in OA (M) No. 331/2001 dated 20.7.2007 by way of present writ petition.

2. "Key facts" necessary for the adjudication of this petition are that Roshan Lal, husband of petitioner, was appointed as Forest Guard with the respondent department. He was promoted as Deputy Ranger on 3.7.1970. He was charged with and tried for offences punishable under sections 41 and 42 of the Indian Forest Act. He was convicted by the trial court. In an appeal, his conviction was upheld. However, Roshan Lal filed a Criminal Revision before this Court. It was allowed on 5.12.1997. He was acquitted. The operative portion of the judgment reads as under:

> "**After scrutinizing the entire oral and documentary evidence on record, I am of the considered view that both the courts below have committed grave error in appreciating the evidence in its right perspective and the judgments and orders of convictions and sentences have entailed miscarriage of justice to the convicts in the present case. No doubt, 91 sleeps of Deodar were recovered by the DFO, which were being illicitly transported in the truck hired by convict Narinder Kumar for transporting 146 logs in pursuance of challan Ex.PW-1/A. From the evidence on record, the prosecution has failed to prove beyond reasonable doubt that the timber was transported by convict Narinder Kumar and other convicts forest officials had conspired with him and allowed the transportation of the timber illegally. There is no evidence on record to show that 146 logs transported by convict Narinder Kumar under challan Ex.PW-1/A were not in conformity with the rules and thereby convicts have committed offence punishable under sections 41 and 42 of the Indian Forest Act for the reasons stated in the earlier part of the judgment.**

> **In the result, for the above said reasons, all the revision petitions are allowed and the judgment and orders of convictions and sentences passed by both the courts below are set aside. The convicts shall stand acquitted of the charges. Bail bonds are discharged. Fine if deposited, be refunded to the petitioners."**

3. His suspension was also revoked on 5.6.1998. In the meantime, the Departmental Promotion Committee was also held on 12.5.1988 for considering him for promotion to the post of Ranger. However, the recommendations were kept in sealed cover due to pendency of criminal case. He was promoted notionally on 21.7.2000. Roshan Lal aggrieved by the order dated 21.7.2000 filed O.A. (M) No.331/2001. It was dismissed by the H.P. Administrative Tribunal on 20.7.2007. Hence, the present petition.

4. Case of the petitioner precisely is that her husband was acquitted by this Court on 5.12.1997. His suspension was also revoked on 5.6.1998. In view of this, petitioner's husband should have been granted actual/effective monetary benefits with effect from 8.2.1989. Case of the respondents precisely is that acquittal of the husband of the petitioner was not based on positive findings and moreover, he has not performed the duties/responsibilities of the higher post as Forest Ranger. Thus, he was promoted as Ranger on 21.7.2000 on notional basis.

5. Mr. J.S. Guleria, learned Asstt. Advocate General has drawn the attention of the Court to para 16.32 (2) iv) of the Handbook on Personnel Matter. The relevant extract of the same has been placed on record. According to these instructions, on the conclusion of disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of next junior on the basis of such person. There is also a rider that there may be cases where the proceedings whether disciplinary or criminal are for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, in these cases, competent authority may deny the arrears of salary or part of it. However, it has to record its reasons for doing so. Roshan Lal has been acquitted since the prosecution has failed to prove the case against him beyond the reasonable doubt. He has not been acquitted merely by giving him benefit of doubt. Thus, Roshan Lal was required to be promoted with effect from 8.2.1989 by giving him actual monetary benefits instead of promoting notionally with all the consequential benefits.

6. Division Bench of Orissa High Court in ***Jogendra Garabadu and others*** vs. ***Lingaraj Patra and others***, AIR 1970 Orissa 91 has held that "acquittal on merits" means an acquittal after trial on a consideration of the evidence as distinguished from acquittals due to certain defects such as want of sanction, acquittals on weakness of prosecution evidence, on benefit of doubt or on insufficiency of evidence. Division Bench has held as under:

> **[16] What the words "acquittal on merits" precisely connote have not been dealt with in any of the decisions. Reference was made to a decision of our High Court reported in (1959) 25 Cut LT 366 = (AIR 1960 Orissa 29) where a distinction has been made between "acquittal on grounds of extreme weakness of the prosecution evidence" and "acquittal by giving benefit of doubt." It has been observed that while**

the former will amount to an acquittal on merits, the latter will not. For this purpose, it was observed that the criminal court judgment can be gone through to find out the reasons for the acquittal, though the reasonings and conclusions therein cannot be relied upon as conclusive or decisive in the civil suit claiming damages for malicious prosecution.

[17] It is well settled that in every suit for malicious prosecution, the civil Court must hear the evidence on both sides and decide for itself independently whether or not the prosecution was without reasonable and probable cause and malicious. It is equally well settled that the judgment of the criminal Court is evidence and conclusive at that to show the acquittal of the plaintiffs as a fact in issue which is one of the essential elements to be determined in a suit for damages, for malicious prosecution. No doubt the judgment of a criminal Court is admissible to show certain facts and circumstances, such as, the names of witnesses examined, the documents exhibited or that the acquittal was on some technical grounds without going into the evidence or on the merits of the evidence, but in our opinion, the reasonings and conclusions in the judgment of a criminal Court cannot be gone into to determine whether the acquittal resulted on account of the prosecution evidence being weak, insufficient or doubtful.

Therefore, the words "acquittal on merits" must mean an acquittal after trial on a consideration of the evidence as distinguished from and in contradistinction to acquittals which occur due to certain technical defects, such as, want of sanction etc. There seems to be no authority, and in our opinion, no adequate justification to make a further distinction between acquittals on weakness of prosecution evidence, acquittals by giving benefit of doubt or acquittals on insufficiency of evidence and holding that only some of them will amount to acquittals on merits and others not. Embarking on making such a distinction will necessarily mean utilisation of reasonings and conclusions in the criminal court judgment by the civil court in the trial of the suit which is not permissible.

7. The expression “benefit of doubt” has been explained by their Lordships of the Hon’ble Supreme Court in ***State of U.P.*** vs. ***Iftikhar Khan and others***, (1973) 1 SCC 512 as under:

[27] Mr. Mookerjee no doubt urged that the High Court might have been influenced by the fact that the evidence of the defence witnesses creates a lot of doubt about the participation of the first respondent in the crime. We are prepared to agree that if the said evidence really raises a reasonable doubt in the mind of the Court regarding the participation in the crime by the first respondent, that doubt must be resolved in his favour. In this context, it is pertinent to quote the following observations in the decision in AIR 1972 SC 975 (supra) :

"The benefit of doubt to which the accused is entitled is reasonable doubt-the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy-though unwittingly it may be-or is afraid of the logical consequences, if that benefit was not given, or as one great Judge said it is not the doubt of a vacillating mind that has not be

> **moral courage to decide but shelters itself in a vain and idle scepticism."**

8. Learned Single Judge of Gauhati High Court in ***Pratul Bhattacharjee*** vs. ***The State of Assam***, Crimes 1987 (2) 816 has held that when the trial court comes to the finding that the prosecution totally fails to prove the charge, then the user of the expression 'benefit of doubt' in acquitting the accused is improper and illegal. Learned Single Judge has held as under:

> **[5] The trial courts should be very cautious in using that expression in a case where" Government servant is involved It should not be used as a fashion or ornamentally if not warranted, because the expression may be detrimental to the service career of-the person getting acquittal. When the trial court comes to the finding that the prosecution totally fails to prove the charge, then the user of the expression 'benefit of doubt' in acquitting the accused is improper and illegal. The present case comes within this category."**

9. In the present case also, the prosecution has failed to prove the case against Roshan Lal as per the evidence discussed by the learned Single Judge.

10. In criminal cases the charges are to be proved beyond reasonable doubt. The expression "beyond reasonable doubt" has not been correctly appreciated by the Tribunal while dismissing the original application.

11. Learned Single Judge of the Allahabad High Court in ***Sita Ram Dixit*** vs ***Divisional Commissioner, Allahabad Division***, 1991 Law Suit (All) 322 has held that there is a distinction between the words "benefit of doubt" and "establishment of guilt beyond reasonable doubt".

12. Roshan Lal has been acquitted and the words "the prosecution has failed to prove beyond reasonable doubt" in the judgment of this Court has been taken by the Tribunal as Roshan Lal has been given benefit of doubt. The exception given in para 16.32 (2) iv) of the Handbook on Personnel Matter not to grant benefit and restricting the same would be applicable in those cases where the person has been given benefit of doubt etc.

13. Their Lordships of the Hon'ble Supreme Court in ***Bank of India and another*** vs. ***Degala Suryannarayana***, (1999) 5 SCC 762 have held that the sealed cover procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over. Their Lordships have held as under:

> **"[14] However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India v. K. V. Jankiraman, AIR 1991 SC 2010, 2113 : (1991 AIR SCW 2276 : 1991 Lab IC 2045). As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the**

adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D. E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986."

14. The criminal proceedings launched against Roshan Lal ended in acquittal wiping out the retrospective effect of the adverse consequences.

15. There is no material placed on record of this case that after the acquittal of Roshan Lal any departmental proceedings were initiated against him. Moreover, this power to initiate disciplinary proceedings after the acquittal has to be exercised equitably and reasonably.

16. Their Lordships of the Hon'ble Supreme Court in ***Deputy Inspector General of Police and another*** vs. ***S. Samuthiram***, (2013) 1 SCC 598 have dealt with expression "honourable acquittal". Their Lordships have held that the expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. Their Lordships have also explained that there may be a case where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile. Their Lordships have held as under:

[24] The meaning of the expression 'honourable acquittal' came up for consideration before this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal, 1994 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

[25] In R.P. Kapoor v. Union of India, 1964 AIR(SC) 787, it was held even in the case of acquittal, departmental proceedings may follow

where the acquittal is other than honourable. In State of Assam and another v. Raghava Rajgopalachari,1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in 1934 61 ILR(Cal) 168 which is as follows:

"The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

[26] As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

17. We have gone through the judgment rendered by the learned Single Judge. The Court has appraised the entire evidence led by the prosecution and has categorically held that the prosecution has failed to prove the case against the accused beyond reasonable doubt. Thus, the acquittal of the accused was "honourable acquittal". It is not a case where accused Roshan Lal was acquitted for technical reasons, but he was acquitted after consideration of entire evidence led by the prosecution.

18. Now, as far as applicability of "no work no pay' is concerned, this question is no more ***res integra*** in view of the law laid down by their Lordships of the Hon'ble Supreme Court in ***Union of India and others*** vs. ***K.V. Jankiraman and others***, (1991) 4 SCC 109. Their Lordships have held as under:

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee

although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the, administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

19. The Departmental Promotion Committee in the instant case was held in the year 1988. He was acquitted on 5.12.1997 by this Court. However, despite that he was promoted on 21.7.2000 on notional basis. He was always ready and willing to discharge the duties of Ranger, but has been prevented for the simple reason that the recommendations made by the Departmental Promotion Committee were kept in sealed cover and these were opened only on 21.7.2000. Thus, the principles of “no work no pay” would not be applicable. It is reiterated that Roshan Lal has been acquitted by this Court after perusal of entire evidence and not on any technical defects. He was required to be promoted with effect from due date, i.e. 8.2.1989 with monetary benefits.

20. Accordingly, in view of the analysis and discussion made hereinabove, writ petition is allowed. The judgment dated 20.7.2007 rendered by the Tribunal in O.A. (M) No. 331/2001 is set aside. Letter dated 21.7.2000, is also quashed and set aside by applying the principle of severability and the legal heirs of Roshan Lal would be entitled to all the consequential monetary benefits of the promotional post of Ranger with effect from 8.2.1989 with interest @ 9% per annum. Respondents are also directed to work out the pensionary benefits as per actual monetary benefits released to the legal heirs w.e.f. 8.2.1989. The amount shall carry out interest @ 12% per annum. Needful be done within a period of six weeks from today. Pending application(s), if any, also stands disposed of. No costs.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Chuni Lal son of Shri Nand Lal & others ....Petitioners

Versus

State of H.P. through Secretary (PWD NH-20) and another ....Non-petitioners

CWP No. 387 of 2007
Order Reserved on 3rd December 2015
Date of Order 07th January 2016

Constitution of India, 1950- Article 226- Petitioners were engaged as labourers in PWD National Highway 20 on 7.10.1998 - they allege that their services were terminated orally on 1.1.2002- Reference made to the Labour and Industrial Tribunal was dismissed- held that, non-petitioners have taken the plea that the petitioners had voluntarily left the service-thus a complicated dispute of fact has arisen which cannot be entertained in the writ petition-plea of the petitioners that the juniors were retained while their services were disengaged can also not be entertained without impleadment of the juniors-petition dismissed. (Para 6 to 13)

Case referred:
Swati Ferro Alloys Private Ltd. vs. Orissa Industrial Infrastructure Development Corporation (IDCO) and others, 2015)4 SCC 204

For the Petitioners: Shri G.R. Palsara, Advocate.
For the Non-petitioners: Mr. M.L. Chauhan Additional Advocate General with Mr.J.S.Rana Assistant Advocate General.

The following order of the Court was delivered:

P.S. Rana, Judge

Present civil writ petition is filed under Article 226/227 of the Constitution of India.

2. Brief facts of the case as pleaded are that on 7.10.1998 petitioners were engaged as labourers in PWD National Highway 20. It is pleaded that on 1.1.2002 services of petitioners were terminated by verbal orders. It is pleaded that thereafter on 2.1.2002 conciliation proceedings were initiated by the Labour Commissioner. It is pleaded that thereafter reference No. 855 of 2002 was sent to Labour Court at Dharamshala. It is pleaded

that learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala on 23.2.2006 dismissed the claim petition. Feeling aggrieved against the award passed by Presiding Judge Industrial Tribunal-cum-Labour Court Dharamshala present petition filed and following reliefs sought. It is prayed that non-petitioners be directed to re-engage the petitioners on same place and post as on 31.1.2002 with all consequential benefits and seniority after setting aside the award of learned Labour Court dated 23.2.2006. It is further prayed that seniority of petitioners be also ordered to be maintained and artificial breaks given to petitioners by non-petitioners be set aside. It is also prayed that non-petitioners be directed to release the arrears of daily wages of petitioners w.e.f. 1.2.2002 till decision of writ petition. It is also prayed that non-petitioners be directed to count the period of artificial breaks of petitioners qua seniority of petitioners.

3. Per contra response filed on behalf of non-petitioners Nos. 1 and 2 i.e. Stateof H.P. and Executive Engineer HPPWD pleaded therein that petitioners Nos. 1 to 6 were engaged under N.H.-20 Division Jogindernagar in the year 1998 purely on temporary basis. It is pleaded that petitioners did not complete continuous service of 240 days in calender year till the year 2006. It is pleaded that Sanjeev Kumar and Roop Chand were engaged under B&R Sub Division Jogindernagar and not under N.H.-20 wing. It is pleaded that Keshav and Devinder filed OA (M) No. 426 of 2000 and OA (M) No. 342 of 2000 against the termination and they were retained by Tribunal order. It is pleaded that petitioners were daily wager Beldars and were casual workers and are not entitled to claim seniority and regularisation. It is pleaded that petitioners were engaged for doing temporary work. It is also pleaded that petitioners voluntarily left the job. It is pleaded that allegations of personal bias and discrimination are totally wrong and false. Prayer for dismissal of civil writ petition sought.

4. Petitioners filed rejoinder and re-asserted the allegations mentioned in civil writ petition. Court heard learned Advocate appearing on behalf of petitioners and learned Additional Advocate General appearing on behalf of non-petitioners.

5. Following points arise for determination in this civil writ petition:-

Point No.1

Whether civil writ petition filed under Article 226/227 of Constitution of India is liable to be accepted for the reasons as mentioned in memorandum of grounds of petition?

Point No.2

Whether the present civil writ petition is bad for non-joinder of necessary parties?

Point No.3

Relief.

Findings upon Point No.1 with reasons

6. Submission of learned Advocate appearing on behalf of petitioners that fictitious artificial break was given to petitioners so that petitioners could not complete 240 days within twelve months and some labourers namely Bhup Singh, Nagnu Ram, Kishan Chand, Kaushlya Devi, Hukum Chand, Sanjeev Kumar and Roop Chand who were juniors to them were retained in service and were allowed to complete 240 days in calender year is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioners did not implead Bhup Singh, Nagnu Ram, Kishan Chand, Kaushalya Devi, Hukum Chand, Sanjeev and Roop Chand as co-party in petition. It is well settled law that noone should be

condemned unheard in judicial proceedings on the concept of *audi alterm partem.* Hence it is held that as petitioners did not implead the above said persons as co-party no findings can be given by writ Court without hearing them.

7. Submission of learned Advocate appearing on behalf of petitioners that non-petitioners have given artificial breaks to the petitioners so that petitioners could not complete 240 days in calender year and committed unfair labour practice and non-petitioners have violated the rule first come last go and also violated Section 25 of Industrial Disputes Act is rejected being devoid of any force for the reasons hereinafter mentioned. The fact whether non-petitioners have given artificial breaks to the petitioners is a complicated question of fact and it is well settled law that complicated question of facts cannot be decided in writ proceedings. ***See (2015)4 SCC 204 titled Swati Ferro Alloys Private Ltd. vs. Orissa Industrial Infrastructure Development Corporation (IDCO) and others.***

8. Submission of learned Advocate appearing on behalf of petitioners that there is clear violation of Section 25 (f) of Industrial Disputes Act and on this ground petition filed by petitioners be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioners did not place on record any retrenchment order issued by non-petitioners. On contrary non-petitioners have pleaded that petitioners have voluntarily left the daily wages service. The fact whether petitioners have voluntarily left the daily wages service is also complicated question of facts which cannot be decided in writ petition.

9. Submission of learned Advocate appearing on behalf of petitioners that there is tampering in mustroll by non-petitioners and writ petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Issue of tampering in mustroll is complicated question of fact and same cannot be decided by writ Court because it requires elaborate oral as well as documentary evidence. Dispute inter se parties is relating to complicated question of facts.

10. Submission of learned Advocate appearing on behalf of petitioners that some persons have not been given artificial breaks by non-petitioners in oder to give undue benefits to them and on this ground writ petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Petitioners did not implead the persons as co-party to whom undue benefits have been given by non-petitioners. Judicial findings relating to undue benefits cannot be given without hearing effected persons on the concept of *audi alterm partem.*

11. Submission of learned Advocate appearing on behalf of petitioners that service of junior persons cannot be allowed to be retained by non-petitioners under Industrial Disputes Act is also rejected being devoid of any force for the reasons hereinafter mentioned because petitioners did not implead the petitioners to whom undue benefits have been given by non-petitioners. Without impleadment of persons to whom undue benefits have been given and without hearing the effected persons judicial findings cannot be given by writ Court in present writ petition on the concept of *audi alterm partem.*

12. Submission of learned Advocate appearing on behalf of petitioners that learned Labour Court did not apply its mind judicially is also rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the award passed by learned Labour Court Dharamshala and learned Labour Court has given proper reasoning in award. There is no evidence on record in order to prove that petitioners have completed 240 days of continous service in calender year. In absence of positive evidence relating to 240 days continuous service in calender year it is not expedient in the ends of justice to accept the petition filed by petitioners. Point No. 1 is answered in negative.

Findings on point No. 2 with reasons

13. It is admitted case of parties that petitioners were employed in National Highway-20. It is well settled law that National Highway is under the control of Central Government and petitioners did not implead Central Government as co-party in civil writ petition. As per National Highways Act 1956 all national highways would vest in union and it will be responsibility of Central Government to develop and maintain national highway. As per National Highway Act 1956 Central Government in official gazette will declare competent authority relating to National Highway. Hence present civil writ petition is bad for non-joinder of necessary parties i.e. (1) Central Government, (2) Bhup Singh, (3) Nagnu Ram, (4) Kishan Chand, (5) Kaushlya Devi, (6) Hukum Chand, (7) Sanjeev Kumar, (8) Roop Chand. Point No. 2 is decided in affirmative.

Point No.3(Relief)

14. In view of findings on points Nos. 1 and 2 petition filed under Article 226/227 of Constitution of India is dismissed. No order as to costs. Petition stands disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Om Prakash Mehta .....Petitioner.

Versus

Rajesh Kumar Kaushal & ors. .....Respondents.

CMPMO No. 108 of 2013
Reserved on: 21.12.2015.
Decided on: 07.01.2016.

Code of Civil Procedure, 1908- Sections 10, 94 & 151- R filed a suit for possession by way of specific performance of the contract executed by S and A- O also filed a civil suit against S and D for the specific performance of the contract- an application was filed for staying the proceedings in the suit filed by R - held, that purpose of Section 10 of C.P.C is to prevent the Court from trying two parallel suits in respect of the same matter- it applies only to those cases where whole of the subject matter in both the suit is identical- R is not a party in another suit- the subject matter is also not identical- hence, suit cannot be stayed- application dismissed. (Para-6 to 15)

Cases referred:

Kalipada Banerji vrs. Charubala Dasee, AIR 1933 Calcutta 887

M/S Sohal Engineering Works, Bhandup, Bombay vrs. Rustam Jehangir Vakil Mills Co. Ltd., Ahmedabad, AIR 1981 Gujarat 110

R. Srinivasan vrs. Southern Petrochemical Industries Corporation Ltd., AIR 1992 Madras 363

Ajit Singh vrs. Sadhu Singh, reported in AIR 2004 Delhi 320,

National Institute of Mental Health & Neuro Sciences vrs. C. Parameshwara, AIR 2005 SC 242

Aspi Jal and another vrs. Khushroo Rustom Dadyburjor, (2013) 4 SCC 333,

For the petitioner:	Mr. Ajay Kumar Sr. Advocate with Mr. Dheeraj K. Vashishta, Advocate.
For the respondents:	Mr. Mukesh Thakur, Advocate, for respondent No. 1. Mr. R.K.Gautam, Sr. Advocate, with Mr. Gaurav Gautam, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This petition is directed against the order rendered by the learned Civil Judge (Sr. Divn.), Distt. Una, H.P., in CMA No. 10-VI/2013 in Civil Suit No. RBT 94 of 2009 dated 2.1.2013.

2. Key facts, necessary for the adjudication of this petition are that respondent No. 1 Sh. Rajesh Kumar Kaushal has instituted civil suit No. RBT 94 of 2009 titled as Rajesh Kumar Kaushal vrs. Surjeet Singh and another for possession by way of specific performance of contract by execution of the sale deed of the land measuring 0-49-92 hectares, being 4992/21353 share out of the land measuring 2-13-53 hectares, comprised in Khewat No. 20 min, Khatoni No. 28, Kh. No. 2024/792, 887, 889 and 890, as entered in the nakal jamabandi for the year 2003-04, situated in Up-Mohal Rakkar Colony, Tehsil and Distt. Una, H.P. for the sum of Rs. 70,000/- per kanal as sale consideration on the basis of agreement to sell dated 11.1.2008 by defendants, namely, Surjeet Singh and Om Parkash, in favour of plaintiff and in the alternative suit for recovery for the sum of Rs. 8,42,000/-.

3. The petitioner, Om Parkash has also instituted Civil Suit No. 60 of 2008 in this Court against Sh. Surjeet Singh and Deepika Vashisht for specific performance of the agreement of sale dated 26.4.2006. This Court vide order dated 8.3.2011 in OMPs No. 269 of 2008 and 602 of 2010 has restrained the defendants from alienating and transferring the suit property in any manner, during the pendency of the suit. The petitioner filed an application under Section 10 of the CPC read with Sections 94 and 151 CPC to stay the proceedings in Civil Suit No. 94 of 2009. The application was contested by filing a detailed reply. It was submitted that plaintiff i.e. Rajesh Kumar Kaushal has not been arrayed as party in suit filed before this Court and both the suits are not between the same parties and the cause of action is also distinct. Civil Suit No. 94 of 2009 was instituted in the month of August, 2008 and Civil Suit No. 60 of 2008 was instituted in the month of September, 2008 in this Court. It is also averred that the judgment passed in Civil Suit No. 60 of 2008 will not operate *res judicata* qua the plaintiff. The learned Civil Judge (Sr. Divn.), Distt. Una dismissed the application vide order dated 2.1.2013. Hence, this petition.

4. Mr. Ajay Kumar, Sr. Advocate has vehemently argued that the suit pending before this Court pertains to the entire suit land. On the other hand, Mr. R.K. Gautam, Sr. Advocate, has vehemently argued that both the suits are founded on totally different and independent causes of action. According to him, Section 10 CPC is not attracted in this case. He lastly contended that the suit pending before the learned Civil Judge (Sr. Divn.), Distt. Una and before this Court are not *inter se* the same parties.

5. I have heard counsel for both the sides and have also gone through the impugned order and Civil Suit No. 94 of 2009 and Civil Suit No. 60 of 2008, carefully.

6. Civil Suit No. 94 of 2009 has been instituted by Rajesh Kumar against the petitioner Om Parkash and Surjeet Singh for specific performance of agreement dated 11.1.2008 of land as detailed in the plaint. The suit instituted by the petitioner being Civil

Suit No. 60 of 2008 is for specific performance of the agreement of sale dated 26.4.2006 with respect to the land detailed in the plaint.

7. The issues in Civil Suit No. 60 of 2008 were framed on 26.5.2010. The issues in Civil Suit No. 94 of 2009 were framed on 19.1.2009. The parties in both the Civil Suits i.e. No. 94 of 2009 and 60 of 2008 are not the same and the matter in controversy is also different. Civil Suit No. 94 of 2009 was filed on 4.8.2008 and Civil Suit No. 60 of 2008 was filed on 4.6.2008. In the written statement filed by defendant No. 2 Om Parkash on 28.7.2010, no specific issue was raised, being preliminary or on merits that the suit of the plaintiff is hit by principle of *sub-judice*.

8. The underlying principle of Section 10 CPC is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue as well as to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. Section 10 CPC applies only in those cases where the whole of the subject matter in both the suits is identical. The Court has gone through the plaints in both the civil suits i.e. Civil suit No. 94 of 2009 and Civil Suit No. 60 of 2008. Both the suits are instituted on totally different and independent causes of action. It is reiterated that Civil Suit No. 94 of 2009 has been filed for specific performance of agreement dated 11.1.2008 and Civil Suit No. 60 of 2008 for specific performance of contract dated 26.4.2006. The suit instituted by Om Parkash bearing No. 60 of 2008 involves different issues as compared to the earlier suit filed by Rajesh Kumar Kaushal bearing No. 94 of 2009. Civil Suit No. 60 of 2008 has been instituted by Om Parkash against Surjeet Singh and Deepika Vashishat. Rajesh Kumar Kaushal has not been made party in Civil Suit No. 60 of 2008. Thus, learned Civil Judge (Sr. Divn.), Distt. Una has rightly come to the conclusion that the suit could not be stayed on the basis of subsequent suit filed by the petitioner bearing No. 60 of 2008. The purpose of Section 10 CPC is also to save time and energy of Courts and parties. In the present case, the same matter is not in issue in both the civil suits. There is no identity of the matter in issue in both the Civil Suits. The whole of the subject matter in both the Civil Suits is not identical.

9. The Division Bench of the Calcutta High Court in the case of ***Kalipada Banerji vrs. Charubala Dasee,*** reported in ***AIR 1933 Calcutta 887,*** has held that the three essential conditions, that are necessary for bringing in the operation of Section 10, Civil P.C., are: (1) that the matter in issue in the second suit is directly and substantially in issue in the previously instituted suit, (2) that the parties in the two suits are the same, and (3) that the Court, in which the first suit is instituted, is a Court of competent jurisdiction to grant the relief claimed in the subsequently instituted suit.

10. The learned Single Judge of the Gujarat High Court in the case of ***M/S Sohal Engineering Works, Bhandup, Bombay vrs. Rustam Jehangir Vakil Mills Co. Ltd., Ahmedabad,*** reported in ***AIR 1981 Gujarat 110,*** has explained the term "directly and substantially in issue" as under:

> "13. On a plain reading of the contents of Section 10 of the Code, it is crystal clear that the object of the provision is to prevent Courts of concurrent jurisdiction from adjudicating upon parallel litigations between the same parties having the same matter in issue with a view to avoiding conflict of decisions. The policy of the law is that if the matter in issue in the two parallel suits is identical in the interest of judicial comity, the Court in which the subsequently instituted suit is pending shall stay the proceedings and allow the previously instituted suit to proceed. The key words in the Section are: "the matter in issue is directly and substantially in issue" in the

previously instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". That means that the Section would apply only if there is identity of the matter in issue in both the suits meaning thereby that the whole of the subject-matter in both the proceedings is identical and not merely one of the many issues which arise for determination in the two suits. That, however, does not mean that all the issues must be identical, that is, the subject matter need not be the same in every particular. To that extent, Section 10 differs from Section 11 which engrafts the doctrine of res judicata. Under Section 11 even if one of the two issues is common to both the suits, the decision on that issue would operate as res judicata in any suit subsequently decided between the same parties so far as that issue is concerned. That is why the working test evolved by the Bombay High Court in the case of Trikamdas (AIR 1942 Bom 314) is that if by the decision in the previously instituted suit the subsequent suit would fail as a whole on the principle of res judicata, the subsequent suit must be stayed.

14. There can, therefore, be little doubt that Section 10 of the Code is mandatory in character. If the matter in issue in the subsequently instituted suit is directly and substantially in issue in the previously instituted suit, the Court is precluded from proceeding with the subsequently instituted suit. In that case it is imperative on the Court to stay the subsequently instituted suit and await the decision in the previously instituted suit. It is, however, a question of fact to be gathered from the pleadings of the two suits as to whether the matter in issue in the subsequently instituted suit is directly and substantially in issue in the previously instituted suit. In the present two suits the parties are the same and both the suits arise out of the very same contract. The scope of the first suit is, however, limited in that the endeavour of the plaintiff in that suit is to restrain the defendant from committing a breach of the contract. That suit, therefore, clearly arises under the contract. Once the contract is established and there is a reasonable apprehension of the contract being broken, the plaintiff is entitled to request the Court to restrain the defendant-firm from committing a breach of the contract. The subsequently instituted suit, however, proceeds on the basis that the defendant has been guilty of non-performance of the contract and, therefore, the plaintiff-company has become entitled to damages. The subsequently instituted suit also arises out of the very same contract, as its non-performance entitles the plaintiff-company to sue the defendant-firm in damages. In the first suit the question of breach of contract does not arise, but it is a suit based on an existing contract, which, it is apprehended, is about to be broken. The subsequent suit arises ex contractu as it proceeds on the basis that the defendant-firm has committed a breach of the contract and has, therefore, entitled the plaintiff-company to sue for damages. Therefore, the field of controversy of the two suits cannot be said to be identical because what the plaintiff will have to prove in the first suit is merely the existence of the contract and the alleged apprehension of breach thereof. In the subsequent suit the plaintiff will have to prove not only the existence of the contract but failure on the part of the defendant-firm to perform its part of the contract and to establish its right to claim damages from the defendant-firm and to prove the quantum of damages. Strictly speaking, therefore, the field of controversy of the two suits cannot be said to be so identical that the decision of the former suit would conclude the

subsequent suit on the doctrine of res judicata. Even if the plaintiff-company fails to prove in the former suit the alleged apprehension and the suit is dismissed on that ground, the subsequent suit based on actual breach of contract will still survive. I am, therefore, of the opinion that Mr. Zaveri is not right when he contends that in the facts and circumstances of the two suits, the subsequently instituted suit ought to have been stayed by the learned trial Judge."

11. The learned Single Judge of the Madras High Court in the case of ***R. Srinivasan vrs. Southern Petrochemical Industries Corporation Ltd.,*** reported in ***AIR 1992 Madras 363,*** has held that there must be an identity of the subject-matter, the field of controversy between the parties in the two suits must also be the same, but the identity contemplated and the field of controversy contemplated should not be identical in every particular, but the identity and the field of controversy must be substantially the same. It has been held as follows:

"8. Under Section 10 of the Code of Civil Procedure, no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the sme title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed. This section does not contemplate an identity of issues between the two suits, nor does it require that the matter in issue in the two suits should be entirely the same or identical. What the section requires is that the matter in issue in the two suits should be directly and substantially the same, and proper effect must be given to the language used by the legislature in S. 10 that the identity required is a substantial identity. There must be an identity of the subject-matter, the field of controversy between the parties in the two suits must also be the same, but the identity contemplated and the field of controversy contemplated should not be identical and the same in every particular, but the identity and the field of controversy must be substantially the same. Where there are different and indpendent transactions between the parties, a suit qua one transaction cannot be stayed when a suit qua second transaction is filed."

12. The learned Single Judge of Delhi High Court in the case of ***Ajit Singh vrs. Sadhu Singh***, reported in ***AIR 2004 Delhi 320,*** has held that the provisions of Section 10 of the Code of Civil Procedure would apply when decision in one suit would non-suit the other suit. Only in that event it could be said that the matter in issue in both the suits are directly and substantially the same. It also cannot be said that the whole of the subject matter in both the suits is identical. In case of two suits between the same parties when the facts clearly disclose and also establish that the suit property in the subsequent suit is absolutely distinct and separate from that of the earlier suit and there is no identity at all with regard to cause of action and also the reliefs that are sought in both suits, the subsequent suit between the same parties was not liable to be stayed as provisions of Section 10 of CPC are not applicable. It has been held as follows:

"7. I have heard the counsel appearing for the parties and have considered the pleadings and the records very carefully in the light of the submissions made by the counsel appearing for the parties. The earlier suit is admittedly filed by the plaintiff against the defendants in respect of the ground floor portion of the property No. L-59, Kalkaji, New Delhi. The contention in the

said suit was that the plaintiff inducted the defendants, who are cousin brothers of the plaintiff, as Licensees as at that relevant point of time when they were given shelter in the said premises, they were undergoing financial distress because of the death of their father, who was the uterine brother of the father of the plaintiff. The judgment and the decree that was passed by the Additional District Judge, Delhi in the other suit, namely, suit No. 63/1992 was only in respect of the ground floor of the property bearing No. L-59, Kalkaji, New Delhi. So far the present suit is concerned, the plaintiff was compelled to file this suit as according to the plaintiff the defendant forcibly entered into possession of the first floor and the barsati floor some time in 1993. The defendants in their written statement filed in the present suit have stated in paragraph 11 that in the first week of April 1993, the plaintiff out of his own volition, voluntarily and having realised the mistake handed over the vacant possession of the first floor and the barsati floor to the defendants and had also assured the defendants to withdraw the suit pending before Tis Hazari, Delhi, but later on he resoled from the said assurance. The aforesaid facts clearly disclose and also establish that the suit property in the present suit is absolutely distinct and separate from that of the earlier suit. The issues that are also being raised in the present suit cannot be said to be identical in view of the fact that the contention that is raised in the present suit is that the defendants forcibly entered into the possession of the first floor and the barsati floor whereas according to the defendants possession of the said floors was given by the plaintiff to the defendants of his own volition with a further statement that he will withdraw the suit, which is pending in the Tis Hazari Courts, namely, suit No. 63/1992. Therefore, it cannot be said that the matters in issue in both the suits are identical.

8. Besides, the relief which is sought for by the plaintiff herein is a decree for recovery of possession of the first floor and the barsati floor of the premises in question. The said relief would not be available and could not be given to the plaintiff automatically and on the basis of the decree which is already passed even when the same is upheld by the appellate court. In the subsequent suit, the plaintiff has also claimed for mesne profits and damages, which are also not issues, which had arisen for consideration in the earlier suit. The provisions of Section 10 of the Code of Civil Procedure would apply when decision in one suit would non-suit the other suit. Only in that event it could be said that the matter in issue in both the suits are directly and substantially the same. It also cannot be said that the whole of the subject matter in both the suits is identical. It is true that some of the issues which would arise for consideration could be identical but not all the issues. There is no identity at all with regard to the cause of action and the suit property and also the reliefs that are sought for. The decision of this Court in Sagar Shamsher Jung Bahadur Rana and another v. The Union of India and others (supra) is distinguishable on facts. The ratio that is laid down in the said decision was rendered in the context of the facts of that case. It is also clear from a reading of the said judgment that this Court while deciding the said case applied the principles of res judicata for stay of the suit. In the said proceedings the plea of res judicata was specifically raised by the defendant whereas in the present suit the defendants have not raised the plea of res judicata specifically and, therefore, in my considered opinion the ratio of the said decision is not applicable to the facts of the

present case. The plaintiff in the said suit, which was stayed, claimed recovery of Rs. 18 lacs on account of principal amount and interest by sale of the mortgaged property. The present suit is, however, filed for decree for recovery of possession and for damages and mesne profits, which relief cannot be said to be identical with that of the relief sought for in the suit No. 62/1993."

13. In the case of ***National Institute of Mental Health & Neuro Sciences vrs. C. Parameshwara,*** reported in ***AIR 2005 SC 242,*** their lordships of the Supreme Court have explained applicability of "directly and substantially in issue". Their lordships have further held that the fundamental test for applicability of S. 10 is whether decision in previous suit operates as res judicata in subsequent suit. Their lordships have further held that Section 10 CPC only applies in cases where whole of the subject matter in both the suits is identical. It has been held as follows:

> "8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the - same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical."

14. Their lordships of the Hon'ble Supreme Court in the case of ***Aspi Jal and another vrs. Khushroo Rustom Dadyburjor,*** reported in ***(2013) 4 SCC 333,*** have held that for Section 10 CPC to be attracted, it is essential that the entire subject matter in controversy must be the same between previous suit and the subsequent suit. Mere common grounds in previous suit and subsequent suit would not attract Section 10 CPC. Their lordships have explained the words and phrases "matter in issue" as follows:

> "9. Section 10 of the Code which is relevant for the purpose reads as follows:
>
> > " 10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the

> Central Government and having like jurisdiction, or before the Supreme Court.
>
> Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.

10. The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences vrs. C.Parameshwara, (2005) 2 SCC 256 in which it has been held as follows:

> " 8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."

11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether "the matter in issue is also directly and substantially in issue in previously instituted suits". The key words in Section 10 are "the matter in issue is directly and substantially in issue in the previously instituted suit". The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what "the matter in issue" exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case."

15. Accordingly, there is no merit in this petition. The same is dismissed, so also the pending application(s), if any. The parties through their counsel are directed to appear before the learned trial Court on 15.2.2016.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Prof. Arvind Kumar Agrawal and others ....Petitioners.

versus

Central University of Himachal Pradesh and others ...Respondents.

CWP No.9311 of 2013
Reserved on : January 6, 2016
Date of Decision: January 7, 2016

Constitution of India, 1950- Article 226- Petitioners were employed in different capacities with various universities- they were selected and appointed by respondent/university pursuant to an advertisement issued by the latter - petitioners were governed under various pension schemes with their parent Organization – petitioners filed a writ petition seeking a direction to the respondent to grant pension by counting their past services rendered in other institutions- held, that University came into existence in the year 2010 with the enactment of the Act - old pension scheme, so framed under various rules cannot be made automatically applicable to the petitioners who had joined the services fully knowing the terms and conditions of their appointments- appointments letters issued to the petitioners specified clearly that they would be governed by new pension scheme of Government of India- since, petitioners had accepted the terms by accepting the employment, they have agreed to be governed by new pension scheme – petitioners have no legally enforceable right which was defeated by the respondent/university- petition dismissed. (Para-5 to 12)

For the Petitioners	:	Mr. Sanjeev Bhushan, Senior Advocate, with Ms Abhilasha, Advocate.
For the Respondents	:	Mr. Ashok Sharma, Assistant Solicitor General of India, for respondents No.1 and 2. Mr. R.S. Verma, Additional Advocate General and Mr. R.M. Bisht, Deputy Advocate General, for respondent No.3. Mr. J.L. Bhardwaj, Advocate, for respondent No.4.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

Much, as one may want to take an equitable view in favour of the petitioners, however, in the absence of any legal sanction, the reliefs, as claimed for, cannot be granted.

2. Petition stands filed, praying for the following reliefs:

1. That a writ in the nature of mandamus may be issued directing the respondent-University to grant portability of pension to the petitioners by counting their past service rendered by them in previous institutions where they were covered under CCS (Pension) Rules, 1972 with further directions to the respondent University to grant the benefit of pension to the petitioners as provided in CCS (Pension) Rules, 1972.
2. That further a writ in the nature of mandamus may be issued directing the respondent-University for transferring the provident fund account of the petitioners alongwith terminal benefits by further directing the respondent University to start deducting provident fund in the present establishment in the interest of law and justice.

3. Petitioners were employed, in different capacities, including Professors, with various Universities/ organizations/departments, is not in dispute. Pursuant to the advertisement issued by the respondent-University, for appointment to various posts, petitioners applied and, on the basis of merit and selection, were appointed. It is not in dispute that the petitioners were governed under the various schemes of pension with their parent-organization(s).

4. Significantly, letters of appointment of the petitioners reveal that their lien with the parent-department(s) continued only for a period of two years. Undisputedly, during the period of such lien, petitioners have chosen not to return to their respective parent-department(s)/organization(s) and continued to discharge their duties and functions, in terms of their letters of appointment.

5. The respondent-University stands established under the provisions of The Central Universities Act, 2009 (hereinafter referred to as the Act). The relevant provision of the Act, invoked by the petitioners, reads as under:

> "Section 6. .....
>
> (2) exercising its powers referred to in sub-section (1), it shall be the Endeavour of the University to maintain all all-India character and high standards of teaching and research, and the University shall, among other measurers which may be necessary for the said purpose, take, in particular, the following measurers, namely:-
>
> (i) .....
>
> (ii) .....
>
> (iii) Inter-University mobility of faculty, with portable pensions and protection of seniority, shall be encouraged;"

6. By virtue of Section 27 of the Act, the University can frame, amend or repeal statutes. However, this can only be when the assent of the Visitor, which, in the instant case is, His Excellency the President of India, is duly accorded and received.

7. In the instant case, the respondent-University has issued certain ordinances, also pertaining to the service which is to be counted for the purpose of pension, but however, it is a matter of record that the statute, with regard to the scheme of pension, on portability basis, has not been approved by the Visitor. University, as such, would be governed under the new scheme of pension.

8. No doubt, in the parent department(s), the petitioners were governed by the respective schemes of pension, including the one framed under the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the Rules), but however, in the instant case, since the University itself came into existence on 20.1.2010, with the enactment of the Act, the old pension scheme, so framed, under various Rules cannot be made automatically applicable to the petitioners, who, voluntarily and knowing well the terms and conditions of their appointment, joined on various posts.

9. Doctrine of legitimate expectation cannot be invoked in the present case. With open eyes, petitioners joined the University. Their selection was on unequivocal terms, as it stood explained to them, in their letters of appointment, that they would be governed by the New Pension Scheme of the Government of India. Petitioners having openly accepted such condition and having readily agreed to be governed by the New Pension Scheme, voluntarily joined the respondent.

10. It be observed that the respondent-University is one amongst the fifteen, so established under the Act, and the scheme of portability of pension has also not been made applicable to these institutions.

11. In the instant case, respondent-University does not have any old pension scheme and is governed by the New Pension Scheme. As such, in the absence of any

provision for continuing with the pension scheme of the parent organization(s), the question of portability does not arise.

12. In this backdrop, it cannot be said that the petitioners have any legally enforceable right, which stands defeated by the respondent-University. Petitioners' claim of grant of portability pension, being unsustainable in law, cannot be allowed and is, therefore, rejected. In view of the aforesaid discussion, present writ petition is dismissed. Pending application(s), if any, also stand disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Ranjit Singh Pathania ...Petitioner.
Versus
State of Himachal Pradesh and others ...Respondents.

CWP No. 123 of 2016
Decided on: 07.01.2016

Constitution of India, 1950- Article 226- Petitioner filed objections for rejection of candidature of respondent No. 4- objections were rejected and respondent No. 4 was permitted to contest the election – held, that the dispute is not within domain of writ court- an alternative remedy is available to the petitioner- petition dismissed. (Para-1 to 3)

For the petitioner: Mr. Lovenish Thakur, Advocate, vice Mr. Deepak Kaushal, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. V.S. Chauhan, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 to 4.
Ms. Nishi Goel, Advocate, for respondent No. 5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice. *(Oral)*

At the oral request of the learned proxy counsel appearing on behalf of the petitioner, The State Election Commission, Himachal Pradesh, is arrayed as party-respondent, shall figure as respondent No. 5 in the array of respondents. Registry to carry out necessary entries in the cause title.

2. It is contended that the writ petitioner had filed objection for rejection of the candidature of respondent No. 4, but respondent No. 3 has wrongly rejected the objection and allowed respondent No. 4 to contest the election.

3. The dispute raised is not within the domain of this Court in view of the principles laid down by this Court in the judgment and order, dated 15.12.2015, made by this Court in a batch of writ petitions, **CWP No. 4366 of 2015,** titled as **Bal Krishan and**

others versus State of H.P. and others, being the lead case. However, an alternative remedy is available with the writ petitioner.

4. Having said so, the writ petition is dismissed alongwith all pending applications. However, the writ petitioner is at liberty to seek appropriate remedy at appropriate stage.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Som Chand s/o Sh. Tule Ram .....Petitioner
Versus
State of H.P. .....Non-petitioner

Cr.MP(M) No. 1876 of 2015
Order Reserved on 31.12.2015
Date of Order 7th January 2016

Code of Criminal Procedure, 1973- Section 438- As per the prosecution case, the prosecutrix had gone to take the test for the post of patwari, when petitioner/accused met her and asked to marry him- prosecutrix refused- the accused mentally tortured her and threatened to humiliate her- mobile phone of the prosecutrix was also snatched by the accused - she was brought to the house by the petitioner and was raped 4-5 times in four days- subsequently, the accused abused the prosecutrix and turned her out of the house with a threatening note that she would be killed in case of disclosure of the incident to anyone- the accused also refused to marry her- petitioner pleaded that he and prosecutrix were in love with each other and intended to marry but their parents are against the marriage- held, that allegations against the petitioner are heinous and grave-the investigation is at the initial stage- merits of the case will be decided during the trial and cannot be considered at the stage of consideration of bail application - taking into account the allegations against the petitioner, he cannot be released on anticipatory bail as investigation will be adversely affected- bail application rejected. (Para 6 to 10)

Cases referred:
Gurcharan Singh and others Vs. State (Delhi Administration), AIR 1978 SC 179
The State Vs. Captain Jagjit Singh, AIR 1962 SC 253
Bodhisattwa Gautam vs. Subhra Chakraborty , AIR 1996 SC 922

For petitioner : Mr. Vijay Arora, Advocate
For non-petitioner : Mr. R. S. Verma, Addl. A. G.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 438 Cr.PC for grant of anticipatory bail relating to FIR No.305/2015 dated 02.12.2015 registered under Sections 363, 366, 376 and 506 IPC in Police Station Kullu Distt. Kullu (H. P.).

2. It is pleaded that petitioner/accused and prosecutrix are in love with each other and both are willing to marry but parents of petitioner/accused and prosecutrix are

against the marriage. It is further pleaded that petitioner/accused is student of B.Ed Class and petitioner/accused will appear before the investigating agency as and when required by the investigating agency. It is further pleaded that petitioner/accused will abide by all conditions imposed by the Court. It is further pleaded that petitioner/accused is innocent and has been falsely implicated in the present case. Prayer for grant of anticipatory bail sought.

3. Per contra police report filed. There is recital in police report that on 25.11.2015 prosecutrix went to Govt. Girls Senior Sec. School Sultanpur Kullu for appearing in paper of Patwari. There is further recital in police report that after completion of examination when prosecutrix was standing outside the gate then petitioner/accused chased the prosecutrix and at Dhalpur ground forced the prosecutrix to marry him. There is further recital in the police report that at Dhalpur ground prosecutrix refused to marry him. There is further recital in the police report that petitioner/accused mentally tortured the prosecutrix and told that he would humiliate the prosecutrix. There is further recital in the police report that thereafter petitioner/accused brought the prosecutrix to his residential house and snatched her mobile phone. There is further recital in the police report that w.e.f. 25.11.2015 to 29.11.2015 petitioner/accused committed sexual intercourse 4-5 times with the prosecutrix. There is further recital in the police report that on 30.11.2015 petitioner/accused abused the prosecutrix and turned out the prosecutrix from his residential house and also refused to marry with the prosecutrix and also threatened her that in case prosecutrix would disclose the incident to anybody then petitioner/accused would kill the prosecutrix. There is further recital in the police report that medical examination of the prosecutrix was conducted and as per opinion of Medical Officer prosecutrix was exposed to coitus and final opinion would be given after report from Forensic Lab. There is further recital in the police report that site plan was prepared and photographs also obtained. Statements of prosecution witnesses also recorded under Section 161 of Cr.P.C. and statement of prosecutrix also recorded under Section 164 Cr.P.C. before learned Chief Judicial Magistrate Lahaul and Spiti at Kullu. There is further recital in the police report that medical examination of the petitioner/accused is still to be conducted and clothes of the prosecutrix which have been concealed by the petitioner/accused worn by the prosecutrix w.e.f. 25.11.2015 to 29.11.2015 are to be taken into possession. There is further recital in the police report that if the petitioner/accused is released on anticipatory bail at this stage then investigation of the case will be adversely affected. Prayer for rejection of anticipatory bail sought.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioner and Court also perused the entire record carefully.

5. Following points arise for determination in present bail application.

(1) Whether anticipatory bail application filed by the petitioner/accused under Section 438 Cr.PC is liable to be accepted as mentioned in memorandum of grounds of bail application?

(2) Final Order.

Findings upon Point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner/accused is innocent and he did not commit any criminal offence of sexual assault as alleged by the investigating agency cannot be decided at this stage. Same facts will be

decided when case will be disposed of on merits after giving due opportunity to both parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of petitioner that any condition imposed by the Court will be binding upon the petitioner/accused and on this ground bail application filed by the petitioner/accused be allowed is rejected being devoid of any force for the reason hereinafter mentioned. It is well settled law that at the time of granting bail following factors are to be considered: (i) Nature and seriousness of offence (ii) Character of the evidence (iii) Circumstances which are peculiar to the accused (iv) A reasonable possibility of the presence of accused not being secured at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. See AIR 1978 SC 179 titled ***Gurcharan Singh and others Vs. State (Delhi Administration.*** Also see AIR 1962 SC 253 titled ***The State Vs. Captain Jagjit Singh.***

8. Allegations against the petitioner/accused are very heinous and grave in nature relating to sexual assault. Investigation is at the initial stage. It was held in case reported in ***AIR 1996 SC 922 titled Bodhisattwa Gautam vs. Subhra Chakraborty*** that rape is not only a crime against the person of a victim but it is a crime against the entire society. It was held that offence of rape destroys the entire psychology of a girl and pushes the girl into deep emotional crisis. It was held that offence of rape is a crime against the basic human rights and is also violative of most cherished fundamental rights of the victim contained in Article 21 of the Constitution of India. In view of the fact that investigation is at the initial stage and in view of the fact that allegations against the petitioner/accused are very heinous and grave in nature that petitioner/accused forcibly committed rape upon the prosecutrix w.e.f. 25.11.2015 to 29.11.2015 four-five times Court is of the opinion that if anticipatory bail is granted to the petitioner/accused at this stage then investigation will be adversely affected. Court is of the opinion that if anticipatory bail is granted to the petitioner/accused at this stage then interest of the State and general public will also be adversely affected.

9. Submission of learned Additional Advocate General that if anticipatory bail is granted to the petitioner/accused at this stage then petitioner will induce and threaten the prosecution witnesses and on this ground bail application be declined is accepted for the reason hereinafter mentioned. There is apprehension in the mind of the Court that if anticipatory bail is granted to the petitioner/accused at this stage then petitioner/accused will induce and threaten the prosecution witnesses. Court is of the opinion that in view of the gravity of allegations against the petitioner/accused relating to sexual assault criminal offence it is not expedient in the ends of justice to grant anticipatory bail to the petitioner/accused. Point No.1 is answered in negative.

Point No.2 (Final order).

10. In view of my findings on point No.1 above anticipatory bail application filed by petitioner under Section 438 Cr.PC is rejected. Observations made hereinabove will not effect merits of the case in any manner and will be strictly confined for disposal of the anticipatory bail application filed under Section 438 Cr.PC. Cr.MP(M) No.1876/2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Baldev Singh and others .....Appellants

Versus

Bhagwati Devi and others ..... Respondents

FAO No. 19 of 2009.
Reserved on : 01.01.2016.
Pronounced on: 08.01.2016

Motor Vehicles Act, 1988- Section 166- A tractor met with an accident and deceased travelling on the same expired due to the injuries sustained by him- claimants filed claim petition –MACT saddled the owner and driver with liability- claimants had claimed that deceased was working as a labourer at the time of accident, whereas, the owner and driver claimed in reply that deceased had boarded the tractor on his own without the consent of the driver- held, that the insurance policy of the tractor showed that tractor could be used only for agricultural purposes – driver and owner had failed to prove the plea taken by them- Tribunal had rightly held that deceased was travelling as a gratuitous passenger and the owner had committed willful breach – further, the plea that the owner had died during the proceedings and the award was passed against a dead person, which was a nullity, is liable to fail as summary procedure is adopted while deciding a claim petition - all the provisions of C.P.C are not applicable- since, owner had already taken the plea that deceased boarded the tractor on his own, his legal representatives have to follow the same defence- the award saddling the owner with the liability is proper- hence, appeal dismissed. (Para-8 to 27)

Cases referred:

Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another, (2013) 10 SCC 646
Savita vs. Bindar Singh & others, 2014 AIR SCW 2053
Sohan Lal Passi v. P.Sesh Reddy and others, AIR 1996 Supreme Court 2627

For the appellants: Mr.Neeraj Gupta, Advocate.
For the respondents: Mr.G.R. Palsara, Advocate, for respondents No.1 to 5.
Mr.G.C. Gupta, Senior Advocate, with Ms.Meera Devi, Advocate, for respondent No.6.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice

Subject matter of this appeal is the award, dated 22nd September, 2008, passed by the Motor Accident Claims Tribunal, Fast Track Court, Mandi, District Mandi, H.P., (for short, the Tribunal), in Claim Petition No.29/2002 (27/2005), titled Bhagwati Devi and others vs. Attar Singh and others, whereby compensation to the tune of Rs.4.00 lacs, alongwith interest at the rate of 7.5% per annum, came to be awarded in favour of the claimants, and the owner and the driver (original respondents No.1 and 3) came to be saddled with the liability, (for short, the impugned award).

2. The claimants, the driver and the insurer have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to them.

3. The legal representatives of the owner Attar Singh have questioned the impugned award by the medium of instant appeal on the grounds taken in the memo of appeal, after seeking leave to file appeal.

Brief facts:

4. Mani Ram son of Balku Ram became the victim of a vehicular accident which was caused by driver Brij Lal Retka while driving the offending vehicle-tractor bearing registration No.HP-10-1203, who was traveling in the said vehicle, sustained injuries and succumbed to the same. It was specifically averred in the Claim Petition that the deceased was traveling in the offending vehicle as labourer, with other labourers, and while coming back after unloading the material, the accident had occurred. It was further pleaded in the Claim Petition that the deceased was earning Rs.5,000/- per month. Thus, as per the break-ups given in the claim petition, the claimants claimed compensation to the tune of Rs.6.00 lacs.

5. Claim petition was resisted by the original respondents No.1 and 2 (owner and insurer) by filing replies, while respondent No.3 (driver) adopted the reply filed by the owner.

6. On the pleadings of the parties, the following issues came to be framed:

"1. Whether Mani Ram died as a result of rash & negligent driving of the Tractor No.HP-10-1203 being driven by Res.No.3 at Bhadyara on 29-9-1999? OPP

2. Whether the Respondent No.3 was not possessing a valid and effective driving licence at the time of the accident? OPR-2.

3. Whether the vehicle in question was being driven by the respondent No.3 in-contravention of the terms & conditions of the Insurance Policy, if so its effect? OPR-2.

3-A. Whether the petitioners are entitled for compensation, if so to what amount and from whom? OPP

4. Relief."

7. Claimants, in order to prove their claim, examined as many as three witnesses i.e. PW-1 Dalip Singh, PW-2 Inder Dev (one of the claimants) and PW-3 Jai Dev. On the other hand, respondents examined Partap Singh, Junior Assistant, in the office of Sub Divisional Magistrate Rohru.

8. The Tribunal, after scanning the evidence, held that the claimants have proved that the driver of the offending vehicle had driven the tractor rashly and negligently, as a result of which the deceased sustained injuries and succumbed to the same. The said findings are not in dispute. Accordingly, the findings returned on issue No.1 by the Tribunal are upheld.

9. The question to be determined in this appeal is – Whether the Tribunal has rightly fastened the owner Attar Singh with the liability and has rightly exonerated the insurer.

10. The said question revolves around issues No.2, 3 and partly issue 3-A. The Tribunal in paragraphs 20, 21 and 24 of the impugned award has held that the deceased was traveling on the offending vehicle as a gratuitous passenger, thus, the owner has committed willful breach and accordingly discharged the insurer from its liability and directed the owner and the driver to satisfy the award.

11. I have gone through the pleadings of the parties before the Tribunal. The claimants in paragraphs 10 and 24 of the claim petition have specifically averred that the deceased was traveling on the tractor as a labourer, alongwith others. It was further pleaded by the claimants that said tractor met with the accident because of the rash and negligent driving of the driver. It was not averred in the claim petition whether the deceased, alongwith others, was traveling on the tractor in connection with agriculture work and whether at the relevant point of time, the tractor was being used for agriculture purposes.

12. The owner has filed the reply, which was adopted by the driver also, wherein they have specifically pleaded that the accident was the outcome of brake failure. In reply to paragraph 10, it has been pleaded that the deceased had boarded the tractor on his own, without the consent of the driver, when the tractor was in motion. In reply to paragraph 24 of the Claim Petition, it has specifically been pleaded that the accident was due to brake failure. It has also been averred that the driver of the offending tractor was acquitted of the criminal case by the court of competent jurisdiction.

13. Here, It is apt to reproduce paragraph 2 of the preliminary submissions, and Paragraphs 3 & 7 of the reply, on merits, filed by the owner and adopted by the driver:

> *"2. That the death of Mani Ram is not on account of any rash and negligent act but it is due to the break failure of the tractor as is clear from the photo copy of Mechanical report attached herewith.*
>
> *3. That para No.10 of the claim petition is also denied. The deceased boarded the tractor while moving on the road without the consent of the driver.*
>
> *7. That the contents of para No.24 of the claim petition are denied for want of knowledge. However, while the tractor was coming from Devidhar to Rohru the deceased Mani Ram boarded the tractor at his own without the consent of the Driver and due to the failure of the break the tractor fell down. The deceased Mani Ram died in the accident and thereafter case against on Brij Lal Retka S/o Sh.Ajit Singh R/o Village Barara, Tehsil Rohru, District Shimla, H.P. was filed under Section 279, 337 and 304-A I.P.C. in the court of Ld.Addl.C.J.M. Rohru who acquitted the above Driver on the ground that the accident took place due to the break failure. Photo stat copy of the order dated 18-7-2000 is attached herewith for the kind perusal of this Hon'ble Tribunal. Now it is clear that the Tractor is insured with the Oriental Insurance Company and the accident occurred due to the break failure as per the report of the mechanic. The respondent No.1 not at all liable to make the payment of compensation."*

14. The insurer has also filed the reply to the Claim Petition where it has been specifically averred in paragraphs 5 and 7 of the preliminary submissions that the deceased was a gratuitous passenger and his risk was not covered in terms of the conditions contained in the policy and the tractor was registered for agriculture purpose and not for commercial purpose.

15. The registration certificate of the offending tractor has been proved on record as Ext.R-2. RW-2 Pratap Singh has clearly stated that, as per the registration certification, the tractor was to be used for the purpose of agriculture works and not for commercial use.

16. The insurance policy, though comprehensive in nature, also provides that the tractor was to be used only for the purpose of agriculture works. It was also provided in the insurance policy that the risk of driver/two workmen was covered.

17. From the pleadings, as referred to above, it is not the case of the claimants that the deceased was traveling on the tractor in connection with any agriculture work.

18. The Tribunal, in paragraph No.12 of the impugned award, has discussed the statement of PW-3 Jai Devi, who specifically stated that, at the relevant point of time, the tractor was used for carrying stones. The positive case of the claimants, as discussed hereinabove, is that the deceased was traveling on the tractor as a labourer/trained mechanic. It is not the case of the owner that the deceased was engaged by him as workman/labourer in connection with any agriculture work.

19. No doubt, the driver and the owner have tried to carve out a case that the deceased had boarded the tractor on his own, which they have failed to prove. It was also established that at the relevant point of time, the tractor was not being used for agriculture purpose, but was being plied for commercial purpose. The Tribunal, after discussing the evidence, oral as well as documentary, rightly held that the deceased was traveling as gratuitous passenger and the owner had committed willful breach. The risk of gratuitous passenger was not covered and the Tribunal has rightly discharged the insurer from its liability.

20. Learned counsel for the appellants argued that the owner Attar Singh had died during the pendency of the Claim Petition i.e. on 9th August, 2006, thus, the award has been passed by the Tribunal against a dead person and is nullity in the eyes of law. Therefore, the learned counsel for the appellants pressed for the remand of the claim petition.

21. The argument, though attractive, is devoid of any force for the following reasons. In a Claim Petition, summary procedure is to be adopted and all provisions of Civil Procedure Code are not applicable, rather only some provisions have been made applicable in terms of Section 169 of the Motor Vehicle Act, 1988 (for short, the Act), read with Rule 232 of the Himachal Pradesh Motor Vehicles Rules, 1999 (for short, the Rules of 1999). It is apt to reproduce Rule 232 of the Rules of 1999, hereunder:

> ***"232. The Code of Civil Procedure to apply in certain cases:-***
>
> *The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII; Rule 3 to 10; Order XVI, Rules 2 to 21; Order XVII; Order XXI and Order XXIII, Rules 1 to 3."*

22. It is beaten law of the land that the claimants claiming compensation in terms of Section 166 of the Motor Vehicles Act is not to be seen as adversial litigation, but is to be determined while keeping in view the aim and object of granting compensation. My this view is fortified by the judgment of the Apex Court in ***Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another, (2013) 10 SCC 646***.

23. The Apex court in **Savita vs. Bindar Singh & others, 2014 AIR SCW 2053,** has held that at the time of fixing compensation, courts should not succumb to niceties or technicalities of law. It is apt to reproduce paragraph 6 of the said decision hereunder:

> *"6. After considering the decisions of this Court in Santosh Devi (Supra) as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the*

compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."

24. A reference may also be made to the decision of the Apex Court in **Sohan Lal Passi v. P.Sesh Reddy and others, AIR 1996 Supreme Court 2627,** in which, in paragraph 12, it was observed that the courts, while deciding claim petitions, must keep in mind that the right of the claimants is not defeated on technical grounds. Relevant portion of paragraph 12 of the said decision is reproduced hereunder:

"12. ..... While interpreting the contract of insurance, the Tribunal and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment debtor in respect of the liability in view of sub-section (1) of Section 96 of the Act. It need not be pointed out that the whole concept of getting the vehicle insured by an insurance company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Accident Claims Tribunal for realisation of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well known."

25. This Court also, in the recent past, in series of judgments, has followed the similar principle and held that granting of compensation is just to ameliorate the sufferings of the victims and is to be taken to its logical end without succumbing to the niceties of law, hyper-technicalities and procedural wrangles and tangles.

26. The argument of the learned counsel for the appellants is also not tenable for another reason that the owner Attar Singh had filed the reply to the claim petition and contested the same. He had specifically pleaded in the reply that the deceased was not traveling in the said tractor and he was not engaged as workman and that the deceased had boarded the tractor on his own, without the consent of the driver. The legal representatives have to follow the defence projected by Attar Singh. They cannot take any other ground.

27. Another aspect which cannot be lost sight of is that the owner Attar Singh was duly represented by the counsel before the Tribunal till the passing of the impugned award. The learned counsel representing the deceased never informed the Tribunal about the factum of his death, which he was supposed to do.

28. Viewed thus, the contention raised by the learned counsel for the appellants is rejected.

29. In view of the above discussion, there is no merit in the appeal and the same is dismissed. Consequently, the impugned award is upheld.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Smt. Jamila Begum and others ...Appellants.
Versus
Sh. Amar Jeet Singh and others ...Respondents.

FAO No. 410 of 2009
Decided on: 08.01.2016

Motor Vehicles Act, 1988- Section 166- Claimants challenged the award on the ground of adequacy of compensation - held that deceased was 22 years at the time of accident and was a bachelor- by guess work even if deceased is treated as a labourer, he can be safely presumed to be earning not less than Rs. 4,000/- per month - 50 % was to be deducted towards his personal expenses and multiplier of 15 was applicable- the claimants are entitled to compensation of Rs. 2000 x 12 x 15 = 3,60,000 along with interest - appeal allowed and award modified. (Para-3 to 13)

Cases referred:
Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others versus Madan Mohan and another, 2013 AIR SCW 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105

For the appellants: Mr. Deepak Kaushal & Mr. Lovenish Thakur, Advocates.
For the respondents: Mr. Karan Singh Kanwar, Advocate, for respondent No. 1.
Nemo for respondent No. 2.
Ms. Aruna Sharma, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

This appeal is directed against the judgment and award, dated 02.04.2009, made by the Motor Accident Claims Tribunal-II, Sirmaur District at Nahan, H.P. (for short "the Tribunal") in M.A.C. Petition No. 18-N/2 of 2007, titled as Smt. Jamila Begum and others versus Shri Amar Jeet Singh and others, whereby compensation to the tune of ₹ 1,42,000/- with interest @ 7.5% per annum from the date of the claim petition till its deposition came to be awarded in favour of the claimants and against the owner-insured (Amar Jeet Singh) (for short "the impugned award").

2. The owners-insured and the driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The claimants have questioned the impugned award on the ground of adequacy of compensation.

4. Thus, the only question to be determined in this appeal is - whether the amount awarded is inadequate or otherwise?

5. The claimants invoked the jurisdiction of the Tribunal for grant of compensation on the grounds taken in the memo of claim petition, was resisted by the respondents and the following issues came to be framed by the Tribunal:

> *"1. Whether the death of Zahool Ali took place in an accident which was the result of rash and negligent driving of Tractor No. HR-01D-2996 by respondent No. 3, as alleged? OPP*
>
> *2. If issue No. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom? OPP*
>
> *3. Whether the petition is not maintainable? OPR*
>
> *4. Relief."*

6. Parties have led evidence.

7. The Tribunal, after scanning the evidence, oral as well as documentary, awarded compensation to the tune of ₹ 1,42,000/- and saddled the owner-insured-Amar Jeet Singh with liability.

Issues No. 1 and 3:

8. The owners-insured and the driver of the offending vehicle have not questioned the findings returned by the Tribunal on issues No. 1 and 3. However, I have gone through the impugned award and am of the considered view that the Tribunal has rightly decided issues No. 1 and 3 in favour of the claimants and against the respondents. Thus, the findings returned by the Tribunal on issues No. 1 and 3 are upheld.

Issue No. 2:

9. The amount awarded by the Tribunal, in terms of the impugned award, on the face of it, is meager, for the following reasons:

10. Admittedly, the deceased was 22 years of age at the time of the accident and was bachelor. Thus, by guess work, even if he be treated as a labourer, it can be safely said and held that he would have been earning not less than ₹ 4,000/- per month. 50% was to be deducted towards his personal expenses in terms of the Second Schedule appended with the Motor Vehicles Act, 1988 (for short "the MV Act") read with the ratio laid down by the Apex Court in the case titled as **Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another,** reported in **AIR 2009 SC 3104,** and upheld by a larger Bench of the Apex Court in the case titled as **Reshma Kumari & others versus Madan Mohan and another,** reported in **2013 AIR SCW 3120.**

11. Having said so, it can be safely said and held that the claimants have lost their source of dependency/income to the tune of ₹ 2,000/- per month.

12. Multiplier of '15' is to be applied in view of **Sarla Verma's case (supra),** upheld by a larger Bench of the Apex Court in **Reshma Kumari's case (supra)** read with **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.**

13. Accordingly, the claimants are held entitled to compensation to the tune of ₹ 2,000/- x 12 x 15 = ₹ 3,60,000/- with interest as awarded by the Tribunal.

14. Having said so, the appeal is allowed and the impugned award is modified, as indicated hereinabove.

15. Owner-insured-Amar Jeet Singh is directed to deposit the enhanced awarded amount before the Registry of this Court or before the Tribunal within eight weeks. On deposition, the same be released in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same to their respective bank accounts.

16. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Sh. Jeet Ram .....Appellant
Versus
Kanta Devi & another .....Respondents

FAO No. 316 of 2009
Decided on : 8.1.2016

Motor Vehicles Act, 1988- Section 166- Claimant questioned the award on the grounds that Tribunal has wrongly saddled the owner with liability, and secondly, amount of compensation is meager – held that since owner has not questioned the award, claimant has no locus standi to challenge the liability saddled on owner -appeal dismissed.

(Para No. 3 to 7)

For the Appellant : Mr. H.C. Sharma, Advocate.
For the Respondents: Nemo for respondent No. 1.
Mr. Jagdish Thakur, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

This appeal is directed against award dated 6th January, 2009, made by the Motor Accident Claims Tribunal-II, Shimla, H.P. (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 7-S/2 of 2007, titled Shri Jeet Ram versus Smt. Kanta Devi & another, whereby compensation to the tune of ₹ 3,00,000/- with interest @ 9% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimant-appellant herein and the owner-insured came to be saddled with liability (for short, "the impugned award").

2. The insurer and insured-owner have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The claimant has questioned the impugned award on the following two grounds:

(i) The Tribunal has fallen in an error in saddling the owner with liability;

(ii) the amount of compensation is meager.

4. Both the grounds are not tenable for the following reasons.

5. The owner has not questioned the impugned award. How can it lie in the mouth of the claimant that the Tribunal has fallen in an error in saddling the insured-owner with the liability. Thus, the argument of the learned Counsel is turned down.

6. I have gone through the impugned award. The Tribunal has rightly assessed the compensation and made discussion in paras 27 to 29 of the impugned award. The findings returned by the Tribunal are legally correct, need no interference.

7. Accordingly, the impugned award is upheld and the appeal is dismissed.

8. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, J.

Jeet Singh s/o late Sh. Hoshiara Singh .....Petitioner
Versus
State of H.P. & Others .....Non-petitioners

CMPMO No. 17/2016
Date of order: January 08, 2016

Code of Civil Procedure, 1908- Order 23 Rule 1- Learned Counsel for the petitioner does not press the petition- hence, petition is dismissed as withdrawn- liberty also granted to the petitioner to approach the Competent Court in accordance with law.

For petitioner : Mr. Lalit K. Sehgal, Advocate
For non-petitioners : Mr. R. S. Verma, Addl. A.G. and Mr. M. L. No. 1 to 5 Chauhan, Addl. A.G.

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

At this stage learned Advocate appearing on behalf of petitioner submitted that he does not press the present petition with liberty to approach competent Court of law. In view of the above stated facts present petition filed under Article 227 of Constitution of India is dismissed as withdrawn with liberty to the petitioner to approach competent Court of law in accordance with law. No order as to costs. CMPMO No.17/2016 is disposed of. Copy dasti.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Madhubala ...Petitioner.
Versus
State of H.P. and Ors. ...Respondents.

CWP No.14 of 2016.
Decided on: January 8, 2016.

Constitution of India, 1950- Article 226- **Himachal Pradesh Panchayati Raj Act, 1994-** Section 122- Petitioner wanted to contest the election for the post of Pardhan- however, her nomination paper was rejected on the ground that her husband had encroached upon the Government land- it was not disputed that an application was filed by the husband of the petitioner for regularization of the government land- it was contended that husband of the petitioner had surrendered the encroached land and the prohibition contained in Section 122 ceased to be applicable- no material was placed on record to show that her husband had delivered the possession to the government- husband falls within the definition of the family- therefore, petitioner is debarred from contesting the election – writ petition dismissed. (Para-2 and 3)

For the petitioner: Mr.Archna Dutt, Advocate.

For the respondents: Mr.Shrawan Dogra, Advocate General, with Mr.V.S.Chauhan and Mr.Romesh Verma, Addl.Advocates General and Mr.J.K.Verma, Deputy Advocate General, for respondents No.1 to 3 and 5.
Ms.Nishi Goel, Advocate for respondent No.4.
Mr.Sanjay Jaswal, Advocate for respondent No.6.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

The petitioner aspired to contest elections to the office of Pradhan, Gram Panchayat Dadhamb, Tehsil Shahpur, District Kangra. However, her aspiration to contest elections to the coveted office of Pradhan of the aforesaid Panchayat stood frustrated by Annexure P-6 whereunder the Returning Officer concerned rejected her nomination papers on the score of objector/complainant one Pravesh Kumar also an aspirant for seeking election to the office of Pradhan of the Panchayat aforesaid purveying to the Returning Officer concerned an information elicited under the Right to Information Act with a vivid portrayal therein of the husband of the petitioner assaying for regularization of encroachment at his instance upon Government land comprised in Khasra No.1/1 measuring 0-01-40 hectare situated at Mohal Dhanotu, Tehsil Shahpur, District Kangra, concert whereof of the husband of the petitioner bespeaking of his hence acquiescing to his holding Government land as an encroacher rendered amenable for invocation against the petitioner his wife the statutory inhibition cast in Clause (c) of the proviso to Sub-section (1) of Section 122 of the Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act') for hence de-eligiblizing her to contest elections to the office of Pradhan of the Gram Panchayat concerned. The learned counsel for the petitioner does not contest the factum of the husband of the petitioner thereto concerting to regularize encroachment at his instance of Government land comprised in Khasra No.1/1 measuring 0-01-40 hectare situated at Mohal Dhanotu, Tehsil Shahpur, District Kangra, which factum of the husband of the petitioner endeavouring to regularize from the authorities concerned his encroachment upon government land though bespeaks of his acquiescence to his unlawfully holding government land nonetheless the short submission addressed by the learned counsel for the petitioner to efface the effect of the grounds constituted in Annexure P-6 on succor whereof the Returning Officer concerned rejected the nomination papers of the petitioner stands grooved on reliance upon the provisions engrafted in Section 122 (1) (c) of the Act, which stands extracted herein-after:-

"122. Disqualifications.- (1) xxx xxx

(a) xxx xxx

(b) xxx xxx

(c) if he or any of his family member(s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed since the date on which he or any of his family members, as the case may be, is ejected therefrom or ceases to be the encroacher.

Explanation.- For the purpose of this clause the expression "family member" shall mean the spouse, their son(s), unmarried daughter(s) and adopted son and unmarried daughter; or}

(d) xxx xxx …."

Pre-eminently her emphatic centralized focus is upon Clause (c) of its proviso also embedding a prescription therein of cessor of encroachment upon Government land by an aspirant or his family member either of whom evidently hold Government land as encroachers cessor whereof stands constituted by theirs abandoning or surrendering possession of Government land besides significantly when such cessor of encroachment of Government land by an aspirant or his family member provenly occurs six years previous to an aspirant staking a claim for seeking elections to the coveted office of Pradhan of the Panchayat concerned, would beget relaxation of/or the whittling down of the rigor of the statutory inhibition cast against an encroacher of Government land inasmuch as his/her or his/her family member standing barred to contest election to any office of the Panchayat concerned. The relaxation or denudation of the rigor of the aforesaid statutory inhibition embedded in the apposite statutory provisions is canvassed to stand bespoken by Annexure P-3 besides by Annexure P-2. Reliance, if any, by the learned counsel for the petitioner upon Annexure P-3 besides upon Annexure P-2 for sustaining her contention before this Court of theirs embodying communications of the husband of the petitioner surrendering besides abandoning Government land held by him as an encroacher especially when as manifested by Annexure P-3 of its preparation occurring in the year 2002 hence more than six years since thereat standing elapsed till the stage of the petitioner filing nomination papers for contesting elections to the office of Pradhan of the Gram Panchayat concerned rendered the husband of the petitioner to stand encompassed within the domain of the exception to the apposite statutory inhibition cast against an aspirant to any office of the Panchayat concerned by contesting elections thereto with a concomitant effect of hers being eligible in the year 2016 to contest elections to the office of Pradhan of the Panchayat concerned with a sequelling effacement of Annexure P-6 whereunder her nomination papers stood rejected by the Returning Officer concerned. Moreover, the learned counsel for the petitioner has also relied upon a display in the column of cultivation of Annexure P-2 inasmuch as of the Government of Himachal Pradesh standing therein reflected to be holding possession as owner of land purportedly encroached upon by her husband, for dislodging the tenacity of the reason purveyed in Annexure P-6 of the husband of the petitioner by his applying in the year 2002 for regularization of land comprised in Khasra No.1/1 measuring 0-01-40 hectare situated at Mohal Dhanotu, Tehsil Shahpur, District Kangra, his hence acquiescing to his holding the aforesaid tract of land as an encroacher. In other words, the learned counsel for the petitioner contends of the aforesaid display in the column of possession of Annexure P-2 of the State of Himachal Pradesh holding possession as owner of land comprised in Khasra No.1, measuring 0-15-12 Hectares silences the efficacy of the reasoning expounded in Annexure P-6 of her husband extantly holding possession thereof as an encroacher.

2. The initial submission of the learned counsel for the petitioner anvilled upon Annexure P-3 with a manifestation therein of its preparation occurring in the year 2002 hence more than six years since then up to the stage of hers filing nomination papers for contesting elections to the office of Pradhan of the Gram Panchayat concerned standing elapsed, it hence rendering her husband to fall within the domain of the exception constituted to the statutory inhibition cast in Clause (c) of the proviso of sub-section (1) of Section 122 of the Act, fails to garner any strength as the mere factum of its preparation occurring in 2002 would ipso facto not enable her to place reliance thereupon to save the rigor of the statutory inhibition cast in the apposite provisions of the Act against hers contesting elections to the office of Pradhan of the Gram Panchayat concerned on the ground articulated in Annexure P-6 rather only on its keen, incisive and wholesome reading would it be discernable of any portrayal standing embodied therein of the husband of the petitioner six years prior to the stage of hers filing nomination papers for contesting elections to the office of Pradhan of the Gram Panchayat concerned having surrendered or abandoned possession of the land of the Government held by him as an encroacher for hence lending succor to the argument espoused before this Court by the learned counsel for the petitioner. While incisively reading the portrayals in Annexure P-3 the imminent effect which stands evinced there-from is of the authority concerned therein not bespeaking of possession of Govt. land held by the husband of the petitioner as an encroacher standing either surrendered or abandoned by him rather it is merely communicative of the relevant tract of land held by the husband of the petitioner as an encroacher standing selected for construction of a gymnasium thereon. Necessarily the mere display therein of the tract of land held by the husband of the petitioner as an encroacher standing selected as the site for raising thereon a playground and a gymnasium is the least connotative of the husband of the petitioner either having surrendered its possession to the Government or abandoned it hence his ceasing to be an encroacher thereupon. The aforesaid inference as stands drawn by this Court on an incisive perusal of Annexure P-3 wanes the effect of the contention of the learned counsel for the petitioner of her husband in the year 2002 having surrendered or abandoned possession of Government land hence with more than six years standing elapsed since the preparation of Annexure P-3 in the year 2002 up to the petitioner filing nominations for contesting elections to the office of Pradhan of the Panchayat concerned the saving provision or the exception to the statutory inhibition cast in Clause (c) of proviso to sub-section (1) of Section 122 of the Act against the petitioner contesting elections stands squarely attracted qua her.

3. Herein-after it is also imperative to pronounce upon the efficacy of the contention of the learned counsel for the petitioner of the column of possession comprised in Annexure P-2 displaying the factum of the Government of Himachal Pradesh holding possession as owner of the tract of land held by the husband of the petitioner as an encroacher rendering her hence amenable to seek reprieve from the saving provisions of clause (c) of proviso to sub-section (1) of Section 122 of the Act as stands engrafted therein in relaxation of the rigour of the statutory inhibition preceedingly cast thereunder against the petitioner on the aforestated grounds standing debarred to contest elections to the office of Pradhan of the Gram Panchayat concerned. The said contention loses its force given the factum of Annexure P-2 disclosing its preparation occurring in the year 2015 in sequel with its preparation occurring in the year 2015 the effect, if any, of the aforesaid display therein cannot empower the learned counsel for the petitioner to contend qua six years standing elapsed since the husband of the petitioner purportedly surrendering possession of the tract of land reflected therein hitherto held as an encroacher by him up to the stage of the petitioner filing nomination papers in the very same year for contesting elections to the office of Pradhan of the Gram Panchayat concerned nor can empower her to contend of hence hers standing entitled to seek reprieve from the saving provisions in dilution of the vigor of clause

(c) of proviso to sub-section (1) of Section 122 of the Act. Apart there-from, the display in the column of possession in Annexure P-2 prepared in the year 2015 of the Government of Himachal Pradesh holding possession of the tract of land purportedly hitherto held as an encroacher by the husband of the petitioner carries only a presumption of truth yet the said presumption is rebutable, rebuttal whereto stands begotten by a display in Annexure P-3 of the tract of land reflected therein to stand merely chosen for construction of a playground and a gymnasium thereon which reflection repels both the factum of the husband of the petitioner having ever surrendered or abandoned its possession besides rebuts the reflection in Annexure P-2 of the Government of Himachal Pradesh holding possession as owner of the tract of land held as an encroacher by the husband of the petitioner. Even otherwise, the best evidence to discount the efficacy of the communications in Annexure P-6 of the husband of the petitioner holding as an encroacher the tract of land owned by the Government stood comprised (i) in an apposite certificate obtained from the authority concerned; (ii) adduction of material by the petitioner in portrayal of the tract of land reflected in Annexure P-6 to stand chosen by the Government as the site for construction thereon of a gymnasium and a playground standing subjected to use by the authority concerned for the purpose for which it was selected. However, no certificates/material aforesaid stand adduced on record at the instance of the petitioner in substantiation of the portrayal in Annexure P-2 of the Government of Himachal Pradesh extantly holding possession of the tract of land purportedly previously held as an encroacher by the husband of the petitioner, sequelly for non-substantiation of the apposite reflection therein, an inference stands garnered of reflections in Annexure P-2 marshalling no efficacy rather standing rebutted by portrayals in Annexure P-3, dehors the factum that even if assumingly the reflections therein are truthful its standing prepared in the year 2015 hence rendering the surrendering or abandoning of possession, if any, by the husband of the petitioner of Government land to not fall out side the period of six years on lapse whereof only the rigor of clause (c) of proviso to sub-section (1) of Section 122 of the Act would stand un-attracted. Rather, it appears that the entry in Annexure P-2 is a mere stray entry recorded therein without the Patwari concerned having ever visited the site concerned whereupon no reliance is imputable. Undisputedly, the encroacher upon Government land is the husband of the petitioner, obviously when he falls within the definition of her family as constituted in Clause (c) of proviso to sub-section (1) of Section 122 of the Act, the factum of his being an encroacher upon Government land rears the bar constituted in Clause (c) of proviso to sub-section (1) of Section 122 of the Act to stand attracted against the petitioner, his wife for hers hence concomitantly standing debarred to contest elections to the office of Pradhan, Gram Panchayat Dadhamb, Tehsil Shahpur, District Kangra.

4. In view of the aforesaid discussion and observations, the writ petition is dismissed. Pending application(s), if any, shall also stand disposed of. No costs.

****

BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Muzaffar Khan alias Jafari .....Appellant.

Versus

State of Himachal Pradesh .....Respondent.

Cr. Appeal No. 492 of 2015
Reserved on: January 06, 2016.
Decided on: January 08, 2016.

Indian Penal Code, 1860- Section 302, 201 read with Section 34- **Indian Arms Act, 1959-** Sections 25 and 27- Daughter of the complainant was married to the accused- she complained that she was being harassed by the accused who also threatened to kill her - the complainant advised his son-in-law to treat his wife properly- complainant heard the noise near the house of the daughter – he went to the spot and found that accused had killed his wife and had run away from the spot- accused was convicted by the trial Court- complainant categorically stated that there was no person in the house except the accused and his wife- his statement was corroborated by other witnesses- a gun was produced by the accused- cause of death was gunshot – the plea that deceased died due to the accident cannot be believed- accused had also run away from the spot which falsifies his version regarding accidental fire - accused was rightly convicted by trial court-appeal dismissed.

(Para-18 to 25)

Cases referred:

Babu alias Balasubramaniam vrs. State of Tamil Nadu, (2013) 8 SCC 60
Ramesh Vithal Patil vs. State of Karnataka and others, (2014) 11 SCC 516
State of Rajasthan vs. Thakur Singh, (2014) 12 SCC 211
Alber Oraon vs. State of Jharkhand, (2014) 12 SCC 306

For the appellant: Mr.Anoop Chitkara, Advocate.
For the respondent: Mr. M.A.Khan, Addl. AG.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment and order dated 2.6.2015 and 5.6.2015, respectively, rendered by the learned Addl. Sessions Judge, Chamba, H.P. in Sessions Trial No. 1/13 (regd. No. 42/14), whereby the appellant-accused (hereinafter referred to as accused), who was charged with and tried for offences punishable under Sections 302, 201, 34 IPC and Sections 25 and 27 of the Arms Act, has been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.20,000/- for offence punishable under Section 302 IPC and in case of default of payment of fine, he was ordered to further undergo simple imprisonment for six months. He was also sentenced under Section 27 of the Arms Act, 1959 to suffer simple imprisonment for three years and to pay fine of Rs.5,000/- and in case of default of payment of fine, he was further ordered to undergo simple imprisonment for six months. Co-accused Sahabdeen and Sardaro Begum were acquitted of the offence charged against them.

2. The case of the prosecution, in a nut shell, is that on 19.8.2012 Mohd. Raffi telephonically informed Police Station Tissa that Muzaffar Khan has killed his wife with gunshot. S.I./Addl SHO Dharam Singh (PW-13) alongwith ASI Ravinder Singh and others proceeded to the spot. The statement of Abdul Majeed was recorded under Section 154 Cr.P.C vide Ext. PW-1/A. He was working on daily wages in Public Works Department. His eldest daughter is Reena Begum. His daughter Reena Begum(deceased) was married with Muzaffar Khan alias Jaffari about one and a half month back as per Muslim rites and customs. After the marriage his daughter came to his house 2-3 times with her husband and stated that her husband used to quarrel on trivial issues. He used to taunt her that she has not brought any dowry nor she is doing the household work. He also used to say that if she will speak out, he would shot her with a gun. He had also advised his son-in-law not to pick up quarrels with his daughter. On 19.8.2012 at about 7:00 AM, he was sleeping in his house. He heard the noise near the house of his daughter Reena Begum. On hearing the

noise, he and his wife Smt. Shamshad Begum went to the spot. They went to the room of Reena Begum. Mohd. Farooq, Mohd. Hanu and Pradhan Dilawar Mohd were present on the spot. Pradhan Dilawar told that Muzaffar Khan has killed his wife with gun and ran away from the spot. He saw the dead body of his daughter lying on the cot. He noticed bullet mark on her right breast. Many persons had assembled there. His daughter was killed by Muzaffar Khan alias Jaffari with gun of his father Sahabdeen. On 19.8.2012, SI Dharam Singh handed over rukka Ext. PW-1/A to Const. Rakesh Kumar (PW-6) for taking the same to Police Station Tissa. Thereafter, FIR Ext. PW-5/B was registered. The spot map was prepared. In the ground floor of the house of the accused persons there were three rooms. In the third room a gun SBML length about 53 inch with iron rod and string bearing body No. 6263 with which the accused Muzaffar Khan killed his wife was recovered and sealed in pulinda with 15 seal impressions of seal "V". It was taken into possession vide memo Ext. PW-2/C. During the course of investigation, it revealed that co-accused Sahabdeen after the gun shot removed the gun from the room of accused Muzaffar and kept it in another room. Blood stains were cleaned by Sardaro Begum, wife of accused Sahabdeen with the help of duster and both Sahabdeen as well as his wife caused disappearance of the evidence. The post mortem report is Ext. PW-11/B. Viscera and case property were taken into possession and sent for chemical examination. Reports of RFSL, Mandi Ext. PX and RFSL, Dharamshala Ext. PY were obtained. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution, in order to prove its case, has examined as many as 13 witnesses. The accused was also examined under Section 313 Cr.P.C. He denied the incriminating circumstances put to him. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, this appeal.

4. Mr. Anoop Chitkara, Advocate for the accused has vehemently argued that the prosecution has failed to prove the case against the accused. On the other hand, Mr. M.A.Khan, Addl. Advocate General, appearing on behalf of the State, has supported the judgment and order of the learned trial Court dated 2.6.2015 and 5.6.2015, respectively.

5. We have heard learned counsel for both the sides and gone through the judgment and records of the case carefully.

6. PW-1 Abdul Mazid deposed that Reena Begum (deceased) was his eldest daughter. His daughter Reena Begum(deceased) was married with Muzaffar Khan alias Jaffari about one and a half month back, as per Muslim rites and customs. After the marriage his daughter visited his house 2-3 times with her husband. She told that her husband used to quarrel on trivial issues and threatened to kill her. He used to taunt his daughter that she has not brought sufficient dowry nor she is doing the household work. He had also advised his son-in-law not to pick up quarrel with his daughter. On 19.8.2012 at about 6:45-7:00 O' Clock, while he was asleep, he heard the noise near the house of his daughter Reena Begum. On hearing the noise, he and his wife Smt. Shamshad Begum went to the spot. Many other persons had also gathered there. They went to the room of Reena Begum. Mohd. Farooq, Mohd. Hanu and Pradhan Dilawar Mohd had reached there. These persons told him that Muzaffar Khan has killed his wife with a gun and ran away from the spot. He saw the dead body of his daughter lying on the cot and there was a bullet shot mark on her right breast. Her clothes were torn. There were no exit wounds in the body of his daughter. There was smell of gun shot fire in the room where she was lying dead. The father of his son-in-law was licence holder of the gun with which his daughter was killed. His cousin Mohd. Raffi informed the police over phone. The police reached the spot within half an hour and recorded his statement Ext. PW-1/A. He noticed that his son-in-law, accused Muzaffar ran away from the spot and his father accused Sahabdeen followed to nab

him. Accused Sahabdeen returned to the spot after 10-15 minutes but his son-in-law was not found by him since he absconded. The police also inspected the spot Earlier, the incumbents of the house, including accused were reluctant to produce the gun but when police threatened to take stringent action, accused Sahabdeen produced the gun in question from the adjoining room, where his daughter was lying dead. In his cross-examination, he admitted that in the month of August, maize is sown. He denied that maize crop was about to ripe. He also denied that maize crop is generally harvested in the month of August. He denied that owners burst crackers and fire gun shots to scare Bears and Monkeys away from maize fields. Volunteered that there is no forest area nearby. The forest is about 1 km. away from the maize fields of accused. There was no one in the room where occurrence had taken place except his son-in-law and deceased daughter. He denied the suggestion that relations between his daughter and his son-in-law were very cordial. He denied the suggestion that when the family of accused Sahabdeen including his accused son, daughter-in-law and wife were proceeding to their maize fields and before departing accused Muzaffar had loaded ammunition in the gun and it got fired accidently and bullet hit her breast leading to her death.

7. PW-2 Dilawar Mohd. is the Pradhan of the Gram Panchayat, Khushnagari. According to him, on 19.8.2012 in the morning around 6:35-6:45 AM, he heard some noise while he was strolling in the courtyard of his house. Noise was heard from the house of accused Sahabdeen. He rushed to the house of accused. On reaching there, he found Mohd. Hanu and Mohd. Farooq standing at the door in the house of accused Sahabdeen where accused Muzaffar and his wife used to live in the ground floor. After entering the house, he found Reena Begum lying dead. Mohd. Farooq told him that he heard noise of gun shot from the room of accused Muzaffar. The dead body of Reena Begum was lifted from the floor and placed on the double bed. He found gunshot injuries on right side of her breast and her clothes were torn and he noticed gun shot wound. He was told by Mohd. Farooq and accused Sahabdeen that accused Muzaffar after firing gun shot had run away and could not be traced. Mohd. Raffi informed the police. The gun was produced by accused Sahabdeen from the adjoining room where Reena Begum was lying dead. Half burnt clothes, supposed to have been used as cork in the gun were found lying on the floor near the dead body which were taken into possession by the police vide memo Ext. PW-2/A. The gun was produced by accused Sahabdeen. It was taken into possession by police and sealed in parcel Ext. P-1. The gun is Ext. P-2. In his cross-examination, he deposed that he had seen accused Sardaro standing in the corridor of first floor while accused Sahabdeen had gone to chase his accused son. He denied the suggestion that Reena Begum died since she was sitting in the opposite direction while ammunition in the gun was being filled up by accused Muzaffar and his finger got slipped on the trigger and resulted into accidental gun fire shot. He also deposed that had the trigger been pressed accidently, the accused would not have run away from the spot and would have stayed back to take care of his wife or to take her to the hospital for immediate medical treatment.

8. PW-3 Gulab Deen deposed that in his presence and of Pak Mohd., Munnawar Khan produced one black coloured bag containing silver bottle having gun powder and another small bottle containing potassium and besides this one gun licence having photograph of accused Sahabdeen. All these articles were taken into possession vide memo Ext. PW-3/A. He denied the suggestion, in his cross-examination, that the relations between accused Muzaffar Khan and Reena Begum were cordial.

9. PW-4 Mohd. Hanu is the material witness. He deposed that on 19.8.2012, he heard gunshot noise in the morning around 6:45 AM from the side of house of accused Muzaffar Khan. Accused Muzaffar Khan has two storeyed house and he used to reside on

the ground floor with his family. First floor of the house was in occupation of his parents. On hearing gunshot, he rushed to the house of accused Muzaffar Khan. He entered the room and found that wife of accused Muzaffar Khan was lying unconscious. She was lying with her back on the floor and face upwards. He noticed gunshot wound on the right side of her breast. In the meanwhile, Farooq Khan also arrived there. Parents of victim along with Pradhan of Gram Panchayat and 5-6 persons also came on the spot. He tried to provide water to victim but she could not take it and water spilled on the floor. Thereafter, he alongwith Farooq and Pradhan of Gram Panchayat lifted victim Reena Begum and placed her on the double bed.

10. PW-5 HC Ravinder Kumar deposed that on 19.8.2012 SI Dharam Chand handed over to him case property, including SBML gun and another parcel stated to be containing half burnt cloth pieces duly sealed with seal "S", which he entered at Sr. No. 225 in the Malkhana Register No. 19. On 21.8.2012, Const. Deepak Kumar handed over to him two parcels containing viscera and clothes of deceased Reena Begum alongwith two envelopes addressed to RFSL, Dharamshala and RFSL, Mandi which he entered at Sr. No. 226 in the Malkhana register. On the same day, SI Dharam Chand also handed over two small parcels containing gun powder and potash duly sealed with seal impression of "D", which he entered at Sr. No. 227 of Malkhana register.

11. PW-8 HC Kailash Chand deposed that on 27.8.2012, he sent case property i.e. five parcels alongwith envelope addressed to the Director RFSL, Mandi through Const. Yog Raj vide RC No. 106/12. One sealed parcel said to be containing gun, 2nd sealed parcel containing half burnt clothes, 3rd containing silver bottle having gun powder, 4th containing potassium and 5th containing clothes worn by the deceased and a pellet recovered from her body alongwith docket, copy of FIR, etc were sent to RFSL, Mandi. He also sent one parcel containing viscera to RFSL, Dharamshala.

12. PW-10 Const. Yog Raj deposed that on 27.8.2012, HC Kailash Chand handed over to him five parcels duly sealed with sample seals and an envelope addressed to Director, RFSL, Mandi vide RC No. 106 of 2012 to hand over the same at RFSL, Mandi. On 28.8.2012, he handed over these articles at RFSL, Mandi and handed over the receipt on his return to MHC, PS Tissa.

13. PW-11 Dr. Chandan Verma has conducted the post mortem. His report is Ext. PW-11/B. According to him, the cause of death was gun shot injury on chest leading to injuries to vital organ and hemorrhage in thoracic cavity, leading to shock and death. The pellet recovered was put in parcel and sealed with seals of CHC Tissa, bearing CTH alongwith clothes. Viscera of deceased Reena Begum was preserved and put in a container and sealed with the seals.

14. PW-12 Const. Ravinder Kumar deposed that on 27.8.2012 MHC Kailash Chand handed over to him one parcel sealed with six impressions of CHC Tissa alongwith envelope duly sealed addressed to RFSL, Dharamshala vide RC No. 107/12. He deposited the same with RFSL, Dharamshala on 28.8.2012.

15. PW-13 SI Dharam Singh is the I.O. According to him, a telephonic message was received at PS Tissa on 19.8.2012 from Mohd. Raffi. He proceeded to the spot alongwith ASI Ravinder Kumar, HC Hakam Chand etc. The Pradhan of the local Gram Panchayat alongwith other residents was also present on the spot. Photographs were clicked. Thereafter, he recorded the statement of Abdul Mazid under Section 154 Cr.PC vide Ext. PW-1/A. The FIR was registered. The case property, including gun was taken into possession. The spot map was also prepared. He also deposed that during the course of

investigation, it was noticed that accused Muzaffar Khan after marriage used to pick up quarrels with his deceased wife and later on killed her with a gun.

16. PW-1 Abdul Mazid has deposed that Reena Begum (since deceased) was his eldest daughter. She was married with accused Muzaffar Khan alias Jaffari about one and a half month back to the date of occurrence. On 19.8.2012 at about 6:45-7:00 O' Clock, while he was asleep, he heard the noise of gun shots emanating from the residence of his daughter Reena Begum. On hearing the noise, he and his wife Smt. Shamshad Begum rushed to the spot. Many persons had also gathered there. They went to the room of Reena Begum. Pradhan Dilawar Mohd had already reached on the spot. These persons told him that Muzaffar Khan, his son-in-law has killed his wife with a gunshot and ran away from the spot and accused Sahabdeen followed to nab him. He had noticed bullet injuries on right side of the breasts of his daughter. He has categorically deposed that there was no one in the room where occurrence had taken place except his son-in-law and deceased daughter. He denied the suggestion that the fire has taken place accidently. The statement of PW-1 Abdul Mazid has been corroborated by PW-2 Dilawar Mohammad. He was Pradhan of the Gram Panchayat Khushnagari. According to him, on 19.8.2012, in the morning at around 6:35-6:45 AM, he heard some noise while he was strolling in the courtyard of his house. Noise was heard from the house of accused Sahabdeen. He reached the spot and found gun shot injuries on right side of breast of deceased Reena Begum and her clothes were torn and the gun shot wound was visible. He was told by Mohd. Farooq and accused Sahabdeen that accused Muzaffar after firing had run away and could not be nabbed. Mohd. Raffi informed the police. In his presence, the gun Ext. P-2 was produced by accused Sahabdeen from the adjoining room where Reena Begum's body was lying. Half burnt clothes supposed to have been used as cork in the gun were found lying on the floor near the dead body which were taken into possession by the police. In his cross-examination, he denied the suggestion that Reena Begum died since she was sitting in the opposite direction while ammunition in the gun was being filled up by accused Muzaffar and his finger got slipped on the trigger which resulted into accidental gun fire.

17. PW-4 Mohd. Hanu also heard gunshot and reached the house of accused. He deposed that accused Muzaffar Khan has two storeyed house and he lives in the ground floor with his family. His parents reside in first floor. He entered the room and found that wife of accused Muzaffar Khan was lying unconscious. He noticed gunshot wound on the right side of her breast. In the meantime, Farooq Khan also reached on the spot. The parents of victim along with Pradhan of Gram Panchayat and 5-6 persons also came on the spot. Thereafter, he alongwith Farooq and Pradhan of Gram Panchayat lifted victim Reena Begum and placed her on the double bed.

18. The cause of death, as per the post mortem report Ext. PW-11/B, was gunshot injury to vital organ and hemorrhage in thoracic cavity leading to shock and death. PW-11 Dr. Chandan Verma has categorically deposed that wounds noticed on the person of deceased Reena Begum during her post mortem, in his opinion, could have been caused by gun. Gun Ext. P-2 was shown to him in the Court. According to PW-11 Dr. Chandan Verma, penetrating gunshot wound was noticed at right breast. The pellet recovered was measuring 6 mm in diameter and 5 mm in length from superior border of spleen and posterior chest wall. The probable time that elapsed between injury and death was immediate and between death and post mortem was 5-6 hours. According to the RFSL report, Ext. PX, gunshot fire discharge residues have been detected in the barrel of Ext. E/1 (SBML) gun. The gunshot fire discharge residues have been detected on Ext. E/2 (semi burnt cloth pieces). Ext. E/2 (semi burnt cloth pieces) could have been fired from Ext. E/1 (SBML) gun. Black powder found in Ext. E/3 (metallic container containing black powder)

was found to be gun powder. Gun powder found in Ext. E/3 (metallic container containing black powder) was different from the pink colour powder found in Ext. E/4a (a cartridge like shaped container). Ext. E/5a was lead pellet and could have been fired from Ext. E/1 (SBML) gun. Ext. E/2 (semi cloth pieces) and Ext. E/4b (cloth piece) were found similar on the basis of colour, texture and burning test.

19. Thus, it is conclusively proved, as per the testimonies of the witnesses, as discussed hereinabove and the FSL report Ext. PX, that the deceased was shot by the accused with gun. The deceased was married only one and a half months back. She used to complain that accused used to pick up quarrels with her on trivial issues. He used to chide her for bringing insufficient dowry. According to the evidence available on record, the accused used to live with his wife on the ground floor. The parents were residing on the first floor. The plea that the deceased died due to accidental fire cannot be believed. The accused also ran away from the spot. His father Sahabdeen tried to chase him but could not be nabbed. In case, the death was caused by accidental fire, the accused should have stayed back and taken his wife to hospital.

20. There were only two persons in the room and it was for the accused to explain as to what happened in the room.

21. Their lordships of the Hon'ble Supreme Court in the case of ***Babu alias Balasubramaniam vrs. State of Tamil Nadu,*** reported in ***(2013) 8 SCC 60,*** have held that the appellant-accused husband's failure to give plausible explanation as to how his wife living with him died in matrimonial home during his presence, this circumstance would add up to other proved circumstances which substantiate prosecution case against the accused. It has been held as follows:

> "21. It is also pertinent to note that PW-5 Dr. Rajabalan stated that the injuries sustained by the deceased could have been caused 10 to 12 hours prior to the post-mortem. We have already stated that the post-mortem was conducted at 5.00 p.m. Thus, the death occurred around 6.00 a.m. The death occurred in the house where the deceased resided with A1-Babu. Presence of the accused at 6.00 a.m. in the house is natural. Besides, it is not contended by A1-Babu that he was not present in the house when the incident occurred. To this fact situation, Section 106 of the Evidence Act is attracted. As to how the deceased received injuries to her head and how she died must be within the exclusive personal knowledge of A1-Babu. It was for him to explain how the death occurred. He has not given any plausible explanation for the death of the deceased in such suspicious circumstances in the house in which he resided with her and when he was admittedly present in the house at the material time. This circumstance must be kept in mind while dealing with this case. We are mindful of the fact that this would not relieve the prosecution of its burden of proving its case. But, it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different inference. In this case, in our opinion, the prosecution has succeeded in proving facts from which reasonable inference can be drawn that the death of the deceased was homicidal and A1-Babu was responsible for it. A1-Babu could have by virtue of his special knowledge regarding the said facts offered an explanation from which a different inference could have

been drawn. Since he has not done so, this circumstance adds up to other circumstances which substantiate the prosecution case."

22. Their lordships of the Hon'ble Supreme Court in the case of ***Ramesh Vithal Patil vs. State of Karnataka and others,*** reported in ***(2014) 11 SCC 516,*** have held that when prosecution establishes facts from which reasonable inference could be drawn that deceased committed suicide, appellant should have, by virtue of his special knowledge regarding those facts offered an explanation which might drive court to draw different inference. Since the appellant has failed to prove facts which were especially within his knowledge, adverse inference can be drawn against him. It has been held as follows:

> "21. There is also another angle to this case. The prosecution has succeeded in proving facts from which a reasonable inference can be drawn that the deceased committed suicide by jumping in the river along with her daughter. The deceased was in the custody of the appellant. She left the appellant's house with the small child. Admittedly, neither the appellant nor any member of his family lodged any missing complaint. The appellant straightway went to the house of the deceased to enquire about her. This conduct is strange. When his wife and small child had left the house and were not traceable the appellant was expected to move heaven and earth to trace them. As to when and why the deceased left the house and how she died in suspicious circumstances was within the special knowledge of the appellant. When the prosecution established facts from which reasonable inference can be drawn that the deceased committed suicide, the appellant should have, by virtue of his special knowledge regarding those facts, offered an explanation which might drive the court to draw a different inference. The burden of proving those facts was on the appellant as per Section 106 of the Evidence Act but the appellant has not discharged the same leading to an adverse inference being drawn against him (See: Tulshiram Sahadu Suryawanshi & Anr. v. State of Maharashtra[9] and Babu alias Balasubramaniam)"

23. Their lordships of the Hon'ble Supreme Court in the case of ***State of Rajasthan vs. Thakur Singh,*** reported in ***(2014) 12 SCC 211,*** have held that since the facts relevant to cause of death being only known to accused and he not explaining them, principle under Section 106 of the Indian Evidence Act, would be clearly applicable. It has been held as follows:

> "15. We find that the High Court has not at all considered the provisions of Section 106 of the Evidence Act, 1872.1 This section provides, inter alia, that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him.
>
> 16. Way back in Shambhu Nath Mehra v. State of Ajmer2 this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:
>
> > "This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to

> establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.
>
> The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not."

17. In a specific instance in Trimukh Maroti Kirkan v. State of Maharashtra3 this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said:

> "22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

18. Reliance was placed by this Court on Ganeshlal v. State of Maharashtra4 in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in Dnyaneshwar v. State of Maharashtra5 this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife."

24. Their lordships of the Hon'ble Supreme Court in the case of ***Alber Oraon vs. State of Jharkhand,*** reported in ***(2014) 12 SCC 306,*** have held that in a case where murder was committed in secrecy inside a house, the burden of proving innocence would be on the inmates of the house to give a cogent explanation as to how the crime was committed. It has been held as follows:

> "[6] Trimukh v. State, 2006 10 SCC 681 was justifiable and correctly relied upon inasmuch as this Court opined that –
>
> > "Where an offence like murder is committed in secrecy inside the house the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree, as is

required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be corresponding burden on the inmates of the house to give the cogent explanation as to how the crime was committed."

Reliance has correctly been placed on the subsequent decisions of this Court in Raj Kumar v. State, 2007 1 SCC 433, State v. Jaggu, 2008 12 SCC 51, Sushil Kumar v. State of Punjab, 2009 10 SCC 434, and Swamy Shraddananda v. State of Karnataka, 2008 13 SCC 767."

25. Thus, there is no occasion for us to interfere with the well reasoned judgment of the learned trial Court dated 2/5.6.2015.

26. Accordingly, there is no merit in this appeal and the same is dismissed.

****

BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Narinder Singh .....Appellant

Versus

Deepak Sharma & another ..... Respondents

FAO No.278 of 2009
Date of decision: 08.01.2016

Motor Vehicles Act, 1988- Section 149- Driver of the offending vehicle filed a claim petition which was dismissed on the ground that driver was driving the vehicle rashly and negligently- in appeal held, that as per settled law of the land rashness and negligence is sine qua non to maintain a claim petition under Section 166 of the Motor Vehicles Act- Tribunal has rightly held that driver Narinder Singh could not have maintained the claim petition under Section 166 of M.V. Act on the ground of rash and negligent driving- appeal dismissed. (Para-1 to 5)

For the appellant: Mr.Jagdish Thakur, Advocate.
For the respondents: Nemo for respondent No.1.
Mr.P.S. Chandel, Advocate, for respondent No.2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (oral)

This Court in terms of order dated 1st January, 2016, had directed the District & Sessions Judge, Una to furnish the status of Claim Petition No.17 of 2006. He has submitted the same, which does disclose that the said claim petition was decided and it was held that the driver, namely, Narinder Singh (appellant-claimant herein) was driving the vehicle rashly and negligently, which findings of the Tribunal were the subject matter of FAO No.196 of 2008 and FAO No.28 of 2011.

2. In both these appeals, this Court vide judgment, dated 30th May, 2014, saddled the insurer with the liability and it was held that the driver Narinder Singh (appellant herein) was driving the vehicle rashly and negligently.

3. It is beaten law of the land that rashness and negligence is sine qua non to maintain a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act").

4. Thus, the Tribunal has rightly held that the driver Narinder Singh could not maintain the claim petition under Section 166 of the Act on the ground of rash and negligent driving, and rightly dismissed the same.

5. Having said so, no case is made out for interference and the appeal merits to be dismissed. Accordingly, the appeal is dismissed and the impugned award is upheld. However, the appellant Narinder Singh is at liberty to seek appropriate remedy before the appropriate Forum. It is made clear that the period spent from the date of filing of the Claim Petition till today shall be excluded while computing the period of limitation. Copy **dasti**.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Company Limited ...Appellant.

Versus

Atul Bhatia and others ...Respondents.

FAO No. 399 of 2009
Decided on: 08.01.2016

Motor Vehicles Act, 1988- Section 166- Insurer challenged the award on the ground of adequacy of compensation – held that claimant–injured has not challenged the award on the ground of adequacy of compensation, therefore, this ground is not available to the appellant/insurer- appeal dismissed. (Para 3 to 8)

For the appellant: Mr. Lalit K. Sharma, Advocate.
For the respondents: Nemo.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Subject matter of this appeal is the judgment and award, dated 20.11.2008, made by the Motor Accident Claims Tribunal, Kinnaur Civil Division at Rampur Bushahr, H.P. (for short "the Tribunal") in M.A.C. Case No. 42 of 2006, titled as Sh. Atul Bhatia versus Sh. Dharam Dutt and others, whereby compensation to the tune of ₹ 1,15,847/- with interest @ 9% per annum from the date of the claim petition till its realization came to be awarded in favour of the claimant-injured and the insurer was saddled with liability (for short "the impugned award").

2. The claimant-injured, the owner-insured and the driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. It is unfortunate that the claimant-injured has not questioned the impugned award on the ground of adequacy of compensation.

4. Learned counsel for the appellant-insurer has questioned the impugned award only on the ground of adequacy of compensation, which ground is not available to the appellant-insurer.

5. I have gone through the assessment made by the Tribunal in paras 11 to 19 of the impugned award, which appears to be *prima facie* correct. Had the claimant-injured questioned the adequacy of compensation, this Court may have exercised its jurisdiction to enhance the same.

6. Having said so, the impugned award is upheld and the appeal is dismissed.

7. Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same to his bank account.

8. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Company Limited ...Appellant.
Versus
Kiran Bala and others ...Respondents.

FAO No. 408 of 2009
Decided on: 08.01.2016

Motor Vehicles Act, 1988- Section 166- Insurer of Motorcycle challenged the award on the ground that Tribunal has wrongly saddled it with liability – held that deceased had died due to contributory negligence- no material was brought on the record by the appellant to show that the owner-insured has committed willful breach of the terms and conditions of the insurance policy –the Tribunal has fallen in error while awarding interest @ 9% whereas, interest @ 7.5% should have been granted – award partly modified. (Para-5 to 17)

For the appellant: Mr. Lalit K. Sharma, Advocate.
For the respondents: Mr. Ajay Sharma, Advocate, for respondents No. 1 to 5.
Nemo for respondents No. 6 and 8.
Respondent no. 7 already ex-parte.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Subject matter of this appeal is the judgment and award, dated 25.04.2009, made by the Motor Accident Claims Tribunal(I), Kangra at Dharamshala, H.P. (for short "the Tribunal") in M.A.C.P. No. 2-K/II-2005, titled as Kiran Bala and others versus Amit and others, whereby compensation to the tune of ₹ 4,95,742/- with interest @ 9% per annum

from the date of the claim petition till its deposition came to be awarded in favour of the claimants and against the respondents (Amar Jeet Singh) (for short "the impugned award").

2. The claimants have invoked the jurisdiction of the Tribunal, by the medium of claim petition, for grant of compensation on the grounds taken in the memo of the claim petition, was resisted by the respondents and the following issues came to be framed by the Tribunal:

> *"1. Whether Sh. Deepak Chaudhary died on 27.9.2004 due to rash and negligent driving of vehicle No. HP-39 A-5436 and PB-02 L-5035 being driven by respondents No. 1 & 3? OPP*
>
> *2. If issue No. 1 is proved in the affirmative, whether the petitioners are entitled for compensation, if so, how much and from whom? OP Parties*
>
> *3. Whether respondents No. 1 & 3 were not holding valid and effective driving licence at the time of alleged accident? OPR-2 & 4*
>
> *4. Whether the vehicles were not insured with respondent 2 & 4 respectively? OPR 2 & 4*
>
> *5. Whether the petition is bad for non-joinder of necessary parties as alleged? OPR-2, 3, & 4*
>
> *6. Whether both the vehicles in question were being plied in violation of terms and conditions of insurance policies as alleged? OPR-2 & 4*
>
> *7. Whether the deceased is liable for contributory negligence as alleged? OPR-2 & 4*
>
> *8. Whether the petition is collusive between the petitioners and respondents No. 1, 3 & 5 as alleged? OPR-2 & 4*
>
> *9. Relief."*

3. Claimants examined HC Kuldeep Singh as PW-1, Shri Raj Kumar as PW-3 and one of the claimants, namely Shri Pancham Chand himself appeared in the witness box as PW-2. The respondents have examined Shri Keshavanand, Shri Paramjit Singh and Shri Kewal Kumar as RW-1, RW-4 and RW-5, respectively. Respondents, namely Shri Amit Kumar and Sudesh Kumar, themselves appeared in the witness box as RW-2 and RW-3. Parties have placed on record the documents, the details of which are given in Form-B of the impugned award.

4. The claimants, the drivers and the owners-insured of all the vehicles involved in the accident have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

5. One of the insurers, i.e. the insurer of motor cycle No. HP-39 A-5436, has questioned the impugned award on the ground that the Tribunal has fallen in error in saddling it with liability as the owners-insured of the offending vehicles have committed breach.

6. At the first instance, learned counsel for the appellant-insurer argued that the accident was outcome of contributory negligence, however, while advancing the arguments, argued that the owners-insured have committed breach.

Issue No. 1:

7. The claimants have led evidence and proved that the drivers of the offending vehicles have driven the same rashly and negligently at the relevant point of time and

caused the accident. The Tribunal, after discussing the statements of the witnesses, particularly PW-2, Pancham Chand and PW-3, Raj Kumar, came to the conclusion that the accident was outcome of contributory negligence.

8. The said finding has been recorded against the drivers and the owners-insured, but they have not questioned the same. Then, how can it lie in the mouth of the insurer that the said findings are not correct.

9. Having said so, the Tribunal has rightly made discussions and decided issues No. 1 and 7 in favour of the claimants. Accordingly, the findings returned by the Tribunal on issues No. 1 and 7 are upheld.

10. Before I determine issue No. 2, I deem it proper to decide issues No. 3 to 8.

Issue No. 3:

11. The insurers have not led any evidence to prove that the drivers of the offending vehicles were not having a valid and effective driving licences. However, I have gone through the record and the impugned award and am of the considered view that the Tribunal has rightly made the discussions in para 22 of the impugned award. Accordingly, it is held that the drivers of the offending vehicles were having valid and effective driving licences to drive the same and the findings recorded by the Tribunal on issue No. 3 are upheld.

Issue No. 4:

12. Raising of such objections before the Tribunal and framing of such issue by the Tribunal is suggestive of the fact as to how the insurers are resisting the claim petitions, which is not their legal duty, their duty is to satisfy the damages within the four corners of the insurance policies. Learned counsel for the appellant-insurer frankly conceded that he is not pressing issue No. 4. However, I have gone through paras 24 and 25 of the impugned award. The said issue has rightly been decided in favour of the claimants and against the appellant. Accordingly, the findings returned by the Tribunal on issue No. 4 are upheld.

Issue No. 5:

13. It was for the respondents in the claim petition to prove the said issue, have not led any evidence. I wonder how such an issue has been raised. The MV Act has gone through a sea change in the year 1994 and in terms of Sections 158 (6) and 166 (4) of the MV Act, even the police report can be treated as a claim petition. It appears that all the necessary parties have been arrayed as respondents by the claimants. It is averred that deceased-Deepak Chaudhary, has died leaving behind the claimants as his legal representatives. Accordingly, the findings returned by the Tribunal on issue No. 5 are upheld.

Issue No. 6:

14. It was for the insurers to plead and prove that the offending vehicles were being plied in violation of the terms and conditions of the insurance policies and the owners-insured have committed willful breach, have not led any evidence. However, I have gone through the record. There is not even a single iota of evidence on the file to suggest that the owners-insured of the offending vehicles have committed any willful breach. Viewed thus, the findings returned by the Tribunal on issue No. 6 are upheld.

Issue No. 7:

15. The findings returned on issue No. 1 also covers issue No. 7. Accordingly, issue No. 7 is also decided in terms of the discussions made by the Tribunal in para 29 of the impugned award and the finding returned by the Tribunal on issue No. 7 is upheld.

Issue No. 8:

16. The insurers have failed to prove that there is collusion between the claimants, drivers and owners-insured of the offending vehicles. Accordingly, the findings returned by the Tribunal on issue No. 8 are upheld.

Issue No. 2:

17. I have gone through the assessment made by the Tribunal and am of the considered view that the amount awarded is just and appropriate, cannot be said to be meager or excessive. However, it appears that the Tribunal has fallen in an error in awarding interest @ 9% per annum, which is at higher side in view of the law laid down by the Apex Court read with the rates of the Reserve Bank of India. Accordingly, it is held that the claimants are entitled to interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

18. Having glance of the above discussions, the impugned award is modified and the appeal is disposed of, as indicated hereinabove.

19. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same to their respective bank accounts.

20. Excess amount, if any, be refunded back to the appellant-insurer through payee's account cheque or by depositing the same in its bank account.

21. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Co. Ltd. ....Appellant

Versus

Sharda Devi and others ...Respondents

FAO (MVA) No. 247 of 2009.
Judgment reserved on 1.1.2016.
Date of decision: 08.1.2016.

Motor Vehicles Act, 1988- Section 166- Monthly income of the deceased was Rs. 3300/- per month – Tribunal had deducted 1/3rd towards personal expenses, whereas 1/4th was to be deducted - claimants had lost the source of dependency to the extent of Rs. 2500/- per month- deceased was aged 27 years and multiplier of '16' was applicable- thus, claimants had lost source of dependency to the extent of Rs. 4,80,000/- (Rs.2500x12x16)- the claimants were also held entitled for Rs. 10,000/- each under the heads loss of 'love and affection', 'loss of estate' , 'funeral expenses' and 'loss of consortium' - thus, claimants are entitled to total compensation of Rs.5,20,000/- - further held, that Appellate Court can enhance the compensation, even in absence of cross-objections. (Para-28 to 48)

Motor Vehicles Act, 1988- Section 167- Claimants filed a claim petition on the ground of death of 'S' who was employed as driver by respondent No. 2 with his JCB- death was caused while driving the JCB- it was contended that petition is not maintainable- held, that driver was in the employment of the contractor and had died while using the motor vehicle-

legal representatives can file a claim petition to get the enhanced compensation- legal representatives had two remedies- one under Workmen Compensation Act and second under Motor Vehicles Act- they had chosen to knock the door of the Tribunal and the claim petition was maintainable. (Para-9 to 11)

Motor Vehicles Act, 1988- Section 228- Deceased had died in an accident involving JCB- it was contended that JCB is not a motor vehicle- held, that JCB is a motor vehicle with a long arm for digging earth and will fall within the definition of motor vehicle under Section 2(28) of the Act. (Para-13 to 26)

Cases referred:

New India Assurance Co. Ltd. Indore versus Balu Banjara and others 2008 (2) MPHT 252
Bose Abraham versus State of Kerala and another AIR 2001 SC 835
Nagashetty versus United India Insurance Co. Ltd and others, AIR 2001 SC 3356
M/s Natwar Parikh and Co. Ltd. versus State of Karnataka and others AIR 2005 SC 3428
National Insurance Co. Ltd. v. Baby Anjali & Ors., AIR 2008 Gujarat 12
State of Gujarat versus Danabhai Bhulabhai and Ors., 1991 (2) G.L.H. 404
Kusum and others versus Kamal Kumar Soni and another 2009 ACJ 1613
Rajasthan State Road Transport Corporation & Ors versus Smt. Santosh & Ors. 2013 AIR SCW 2791
Sarla Verma and others versus Delhi Transport Corporation and another AIR 2009 SC 3104
Munna Lal Jain and another versus Vipin Kumar Sharma and others 2015 AIR SCW 3105
Reshma Kumari and others versus Madan Mohan and another, 2013 AIR SCW 3120
United India Insurance Company Ltd. versus Smt. Kulwant Kaur, Latest HLJ 2014 (HP) 174
Nagappa versus Gurudayal Singh and others, AIR 2003 Supreme Court 674
State of Haryana and another vs Jasbir Kaur and others, AIR 2003 Supreme Court 3696
The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another, AIR 2003 Supreme Court 4172
A.P.S.R.T.C. & another versus M. Ramadevi & others, 2008 AIR SCW 1213
Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr., 2009 AIR SCW 3717
Ningamma & another versus United India Insurance Co. Ltd., AIR SCW 4916,
Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service, 2013 AIR SCW 5800
Savita versus Bindar Singh & others, 2014 AIR SCW 2053

For the appellant: Ms.Sunita Sharma, Advocate.
For the respondents: Nemo for respondent No.1.
Mr. Vijay Chaudhary, Advocate, for respondents No. 2 to 4.
Mr. Nimish Gupta, Advocate, for respondent No.5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

This appeal is directed against the judgment and award dated 28.2.2009, made by the Motor Accident Claims Tribunal Chamba, District Chamba, H.P. in MAC No. 11 of 2008, titled Sharda Devi and others versus National Insurance Company and another, for short "the Tribunal", whereby compensation to the tune of Rs.3,18,800/- alongwith interest @ 7.5% per annum was awarded in favour of the claimants and insurer was saddled with the liability, hereinafter referred to as "the impugned award", for short.

2. The claimants had filed claim petition before the Tribunal, seeking compensation to the tune of Rs.8 lacs, as per the break-ups given in the claim petition, on account of death of Shri Shashi Singh, husband of claimant No. 1 and son of claimants No. 2 and 3, who was employed as driver by respondent No. 2, namely, Kamal Kumar contractor with his JCB No. 4D-JCB 51622, on monthly wages of Rs.3300/-, while driving the said JCB near petrol pump Banikhet, Tehsil Dalhousie District Chamba on 10.12.2007 at 9 30 p.m. The claimants have also given details in the claim petition how they are entitled to compensation.

3. Both the respondents have contested and resisted the claim petition and following issues came to be framed.

"(i). Whether on 10.12.2007 at 9 30 PM near petrol pump, Banikhet, Shri Shasi Singh, husband of petitioner no. 1 and son of petitioner no.2 and 3 died in a vehicular mishap involving vehicle 4D-JCB-51622, as alleged? OPP.

(ii) If issue no. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom? OP Parties.

(iii) Whether the petition has been filed by the petitioners in collusion with the driver and owner of the vehicle, as alleged? OPR1.

(iv) Whether the driver of the offending vehicle was not holding a valid and effective diving licence at the time of accident, as alleged? OPR-1.

(v) Whether the offending vehicle was being driven in contravention of terms and conditions of the Insurance Policy, as alleged? OPR.

(vi) Whether the petition is not maintainable in the present form, as alleged? OPR1.

(vii) Relief.

4. Claimants have examined MHC Gurdhayan Singh as PW1 and Nirmala Devi claimant No.2 herself stepped into the witness-box as PW2. The claimants have also led documentary evidence, details of which have been given in the impugned award.

5. On the other hand, respondents have not led any evidence. Thus, the evidence led by the claimants has remained un-rebutted.

6. Claimants and owner of the vehicle have not questioned the impugned award on any count, thus it has attained the finality so far it relates to them.

7. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have proved issue No.1 and respondents have failed to prove issues No. 3 to 6. After making the assessment, the Tribunal awarded the compensation to the tune of Rs.3,18,800/-, as stated supra, in favour of the claimants and against the owner and saddled the insurer/appellant herein with the entire liability.

8. The cause of death of the deceased is not in dispute. Thus, the Tribunal has rightly recorded the findings on issue No.1 and are accordingly upheld.

9. Learned counsel for the appellant argued that the claim petition was not maintainable. The argument is not tenable for the following reasons.

10. The Driver was in the employment of Kamal Kumar contractor, who died in the use of a motor vehicle. The claimants are entitled to compensation in terms of the mandate of Workmen's Compensation Act. The legal representatives can file claim petition in terms of Section 167 of the Motor Vehicles Act, for short "the Act" in order to get enhanced compensation. The option lies with the legal representatives of the deceased. It is apt to reproduce Section 167 of the Act herein.

> **"167. Option regarding claims for compensation in certain cases.**
>
> Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

11. As per the mandate of law supra, the legal representatives of driver had right of election/option. They had two remedies available with them; one to file claim petition before the Tribunal and other to file claim under the Workmen's Compensation Act. They have chosen to knock the door of the Tribunal under the Motor Vehicles Act. Thus, the claim petition was maintainable.

12. This Court in **FAO No. 363 of 2006** titled **Smt. Rajo Devi versus Sh. Madan Lal Sharma and others** decided on 2.5.2014, **FAO No. 530 of 2009** titled **Oriental Insurance Co. Ltd. versus Smt. Kamlo and others** decided 25.7.2014 and **FAO No. 227 of 20**06 titled **National Insurance Co. Ltd. versus Nishan Surya and anothe**r decided 3.1.2014 has laid down the similar principles of law.

13. The second argument advanced by the learned counsel for the appellant is that the JCB machine is not a motor vehicle in the eyes of law. The argument though attractive, is devoid of any force for the following reasons.

14. The JCB machine itself is a motor vehicle and in Ext. R1 it is recorded that risk of one JCB helper engaged for the works of the JCB and other works in District Chamba is covered.

15. Section 2 (28) of the Act defines definition of a motor vehicle and while going through the said definition, it appears that JCB machine is a motor vehicle. It is apt to reproduce Section 2 (28) of the Act herein.

> "2 (28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 4 [twenty-five cubic centimetres];"

16. It is also profitable to reproduce the definition of JCB given in Oxford dictionary at page 695.

> "A powerful motor vehicle with a long arm for digging and moving earth."

17. The above quoted definition does disclose that the JCB is a powerful motor vehicle with a long arm for digging earth. In terms of the said definition, the JCB is a motor vehicle.

18. The same question arose before the Madhya Pradesh High Court in case titled **New India Assurance Co. Ltd. Indore versus Balu Banjara and others** reported in **2008 (2) MPHT 252**. It is apt to reproduce relevant portion of para 8 of the said judgment herein.

> "8. ....In the present case the JCB machine is running on the roads and is being used for construction of the roads. Only because it is not being registered by the Regional Transport Authority as motor vehicle and no registration number is being given, it cannot be said that the JCB was not a motor under the provisions of the Motor Vehicles Act. In the facts and circumstances of the case, this Court is of the view that the learned Tribunal has rightly held that the JCB machine is motor for the purpose of Motor Vehicles Act."

19. The apex Court in **Bose Abraham** versus **State of Kerala and another** reported in **AIR 2001 SC 835** has discussed Section 2 (28) of the Act and held that the excavators and road rollers are motor vehicles. It is apt to reproduce para 7 of the said judgment herein.

> "7. We hold that the excavators and road rollers are motor vehicles for the purpose of the Motor Vehicles Act and they are registered under that Act. The High Court has noticed the admission of the appellants that the excavators and road rollers are suitable for use on roads. However, the contention put forth now is that they are intended for use in the enclosed premises. Merely because a motor vehicle is put to a specific use such as being confined to an enclosed premises, will not render the same to be a different kind of vehicle. Hence, in our view, the High Court has correctly decided the matter and the impugned order does not call for any interference by us. However, the question whether any motor vehicle has entered into a local area to attract tax under the Entry Tax Act or any concession given under the local Sales Tax Act will have to be dealt with in the course of assessment arising under the Entry Tax Act".

20. The apex Court in another judgment rendered in case titled **Nagashetty versus United India Insurance Co. Ltd and others,** reported in **AIR 2001 SC 3356,** held that the trailer attached with the tractor is a motor vehicle.

21. The apex Court in another judgment in case **M/s Natwar Parikh and Co. Ltd. versus State of Karnataka and others** reported in **AIR 2005 SC 3428** discussed Sections 2 (28), 2 (14) and 2 (47) of the Act and held that tractor-trailer is a transport

vehicle under Section 2 (47) of the Act. It is apposite to reproduce para 24 of the said judgment herein.

> "24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under Sec. 2(46) to mean any vehicle drawn or intended to be drawn by a motor vehicle, it is still included into the definition of the words "motor vehicle" under Sec. 2(28). Similarly, the word "tractor" is defined in Sec. 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the aforestated definitions under Sec. 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" under Sec. 2(14), and consequently, a "transport vehicle" under Sec. 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under Sec. 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under Sec. 2(47) of the M.V. Act, 1988."

22. The Gujarat High Court in case **National Insurance Co. Ltd. v. Baby Anjali & Ors**., reported in **AIR 2008 Gujarat 12,** has discussed the definition in terms of Sections 2 (18) and 2 (19) of the Act and held that the trailer attached to the tractor falls within the definition of motor Vehicle.

23. The question arose before the Gujarat High Court in case titled **State of Gujarat versus Danabhai Bhulabhai and Ors.,** reported in **1991 (2) G.L.H. 404**, whether the bulldozer is a motor vehicle and it was held that the same is a motor vehicle. It is appropriate to reproduce relevant portion of para 11 of the said judgment herein.

> "11. .....Therefore, going by the definition of the expression 'Motor Vehicle' and keeping in mind the evidence on record, the submission that bulldozer cannot be said to be a motor vehicle must be said to have been rightly rejected by the Tribunal."

24. In case **Kusum and others versus Kamal Kumar Soni and another** reported in **2009 ACJ 1613,** the Madhya Pradesh High Court held that the power-tiller is a motor vehicle.

25. The apex Court in a latest judgment in case titled Chairman, **Rajasthan State Road Transport Corporation & Ors versus Smt. Santosh & Ors.** reported in **2013 AIR SCW 2791** has discussed the object of the Motor Vehicles Act and also Sections 2 (28) and 2(44). It is apt to reproduce relevant portion of para 22 of the said judgment herein.

> "22. The Tractor is a machine run by diesel or petrol. It is a self- propelled vehicle for hauling other vehicles. It is used for different purposes. It is also used for agricultural purposes, along with other implements; such as harrows, ploughs, tillers, blade-terracers, seed- drills etc. It is a self-propelled vehicle capable of pulling alone as defined under the definition of Motor Vehicles. It does not fall within any of the exclusions as defined under the Act. Thus, it is a Motor Vehicle in terms of the definition under Section 2(28) of the Act, which definition has been adopted by the Act. So, even without referring to the definition of the Tractor, if the definition of the Motor Vehicle as given under the Act is strictly construed, even then the Tractor is a Motor Vehicle as defined under the Act. The Tractor is not only used for agricultural purposes but is also used for other purposes as stated above. Therefore, it cannot be said that the Tractor in its popular meaning is only used for agricultural purposes and, thus, is not a Motor Vehicle as defined under the Act. The Tractor is a Motor Vehicle is also proved by this definition under Section 2(44) of the Act. Different types of Motor Vehicles have been defined under the provisions of the Act, and the Tractor is one of them. Thus, considering the question from any angle, the Tractor is a Motor Vehicle as defined under the Act."

26. Viewed thus, it is held that the JCB is a motor vehicle.

27. Before I will deal with issue No. 2, I deem it proper to deal with issues No. 3 to 5 at the first instance. It was for the insurer to discharge the onus, has not led any evidence. It is beaten law of the land that if a party fails to discharge the onus, issues have to be decided against the said party. Thus, the Tribunal has rightly decided all these issues in favour of the claimants and against the insurer/appellant. Accordingly, the findings returned by the Tribunal on these issues are upheld.

28. **Issue No.2.** It is specifically averred in the claim petition that the monthly income of the deceased was Rs.3300/- per month which is not disputed by the owner in the reply. Even no evidence has been led to dislodge the same. The Tribunal has rightly held that the income of the deceased was Rs.3300/- per month. However, the Tribunal has wrongly deducted 1/3rd deduction and wrongly applied the multiplier.

29. Admittedly, the age of the deceased was 27 years. 1/4th was to be deducted as per the ratio laid down in **Sarla Verma and others versus Delhi Transport Corporation and another** reported in **AIR 2009 SC 3104**. Thus, it is held that the claimants have lost source of dependency to the tune of Rs.2500/- per month.

30. Keeping in view the age of the deceased read with **Munna Lal Jain and another** versus **Vipin Kumar Sharma and others** reported in **2015 AIR SCW 3105**, the multiplier is to be applied according to the age of the deceased. The multiplier of "16' was applicable, keeping in view **Sarla Verma's** case supra and upheld in **Reshma Kumari and**

others versus Madan Mohan and another, reported in **2013 AIR SCW 3120**, but the Tribunal has applied the multiplier of "12". Thus multiplier of "16" is applied in this case.

31. Viewed thus, the claimants have lost source of dependency to the tune of Rs.2500x12x16= Rs.4,80,000/-.

32. I also hold the claimants entitled to compensation under the four heads as under:

(i)	loss of love and affection:		Rs.10,000/-
(ii)	Loss of estate	:	Rs.10,000/-
(iii)	Funeral expenses	:	Rs.10,000/-
(iv)	Loss of consortium	:	Rs.10,000/-
			Total Rs.40,000/-

33. Having said so, the amount awarded is enhanced to Rs.4,80,000/- +Rs.40,000/- =Rs.5,20,000-. The rate of interest awarded by the Tribunal is upheld.

34. The moot question is-whether the amount awarded can be enhanced without filing objections or without questioning by the claimants?

35. It would be profitable to reproduce Section 168 (1) of the MV Act herein:

> "**168. Award of the Claims Tribunal. -** On receipt of an application for compensation made under section 166 , the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be: ....."

36. The mandate of Section 168 (1) (supra) is to 'determine the amount of compensation which appears to it to be just'.

37. Keeping in view the object of granting of compensation and the legislature's wisdom read with the amendment made in the MV Act in the year 1994, it is for the Tribunal or the Appellate Court to assess the just compensation and is within its powers to grant the compensation more than what is claimed and can enhance the same.

38. This Court in a case titled as **United India Insurance Company Ltd. versus Smt. Kulwant Kaur,** reported in **Latest HLJ 2014 (HP) 174,** held that the Tribunal as well as the Appellate Court is/are within the jurisdiction to enhance the compensation and grant more than what is claimed.

39. The same view was taken by the Apex Court in the case of **Nagappa versus Gurudayal Singh and others,** reported in **AIR 2003 Supreme Court 674.** It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

> "7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction

> that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is – it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.
>
> 8. .....
>
> 9. It appears that due importance is not given to sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.
>
> 10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

40. In the case titled as **State of Haryana and another versus Jasbir Kaur and others,** reported in **AIR 2003 Supreme Court 3696,** the Apex Court has discussed the expression 'just'. It is apt to reproduce para 7 of the judgment herein:

> "7. It has to be kept in view that the Tribunal constituted under the Act as provided in S. 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim.

> Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; nor a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191)."

41. The same view has been taken by the Apex Court in a case titled as **The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another,** reported in **AIR 2003 Supreme Court 4172**.

42. The Apex Court in a case titled as **A.P.S.R.T.C. & another versus M. Ramadevi & others,** reported in **2008 AIR SCW 1213,** held that the Appellate Court was within its jurisdiction and powers in enhancing the compensation despite the fact that the claimants had not questioned the adequacy of the compensation.

43. The Apex Court in the case titled as **Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr.,** reported in **2009 AIR SCW 3717,** laid down the same principle while discussing, in para 27 of the judgment, the ratio laid down in the judgments rendered in the cases titled as Nagappa v. Gurudayal Singh & Ors, (2003) 2 SCC 274; Devki Nandan Bangur and Ors. versus State of Haryana and Ors. 1995 ACJ 1288; Syed Basheer Ahmed & Ors. versus Mohd. Jameel & Anr., (2009) 2 SCC 225; National Insurance Co. Ltd. versus Laxmi Narain Dhut, (2007) 3 SCC 700; Punjab State Electricity Board Ltd. versus Zora Singh and Others (2005) 6 SCC 776; A.P. SRTC versus STAT and State of Haryana & Ors. versus Shakuntla Devi, 2008 (13) SCALE 621.

44. The Apex Court in another case titled as **Ningamma & another versus United India Insurance Co. Ltd.,** reported in **AIR SCW 4916,** held that the Court is duty bound to award just compensation to which the claimants are entitled to. It is profitable to reproduce para 25 of the judgment herein:

> "25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just

> Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."

45. The Apex Court in a latest judgment in a case titled **Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service,** reported in **2013 AIR SCW 5800,** has specifically held that compensation can be enhanced while deciding the appeal, even though prayer for enhancing the compensation is not made by way of appeal or cross appeal/objections. It is apt to reproduce para 9 of the judgment herein:

> "9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."

46. The Apex Court in a latest judgment in the case titled as **Smt. Savita versus Bindar Singh & others,** reported in **2014 AIR SCW 2053,** has laid down the same proposition of law and held that the Tribunal as well as the Appellate Court can ignore the claim made by the claimant in the application for compensation. It is apt to reproduce para 6 of the judgment herein:

> "6. After considering the decisions of this Court in Santosh Devi as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just,

> equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."

47. Having said so, the Tribunal/Appellate Court is within its powers to award the just compensation.

48. Similar principles of law have been laid down by this Court in **FAO No. 663 of 2008** titled **Mani Devi versus Sh. Baldev and another** decided on 7.8.2015, **FAO No. 224 of 2008** titled **Hem Ram and another versus Krishan Ram and another** decided on 29.5.2015, alongwith connected matters, **FAO No.226 of 2006** titled **United India Insurance Co. Ltd. versus Kulwant Kaur and another** decided on 8.3.2014 and **FAO No.524 of 2007** titled **Jagdish versus Rahul Bus services and others** decided on 15.5.2015.

49. Now the question is who is to be saddled with the liability. The factum of insurance is not in dispute. Insurance policy Ext. R-1 is on record, which does disclose that the JCB machine was insured and the risk of operator/driver and helper was covered. The Tribunal has rightly recorded the findings and made the discussion in para 8 of the impugned award, needs no interference.

50. In view of the foregoing discussion and reasoning, the insurer/appellant is liable to satisfy the amount of compensation to the tune of Rs.5,20,000/-, with interest as awarded by the Tribunal.

51. The insurer/appellant is directed to deposit the amount in the Registry within six weeks from today.

52. The Registry to release the amount, including the enhanced amount, in favour of the claimants, through payees' cheque account or by depositing the same in their bank accounts, strictly as per the terms and conditions contained in the impugned award.

53. Accordingly, the impugned award is modified and compensation amount is enhanced, as indicated hereinabove, and the appeal is disposed of.

54. Send down the records forthwith, after placing a copy of this judgment.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

National Insurance Company .....Appellant

Versus

Smt. Kamla & others .....Respondents

FAO No. 343 of 2009
Decided on : 8.1.2016

Motor Vehicles Act, 1988- Section 166- Insurer challenged the award on the grounds that Tribunal had wrongly directed it to satisfy the award and then to recover the amount from

the owner/insured-held that the aim and object of granting compensation, is social one and compensation has to be granted as early as possible - rights of third party cannot be defeated even if the owner/insured has committed willful breach-appeal dismissed.

(Para-3 to 5)

For the Appellant :	Mr. Jagdish Thakur, Advocate.
For the Respondents:	Nemo for respondents No. 1 to 5.
	Respondent No. 6 stands deleted.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

The insurer has questioned the award dated 12th January, 2009, made by the Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 4 of 2007, titled Smt. Kamla Devi & others versus Sh. Lal Chand & others, whereby compensation to the tune of ₹ 5,33,400/- with interest @ 9% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants-respondents No. 1 to 4 herein and the insurer came to be saddled with liability (for short, "the impugned award").

2. The claimants, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. Learned Counsel for the appellant-insurer argued that the Tribunal has fallen in an error in directing it to satisfy the award and recovering the same from the owner/insured. The insured/owner was to be directed to satisfy the same.

4. The argument of the learned Counsel is not tenable for the following reason.

5. The aim and object of granting compensation, is social one**,** is to be granted, as early as possible, in order to save claimants from social evils. The rights of the third party cannot be defeated, even if the owner-insured has committed a willful breach.

6. Having said so, the Tribunal has rightly directed the appellant/insurer to satisfy the award, with right of recovery.

7. Accordingly, the impugned award is upheld and the appeal is dismissed.

8. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of the conditions contained in the impugned award, through payees account cheque or by depositing in their account(s).

9. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

FAO No.180 of 2009 with FAO No.274 of 2009 and FAO No.447 of 2010
Decided on : 08.01.2016

1.	**FAO No.180 of 2009**	
	Neena Shukla and another	.....Appellants
	Versus	
	Amar Singh and others	..... Respondents
2.	**FAO No.274 of 2009**	
	M/s Mahesh Udhyog	.....Appellant
	Versus	
	Neena Shukla and others	..... Respondents
3.	**FAO No.447 of 2010**	
	M/s Mahesh Udhyog	.....Appellant
	Versus	
	Mansha Ram and others	..... Respondents

Motor Vehicles Act, 1988- Section 14 and 149- Tribunal held that driver of the motor vehicle did not have a valid and effective driving licence at the time of accident as licence had expired on 20.3.2005- accident had taken place on 17.4.2005- held, that licence remains effective for a period of 30 days from the date of expiry- the accident had taken place within a period of 30 days- therefore, findings recorded by the Tribunal that the driver did not have a valid driving licence set aside. (Para-8 to 15)

Presence for the parties:

Mr.J.R. Poswal, Advocate, for the owner/Mahesh Udhyog.
Mr.G.S. Rathour, Advocate, for the claimants.
Mr.G.D. Sharma, Advocate, for the insurance Company.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

FAO No.180 of 2009 and FAO No.274 of 2009

Both these appeals are directed against the award, dated 17th January, 2009, passed by the Motor Accident Claims Tribunal, Bilaspur, H.P., (for short, the Tribunal), whereby compensation to the tune of Rs.75,000/, with interest at the rate of 9% per annum, in claim petition No.65 of 2006, titled Neena Shukla and another vs. Amar Singh and others, came to be granted in favour of the claimants on account of the death of their son Akshay Kumar, and the insured came to be saddled with the liability, (for short, the impugned award).

2. Feeling aggrieved, the claimants have questioned the impugned award on the ground of adequacy of compensation by way of FAO No.180 of 2009 and the insured has challenged the same by filing FAO No.274 of 2009 on the ground that the Tribunal has wrongly fastened the insured with the liability.

FAO No.447 of 2010:

3. By the medium of this appeal, the appellant/insured has laid challenge to the award, dated 1st September, 2010, passed by the Motor Accident Claims Tribunal,

Bilaspur, H.P., (for short, the Tribunal), in Claim Petition No.7 of 2008, titled Mansha Ram vs. Amar Singh and others, whereby the claim petition was allowed and the claimant Mansha Ram was granted compensation to the tune of Rs.3,68,000/-, alongwith interest at the rate of 7.5% per annum, from the date of filing of the petition till deposit, and the insured came to be saddled with the liability, (for short, the impugned award).

4. All the appeals are the outcome of one accident, therefore, the same are being disposed of by a common judgment.

Facts:

5. Claimants invoked the jurisdiction of the Motor Accident Claims Tribunal under Section 166 of the Motor Vehicles Act, 1988, (for short, the Act), by the medium of Claim Petitions. It was pleaded that on 17th April, 2005, deceased Akshay Kumar, aged 7 years, was traveling on scooter No.PB-25/A-4341 as pillion rider, which was being driven by Mansha Ram, and all of a sudden, a car bearing No.HP-51-1372, came from the backside, hit the scooter as a result of which Mansha Ram and the deceased Akshay Kumar fell on the road and in the meantime, a truck bearing No.HP19/A-2774, being driven by original respondent No.4 in a rash and negligent manner came from the opposite side and hit the claimant Mansha Ram and the deceased Akshay Kumar as a result of which the claimant and Akshay Kumar sustained injuries. Akshay Kumar died on the way to the hospital, whereas the petitioner sustained grievous injuries.

6. Thus, Claim Petition No.65 of 2006 was filed by the claimants, being father and mother of deceased Akshay Kumar, for grant of compensation to the tune of Rs.10.00 lacs, while Claim Petition No.7 of 2008 was filed by claimant Mansha Ram on account of injuries sustained by him. Both the Claim Petitions were allowed by the Tribunal vide the impugned awards, as detailed above.

7. I have heard the learned counsel for the parties and have gone through the impugned awards as well as the record of the cases.

8. Moot question involved in FAO Nos.274 of 2009 and 447 of 2010 is whether the Tribunal has rightly exonerated the insurer from its liability, while in FAO No.180 of 2009, the question needs to be answered is whether the amount awarded is adequate or otherwise.

9. The Tribunal has recorded findings in the impugned awards that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident on the ground that the licence had already expired on 20th March, 2005, while the accident had taken place on 17th April, 2005. Perhaps, the Tribunal has lost sight of the mandate of Section 14 of the Motor Vehicles Act, 1988 (for short, the Act), which provides as under:

> *"14.* ***Currency of licences to drive motor vehicles. –***
>
> *(1)…….* *…….*
>
> *(2) …….* *…….*
>
> *Provided that every driving licence shall, notwithstanding its expiry under this sub-section continue to be effective for a period of thirty days from such expiry."*

10. Thus, from a bare reading of the above proviso attached to Section 14 of the Act, it is crystal clear that the licence remains effective for a period of "thirty days" from the date of its expiry. In the instant case, as has been discussed above, the licence had expired on 20th March, 2005 and the accident took place on 17th April, 2005, meaning thereby that

the driver of the offending vehicle was having a valid and effective driving licence on the date of accident.

11. Having said so, the Tribunal has fallen in error in holding that the driver of the offending vehicle was not having a valid and effective driving licence on the date of accident. Accordingly, both the appeals i.e. FAO No.274 of 2009 and FAO No.447 of 2010, filed by the insured/owner, are allowed and the insurer is saddled with the liability.

12. Coming to FAO No.180 of 2009, filed by the claimants for enhancement of compensation on account of death of their son Akshay Kumar, the Tribunal has fallen in error in awarding a meager compensation to the tune of Rs.75,000/-. The deceased was 7 years of age at the time of accident.

13. This Court in a similar case in FAO No.143 and 144 of 2008, decided on 29th May, 2015, after making the guess work and relying upon the law expounded by the Apex Court, held the claimants entitled to Rs.4,80,000/-.

14. I have gone through the impugned award and the record. The claimants, in the instant case, are the unfortunate parents who lost their son of 7 years of age in the accident. Thus, I deem it proper to enhance the compensation and award Rs.4.00 lacs, alongwith interest at the rate of 7.5% per annum from the date of the impugned award till the amount is deposited.

15. In view of the above discussion, all the appeals are allowed and the impugned awards, subject matter of FAO No.274 of 2009 and FAO No.447 of 2009 are modified to the extent that the insurer is held liable to pay the compensation. The award impugned in FAO No.180 of 2009 is also modified by providing that the claimants are held entitled to Rs.4.00 lacs, alongwith interest at the rate of 7.5% per annum from the date of the impugned award till deposit.

16. The insurer is directed to deposit the amount, as above, within a period of eight weeks from today and on deposit, the same be released in favour of the claimants strictly in terms of the impugned award. The statutory amount deposited by the insured in FAO Nos.274 of 2009 and 447 of 2010 is also awarded in favour of the claimants as costs throughout.

17. All the appeals stand disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

The New India Assurance Company Limited .....Appellant

Versus

Smt. Nirmala Devi & others .....Respondents

FAO No. 359 of 2009
Decided on : 8.1.2016

Motor Vehicles Act,1988- Section 166- Insurer challenged the award on the grounds that driver was possessing fake license at the time of accident, and secondly, Tribunal had wrongly awarded Rs. 50,000/- twice under the head 'consortium'- held that, the award shows that Tribunal has fallen in an error in awarding compensation of Rs. 50,000/- twice

under the head 'consortium' – further held that, the appellant had not pleaded and proved that owner of the offending vehicle had committed willful breach of terms and conditions of the insurance policy- award modified regarding grant of 'consortium'. (Para-No. 3 to 11)

Cases referred:
National Insurance Co. Ltd. versus Swaran Singh & others, AIR 2004 Supreme Court 1531
Pepsu Road Transport Corporation versus National Insurance Company, (2013) 10 Supreme Court Cases 217

For the Appellant : Mr. Ratish Sharma, Advocate.
For the Respondents: Mr. V.S. Chauhan, Advocate, for respondents No. 1 to 3.
Mr. Sanjeev Bhushan, Senior Advocate with Ms. Abhilasha Kaundal, Advocate, for respondent No. 4.
Mr. Bhupender Thakur, Advocate, for respondent No. 5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (oral)

Subject matter of this appeal is the award dated 18th March, 2009, made by the Motor Accident Claims Tribunal-II, Solan, Himachal Pradesh (hereinafter referred to as "the Tribunal") in Petition No. 22-S/2 of 2008, titled Nirmala Devi & others versus Sh. Om Parkash & others, whereby compensation to the tune of ₹3,74,000/- with interest @ 12% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants-respondents No. 1 to 3 herein and the insurer came to be saddled with liability (for short, "the impugned award").

2. The claimants, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The insurer has questioned the impugned award on the following two grounds:

"i) *The driver was having fake licence at the time of accident;*

ii) *The Tribunal has fallen in an error in awarding ₹50,000/- twice, under the head 'consortium'.*

4. Learned Counsel for the appellant-insurer also argued that the interim compensation has not been deducted.

5. I have gone through the impugned award. It appears that the Tribunal has fallen in an error in awarding compensation to the tune of ₹ 50,000/- twice, under the head 'consortium', in view of paras 11 & 14 of the impugned award.

6. It was for the insurer to plead and prove that the owner of the offending vehicle has committed willful breach of the terms and conditions of the insurance policy and mere plea here and there cannot be a ground for seeking exoneration, as held by the Apex Court in **National Insurance Co. Ltd. versus Swaran Singh & others,** reported in **AIR 2004 Supreme Court 1531.** It is apt to reproduce relevant portion of para 105 of the judgment hereinbelow:

"105. .....

(i) .....

(ii) .....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of available the Act."

7. It is also profitable to reproduce para 10 of the latest judgment of the Apex Court in the case of **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **(2013) 10 Supreme Court Cases 217,** hereinbelow:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case.

If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

8. This Court in **FAO No. 322 of 2011**, titled as **IFFCO-TOKIO Gen. Insurance Company Limited versus Smt. Joginder Kaur and others**, decided on 29.08.2014 and **FAO No. 523 of 2007,** titled as **Oriental Insurance Company Ltd.** versus **Smt. Rikta alias Kritka & others,** decided on 19.12.2014, has laid down the same principle.

9. The Tribunal has rightly made discussion in para-12 of the impugned award and held that the owner has not committed any willful breach. The learned Counsel for the appellant was not in a position to indicate how the owner has committed willful breach.

10. Having said so, it is held that the claimants are held entitled to the compensation to the tune of ₹ 2,74,000/- including interim compensation with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

11. Accordingly, the impugned award is modified, as indicated above. The appeal is accordingly disposed of

12. The excess amount be refunded to the insurer through payees' cheque account. The Registry is directed to release the compensation amount in favour of the claimants, strictly in terms of the impugned award.

13. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

The New India Assurance Company Limited ...Appellant.

Versus

Sh. Ramesh Chand and others ...Respondents.

FAO No. 382 of 2009
Decided on: 08.01.2016

Motor Vehicles Act, 1988- Section 166- Insurer challenged the award on the ground that it has been wrongly saddled with the liability by the Tribunal – held that unladen weight of the vehicle involved in the accident is 1700 k.g. and it falls within the definition of light Motor Vehicle –offending driver had valid and effective license to drive the light motor vehicle and the Tribunal has rightly saddled the appellant/insurer with the liability- appeal dismissed.

(Para 3 to 15)

Cases referred:

National Insurance Company Ltd. Vs Annappa Irappa Nesaria & Ors., 2008 AIR SCW 906
National Insurance Co. Ltd. versus Swaran Singh and others, AIR 2004 Court 1531
Pepsu Road Transport Corporation versus National Insurance Company, (2013) 10 Supreme Court Cases 217

For the appellant: Mr. Praneet Gupta, Advocate.
For the respondents: Mr. Suneet Goel, Advocate, for respondents No. 1 and 2.
Ms. Monika Shukla, Advocate, for respondent No. 3.
Nemo for respondent No. 4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Subject matter of this appeal is the judgment and award, dated 07.05.2009, made by the Motor Accident Claims Tribunal, Hamirpur, H.P. (for short "the Tribunal") in M.A.C. Petition No. 49 of 2007, titled as Ramesh Chand and another versus Sunil alias Sushil Kumar and others, whereby compensation to the tune of ₹ 6,50,000/- with interest @ 7.5% per annum from the date of the claim petition till its deposition came to be awarded in favour of the claimants and the insurer was saddled with liability (for short "the impugned award").

2. The claimants, the owner-insured and the driver of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has questioned the impugned award on the ground that the Tribunal has fallen in an error in saddling it with liability, on the grounds taken in the memo of the appeal.

4. Precisely, the ground taken by the appellant-insurer is that the driver of the offending vehicle was not having a valid and effective driving licence to drive the same, which is devoid of any force for the following reasons:

5. Admittedly, the driver was driving the offending vehicle, i.e. Tata Sumo, bearing registration No. HP-02 H- 2509, at the relevant point of time, the unladen weight of which is 1700 kilograms, as per the Certificate of Registration, the photocopy of which has been furnished by the learned counsel appearing on behalf of the owner-insured, across the Board, made part of the file, thus, falls within the definition of a light motor vehicle.

6. I deem it proper to reproduce the definitions of “driving licence”, “light motor vehicle”, “private service vehicle” and “transport vehicle” as contained in Sections 2 (10), 2 (21), 2(35) and 2 (47), respectively, of the MV Act herein:

> *“2. .....*
>
> *(10) “driving licence” means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class or description.*
>
> *xxx xxx xxx*
>
> *(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms.*
>
> xxx xxx xxx
>
> *(35) “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and*

includes a maxicab, a motorcab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage , an educational institution bus or a private service vehicle."

7. Section 2 (21) of the MV Act provides that a "light motor vehicle" means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7500 kilograms. Section 2 (35) of the MV Act gives the definition of a "public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2 (47) of the MV Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

8. At the cost of repetition, definition of "light motor vehicle" includes the words "transport vehicle" also. Thus, the definition, as given, mandates the "light motor vehicle" is itself a "transport vehicle", whereas the definitions of other vehicles are contained in Sections 2(14), 2 (16), 2 (17), 2 (18), 2 (22), 2 (23) 2 (24), 2 (25), 2 (26), 2 (27), 2 (28) and 2 (29) of the MV Act. In these definitions, the words "transport vehicle" are neither used nor included and that is the reason, the definition of "transport vehicle" is given in Section 2 (47) of the MV Act.

9. The Apex Court in a case titled as **National Insurance Company Ltd. versus Annappa Irappa Nesaria & Ors.,** reported in **2008 AIR SCW 906,** has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of 'light motor vehicle', 'medium goods vehicle' and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of the judgment herein:

"8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the 'light motor vehicle' as contained in Section 2(21) of the Motor vehicles Act, 1988 ('Act' for short), a light goods carriage would come within the purview thereof.

A 'light goods carriage' having not been defined in the Act, the definition of the 'light motor vehicle' clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle.

Strong reliance has been placed in this behalf by the learned counsel in Ashok Gangadhar Maratha vs. Oriental Insurance Company Ltd., [1999 (6) SCC 620].

9. .....

10. .....

11. .....

12. .....

13. .....

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

Clause (e) provides for 'Transport vehicle' which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which have been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein.

15. .....

16. From what has been noticed hereinbefore, it is evident that 'transport vehicle' has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time, to cover both, 'light passenger carriage vehicle' and 'light goods carriage vehicle'.

A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."

10. Having glance of the above discussions, I hold that the driver of the offending vehicle was having a valid and effective driving licence to drive the offending vehicle.

11. Even otherwise, it was the duty of the appellant-insurer to plead and prove that the owner-insured of the offending vehicle has committed any willful breach in order to seek exoneration, has not led any evidence. However, I have gone through the impugned award. The Tribunal has rightly made the discussions and saddled the appellant-insurer with liability.

12. The Apex Court in the case titled as **National Insurance Co. Ltd. versus Swaran Singh and others,** reported in **AIR 2004 Court 1531,** has laid down principles, how can insurer avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment herein:

"105. .....

(i) .....

(ii) .....

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only the available defence(s) raised in the said but

must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

13. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **(2013) 10 Supreme Court Cases 217,** herein:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

14. Viewed thus, the Tribunal has rightly held that the driver of the offending vehicle was having a valid and effective driving licence to drive the same, the owner-insured has not committed any willful breach and saddled the appellant-insurer with liability.

15. Having glance of the above discussions, the impugned award merits to be upheld and the appeal is to be dismissed. Accordingly, the impugned award is upheld and the appeal is dismissed.

16. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same to their respective bank accounts.

17. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Oriental Insurance Company Limited ...Appellant
Versus
Aman Mittal and others ...Respondents

FAO No. 347 of 2014
a/w CO No. 18 of 2015
Reserved on: 01.01.2016
Decided on: 08.01.2016

Motor Vehicles Act, 1988- Section 166- Claimant had sustained permanent disability to the extent of 75%- injury has shattered his physical frame, his future, has taken away his amenities of life and has deprived him of his charmful life- wife of the claimant proved that injured had lost his power of speech and hearing- thus, he has become a burden on his family- injured was running a kariana shop – his income can be taken as not less than Rs. 5,000/-, even if, he was a labourer- he was aged 27 years and multiplier of '16' is applicable- hence, he is entitled to Rs. 9,60,000/- (5,000/- x 12 x 16) as compensation under the head 'loss of income'- he is entitled to Rs. 1 lac under the head 'future treatment- he had spent Rs. 1,79,089/- for his treatment- he is entitled to Rs. 2,00,000/- under the head 'medical expenses'- he remained bedridden for 7-8 months- he is entitled to Rs.1 lac under the head 'attendant/guide charges'- he was taken to Poanta Sahib, Dehradun and Chandigarh and is entitled to Rs. 30,000/- under the head 'transportation charges'- he is also entitled to Rs.1 lac under the head 'pain and suffering undergone' and Rs.1 lac under the head 'future pain and suffering'- hence, compensation of Rs. 16,69,100/- awarded as compensation. (Para-14 to 45)

Cases referred:

R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755
Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771
Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others versus Madan Mohan and another, 2013 AIR SCW 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105
National Insurance Co. Ltd. versus Swaran Singh and others, AIR 2004 Court 1531

Pepsu Road Transport Corporation versus National Insurance Company, (2013) 10 Supreme Court Cases 217

For the appellant:	Mr. G.C. Gupta, Senior Advocate, with Ms. Meera Devi, Advocate.
For the respondents:	Mr. Ashok Tyagi, Advocate, for respondent No. 1-cross objector. Nemo for respondents No. 2 and 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Appellant-insurer has called in question the judgment and award, dated 05.07.2014, made by the Motor Accident Claims Tribunal-II, Sirmaur District at Nahan, H.P. (for short "the Tribunal") in MAC Petition No. 17-N/2 of 2009, titled as Aman Mittal versus Shri Aman Kumar Bansal and others, whereby compensation to the tune of Rs.10,78,100/- with interest @ 7.5% per annum from the date of the claim petition till its final realization came to be awarded in favour of the claimant-injured and against the insurer (for short "the impugned award").

2. The insurer, by the medium of this appeal, has questioned the impugned award on the ground that the amount awarded is excessive and the claimant-injured was also negligent.

3. The claimant-injured has also questioned the impugned award, by the medium of cross-objections on the ground of adequacy of compensation.

4. The driver and owner-insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

5. In order to determine the appeal as well as the cross-objections, it is necessary to give a brief resume of the facts of the case, the womb of which has given birth to the instant case.

6. Aman Mittal, i.e. the claimant-injured, became the victim of a traffic accident on 21.12.2008, at about 10.00 P.M. at Village Dhaulakuan, Tehsil Paonta Sahib, which was caused by driver, namely Shri Bhura Ram, while driving motor cycle, bearing registration No. HP-18B-1234, rashly and negligently, hit the claimant-injured, who was walking on the correct side of the road, sustained injuries, was immediately taken to a Private Clinic at Paonta sahib, thereafter to Himalayan Hospital Doiewala, Dehradun wherefrom was referred to PGI, Chandigarh, where he remained under treatment for pretty long time, as he was in coma.

7. The claimant-injured, after long-drawn treatment, has filed claim petition through his wife, Mamta Mittal, and claimed compensation to the tune of Rs.20,00,000/-, as per the break-ups given in the claim petition.

8. The claim petition was resisted by the respondents on the grounds taken in the respective memo of objections.

9. Following issues came to be framed by the Tribunal on 15.03.2010:

> *"1. Whether the accident took place due to the rash and ngliegnt driving of respondent No. 2 Bhura Ram while driving motorcycle No.*

HP-18B-1234 and that the petitioner Aman Mittal susained in the said accident? OPP

2. If issue No. 1 is proved to what amount of compensation the petitioner is entitled to and from whom? OPP

3. Whether driver Bhura Ram of motorcycle No. HP-18B-1234 did not possess a valid and effective driving licnce at the time of accident? OPR-3

4. Whether motorcycle No. HP-18B-1234 was being plied in violation of terms and conditions of the insurance policy? OPR-3

5. Whether the petition has been filed by the petitioner in collusion with respondent Nos. 1 and 2, if so to what effect? OPR-3

6. Whether the petition is not maintainable? OPR-3

7. Relief."

10. Claimant-injured has examined Dr. Mohit Gupta as PW-1, HC Desh Raj as PW-2, Shri Kulwant Singh as PW-3 and his wife, Smt. Mamta Mittal, herself appeared in the witness box as PW-4. The insurer has examined SI Sucha Singh as RW-1, Shri Naveen Sharma as RW-2 and Shri A.S Vaish as RW-3.

11. Parties have also placed on record disability certificate (Ext. PW-1/A), copy of FIR (Ext. PW-2/A), medical bills/cash memos (Ext. P-1 to P-159), investigation report (Ext. RW-3/A), copy of driving licence (Ext. RY), insurance policy (Ext. RX) and report of investigation relating to the driving licence (Mark-A).

Issue No. 1:

12. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimant-injured has proved that driver-Bhura Ram had driven the offending vehicle rashly and negligently at the relevant point of time, hit the claimant-injured, who was walking on the correct side of the road, sustained injuries and became permanently disabled. Neither the driver of the offending vehicle nor any of the parties have questioned the said findings. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

13. The following two points are to be determined in order to decide the appeal as well as the cross-objections:

(i) Whether the amount awarded is adequate or otherwise?

(ii) Whether the insurer came to be rightly saddled with liability?

14. Before I determine the said issues, it is profitable to determine how to assess compensation in injury cases?

15. It is beaten law of land that for assessing compensation in injury cases, the Court has to make guess work.

16. The Apex Court in case titled as **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others,** reported in **AIR 1995 SC 755,** had discussed all aspects and laid down guidelines how guess work is to be done and how compensation is to be awarded under various heads. It is apt to reproduce paras 9 to 14 of the judgment hereinbelow:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those

which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

11. In the case Ward v. James, 1965 (1) All ER 563, it was said:

> *"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."*

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

13. This Court in the case of C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed (at p. 380):

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

14. In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said :-

"Non-pecuniary loss : the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

17. The said judgment was also discussed by the Apex Court in case titled as **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another,** reported in **2010 AIR SCW 6085,** while granting compensation in such a case. It is apt to reproduce para-7 of the judgment hereinbelow:

"7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

18. The Apex Court in the case titled as **Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited,** reported in **2011 AIR SCW 4787,** also laid down the guidelines for granting compensation. It is apt to reproduce paras 8 and 9 of the judgment hereinbelow:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are

expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

19. The Apex Court in case titled as **Kavita versus Deepak and others,** reported in **2012 AIR SCW 4771,** also discussed the entire law and laid down the guidelines how to grant compensation. It is apt to reproduce paras 16 & 18 of the judgment hereinbelow:

"16. In Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. .....

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

20. Keeping in view the tests laid down by the Apex Court and the other High Courts, as discussed hereinabove, it is to be seen as to what amount of compensation, the claimant is entitled to.

21. The claimant-injured has suffered permanent disability to the extent of 75%, in terms of the disability certificate, Ext. PW-1/A, read with the statement of Dr. Mohit Gupta (PW-1). The said injury has shattered his physical frame, his future, income, taken away his amenities of life and has deprived him of charmful life.

22. It is apt to record herein that the statement of Dr. Mohit Gupta (PW-1) is in Hindi. It would be profitable to reproduce the English version of his statement herein:

"Stated that I am posted as Orthopaedic Surgeon at Regional Hospital, Nahan. I have brought the summoned record. On 24.04.2010, Board of Doctors was constituted, of which I was also a member. Shri Aman Mittal, s/o Shri Krishan Kumar, VPO Majra, Tehsil Paonta Sahib was medically examined by the Board of Doctors and issued certificate Ext. PW-1/A in which it was found that applicant-Aman Mittal has sustained 75% permanent disability with respect to head injury and right hemiplegia. Ext. PW-1/A contains my signatures in red circle-A, signatures of Dr. Amit Mangla in circle-B and signatures of Dr. Ajay Gupta in circle-C. The 75% disability is related to whole body of the applicant.

xxx by all respondents xxx

I have never treated the applicant. It cannot be said, without any record, as to how old are the injuries."

23. While going through the statement of Dr. Mohit Gupta, he has categorically stated that the claimant-injured has suffered 75% permanent disability in relation to head injury and right hemiplegia. The said injury has affected his entire body, which is suggestive of the fact that the said injury has affected his earning capacity in toto.

24. Perusal of the disability certificate, Ext. PW-1/A and the statement of the wife of the claimant-injured, Smt. Mamta Mittal (PW-4) do disclose that the unfortunate claimant-injured has lost the power of speech and hearing, which is permanent in nature and non-progressive. It has also been recorded in the disability certificate that the condition of the claimant-injured is not likely to be improved, thus, he has become permanently dependent. Neither he can speak nor hear, rendering him deaf and dumb. Meaning thereby, he has become a burden on his family members.

25. In view of the pleadings of the parties, oral as well as documentary, and the record, the claimant-injured has to suffer throughout his life due to the said injury. The said injury has also affected his matrimonial life/home.

26. The Tribunal has made discussions from para 32 to para 39 and granted compensation to the tune of Rs.10,78,100/- under various heads, which appears to be meager for the following reasons:

27. The claimant-injured, immediately after the accident, was taken to a Private Clinic at Paonta Sahib, thereafter to Himalayan Hospital, Doiewala, Dehradurn and was referred to PGI, Chandigarh, was in coma and remained admitted w.e.f. 22.12.2008 to 12.03.2009. He was in the hospital for about three months. He has lost the income for the said period. Not only he has lost the income for the said period, but the injury has affected his future income throughout his life.

28. It has been pleaded in the claim petition that the claimant-injured was running a Karyana shop and was earning Rs.12,000/- per month.

29. The Tribunal has lost sight of the fact that the wife of the claimant-injured, who has filed the claim petition, has also undergone pain and sufferings and only she must be knowing under what circumstances she had filed the claim petition and how she had looked-after her husband.

30. I deem it proper to quote the idiom *"only the wearer knows where the shoe pinches"*. In this backdrop, the claimant-injured and his family members, particularly, his wife, are the best persons who are knowing how they have suffered and how they are suffering.

31. Unfortunately, the Tribunal, while assessing the loss of income, has lost sight of the entire facts of the case, particularly, the disability certificate, Ext. PW-1/A and the statement of Dr. Mohit Gupta (PW-1).

32. The Tribunal has recorded that the claimant-injured has failed to prove that he was earning Rs.12,000/- per month. The said fact was not in dispute. The driver, owner-insured and the insurer have not disputed the same. However, if the Tribunal would have exercised guess work, it could have been safely said and held that the claimant-injured would have been earning not less than Rs.5,000/- even had he been a labourer. Unfortunately, the claimant-injured has lost power of speech and hearing, which has permanently affected his earning capacity.

33. The multiplier method is the best method for assessing compensation in view of the Second Schedule appended with the Motor Vehicles Act, 1988 (for short "MV Act") read with the ratio laid down by the Apex Court in the case titled as **Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another,** reported in **AIR 2009 SC 3104,** upheld by a larger Bench of the Apex Court in the case titled as **Reshma Kumari & others versus Madan Mohan and another,** reported in **2013 AIR SCW 3120,** and **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.**

34. Admittedly, the age of the claimant-injured was 27 years at the time of the accident. The multiplier of '16' is just and appropriate in terms of the judgments (supra).

35. Thus, the claimant-injured is held entitled to compensation to the tune of Rs.5,000/- x 12 x 16 = Rs.9,60,000/- under the head 'loss of income'.

36. The disability certificate, Ext. PW-1/A read with the statement of PW-1, Dr. Mohit Gupta, and the other documents on the file, do disclose that the claimant-injured has to undergo treatment throughout his life and by guess work, it can be safely held that the claimant-injured is entitled to Rs.1,00,000/- under the head 'future treatment'. But, unfortunately, the Tribunal has awarded Rs.30,000/- under the head 'future treatment', which is too meager. Accordingly, the claimant-injured is held entitled to Rs.1,00,000/- under the head 'future treatment'.

37. The claimant-injured has placed on record disability certificate, Ext. PW-1/A and the medical bills/cash memos, Ext. P-1 to P-159. While examining the bills/cash memos and making calculations, it appears that the claimant-injured has spent Rs.1,79,089/- for his treatment. PW-4, Smt. Mamta Mittal, has also stated that she has not maintained the entire record of bills. At least, Rs.2,00,000/- should have been awarded under the head 'medical expenses'. However, the Tribunal has awarded only Rs.1,79,100/- under the head 'medical expenses', which is maintained.

38. The claimant-injured was in coma and in that condition, he was referred to PGI, Chandigarh, remained admitted for about three months, was bed ridden for at least seven-eight months at home also and virtually was in the same condition for a pretty long time. He was advised future treatment also and has to attend the hospital from time to time.

39. The Tribunal has awarded Rs.21,000/- under the head 'attendant charges' perhaps keeping in view the fact that the claimant-injured required attendant only for seven months, but, it has lost sight of a very important factor that the unfortunate claimant-injured has lost the power of speech and hearing forever, became a deaf and dumb person. Can we say that a deaf and dumb person do not require any attendant. Rather, such a person requires an attendant/guide throughout his life. No doubt, the claimant-injured is having a wife, who will look after him. But she has also to look after other household/domestic works. Exercising guess work, Rs.1,00,000/- is awarded under the head 'attendant/guide charges'.

40. Admittedly, the claimant-injured was taken to a Private Clinic at Paonta Sahib, thereafter to Dehradun wherefrom he was referred to PGI, Chandigarh, where he remained admitted for three months, thus, would have spent considerable amount on transportation charges. Also, his wife, family members and relatives would have come to attend him and will have to attend him for future treatment/follow-ups at PGI, Chandigarh. The Tribunal has awarded Rs.20,000/- under the head 'transportation charges', which is too meager. Accordingly, the claimant-injured is at least held entitled to Rs.30,000/- under the head 'transportation charges'.

41. As discussed hereinabove, the claimant-injured has undergone pain and sufferings during the period he was admitted in the hospital, during follow-ups and has to undergo pain and sufferings throughout his life. A person, who was quite healthy, suddenly is deprived of power of speech and hearing, rendering him deaf and dumb, has to go through all odds of life and has to be dependent throughout. Thus, Rs.1,00,000/- is awarded under the head 'pain and sufferings undergone' and Rs.1,00,000/- under the head 'future pain and sufferings'.

42. The claimant-injured was 27 years of age at the time of the accident. Meaning thereby, he was at budding age, had just started his career and matrimonial life. But, unfortunately, this accident has shattered his physical frame, destroyed his matrimonial home, also affected his career throughout and stands deprived of the amenities of life. At least, Rs.2,00,000/- would have been awarded under the head 'loss of amenities', but the Tribunal has awarded Rs.1,00,000/- under the said head, which is, accordingly, maintained.

43. Having said so, the claimant-injured is held entitled to the enhanced compensation to the tune of Rs.9,60,000/- + Rs.1,00,000/- + Rs.1,79,100/- + Rs.1,00,000/- + Rs.30,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.1,00,000/- = Rs.16,69,100/- with interest as awarded by the Tribunal.

44. Now, the question is - who is to be saddled with liability?

45. The Tribunal has saddled the insurer with liability. Learned counsel for the insurer has not questioned the said fact.

Issues No. 3 and 4:

46. Both these issues are interlinked and interdependent, I deem it proper to determine both these issues together.

47. It was for the insurer to plead and prove that the driver of the offending vehicle was not having a valid and effective driving licence to drive the same at the relevant point of time, has not led any evidence to prove the said fact. However, the driving licence of the driver of the offending vehicle is on the record as Ext. RY, the perusal of which does disclose that the driver was having a valid and effective driving licence at the relevant point of time.

48. The insurance policy of the offending vehicle is also on the record as Ext. RX, perusal of which does disclose that the offending vehicle was not being driven in violation of the terms and conditions of the insurance policy. The factum of insurance is also not in dispute.

49. Even otherwise, it was for the insurer to discharge the onus, has not discharged the same, thus, cannot seek exoneration.

50. The Apex Court in the case titled as **National Insurance Co. Ltd. versus Swaran Singh and others,** reported in **AIR 2004 Court 1531,** has laid down principles, how can insurer avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment herein:

> *"105. .....*
>
> *(i) .....*
>
> *(ii) .....*
>
> *(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the*

matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only the available defence(s) raised in the said but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v).....

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149 (2) of the Act."

51. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in **Pepsu Road Transport Corporation versus National Insurance Company,** reported in **(2013) 10 Supreme Court Cases 217,** herein:

"10. In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation."

52. Having said so, the findings returned by the Tribunal on issues No. 3 and 4 are upheld.

Issue No. 5:

53. It was for the insurer to prove that there is collusion between the claimant-injured, the owner-insured and the driver of the offending vehicle. I wonder how this question was raised before the Tribunal knowing that the unfortunate victim was in coma, stands deprived of power of speech and hearing and suffered not only 75% permanent disability, but has virtually suffered 100% disability. However, the insurer has not led any evidence to prove the said issue and has failed to discharge the onus. Accordingly, the findings returned by the Tribunal on issue No. 5 are also upheld.

Issue No. 6:

54. It appears that the insurer has taken a plea that the wife of the injured was not competent to file claim petition. MV Act stands amended in the year 1994 and has gone through a sea change. Even a police report under Sections 158 (6) and 166(4) of the MV Act can also be treated as a claim petition. The wife of the injured has seen and is witnessing the condition of her husband. Not only the injured has suffered but she has also lost her prime youth, her matrimonial life and amenities of life because of the injuries suffered by her husband. Thus, the claim petition was maintainable and the Tribunal has rightly decided issue No. 6 in favour of the claimant and against the insurer.

55. Having said so, the Tribunal has rightly saddled the insurer with liability.

56. Having glance of the above discussions, the amount of compensation is enhanced, the impugned award is modified, the appeal is dismissed and the cross-objections are allowed, as indicated hereinabove.

57. The insurer is directed to deposit the enhanced awarded amount before the Registry of this Court within eight weeks. The Registry is directed to release the amount deposited in favour of the claimant-injured in the following manner:

58. 50% of the deposited amount shall be invested in Fixed Deposits for a period of ten years and 50% be released in favour of the claimant-injured through payee's account cheque or by depositing the same to his bank account.

59. The enhanced awarded amount be also released in the same manner and method.

60. Send down the record after placing a copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Oriental Insurance Company Limited .....Appellant

Versus

Kaku alias Karam Singh & others .....Respondents

FAO No. 352 of 2009
Decided on : 8.1.2016

Motor Vehicles Act, 1988- Section 166- Award challenged by insurer on the ground that the tribunal had wrongly decided the issue regarding the deceased travelling in the vehicle as gratuitous passenger - held that, the owner and driver have categorically admitted in their replies that the deceased was travelling in the offending vehicle as owner of the goods- PW-6 had also categorically deposed that the deceased was travelling in the vehicle as owner of the goods and not as a gratuitous passenger- evidence has not been rebutted by the appellant/insurer- the Tribunal has rightly held that the deceased was travelling in the offending vehicle as owner of the goods- appeal dismissed. (Para-3 to 6)

For the Appellant :	Mr. Lalit K. Sharma, Advocate.
For the Respondents:	Mr. Nipun Sharma, Advocate, for respondents No. 2 & 3. Mr. Adarsh Sharma, Advocate, for respondent No. 4. Nemo for the other respondents.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

This appeal is directed against the award dated 30th April, 2009, made by the Motor Accident Claims Tribunal, Chamba Division, Chamba, H.P. (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 41 of 2008, titled Sh. Kaku @ Karam Singh & others versus Sh. Chatro Ram & others, whereby compensation to the tune of ₹ 3,57,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimants-respondents No. 1 to 3 herein and the insurer came to be saddled with liability (for short, "the impugned award").

2. The claimants, insured-owner and driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. Learned Counsel for the appellant-insurer argued that the Tribunal has wrongly decided issue No. 4. It is apt to reproduce issue No. 4 herein:

> *"Whether the deceased was traveling in the vehicle as gratuitous passenger, if so, its effect? .....OPR-3"*

4. The claimants have specifically averred in the claim petition that the deceased was traveling in the offending vehicle, i.e. Canter bearing registration No. HP-48-4267, as owner of goods. They have also examined witnesses in support of their case. Shri Kaku Ram (PW-6) has deposed before the Tribunal that the deceased was not traveling as a gratuitous passenger in the offending vehicle, but was traveling in the vehicle as owner of goods, which is not rebutted by the insurer.

5. I have gone through the claim petition and the replies. The owner and driver have admitted in their replies the claim of the claimants to the extent that the deceased was traveling in the offending vehicle as owner of goods. The claimants have also proved the said fact.

6. Having said so, I am of the considered view that the Tribunal has rightly decided issue No. 4. It is apt to reproduce para-30 of the impugned award herein:

> *"In support of this issue, no evidence was led by respondent No. 3 in order to show that the offending vehicle involved in the accident was being plied in contravention of the terms and conditions of the insurance policy, but it stands proved on record that the offending vehicle was covered under a valid*

insurance policy. In view of no such evidence on record, it can safely be concluded that the offending vehicle was being plied in contravention of the terms and conditions of the insurance policy and as such, this issue is decided against respondent No. 3."

7. Viewed thus, the impugned award is upheld and the appeal is dismissed.

8. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in their account(s).

9. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

FAO No.54 of 2014 a/w FAO
Nos. 55, 56, 200 & 238 of 2014
Date of decision: 08.01.2016

1.	**FAO No.54 of 2014**	
	Ratna Devi	.....Appellant
	Versus	
	Rajwanti Devi & others	..... Respondents
2.	**FAO No.55 of 2014**	
	Ratna Devi	.....Appellant
	Versus	
	Vidya Devi & others	..... Respondents
3.	**FAO No.56 of 2014**	
	Ratna Devi	.....Appellant
	Versus	
	Ram Devi & others	..... Respondents
4.	**FAO No.200 of 2014**	
	Ratna Devi	.....Appellant
	Versus	
	Iman Pati & others	..... Respondents
5.	**FAO No.238 of 2014**	
	Iman Pati & others	.....Appellants
	Versus	
	Ratna Devi & another	..... Respondents

Motor Vehicles Act, 1988- Section 166- Deceased was a JBT and was earning Rs.15,000/- per month- - 1/5th of the income was to be deducted and the loss of dependency will be Rs. 11,700/-, say Rs. 12,000/-- deceased was aged 38 years and multiplier of '15' will be applicable - thus, claimants will be entitled to Rs. 12,000x15x12= Rs. 21,60,000/- under the head 'loss of source of dependency' – they will be also entitled Rs.10,000/- under the head loss of 'love and affection' , 'loss of estate' , 'loss of consortium' and 'funeral expenses' - thus, claimants are entitled to Rs. 21,60,000 + Rs. 40,000/- = Rs. 22,00,000/-, along with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

(Para-25 to 28)

Motor Vehicles Act, 1988- Section 168(1) - Tribunal held that since the claimant had claimed compensation to the extent of Rs.15 lacs- therefore, they were entitled to compensation of Rs.15 lacs, although, after making the assessment, Tribunal had arrived at an amount of Rs.31,93,600/- as total compensation- held, that Tribunal is bound to award just compensation and is entitled to award more compensation than claimed by the claimants. (Para-10 to 24)

Cases referred:

United India Insurance Company Ltd. versus Smt. Kulwant Kaur, Latest HLJ 2014 (HP) 174
Nagappa versus Gurudayal Singh and others, n AIR 2003 Supreme Court 674
State of Haryana and another versus Jasbir Kaur and others, AIR 2003 SCC 3696
The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another, AIR 2003 Supreme Court 4172
A.P.S.R.T.C. & another versus M. Ramadevi & others, 2008 AIR SCW 1213
Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr., 2009 AIR SCW 3717
Ningamma & another versus United India Insurance Co. Ltd., 2009 AIR SCW 4916
Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service, 2013 AIR SCW 5800
Savita versus Bindar Singh & others, 2014 AIR SCW 2053
Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and anr, (2009) 6 SCC 121
Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 312
Munna Lal Jain & anr. vs. Vipin Kumar Sharma & Ors., 2015 AIR SCW 3105

FAO No.54 of 2014

For the appellant: Mr.Dibender Ghosh, Advocate.
For the respondents: Mr.Baldev Singh Negi and Mr. Sunil Chaudhary, Advocates, for respondents No. 1 to 3.
Mr.Jagdish Thakur, Advocate, for respondent No.4.

FAO Nos.55 and 56 of 2014

For the appellant: Mr. Dibender Ghosh, Advocate.
For the respondents: Mr.Parmod Negi, Advocate vice Mr. C.D. Negi, Advocate, for respondents No.1 to 5.
Mr.Jagdish Thakur, Advocate, for respondent No.6.

FAO No.200 of 2014

For the appellant: Mr. Dibender Ghosh, Advocate.
For the respondents: Mr.Baldev Singh Negi and Mr. Sunil Chaudhary, Advocates, for respondents No. 1 to 7.
Mr.Jagdish Thakur, Advocate, for respondent No.8.

FAO No.238 of 2014

For the appellant: Mr.Baldev Singh Negi and Mr. Sunil Chaudhary, Advocates.
For the respondents: Mr.Dibender Ghosh, Advocate, for respondent No.1.
Mr.Jagdish Thakur, Advocate, for respondent No.2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

FAO No. 54, 55, 56 and 200 of 2014

By the medium of these appeals, the insured has questioned the impugned awards on the grounds that the Tribunal has wrongly saddled the insured/appellant with

the liability, while FAO No.238 of 2014 has been preferred by the claimants questioning the impugned award on the ground that the Tribunal has fallen in error in not awarding the compensation of Rs.31,93,600/-, which was assessed by the Tribunal and awarded only Rs.15,00,000/- as claimed by them in the claim petition.

2. All the appeals are outcome of one accident, therefore, these are being disposed of by a common judgment.

3. Claimants have specifically averred in the claim petitions that the deceased were traveling in the offending vehicle, alongwith goods. The said fact has been admitted by the owner in the reply filed to the Claim Petitions. Thus, there was no dispute about the fact that the deceased were traveling in the offending vehicle alongwith their goods.

4. It is settled preposition of law that the facts admitted need not be proved. However, issues were framed and the parties have led their evidence. It has come on the record that the deceased were traveling in the offending vehicle alongwith their goods, thus, cannot be termed as gratuitous passengers.

5. This Court in FAO No.638 of 2008, titled National Insurance Company vs. Sundri Devi and in series of judgments has held that when a person is traveling in a vehicle as owner of the goods, he cannot be said to be traveling as gratuitous passenger.

6. The Tribunal has also fallen in error in holding that the insurance policy was an Act Policy, which is factually incorrect. A perusal of the Insurance Policy shows that the same was a Comprehensive Policy, which fact was also frankly conceded by the learned counsel for the insurer during the course of hearing of the appeal. Thus, the risk of the persons traveling in the offending vehicle alongwith goods is covered.

7. Having said so, in all the claim petitions the insured/owner has to satisfy the award, but the offending vehicle was duly insured, thus, the insurer has to indemnify and, therefore, the insurer is to be saddled with the liability.

8. In the given circumstances, the appeals, being FAO Nos.54, 55, 56 and 200 of 2014 are allowed and the awards, impugned in the said appeals, are modified by saddling the insurer with the liability.

FAO No. 238 of 2014

9. In this appeal, the claimants have questioned the award dated 11th March, 2014, passed by the Motor Accident Claims Tribunal, Kinnaur at Rampur Bushahr, Camp at Reckong Peo, in MAC Petition No.0100037 of 2009, (also subject matter of FAO No.200 of 2014, supra), on the ground of adequacy of compensation. In the claim petition the claimants had claimed compensation to the tune of Rs.15,00,000/-, as per the break-ups given therein.

10. The Tribunal, after making the assessment, held that though the claimants were entitled to Rs.31,93,600/- as total compensation, however, since they had claimed compensation only to the tune of Rs.15,00,000/- in the claim petition, therefore, restricted the award to the tune of Rs.15,00,000/-.

11. The moot question in the instant appeal is - whether the Tribunal or the Appellate Court is/are within its/their jurisdiction to enhance the compensation without there being any prayer for the same?

12. To answer the said question, first of all, I would like to refer to Section 168 (1) of the MV Act hereunder:

> *"**168. Award of the Claims Tribunal.** - On receipt of an application for compensation made under section 166 , the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:*
>
> *....."*

13. The mandate of Section 168 (1) (supra) is that it is incumbent upon the Tribunals to award just compensation in claim petitions filed under Sections 166 of the MV Act.

14. Keeping in view the object of granting of compensation and the legislature's wisdom read with the amendment made in the MV Act in the year 1994, it is for the Tribunal or the Appellate Court to assess the just compensation and is within its powers to grant the compensation more than what is claimed and can enhance the same.

15. This Court in a case titled as **United India Insurance Company Ltd. versus Smt. Kulwant Kaur,** reported in **Latest HLJ 2014 (HP) 174,** held that the Tribunal as well as the Appellate Court is/are within the jurisdiction to enhance the compensation and grant more than what is claimed. It is apt to reproduce paras 41 to 45 of the judgment herein:

> *"41. Before I determine what is the just and adequate compensation in the case in hand, it is also a moot question – whether the Appellate Court can enhance compensation, even though, not prayed by the medium of appeal or by cross-objection.*
>
> *42. The Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") has gone through a sea change in the year 1994 and sub-section (6) has been added to Section 158 of the MV Act, which reads as under:*
>
> *"**158. Production of certain certificates, licence and permit in certain cases.** -*
>
> *.....*
>
> *(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."*
>
> *In terms of this provision, the report is to be submitted to the Tribunal having the jurisdiction.*
>
> *43. Also, an amendment has been carried out in Section 166 of the MV Act and sub-section (4) stands added. It is apt to reproduce sub-section (4) of Section 166 of the MV Act herein:*

*"**166. Application for compensation.** -*

.....

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act."

It mandates that a Tribunal has to treat report under Section 158 (6) (supra) of the MV Act as a claim petition. Thus, there is no handicap or restriction in granting compensation in excess of the amount claimed by the claimant in the claim petition.

44. Keeping in view the purpose and object of the said provisions read with the mandate of Section 173 of the MV Act, I am of the view that the Appellate Court is exercising the same powers, which the Tribunal is having. Also, sub-clause (2) of Section 107 of the Code of Civil Procedure (hereinafter referred to as "the CPC") mandates that the Appellate Court is having all those powers, which the trial Court is having. It is apt to reproduce Section 107 sub-clause (2) of the CPC herein:

*"**107. Powers of Appellate Court.** -*

.....

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein."

45. Thus, in the given circumstances, the Tribunal as well as the Appellate Court is within the jurisdiction to enhance the compensation. "

16. The same view was taken by the Apex Court in the case of **Nagappa versus Gurudayal Singh and others,** reported in **AIR 2003 Supreme Court 674.** It is apt to reproduce paras 7, 9 and 10 of the judgment herein:

"7. Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is – it should be 'Just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the M.V. Act. Section 166 provides that an application for compensation arising out of an accident involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. Other important part of the said Section is sub-section (4) which provides that "the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act." Hence, Claims Tribunal in appropriate case can treat the report

forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed.

8. .....

9. It appears that due importance is not given to sub-section (4) of Section 166 which provides that the Tribunal shall treat any report of the accidents forwarded to it under sub-section (6) of Section 158, as an application for compensation under this Act.

10. Thereafter, Section 168 empowers the Claims Tribunal to "make an award determining the amount of compensation which appears to it to be just". Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

17. In the case titled as **State of Haryana and another versus Jasbir Kaur and others,** reported in **AIR 2003 Supreme Court 3696,** the Apex Court has discussed the expression 'just'. It is apt to reproduce para 7 of the judgment herein:

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in S. 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; nor a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191)."

18. The same view has been taken by the Apex Court in a case titled as **The Divisional Controller, K.S.R.T.C. versus Mahadeva Shetty and another,** reported in **AIR 2003 Supreme Court 4172**.

19. The Apex Court in a case titled as **A.P.S.R.T.C. & another versus M. Ramadevi & others,** reported in **2008 AIR SCW 1213,** held that the Appellate Court was within its jurisdiction and powers in enhancing the compensation despite the fact that the claimants had not questioned the adequacy of the compensation.

20. The Apex Court in the case titled as **Oriental Insurance Co. Ltd. versus Mohd. Nasir & Anr.,** reported in **2009 AIR SCW 3717,** laid down the same principle while discussing, in para 27 of the judgment, the ratio laid down in the judgments rendered in the cases titled as *Nagappa v. Gurudayal Singh & Ors, (2003) 2 SCC 274; Devki Nandan*

Bangur and Ors. versus State of Haryana and Ors. 1995 ACJ 1288; Syed Basheer Ahmed & Ors. versus Mohd. Jameel & Anr., (2009) 2 SCC 225; National Insurance Co. Ltd. versus Laxmi Narain Dhut, (2007) 3 SCC 700; Punjab State Electricity Board Ltd. versus Zora Singh and Others (2005) 6 SCC 776; A.P. SRTC versus STAT and State of Haryana & Ors. versus Shakuntla Devi, 2008 (13) SCALE 621.

21. The Apex Court in another case titled as **Ningamma & another versus United India Insurance Co. Ltd.,** reported in **2009 AIR SCW 4916,** held that the Court is duty bound to award just compensation to which the claimants are entitled to. It is profitable to reproduce para 25 of the judgment herein:

> *"25. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the Court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not. However, whether or not the claimants would be governed with the terms and conditions of the insurance policy and whether or not the provisions of Section 147 of the MVA would be applicable in the present case and also whether or not there was rash and negligent driving on the part of the deceased, are essentially a matter of fact which was required to be considered and answered at least by the High Court."*

22. The Apex Court in a latest judgment in a case titled **Sanobanu Nazirbhai Mirza & others versus Ahmedabad Municipal Transport Service,** reported in **2013 AIR SCW 5800,** has specifically held that compensation can be enhanced while deciding the appeal, even though prayer for enhancing the compensation is not made by way of appeal or cross appeal/objections. It is apt to reproduce para 9 of the judgment herein:

> *"9. In view of the aforesaid decision of this Court, we are of the view that the legal representatives of the deceased are entitled to the compensation as mentioned under the various heads in the table as provided above in this judgment even though certain claims were not preferred by them as we are of the view that they are legally and legitimately entitled for the said claims. Accordingly we award the compensation, more than what was claimed by them as it is the statutory duty of the Tribunal and the appellate court to award just and reasonable compensation to the legal representatives of the deceased to mitigate their hardship and agony as held by this Court in a catena of cases. Therefore, this Court has awarded just and reasonable compensation in favour of the appellants as they filed application claiming compensation under Section 166 of the M.V. Act. Keeping in view the aforesaid relevant facts and legal evidence on record and in the absence of rebuttal evidence adduced by the respondent, we determine just and reasonable compensation by awarding a total sum of Rs. 16,96,000/- with interest @ 7.5% from the date of filing the claim petition till the date payment is made to the appellants."*

23. The Apex Court in a latest judgment in the case titled as **Smt. Savita versus Bindar Singh & others,** reported in **2014 AIR SCW 2053,** has laid down the same proposition of law and held that the Tribunal as well as the Appellate Court can ignore the claim made by the claimant in the application for compensation. It is apt to reproduce para 6 of the judgment herein:

> *"6. After considering the decisions of this Court in Santosh Devi as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."*

24. Viewed thus, the Tribunal/Appellate Court is within its power to award compensation more than what is claimed or even if no appeal is filed, the appellate Court can enhance the compensation.

25. The claimants have claimed in the claim petition that the deceased was a Junior Basic Teacher and was earning Rs.15,000/- per month. However, the Tribunal has taken the income of the deceased as Rs.14,600/- per month. In view of the law laid down by the Apex Court in **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,** which decision was also upheld by the larger Bench of the Apex Court in **Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 312**, 1/5th of the total monthly income i.e. Rs.2900/- was to be deducted. Thus, after deducting 1/5th, the monthly loss of source of dependency to the claimants can be said to be Rs.11,700/-, say Rs.12,000/-.

26. Admittedly, the age of the deceased was 38 years at the time of accident. Thus, as per the 2nd Schedule attached to the MV Act read with the law laid down by the Apex Court in Sarla Verma's supra and the latest judgment of the Apex Court in **Munna Lal Jain & anr. vs. Vipin Kumar Sharma & Ors., 2015 AIR SCW 3105**, the Tribunal has rightly applied the multiplier of 15.

27. Having said so, the claimants are held entitled to compensation to the tune of Rs.12000 x 15 x 12 = 21,60,000/- under the head 'loss of source of dependency'. In addition to it, the claimants are also held entitled to Rs.10,000/- each i.e. Rs.40,000/- in all, under the heads 'loss of love and affection', 'loss of estate', 'loss of consortium' and 'funeral expenses'.

28. Thus, in all, the claimants are held entitled to Rs.21,60,000 + Rs.40,000/- = Rs.22,00,000/-, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

29. The insurer is directed to deposit the entire amount alongwith interest up-to-date within a period of eight weeks from today and on deposit, the Registry is directed to release the same in favour of the claimants strictly in terms of the impugned award.

30. Apart from it, the statutory amount deposited by the insured in FAO Nos.54, 55, 56 and 200 of 2014 is also awarded to the claimants, alongwith interest accrued thereon, as cost of the litigation throughout. The said amount be also released in favour of the claimants forthwith, after proper identification.

31. All the appeals stand disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Reeta Devi w/o Sh. Raj Kumar .....Petitioner
Versus
State of H.P. .....Non-petitioner

Cr.MP(M) No. 1870 of 2015
Order Reserved on 06.01.2016
Date of Order 8th January 2016

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the accused/petitioner for the commission of offences punishable under Sections 302, 323, 325, 452, 436, 427, 147, 148, 149, 109, 115, 117 and 120-B I.P.C on the allegations that she was a member of mob which had committed the offences- petitioner pleaded that investigation is complete and she is mother of two children- held, that investigation is complete and nothing is to be recovered from the petitioner - being a woman she is to be dealt with under special provision of bail for woman- petitioner being mother of two minor children is also entitled for being released on bail - no prejudice shall be caused to the State and society at large by releasing the petitioner on bail- bail application allowed. (Para-6 to 9)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration), AIR 1978 SC 179
The State Vs. Captain Jagjit Singh, AIR 1962 SC 253
Sanjay Chandra Vs. Central Bureau of Investigation, 2012 Cri. Law Journal 702 SC
Mt. Choti vs. State, AIR 1957 Rajasthan page 10

For petitioner : Mr. Vijay Chaudhary, Advocate
For Non-petitioner : Mr. M. L. Chauhan, Addl. A.G. and
Mr. Rupinder Singh Thakur, Addl. A. G.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 Cr.PC for grant of bail in FIR No.56/2015 dated 20.06.2015 registered under Sections 302, 323, 325, 452, 436, 427, 147, 148, 149, 109, 115, 117 and 120-B IPC in Police Station Padhar Distt. Mandi (H.P.).

2. It is pleaded that investigation is completed and final investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in the competent Court of law. It is further pleaded that petitioner arrested merely on suspicion. It is further pleaded that petitioner is a poor lady having two minor children aged 8 years and 6 years and there is no body to look after them. It is further pleaded that petitioner will abide by the terms and conditions imposed by the Court. Prayer for acceptance of bail petition sought.

3. Per contra police report filed. There is recital in police report that complainant Gurvinder Singh was working with Contractor Rajiv Sharma at place Shalgi/Kamand Distt. Mandi H.P. There is further recital in police report that complainant alongwith his friends Gagandeep, Balbinder Singh, Satbir Singh, Lovely, Hairy, Teja Singh, Simranjeet Singh and Jitender alias Sheru on dated 17.6.2015 came for work. There is further recital in police report that on dated 20.6.2015 at about 10.30 A.M. when the complaint and his friends were working then local labourers and other persons came and told them to stop the work. There is further recital in police report that when the complainant and his friends did not stop the work then accused persons inflicted injuries with stones and iron rods. There is further recital in police report that friend of the complainant party namely Simranjeet Singh in self defence fired with the pistol in the air. There is further recital in police report that thereafter the mob became aggressive and threw the workers in rivulet and damaged the vehicle and also damaged the office. There is further recital in police report that Simranjeet Singh, Tanvinder Singh alias Hairy, Tejinder Singh and Jitender Singh have died. After registration of the case investigation was conducted, site plan prepared, photographs obtained and damaged vehicle, broken module of office took into possession vide seizure memo. Blood clotted sticks, stones and iron rods also took into possession vide seizure memo. Post mortem of deceased Simranjeet Singh, Tanvinder Singh alias Hairy, Tejinder Singh and Jitender Singh conducted and after post mortem dead bodies handed over to relatives of deceased. There is further recital in police report that injured Gurvinder Singh, Gagandeep, Baljinder Singh, Satbir Singh, Baljeet Singh alias Lovely were medically examined in Zonal Hospital Mandi and MLCs obtained. There is further recital in police report that investigation is complete and final investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in the competent Court of law. There is further recital in police report that petitioner Reeta Devi is the effective leader of labour union and she in collusion with other co-accused inflicted injuries with iron rods and sticks upon Gurvinder Singh, Gagandeep, Baljeet Singh, Baljinder Singh, Satbir Singh and committed homicide of Satvir Singh, Tabinder Singh, Jitender Singh and Tizender Singh and also burnt Bolero Mahindra Pick Up, Maruti Car and Tereno. If she is released on bail then she would commit similar criminal offence. Prayer for rejection of bail application sought.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioner.

5. Following points arise for determination in present bail application.

(1) Whether petitioner is liable to be released on bail as per special provision of bail provided for women under proviso of Section 437 of Code of Criminal Procedure 1973 relating to criminal offence punishable with death or imprisonment for life after completion of investigation and after filing investigation report under Section 173 Code of Criminal Procedure?

(2) Final Order.

Findings upon Point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and she did not commit any offence as alleged by the prosecution cannot be decided at this stage. Same fact will be decided when case will be disposed of on its merits after giving due opportunity to both parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of petitioner that petitioner is a woman and investigation is complete in the present case and final

investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in the competent Court of law and petitioner be released on bail as per special provision of bail provided for women is accepted for the reasons hereinafter mentioned. It is well settled law that at the time of granting bail following factors are to be considered (i) Nature and seriousness of offence (ii) Character of the evidence (iii) Circumstances which are peculiar to the accused (iv) A reasonable possibility of the presence of accused not being secured at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. See AIR 1978 SC 179 titled ***Gurcharan Singh and others Vs. State (Delhi Administration.*** Also see AIR 1962 SC 253 titled ***The State Vs. Captain Jagjit Singh.*** It was held in case reported in 2012 Cri. Law Journal 702 SC titled ***Sanjay Chandra*** Vs. ***Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at trial. It was held that grant of bail is rule and committal to jail is an exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It was held that it is not in the interest of justice that accused should be kept in jail for an indefinite period. In the present case investigation is completed, final investigation report under Section 173 Code of Criminal Procedure 1973 already stood filed in the competent Court of law, no recovery is to be effected from the petitioner and trial of the case will be concluded in due course of time. There is special provision of bail for woman, sick or infirm persons or persons under the age of 16 years as per proviso clause of Section 437 of Code of Criminal Procedure 1973 in non-bailable criminal offences punishable with death or imprisonment for life. In view of the fact that petitioner is a woman and in view of the fact that investigation is completed and in view of the fact that accused is presumed to be innocent till convicted by competent Court and in view of the fact that as per prosecution story offence of murder was committed by mob on provocation of fire and in view of the fact that petitioner is mother of two minor children Court is of the opinion that it is expedient in the ends of justice to allow the application. Court is also of the opinion that if the petitioner is released on bail at this stage then interest of the general public and State will not be adversely affected. It was held in case reported in AIR 1957 Rajasthan page 10 titled ***Mt. Choti*** vs. ***State*** that special treatment of women and children in bail matter is not inconsistent with Article 15 of Constitution of India.

8. Submission of learned Additional Advocate General that if the petitioner is released on bail at this stage then petitioner will induce and threat prosecution witnesses and on this ground bail application be declined is rejected being devoid of merits for the reason hereinafter mentioned. Court is of the opinion that conditional bail will be granted to the petitioner. Court is of the opinion that conditions will be imposed upon the petitioner in bail order that petitioner will not induce or threat prosecution witnesses during trial of the criminal case. Court is of the opinion that if petitioner will induce or threat prosecution witnesses after grant of bail then prosecution agency or investigating agency will be at liberty to file application for cancellation of bail provided under Section 439(2) of the Code of Criminal Procedure 1973 in accordance with law. In view of the above stated facts point No.1 is answered in affirmative.

Point No.2 (Final order).

9. In view of my findings on point No.1 above bail application filed by petitioner under Section 439 of Code of Criminal Procedure 1973 is allowed as per special provision of bail for women. It is ordered that petitioner will be released on bail on furnishing personal bond in the sum of Rs.100000/-(One lac) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner shall make herself available for interrogation by a Police Officer as and when required. (ii) That petitioner will attend proceedings of the trial Court regularly till conclusion of the trial. (iii)

That petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iv) That petitioner shall not leave India without prior permission of the Court. (v) That petitioner will not commit similar offence qua which she is accused. Observation made hereinabove will not affect merits of the case in any manner and will be strictly confined for disposal of the present bail application. Cr.MP(M) No.1870/2015 is disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Safdar Ali & another .....Appellants

Versus

Raj Kumar & others ...Respondents

FAO No. 370 of 2009
Decided on : 8.1.2016

Motor Vehicles Act, 1988- Section 166- Insured/ owner and the driver of offending vehicle have challenged the award on the ground that right of recovery has wrongly been granted to the insurer-held that the unladen weight of offending vehicle was 2800 k.g. and it fell within the definition of light motor vehicle- the offending driver possessed the license to drive light motor vehicle- hence, he possessed valid and effective license- insurer had not pleaded and proved that owner of the offending vehicle had committed willful breach of the terms and conditions of the insurance policy- in these circumstances, tribunal had wrongly granted the right to recovery to the insurer – appeal allowed. (Para-6 to 15)

Case referred:
Anita and others versus The Truck Co-operative and Operator Goods Carrier Transport Society Ltd. and others, Latest HLJ 2015 (HP) 652

For the appellants : Mr. Rajnish K. Lal, Advocate.
For the respondents: Mr. Praneet Gupta, Advocate, for respondent No.2.
Nemo for respondents No. 1, 3 & 4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

Subject matter of this appeal is the award, dated 17th March, 2009, made by the Motor Accident Claims Tribunal, Mandi, H.P. (hereinafter referred to as "the Tribunal") in Claim Petition No. 35 of 2007, titled Shri Raj Kumar versus Shri Safdar Ali & others, whereby compensation to the tune of ₹ 2,55,500/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, was awarded in favour of the claimant-respondent No. 1 herein and the insurer-respondent No. 5 was directed to satisfy the award, with right of recovery to the extent of half of the awarded amount from the owner/insured and driver (hereinafter referred to as the "impugned award").

2. The claimant and insurer have not questioned the impugned award, on any count. Thus, it has attained finality so far it relates to them.

3. Only the insured-owner and driver of the offending vehicle have questioned the impugned award on the ground that the Tribunal has fallen in an error in granting right of recovery to the insurer.

4. Learned Counsel for the appellants argued that the Tribunal has wrongly decided issue No. 3 for the reason that the driver was having valid and effective driving licence at the time of accident.

5. I have examined the entire record.

6. The unladen weight of the offending vehicle i.e. Swaraj Mazda bearing registration No. HP-31B-0335, is 2800 kilogram, which as per Section 2 (21) of the Motor Vehicles Act, 1988, for short 'MV Act', falls within the definition of 'light motor vehicle'. The driving licence of the driver of the offending vehicle is on the record as Ext. R.B, the perusal of which does disclose that the driver of the offending vehicle was having a valid and effective driving licence to drive a 'light motor vehicle'

7. This Court in **Smt. Anita and others versus The Truck Co-operative and Operator Goods Carrier Transport Society Ltd. and others** reported in **Latest HLJ 2015 (HP) 652** and catena of judgments, has laid down the same principle.

8. The learned Counsel for the insurer was asked to show how he would defend the impugned award, but he failed to do so.

9. Having said so, the Tribunal has fallen in an error in holding that the driver of the offending vehicle was not having valid and effective driving licence to drive the same.

10. Viewed thus, it is held that the driver was having valid and effective driving licence and owner has not committed any breach.

11. It was for the insurer to plead and prove that the owner of the offending vehicle has committed willful breach of the terms and conditions of the insurance policy, has failed to do so.

12. The factum of insurance is not in dispute. Accordingly, the findings returned by the Tribunal on issue No. 3 are set aside. The insurer has to satisfy the entire liability.

13. At this stage, learned Counsel for the appellants stated at the Bar that the appellants have already deposited 50% of the awarded amount before the Tribunal, which stands already released in favour of the insurer by the Tribunal.

14. The insurer is directed to refund the said amount to the appellants through payees' account cheque or by depositing the same in their accounts.

15. Accordingly, the impugned award is modified, as indicated hereinabove and the appeal is disposed of.

16. Send down the record after placing copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Samriti Gupta and another ...Petitioners

Versus

State of H.P. and others ....Respondents.

CWP No. 4831 of 2015
Judgment reserved on: 4.1.2016
Date of Decision : January 08, 2016

Constitution of India, 1950- Article 226- Department of Health and Family Welfare issued No Objection Certificate in favour of the petitioners to appear as State sponsored candidates for admission in super specialty courses in All India Institute of Medical Science, New Delhi- private respondents challenged 'No Objection Certificate' by filing Original Application before the Administrative Tribunal taking the plea that N.O.C was issued arbitrarily and was illegal- Tribunal accepted the plea, allowed the application and quashed the order granting N.O.C to the petitioners- petitioners feeling aggrieved approached the Court - held that Administrative Tribunal could not entertain Public Interest Litigation from a stranger as it would defeat the object of speedy disposal of the services matters for which the Tribunal has been created- petition allowed and the order passed by the Tribunal quashed.

(Para-6 to 14)

Cases referred:

Arti Gupta vs. State of Himachal Pradesh and others 1997 (2) SLR, 716
Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others (1998) 7 SCC 273
L. Chandra Kumar vs. Union of India and others (1997) 3 SCC 261
Ashok Kumar Pandey vs. State of West Bengal (2004) 3 SCC 349
Dattaraj Nathuji Thaware vs. State of Maharashtra and others (2005) 1 SCC 590
Girjesh Shrivastava and others vs. State of Madhya Pradesh and others (2010) 10 SCC 707
Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others (2013) 4 SCC 465
State of Punjab vs. Salil Sabhlok and others (2013) 5 SCC 1
D.C.M. vs. Shambhu, AIR 1978 SC 8

For the Petitioners : Mr. Ajay Mohan Goel, Advocate.

For the respondents : Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Mr. Romesh Verma, Addl. Advocate Generals and Mr.J.K.Verma, Deputy Advocate General, for respondents No. 1 and 2.

Mr. Janesh Mahajan, Advocate, for respondents No. 3 to 6.

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge

The sole determinative issue which arises for consideration is as to whether the Original Application preferred by the private respondents herein before the State Administrative Tribunal which was more in the nature of Public Interest Litigation was maintainable or not.

The facts, in brief, may be noticed.

2. On 5.10.2015 the Department of Health and Family Welfare issued No Objection Certificate in favour of the petitioners and similarly situated persons to appear as State sponsored candidates for admission in super specialty courses in All India Institute of Medical Science, New Delhi. The private respondents challenged No Objection Certificate (for short "NOC") by filing Original Application No.3854 of 2015 before the learned H.P. State Administrative Tribunal by claiming therein the following reliefs:

> *" 1. Quash the impugned order Annexure A-3 bearing No HFW-H(IV) (12)-4/2006-15 (NOC) qua the respondents No. 3 to 8, being arbitrary, discriminatory and illegal.*
>
> *2. Direct the respondents to withhold sponsorship of respondents No. 3 to 8 for pursuing higher course in MD/MCH at AIIMS, New Delhi.*
>
> *3. Direct the respondents to follow the guidelines as laid in Annexure A-1. Besides this directing the respondent to widely circulate list of tentative sponsored candidates which only be finalised after affording due opportunity to candidates to object to same."*

3. The official respondents in their reply had justified its action in granting NOC to the petitioners and it was averred that the writ petitioners were fully eligible for being considered for grant of NOC.

4. Insofar as the writ petitioners are concerned, they in their separate reply apart from raising other pleas had resisted the petition on the ground of want of jurisdiction of the Tribunal and it was specifically averred that the application filed by the private respondents was in the nature of public interest and therefore not maintainable.

5. The learned Tribunal allowed the Original Application vide judgment dated 23.12.2015 and held that the writ petitioners did not fulfill the eligibility criteria as laid down in Clause 1.4 of the policy dated 02.04.2013 and accordingly quashed the NOC issued in their favour.

We have heard learned counsel for the parties and have gone through the records of the case carefully.

6. At the outset, it may be observed that even the Tribunal was of the view that the private respondents were strangers but it still held that the Original Application preferred by them to be maintainable after placing reliance upon a judgment of this Court in ***Arti Gupta vs. State of Himachal Pradesh and others 1997 (2) SLR,* 716** wherein it was held:

> *"44. The only other question to be considered is whether the petitioners in CWP No. 1665/96 who have not even applied for the post in question can move the Tribunal for reliefs. On principle, the question has to be answered only in the affirmative. The language used in the provisions of the act clearly shows that the jurisdiction of the Tribunal is in relation to the matter set out in Sections 14 and 15 and it does not depend upon the status or otherwise of the applicant before it. Even an utter stranger can move the Tribunal with reference to the matters set out in those Sections. The wording of Section 28 of the Act, which excludes the jurisdiction of the High Court is also to the same effect. In fact, a question arose before the High Court of Madras in Thanga Maruthamuthu vs. Government of Tamilnadu and others, Writ Appeal No. 116/96, whether a public interest litigation could be dealt with by the Administrative Tribunal. A learned Single Judge of that Court held that in public interest litigation, the Tribunal will have no jurisdiction and it is only the High Court which can*

entertain such petitions. That judgment was reversed by a Division Bench of that Court vide its judgment dated 6.3.1996. The Division Bench said:

"The contention that it is a public interest litigation and the relief sought is the one for a writ of Quo Warranto, which cannot be granted by the Central Administrative Tribunal, therefore, the petition under Article 226 of the Constitution of India can be maintained, is only stated to be rejected. The said contention fails to take note of the fact that the substance of the relief sought for by the petitioner is to set aside the order of the State Government extending the services of the 4th respondent, and thereby preventing the 4th respondent from functioning as a member of the Indian Administrative Service. The fact that it is a public interest litigation will not clothe this Court with the jurisdiction to hear and decide the Writ Petition when the very subject matter of the writ petition is excluded from the purview of the jurisdiction of this Court under Article 226 of the Constitution."

45. With respect we agree with the view expressed by the Division Bench as above."

7. It would be noticed that the judgment in ***Arti Gupta*** case (supra) was rendered by this Court at the time when there was no authoritative pronouncement on the subject by the Hon'ble Supreme Court. But, now the issue is no longer resintegra and is considered to be settled by the three Hon'ble Judges Bench in ***Dr. Duryodhan Sahu and others*** vs***. Jitendra Kumar Mishra and others (1998) 7 SCC 273*** wherein after placing reliance in ***L. Chandra Kumar*** vs***. Union of India and others (1997) 3 SCC 261*** it was held that the Tribunals have to perform only a supplemental as opposed to substitutional role in discharging the powers conferred by Articles 226/ 227and 32 of the Constitution. The powers of this Court under Articles 226 /227 are not taken away by the Administrative Tribunals Act.

8. After examining the various provisions of the Administrative Tribunals Act vis-à-vis the maintainability of the Public Interest Litigation in service matters, it was categorically held that if the Public Interest Litigation at the instance of strangers is allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated. It was further held that the term "person aggrieved" does not comprehend such categories of persons. It shall be profitable to reproduce paras 14 to 19 of the judgment which reads thus:

"14. Section 14 of the Act provides that the central Administrative Tribunal shall exercise all the jurisdiction, powers and authority exercisable by all courts except the Supreme Court immediately before the appointed day in relation to matters set out in the section. Similarly, section 15 provides for the jurisdiction, powers and authority of the State Administrative Tribunals in relation to matters set out therein. Sections 19 to 27 of the Act deal with the procedure. Section 19 strikes the key-note. Sub-sections (1) and (4) of section 19 are in the following terms:

"19 (1) Subject to other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation*. – For the purposes of this sub-section, 'order' means an order made –*

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a).

* * * *

19.(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

15. Section 20 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant rules. Section 21 provides for a period of limitation for approaching the Tribunal. A perusal of the above provisions shows that the Tribunal can be approached only by 'persons aggrieved' by an order as defined. The crucial expression ' persons aggrieved' has to be construed in the context of the Act and the facts of the case.

16. In Thammanna versus K. Veera Reddy and other (1980) 4 S.C.C. 62 it was held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

17. In Jasbhai Motibhai Desai Versus Roshan Kumar Haji Bashir Ahmed and others (1976) 1.S.C.C. 671 the Court held that the expression 'aggrieved person' donotes an elastic, and to an extent, an elusive concept. The Court observed: The Court observed: (SCC p.677, para 13)

"...It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statue of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him"..

18. The constitution of Administrative Tribunal was necessitated because of large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of 'service matters' found in Section 3 (q) shows that in relation to a person the expression means all service matters relating to the conditions of his service. The significance of

the word 'his' cannot be ignored. Section 3 (b) defines the word 'application' as an application made under Section 19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the work 'order' has been defined in the explanation to sub-s. (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgement of the Orissa Administrative Tribunal in Smt. Amitarani Khuntia Versus State of Orissa 1996. (1) OLR (CSR)-2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgement is relevant:

> *"....A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.*

Tribunals are constituted under Article 323 A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power."

9. This legal position has thereafter been reiterated and must be considered to have been settled and reference in this regard can conveniently be made to the decisions rendered by the Hon'ble Supreme Court in ***Ashok Kumar Pandey*** *vs.* ***State of West Bengal (2004) 3 SCC 349, Dattaraj Nathuji Thaware*** *vs.* ***State of Maharashtra and others (2005) 1 SCC 590.*** In ***Girjesh Shrivastava and others vs. State of Madhya Pradesh and others (2010) 10 SCC 707*** the entire law on the subject was again reiterated as under:

> "15. *In the case of Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others (1998) 7 SCC 273, a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held (SCC p. 281, para 18)*

"18……If public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated"

Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

16. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others, reported in (2006) 11 SCC 731 (2), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See SCC p. 755, para 51 of the Report).

17. This view was very strongly expressed by this Court in Dattaraj Nathuji Thaware v. State of Maharashtra and others, reported in (2005) 1 SCC 590, by pointing out that despite the decision in Duryodhan Sahu (supra), PILs in service matters `continue unabated'. This Court opined that High Courts should `throw out' such petitions in view of the decision in Duryodhan Sahu (supra) (Para 16, page 596).

18. Same principles have been reiterated in Ashok Kumar Pandey v. State of W.B., reported in (2004) 3 SCC 349. (SCC at p. 358, para16)..

19 . In a recent decision of this Court delivered on 30.8.2010, in Hari Bansh Lal v. Sahodar Prasad Mahto and others, (2010) 9 SCC 655, it has been held that except in a case for a writ of `Quo Warranto', PIL in a service matter is not maintainable (See SCC para 15).".

10. Further reiteration of the legal position can be found in ***Ayaaubkhan Noorkhan Pathan*** vs***. State of Maharashtra and others (2013) 4 SCC 465 and State of Punjab vs. Salil Sabhlok and others (2013) 5 SCC 1.***

11. Now, what emerges from the aforesaid exposition of law is that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal and the necessary corollary which follows is that it is only "person aggrieved" within the meaning of the Act who can prefer an application for redressal of his grievances before the Tribunal constituted under Article 323-A of the Constitution of India. The Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well defined in the Act and more importantly it does not enjoy any plenary power.

12. In the result, it can safely be concluded that the Administrative Tribunals constituted under the Act cannot entertain a Public Interest Litigation and the same would amount to defeating the object of speedy disposal of the service matter for which the Tribunals have been created.

13. Before parting, we may clarify that the judgment in ***Arti Gupta*** case (supra) was rendered by the Hon'ble Full Bench of this Court and would normally in absence of any judgment to the contrary by the Hon'ble Supreme Court be binding on this Bench and in case of any difference of opinion would be required to be referred to a larger Bench. However, no such reference is necessary if the Hon'ble Supreme Court has given a decision in the matter because as soon as the Hon'ble Supreme Court gives its decision all decisions of the High Court on the point are overruled. (Reference in this regard is given to ***D.D.Basu Commentary on the Constitution of India, 8th Edition*** and to the judgment of the Hon'ble Supreme Court in ***D.C.M. vs. Shambhu, AIR 1978 SC 8.)***

14. Even otherwise, Article 141 of the Constitution provides that the law declared by the Hon'ble Supreme Court shall be binding on all courts within the territory of India. Therefore, once the Hon'ble Supreme Court has decided the issue by passing a reasoned order, a fortiori, the ratio decidendi declared in the said decision would be binding on all the Courts in the Country for giving effect to it while deciding the lis of the same nature. All the Courts are under legal obligation to take note of the said decision and decide the lis in conformity with the law laid down therein.

15. In view of the aforesaid discussion, we are left with no other option but to allow this writ petition. Consequently, the writ petition is allowed and the order passed by the learned Tribunal dated 23.12.2015 (Annexure P-7) is quashed and set-aside. Resultantly, the Original Application filed by the private respondents before the Tribunal is ordered to be dismissed, leaving the parties to bear their costs. Pending application(s), if any, stands disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Surekha Devi ...Appellant

Versus

Mangal Singh and another ...Respondents

FAO No. 58 of 2011
Reserved on: 01.01.2016
Decided on: 08.01.2016

Motor Vehicles Act, 1988- Section 166- Injured was travelling in the vehicle, which met with an accident- she suffered injuries to the extent of 30%- she was a student of 10+2 at the time of accident and was working with All India Radio- she was earning Rs.8,000/- per month from all sources- permanent disability had affected her lower limbs- she is not in a position to do any work including domestic work- it would be difficult to her to get a suitable match in view of disability sustained by her – her income can be taken as Rs.4,500/- per month by guess work- she was bedridden for three months and was further advised bed rest- hence, she is entitled for Rs.4,500 x 10= Rs.45,000/- as loss of income for 10 months- she has suffered 30% injuries which has affected her earning capacity to the extent of Rs.1500/- per month- she was 23 years of age at the time of accident and multiplier of 15 will be applicable- thus, she is entitled to Rs. 2,70,000/- (1500 x 15 x 12) under the head loss of income- she is also entitled to Rs.1 lac under the head loss of marriage prospects, Rs. 50,000/- under the head 'pain and suffering', Rs. 1 lac under the head 'future pain and suffering', Rs. 1 lac under the head 'loss of amenities of life' and Rs. 75,000/- under the head 'medical treatment past and future' – she must have taken services of attendant when she was bedridden- she is entitled to Rs. 50,000/- under the head of 'attendant charges- she has to visit hospital for follow up and is entitled to Rs. 20,000/- under the head 'travel expenses'- thus, she is entitled to Rs. 45,000 + 2,70,000/- + 1 lac + 50,000 + 1 lac + 1 lac + 75,000 + 50,000 + 20,000= Rs. 8,10,000/-. (Para 16 to 36)

Cases referred:

R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755

Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771
Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others versus Madan Mohan and another, 2013 AIR SCW 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105

For the appellant:	Mr. G.C. Gupta, Senior Advocate, with Ms. Meera Devi, Advocate.
For the respondents:	Mr. Narender Sharma, Advocate, vice Mr. Shashi Shirshoo, Advocate, for respondent No. 1. Mr. Jagdish Thakur, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Appellant-claimant-injured has questioned the judgment and award, dated 08.12.2010, made by the Motor Accident Claims Tribunal, Shimla (for short "the Tribunal") in M.A.C. Petition No. 15-S/2 of 2008, titled as Surekha Devi versus Mangal Singh and another, whereby compensation to the tune of Rs.3,40,000/- with interest @ 8% per annum from the date of the claim petition till its final realization came to be awarded in favour of the claimant-injured and against the respondents (for short "the impugned award").

2. The driver and owner-insured, i.e. Himachal Road Transport Corporation (for short "HRTC") have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The appellant-claimant-injured has questioned the impugned award on the ground of adequacy of compensation.

4. Thus, the only question to be determined in this appeal is - whether the compensation awarded by the Tribunal is inadequate? The answer is in the affirmative for the following reasons:

5. Surekha Devi, the claimant-injured became the victim of vehicular accident on 20.01.2008, which was caused by driver, namely Mangal Singh, while driving HRTC bus, bearing registration No. HP-07-4509, rashly and negligently near Dhalli, Shimla, the claimant-injured, who was travelling in the said vehicle, sustained multiple injuries, was immediately taken to Indira Gandhi Medical College and Hospital (for short "IGMC"), remained admitted upto 03.03.2008. She has suffered permanent disability to the extent of 30%.

6. The claimant-injured filed claim petition before the Tribunal seeking compensation to the tune of Rs.10,60,000/-, as per the break-ups given in the claim petition.

7. The respondents resisted the claim petition on the grounds taken in the respective memo of objections.

8. Following issues came to be framed by the Tribunal:

"1. Whether the petitioner suffered injuries due to rash and negligent driving of Bus No. HP-07-4509 by respondent No. 1? ...OPP

2. If issue No. 1 is proved in affirmative, to what amount of compensation the petitioner is entitled to and from whom? ...OPP

3. Relief."

9. Parties have led evidence.

10. The Tribunal, after scanning the evidence, oral as well as documentary, awarded compensation to the tune of Rs.3,40,000-/ in favour of the claimant-injured and against the respondents, in terms of the impugned award.

Issue No. 1:

11. There is no need to return findings on issue No. 1 for the reason that the findings returned on the said issue have not been questioned by any of the parties. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

Issue No. 2:

12. Admittedly, the claimant-injured was a student of 10+2 at the relevant point of time. It has also been averred that she was working with All India Radio and was earning Rs.8,000/- per month from all sources, as per the details given in the claim petition.

13. The Tribunal, after discussing the evidence, assessed the compensation, which, on the face of it, is not legally correct.

14. I have gone through the record and the impugned award and am of the considered view that the Tribunal has fallen in an error in determining the compensation under various heads. The Tribunal ought to have awarded the compensation while keeping in view the pecuniary and non-pecuniary damages caused to the claimant-injured due to the said accident, which is not in dispute.

15. It is beaten law of land that for assessing compensation in injury cases, the Court has to make guess work.

16. The Apex Court in case titled as **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others,** reported in **AIR 1995 SC 755,** had discussed all aspects and laid down guidelines how guess work is to be done and how compensation is to be awarded under various heads. It is apt to reproduce paras 9 to 14 of the judgment hereinbelow:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the

claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

11. In the case Ward v. James, 1965 (1) All ER 563, it was said:

> *"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."*

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

13. This Court in the case of C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed (at p. 380):

> *"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."*

14. In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said :-

> *"Non-pecuniary loss : the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being*

interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

17. The said judgment was also discussed by the Apex Court in case titled as **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another,** reported in **2010 AIR SCW 6085,** while granting compensation in such a case. It is apt to reproduce para-7 of the judgment hereinbelow:

"7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

18. The Apex Court in the case titled as **Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited,** reported in **2011 AIR SCW 4787,** also laid down the guidelines for granting compensation. It is apt to reproduce paras 8 and 9 of the judgment hereinbelow:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same

work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

19. The Apex Court in case titled as **Kavita versus Deepak and others,** reported in **2012 AIR SCW 4771,** also discussed the entire law and laid down the guidelines how to grant compensation. It is apt to reproduce paras 16 & 18 of the judgment hereinbelow:

"16. In Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of

injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. .....

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

20. Applying the test, it is profitable to reproduce the statement of PW-6, Dr. Manoj Thakur, herein:

"Stated that I have been posted as Associate Professor in the Department of Orthopedic, Indira Gandi Medical College, Shimla since 1998. Surekha Devi daughter of Sh. Beli Ram Verma, resident of Village Koti, aged 23 years, was admitted in Indira Gandhi Medical College, Shimla on 23.01.2008. She had suffered a fracture of D 12 without deficit. She was operated upon on 17.02.2008. She was discharged on 4.3.2008. Surekha Devi also visited our Department for follow up treatment with regular intervals and she was lastly examined for the purpose of assessment of disability on 3.6.2009. The disability suffered by her was assessed at 30% in relation to whole lower limbs permanent in nature. Accordingly, Medical Board issued Disability Certificate, Ex. PW-3/A, which bears my signature. The Chairman of the Medical Board was Professor Mukand Lal and other member was Dr. Lokesh Thakur. During her hospitalization, the petitioner required one attendant. The petitioner has been advised to avoid heavy work and strenuous activities. The Moss Miami system was used for stabilization of her fracture which cost Rs. 45,000/-. Total amount of expenditure on treatment approximately must have been spent about Rs. One lac. She is visiting the O.P.D.

Cross-examination on behalf of Ajay Kochhar, Advocate.

It can be ascertained from the prescription slip as to whether the petitioner is coming for review or follow-up treatment. The prescription slip has not been shown to me today in the court. The said expenditure of Rs. One lacs stated by me is approximate. She will not suffer in her married life, because of the disability. The petitioner is now recovered.

Cross-examination by Sh. Varinder Katoch, Advocate for the respondent No. 2.

The said cross-examination followed."

21. In view of the disability certificate, Ext. PW-3/A, read with the expert evidence (supra), the claimant-injured has suffered 30% permanent disability, which has affected her lower limbs, is suggestive of the fact that she is not in a position to do any work including domestic work, which she would have done, had she not sustained the injuries. She has not only suffered disability of lower limbs, but it has affected her spinal cord also.

22. 30% permanent disability suffered by the claimant-injured has affected her earning capacity throughout. Not only it has affected her earning capacity throughout, it would have become very difficult for her to get a suitable match, which she would have otherwise got easily, had she not become the victim of the vehicular accident.

23. The Tribunal has taken the income of the claimant-injured at Rs.3,000/- per month from all sources, as discussed in para 15 of the impugned award, which, on the face of it, is not legally correct for the reason that even a labourer in the year 2008 would not have been earning less than Rs.150/- per day and minimum income of a labourer would not have been less than Rs.4,500/- per month.

24. The claimant-injured was 23 years of age at the relevant point of time, was maiden, was a student of 10+2 class and also performing duties with All India Radio, which is suggestive of the fact that she would have good future to come after completing her graduation and post graduation.

25. Thus, by guess work, while treating her a labourer or a house wife, it can be safely said and held that the earning capacity of the claimant-injured would have been not less than Rs.4,500/- per month.

26. Admittedly, the claimant-injured was in hospital for about three months, thereafter had to go to hospital for follow-ups. She was also advised bed rest, as per para 20 of the impugned award, which is also not in dispute. Thus, the claimant-injured is held entitled to Rs.4,500/- x 10 = Rs. 45,000/-, under the head 'loss of income for ten months'.

27. The injury has affected the earning capacity of the claimant-injured throughout to the extent of 30%. In view of the above, it can be safely said and held that it has affected her earning capacity to the tune of Rs.1,500/- per month.

28. The age of the claimant-injured was 23 years at the time of the accident. Viewed thus, the multiplier of '15' is just and appropriate in view of the Second Schedule appended with the Motor Vehicles Act, 1988 (for short "MV Act") read with the ratio laid down by the Apex Court in the case titled as **Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another,** reported in **AIR 2009 SC 3104,** upheld by a larger Bench of the Apex Court in the case titled as **Reshma Kumari & others versus Madan Mohan and another,** reported in **2013 AIR SCW 3120,** and **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.**

29. Having said so, the claimant-injured is entitled to compensation to the tune of Rs.1,500/- x 12 x 15 = Rs.2,70,000/- under the head 'loss of future income'.

30. As discussed hereinabove and also by the Tribunal in paras 13 to 21 of the impugned award, the injury has affected the spine of the claimant-injured, which would have also affected her marriage prospects. It appears that compensation for the same has not been granted because the doctor has stated that the injury will not affect her matrimonial life, which is not factually and legally correct, keeping in view of the prevailing circumstances relating to contracting and performing marriages. Applying the ratio of the

above discussions, the claimant-injured is held entitled to Rs.1,00,000/- under the head 'loss of marriage prospects'.

31. The claimant-injured has also undergone pain and sufferings due to the injury sustained by her. She remained admitted for about three months, was advised bed rest and had to visit the hospital for follow-ups. She has suffered 30% permanent disability due to which she will be suffering throughout her life. In view of the above, she is at least held entitled to Rs.50,000/- under the head 'pain and sufferings undergone' and Rs.1,00,000/- under the head 'future pain and sufferings'.

32. It appears that because of the said injury, the claimant-injured is deprived of the amenities of life as the injury has affected her physical frame, her charm of enjoyment of life and other factors and Rs.1,00,000/- under the head 'loss of amenities of life' is just compensation.

33. The claimant-injured has been granted Rs.75,000/- under the head 'medical treatment past and future'. The claimant-injured has placed on record the copies of bills, Ext. PW-3/E-1 to PW-3/E-48, which do disclose that the claimant-injured has spent at least Rs.60,000/- and had to spent for future follow-ups also as per the disability certificate, Ext. PW-3/A and the doctors evidence. Thus, it appears that compensation to the tune of Rs.75,000/-, as awarded by the Tribunal, under the head 'medical treatment' is just compensation, which is upheld accordingly.

34. The claimant-injured was admitted in the hospital w.e.f. 22.01.2008 to 03.03.2008 and was advised bed rest in view of the injury which she has suffered. Therefore, she must have taken the services of an attendant at least for the said period of ten months and would have to pay at least Rs.5,000/- per month. Accordingly, compensation to the tune of Rs.50,000/- is awarded under the head 'attendant charges'.

35. The family members and relatives of the claimant-injured would have been attending her in the hospital for the period she remained admitted. She had also to visit the hospital for follow-ups. Thus, at least, Rs.20,000/- was to be awarded under the head 'travelling expenses'. Only Rs.5,000/- has been awarded, which is too meager. Accordingly, by guess work, the claimant-injured is held entitled to compensation to the tune of Rs.20,000/- under the head 'travelling expenses'.

36. Having said so, the claimant-injured is held entitled to the enhanced compensation to the tune of Rs.45,000/- + Rs.2,70,000/- + Rs.1,00,000/- + Rs.50,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs. 75,000/- + Rs.50,000/- + Rs. 20,000/- = Rs.8,10,000/- with interest as awarded by the Tribunal. A sum of Rs. 85,000/- paid by respondent No. 2 at the time of the accident is to be deducted from the total amount of compensation.

37. Viewed thus, the appeal is allowed and the impugned award is modified, as indicated hereinabove.

38. Respondent No. 2 is directed to deposit the enhanced awarded amount before the Registry of this Court within eight weeks. On deposition of the amount, the same be released in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award after proper identification.

39. Send down the record after placing a copy of the judgment on Tribunal's file.

****

BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

LPA No.158 of 2014 a/w LPAs No.160, 163, 183 of 2014 and CWP No.7464 of 2014.
Reserved on : 04.01.2016.
Date of decision: January 08,2016.

1. **LPA No.158 of 2014**.

Suresh Kumar and others .....Appellants.

Versus

State of Himachal Pradesh and another .....Respondents.

For the Appellants : Mr. Yudhbir Singh Thakur, Advocate.
For the Respondents : Mr.Shrawan Dogra, Advocate General with Mr.Anup Rattan, Mr. Romesh Verma, Additional Advocate General and Mr.J.K.Verma, Deputy Advocate General.

2. **LPA No.160 of 2014.**

Anil Kumar and others .....Appellants.

Versus

State of Himachal Pradesh and another .....Respondents.

For the Appellants : Mr. Yudhbir Singh Thakur, Advocate.
For the Respondents : Mr.Shrawan Dogra, Advocate General with Mr.Anup Rattan, Mr. Romesh Verma, Additional Advocate General and Mr.J.K.Verma, Deputy Advocate General.

3. **LPA No.163 of 2014.**

Sanjay Kumar and others .....Appellants.

Versus

State of Himachal Pradesh and others .....Respondents.

For the Appellants : Mr. Rajesh Kumar, Advocate.
For the Respondents : Mr.Shrawan Dogra, Advocate General with Mr.Anup Rattan, Mr. Romesh Verma, Additional Advocate General and Mr.J.K.Verma, Deputy Advocate General, for respondents No.1 and 2.
Names of respondents No.3 to 189 stand already deleted.

4. **LPA No.183 of 2014.**

Kirpal Singh and others .....Appellants.

Versus

State of Himachal Pradesh and others .....Respondents.

For the Appellants : Mr. Rajesh Kumar, Advocate.
For the Respondents : Mr.Shrawan Dogra, Advocate General with Mr.Anup Rattan, Mr. Romesh Verma, Additional Advocate General and Mr.J.K.Verma, Deputy Advocate General.

5. **CWP No.7464 of 2014.**

Suresh Kumar and others .....Petitioners.

Versus

State of Himachal Pradesh and another .....Respondents.

For the Petitioners : Mr. Yudhbir Singh Thakur, Advocate.
For the Respondents : Mr.Shrawan Dogra, Advocate General with Mr.Anup Rattan, Mr. Romesh Verma, Additional Advocate General and Mr.J.K.Verma, Deputy Advocate General.

Constitution of India, 1950- Article 226- Writ petitioners were working as constables in police department- they are governed by Punjab Police Rule, 1934 for the purpose of promotion- writ petitioners were eligible for competing in a test known as B-1 test- they qualified the B-1 test and were brought in list-C making them eligible for promotion as Head constables- they were required to be sent to Lower School Course on the basis of list maintained by S.P./Commandant of Battalion - amended standing order was issued and the validity of list B-1 was restricted for one year- 687 constables were brought in list B-1 out of whom 272 constables were sent to Lower School Course - other candidates could not be sent to the Course due to the amendment in the standing order- there were 362 vacancies of Head constables- B-1 list had not been fully exhausted - writ petitioners were required to compete again for being brought on list B-1 of the notification- respondent contended that the amended standing orders provide that list will be valid for one year- the writ petition was dismissed by the Writ Court- held, that Government had deleted the requirement of appearing in B-1 test by those constables who were not sent to Lower School Course within one year of the preparation of the list- therefore, it was impermissible for the Director General of Police to issue the standing order contrary to the Rule- power to issue standing orders is subject to the rules and regulations and H.P. Police Act- the executive instructions cannot over-ride the rules and what was deleted vide amendment could not have been reintroduced by standing orders- further, power has been vested with the Director General of Police to hold the test once or more in a year keeping in view the vacancy position- the standing orders can be issued regarding the manner in which the test is to be conducted- no power has been conferred upon the Director General of Police to add or subtract anything to the rule- once constables had successfully completed B-1 test and were sent to the Lower School Course, there is no reason why they should be subjected to undergo the test again- appeal and writ petition allowed. (Para-4 to 25)

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge.

Since common question of law and facts arises for determination, therefore, all these cases are taken up together for disposal.

2. The Letters Patent Appeals are directed against the judgment passed by the learned writ Court whereby the prayer of the appellants for directing the respondents to send them for Lower School Training Course on the basis of the B-1 list against available vacancies of Head constables came to be rejected and on the same grounds CWP No.7464 of 2014 has been preferred. For convenience, the parties shall be referred to as writ petitioners and respondents.

3. The writ petitioners are working as Constables in the Police Department and for purpose of further promotion to the rank of Head constables, they are governed by the Punjab Police Rules, 1934 (as applicable to the State of Himachal Pradesh).

4. The facts as necessary and even otherwise not disputed are that all the writ petitioners on completion of five years service as Constables were eligible to compete for a test known as B-1 test prescribed by the Punjab Police. The writ petitioners qualified the B-1

test and were brought in list-C making them eligible to promotion as Head constables. For this purpose, they were required to be sent to Lower School Course on the basis of list-B maintained by the Superintendent of Police/Commandant of the Battalion concerned in terms of Rule 13.7 of the Punjab Police (Himachal Pradesh Amendment) Rules, 2008.

5. As per Rule 13.7, the Superintendent of Police/Commandant Police Battalion is required to maintain list B (in Form 13.7) which shall include the names of all Constables selected for admission to the promotion course for Constables at the Police Training College. The above list is prepared on the basis of selection made by the Departmental Promotion Committee (DPC) on the basis of test given in parade, general law, interview and examination of service records. All constables who have put in five years of service from the date of appointment are eligible to take the test.

6. Before amendment to Rule 13.7 as notified on 13.06.2008, the respondent department had been following Rule 13.7 of Punjab Police Rules for preparing B-1 List. The unamended provision of Rule 13.7 is reproduced below:-

> *"**13.7. List 'B'. Selection of candidates for admission to promotion Course for Constables at the Police Training College.—**(1) List 'B' in Form 13.7 shall be maintained by each Superintendent of Police/Commandant, Police Battalion of Himachal Pradesh. It shall include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College. Selection shall be made in the month of January every year generally. However, the Director General of Police shall have discretionary powers to hold these tests once, or more than once in a year in case of exigencies, keeping in view the vacancy position. The test shall be regulated by the standing orders issued by the Director General of Police. All the successful candidates shall be kept in a panel and shall be sent for lower school course on merit basis as per available vacancies. Names shall be entered in the said list in order of their merit as determined by the Departmental Promotion Committee constituted by the Director General of Police on the basis of the tests given in Parade General Law (Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act, Local & Special Laws and Police Rules as per details given below):*
>
> *To test the intelligence of candidates in applying their theoretical knowledge to practical conditions, interview and examination of service records. XXXXX*
>
> *All Constables:*
>
> *(a) who are middle pass and have put in more than four years of service;*
>
> *(b) who are at least matriculates and have put in more than three years of service; or*
>
> *(c) who obtain first class with credit in the Recruits Course specified in rule 19.2; will be eligible to have their names entered in the aforesaid list, if they are not above thirty years on the first day of July in the year in which the selection is made;*
>
> *Provided that no Constable who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which such selection is made will be eligible for admission to this list and if any Constable whose name has been brought on this list is not sent to the*

Police Training College in the year he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules.

(3) Temporary Constables brought on List 'B' shall be absorbed in the regular establishment in preference to others.

(4) No Constable who has failed to qualify in the promotion course of Constables shall be readmitted to List 'B', unless the Principal, Police Training College, for the reasons to be recorded in writing by him considers him deserving of another chance and he is still eligible. The reasons for doing so shall be communicated by him to the Superintendent of Police concerned."

7. The respondents, however, decided to delete the condition of requiring the Constables to compete again with the new candidates, if they were not sent to the Police Training College within one year of the preparation of the list and for this purpose standing orders were issued on 13.09.1993 incorporating the following provisions in Clause 16:-

"The constables who duly qualify B-1 test will not have to appear again in the same test. All the successful candidates will be kept in a panel and they will be sent for Lower School Course on merit basis as per available vacancies."

8. What was incorporated in Clause 16 of the standing orders of 1993 was substituted in Rule 13.7 and for this purpose an amendment was made to Rule 13.7 by way of Punjab Police (Himachal Pradesh Amendment) Rules, 2008. The amended provision of Rule 13.7 is reproduced below:-

"13.7: List "B"-Selection of candidates for admission to promotion course for constables, at the Police Training College-

"(1) List-'B' (in Form 13.7) shall be maintained by each Superintendent of Police/Commandant, Police Battalion of Himachal Pradesh. It shall include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College. Selection shall be made in the month of August every year generally. However, the Director General of Police shall have discretionary powers to hold these tests once, or more than once in a year in case of exigencies, keeping in view the vacancy position. The test shall be regulated by the standing orders issued by the Director General of Police. All the successful candidates shall be kept in a panel and shall be sent for lower school course on merit basis as per available vacancies. Names shall be entered in the said list in order of their merit as determined by the Departmental Promotion Committee constituted by the Director General of Police on the basis of the tests given in Parade, General Law (Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act, Local & Special Laws and Police Rules as per details given below):

To test the intelligence of candidates in applying their theoretical knowledge of practical conditions, interview and examination of service records.

XXXX

(2) All Constables:

(a) Who have put in 5 years service from the date of appointment are eligible to take the test. In case the test is not held in the month of

August, all the candidates who becomes eligible subsequently shall also be eligible to appear in the said test; or

(b) Who obtained first position in the Recruits Basic Training Course shall be eligible to appear in the B-1 test after completing 3 years service; or

(c) Who are on deputation and the Constables serving outside the district/unit shall also be eligible for consideration subject to fulfillment of other conditions.

Provided that no Constable, who has been awarded major punishment within a period of 3 years preceding the first day of August of the year in which such selection is made shall be eligible for admission to that list.

Similarly, the Constables with minor punishment shall also not be allowed to take B-1 test for 6 months after the date of award of punishment. The candidates caught cheating or using unfair means shall be disqualified and debarred from taking B-1 test for the entire service and departmental inquiry shall be initiated against such Constables.

(3) Temporary Constables brought on List-B shall be absorbed in the regular Police Establishment in preference to other candidates.

(4) No Constable, who has failed to qualify in promotion course of Constables shall be readmitted to List-B unless the Principal of Police Training College for reasons to be recorded in writing by him considers him deserving of another chance and makes him thus eligible. The reasons for doing so shall be communicated by him to the Superintendent of Police concerned."

9. In 2007, the Government of Himachal Pradesh enacted an Act known as Himachal Pradesh Police Act, 2007, which inter alia provides that the Punjab Police Rules, 1934, will continue to be applicable to the State of Himachal Pradesh to the extent the provisions of these rules were not inconsistent with the provisions of the Act. The relevant provisions of Section 144(4) read as under:-

"The Punjab Police Rules, 1934 as applicable to the State of Himachal Pradesh shall, except to the extent that a provision may be inconsistent with the provisions of this Act, continue to be in force and shall have effect as if made under the corresponding provisions of this Act."

10. The power to make rules, regulations and standing orders are provided in Sections 141, 142 and 143 which are reproduced below:-

"***141. Power to make rules.***

(1) The State Government may, by notification in the Official Gazette and after previous publication, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of not less than ten days which may comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rules should not be made, the rules shall, thereafter, have effect only in such modified form or be of no effect,

as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

142. Power to make regulations.

The Director General of Police may, with the previous approval of the State Government and subject to the rules made under section 141 of this Act, by notification published in the Official Gazette, make regulations to carry out the purposes of this Act.

143. Power to issue standing orders.

(1) The Director-General of Police may, subject to the rules and the regulations made under this Act, issue standing orders to carry out the purposes of this Act.

(2) Subject to sub-section(1), the Inspector-General, the Deputy Inspector-General, the District Superintendent of Police and Commandant of a Battalion may, with the previous approval of the authority to whom they are directly subordinate and subject to the rules and regulations made under this Act, issue standing instructions within their respective jurisdiction to carry out the purposes of this Act."

11. On 06.04.2012, the Director General of Police, Himachal Pradesh, in continuation of the standing orders circulated vide letter dated 13.09.1993 issued amended standing orders No.3/2012 regarding selection of constables for admission to list-B. The Director General of Police (respondent No.2) restricted the validity of B-1 list for one year only for which the test has been held. This condition has been laid down in Clause 16 of the standing orders of 2012 which reads as under:-

"16: As per HPPR, List will be valid for one year only for which the test has been held."

12. It is not in dispute that 687 constables (including appellants) were brought on list-B which was issued on 15.02.2013. Out of this list, 272 constables were sent to Lower School Course, whereas, constables who were next in the list could not be sent to the Course for want of vacancies. There are about 362 vacancies of Head constables with the respondent department. The B-1 list prepared by the respondents in 2012 has not been fully exhausted and despite this the aforesaid Constables have not been sent for Lower School Course only on account of Clause 16 of the standing orders of 2012. Consequently, the writ petitioners were required to compete again for being brought on list-B of the notification. This action of the respondents was questioned before the learned writ Court on various grounds as taken in the writ petitions.

13. The respondents contested the writ petitions by filing replies wherein it was averred that though there is no provision in the rules which may require the writ petitioners to compete again for being brought in list-B but then this provision had been supplemented by issuing standing orders which inter alia provides that HPPR will be valid for one year only for which the test has been conducted.

14. The learned writ Court dismissed the writ petitions by concluding that the merit list of test B-1 could not remain operative in perpetuity and by virtue of standing orders would now remain operative only for one year from the date of its preparation.

15. It is vehemently argued by Shri K.D.Shreedhar, Senior Advocate, assisted by Shri Yudhbir Singh Thakur, Advocate that it is settled proposition of law that executive

instructions cannot over-ride the statutory rules and once there was no time cap or limit of one year fixed by the statutory rules, then the same could not be curtailed to one year under the standing orders.

16. On the other hand, learned Advocate General, would vehemently argue that in terms of the H.P. Police Act, 2007, (for short the 'Act'), the Director General of Police is competent to issue the standing orders to carry out the purpose of the Act and no exception can be taken by the writ petitioners for the same.

We have heard the learned counsel for the parties and have gone through the records of the case.

17. It would be noticed that the amendment to rule 13.7 Punjab Police (Himachal Pradesh Amendment) Rules, 2008, was made by virtue of the powers conferred by the Himachal Pradesh Police Act, 2007 whereby the Government had specifically deleted the requirement of appearing in B-1 test by those Constables, who were not sent to Lower School Course within one year of preparation of list. Therefore, in such circumstances, it was impermissible for the Director General of Police to have issued standing orders which infact were contrary not only to the letter but even the spirit and in utter violation and contravention of Rule 13.7 of the Rules.

18. In case, it would have been the intention of the Government to restrict the validity of list B-1 to only one year, we see no reason why the same could not have been provided in the rules themselves which as observed earlier came to be amended only in the year 2008. It cannot be disputed that the power to issue standing orders by the Director General of Police is subject to the rules and regulations and the H.P. Police Act, 2007.

19. Even otherwise, it is more than settled that the executive instructions/standing orders cannot over-ride or supersede the rules and, therefore, what was contemplated by the rules and consciously deleted vide amendment carried out in the year 2008 could not have been reintroduced by way of standing orders.

20. That apart, it would also be noticed that the Director General of Police in terms of Rule 13.7 has been vested with discretionary power to hold the test once or more in a year in case of exigencies keeping in view the vacancy position. The other power which has been vested with the Director General of Police is to issue standing orders, but this is confined to the manner in which the test is to be regulated. It does not in any manner confer upon the Director General of Police any other power to add or subtract anything to this rule. Even, under Section 143 of the Act though the Director General of Police is authorized to issue standing orders to carry out the performance of the Act, however, even this power is subject to the rules and regulations made under the Act.

21. Therefore, we have no hesitation to hold that once the rules did not prescribe for a cap or time period of one year validity of the HPPR list, the same could not have been prescribed by issuing standing orders as the same is in conflict with the rules.

22. Even otherwise, the 'test' in normal parlance would mean a procedure intended to establish a quality, performance or reliability of something. However, the definition of 'test' in legal parlance could be slightly different. The Black's Law Dictionary defines the word 'test' as under:-

> *"**1**. A set of questions, exercises, or practical activities that measure either what someone knows or what someone or something is like or can do. **2**. A medical examination on part of one's body, usu. administered for diagnostic reasons. **3**. A procedure designed to discover whether equipment or a product*

works correctly, or else to discover more about it. ***4****. A difficult situation in which a person's or thing's qualities are revealed."*

23. Once the Constables have successfully competed B-1 test and were admittedly not sent for the Lower School Course only because of Clause 16 of the standing orders, we see no reason why they should be subjected to again undergo a test.

24. It would be noticed that the only reason which persuaded and prevailed upon the learned writ Court to dismiss the writ petitions was that it treated the list B-1 as a select panel and concluded that the same was valid for one year. This was not the correct legal position as the select list is the list which is normally prepared by the Selection Committee out of the candidates, who are considered fit for appointment in order of their merit. Whereas, B-1 enlisted candidates are those successful candidates, who have qualified the B-1 test and would be required to be sent to Lower School Course. It is only after successful passing of this Course that they would be entitled to be considered for promotion as Head constables. The mere passing of the B-1 test in itself does not result in promotion and, therefore, by any stretch of imagination can be considered to be a select panel.

25. In view of the aforesaid discussion, we find merit in these appeals and writ petition. Consequently, the judgment passed by the learned writ Court is ordered to be set aside and resultantly the writ petitions as filed by the writ petitioners are allowed as prayed for.

26. However, before parting, it may be observed that the instant litigation has arisen only because of lack of clarity and confusion created by the respondents themselves by not having clear-cut and well-defined rules. For some strange reasons, the respondents have still chosen to follow the Punjab Police Rules, 1934 by amending the same to suit their convenience. Therefore, it is high time that the respondents liberate themselves from the shackles of the archaic Punjab Police Rules, 1934, which were enacted more than 80 years back during colonial regime and make an endeavour to frame their own rules or else this would lead to un-necessary complication giving rise to compulsive litigation, the consequences whereof would only lead to a further docket explosion of the already over-burdened Courts and Tribunals.

27. With the aforesaid observations, the appeals as well as writ petition are accordingly disposed of alongwith all pending applications, leaving the parties to bear their own costs. The Registry is directed to place a copy of this judgment on the files of connected matters.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

The Land Acquisition Collector & ors. .....Appellants.

Versus

Sh. Kanwar Singh .....Respondent.

RFA No. 32 of 2011 with C.O. 2011 No. 698 of 2011 & CMP No. 10118 of 2015.
Reserved on: 4.1.2016.
Decided on: 8.1.2016.

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for construction of Sayri-Danwati road- market value of the acquired land was assessed as Rs. 5,14,384/- per bigha for Bangar Awal and Rs. 74,669/- per bigha for Bangar Kadeem - claimant sought a land reference and the Reference Court awarded compensation of Rs. 17,05,000/- per bigha for 7 biswas of Bangar-1 and Rs. 82,500/- per bigha for 13 biswas of Ghasni land along with statutory benefits – aggrieved from the award, appeal and cross objections have been filed- Reference Court had relied upon the award and had applied the decrease of 15% while assessing the value of 7 biswas of land @ Rs. 17,05,000/- per bigha and 13 biswas of Ghasni land @ Rs. 82,500/- per bigha- land was acquired for same purpose – held, that when the land is acquired for one purpose, the market value of the acquired land irrespective of classification/category is required to be assessed - a flat and uniform rate is to be awarded for all categories of land as classification completely loses significance in such a case- Reference Court should have awarded flat and uniform rate of Rs. 17,05,000/- per bigha- cross-objections allowed and uniform rate of Rs. 17,05,000/- per bigha awarded. (Para-12 to 17)

Case referred:
H.P. Housing Board vrs. Ram Lal and others, 2003(3) Shim. L.C. 64

For the appellant(s): Mr. Neeraj K. Sharma, Dy. AG.
For the respondent: Ms. Devyani Sharma, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This regular first appeal is directed against the award of the learned District Judge, Solan, H.P. dated 7.8.2010, rendered in Reference Petition No. 7-S/4 of 2009.

2. "Key facts" necessary for the adjudication of this regular first appeal are that the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was issued on 16.5.2005 for acquiring the land of the respondent-claimant (hereinafter referred to as the claimant), bearing Kh. Nos. 27/1, 32/1, 74/1, kita-3, measuring 1-0 bighas, situated in Village Nataila, Tehsil Kandaghat, Distt. Solan, H.P. for the construction of Sayri-Danwati road. It was published in the Rajpatra on 3.6.2005. The Land Acquisition Collector, HP PWD, South Zone, Winterfield, Shimla, announced the award on 17.5.2008, bearing No. 10/2008, whereby the market value of the acquired land was assessed at the rate of Rs. 5,14,384/- per bigha for Bangar Awal and at the rate of Rs. 74,669/- per bigha for Bangar Kadeem kind of land. Dissatisfied with the award of the Land Acquisition Collector, HP PWD, Shimla, the claimant sought a land reference petition No. 7-S/4 of 2009 before the Reference Court for determination of market value of the acquired land and for enhancement of the rate.

3. According to the claimant, the compensation awarded by the Land Acquisition Collector was on the conservative side. The market value of the acquired land was Rs. 50,00,000/- per bigha at the relevant time. The damage was also caused to his adjoining land. The petition was contested by the appellants. The case of the appellants before the Reference Court was that the price claimed by the claimant was exorbitant and the assessment of the compensation was made strictly as per law.

4. The learned Reference Court framed the issues on 28.5.2009 and award was passed on 7.8.2010 awarding compensation of Rs. 17,05,000/- per bigha for 7 biswas of

Bangar-1 of land and Rs. 82,500/- per bigha for 13 biswas of Ghasni kind of land, alongwith statutory benefits. Hence, this regular first appeal. The claimant has also filed Cross Objections No. 698 of 2011 for enhancement of the amount.

5. Mr. Neeraj K. Sharma, Dy. Advocate General, appearing for the appellants has vehemently argued that the Reference Court has not taken into consideration the well known principles, while determining the market value of the acquired land. On the other hand, Ms. Devyani Sharma, Advocate, for the claimant has vehemently argued that the awarded amount by the learned Reference Court is on the conservative side. The claimant has also moved an application under Order 41 Rule 27 CPC, bearing No. 10118 of 2015 for leading additional evidence.

6. I have heard learned Advocates for the parties and gone through the award and records of the case carefully.

7. The claimant has appeared as PW-2. He has led his evidence by filing an affidavit. According to him, he used to grow cash crops on the acquired land and used to earn Rs. 2,00,000/- per bigha. The various public offices like Bank, Post Office, Agriculture Office/Horticulture Department, PHC, Patwar Circle and 10+2 government school are situated in the vicinity of the acquired land. The Airport is also nearby the acquired land. Sayri bazaar is at a distance of 2 ½ km. The State Highway also passes near the acquired land. The acquired land is situated on the boundary of village Kahla and the lands of these both the villages are similar in nature and kind. The possession was taken in 1983-84. The market value of the acquired land, according to him, at the relevant time was Rs. 15 to 20 lac per bigha.

8. PW-1 Patwari Halqua, Shyam Lal Verma has deposed that the nature and kind of land in village Kahla is similar to that of the land in village Nataila where the acquired land is situated. According to him, village Kot abuts village Nataila where the acquired land is situated.

9. PW-3 V.L.Verma has admitted that the road in question was constructed in the year 1986. He also admitted in his cross-examination that the possession was not taken in the year 1986 but was taken after the issuance of the notification.

10. RW-1 Hari Kishan has produced copies of the sale deeds Ext. R-1 and R-2. According to him, in Ext. R-1, 6 bigha-16 biswa of land was sold in village Kot in January 2006 for Rs. 7,00,000/- at the rate of about Rs. 1,11,100/- per bigha. Similarly, in February, 2006, 4 biswa of land was sold for Rs. 13,500/- i.e. at the rate of Rs. 67,500/- per bigha.

11. Neither vendor nor vendee has appeared to prove sale deeds Ext. R-1 and Ext. R-2. It is the admitted case that no transaction has taken place in village Nataila before one year of the publication of notification under Section 4 of the Act i.e. 16.5.2005. The claimant has placed on record copy of award dated 13.3.2010 qua the land of the same village where the acquired land is situated. In this case, the notification was issued on 25.9.2008 i.e. after three years.

12. The purpose for acquiring the land was construction of Sayari-Danwati road. As per the award dated 10.3.2010, the Land Acquisition Collector has awarded Rs. 1,55,000/- per biswa for Bangar-1 land and Rs. 31,00,000/- per bigha and also awarded Rs. 1,10,000/- per biswa for Bangar-II and Rs. 22,00,000/- per bigha. He has awarded Rs. 7500/- per biswa for Ghasni and Rs. 1,50,000/- per bigha. The land in the present appeal is also situated in the same village i.e. village Nataila.

C.O. No.698 of 2011 & CMP No. 10118 of 2015.

13. Ms. Devyani Sharma, Advocate, has submitted that a sum of Rs. 17,05,000/- per bigha was required to be calculated uniformly for all kinds of land, irrespective of the category of land alongwith statutory benefits as the land was acquired for the purpose of construction of road. According to her, flat rate was required to be awarded.

14. The claimant has also filed CMP No. 10118 of 2015 under Order 41 Rule 27 CPC for leading additional evidence. Reliance has been placed on award rendered in LAC Petition No. 3-S/4 of 2011 dated 11.12.2014, rendered by the learned District Judge, Solan. In this case, the notification was issued under Section 4 of the Act on 25.9.2008 and it was published in the Rajpatra on 27.9.2008 and in two daily newspapers, namely, "Amar Ujala" and "Hindustan Times" on 16.10.2008. Wide publicity was also made in the locality on 5.11.2008. The notification under Sections 6 & 7 of the Act was issued on 20.2.2009 which was published in the Rajpatra on 25.2.2009 and in two daily newspapers, namely, "Indian Express" and "Apka Faisla" on 13.3.2009. However, the claimant, in the present appeal, as per the impugned award was only paid Rs. 5,14,384/- per bigha for Bangar Awal and Rs. 24,890/- per bigha for Ghasni kind of land. CMP No. 10118 of 2015 is accordingly allowed.

15. The learned Reference Court by relying on award No. 3 of 2010, dated 10.3.2010 and thereafter applying the decrease of 15% per annum in view of hike in prices from 2005, has assessed the value of the land for 7 biswas of Bangar-I kind of land of the claimant at the rate of Rs. 17, 05,000/- per bigha and for 13 biswas Ghasni kind of land at the rate of Rs. 82,500/- per bigha. In the impugned award i.e. award No. 10/2008 dated 17.5.2008, and award No. 3/2010 dated 10.3.2010 and in LAC petition No. 3-S/4 of 2011, decided on 11.12.2014, land has been acquired for the same purpose i.e. construction of Sayari-Danwati road. It is settled law that when land of different kinds and classification is acquired for one purpose, the market value of the entire acquired land, irrespective of its classification/category, is required to be assessed and awarded a flat and uniform rate for all categories of land since classification of land completely loses significance and entire land under acquisition shall be awarded uniform rate. The learned Reference Court has awarded Rs. 17,05,000/- per bigha for Bangar-I kind of land and Rs. 82,500/- per bigha for Ghasni kind of land, on the basis of classification of land. The learned Reference Court should have awarded flat and uniform rate of Rs. 17,05,000/- per bigha for Ghasni kind of land as well, since the land acquired was for a common purpose i.e. construction of Sayari-Danwati road.

16. In the case of ***H.P. Housing Board vrs. Ram Lal and others,*** reported in ***2003(3) Shim. L.C. 64,*** the learned Single Judge of this Court has held that when the land is being developed for housing colony, classification completely loses its significance. It has been held as follows:

> "27. When the land is being developed for a housing colony, as in the present case, classification completely looses significance. Reason being that it has to be developed as a single unit i.e. for housing colony. Similarly allowing higher price for land near the road and for the one which is at a distance from the road also does not provide any reasonable, muchless rational basis to allow less price for the area. Reason being that a person may be interested to reside near the road side in a developed colony for so many reasons. Whereas another, may like to live in the vicinity which is away from the road to avoid hustle and bustle of being near the road side and for many other reasons. In these circumstances, it cannot be said that location of the land and its distance from the road is a good criteria and/or for that matter classification for the assessment of compensation. In my

view entire land under acquisition should have been assessed at Rs. 200 per sq. meter irrespective of its classification and/or distance from the road."

17. Consequently, there is no merit in this regular first appeal and the same is dismissed. The Cross-Objections are allowed. The claimant is held entitled to uniform rate of compensation for the entire chunk of land, irrespective of classification, @ Rs. 17,05,000/- per bigha on the basis of Award in LAC Petition No. 3-S/4 of 2011 dated 11.12.2014. The enhanced amount be released to the claimant within a period of three months from today with statutory benefits after deducting the amount already paid. The award shall stand modified accordingly.

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BEFORE HON'BLE MR. JUSTICE P. S. RANA, VACATION J.

Pratap Singh Verma S/o Lt. Sh. T.R. Verma .....Petitioner
Versus
State of H.P. & Another ....Non-petitioners

CMPMO No. 23/2016
Date of order: January 11, 2016

Code of Civil Procedure, 1908- Order 23 Rule 1- Advocate for the petitioner does not want to continue with the petition- hence, petition dismissed as withdrawn- pending applications, if any, also disposed of.

For petitioner : Mr. Kunal Verma, Advocate
For non-petitioners : M/s. Neeraj Sharma and Pushpinder Jaswal, Dy. A.Gs.

The following order of the Court was delivered:

P. S. Rana, J. (Oral)

Learned Advocate appearing on behalf of petitioner submitted that he does not want to continue with the present petition and the same be dismissed as withdrawn. In view of the submission of learned Advocate appearing on behalf of the petitioner CMPMO No. 23 of 2016 is dismissed as withdrawn. No order as to costs. CMPMO No. 23 of 2016 is disposed of. Pending application(s) if any also disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Alone Zemer s/o Sh. Edvard US National .....Petitioner
Versus
State of H.P. .....Non-petitioner

Cr.MP(M) No. 5 of 2016
Order Reserved on 11.01.2016
Date of Order 15th January 2016

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offence punishable under Section 20 of NDPS. Act- he filed a bail application pleading that investigation is complete and he will not temper with the prosecution evidence- as per prosecution version, the petitioner was found in possession of 850 grams of charas- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and the larger interest of the public and State- contraband recovered from the petitioner is not a commercial quantity- investigation is complete and releasing the petitioner will not interfere with the investigation- petition allowed and petitioner ordered to be released on bail.

(Para-6 to 9)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration), AIR 1978 SC 179

The State Vs. Captain Jagjit Singh, AIR 1962 SC 253

Sanjay Chandra Vs. Central Bureau of Investigation, 2012 Cri. Law Journal 702 SC

For petitioner : Mr. Anoop Chitkara, Advocate

For Non-petitioner : M/s. Neeraj Sharma & Pushpinder Jaswal, Dy. A. Gs.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 Cr.PC for grant of bail relating to FIR No.235/2015 dated 10.12.2015 registered under Section 20 of NDPS Act in Police Station Manali Distt. Kullu (H.P.).

2. It is pleaded that petitioner is innocent and petitioner has been falsely implicated in the present case. It is further pleaded that investigation is completed in the present case. It is further pleaded that petitioner will not tamper with the prosecution witnesses in any manner. It is further pleaded that alleged contraband is less than commercial quantity and rigors of Section 37 of NDPS Act will not apply in the present case. It is further pleaded that petitioner is not habitual offender. Prayer for acceptance of bail application sought.

3. Per contra police report filed. There is recital in police report that on 10.12.2015 police party was on patrolling duty at about 5.00 p.m at place Jana road Zeed forest near Patahar rivulet accused came on the road with bag upon his back portion of the body. There is further recital in police report that accused was in possession of another small bag upon his right shoulder. There is further recital in police report that when accused saw the police officials then he became perplexed and tried to run below the road. There is further recital in police report that accused also threw his bag which was in possession of his right shoulder. There is further recital in police report that accused was caught and he disclosed his name as Alon Zemer son of Edvard R/o San Francisco California (USA). There is further recital in police report that bag which was in possession of the accused was checked and in the bag 850 gms. charas was found from the exclusive and conscious possession of the accused. There is further recital in the police report that sample and bulk of the charas was sealed in separate parcels. There is further recital in the police report that accused informed that he came in India about seven months ago and there is

further recital in the police report that accused is in possession of VISA for 10 years. There is further recital in the police report that accused is in the habit of consuming charas. There is further recital in the police report that accused came from Rishikesh to Kullu-Manali and accused purchased the charas at Manikaran for his personal consumption. There is further recital in the police report that accused has not disclosed the name of other persons from whom the accused has purchased the contraband. There is further recital in the police report that accused has purchased the contraband in consideration of amount of Rs.40000/-. There is further recital in the police report that if the accused is released on bail then accused will leave India and he will not attend the Court proceedings. There is further recital in the police report that till date Chemical Analyst report not received.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Deputy Advocate General appearing on behalf of non-petitioner and also perused the entire record carefully.

5. Following points arise for determination in present bail application.

(1) Whether bail application filed by the petitioner is liable to be accepted as mentioned in memorandum of grounds of application?

(2) Final Order.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and he did not commit any offence as alleged by the prosecution cannot be decided at this stage. Same fact will be decided by the learned trial Court after giving due opportunity of hearing to both parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of petitioner that investigation is completed and trial will be concluded in due course of time and any condition imposed upon the petitioner will be binding upon the petitioner and on this for the reasons hereinafter mentioned. ground bail application be allowed is accepted It is well settled law that at the time of granting bail following factors are to be considered (i) Nature and seriousness of offence (ii) Character of the evidence (iii) Circumstances which are peculiar to the accused (iv) A reasonable possibility of the presence of accused not being secured at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. See AIR 1978 SC 179 titled ***Gurcharan Singh and others Vs. State (Delhi Administration.*** Also see AIR 1962 SC 253 titled ***The State Vs. Captain Jagjit Singh.*** It was held in case reported in 2012 Cri. Law Journal 702 SC titled ***Sanjay Chandra*** Vs. ***Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at trial. It was held that grant of bail is rule and committal to jail is an exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It was held that it is not in the interest of justice that accused should be kept in jail for an indefinite period.

8. In view of the fact that alleged contraband was recovered from the petitioner is not commercial quantity and in view of the fact that the investigation is completed and in view of the fact that case will be disposed of by the learned trial Court in due course of time Court is of the opinion that it is not expedient in the ends of justice to keep the petitioner in judicial custody. Court is also of the opinion that if the petitioner is released on bail then interest of the State and general public will not be adversely affected.

9. Submission of learned Deputy Advocate General that if the bail application filed by the petitioner is allowed then petitioner will leave India and trial will be hampered and on this ground bail application be denied is rejected being devoid of merits for the reason hereinafter mentioned. It is held that conditional bail will be granted to the petitioner and conditions will be imposed upon the petitioner that petitioner will not leave India without prior permission of the Court and condition will also be imposed upon the petitioner that petitioner will surrender his VISA before the learned trial Court till conclusion of the trial. It is held that if petitioner will flout terms and conditions of bail then prosecution will be at liberty to file application for cancellation of bail as provided under Section 439(2) of the Code of Criminal Procedure 1973 in accordance with law. In view of the above stated facts point No.1 is answered in affirmative.

Point No.2 (Final order).

10. In view of my findings on point No.1 above bail application filed by petitioner under Section 439 of Code of Criminal Procedure 1973 is allowed. It is ordered that petitioner will be released on bail on furnishing personal bond in the sum of Rs.500000/- (Five lacs) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner will join investigation of the case whenever and wherever directed by the Investigating Officer in accordance with law. (ii) That petitioner will attend proceedings of the learned trial Court regularly till conclusion of the trial. (iii) That petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iv) That petitioner shall not leave India without prior permission of the Court. (v) That petitioner will deposit his VISA in the learned trial Court till conclusion of the trial. (vi) That petitioner will not commit similar offence qua which he is accused. Observation made hereinabove will not effect merits of the case in any manner and will be strictly confined for disposal of the present bail application. Cr.MP(M) No.5/2016 is disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Varinder Singh son of late Liak Singh .....Petitioner.

Vs.

State of Himachal Pradesh. ....Non-petitioner.

Cr.MP(M) No. 16 of 2016.
Order reserved on:8.1.2016.
Date of Order: January 15, 2016.

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 307, 324 and 506 IPC- petitioner filed a bail application pleading that challan has been filed in the Court and there is no person to look after the family members of the petitioner- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and the larger interest of the public and State- investigation

has been completed and the challan has been filed in the Court- hence, bail application allowed and the petitioner ordered to be released on bail. (Para-6 to 9)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration), AIR 1978 SC 179

The State Vs. Captain Jagjit Singh, AIR 1962 SC 253

Sanjay Chandra Vs. Central Bureau of Investigation, 2012 Cri. Law Journal 702 SC

For the petitioner:	Mr. N.K.Thakur, Sr. Advocate with Mr. Ramesh Sharma, Advocate.
For non-petitioner:	Mr. M.L.Chauhan, Mr.R.S.Verma and Mr.Rupinder Singh Thakur, Addl. Advocates General with Mr. J.S.Rana, Assistant Advocate General.

The following order of the Court was delivered:

P.S.Rana, Judge.

Present petition is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail relating to FIR No. 265 of 2015 dated 22.9.2015 registered under Sections 307, 324 and 506 IPC at Police Station Haroli District Una HP.

2. It is pleaded that petitioner is innocent and petitioner did not commit any criminal offence. It is further pleaded that petitioner has been falsely implicated in criminal case with ulterior motive. It is further pleaded that investigation is completed and challan already stood filed before criminal court of law after completion of investigation. It is further pleaded that petitioner has also sustained injuries. It is further pleaded that there is no one to take care of wife and female minor child of petitioner. It is further pleaded that petitioner will be abide by the terms and conditions imposed by Court. Prayer for acceptance of bail petition sought.

3. Per contra police report filed. As per police report FIR No. 265 of 2015 dated 22.9.2015 is registered under Sections 307, 324 and 506 IPC at police station Haroli District Una HP. There is recital in police report that on dated 21.9.2015 statement of injured Anju Mankotia was recorded under Section 154 Cr.PC. There is further recital in police report that on dated 21.9.2015 at about 8 PM accused was inflicting injury upon his sister-in-law namely Anju Mankotia upon her face, neck and cheek with sickle (Sharp edged weapon). There is further recital in police report that Anju Mankotia was crying and her mother-in-law Krishna Devi was rescuing her. There is further recital in police report that thereafter one Jagjit Singh also rescued injured Anju Mankotia from the clutches of accused. There is further recital in police report that on earlier occasion also accused had tried to inflict injuries upon his sister-in-law namely Anju Mankotia. There is further recital in police report that medical examination of Anju Mankotia was conducted. There is further recital in police report that as per medical examination injuries sustained by Anju Mankotia were dangerous to life. There is further recital in police report that site plan was prepared and statement of witnesses recorded under Section 161 Cr.PC. There is further recital in police report that statement of accused under section 27 of Indian Evidence Act 1872 also recorded and sickle was recovered as per disclosure statement given by accused. There is further recital in police report that investigation is completed and challan already stood filed in criminal court of law. There is further recital in police report that chemical analyst report

also received from RFSL Dharamshala. There is further recital in police report that accused has also beaten his wife who is residing in her parental house since one year. There is further recital in police report that accused has also killed one woman at Australia and remained in custody for thirteen years. There is further recital in police report that accused has also beaten his sister-in-law on the earlier occasion and thereafter matter was placed before gram panchayat and compromise was executed. There is further recital in police report that husband of injured namely Anju Mankotia is working in foreign country. There is further recital in police report that if accused is released on bail at this stage then accused will commit similar criminal offence again. Prayer for rejection of bail petition sought.

4. Court heard learned Advocate appearing on behalf of petitioner and Court also heard learned Additional Advocate General appearing on behalf of non-petitioner and also perused the record carefully.

5. Following points arise for determination in the present bail petition.

(1) Whether bail petition filed under Section 439 of the Code of Criminal Procedure 1973 is liable to be accepted as alleged in memorandum of grounds of bail petition after completion of investigation and after filing of investigation report under section 173 Cr.PC?.

(2) Final Order.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and he has been falsely implicated in the present case cannot be decided at this stage. Same fact will be decided when case shall be decided on merits by learned trial Court after giving due opportunity of hearing to both the parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of the petitioner that investigation is completed and final investigation report under Section 173 Cr.PC stood filed in competent criminal Court of law and trial will be disposed of in due course of time and bail petition filed by petitioner be allowed is accepted for the reasons hereinafter mentioned. It is well settled law that at the time of granting bail following factors should be considered (i) Nature and seriousness of offence (ii) Character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration.*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** It was held in case reported in ***2012 Cri.L.J 702 S.C titled Sanjay Chandra Vs. Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at his trial and it was held that object of bail is not punitive in nature. It was held that bail is rule and committal to jail is exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It was held that it is not in the interest of justice that accused should be kept in jail for indefinite period.

8. Anju Mankotia sister-in-law of petitioner already discharged from hospital and in view of fact that investigation already completed and investigation report stood filed before competent court of law under Section 173 Cr.PC and in view of fact that accused is presumed to be innocent till convicted by competent Court of law court is of the opinion that

it is expedient in the ends of justice to release petitioner on bail. Court is of the opinion that if petitioner is released on bail at this stage then interest of general public and State will not be adversely effected.

9. Submission of learned Additional Advocate General appearing on behalf of non-petitioner that if the petitioner is released on bail then petitioner will commit similar offence again and on this ground bail petition be rejected is devoid of any force for the reasons hereinafter mentioned. It is held that conditional bail will be granted to petitioner. It is further held that if petitioner will flout terms and conditions of bail order then prosecution agency or investigating agency will be at liberty to file application for cancellation of bail as provided under Section 439(2) of the Code of Criminal Procedure 1973 in accordance with law. In view of above stated facts point No.1 is answered in affirmative.

Point No.2 (Final order).

10. In view of findings on point No.1 bail petition filed by petitioner is allowed. It is ordered that petitioner will be released on bail on furnishing personal bond in the sum of Rs.1,00,000/- (One lac) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner will join investigation as and when called for by the Investigating Officer in accordance with law. (ii) That petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That petitioner will not leave India without prior permission of Court. (iv) That petitioner will not commit similar offence qua which he is accused. (v) That petitioner will attend the proceedings of learned trial Court regularly till conclusion of the trial. Observation made hereinabove is strictly for the purpose of deciding the present bail petition and it shall not effect merits of case in any manner. Bail petition disposed of. All pending application(s) if any also disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S. RANA, J.

Savitri Devi w/o Sh. Satish Kumar .....Petitioner

Versus

State of H.P. .....Non-petitioner

Cr.MP(M) No. 34 of 2016
Reserved on 15.01.2016
Date of Order 22nd January 2016

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the petitioner for the commission of offences punishable under Sections 306, 201 & 120(B) IPC- petitioner filed a bail application pleading that investigation is complete and he will join the investigation as and when directed to do so and will not temper with the prosecution evidence- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation,

reasonable apprehension of the witnesses being tampered with and the larger interest of the public and State- there is a special provision of bail for women and minor- investigation has been completed and the final investigation report has been filed in the Court- the interest of the State and general public will not be adversely affected by releasing the petitioner on bail- hence, bail application allowed and the petitioner ordered to be released on bail.

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration, AIR 1978 SC 179
The State Vs. Captain Jagjit Singh, AIR 1962 SC 253
Sanjay Chandra Vs. Central Bureau of Investigation , 2012 Cri. Law Journal 702 SC
Mt. Choti vs. State, AIR 1957 Rajasthan page 10

For petitioner : Mr. N. S. Chandel, Advocate
For Non-petitioner : Mr. Romesh Verma, Addl. A.G. and Mr. Neeraj Sharma, Dy. A. G.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 Cr.PC for grant of bail relating to FIR No.100/2014 dated 10.09.2014 registered under Sections 306, 201 & 120(B) IPC in Police Station Kot Kehloor Distt. Bilaspur (H.P.).

2. It is pleaded that petitioner is innocent and petitioner has been falsely implicated in the present case. It is further pleaded that investigation is completed in the present case and petitioner undertakes to join investigation as and when directed by the Investigation Agency and also undertakes to abide by any condition imposed by the Court. It is further pleaded that petitioner also undertakes not to tamper with the prosecution evidence in any manner. It is further pleaded that final investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in competent criminal Court of law. Prayer for acceptance of bail petition sought.

3. Per contra police report filed. There is recital in police report that deceased Shakuntala Devi sent her husband Satish Kumar from matrimonial house to convene local panchayat relating to less allotment of land to the husband of deceased. There is further recital in police report that as per request of the deceased, Satish Kumar went outside the matrimonial house in order to collect local people. There is further recital in police report that when husband of the deceased came then he found that deceased had bolted the door of the room. There is further recital in police report that when the door was opened forcibly then it was found that scarf was in the neck of the deceased and deceased had tried to commit suicide. There is further recital in police report that thereafter deceased was brought for her medical treatment to Guru Teg Bahadur Multi Specialist Hospital wherein the deceased was declared dead. There is further recital in police report that thereafter Satish Kumar and his parents without informing the parents of the deceased on dated 10.09.2014 at 7.00 A.M. cremated the deceased. There is further recital in police report that deceased was forced to commit suicide. There is further recital in police report that deceased was mother of 2½ (Two and half) years son and she has committed suicide due to harassment committed upon the deceased by her husband and in-laws. Investigating Agency prepared the site plan after registration of the case and also took photographs of cremation ground. Investigating Agency also took into possession plastic canny of kerosene oil from the

cremation ground and sealed it. Investigating Agency also took into possession the ashes and burnt bones from the cremation ground in sealed parcel. Investigating Agency also took into possession mobile phone of deceased Shakuntala Devi i.e. 94598-89783. Investigating Agency also recorded statements of prosecution witnesses. Investigating Agency also called special team from RFSL Bhayuli Mandi on 12.09.2014 who inspected the kitchen and toilet in intensive manner. Investigating Agency also collected footage from CCTV camera fixed in Guru Teg Bahadur Hospital on dated 13.09.2014. Investigating Agency after completion of investigation filed investigation report under Section 173 of Code of Criminal Procedure 1973 before competent Court of law.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Additional Advocate General appearing on behalf of non-petitioner.

5. Following points arise for determination in present bail application.

(1) Whether bail application filed by the petitioner is liable to be accepted as per special provision of bail for woman after completion of investigation and after filing investigation report under Section 173 of Code of Criminal Procedure as alleged relating to criminal offence punishable with death or imprisonment for life?

(2) Final Order.

Findings upon Point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and she did not commit any criminal offence as alleged by the prosecution cannot be decided at this stage. Same fact will be decided when case will be disposed of on merits by the learned trial Court after giving due opportunity to both parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of petitioner that investigation is completed in the present case and final investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in the competent Court of law and petitioner be released on bail as per special provision of bail provided for woman is accepted for the reasons hereinafter mentioned. It is well settled law that at the time of granting bail following factors are to be considered (i) Nature and seriousness of offence (ii) Character of the evidence (iii) Circumstances which are peculiar to the accused (iv) A reasonable possibility of the presence of accused not being secured at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. See AIR 1978 SC 179 titled ***Gurcharan Singh and others Vs. State (Delhi Administration.*** Also see AIR 1962 SC 253 titled ***The State Vs. Captain Jagjit Singh.*** It was held in case reported in 2012 Cri. Law Journal 702 SC titled ***Sanjay Chandra*** Vs. ***Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at trial. It was held that grant of bail is rule and committal to jail is an exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India.

8. Court is of the opinion that there is special provision of bail for woman and minors even in criminal offences punishable with death or imprisonment for life as per proviso clause of Section 437 of Code of Criminal Procedure 1973. In the present case investigation is completed and final investigation report under Section 173 Code of Criminal

Procedure 1973 already stood filed in the competent Court of law and trial of the case will be concluded by the learned trial Court in due course of time. In view of special provision of bail for woman Court is of the opinion that it is not expedient in the ends of justice to keep the petitioner in judicial custody. Court is also of the opinion that if the petitioner is released on bail at this stage then interest of the State and general public will not be adversely affected.

9. Submission of learned Additional Advocate General that if the petitioner is released on bail at this stage then petitioner will induce and threat prosecution witnesses and on this ground bail application be declined is rejected being devoid of merits for the reason hereinafter mentioned. Court is of the opinion that conditional bail will be granted to the petitioner. Court is of the opinion that conditions will be imposed upon the petitioner in bail order that petitioner will not induce or threat prosecution witnesses during trial of the criminal case. Court is of the opinion that if petitioner will induce or threat prosecution witnesses after grant of bail then prosecution agency or investigating agency will be at liberty to file application for cancellation of bail provided under Section 439(2) of the Code of Criminal Procedure 1973 in accordance with law. In view of the fact that there is special provision of bail for woman in Code of Criminal Procedure relating to heinous offence punishable with death or imprisonment for life and in view of the fact that investigation is completed and investigation report under Section 173 of Code of Criminal Procedure 1973 already stood filed in competent criminal Court of law it is expedient in the ends of justice to allow the bail application. It was held in case reported in **AIR 1957 Rajasthan page 10 titled Mt. Choti** vs. **State** that special treatment of woman and children in bail matter is not inconsistent with Article 15 of Constitution of India. Point No.1 is answered in affirmative.

Point No.2 (Final order).

10. In view of my findings on point No.1 above bail application filed by petitioner under Section 439 of Code of Criminal Procedure 1973 is allowed as per special provision of bail for woman. It is ordered that petitioner will be released on bail on furnishing personal bond in the sum of Rs.100000/-(One lac) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner shall make herself available for interrogation by a Police Officer as and when required in accordance with law. (ii) That petitioner will attend proceedings of the trial Court regularly till conclusion of the trial. (iii) That petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iv) That petitioner shall not leave India without prior permission of the Court. (v) That petitioner will not commit similar offence qua which she is accused. Observation made hereinabove will not affect merits of the case in any manner and will be strictly confined for disposal of the present bail application. Cr.MP(M) No.34/2016 is disposed of.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Sh Ashutosh Garg son of Sh Adesh Kumar Garg. ....Petitioner.

Versus

State of HP and others. ....Non-petitioners

CWP No. 11745 of 2011.
Order reserved on: 30.12.2015.
Date of Order: February 24, 2016

Constitution of India, 1950- Article 226- Petitioner was appointed as TGT in cantonment board against JBT post- School was upgraded from elementary to middle school- work was divided between the petitioner and non-petitioner No. 4- Govt. of H.P. issued a notification that where elementary school is part of middle school, Head Master of the School would be TGT- Board of Directors proposed the name of non-petitioner No. 4 for the post of head master- petitioner made representation but representation was not decided – it was resolved by the Board of Directors that non-petitioner No. 4 will be promoted for the post of Head Master- petitioner contended that non-petitioner No. 4 is not qualified and the promotion of non-petitioner No. 4 is in violation of promotion rules- respondent pleaded that non-petitioner No. 4 is the senior most teacher and is looking after the administrative duties - petitioner is JBT teacher and is the junior most- representation of the petitioner was rejected- held, that Departmental Promotion Committee had not recommended the name of the petitioner and, therefore, the petitioner cannot claim the promotion to the post of head master- non-petitioner No. 4 has been appointed on adhoc basis and a stop gap arrangement- writ petition dismissed and direction issued to non-petitioner No. 2 and 3 to fill up the regular post of head master in accordance with law. (Para-6 to 11)

For the petitioner	:	Mr.S.D.Gill, Advocate.
For non-petitioner-1	:	Mr.Rupinder S.Thakur, Addl. Advocate General with Mr. J.S.Rana Asstt. Advocate General.
For non-petitioners-2&3:		Ms.Ritta Goswami, CGC.
For non-petitioner-4:		Mr.Bimal Gupta, Sr. Advocate with Mr. Vaneet Advocate.

The following order of the Court was delivered.

P.S.Rana Judge.

Present civil writ petition is filed under Article 226/227 of the Constitution of India with relief to issue direction to non-petitioners No. 2 and 3 Chief Executive Officer Kasaulit Cantt and G.O.C-in-command Chandi Temple Panchkula Haryana not to promote non-petitioner No.4 namely Smt. Paramjeet Kaur as headmaster of cantonment board middle school Kasauli District Solan HP. Additional relief also sought that resolution No. 104 passed in the meeting by board of directors dated 23.12.2011 be quashed and set aside. Further additional relief also sought that non-petitioners No. 1 to 3 be directed to promote petitioner as headmaster of cantonment board middle school Kasauli HP.

Brief facts of the case:

2. It is pleaded that on dated 16.2.2001 petitioner was appointed as TGT teacher in cantonment board school Kasauli Tehsil Kasauli District Solan HP against JBT post. It is pleaded that on dated 25.2.2003 cantonment board school was upgraded from elementary school to middle school and supervision work was divided between the petitioner and non-petitioner No. 4. It is further pleaded that non-petitioner No.4 was given classes 1st to 5th standard and petitioner was given classes 5th to 8th standard. It is further pleaded that on dated 20.4.2005 government of HP issued notification that where elementary school is part of middle school and is being run within building of middle school then the headmaster of school would be TGT or must be having academic qualification of minimum graduation. It is further pleaded that on dated 29.5.2007 meeting of Board of Directors of management of school was convened and name of non-petitioner No.4 was proposed for the post of headmaster but the same was deferred. It is further pleaded that on dated 27.6.2007 the meeting of Board of Directors of management of school convened again and resolution No. 27 was passed. According to resolution the post of TGT was to be created for appointment of headmaster. It is further pleaded that on dated 27.12.2008 and 30.10.2009 petitioner represented to non-petitioners No. 2 and 3 Chief Executive Officer Kasaulit and G.O.C-in-Command Western Command Chandi Temple Paunchkula for redressal of his grievance but till date representation not decided. It is further pleaded that thereafter on dated 29.12.2008 block primary education officer inspected the school and had given inspection report that headmaster should be graduate or TGT. It is further pleaded that on dated 23.12.2011 Board of Directors passed resolution No. 104 vide which Board of Directors resolved that non-petitioner No.4 would be promoted to the post of headmistress. It is further pleaded that non-petitioner No.4 is not qualified for the post of headmistress as the qualification of non-petitioner No.4 is matric with JBT. It is further pleaded that promotion of non-petitioner No.4 is in violation of promotion rules. It is further pleaded that promotion of non-petitioner No.4 effected the promotion avenue of petitioner. Prayer for acceptance of writ petition sought.

3. Per contra response filed on behalf of non-petitioners pleaded therein that civil writ petition is not maintainable. It is pleaded that petitioner was appointed as JBT teacher in cantonment board school Kasauli HP during the year 2000. It is further pleaded that thereafter school was upgraded into middle school. It is further pleaded that middle school is running by way of engaging teachers on contract basis every year with prior approval of GOC-in-Command in the interest of general public. It is further pleaded that there is no permanent sanctioned strength of teachers in the section of middle school. It is further pleaded that in the primary section there is sanctioned strength of seven JBT teachers including headmistress. It is further pleaded that post of headmistress was lying vacant since 2006 due to retirement of headmistress of school. It is further pleaded that non-petitioner No.4 Smt. Paramjeet Kaur is senior most teachers in school and also looking after the duties of officiating headmistress of school since 2006. It is further pleaded that petitioner is JBT teacher in cantonment board school and is junior most teacher than non-petitioner No.4. It is further pleaded that two other JBT teachers are senior most teacher than petitioner. It is further pleaded that being junior teacher in school the claim of petitioner for promotion as headmaster is not correct. It is further pleaded that behaviour of petitioner with his superior and other teachers is not satisfactory. It is further pleaded that explanation was called from petitioner to maintain decorum in the school and warning was also given to petitioner by disciplinary authority. It is further pleaded that there is no regular post of TGT teacher in middle school. It is further pleaded that middle section is run by engaging teachers on contract basis. It is further pleaded that sanction to fill up the vacant post of headmistress in cantonment board primary school by promotion was accorded by

Directorate DEWC. It is further pleaded that post of headmaster was given to senior most JBT teacher. It is further pleaded that representation filed by petitioner for promotion to the post of head teacher in cantonment board school was considered and rejected. It is further pleaded that although qualification of petitioner is B.Sc B.Ed but he was appointed in regular post of JBT teacher. It is further pleaded that there is no regular post of TGT in middle school. It is further pleaded that non-petitioner No.4 has been promoted as headmistress in primary section of school only. It is further pleaded that petitioner being JBT and junior most teacher amongst other JBT teachers petitioner has no right to file present civil writ petition. Prayer for dismissal of writ petition sought.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Advocate appearing on behalf of non-petitioners and also perused entire record carefully

5. Following points arise for determination in the present writ petition:

(1) Whether civil writ petition filed under Articles 226/227 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?

(2) Relief.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner be promoted as headmaster of cantonment board school Kasauli in middle section automatically on the basis of higher qualification of B.Sc. B.Ed. is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that promotion is always given as per recommendation of departmental promotion committee and there is no evidence on record in order to prove that departmental promotion committee has recommended the name of petitioner for the post of headmaster in middle section of school. It is held that unless there is recommendation of departmental promotion committee in favour of petitioner non-petitioners cannot be directed to promote the petitioner automatically as headmaster of middle school wing.

7. Submission of learned Advocate appearing on behalf of petitioner that qualification of non-petitioner No.4 Smt. Paramjeet Kaur is matric with JBT and she was not eligible to be appointed as headmistress of middle school wing as of today is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that as of today no regular post has been created in the middle wing of school. It is also proved on record that only teachers on contract basis are attached in middle wing of school. As per instruction of HP Board of School Education Dharamshala following teachers should be appointed in middle school:

(i) Headmaster-I(TGT/PGT)

(ii) TGT-2 (Science & Arts)

(iii) Shastri/LT-I

(iv) Arts & Craft Teacher-I

(v) Pet-I

(vi) Peon-I

It is proved on record that no regular appointment has been conducted as of today in the middle wing of school. It is well settled law that all regular appointments are conducted on the basis of merits after advertisement of regular post in accordance with law. There is no evidence on record that advertisement was issued relating to middle wing of school for the regular post.

8. It is proved on record that Smt. Paramjeet Kaur has been appointed as headmistress of school on adhoc basis only and as a stop gap arrangement. It is proved on record that Smt. Paramjeet Kaur is senior most teacher in school and petitioner is not senior most teacher in the school and there are also two other teachers who are senior to petitioner in school. As per notification No. EDN-C.A(1)-2/2004 dated 31.10.2005 all existing primary and middle schools operating from the same building will merge into single elementary school and their separate identity will cease to exist. As per notification dated 31.10.2005 staff both teaching and non-teaching working in these primary and middle schools will merge and formulate a common time table mark attendance on a single register and work as a single unit.

9. As per notification of government of Himachal Pradesh September 2006 the promotion quota from JBT and C&V cadres to the post of TGT would be as follows:

1 Direct recruitment	25%
2 Batchwise recruitment	25%
3 By promotion from JBT	30%
4 By promotion from C&V	20%

It is prima facie proved on record that cantonment board school Kasauli was upgraded from primary section to middle section w.e.f. February 2003. It is proved on record that block primary education officer Dharampur District Solan HP has conducted inspection of the school on dated 29.12.2008 and submitted inspection report. Block primary education officer Dharampur has specifically mentioned in his inspection report that number of TGT teaches are not sufficient for the classes of middle section and post of headmaster is vacant since 2006. Block primary education officer has specifically mentioned in his report that presently Smt. Paramjeet Kaur is officiating as headmistress and her qualification is matric with JBT. Block primary education officer Dharampur has further mentioned in his inspection report that lacuna should be filled up at the earliest possible because headmaster in the middle wing should be graduate.

10. It is prima facie proved on record that Smt. Paramjeet Kaur, Smt. Pratima Kalyani, Smt. Mamta, Sh. Pardeep Kumar, Sh. Rakesh Kashyap, Sh. Krishan Pal, Smt. Suman, Smt. Sapna Mehta and Surekha Sharma have filed complaint against petitioner Ashutosh Garg before Chief Executive Officer cantonment board Kasauli relating to his mis-behaviour. It is prima facie proved on record that thereafter Chief Executive Officer has sought explanation of petitioner Ashutosh Garg on dated 17.8.2007 vide explanation No. CBK/Estt/23737. It is proved on record that thereafter on dated 23.8.2007 warning was given to petitioner Ashutosh Garg to be careful in future and warning was also given that such type of act should not be repeated. In view of the fact that departmental promotion committee did not recommend the name of petitioner for the post of headmaster in middle wing of school and warning was also given to petitioner by competent authority of law as per complaint given by nine persons against petitioner and in view of fact that petitioner did not challenge warning order before any competent authority of law and in view of fact that Smt. Paramjeet Kaur has been appointed as headmistress only as officiating headmistress and as a stop gap arrangement court is of the opinion that it is not expedient in the ends of justice to allow writ petition filed by petitioner Ashutosh Garg. Hence point No.1 is answered accordingly.

Point No.2 (Relief).

11. In view of finding upon point No.1 writ petition filed by petitioner is dismissed. However non-petitioners No.2 and 3 Chief Executive Officer Kasaulit Cantt and G.O.C-in- Command Chandi Temple Panchkula Haryana are directed to fill up regular post

of headmaster/ headmistress in the middle wing of school expeditiously in accordance with law within three months in view of deficiency pointed out by Block Primary Education Officer Dharampur District Solan HP in his inspection report dated 29.12.2008 placed on record. No order as to costs. Writ petition is disposed of. All miscellaneous application(s) are also disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Collector Land Acquisition National Hydro
Electric Power Corporation Parbati Hydro Electric Project. ....Appellant

Versus

Tej Ram son of Dot Ram & others ....Respondents

RFA No. 7 of 2008
Order Reserved on 22nd January 2016
Date of Order 24th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for the construction of Parbati Hydro Electric Project – award was pronounced and a reference was sought to District Court who enhanced the compensation to Rs. 20,000/- per biswa (Rs.4 lacs per bigha) irrespective of classification - interest @ 12% per annum and 30% compulsory acquisition charges were also awarded- aggrieved from the award, appeals were preferred- held, that 17 reference petition were disposed of by one award- some of the appeals filed against this award were dismissed, therefore, the present appeal is to be dismissed on the principle of equality- appeal dismissed. (Para-6 and 7)

For the Appellant: Mr. Rajnish Maniktala Advocate.
For Respondent No.1: Mr. Sanjeev Kuthiala, Advocate.
For Respondents Nos. 2 & 3: Mr.M.L. Chauhan Additional Advocates General.

The following order of the Court was delivered:

P.S. Rana, Judge

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned Additional District Judge Fast Track Court Kullu (H.P.) on 29.9.2007 in land reference case No. Tej Ram and others vs. Collector Land Acquisition and others.

Brief facts of the case

2. Notification under Section 4 of Land Acquisition Act 1894 was issued on 5.12.2000 whereby it was proposed to acquire land situated in Phati Dhaugi Sub Tehsil Sainj for construction of Parbati Hydro Electric Project. After completing all formalities Land Acquisition Officer Sub Divisional Officer (Civil) Kullu announced the award on 4.1.2002. Thereafter respondents preferred reference petitions under Section 18 of Land Acquisition Act 1894 before learned Court below pleaded therein that land is situated near Sainj market which is central market of the area and land is potential of raising orchard, growing vegetables, construction of commercial buildings and hotels. It is pleaded that market value of land was not adequately assessed.

3. Learned Additional District Judge Fast Track Court Kullu H.P. passed the award on 29.9.2007 and enhanced the compensation at the rate of Rs.20,000/- (Rupees twenty thousand only) per biswa (Rs.4 lacs per bigha) irrespective of nature, kind and classification of land. Learned Additional District Judge Kullu further granted interest @ 12% per annum on enhanced amount of compensation and also awarded 30% compulsory acquisition charges on enhanced amount of compensation. Learned Additional District Judge further directed that owners will be entitled to the interest on enhanced amount of compensation at the rate of 9% for first year from the date of notification under Section 4 of Act and thereafter 15% per annum till the amount is deposited in Court. Learned Additional District Judge further directed that Collector would pay interest as specified under Section 34 of Act to owners if not paid as a whole or any part thereof after due calculation.

4. Court heard learned Advocate appearing on behalf of appellant and learned Advocate appearing on behalf of respondent No. 1 and learned Additional Advocate General appearing on behalf of respondents Nos. 2 and 3 and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 7 of 2008:-

1. Whether RFA No. 7 of 2008 is covered matter as per award announced by Hon'ble High Court on 26.11.2014 in RFA Nos. 6 of 2008, 8 of 2008 to 15 of 2008 and 17 of 2008 to 22 of 2008?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that learned Additional District Judge (Fast Track Court) Kullu H.P. disposed of 17 reference petitions vide one award dated 29.9.2007. It is proved on record that Hon'ble High Court of H.P. on 26.11.2014 dismissed similar nature RFA Nos. 6 of 2008, 8 of 2008 to 15 of 2008 and 17 of 2008 to 22 of 2008 filed against the same award passed by learned Additional District Judge (Fast Track Court) Kullu (H.P.). While applying the concept of Article 14 of Constitution of India i.e. equality before law Court is of the opinion that it is expedient in the ends of justice to dismiss the present RFA also. Order passed by Hon'ble High Court in aforesaid RFA's will apply mutatis mutandis in present RFA No. 7 of 2008. Point No. 1 is answered accordingly.

Point No. 2 (Relief)

7. In view of findings on point No.1 present RFA No. 7 of 2008 is dismissed. No order as to costs. RFA No. 7 of 2008 is disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Joginder Singh son of Diwan Singh and others. .....Petitioners.

Vs.

State of HP and another. ....Non-petitioners

CWP No. 6672 of 2010.
Order reserved on: 30.12.2015.
Date of Order: February 24, 2016

Industrial Disputes Act, 1947- Section 25- Petitioners were engaged as workers- they were superannuated at the age of 57 years without complying with the certified and model

standing orders- an industrial dispute was raised – conciliation was attempted but could not be effected- Labour Commissioner did not refer the matter to Labour Court- hence, a writ petition was filed- respondent pleaded that age of superannuation was enhanced to 60 years from 55 years - an appeal was filed before the Labour Court which was accepted and it was held that raising the age of the retirement ignoring the existing settlement between the parties is illegal- a writ petition was filed in which interim order was passed that company will not retire a person on the basis of new certified standing orders- held, that in view of interim order passed by Hon'ble High Court, the Labour Commissioner had rightly declined to make the reference to the Labour Court- petition dismissed. (Para-6 to 9)

For the petitioner :Mr. V.D.Khidtta, Advocate.
For non-petitioners :Mr.Rupinder S.Thakur, Addl. Advocate General with Mr. J.S.Rana, Asstt. Advocate General.

The following order of the Court was delivered:

P.S.Rana Judge.

Present civil writ petition is filed under Article 226 of the Constitution of India with prayer that impugned order dated 18.9.2009 passed by non-petitioner No. 2 Labour Commissioner HP be quashed and set aside. Further prayer sought that non-petitioner No.2 Labour Commissioner HP be directed to send reference of petitioners to learned Labour Court for adjudication on merits.

BRIEF FACTS OF THE CASE:

2. It is pleaded that in the year 1978 petitioners were engaged as workers in M/s Purolator India Limited Company at Parwanoo and were working as skilled workers till 24.9.2007. It is further pleaded that on dated 24.9.2007 all petitioners were superannuated at the age of 57 years without complying certified standing orders and model standing orders. It is further pleaded that on dated 15.12.2007 all petitioners submitted demand notices to management as well as to Labour Inspector-cum-Conciliation Officer Solan for conciliation of matter. It is further pleaded that conciliation could not be effected and thereafter Labour Commissioner HP in the month of September 2009 did not refer the matter to learned Labour Court for adjudication. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners No.1 and 2 pleaded therein that superannuation age was enhanced from 55 years to 66 years. It is further pleaded that after enhancement of retirement age from 55 years to 60 years management of M/s Purolator India Limited Parwanoo District Solan HP filed appeal before learned Labour Court Shimla which was accepted by learned Labour Court and learned Labour Court held that raising the age of retirement from 55 to 60 years ignoring the existing settlement entered into between the parties is illegal. It is further pleaded that thereafter civil writ petition filed before Hon'ble High Court of HP against the order of learned Labour Commissioner. It is further pleaded that during the pendency of civil writ petition before Hon'ble High Court of HP petitioners retired at the age of 55 years. It is further pleaded that during the pendency of civil writ petition Hon'ble Division Bench High Court of HP passed order that Company would not retire the employee on the basis of new certified standing orders till further orders in view of the fact that matter is subjudice before Hon'ble Apex Court of India. It is further pleaded that present writ petition is bad for non-joinder of necessary party i.e. the management of M/s Purolator India Limited Parwanoo District Solan HP. Petitioner filed re-joinder and re-asserted the allegations mentioned in writ petition.

4. Court heard learned counsel appearing on behalf of petitioners and learned counsel appearing on behalf of non-petitioners and also perused entire record carefully.

5. Following points arise for determination in the present writ petition:

(1) Whether civil writ petition is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?

(2) Relief.

Finding upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner be retired at the age of 60 years in view of latest certified standing order and middle standing order and matter be referred to learned Labour Court for adjudication is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that M/s Purolator India Limited Parwanoo filed appeal under Section 6 of Industrial Employment (Standing orders) Act 1946 against the order of Joint Labour Commissioner dated 15.11.2003 titled M/s Purolator India Ltd. Vs. Purolator Workers Union and another. It is proved on record that Industrial Tribunal-cum-Labour Court Shimla HP in appeal No.1 of 2004 decided on 22.9.2007 held in similar nature case that M/s Purolator Workers Union and another is debarred from agitating any demand in view of existing settlement entered between M/s Purolator India Ltd. Vs. Purolator Workers Union and another relating to raising the age of retirement from 55 years to 60 years. It is proved on record that learned Labour Court set aside order dated 15.11.2003 passed by Joint Labour Commissioner. It is also proved on record that thereafter Purolator Workers Union filed CWP No. 1645 of 2007 before Hon'ble High Court of HP. It is prima facie proved on record that on dated 13.3.2008 Hon'ble Division Bench High Court of HP passed following orders which is quoted in toto:

13.3.2008 Present: Mr.V.D.Khidta, counsel for the petitioner.
Mr.Dushyant Dadwal, counsel for Respondent No.1.
Mr.R.K.Bawa, Advocate General with Mr.J.K.Verma, Deputy General for respondents No. 2 and 3.

Mr.Dushyant Dadwal submits that this case is more or less covered by the judgment of this Court in LPA No. 73 of 2007. However he submits that the company in that case has approached the Supreme Court and the matter is fixed for 24th March 2008. He requests that the matter be taken up thereafter. This request is accepted.

It is however made clear that the respondent-company shall not retire the employee on the basis of new certified standing orders till further orders of this Court.

Sd/-
Judge
Judge

March 13 2008.

Hon'ble Division Bench High Court of HP on dated 13.3.2008 in CWP No. 1645 of 2007 held that order passed in LPA No. 73 of 2007 is challenged before Hon'ble Apex Court of India and matter of similar nature is subjudice before Hon'ble Apex Court of India. Court is of the opinion that as similar nature of matter is subjudice before Hon'ble Apex Court of India against the order passed by High Court of HP in LPA No. 73 of 2007 the case of the petitioner will also be covered as per decision of Hon'ble Apex Court of India relating to LPA No. 73 of 2007.

7. Submission of learned Advocate appearing on behalf of petitioner that learned Labour Commissioner was under legal obligation to refer the matter to learned Labour Court for adjudication is rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused order of learned Labour Commissioner. Learned Labour Commissioner has specifically mentioned in his order dated 18.9.2009 that Purolator Workers Union filed an application before Certifying Officer for amendment the age of retirement from 55 years to 60 years and thereafter Joint Labour Commissioner –cum-Certifying Officer vide order dated 15.11.2003 amended the age of retirement from 55 years to 60 years. Learned Labour Commissioner has further mentioned in his order dated 18.9.2009 that thereafter company filed an appeal against the order dated 15.11.2003 before learned Labour Court and the appeal was allowed by learned Labour Court Shimla on dated 22.9.2007. Learned Labour Commissioner has specifically mentioned in his order that the workers Union has filed CWP No. 1645 of 2007 before Hon'ble Division Bench High Court of HP and High Court of HP directed that company would not retire the employee on the basis of new certified standing orders till further orders of Court. It is proved on record that learned Labour Commissioner has declined to send reference to learned Labour Court for adjudication in view of the direction of Hon'ble Division Bench High Court of HP passed in CWP No. 1645 of 2007 dated 13.3.2008. It is prima facie proved on record that learned Labour Commissioner has simply comply interim order of Hon'ble Division Bench High Court of HP passed in CWP No. 1645 of 2007 dated 13.3.2008.

8. In view of the fact that interim order was passed by Hon'ble Division Bench High Court of HP on dated 13.3.2008 in CWP No. 1645 of 2007 quoted supra and in view of the fact that judgment passed in LPA No. 73 of 2007 was challanged before Hon'ble Apex Court of India and in view of fact that matter is subjudice before Hon'ble Apex Court of India it is held that it is not expedient in the ends of justice to allow civil writ petition. Petitioner did not place on record any final decision of Hon'ble Apex Court of India relating to LPA No. 73 of 2007. Hence point No.1 is answered accordingly.

Point No.2 (Relief).

9. In view of finding upon point No.1 it is held that final decision of Hon'ble Apex Court of India relating to LPA No. 73 of 2007 will be followed in CWP No. 6672 of 2010 titled Joginder Singh and others Vs. State of HP and another. No order as to costs. Writ petition is disposed of. All miscellaneous application(s) are also disposed of.

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BEFORE HON'BLE MR. P.S.RANA,J.

Land Acquisition Collector HP PWD and another ....Appellants.

Versus

Smt. Boru D/o Sh. Rama ...Respondent.

RFA No. 373 of 2004.
Order reserved on: 22.1.2016.
Date of order: February 24, 2016.

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Bakhalag Bapdoon Tal Behli road – compensation @ Rs.39,000/- per bigha regarding the cultivated

land and Rs.6,000/- per bigha for non-cultivated land was awarded by Commissioner- a reference was sought- Reference Court enhanced the compensation @ Rs.31,000/- per bigha for cultivated land and Rs.64,000/- per bigha for non-cultivated land- interest and compensation were also awarded- aggrieved by the award, the present appeal has been preferred- separate appeals were preferred against the award made in favour of the some of the co-owners which were dismissed observing that amount involved is a petty amount- therefore, the present appeal is liable to be dismissed on the principle of the equality- appeal dismissed. (Para-7 to 9)

For the appellants: Mr. M.L.Chauhan, Addl. Advocate General .
For respondent-1: Mr. V.S.Chauhan, Advocate
For respondent-2: None.

The following order of the Court was delivered:

P.S.Rana, Judge.

Present appeal is filed under Section 54 of the Land Acquisition Act against the award dated 1.7.2004 passed by learned District Judge Solan in land reference case No. 36-S/4 of 2003.

Brief facts of the case:

2. Land Acquisition Collector HP PWD Solan and Sirmour HP issued notification for acquisition of land for construction of Bakhalag Bapdoon Tal Behli road in village Bapdon Tehsil Arki District Solan HP. Notification under Section 4 of Land Acquisition Act was issued on 6.6.1994 and thereafter award No.9/97 was passed by Land Acquisition Collector HP PWD Solan and Sirmour Districts at Solan. On dated 5.11.1997 learned Land Acquisition Collector awarded compensation @ 39000/- (Thirty nine thousand) per bigha qua cultivated land and awarded compensation @ 6000/- (Six thousand) per bigha for non-cultivated land.

3. Feeling aggrieved against award No.9 of 1997 dated 5.11.1997 passed by learned Land Acquisition Collector 23 reference petitions filed before learned District Judge Solan and learned District Judge Solan disposed of all 23 reference petitions vide same award passed on 1.7.2004 and enhanced compensation amount @ 31000/- (Thirty one thousand) per bigha for cultivated land and Rs.64000/- (Sixty four thousand) per bigha for un-cultivated land. Learned District Judge further directed that petitioner would be entitled for additional compensation @ 12% per annum from the date of publication of notification i.e. 18.6.1994 to the date of award of the Land Acquisition Collector. Learned District Judge further directed that petitioner would also entitle for solatium @ 30%. Learned District Judge further directed that petitioner would be entitled for interest @ 9% per annum for the first year and thereafter 15% per annum for the remaining period on the amount of excess compensation from the date of publication of notification under Section 4 of Land Acquisition Act to the date of deposit of the award amount in Court.

4. Feeling aggrieved against the award passed by learned District Judge present RFA No. 373 of 2004 titled LAC and another Vs. Smt. Boru and another filed.

5. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and also perused entire record carefully.

6. Following points arise for determination in present appeal.

(1) Whether present RFA is liable to be accepted as mentioned in memorandum of grounds of appeal?.

(2) Relief.

Finding on point No.1 with reasons:

7. It is proved on record as per statement showing compensation for each co-owner placed on record that Sh. Ram Sawroop son of late Rama and Smt. Boru daughter of late Rama were owners of 2/15 shares in khasra No. 78/4 measuring 3-3 bighas and nature of acquired land in khasra No. 78/4 is grassy land. Sh Ram Swaroop and Smt. Boru are real brother and sister. It is proved on record that only Rs.18900/-(Eighteen thousand nine hundred) total compensation amount was awarded to all co-owners in khasra No. 78/4. It is proved on record that RFA No. 364 of 2004 titled LAC and another Vs. Ram Swaroop and another was filed in which Smt. Boru was co-respondent No.2. Hon'ble High Court of HP on dated 16.5.2005 dismissed RFA No. 364 of 2004 in which Smt. Boru was co party observing that amount involved is only a petty amount. There is no evidence on record that order of Hon'ble High Court of HP is set aside by competent court of law.

8. In view of the fact that RFA No. 364 of 2004 titled LAC and another Vs. Ram Swaroop and another was dismissed by Hon'ble High Court of HP on 16.5.2005 in which Smt. Boru daughter of Rama was co-respondent No.2 Court is of the opinion that on the concept of equality before law under Article 14 of Constitution of India it is expedient in the ends of justice to dismiss present RFA No. 373 of 2004. Point No.1 is decided accordingly.

Point No.2 (Relief).

9. In view of finding on point No.1 RFA No. 373 of 2004 titled LAC and another Vs. Smt. Boru and another is dismissed. It is held that similar matter against Smt. Boru cannot be agitated twice before Hon'ble High Court of HP in RFA No. 364 of 2004 and in RFA No. 373 of 2004. No order as to costs. RFA No. 373 of 2004 is disposed of. Pending applications if any also disposed of.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Sh. Ram Gopal ... Petitioner

Versus

Smt. Vidya Devi & others. ... Respondents

CMPMO No. 75 of 2015
Date of Decision: February 24, 2016

Indian Evidence Act, 1872- Sections 45 and 112- Plaintiff pleaded that defendant No. 1 is not his legally wedded wife and defendants No. 2 to 4 are not his children and they have been born through the loins of defendant No. 5- plaintiff filed an application for subjecting defendants No. 2 to 5 to DNA test- the application was rejected- held, that Court had erred in dismissing the application- the paternity of the defendant was in issue, hence, application allowed. (Para-6 to 9)

Cases referred:

Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik & another, (2014) 2 SCC 576

Dipanwita Roy vs. Ronobroto Roy, (2015) 1 SCC 365

For the petitioner : Mr. Suneet Goel, Advocate, for the petitioner.
For the respondent : Mr. Karan Singh Kanwar, Advocate, for respondents No. 1 to 4.

The following judgment of the Court was delivered:

Sanjay Karol, J. (oral)

Plaintiff – petitioner herein filed a suit praying for the following reliefs:

"(a) That the defendants No. 1 is not the legally wedded wife of plaintiff and the defendants No. 2 to 4 are not daughter and sons of plaintiff and they are wife, daughter and sons of defendant No. 5 and as such are not entitled to get maintenance amount @ Rs. 500/- P.M. each from the plaintiff in any manner whatsoever as per the order of Ld. C.J.M., Nahan, H.P. and the order in Criminal Petition No. Cr-25/4 of 2000 decided on 5/12/2002 titled Vidya Devi etc. v/s Ram Gopal and orders passed by Hon'ble Sessions Judge in Criminal Revision No. 1-Cr-10 of 2003 titled Ram Gopal v/s Vidya Devi etc. decided on 27/12/2003 and order passed by the Hon'ble High Court in Revision No. Cr-M.M.O. No. 12/4 decided on 1/12/2008 are not binding over the rights of plaintiff and the claim of the defendants 1 to 4 in criminal proceedings U/S 125 Cr.P.C. be declared based on false facts.

(b) With a consequential relief of permanent injunction restraining the defendants No. 1 to 4 getting maintenance of Rs. 500/- P.M. each from the plaintiff in future in any manner whatsoever on the basis of above said order/orders in the interest of justice."

2. Whether in a civil suit, judgment rendered by this Court can be set aside or not is an issue which is left open to be decided by the trial Court, not being subject matter of the present petition. In proceedings arising under the provisions of Section 125 of the Code of Criminal Procedure, which are summary in nature, this Court has only affirmed the order of payment of maintenance, prima facie holding the petitioner to be husband of respondent No. 1.

3. Petitioner who is the plaintiff, is aggrieved of the order dated 19.2.2015 passed by Civil Judge, (Jr. Divn.), Nahan, District Sirmaur, H.P. in Application No. 38/6 of 2015, titled as Ram Gopal vs. Vidya Devi etc., whereby his application filed under Sections 45 and 112 of the Indian Evidence Act read with Section 151 CPC stands rejected. Plaintiff pleads defendant No. 1 not to be his legally wedded wife and defendants No. 2, 3 and 4 not being his children having been born through the loins of defendant No. 5.

4. In order to substantiate his case, plaintiff filed the application in question, desiring defendants No. 2 to 4 as also defendant No. 5 through whom the children are alleged to have been born, being subjected to the DNA test.

5. Having heard learned counsel for the parties as also perused the record, I am of the considered view that the trial court seriously erred in rejecting the application. The order being perverse and not in consonance with the law of the land, needs to be quashed and set aside.

6. Question of paternity of defendants No. 2 to 4 is a fact in issue, being the subject matter of the suit.

7. The apex Court in *Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik & another,* (2014) 2 SCC 576 has held that:-

> "17. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.
>
> 18. We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption."

8. The aforesaid principle came up to be reiterated in *Dipanwita Roy vs. Ronobroto Roy,* (2015) 1 SCC 365 wherein, under somewhat similar circumstances, the Court allowed the prayer of the husband in getting the respondent/wife and the children subjected to the DNA test.

9. Under these circumstances, petition as also the application filed by the plaintiff is allowed. It stands clarified that in the event of the defendants not agreeing to be subjected to the test, to be conducted in accordance with law, presumptions and inferences contemplated under the Evidence Act would arise.

10. Parties are directed to appear before the trial Court on 23rd March, 2016.

11. Registrar (Judicial) is directed to ensure that the record is remitted immediately. Pending application(s), if any, also stand disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Sunil Kumar son of Shri Hira Lal ...Petitioner/Co-defendant No.2

Versus

(1) Big Apple Berry Hospitality Pvt. Ltd ....Non-petitioner/Plaintiff

(2) Rakesh son of Dile Ram ...Proforma Non-petitioner/Co-defendant No.1

CMPMO No. 393 of 2015
Order Reserved on 8.1.2016
Date of Order 24th February 2016

Code of Civil Procedure, 1908- Order 39 Rules 1 and 2- Plaintiff, a private limited Company took on lease the suit property along with building on yearly rent of Rs.1,60,000/- for a period of 20 years w.e.f. 1.5.2011 till 30.4.2031- plaintiff paid amount of Rs.4,80,000/- in advance by cheque and also paid Rs.1,80,000/- in cash – plaintiff also agreed that in future rent amount will be paid on or before 31st of every month of May when due- defendants threatened the plaintiff to vacate the premises on which the plaintiff filed the civil suit for seeking injunction- defendant No.1 pleaded that the premises was leased for a period of three years and plaintiff had handed over the possession to defendant No. 1- defendant No. 1 had alienated the suit land in favour of defendant No. 2- defendant No. 2 pleaded that he had purchased the suit property and possession was delivered to him- application filed by the plaintiff was dismissed by the trial Court- an appeal was preferred in which a Local Commissioner was appointed -Appellate Court allowed the appeal and granted the injunction- held, that the lease for more than one year is required to be compulsorily registered- lease deed in the present case was not registered but the same can be used for collateral purpose- lease deed shows that possession was delivered to the plaintiff- no evidence was produced by the defendants to show that the lease was for three years and possession was handed over by the plaintiff after the expiry of three years- report of Local Commissioner shows that the plaintiff is in possession of suit land and defendant No. 2 had broken locks recently- a person in settled possession cannot be dispossessed except in accordance with law- hence, order modified and parties directed to maintain status quo qua nature and possession of the suit land till the disposal of the suit. (Para-12 to 28)

Cases referred:

Neelam Kumari vs. Temple of Devi Ambika, 1994(1) SLC 238 (HP)
Dalip Singh vs. State of H.P., 1992(1) SLC 320
Krishan Ram Mahale vs. Mrs. Shobha Venkat Rao, JT 1989(3) SC 489 (DB)

For the Petitioner:	Mr. Sunil Mohan Goel Advocate.
For Non-petitioner No.1:	Mr.R.L.Sood, Sr. Advocate with Mr.Arjun Lall, Advocate.
For Non-petitioner No.2:	Mr. Neeraj Gupta, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge

Present petition is filed under Article 227 of Constitution of India against order passed by learned Additional District Judge Kullu in Civil Miscellaneous Appeal No. 12 of 2015 decided on 8.9.2015 titled Big Apple Berry Hospitality Pvt. Ltd. vs. Rakesh Kumar and others.

Brief facts of the case

2. Big Apple Berry Hospitality Pvt. Ltd. through its director filed civil suit for perpetual and prohibitory injunction restraining the defendants their agents etc. from dispossessing the plaintiffs from suit property comprised Khasra Nos. 251, 252, 253 measuring 0-0-89 Hectares known as Manu Samriti Home situated at Muhal and Phati Manali Tehsil Manali District Kullu H.P. Additional relief also sought that if during the pendency of suit defendants would succeed in dispossessing the plaintiff from suit property and if would succeed in removing the structure from suit property then same be ordered to be restored to its original position and possession be also granted in favour of plaintiff. Additional relief also sought that decree be passed for permanent prohibitory injunction

restraining the defendants from leasing out/renting out the suit property to some other person in any other way. Plaintiff also prayed that any other relief which the Court deems fit as per facts and circumstances of case be also granted.

3. It is pleaded by plaintiff that plaintiff Big Apple Berry Hospitality is a private limited company and Shri Gursimaran S. Bhullar is its Director. It is pleaded that plaintiff took on lease the suit property along with building on yearly rent of Rs.160000/- (Rupees one lac sixty thousand only) from co-defendant No.1 on 6.5.2011. It is pleaded that lease was for a period of twenty years w.e.f. 1.5.2011 to 30.4.2031. It is pleaded that on execution of lease plaintiff paid a sum of Rs. 480000/- (Rupees four lacs eighty thousand only) in advance by way of cheque and also paid Rs. 180000/- (Rupees one lac eighty thousand only) in cash and agreed that in future rent amount would be paid on or before 31st of every month of May when due. It is pleaded that plaintiff did not default in payment of yearly lease amount to defendant and co-defendant No.1 threatened the plaintiff with dire consequences and asked the plaintiff to leave the suit property and threatened the plaintiff that defendants would dispossess the plaintiff from suit property forcibly.

4. It is pleaded that on 23.11.2014 defendants along with some other persons constituted an unlawful assembly and threatened the plaintiff and his servants to vacate the premises otherwise plaintiff would face dire consequences. It is pleaded that plaintiff came in settled possession of suit property on 6.5.2011 and did not default in payment of yearly lease rent and plaintiff has right to protect his settled possession from unlawful aggression. Prayer for decree of civil suit sought.

5. Per contra written statement filed on behalf of co-defendant No.1 pleaded therein that plaintiff did not approach the Court with clean hands and supressed the material facts. It is pleaded that suit has not been properly valued for the purpose of Court fee and jurisdiction and plaintiff filed the present suit to grab the property in illegal manner. It is pleaded that co-defendant No.1 had leased the premises in dispute to plaintiff for a period of three years w.e.f. May 2010 to May 2013 at the rate of Rs. 160000/- (Rupees one lac sixty thousand only) per annum on oral agreement and no written document was executed. It is pleaded that thereafter plaintiff voluntarily surrendered the premises and handed over the peaceful and vacant possession of premises to co-defendant No.1. It is pleaded that thereafter co-defendant No.1 has alienated the suit property to co-defendant No.2 and further pleaded that after execution of sale deed in favour of co-defendant No.2 co-defendant No.2 is in open hostile and peaceful possession of suit property. Prayer for dismissal of civil suit sought.

6. Per contra separate written statement filed on behalf of co-defendant No. 2 pleaded therein that plaintiff has got no title and locus standi to file present suit and suit of plaintiff is not maintainable. It is pleaded that plaintiff has no cause of action to file the suit and plaintiff is estopped to file the present suit by his act and conduct. It is pleaded that plaintiff did not approach the Court with clean hands and suppressed the material facts from Court. It is pleaded that plaintiff is not in possession of suit property and he is not entitled to any relief as sought. It is pleaded that possession of suit property is with co-defendant No.2 and further pleaded that co-defendant No. 2 has purchased the suit property by way of sale deed No. 287 of 2013 dated 15.5.2013 from co-defendant No.1. It is pleaded that plaintiff is not in settled possession of suit property and co-defendant No.2 is in settled possession of suit property. Prayer for dismissal of civil suit sought.

7. Plaintiff filed replication and re-asserted the alelgations mentioned in plaint. During the pendency of civil suit plaintiff filed application under Order 39 Rules 1 and 2 CPC and sought the interim relief till disposal of civil suit to the effect that defendants be

restrained from dispossessing the plaintiff from suit property except in due course of law. Plaintiff also sought ad-interim relief to restrain co-defendant No.1 from leasing out and renting out the suit property to some other person till disposal of civil suit.

8. Defendants filed response to application filed under Order 39 Rules 1 and 2 CPC pleaded therein that plaintiff is not in settled possession of suit property and suit property is sold by co-defendant No.1 to co-defendant No. 2 by way of registered sale deed No. 287 of 2013 dated 15.5.2013 before the Sub Registrar Manali. It is pleaded that possession was also delivered to co-defendant No. 2 and prayer for dismissal of ad-interim application filed under Order 39 Rules 1 and 2 CPC sought.

9. Learned trial Court dismissed application filed under Order 39 Rules 1 and 2 CPC on 13.8.2015. Thereafter plaintiff filed civil miscellaneous appeal No. 12 of 2015 under Order 43 Rule 1 of Code of Civil Procedure against order dated 13.8.2015 passed by learned Civil Judge (Junior Divison) Manali. On 27.8.2015 learned Additional District Judge Kullu H.P. appointed Mr. D.S. Thakur Advocate as Local Commissioner under Order 39 Rule 7 CPC with the consent of both the parties and directed the Local Commissioner to visit the spot and report about nature and possession and articles found inside the house in question existing on suit land with details in Court. Thereafter Local Commissioner submitted the report. No objections filed on Local Commissioner' report by any of the party. Thereafter learned Additional District Judge disposed of CMA No. 12 of 2015 on 8.9.2015. Learned Additional District Judge Kullu allowed the appeal and set aside the order of learned trial Court. Learned first appellant Court restrained the defendants, their agents from interfering and forcibly dispossessing the plaintiff from suit property till disposal of main civil suit.

10. Thereafter Sunil Kumar co-defendant No. 2 filed present petition under Article 227 of Constitution of India. Court heard learned Advocate appearing on behalf of petitioner and learned Advocate appearing on behalf of non-petitioners and Court also perused the entire record carefully.

11. Following points arise for determination in this petition:-

1. Whether petition filed under Article 227 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of petition?
2. Relief.

Findings upon point No.1 with reasons

12. Submission of learned Advocate appearing on behalf of the petitioner that lease deed dated 6.5.2011 is not registered instrument under Section 107 of Transfer of Property Act 1882 and same cannot be looked into for any purpose is partly answered in yes and is partly answered in no. It is prima facie proved on record that lease deed dated 6.5.2011 was executed for a period of twenty years w.e.f. 1.5.2011 to 30.4.2031. There is recital in lease deed that lease deed would be irrevocable for a period of twenty years. As per Section 107 of Transfer of Property Act 1882 lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent could be made only by a registered instrument. It is well settled law that if the lease for more than one year is not registered then same can be used for collateral purpose only i.e. possession. As per Section 105 of Transfer of Property Act 1882 lease of immovable property is transfer of right to enjoy such property for a certain time express or implied or in perpetuity in consideration of a price. As per Section 105 of Transfer of Property Act the transferor would be called lessor and transferee would be called lessee and price would be called premium and money, share, service or other thing would be called rent.

13. As per proviso of Section 49 of Registration Act 1908 unregistered document affecting immovable property can be looked for collateral purpose. Admittedly alleged lease deed placed on record is dated 6.5.2011 and period of lease is 20 years w.e.f. May 2011 to May 2031. There is recital in lease deed placed on record that possession of demised premises is already handed over to lessee by lessor.

14. Plea of co-defendant No.1 that lessee handed over the peaceful vacant possession of premises to co-defendant No. 1 is disputed by plaintiff. The fact whether possession of demised premises was handed over by lessee to lessor is conflicting issue of facts inter se the parties which cannot be decided at this stage of case. Same fact will be decided by learned trial Court after giving due opportunities to both the parties to lead evidence in support of their case by way of affirmative evidence and rebuttal evidence.

15. Submission of learned Advocate appearing on behalf of petitioner that after registration of sale deed No. 287 dated 15.5.2013 in consideration of ` 10 lacs (Rupees ten lacs only) co-defendant No. 2 namely Sunil Kumar is in settled possession of suit property and on this ground petition be accepted as a whole is partly answered in yes and partly in no. In written statement co-defendant No. 1 has admitted that lease was given to plaintiff for three years. There is no document placed on record in order to prove that plaintiff/lessee has voluntarily surrendered the possession of demised premises in favour of co-defendant No.1/lessor. There is no prima facie evidence on record that lessor had issued quit notice to the plaintiff/lessee relating to demised premises. On contrary lessee has pleaded that he is in settled possession of demised premises as of today in pleadings as well as affidavit filed by lessee. Alleged unregistered lease deed was executed on 6.5.2011 prior to sale deed in favour of co-defendant No.2.

16. Submission of learned Advocate appearing on behalf of petitioner that learned first Appellate Court has committed illegality by appointing the local commissioner under Order 39 Rule 7 CPC is also rejected being devoid of any force for the reasons hereinafter mentioned. There is recital in order sheet of learned first Appellate Court dated 27.8.2015 that local commissioner was appointed with consent of Advocates appeared on behalf of both parties. It is not expedient in the ends of justice to allow the petitioner to raise the objection before High Court for the first time contrary to consent given by learned Advocate appeared on behalf of petitioner before first appellate Court.

17. Even as per Order 39 Rule 7 CPC the Court may on application of any party to suit may appoint local commissioner for inspection in the ends of justice as Court thinks fit.

18. Submission of learned Advocate appearing on behalf of petitioner that lessee is not resident of Himachal Pradesh and he did not obtain prior permission under Section 118 of H.P. Tenancy and Land Reforms Act 1972 for execution of lease situated in Himachal Pradesh and on this ground this petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. As per proviso of Section 118(3) of H.P. Tenancy and Land Reforms Act 1972 lease can be executed in relation to part or whole of building without previous sanction of State Government. In the present case dispute inter se parties is relating to building only and dispute inter se parties is not relating to agricultural immovable property.

19. Submission of learned Advocate appearing on behalf of petitioner that there is no prima facie evidence on record in order to prove that lessee/plaintiff namely Big Apple Berry Hospitality is in settled possession of suit property and on this ground petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is

prima facie proved on record that with consent of parties learned first Appellate Court appointed local commissioner under Order 39 Rule 7 CPC on 27.8.2015. It is also proved on record that thereafter Local Commissioner submitted report placed on record. Court has carefully perused report of Local Commissioner placed on record which is quoted:-

Report of Local Commissioner

A. **Articles found in the premises:**

1. The Main Gate by the side of road was locked from inside and it was opened by Sunil Kumar.
2. The house in question is single storied concrete structure having four rooms and over the slab there is about 12 feet x 10 feet wooden open structure covered with metal sheets. Photo Mark(A)
3. The first Room was opened by Sunil Kumar and inside this first room there was a double bed with pair of mattresses, bed sheet and pair of pillows on it. There is attached bath room and a geyser was installed therein (Mark-B)
4. The second Room was opened by Sunil Kumar and inside this second room there was also a double bed with pair of mattresses, bed sheet and pair of pillows on it and six shirts were on the hanger. There is also an almirah wherein the lady purse and traveling bag were kept. There is attached bath room and a geyser was installed therein. (Mark C & D)
5. The third Room was opened by Sunil Kumar and inside this third room there was a sofa set and Tandur (Chimani) fixed with wall. There is attached bath room and a geyser was installed therein. (Mark E)
6. The forth room was opened by Sunil Kumar and inside this forth room there were two sofa chair, steel box and on a almirah there were give boilers and twelve pieces of steel glass and there is also attached kitchen wherein the LPG Gas stand along with gas cylinder with two boilers on it and cooker by the side of the gas stand were found. There was also a refrigerator unlocked and was found empty. There was also an almirah where empty bottles, plates and one baby feed box were placed in the shelf of the almirah. (Mark F,G,H,I & J)
7. Towards outside the forth room the dining table, four chairs and one wooden stand with box at the base filled with badminton racquets, glucose bottles and some medicines were found. On the back of the house there is one washing machine and two Nos of syntax water tank. (Mark K,L,M,N, and O)
8. On the room there is Gym articles i.e. one multipurpose exercise machine and one tread mill. (Mark P & Q)

Possession

On the date of visit at the spot i.e. on 27.8.2015 Sh. Gursimran S. Bhullar was standing outside the Main Gate by the side of the road and Sh.Sunil Kumar alongwith his family members and twelve Nos of young friends were inside the said main Gate, some of whom were standing, sitting and laying on the lawn. Sunil Kumar had also parked his car in front of the suit premises. Since the keys of all the aforesaid four rooms of the suit premises were with Sunil Kumar who

opened all the locks respectively as such it appears that Shri Sunil Kumar is in possession/occupation of the suit premises.

Nature :

All the locks in all the four rooms in the suit premises seems to have been replaced recently as the fresh marks of empty spaces qua the previous locks were visible at the spot. (Mark R, S, T & U). In room No. 3 Sh.Gursimran S Bhullar pointed out and identified where the LCD was installed and where the locker was fixed which were found missing. The stand of LCD on the wall was intact and the mark of locker in the almirah were also found at the spot (Mark V & W) In the kitchen there was no cooking material and Sh. Gursimran S Bhullar told that microwave oven was kept on shelf but the same was found missing. Sh. Gursimran S Bhullar produced the photostat copies of Bills qua the articles purchased and kept in the said house such as geysers, refrigerator, gym articles i.e. multipurpose exercise machine and tread mill, which were got tallied by me on the spot with the said articles and found to be in order. (Mark X, Y and Z).

Since all the four locks of said four rooms of suit premises seems to have been replaced recently as submitted above and the fact that articles like geyser, refrigerator, multipurpose exercise machine and tread mill purchased by Sh. Gursimran S Bhullar referred herein above found in the suit premises and the fact that the articles such as badminton racquets, glucose bottles and some medicines were found inside one wooden stand with box at the base adjoining to the dining table were found the same which Sh. Gursimran S Bhullar deposed/told before opening the same and the fact that no cooking material was found in the kitchen and the fact that the stand of LCD was intact in the wall of the room as submitted above and the fact that Sh. Gursimran S Bhullar pointed out and identified the location of articles kept in the suit premises as such in view of the aforesaid facts besides others it appears that Sh. Gursimran S Bhullar has definitely been in occupation/possession of the suit premises.

Sd/-
Local Commssioner
Dt.31/8/2015 (D.S. Thakur)
Advocate
Distt. Courts Kullu HP

20. Local Commissioner has specifically framed para of possession in local commissioner report. Court has carefully perused para of possession mentioned in local commissioner report. There is recital in the para of possession mentioned in local commissioner report that when local commissioner visited the spot on 27.8.2015 plainitff Big Apple Berry Hospitality through Gursimran S Bhullar was standing outside main gate by side of road and co-defendant No. 2 Sunil Kumar along with his family members and twelve numbers of young friends were inside the main gate. Local Commissioner has specifically mentioned that out of twelve young persons some of them were sitting, standing and some of them were laying on lawn. Local Commissioner has specifically mentioned in report that co-defendant No.2 Sunil Kumar also parked his car in front of suit premises. Local

Commissioner has further submitted in report that all keys of four rooms of suit premises were in possession of co-defendant No. 2 Sunil Kumar. Local Commissioner has further submitted in report that co-defendant No. 2 Sunil Kumar opened all locks and it appears that co-defendant No. 2 Sunil Kumar is in possession and occupation of suit premises.

21. Local Commissioner has further submitted in his report that all locks of four rooms of suit premises were replaced recently as there were fresh marks of empty spaces qua the previous locks visible at the spot. Local Commissioner has specifically mentioned in report that plaintiff produced photocopy of bill qua the articles against geysers, refrigerator, gym articles i.e. multipurpose exercise machine and tread mill which tallied by him at the spot and found to be in order.

22. Local Commissioner has further submitted in report that locks of four rooms of suit premises were replaced recently and fact that articles like geyser, refrigerator, multipurpose exercise machine and tread mill were found in suit premises. There is further recital in local commissioner report that articles such as badminton racquets, glucose bottles and some medicines were found inside one wooden stand with box adjoining the dining table and fact that no cooking material was found in kitchen and the fact that LCD was intact in wall of room. It appears that plaintiff Gursimran S Bhullar has definitely been in occupation/possession of suit premises.

23. As per local commissioner report placed on record it is prima facie proved on record that co-defendant No. 2 Sunil Kumar is in possession/occupation of suit premises because he opened all locks of rooms. As per local commissioner's report it is also prima facie proved on record that Gursimran S Bhullar plaintiff is in constructive possession of demised premises by way of geysers, refrigerator, gym articles, multiple exercise machines, tread mill, badminton racquets, glucose bottles and medicines etc.

24. No objections filed by any party upon local commissioner's report and none of the parties challenged the local commissioner's report by way of filing objections before first appellate Court prior to the disposal of civil miscellaneous appeal No.12 of 2015 by learned first Appellate Court on dated 8.9.2015. Report of Local Commissioner has attained stage of finality.

25. It is well settled law that at the time of disposing of application filed under Order 39 Rules 1 and 2 CPC Court is to decide following factors. (1) Prima facie case. (2) Balance of convenience. (3) Irreparable loss which cannot be compensated in terms of money. In present case both parties have claimed their settled possession over suit premises. As per report of local commissioner it is prima facie proved on record that co-defendant No. 2 Sunil Kumar is in possession of suit premises and as per local commissioner's report it is also prima facie proved on record that Big Apple Berry Hospitality Pvt. Ltd. through its Director Gursimran S Bhullar is also in constructive possession of demised premises by way of articles mentioned in local commissioner report. it is expedient in the ends of justice to direct both the parties to maintain status quo as of today as mentioned in local commissioner's report till disposal of civil suit by learned trial Court on merits.

26. Judicial findings that locks of room changed by defendant after institution of civil suit in absence of plaintiff cannot be given at this stage because same is issue of fact and it is well settled law that issue of facts cannot be decided in judicial proceedings unless opportunity is not granted to parties to adduce evidence in affirmative and rebuttal.

27. It is well settled law that person who is in settled possession can be evicted only in due course of law. ***See 1994(1) SLC 238 (HP) titled Neelam Kumari vs. Temple of Devi Ambika. See 1992(1) SLC 320 titled Dalip Singh vs. State of H.P. See JT 1989(3)***

SC 489 (DB) titled Krishan Ram Mahale vs. Mrs. Shobha Venkat Rao. In view of above stated facts point No.1 is answered partly in yes and partly in no.

Point No.2 (Relief)

28. In view of findings on point No. 1 above petition filed under Article 227 of Constitution of India is partly allowed and order of learned first Appellate Court is modified to the extent that both parties will maintain status quo qua nature and possession of suit premises known as Manu Samriti Home comprised in Khata No. 147 Khatauni No. 517 Khasra Nos. 251, 252 and 253 situated in Muhal Manali as per jamabandi for the year 2001-2002 till the disposal of civil suit No. 106 of 2014 titled Big Apple Berry Hospitality Pvt. Ltd. vs. Rakesh Kumar and another by learned trial Court. Local Commissioner' report placed in CMA No. 12 of 2015 titled Big Apple Berry Hospitality Pvt. Ltd. vs. Rakesh Kumar and another decided on 8.9.2015 will form part and parcel of order. Learned trial Court will dispose of civil suit No. 106 of 2014 expeditiously within three months after receipt of case file. No order as to costs. Files of learned trial Court and learned first Appellate Court be sent back forthwith along with certified copy of order. Parties are directed to appear before learned trial Court on 18.3.2016. Observations will not effect the merits of civil suit in any manner and will be strictly confined for disposal of present petition filed under Article 227 of Constitution of India. CMPMO No. 393 of 2015 stands disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE RAJIV SHARMA, J.

Ajay Singh ...Appellant.
Versus
Anubala ...Respondent.

FAO (HMA) No. : 499 of 2015
Reserved on : 24.2.2016
Decided on: 25.2.2016

Hindu Marriage Act, 1955- Section 13- Husband filed a petition for divorce pleading that the wife started torturing him mentally by not obeying his commands- she was also taken to Dharamshala and thereafter, she refused to join the company of the husband- wife denied the allegations- held, that allegations made by the appellant against the respondent are vague and sketchy – no specific incidence of defiance by wife was quoted – husband had not permitted the wife to live with him and he has deserted the wife- two years had also not elapsed from the date of filing of the petition of divorce- District Judge had rightly dismissed the petition- appeal dismissed. (Para-12 to 19)

Cases referred:

Bipinchandra Jaisinghbai Shah versus Prabhavati, AIR 1957 SC 176
Lachman Utamchand Kirpalani versus Meena alias Mota, AIR 1964 SC 40
Rohini Kumari versus Narendra Singh, AIR 1972 SC 459
Shobha Rani v. Madhukar Reddi AIR 1988 SC 121
Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511
Ashok Kumar Jain vs. Sumati Jain, AIR 2013 SC 2916

For the Appellant : Mr. Ramakant Sharma, Advocate.
For the Respondent : Nemo.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge:

This appeal is instituted against the judgment dated 3.7.2015 rendered by the learned District Judge, Hamirpur in HMA No. 96 of 2012.

2. "Key facts" necessary for the adjudication of this appeal are that the appellant has filed a petition under section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955. The marriage between the parties was solemnized on 29.4.2004 as per Hindu rites and ceremonies. Appellant is serving in the Indian Army. He had taken the respondent to Jammu. Respondent became defiant and her behaviour was indifferent towards him. Respondent started torturing the appellant mentally by not obeying his commands. She was also taken to Dharamshala. Thereafter, she refused to join the company of the appellant. The petition was filed seeking divorce on the ground of cruelty and desertion.

3. The petition was contested by the respondent. Respondent has denied the allegations made in the petition. The allegations of mis-behaviour and defiant conduct were specifically denied.

4. Issues were framed by the District Judge on 8.3.2013. The District Judge dismissed the petition on 3.7.2015. Hence, the present appeal.

5. PW-1 Pritam Chand has deposed that the matter was brought before the Pradhan Gram Panchayat, Bajuri vide Ex.PW-1/A. Statements were recorded. However, the matter was dropped as the proceedings were pending before the learned District Judge under section 13 (1) (ia) (ib) of the Hindu Marriage Act.

6. PW-2 Anurag is the landlord of the appellant at Dharamshala. According to him, the relations between the parties were not cordial.

7. Appellant has appeared as PW-3. According to him, respondent proclaimed that she would not conceive a child. Respondent stayed at Dharamshala and they used to go to Kathua to take medicine. His mother has undergone bypass surgery. Respondent used to say that she would consume poison and falsely implicate the appellant.

8. RW-1 Surinder Kumar has deposed that respondent and her uncle, maternal uncle and mother had come with a prayer that she wanted to live in her in-laws house but the appellant was not ready to accept her. Thus, she was forced to live with her parents since June, 2012.

9. RW-2 Soma Devi has deposed that respondent used to visit her in-laws house. She used to say that her parents-in-law used to harass her. She had assured her to talk to the appellant.

10. RW-3 Meera Devi has deposed that respondent used to weep and the appellant had left her in her parental house. He has not tried to take her back.

11. Respondent has appeared as RW-6. According to her, she has never left the company of the appellant. Appellant has exchanged letters vide Ex.R-2 to Ex.R-7. They had physical relations till 2012. She has never refused to cohabit with the appellant. She was ready to join the company of the appellant.

12. Allegations made by the appellant against the respondent are vague and sketchy. The only allegation against the respondent is that she was not obeying his commands. No specific instance has been quoted by the appellant of any incident whereby the respondent has defied the appellant. It has come on record that the relations between the parties were cordial till 2012. It has also come on record that in fact it is the appellant who is not permitting the respondent to live with him and he has deserted the respondent. It has come in the statement of RW-6 Anubala that she was ready and willing to live with the appellant at the time of recording of her statement. The appellant cannot be permitted to take advantage of his own wrongs.

13. Now, as far as the plea of desertion is concerned, according to the appellant, respondent has deserted him in the year 2012, but the petition was filed on 12.6.2012. There was no question of desertion since two years had not elapsed from the date of filing of petition for divorce. Learned District Judge has come to a right conclusion that respondent was being harassed for not conceiving a child. As per the statement of PW-4 Dr. Sanjay Bhat, respondent was capable to conceive a child since her uterus and ovaries were normal.

14. Their Lordships of the Hon'ble Supreme Court in ***Bipinchandra Jaisinghbai Shah*** *versus* ***Prabhavati***, AIR 1957 SC 176 have held that two essential conditions must be there to prove the desertion: (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Their Lordships have held that desertion is a matter of inference to be drawn from the facts and circumstances of each case. Their Lordships have held as under:

> "What is desertion? "Rayden on Divorce" which is a standard work on the subject at p.128 (6th Edn.) has summarized the case-law on the subject in these terms:-
>
> "Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party".
>
> The legal position has been admirably summarized in paras 453 and 454 at pp. 241. to 243 of Halsbury's Laws of England (3rd Edn.), VoL 12, in the following words:-
>
> "In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases. Desertion is not the withdrawal from a place but from the state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.
>
> The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least three years immediately preceding the presentation of the petition where the

offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. Desertion is a continuing offence".

Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances to each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co- exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the (animus deserendi) coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied of bringing cohabitation permanently to a close. The law in England has prescribed a three years period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decides to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end, and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial

offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court. In this connection the following observations of Lord Goddard CJ. in the case of Lawson v. Lawson, 1955-1 All E R 341 at p. 342(A), may be referred to :-

"These cases are not cases in which corroboration is required as a matter of law. It is required as a matter of precaution..... "

With these preliminary observations we now proceed to examine the evidence led on behalf of the parties to find out whether desertion has been proved in this case and, if so, whether there was a bona fide offer by the wife to return to her matrimonial home with a view to discharging marital duties and, if so, whether there was an unreasonable refusal on the part of the husband to take her back.

15. Their Lordships of the Hon'ble Supreme Court in ***Lachman Utamchand Kirpalani*** *versus* ***Meena alias Mota***, AIR 1964 SC 40 have held that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. Their Lordships have further held that the burden of proving desertion - the 'factum' as well as the 'animus deserendi' is on the petitioner and he or she has to establish beyond reasonable doubt to the satisfaction of the Court, the desertion throughout the entire period of two years before the petition as well as that such desertion was without just cause. Their Lordships have held as under:

"The question as to what precisely constitutes "desertion" came up for consideration before this Court in an appeal for Bombay where the Court had to consider the provisions of S. 3(1) of the Bombay Hindu Divorce Act, 1947 whose language is in pari materia with that of S. 10(1) of the Act. In the judgment of this Court in Bipin Chandra v. Prabhavati, 1956 SCR 838; ((S) AIR 1957 SC 176) there is an elaborate consideration of the several English decisions in which the question of the ingredients of desertion were considered and the following summary of the law in Halsbury's Laws of England (3rd Edn.) Vol. 12 was cited with approval :

"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the order without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases." The position was thus further explained by this Court. "If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently the cease cohabitation, it will not amount to desertion. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there, (1) the factum of separation, and (2) the intention of bring cohabitation permanently to an end (animus deserndi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.. . . . . Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same

inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time." Two more matters which have a bearing on the points in dispute in this appeal might also be mentioned. The first relates to the burden of proof in these cases, and this is a point to which we have already made a passing reference. It is settled Law that the burden of proving desertion -

the "factum" as well as the "animus deserendi" - is on the petitioner; and he or she has to establish beyond reasonable doubt, to the satisfaction of the Court, the desertion throughout the entire period of two years before the petition as well as that such desertion was without just cause. In other words, even if the wife, where she is the deserting spouse, does not prove just cause for her living apart, the petitioner-husband has still to satisfy the Court that the desertion was without just cause. As Dunning, L. observed : (Dunn v. Dunn (1948) 2 All ER 822 at p. 823) :

"The burden he (Counsel for the husband) said was on her to prove just cause (for living apart). The argument contains a fallacy which has been put forward from time to time in many branches of the law. The fallacy lies in a failure to distinguish between a legal burden of proof laid down by law and a provisional, burden raised by the state of the evidence . . . . . The legal burden throughout this case is on the husband, as petitioner, to prove that this wife deserted him without cause. To discharge that burden, he relies on the fact that he asked her to join him and she refused. That is a fact from which the court may infer that she deserted him without cause, but it is not bound to do so. Once he proves the fact of refusal, she may seek to rebut the inference of desertion by proving that she had just cause for her refusal; and, indeed, it is usually wise for her to do so, but there is no legal burden on her to do so. Even if she does not affirmatively prove just cause, the Court has still, at the end of the case, to ask itself: Is the legal burden discharged? Has the husband proved that she deserted him without cause? Take this case. The wife was very deaf, and for that reason could not explain to the Court her reasons for refusal. The judge thereupon considered reasons for her refusal which appeared from the facts in evidence, though she had not herself stated that they operated on her mind. Counsel for the husband says that the judge ought not to have done that. If there were a legal burden on the wife he would be right, but there was none. The legal burden was on the husband to prove desertion without cause, and the judge was right to ask himself at the end of the case: Has that burden been discharged?"

16. Their Lordships of the Hon'ble Supreme Court in ***Smt. Rohini Kumari versus Narendra Singh***, AIR 1972 SC 459 have explained the expression 'desertion' to mean the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage.

"Under Section 10 (1) (a) a decree for judicial separation can be granted on the ground that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. According to the Explanation the expression "desertion" with its grammatical variation and cognate expression means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage. The argument raised on behalf of the wife is that the husband had contracted a second marriage on May 17, 1955. The petition for judicial separation was filed on August 8, 1955 under the Act which came into force on May 18, 1955. The burden under the section was on the husband to establish that the wife had deserted him for a continuous period of not less than two years immediately preceding the presentation of the petition. In the presence of the Explanation it could not be said on the date on which the petition was filed that the wife had deserted the husband without reasonable cause because the latter had married Countess Rita and that must be regarded as a reasonable cause for her staying away from him. Our attention has been invited to the statement in Rayden on Divorce, 11th Edn. Page 223 with regard to the elements of desertion According to that statement for the offence of desertion there must be two elements present on the side of the deserting spouse namely, the factum, i.e. physical separation and the animus deserendi i.e. the intention to bring cohabitation permanently to an end. The two elements present on the side of the deserted spouse should be absence of consent and absence of conduct reasonably causing the deserting spouse to form his or her intention to bring cohabitation to an end. The requirement that the deserting spouse must intend to bring cohabitation to an end must be understood to be subject to the qualification that if without just cause or excuse a man persists in doing things which he knows his wife probably will not tolerate and which no ordinary woman would tolerate and then she leaves, he has deserted her whatever his desire or intention may have been. The doctrine of "constructive desertion" is discussed at page 229. It is stated that desertion is not to be tested by merely ascertaining which party left the matrimonial home first. If one spouse is forced by the conduct of the other to leave home, it may be that the spouse responsible for the driving out is guilty of desertion. There is no substantial difference between the case of a man who intends to cease cohabitation and leaves the wife and the case of a man who with the same intention compels his wife by his conduct to leave him."

17. Their Lordships of the Hon'ble Supreme Court in the case of **Shobha Rani v. Madhukar Reddi** reported in **AIR 1988 SC 121** have explained the term "cruelty" as under:

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel

treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. Insuch cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon, [1966] 2 All E.R. 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty."

18. Their Lordships of the Hon'ble Supreme Court in **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511**, have enumerated some instances of human behaviour, which may be important in dealing with the cases of mental cruelty, as under:

"98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture

through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where

the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

19. Their Lordships of the Hon'ble Supreme Court in ***Ashok Kumar Jain*** vs. ***Sumati Jain***, AIR 2013 SC 2916 have held that it is always open to the Court to examine whether the person seeking divorce "is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief." On such examination if it is so found that the person is taking advantage of his or her wrong or disability it is open to the Court to refuse to grant relief.

20. Accordingly, in view of observation and discussion made hereinabove, there is no merit in the appeal and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.

****

BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Chaman Lal son of Bhikham and others ....Revisionists/Contemnor

Versus

Sunder Lal son of Chander Mani ....Non-Revisionist/non-contemnor

Civil Revision No. 19 of 2015
Order Reserved on 24th December 2015
Date of Order 25th February 2016

Code of Civil Procedure, 1908- Order 16 Rule 1- Order 39 Rule 2-A- Applicants filed an application pleading that respondents/revisionists had intentionally and voluntarily violated the interim order of Court –respondents denied these allegations- when the case was listed for the evidence of the respondents, name of 'S' an Advocate was mentioned as witness- 'S' refused to accept the summons on the ground that he is an Advocate for the applicant-

when the Advocate was present, he was not examined on the ground that he is counsel for the applicant- aggrieved from the order, a revision was preferred- held, that a person who intends to summon a witness should state the purpose for which the witness is proposed to be summoned – respondent had not mentioned the purpose of examining the Advocate- it was stated in the Revision that the Advocate was being examined to prove the pleading filed in the Court- the pleadings signed and filed in Courts are not privileged communications- provision of privileged communication is not applicable to the pleadings- revision allowed and the respondent permitted to examine the advocate for proving the pleadings.

(Para-9 to 13)

For the Revisionists: Ms. Ritta Goswami, Advocate.
For the Non-Revisionist: Mr. Sanjeev Kuthiala Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present civil revision petition is filed against the order dated 19.7.2013 passed by learned Civil Judge (Junior Division) Mandi H.P. whereby learned trial Court refused to examine Shri Shailesh Sharma Advocate as witness.

Brief facts of the case

2. Sunder Lal non-revisionist filed application under Order 39 Rule 2-A of Code of Civil Procedure pleaded therein that revisionists have intentionally and voluntarily violated the interim order of Court dated 24.4.2004 passed in CMA No. 46-IV of 2014. Non-revisionist sought the relief that property of revisionists be attached and sold and revisionists be also detained in civil imprisonment.

3. Per contra response filed on behalf of revisionists pleaded therein that revisionists did not violate the order of Court as alleged and further pleaded that petition under Order 39 Rule 2-A CPC filed without any cause of action.

4. Learned trial Court as per pleadings of parties framed following issues on 14.9.2007:-

1. Whether revisionists have willfully disobeyed order dated 24.4.2004? OPA
2. Relief.

5. Thereafter learned trial Court listed the case for non-revisionist evidence. Learned trial Court closed the evidence of non-revisionist on 13.3.2013. Thereafter learned trial Court listed the case for revisionists evidence. Thereafter revisionists filed application for depositing TA and DM of witnesses of revisionists in which the name of Shailesh Kumar Advocate District Court Mandi was mentioned as witness. Learned trial Court directed Civil Nazir to deposit the TA and DM and thereafter TA and DM to the tune of Rs. 200/-(Rupees two hundred only) was deposited on 30.5.2015. Thereafter summon was issued to learned Advocate Shri Shailesh Kumar Sharma by learned trial Court. Sailesh Kumar Sharma learned Advocate District Court complex Mandi refused to accept the summon on the ground that he is Advocate for non-revisionist. Thereafter on dated 19.7.2013 Shri Sailesh Kumar learned Advocate was present before the trial Court but learned trial Court did not examine the witness on the ground that witness Shri Sailesh Kumar is counsel of non-revisionist.

6. Feeling aggrieved against the order dated 19.7.2013 present civil revision petition is filed.

7. Court heard learned Advocate appearing on behalf of revisionists and learned Advocate appearing on behalf of non-revisionist and Court also perused entire record carefuly.

8. Following points arise for determination in civil revision petition:-

1. Whether civil revision is liable to be accepted as mentioned in memorandum of grounds of revision petition?

2. Relief.

Findings upon point No.1 with reasons

9. It is proved on record that revisionists want to examine learned Advocate Shailesh Sharma engaged by non-revisionist before learned trial Court in proceedings filed under Order 39 Rule 2-A CPC. It is well settled law that as per Order XVI of Code of Civil Procedure 1908 a party who intends to summon a witness should state the purpose for which the witness is proposed to be summoned. Court has carefully perused the application filed by revisionists for summoning learned Advocate namely Sailesh Kumar Sharma. In application revisionists did not mention the purpose for which they intend to examine learned Advocate Shailesh Sharma. However, in revision petition the revisionists have stated that revisionists intend to examine the learned Advocate Shailesh Sharma of non-revisionist for the limited purpose only i.e. to prove the pleadings filed in Court.

10. Court is of the opinion that pleadings signed and filed in Courts are not privileged professional communications under Section 126 of Indian Evidence Act 1872. Revisionists intend to prove only pleadings signed by learned Advocate Shri Shailesh Sharma and filed in Court.

11. The protection of disclosing professional communication is given relating to any professional communication which falls within definition of Section 126 of Indian Evidence Act 1872. It is held that privilege of pforessional communication to the Advocate is not given relating to signed pleadings filed in Court.

12. At the time of issuing summon learned trial Court although permitted the revisionists to file the diet money and travelling allowance for learned Advocate Shailesh Sharma but learned trial Court did not direct revisionists to mention specific purpose for which learned Advocate was to be summoned in Court as per mandatory requirement of order XVI of Code of Civil Procedure 1908. It is well settled law that party cannot be penalized for procedural irregularity of Court. In view of above stated facts point No.1 is answered partly in yes.

Point No. 2 (Relief)

13. In view of findings on point No.1 above revision petition is partly allowed and revisionists are permitted to examine learned Advocate namely Shailesh Kumar Sharma before learned trial Court only for limited purpose i.e. to prove the pleadings signed by Mr. Sailesh Kumar Sharma Advocate filed in Court. It is further ordered that no question will be asked from learned Advocate namely Mr. Sailesh Kumar Sharma which is prohibited as professional communications under Section 126 of Indian Evidence Act 1872. Parties are directed to appear before learned trial Court on ***18th March 2016.*** Observations will not effect the merits of case in any manner and will be strictly confined to disposal of civil revision petition. File of learned trial Court along with certified copy of order be sent back forthwith. No order as to costs. Civil revision petition is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

CWPIL No. 10 of 2015
a/w CWP No. 3511 of 2015
and CWPIL No. 1 of 2016
Order reserved on: 23.02.2016
Date of order: 25.02.2016

CWPIL No. 10 of 2015

Court on its own motion ...Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents.

.....

CWP No. 3511 of 2015

Smt. Namita Maniktala ...Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents.

.....

CWPIL No. 1 of 2016

Court on its own motion ...Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents.

Constitution of India, 1950- Article 226- Deaths caused due to the jaundice outbreak in Shimla and Solan –- jaundice outbreak was the outcome of the inaction of the officers/officials/authorities and other concerned persons- earlier directions were issued to submit the compliance report and it was found that Lift Water Supply Scheme Ashwani Khad was not up to the mark- a suo moto cognizance was taken by the Court - Government had appointed a Special Investigating Team (SIT) for investigating into the matter- Investigating Agency and the State Government have virtually admitted that water from LWSS Ashwani Khad was polluted, contaminated, dirty and a cause for jaundice outbreak- direction issued for creation of post and statutory body, to be manned by a competent authority and members to deal with entire water supply system of Shimla and to submit compliance report after every two weeks- Investigating Officer has reported that only class-IV employees were checking the water supply from LWSS Ashwani Khad and the higher authorities had not taken any interest- they had not even inspected Ashwani Khad and the officers of the Municipal Corporation were also negligent/careless because they had not properly managed the Sewage Treatment Plants at Malyana and Dhalli- contractor for operation and maintenance of the STPs at Lal Pani, Dhalli, Sanjauli-Malyana, Summerhill and North Disposal had not taken any steps for the proper operation and maintenance of STPs- direction issued to the SIT to take investigation to its logical end by pinpointing responsible/involved officers from the year 2007- Secretary (IPH) had filed contradictory affidavit- District Magistrates, Superintendents of Police and the authorities concerned directed to implement the provisions of Food Safety and Standards Act- Principal Secretary (Education) commanded to direct all the educational institutions to follow the provisions of The Food Safety and Standards Act- Chief Medical Officers directed to furnish the details of all the persons, who are/were admitted in the hospitals, are/were under treatment because of jaundice along with the details of all those persons who had succumbed to the jaundice outbreak- Engineers of IPH, Department directed to show cause as to why they should not be dealt with in terms of the mandate of Contempt of Courts Act and prosecuted for filing

false affidavits before the Court and for misleading the Court- interim compensation of Rs. 2 lacs awarded to the legal representatives of each of the deceased. (Para-1 to 72)

Cases referred:

Delhi Water Supply & Sewage Disposal Undertaking and another versus State of Haryana and others, (1996) 2 Supreme Court Cases 572

State of Orissa versus Government of India & Anr., AIR 2009 SC (Supp) 261

U.P. Pollution Control Board versus Dr. Bhupendra Kumar Modi and another, (2009) 2 Supreme Court Cases 147

Chief Engineer & Ors. versus Mst. Zeba, II (2005) ACC 705

CWPIL No. 10 of 2015

Present: Mr. Bipin C. Negi, Senior Advocate, as Amicus Curiae, with Mr. Pranay Pratap Singh, Advocate.

Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General, for respondent No. 1.

Mr. Hamender Chandel, Advocate, for respondent No. 2.

Mr. Satyen Vaidya, Senior Advocate, with Mr. Vivek Sharma, Advocate, for respondent No. 3.

CWP No. 3511 of 2015

Mr. Surender Thakur, proxy counsel for the petitioner.

Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1, 2 and 5.

Mr. Hamender Chandel, Advocate, for respondent No. 3.

Mr. Naresh K. Sood, Senior Advocate, with Ms. Charu Gupta, Advocate, for respondent No. 4.

CWPIL No. 1 of 2016

Mr. Ramakant Sharma, Senior Advocate, as Amicus Curiae, with Ms. Soma Thakur, Advocate.

M/s. R.L. Sood & Ms. Jyotsna Rewal Dua, Senior Advocates, with Mr. Surender Thakur, Advocate.

Mr. Ajay Mohan Goel, Advocate, for the intervener.

Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Additional Advocate General, and Mr. J.K. Verma, Deputy Advocate General, for the respondents-State.

Mr. Hamender Chandel, Advocate, for respondent No. 5.

Mr. Naresh K. Sood, Senior Advocate, with Ms. Charu Gupta, Advocate, for respondent-State Pollution Control Board.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Water is a gift of God and it is the duty of everyone to maintain its sanctity. It is unfortunate that some persons/ officers/officials are playing with the gift of God and

because of their negligence, carelessness and other ulterior motives, the water became dirty, contaminated and polluted, which has affected public in general.

2. The Apex Court in the case titled as **Delhi Water Supply & Sewage Disposal Undertaking and another versus State of Haryana and others,** reported in **(1996) 2 Supreme Court Cases 572,** held as under:

> *"1. Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed to an advantageous position are allowed to use the water for non-drinking purposes. A river has to flow through some territory; and it would be travesty of justice if the upper-riparian States were to use its water for purposes like irrigation, denying the lower riparian States the benefit of using the water even for quenching the thirst of its residents."*

3. The Apex Court has also held that right of water is a part of Right of Life guaranteed by Article 21 of the Constitution of India in the case titled as **State of Orissa versus Government of India & Anr.,** reported in **AIR 2009 SC (Supp) 261.** It would be profitable to reproduce relevant portion of para 43 of the judgment herein:

> *"43. In my opinion the right to get water is a part of right to life guaranteed by Article 21 of the Constitution....."*

4. Keeping in view the alarming circumstances prevailing in the entire State of Himachal Pradesh in general and particularly, in Shimla & Solan Districts coupled with the deaths caused due to the jaundice outbreak, which is outcome of the inaction of the officers/officials/authorities and other concerned persons, the Court has to come down heavily and to pass appropriate orders, as it may deem fit and proper.

5. In the case titled as **U.P. Pollution Control Board versus Dr. Bhupendra Kumar Modi and another,** reported in **(2009) 2 Supreme Court Cases 147,** the Apex Court held as under:

> *"In the case on hand which is also similar to Mohan Meakins Ltd. had commenced its journey in the year 1985, nonetheless lapse of such long period cannot be a reason to absolve the respondents from the trial. In a matter of this nature, particularly, when it affects public health if it is ultimately proved, courts cannot afford to deal lightly with cases involving pollution of air and water. The message must go to all concerned persons whether small or big that the courts will share the parliamentary concern and legislative intent of the Act to check the escalating pollution level and restore the balance of our environment. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts on the public health at large, should be dealt with strictly de hors to the technical objections. Since escalating pollution level of our environment affects on the life and health of human beings as well as animals, the courts should not deal with the prosecution for offences under the pollution and environmental Acts in a causal or routine manner."*

6. This Court has taken cognizance of the issue earlier in the year 2007 in **CWP No. 441 of 2007,** titled as **Tarsem Bharti and another versus State of Himachal Pradesh**

and another, has passed interim directions from time to time and finally disposed of the writ petition vide judgment and order, dated 2nd December, 2011. It is apt to reproduce the operative portion (para 2) of the judgment herein:

> *"2. It is submitted by the learned counsel for the petitioners that in view of the orders passed by this Court in this writ petition and the steps taken by the duty holders, this writ petition can be disposed of reserving liberty to the petitioners or such other persons to approach this Court if required at later stage. Ordered accordingly. The writ petition is disposed of. Interlocutory applications are also disposed of. All the interim orders will form part of the judgment."*

7. In the year 2014, fresh writ petition, being **CWP No. 4122 of 2014,** titled as **Ravinder Makhaik versus State of H.P. & others,** came to be filed by the affected persons after noticing the failure of the officials/ officers/agencies and other concerned persons, was disposed of vide judgment and order, dated 18th September, 2014. It is apt to reproduce para 5 of the judgment herein:

> *"5. Keeping in view the judgment (supra) read with the reply filed on behalf of the respondents, we deem it proper to direct the respondents to do the needful. The learned Advocate General has filed a communication, dated 11.07.2014, across the Board, made part of the file. The respondents to do the needful in terms of the communication (supra) and the reply, after every three months ad report compliance before the Registrar (Judicial)."*

8. It appears that the respondents have not filed the status/compliance reports, as directed and required in terms of the directions contained in the judgment.

9. On 11th June, 2015, this Court took *suo motu* cognizance of the scarcity of water in Shimla town, was diarized as CWPIL No. 10 of 2015 and the respondents were directed to file compliance report. Detailed orders have been made in CWPIL No. 10 of 2015. Mr. Bipin C. Negi, learned Senior Counsel, was appointed as Amicus Curiae, who gave suggestions how to ensure proper supply of water, that too, pure and without any contamination.

10. The Municipal Corporation has already filed the response to the suggestions, has virtually accepted the suggestions and is ready to do the needful.

11. Ms. Anuradha Thakur, present Secretary (IPH) to the Government of Himachal Pradesh, has filed the status report/response to the suggestions, which is composite one, relating to both the Public Interest Litigations i.e. CWPILs No. 10 of 2015 and 1 of 2016, in the open Court on 23rd February, 2016.

12. A writ petition, being CWP No. 3511 of 2015 also came to be filed by Mr. Rajnish Maniktala, Advocate, and, after noticing that by and large, the issues involved were same, CWP No. 3511 of 2015 was ordered to be clubbed with CWPIL No. 10 of 2015.

13. Unfortunately, in the month of December, 2015, there was jaundice outbreak and after going for the tests, it was found that the Lift Water Supply Scheme Ashwani Khad (for short "LWSS Ashwani Khad") was not upto the mark, due to which the residents of Shimla and Solan were/are affected/suffering.

14. On 4th January, 2016, the Court took *suo motu* cognizance, came to be diarized as CWPIL No. 1 of 2016, Mr. Ramakant Sharma, learned Senior Counsel, was

appointed as Amicus Curiae and the respondents were directed to file status/compliance reports.

15. The respondents have filed two sets of status reports. Learned Amicus Curiae responded to the same and filed suggestions. Learned Advocate General sought time to file fresh status report and also to respond to the suggestions made by the learned Amicus Curiae. The matter was ordered to be listed on 22nd February, 2016.

16. The Court was on winter recess/winter vacation and on the very first day of the opening of the Court, the matter was taken up. It was stated that so many persons have died including two practicing Advocates and wife of an Advocate leaving behind four days' old baby.

17. It was also stated that a number of people are suffering and are admitted in hospitals. Further stated that some have died in the hospitals at Himachal Pradesh and some have died at PGI Chandigarh.

18. It was also stated that the Government has taken serious note of the issue and appointed a Special Investigating Team (for short "SIT") headed by Additional Superintendent of Police (Rural) Shimla.

19. Learned Advocate General was directed to file details of the investigation with a command to cause presence of the Investigating Officer heading the SIT. The parties were also requested to furnish the details of the persons, who have died due to jaundice and the matter was posted for 23rd February, 2016.

20. On 23rd February, 2016, learned Advocate General, filed the status report, dated 22nd February, 2016, in the case FIR No. 03/16, dated 6th January, 2016, registered under Sections 269, 270, 277, 336, 326, 420, 120-B of the Indian Penal Code (for short "IPC") and Sections 43 & 44 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "Act of 1974") at Police Station Dhalli, District Shimla. He has also filed the compliance report made by the present Secretary (IPH) to the Government of Himachal Pradesh, which is reply to the status report in CWPIL No. 1 of 2016 and also response to the suggestions made by Mr. Bipin C. Negi, learned Amicus Curiae in CWPIL No. 10 of 2015 and Mr. Ramakant Sharma, learned Amicus Curiae in CWPIL No. 1 of 2016.

21. While going through the response, it appears that the Investigating Agency and the State Government, i.e. the present Secretary (IPH), have virtually admitted that the water from LWSS Ashwani Khad was polluted, contaminated, dirty and a cause for jaundice outbreak.

22. Before we pass appropriate orders in CWPIL No. 1 of 2016, we deem it proper to deal with CWPIL No. 10 of 2015 and CWP No. 3511 of 2015.

CWPIL No. 10 of 2015 & CWP No. 3511 of 2015

23. Virtually, the State Government and the Municipal Corporation have accepted the suggestions and in the open Court, learned Advocate General has stated that the suggestions made in writing by Mr. Ajay Mohan Goel, Advocate, will also be considered.

24. In view of the above, we deem it proper to dispose of both these writ petitions commanding the State Government for creation of a post/statutory body, to be manned by a competent authority and members alongwith requisite staff in order to deal with entire water supply system of Shimla town, also to deal with the entire water crisis relating to the State of Himachal Pradesh and to submit compliance reports to this Court every after two weeks in CWPIL No. 1 of 2016.

25. It is apt to record herein that we are disposing of these writ petitions while keeping in view the fact that the relief sought in these writ petitions has to flow from the outcome of CWPIL No. 1 of 2016. The orders have to be passed in the said CWPIL relating to the directions viz-a-viz adequate water supply for the reason that the LWSS Ashwani Khad has been closed.

26. In view of the above, the officers of the State Government and other authorities have to find out a solution how to provide sufficient water supply to the inhabitants of the Shimla and the entire State of Himachal Pradesh. Therefore, requisite orders are to be passed in CWPIL No. 1 of 2016.

27. The respondents in CWPIL No. 10 of 2015 have to file status reports/compliance reports relating to the steps taken in terms of their status reports, suggestions and the initiatives drawn every after two weeks till the post/statutory body/competent authority will be in place and thereafter even, they have to file the status reports/compliance reports, as directed, if required.

28. Accordingly, both these writ petitions are disposed of alongwith all pending applications.

CWPIL No. 1 of 2016

29. While going through the report of the SIT and the status report filed by the present Secretary (IPH) to the Government of Himachal Pradesh) read with the directions (supra), it is necessary to array the Chief Secretary to the Government of Himachal Pradesh; Secretary (Urban Local Bodies) to the Government of Himachal Pradesh; Principal Secretary (Health) to the Government of Himachal Pradesh; Principal Secretary (Education) to the Government of Himachal Pradesh; Director, Public Relations, Himachal Pradesh; and District Magistrates, Superintendents of Police and the Chief Medical Officers of all Districts in the State of Himachal Pradesh, as party-respondents in the array of respondents. Issue notice to the said newly added respondents. Mr. J.K. Verma, learned Deputy Advocate General, waives notice on behalf of the said respondents.

30. It would also be apt to array the Member Secretary, H.P. State Pollution Control Board, Shimla, as party-respondent in the array of respondents. Issue notice. Ms. Charu Gupta, Advocate, waives notice on behalf of the said respondent. Registry to carry out necessary entries in the cause title.

31. The Investigating Officer has reported that only class-IV employees were checking the water supply from LWSS Ashwani Khad and the higher authorities have not taken any interest. Further reported that the SIT has found that all officers, who were manning the posts from time to time, have not taken any interest and even have not inspected the Ashwani Khad and the officers of the Municipal Corporation, were also found negligent/careless because they have not properly managed the Sewage Treatment Plants (for short "STP") at Malyana and Dhalli.

32. It is profitable to reproduce paras 1, 4, 5, 7 and 9 of the status report filed by the SIT herein:

> *"1. That the case was registered on 06.01.2016 on the application of Sh. Tikender Singh Panwar, Dy. Mayor MC Shimla, which was, "the SHO Police Station Chhota Shimla, Subject:- Registration a FIR against the Contractor of STP of Malyana and Dhalli. Sir, I being the Deputy Mayor and a Citizen of Shimla would like to bring the following facts to your notice:- (1) The MC Shimla house held on 29th*

December was chaired by me it discuss the rise in cases of jaundice in Shimla city. (2) There after a committee was constituted to ascertain the reasons. The committee comprised of our Hon'ble councilors and experts including of CHO. (3) The committee visited the site of STP which eventually leads to Ashwani Khad from where water is lifted for drinking purpose. (4) The committee found that the STP at Malyana is not been run properly and contains large quantity of effluents which causes rise in Hepatitis cases. (5) The STP's at Malyana and Dhalli are run by some private individual and it is because of his negligence that the sewerage is not treated properly. This seems to be a case of criminal negligence that wishfully or otherwise is not discharging his duties that are extremely important for a healthy system. Yours truly, Sd/- Tikender Panwar.

xxx xxx xxx

4. .....

- *The parameters for water quality analysis tests were not strictly adhere to.*
- *Neither the essential water quality analysis test like microbiological viz. E. coli nor Total Count was performed nor there any set up for such tests in the laboratory.*
- *That in STP Dhalli water water was directly flowing to the outlet without being treated at clariflocculator. It was found that bleaching powder used was made in the year 2014-15.*

5. That during investigation it was also revealed that STP contractor Akshay Dogar and his Supervisor Manoj Verma were not supplying chemicals in time. Neither they were conducting tests as per the manual. JE, SDO & Executive Engineer of IPH Deptt. who were responsible for proper functioning of this STP, did not properly performed their duties with regard to proper use of bleaching powder, or the leakage at STP Dhalli, and non performing of laboratory test. Neither had they taken any action against contractor or supervisor.

6. .....

7.That SFSL Team Junga also inspected I&PH Drinking Water Testing Lab. at Dhalli and Municipal Corp. at the Ridge Shimla. Its observation with respect to MC lab. Were:

- *Water quality analysis was being carried out without any Laboratory Procedure Manual.*
- *The two parameters performed for water quality analysis were insufficient.*
- *Neither the essential water quality analysis tests like microbiological viz. E. coli and Total Colony Count were performed nor there was any set up for such tests, qualified professional (Microbiologist) in the laboratory.*

8. .....

9. That SIT in its investigation also found that SDO, IPH and JE, IPH were not visiting these Lift Water Supply Scheme (LWS) Ashwani Khand and were not inspected these LWSS Ashwani Khad. As a

> *result the whole management of LWSS Ashwani Khad was left to the call of Class-IV employees, i.e. Beldars and Pump Operators and all the entries made in the registers mantained at LWSS Ashwani Khad were made by these Baldars and Pump Operator. They were never cross checked by Asstt. Engineer. Whereas JE had only done one inspection in the last 3 months."*

33. The report is silent as to who were the officers manning the posts right from the year 2007 till the jaundice outbreak, what action has been taken against them, whether the mandate of the Act of 1974 has been taken into consideration, whether the officers/officials have followed the mandate and who are the officers/officials responsible.

34. While going through the status report filed by the present Secretary (IPH), *prima facie,* it appears that the State Government has also come to the conclusion that the officers, who were manning the posts from time to time, have not taken any steps to maintain the purification of the water supply from LWSS Ashwani Khad and that is the reason they have closed LWSS Ashwani Khad. Whether any departmental proceedings/inquiry/action have been taken against the said officers is also not forthcoming.

35. The respondents in CWP No. 4122 of 2014 are, *prima facie,* in contempt for the reason that they have not submitted the required status reports/compliance reports right from 18th September, 2014. However, two Engineers of I&PH Department have filed four status reports and the Member Secretary, H.P. State Pollution Control Board has filed compliance report, which are not in tune with the orders passed by this Court and in fact, are running contrary to the reports made by the Deputy Mayor, Municipal Corporation, the present Secretary (IPH), report of the Forensic Science Laboratory (for short "FSL") and the status report of the SIT, as mentioned hereinabove.

36. What is the procedure which the officers were following while making payments to the contractor, i.e. M/s. Akshay Doegar, for operation and maintenance of the STPs at Lal Pani, Dhalli, Sanjauli-Malyana, Summerhill and North Disposal. The reports do suggest that he has not taken any steps for proper operation and maintenance of the STPs. Even he has not followed the basics, not to speak of taking all precautions, which he was supposed to take in order to receive the payments.

37. It is stated that the Additional Superintendent of Police, who was the head of the SIT, stands promoted as Superintendent of Police and is posted at Shimla. We direct him to be the head of the SIT and to conduct the investigation.

38. The SIT is directed to take the investigation to its logical end by pinpointing who are the officers right from the year 2007 till today responsible/involved. It shall also examine the role of all the officers, who were supposed to maintain the mandate of the penal laws, other laws applicable in general and particularly, the Act of 1974.

39. It is made clear that we are not making any opinion that the said officers are involved. It is for the SIT to investigate and determine and submit the compliance reports every after one week.

40. The Chief Secretary and the Secretary (IPH) to the Government of Himachal Pradesh are directed to furnish:

> (i) details of all those officers who were manning the posts from the year 2007 right from the Chief Engineer upto the Peon;

(ii) details of the amount released in favour of the contractor and the procedure followed and names of the officers, who have passed those bills;

(iii) details of the steps, which they have to take in terms of the status reports filed before the Court on 23rd February, 2016, i.e. fresh status report, within one week;

(iv) details of the persons who have died due to jaundice and who are under treatment, as on today; and

(v) Whether any departmental inquiry/proceedings have been initiated and what is the stage?

41. Ms. Anuradha Thakur, present Secretary (IPH) to the Government of Himachal Pradesh, has stated that the department has complied with the directions made by this Court in CWPs No. 441 of 2007 and 4122 of 2014, which is not correct. In one breath, the Secretary (IPH) has stated that the LWSS Ashwani Khad was not properly maintained and the Government has issued orders for closing down the same in terms of Annexure R-1 and in the second breath, she has stated that the directions (supra) have been complied with.

42. It is apt to reproduce relevant portion of para 1 of the response filed by the Secretary (IPH) herein:

"1. .....Further it is submitted that the IPH Department in compliance to the various directions and recommendations of the committees appointed by the Hon'ble High Court of HP in CWPIL No. 441 of 2007, CWP No. 4122 of 2014, the department has complied some of the directions and recommendations as elaborated in the reply submitted to the Hon'ble High Court earlier. However, for implementing balance directions and recommendations requiring substantial funds, provisions have been made in the DPR amounting to Rs. 643.05 crores submitted to the World Bank for funding of USD 85.18 Million on dated 09.07.2015 after approval from the Ministry of Urban Development and Ministry of Finance (Department of Economic Affairs), Government of India Annexure R-3....."

43. The Secretary (IPH) to the Government of Himachal Pradesh is asked as to why action shall not be drawn against her for making incorrect/contradictory statements. Is she trying to shield her predecessors and subordinate officers or is trying to carve out a case for them or rather is trying to mislead the Court.

44. The Chief Secretary and the Secretary (Urban Local Bodies) to the Government of Himachal Pradesh were supposed to have a vigilance being the Head of the institutions and to ascertain whether the STPs were being maintained properly. Further, they were supposed to see and ascertain whether the officers concerned were discharging their duties properly and whether the directions have been complied with. *Prima facie,* it appears that they have failed to do so. Had they passed the requisite orders, there would not have been jaundice outbreak. Their failure can be seen in terms of the orders made by them whereby LWSS Ashwani Khad stands closed. They are directed to explain by filing affidavits.

45. The District Magistrates and Superintendents of Police in the entire State of Himachal Pradesh are directed to take all steps to make the public aware about the jaundice outbreak and the precautions to prevent such disease.

46. The District Magistrates, Superintendents of Police and the authorities concerned are directed to implement the provisions of The Food Safety and Standards Act, 2006 (for short "Act of 2006") in letter and spirit. Any deviation shall be seriously viewed.

47. The Principal Secretary (Education) to the Government of Himachal Pradesh is commanded to direct all the educational institutions, right from Primary Schools upto the Universities, for following the provisions of the Act of 2006 and also to ensure providing pure mineral water to the students in terms of the Act of 1974.

48. The Director, Public Relations, is directed to make aware the public in general by using press media, social media and other methods. Any deviation shall be seriously viewed.

49. The Chief Medical Officers in the entire State of Himachal Pradesh are directed to furnish the details of all the persons, who are/were admitted in the hospitals, are/were under treatment because of jaundice alongwith the details of all those persons who have succumbed to the said outbreak.

50. All the Courts in the State of Himachal Pradesh are directed not to take up any matter, which is directly or indirectly connected with CWPIL No. 10 of 2015, CWP No. 3511 of 2015 and CWPIL No. 1 of 2016. Any person, who is aggrieved or wants clarification, is at liberty to approach this Court.

51. It is made clear that SIT, police agencies, accused persons and other affected persons are at liberty to approach the Court(s) of competent jurisdiction for redressal of their grievances in FIR No. 03/16, dated 6th January, 2016, registered at P.S. Dhalli, which is being investigated by SIT, as discussed hereinabove.

52. Learned Advocate General was asked to give details as to whether any amount was due to the Contractor. He, after inquiring from the authorities concerned, stated that ` 99,45,831/- is due to the Contractor till 31st January, 2016. He has furnished the information across the Board, made part of the file. The concerned authority is directed not to release the amount in favour of the Contractor.

53. *Prima facie,* it appears that the respondents in CWP No. 4122 of 2014 are in contempt. Learned Advocate General is directed to furnish the particulars of the officers, who are/were manning the posts w.e.f. 19th September, 2014, till today, within three days. Registry is directed to frame Rule against the said respondents in CWP No. 4122 of 2014 and ask them to show cause as to why they should not be punished for breach/violation of the Court orders in terms of the Contempt of the Courts Act.

54. The record of CWP No. 4122 of 2014 does disclose that four reports have been filed by I&PH Department, one by Er. Suman Vikrant and three by Er. Sunil Justa. All these reports are not in tune with the judgment. Not only this, these reports are misleading and have made the Court to believe that the respondents have complied with the Court directions, which is not factually correct in view of the latest reports, outbreak of jaundice and shutting down of LWSS Ashwani Khad.

55. They are asked to show cause as to why they should not be: (i) dealt with in terms of the mandate of Contempt of Courts Act, and (ii) prosecuted for filing false affidavits before this Court and for misleading the Court.

56. Mr. Vineet Kumar, Member Secretary, Pollution Control Board has filed status report on 3rd March, 2015, has failed to file compliance report right from 18th September, 2014 till 3rd March, 2015 and thereafter till today, has been asked to show cause

hereinabove, but the report submitted by him on 3rd March, 2015, is, *prima facie,* incorrect, rather false, in view of the latest reports of the concerned authorities, as discussed hereinabove. He is further asked to show cause as to why he should not be prosecuted for filing false affidavit in addition to the contempt proceedings already drawn against him.

57. In response to the orders made by this Court, the Senior Administrative Officer (H), PGI, Chandigarh, has furnished the information, in terms of which seven persons have died at PGI Chandigarh due to the said disease, made part of the file.

58. The question is – how to reach to the victims/ legal representatives of the deceased?

59. The concept of grant of interim compensation, based on no fault liability, is outcome of the pronouncements of judgments made by the Apex Court. The purpose is to offer prompt financial relief to the sufferers. The niceties of law and facts have no role to play.

60. It is the duty of the Courts to make such interim orders which are required at the relevant point of time in view of the facts and circumstances of the case read with development of law from time to time.

61. In order to achieve the purpose of grant of interim or final relief promptly and spurn any attempt at procrastination in view of the facts and circumstances of the case, which are crying for the same, the Courts should not succumb to niceties, technicalities and mystic maybe's.

62. We are of the considered view that the Writ Court can exercise powers in terms of the mandate of the Constitution read with the inherent powers and can grant interim relief, even though it is not specifically provided for.

63. We have laid our hands on a judgment which is delivered by one of us (Justice Mansoor Ahmad Mir, Chief Justice) as a Judge of Jammu and Kashmir High Court, wherein interim compensation was granted in a First Civil Appeal, titled as **Chief Engineer & Ors. versus Mst. Zeba,** reported in **II (2005) ACC 705.** It is apt to reproduce paras 10 to 17 of the said judgment herein:

> *"10. While going through the provisions of Section 151, C.P.C., this Court can exercise inherent powers in order to do justice in between the parties and can pass such orders which are warranted in the interests of justice.*
>
> *11. Section 140 of Motor Vehicles Act mandates how to grant interim compensation. This remedy stands introduced in terms of the recommendations made by the Apex Court in the judgments reported in 1977 ACJ 134 (SC), 1980 ACJ 435 (SC) and 1981 ACJ 507 (SC). In terms of the said judgments the legislation was made. The aim and object of the said provision is to save the victims/sufferers from starvation, destitution and from other social evils. It is just to ameliorate the sufferings of the victims.*
>
> *12. The Apex Court has passed a judgment reported in AIR 1996 SC 922, titled Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, wherein Their Lordships have granted interim compensation to the victims of a rape case. In terms of the said judgment the Court is not powerless to come to the rescue of victims and save them from social*

evils as discussed above. It is profitable to reproduce para-18 of the said judgment herein:

> *"18. This decision recognizes the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalization of scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the scheme. On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life."*

13. The Apex Court has also held in the judgment reported in AIR 1986 SC 984, Smt. Savitri v. Govind Singh Rawat, that the Courts can grant interim maintenance in the proceedings under Section 488 (Section 125, Cr.P.C.), Cr.P.C. It is profitable to reproduce relevant portion of para-6 herein:

> *".....if a Civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the pending final disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under Section 125 of the Code to the Family Court constituted under the said Act."*

14. While going through the said provisions of law and while keeping in view of the above discussion, I am of the considered view that Civil Court can exercise inherent powers and can grant interim compensation at any stage even though not provided by any other provision of law. It is profitable to reproduce relevant portion of para-4 of the judgment of Apex Court reported in AIR 1995 SC 350, State of Maharashtra and others v. Admane Anita Moti and Others.

> *".....Interim orders are granted by the Court as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated upon. Even where it is not provided in the*

statute this Court has held that the Courts have inherent power to grant it……"

15. It is also profitable to reproduce paras 9 & 10 of the Apex Court judgment reported in AIR 2004 SC 3992, Vareed Jacob v. Sosamma Geevarghese and Others, herein:

"9. In the case of M/s. Ram Chand and Sons Sugar Mills Pvt. Ltd. v. Kanhayalal Bhargava, reported in AIR 1966 SC 1899, it has been held by this Court that the inherent power of the Court under Section 151 C.P.C. is in addition to and complimentary to the powers expressly conferred under C.P.C., but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of C.P.C. If there is express provision covering a particular topic, then Section 151, C.P.C. cannot be applied. Therefore, Section 151, C.P.C. recognizes inherent power of the Court by virtue of its duty to do justice and which inherent power is in addition to and complimentary to powers conferred under C.P.C. expressly or by implication.

10. In the case of Jagjit Singh Khanna v. Rakhal Das Mullick, reported in AIR 1988 Cal. 95, it has been held that temporary injunction may be granted under Section 94(c) only if a case satisfies Order 39 Rule 1 and Rule 2. It is not correct to say that the Court has two powers, one to grant temporary injunction under Section 94 (c) and the other under Order 39 Rule 1 and Rule 2. That Section 94 (C), C.P.C. shows that the Court may grant a temporary injunction thereunder only if it is so prescribed by Rule 1 and Rule 2 of Order 39. The Court can also grant temporary injunction in exercise of its inherent powers under Section 151, but in that case, it does not grant temporary injunction under any of the powers conferred by C.P.C. but under powers inherent in the constitution of the Court, which is saved by Section 151, C.P.C."

16. In terms of the said judgments, the Civil Court can exercise inherent powers and grant interim compensation in order to do justice, save victims from social evils and just to ameliorate their sufferings.

17. Thus, I am of the considered view that Civil Court can grant interim compensation in the cases, where the claimants/plaintiffs have lost their bread earner, son or daughter due to the negligence of the defendant/s and even in the cases where the plaintiff has sustained injuries due to the negligence of the defendant/s which has rendered the plaintiff permanently disabled."

64. At the cost of repetition, we have lost so many lives because of the fault of the State authorities/officers, who were/are manning the posts, including the Contractor because they have failed to maintain the purification of water, which they were supposed to do in view of the Acts of 1974 and 2006.

65. This Court in **CWP No. 318 of 2015,** titled as **Roshi Devi and others versus Himachal Pradesh State Electricity Board Ltd. and others; CWPIL No. 7 of 2014,** titled as **Court on its own motion versus State of Himachal Pradesh & others;** and **CWP No.**

4524 of 2015, titled as **Sheetal Thakur versus State of Himachal Pradesh and others,** has also awarded interim compensation.

66. In view of the above, we deem it proper to award Rs. two lacs as interim compensation to the legal representatives of each of the deceased.

67. The State is directed to deposit the amount of interim compensation before this Court within four weeks.

68. It is made clear that the observations made hereinabove are only *prima facie* and cannot be read and held that the said officers/persons are liable for criminal prosecution or departmental inquiry. It is for the concerned investigating agency/Court(s) and department(s) to thrash out. Any observations and expressions made hereinabove shall not cause prejudice to anyone.

69. All the respondents are directed to file status reports weekly in terms of the directions passed in this order read with the directions already passed in CWPIL No. 10 of 2015 and CWP No. 3511 of 2015.

70. Registry is directed to consign the record of CWP No. 441 of 2007, CWPIL No. 10 of 2015 and CWP No. 3511 of 2015. The record of CWP No. 4122 of 2014 be made available with the contempt proceedings.

71. List on **2nd March, 2016.**

72. Registry is directed to supply **dasti** copy of this order to learned counsel appearing on behalf of all the parties.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.

Jagdish Kumar Dhiman & others .....Petitioner.

Versus

State of H.P. & others .....Respondents.

CWP No. 7995 of 2010
Date of decision: 25.02.2016

Constitution of India, 1950- Article 226- Petitioners have called in question the scheme for lifting the water supply, namely, LWSS-Malwar and LWSS-Bhatoli-Baih, Dhamaan- held, that it was a policy decision made by the Government in public interest – policy decision cannot be made subject matter of a writ petition, unless arbitrariness is shown- the State has examined all the aspects and had taken the decision thereafter- the Court cannot sit in appeal over the decision of the Government, therefore, petition dismissed. (Para-2 to 9)

Cases referred:

Sidheshwar Sahakari Sakhar Karkhana Ltd. Vs. Union of India and others, 2005 AIR SCW 1399

Manohar Lal Sharma Vs. Union of India and another, (2013) 6 SCC 616

Asha Sharma versus Chandigarh Administration and others, 2011 AIR SCW 5636

Bhubaneswar Development Authority and another versus Adikanda Biswal and others, (2012) 11 SCC 731

For the petitioners :	Mr. Umesh Kanwar, Advocate.
For the respondents:	Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals with Mr. J.K. Verma, Deputy Advocate General.

The following judgment of the Court was delivered.

Mansoor Ahmad Mir, Chief Justice

By the medium of this writ petition, the petitioners have called in question the scheme for lifting the water supply, namely, LWSS-Malwar and LWSS-Bhatoli-Baih, Dhamaan, framed by the Government, which is a policy decision made by the Government. The policy appears to be in the public interest.

2. It is beaten law of the land that policy decision of the Government cannot be made subject matter of a writ petition, unless arbitrariness is shown in the decision making process.

3. The Apex Court in **Sidheshwar Sahakari Sakhar Karkhana Ltd. Vs. Union of India and others, 2005 AIR SCW 1399**, has laid down the guidelines and held that Courts should not interfere in the policy decision of the Government, unless there is arbitrariness on the face of it.

4. The Apex Court in a latest decision reported in **Manohar Lal Sharma Vs. Union of India and another, (2013) 6 SCC 616,** also held that interference by the Court on the ground of efficacy of the policy is not permissible. It is apt to reproduce paragraph 14 of the said decision as under:

> "***14. On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned policy that allows FDI up to 51% in multi-brand retail trading does not appear to suffer from any of these vices.***"

5. The Apex Court in the case titled as **Mrs. Asha Sharma versus Chandigarh Administration and others,** reported in **2011 AIR SCW 5636** has held that policy decision cannot be quashed on the ground that another decision would have been more fair, wise, scientific or logical and in the interest of society. It is apt to reproduce para 10 of the aforesaid judgment herein:

> ***"10. The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logic. The principle of reasonableness and nonarbitrariness in governmental action is the core of our constitutional scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be made to Netai Bag v. State of West Bengal [(2000) 8 SCC 262 : (AIR 2000 SC 3313)]."***

6. It appears that the respondents-State Government have examined all aspects and made the decision. Thus, it cannot be said that the decision making process is bad. The Court cannot sit in appeal and examine the correctness of the policy decision.

7. The Apex Court in the case titled as **Bhubaneswar Development Authority and another versus Adikanda Biswal and others,** reported in **(2012) 11 SCC 731** has laid down the same principle. It is apt to reproduce para 19 of the judgment, *supra*, herein:

> ***"19. We are of the view that the High Court was not justified in sitting in appeal over the decision taken by the statutory authority under Article 226 of the Constitution of India. It is trite law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is confined to the decision making process. The judicial review is not an appeal from a decision, but a review of the manner in which the decision is made and the Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. The Court confines itself to the question of legality and is concerned only with, whether the decision making authority exceeded its power, committed an error of law, committed a breach of the rules of natural justice, reached an unreasonable decision or abused its powers."***

8. This Court in the judgments delivered in **CWP No. 621 of 2014,** titled as ***Nand Lal & another* versus *State of H.P. & others*** and **CWP No. 4625 of 2012, ,** titled as **Gurbachan versus State of Himachal Pradesh & others,** decided on 15.07.2014, has also laid down the same proposition of law.

9. Applying the test to the instant case, the writ petition merits to be dismissed. Accordingly, it is dismissed alongwith pending applications.

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BEFORE HON'BLE MR JUSTICE P.S.RANA, J.

Smt. Payal wife of Shri Manish Chaudhary ....Revisionist

Versus

Manish Chaudhary son of Sh.Raghuvir Singh Chaudhary ....Non-Revisionist

Civil Revision No. 175 of 2014
Order Reserved on 3rd December 2015
Date of Order 25th February 2016

Hindu Marriage Act, 1955- Section 24- Husband filed a petition for divorce pleading that wife did not perform any marital obligations and used to become violent- she had also filed a criminal proceedings against the husband- wife pleaded that husband had subjected her to cruelty and he cannot be allowed to take advantage of his own wrong- a petition for maintenance pendente lite allowance and expenses was filed which was allowed- aggrieved from the order, present revision has been filed- held, that the purpose of providing maintenance is to provide financial assistance to the indigent spouse to maintain herself and to have sufficient funds to carry on litigation expenses- husband had admitted his income as Rs.15,000/- per month and it was not proved that wife was earning anything- hence, maintenance enhanced to Rs.5,000/- per month. (Para-8 to 12)

For the Revisionist: Mr. S.C.Sharma, Advocate.
For the Non-Revisionist: Mr. Peeyush Verma, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present civil revision petition is filed against the order dated 15.10.2014 passed by learned Additional District Judge-II Shimla in maintenance pendente lite application No. 83-S/6 of 2014 filed in divorce petition No. HMA 71-S/3 of 2014 titled Manish Chaudhary vs. Payal Sharma.

Brief facts of the case

2. Shri Manish Chaudhary filed divorce petition No. HMA 71-S/3 of 2014 titled Manish Chaudhary vs. Payal Sharma under Section 13 of Hindu Marriage Act 1955 on account of cruelty and desertion. It is pleaded that marriage between the parties was solemnised at Shimla on 27.11.2010 as per Hindu rites and customs. It is pleaded that on 19.5.2011 Smt. Payal Sharma without consent and knowledge of Manish Chaudhary shifted to her parents house at Shimla and refused to return to her matrimonial house. It is pleaded that Smt. Payal Sharma did not perform any marital obligations and also used to become violent. It is pleaded that behaviour of Smt. Payal Sharma did not improve despite best efforts on the part of Manish Chaudhary. It is pleaded that Smt. Payal Sharma also took her entire clothes and entire jewellery worth Rs.10 lacs (Rupees ten lacs only). It is pleaded that thereafter Shri Manish Chauhdary requested Smt. Payal Sharma to come to her matrimonial house but she refused to return to her matrimonial house. It is also pleaded that Smt. Payal Sharma also instituted criminal proceedings under Section 498-A of Indian Penal Code.

3. Per contra response filed on behalf of Payal Sharma pleaded therein that Shri Manish Chaudhary is estopped to file divorce petition on account of his own act conduct and acquiescence. It is pleaded that Manish Chaudhary has himself committed crulety upon Smt. Payal Sharma and further pleaded that Manish Chaudhary himself deserted Smt. Payal Sharma. It is pleaded that Manish Chaudhary cannot be allowed to take advantage of his own wrong. It is pleaded that Manish Chaudhary and his family members pressurised Smt.Payal Sharma to bring dowry. It is pleaded that Shri Manish Chaudhary always humiliated Smt. Payal Sharma in her matrimonial house. It is pleaded that Manish Chaudhary has also levelled false allegations upon the character of Smt. Payal Sharma. It is pleaded that Manish Chaudhary is dead drunkard and is womeniser. It is pleaded that Manish Chaudhary has also given beatings to Payal Sharma in her matrimonial house mercilessly without any cause of action during night period in intoxicated condition. It is pleaded that Smt. Payal Sharma also filed separate application under Section 12 of Protection of Women from Domestic Violence Act 2005. It is pleaded that Manish Chaudhary and his family members have taken forcibly Istridhan of Smt. Payal Sharma.

4. During the pendency of petition Smt. Payal filed petition under Section 24 of Hindu Marriage Act for grant of maintenance pendente lite allowance and expenses of proceedings. Learned trial Court granted maintenance pendente lite allowance to the tune of Rs. 2000/- (Rupees two thousand only) to Smt. Payal Sharma till disposal of divorce petition and also granted Rs. 5000/- (Rupees five thousand only) per month as litigation expenses from the date of filing of petition.

5. Feeling aggrieved against the order passed by learned Additional District Judge-II Shimla Smt. Payal filed the present civil revision petition.

6. Court heard learned Advocate appearing on behalf of revisionist and learned Advocate appearing on behalf of non-revisionist and Court also perused entire record carefuly.

7. Following points arise for determination in civil revision petition:-

1. Whether civil revision is liable to be accepted as mentioned in memorandum of grounds of revision petition?

2. Relief.

Findings upon point No.1 with reasons

8. It is well settled law that object behind Section 24 of Hindu Marriage Act providing maintenance pendente lite to a party in matrimonial proceedings is obviously to provide financial assistance to the indigent spouse to maintain herself during the pendency of proceedings and also to have sufficient funds to carry on litigation expenses so that indigent spouse would not suffer due to lack of funds. It is well settled law that a spouse unable to maintain herself is entitled to claim maintenance allowance on the principle of equal status and respect. Provision of Section 24 is beneficial in nature and such power is exercised by Court not only out of compassion but by way of judicial duty so that indigent spouse should not suffer. While granting maintenance pendente lite Court is under legal obligation to evaluate the income of parties.

9. In present case in response to application filed under Section 24 of Hindu Marriage Act before learned trial Court for grant of maintenance pendente lite Manish Chaudhary has admitted his monthly income at the rate of Rs.15000/- (Rupees fifteen thousand only). Court is of the opinion that one third income is sufficient for maintenance allowance keeping in view the status of parties.

10. There is no evidence on record in order to prove that revisionist Payal is earning from other sources also. Although learned trial Court has mentioned in para 10 of order announced in application No. 83-S/6 of 2014 that income of Manish Chaudhary is Rs. 50,000/- (Rupees fifty thousand only) per month as salary but Court is of the opinion that mistake in para No. 10 of order is purely clerical in nature. There is no admission on behalf of Manish Chaudhary that his monthly income is Rs. 50,000/- (Rupees fifty thousand only) per month. On contrary Manish Chaudhary has admitted in response that his monthly income is Rs.15000/- (Rupees fifteen thousand only). It is well settled law that facts admitted need not be proved under Section 58 of Indian Evidence Act 1872.

11. In view of the fact that Manish Chaudhary has admitted his monthly income as Rs.15000/- (Rupees fifteen thousand only) per month when he filed response to petition under Section 24 of Hindu Marriage Act Court is of the opinion that learned trial Court has granted pentente lite maintenance allowance to Smt. Payal on lesser side. Court is of the opinion that enhancement of maintenance allowance to the extent of 1/3rd salary of Manish Chaudhary is essential in the ends of justice in present case keeping in view the status of parties. There is no material on record that Smt. Payal is gainfully employed somewhere. There is no material on record that Smt. Payal has other source of income. In view of above stated facts point No. 1 is answered partly in yes and partly in no.

Point No. 2 (Relief)

12. In view of findings on point No.1 above revision petition is partly allowed. Maintenance pendente lite allowance granted by learned trial Court to the extent of Rs. 2000/- (Rupees two thousand only) is enhanced to Rs. 5000/- (Rupees five thousand only) w.e.f. from the date of filing of application under Section 24 of Hindu Marriage Act till disposal of divorce petition by learned trial Court. Order of learned trial Court is modified to

this extent only. File of learned trial Court along with certified copy of this order be sent back for compliance. Civil revision petition is disposed of. Parties are directed to appear before learned trial Court on ***15.3.2016.*** Pending miscellaneous application(s) if any stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Parat Singh son of Shri Hari Ram ....Petitioner
Versus
The Regional Director Employees
State Insurance Corporation & others ....Non-petitioners

CWP No. 4644 of 2014
Order Reserved on 11th December 2015
Date of Order 25th February 2016.

Constitution of India, 1950- Article 226- Petitioner claimed that non-petitioners be directed to enhance the subsistence allowance along with admissible interest- case was registered against the petitioner for the murder of his wife for which he was arrested- he was suspended due to pendency of the criminal case- subsistence allowance at the rate of 50% of the total salary had been granted to the petitioner, whereas he claims subsistence allowance at the rate of 75%- respondent pleaded that subsistence allowance was not enhanced by Review Committee in view of allegations of moral turpitude- held, that there is provision of review after three months and Review Committee had passed an order granting subsistence allowance at the rate of 50%- petitioner was suspended on account of grave criminal offence- there was no delay on the part of non-petitioner- hence, subsistence allowance @ 75% cannot be allowed- petition dismissed. (Para-6 to 10)

For the Petitioner : Mr. Vinod K. Sharma, Advocate.
For the Non-petitioners : Mr. S.R. Sharma, Advocate.

The following order of the Court was delivered.

P.S. Rana, Judge

Present civil writ petition is filed under Article 226 of the Constitution of India with a prayer that non-petitioners be directed to increase the subsistence allowance along with interest as admissible w.e.f. 20.11.2004 to 28.8.2008 at the rate of 25% and w.e.f. 29.5.2008 to 26.2.2009 at the rate of 75%..

2. Brief facts of the case as pleaded are that on 6.12.1990 petitioner was appointed as Branch Manager and was posted in Branch office at Paonta Sahib. It is pleaded that petitioner was working against the regular post and thereafter he was involved in criminal case and FIR No. 193 dated 20.5.2004 was registered under Section 302 IPC. It is pleaded that petitioner was arrested on 20.5.2004 for the murder of his wife. It is further pleaded that petitioner was convicted by Sessions Court under Section 302 IPC. It is pleaded that petitioner was suspended on account of pendency of criminal case under Section 302 IPC and subsistence allowance was granted to the petitioner. It is also pleaded that

petitioner was paid subsistence allowance at the rate of 50% of the total salary whereas petitioner is entitled for subsistence allowance at the rate of 75% because suspension exceeded six months. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners pleaded therein that petitioner has no cause of action to file present civil writ petition. It is pleaded that petitioner was suspended because there were allegations against the petitioner that petitioner has burnt his wife Smt. Bimla Devi. It is pleaded that petitioner was paid subsistence allowance strictly in accordance with law at the rate of 50%. It is pleaded that review committee did not enhance the subsistence allowance to petitioner in view of allegations of moral turpitude and in view of the fact that petitioner was convicted under Section 302 IPC by the competent Criminal Court of law. Prayer for dismissal of civil writ petition sought.

4. Court heard learned Advocate appearing on behalf of the petitioner and learned Advocate appearing on behalf of non-petitioners and Court also perused the entire record carefully.

5. Following points arise for determination in this civil writ petition:-

Point No.1

Whether civil writ petition filed by petitioner under Article 226 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition?

Point No.2

Relief.

Findings upon point No.1 with reasons

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner was entitled to enhancement of subsistence allowance firstly w.e.f. 20.11.2004 to 28.5.2008 at the rate of 25% and secondly w.e.f. 29.5.2008 to 26.2.2009 at the rate of 75% as per CCS and CCA Rules is rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that 50% subsistence allowance was granted to petitioner when petitioner was suspended because petitioner was arrested in criminal case punishable under Section 302 IPC for murder of his wife by way of burn injuries. As per Fundamental Rule 53 Government servant under suspension is entitled upto first three months of the period of suspension the subsistence allowance at an amount equal to leave salary which he would have drawn if he had been on leave on half pay. It is also well settled law that fixation of the quantum of subsistence allowance for the initial period of first three months is automatic.

7. Thereafter there is provision of first review after the expiry of three months from competent authority of law relating to enhancement of subsistence allowance of suspended employee. It is proved on record that on 25.5.2004 order was passed by Regional Director Employees State Insurance Corporation Sector 19-A Madhya Marg Chandigarh qua suspension of petitioner w.e.f. date of detention i.e. 20.5.2004. It is also proved on record that on 7.3.2005 Regional Director Employees State Insurance Corporation Sector 19-A Madhya Marg Chandigarh also passed the subsistence allownace order w.e.f. 20.5.2004. Subsistence allowance order dated 7.3.2005 is quoted in toto:-

ORDER

Shri Parat Singh Manager Branch Office Paonta Sahib who is under deemed suspension w.e.f. 20.5.2004 vide order of even no. dt. 25.5.2004 shall be entitled to the following payments w.e.f. the date of deemed suspension till further orders:

(1) A subsistence allowance at an amount equal to the leave salary which the Government servant could have drawn if he had been on leave on half average pay or on half pay and inaddition Dearness Allowance if admissible on the basis of such leave salary.

(2) Any other Compensary Allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to fulfillment of other conditions laid down for the drawal of such allowances.

(3) The payment under Items (1) & (2) above shall be made subject to production of a certificate (Specimen enclosed) to the effect that he is not engaged in any other employment, business, profession or vocation.

The recoveries to be made from the subsistence allowance shall be regulated in accordance with the Headquarters Office orders issued from to time.

Sd/-
(T.R.Gautam)
Regional Director……

8. It is proved on record that thereafter on 7.8.2008 Deputy Director (Vigilance) Employees State Insurance Corporation Panchdeep Bhawan CIG road New Delhi had issued order that committee relating to subsistence allowance on review of suspension cases decided not to enhance subsistence allowance from 50% which was initially granted to the petitioner and thereafter information was communicated to the petitioner through Superintendent Jail Model Central Jail Nahan H.P.

9. It is proved on record that petitioner was suspended on account of grave criminal offence committed by petitioner relating to murder of his wife. In view of the fact that there was no delay on part of non-petitioners in any manner and in view of the fact that non-petitioners did not delay the disposal of any inquiry proceeding and in view of the fact that delay occurred due to judicial proceedings pending before competent criminal Court it is not expedient in the ends of justice to enhance the subsistence allowance because delay was caused due to pendency of criminal case under Section 302 IPC before competent Court of law and delay was not caused due to the pendency of any departmental proceedings. In view of the fact that petitioner has committed criminal offence of moral turpitude and in view of the fact that allegations against the petitioner are grave and heinous in nature regarding murder of his wife and in view of the fact that petitioner stood convicted by competent criminal Court of law under Section 302 IPC and in view of the fact that there is no evidence on record in order to prove that conviction of petitioner under Section 302 IPC has been set aside by any competent Court of law as of today Court is of the opinion that it is not expedient in the ends of justice to enhance the subsistence allowance of the petitioner. It is well settled law that after conviction of employee by competent Court of law fundamental rights of convicted are suspended. Even in jail custody subsistence allowance is paid by jail authorities to jail inmates. Hence point No.1 is answered in negative.

Point No. 2 (Relief)

10. In view of findings upon point No.1 civil writ petition is dismissed. No order as to costs. Civil writ petition is disposed of. Pending miscellaneous application(s) if any for stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Ramesh Chand Jaswal son of Sh. Mulakh Raj ....Revisionist/Tenant

Versus

Roshan Lal Sharma son of Shri Lala Ram. ....Non-Revisionist/Landlord

Civil Revision No. 151 of 2011
Order Reserved on 30th November 2015
Date of Order 25th February 2016

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlord filed an eviction petition against the tenant claiming that tenant is in arrears of rent, tenant had damaged the premises due to which the premises had become unfit and unsafe for human habitation- landlord required the premises bonafidely for the purpose of rebuilding which cannot be carried out without evicting the tenant- tenant denied all these allegations- petition was allowed on the ground of arrears of rent and that premises was bonafide required by the landlord for the purpose of rebuilding- an appeal was preferred before the Appellate Authority which was dismissed- a revision was preferred against the order of the Appellate Authority- held that the Architect had specifically stated in his report that premises would fall at any time and would cause injury to the public- even the court witness had stated that there were cracks in the building, beams had fallen and the premises was in deteriorating stage- tenant had not placed any evidence to counter the report of the expert- merely because approved site plan had not been placed on record, eviction cannot be declined - landlord can evict the tenant for rebuilding the premises to increase its economic utility - held, that in these circumstances, the order of the Appellate Court cannot be faulted, however, right of re-entry granted to the tenant. (Para-11 to 18)

Cases referred:

Tara Dutt Sharma vs. Sanjeev Pandit, Latest HLJ 2011 (HP) 64
Mangan Lal vs. Nana Saheb 2009(1) Civil Court Cases 102 (SC)
Deep Chand vs. Lajwanti 2008(8) SCC 497
A.K. Jain vs. Prem Kapoor 2008(8) SCC 593
Som Dutt Sharma vs. Sham Lal 2010(1) Him.L.R.442

For the Revisionist : Mr. Rahul Mahajan, Advocate.
For the Non-Revisionist : Mr. K.D. Sood Sr. Adv. with Mr. Dhananjay Singh, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present civil revision petition is filed against the order dated 23.8.2011 passed in Rent Appeal No. 3 of 2010 titled Ramesh Chand Jaswal vs. Roshan Lal Sharma whereby learned first Appellate Authority affirmed the order of learned Rent Controller passed in rent petition No. 4 of 2007 titled Roshan Lal Sharma vs. Ramesh Chand Jaswal.

Brief facts of the case

2. Roshan Lal landlord filed eviction petition against the tenant under Section 14 of H.P. Urban Rent Control Act pleaded therein that premises in question was given to tenant to carry the business of electric work in the month of August 1981 at the rent of

Rs.300/- (Rupees three hundred only) per month plus house tax. It is pleaded that tenant is in arrears of rent w.e.f. 1.7.2003 and tenant has not paid the statutory increased rent to petitioner. It is pleaded that tenant has damaged the beam of roof and walls of premises developed cracks and demised premises has become unfit and unsafe for human habitation. It is pleaded that landlord bonafide required the premises for rebuilding and rebuilding cannot be carried out without eviction of tenant. Prayer for acceptance of eviction petition sought.

3. Per contra response filed on behalf of tenant pleaded therein that rent of demised premises is Rs.300/- (Rupees three hundred only) per month including house tax. It is pleaded that tenant is not in arrears of rent. It is pleaded that tenant offered the rent but landlord refused to accept the rent. It is pleaded that landlord visited the shop in the month of December 2006 and collected Rs.12600/- (Rupees twelve thousand six hundred only) in cash as arrears of rent. It is further pleaded that arrear of rent is barred by law of limitation. Prayer for dismissal of rent petition sought.

4. Landlord filed rejoinder and re-asserted the allegations mentioned in rent petition.

5. On the pleadings of parties learned Rent Controller framed following issues on 3.10.2007:-

1. Whether the respondent is in arrears of rent if so to what extent? OPA
2. Whether the petitioner is entitled for enhancement of 10% of rent as prayed?OPA
3. Whether the premises is bonafidely required for rebuilding which cannot be carried out without the building being vacated as alleged? OPA
4. Relief.

Learned Rent Controller decided issues Nos. 1 to 3 in affirmative and learned Rent Controller passed the eviction order against tenant on account of arrears of rent and on the ground that demised premises is bonafidely required by landlord for rebuilding purpose. Learned Rent Controller held that tenant is in arrears of rent to the tune of Rs. 68196/- (Rupees sixty eight thousand one hundred ninety six only) along with interest w.e.f. 18.8.1997 till 30.11.2010. Learned Rent Controller directed the tenant to deposit the rent within 30 days and learned Rent Controller further directed the tenant to evict the premises and deliver the possession to landlord.

6. Feeling aggrieved against the order of learned Rent Controller tenant filed appeal No. 3 of 2010 titled Ramesh Chand vs. Roshan Lal before first Appellate Authority. Leanred first Appellate Authority dismissed the appeal filed by tenant.

7. Feeling aggrieved against the order of learned first Appellate Authority the tenant filed the present revision petition.

8. Court heard learned Advocate appearing on behalf of revisionist and learned Advocate appearing on behalf of non-revisionist and Court also perused entire record carefuly.

9. Following points arise for determination in civil revision petition:-

1. Whether civil revision is liable to be accepted as mentioned in memorandum of grounds of revision petition?

2. Relief.

10. Findings upon point No.1 with reasons

10.1 AW1 P.L. Bains has stated that since fourteen months he used to prepare the site plan and site plan Ext.AW1/A was prepared by him after visiting the spot. He has stated that site plan Ext.AW1/A is signed by him. In cross examination he has stated that he did not prepare site plan Ext.AW1/A as per revenue record. He has stated that he has prepared site plan as per factual position.

10.2. AW2 Bashlinder Kumar has stated that he took photographs Ext.A-1 to Ext.A-5 from spot which are correct as per factual position. He has stated that he has handed over the negatives of photographs. He has stated that he did not see the negatives of photographs in Court file.

10.3 AW3 Dinesh Sharma Architect has stated that he is performing the work of architecture. He has stated that he personally visited the spot and prepared site plan Ext.AW3/A. He has stated that he prepared report Ext.AW3/B which is correct. In cross examination he has stated that he had qualified the diploma in draftsman. He has stated that he could not state about Khasra numbers. He has stated that he did not spcifically mention the cracks in site plan Ext.AW3/A.

10.4. AW4 Roshan Lal landlord has filed affidavit in his examination in chief. There is recital in affidavit that demised premises was given to tenant in the month of August 1981 at the rate of Rs.300/- (Rupees three hundred only) per month. There is further recital in affidavit that tenant is running the shop of electric items in demised premises. There is further recital in affidavit that tenant did not pay the rent w.e.f. 1.7.2003. There is further recital in affidavit that tenant has caused damage to beams of demised premises. There is also recital in affidavit that walls of demised premises have developed cracks. There is recital in affidavit that demised premises would fall at any point of time. There is further recital in affidavit that deponent also obtained the report from architect and there is recital in affidavit that work of rebuilding cannot be effected without eviction of tenant. Landlord has admitted in cross examination that demised premises was constructed in the year 1970. Landlord has admitted that he did not obtain the damaged report of building from municipal committee. He has denied suggestion that he has received the rent to the tune of Rs.12600/- (Rupees twelve thousand six hundred only) in the month of December 2006. He has denied suggestion that he did not issue the rent receipt.

10.5 RW1 Anil Kumar Nazir office of Civil Judge (Junior Division) Una has stated that he has brought the summoned record of case titled Roshan Lal vs. Kulwant Singh and further stated that he has also seen original rent petition and its certified copy is Ext.RW1/A.

10.6 RW2 Rakesh Kumar has filed affidavit in examination in chief. There is recital in affidavit that RW2 is tenant of landlord. There is recital in affidavit that RW2 is residing in lower portion. There is recital in affidavit that in the month of August 2006 water was collected upon the roof of demised premises and thereafter landlord caused damge to the roof of demised premises for flow of water. He has admitted that landlord has also filed eviction petition against him. He has admitted that he is also tenant of landlord. He has stated that he did not give any notice to landlord and also denied suggestion that he has deposed in Court at the instance of tenant.

10.7 RW3 Ramesh Chand tenant has filed affidavit in examination in chief. There is recital in affidavit that Roshan Lal is landlord of demised premises and deponent is tenant of demised premises. There is recital in affidavit that demised premises was given upon rent

at the rate of Rs. 300/- (Rupees three hundred only) including house tax. There is further recital in affidavit that deponent is running the electric shop. There is recital in affidavit that demised premises was constructed in the year 1970. There is further recital in affidavit that tenant is not in arrears of rent. There is also recital in affidavit that tenant offered the rent to landlord but landlord refused to accept the rent. There is further recital in affidavit that tenant had paid Rs. 12600/- (Rupees twelve thousand six hundred only) to landlord in the last week of December 2006 in cash. There is recital in affidavit that landlord did not issue the receipt. There is also recital in affidavit that demised premises is safe for human habitation. He has stated that he could not produce the receipt of payment of rent. He has stated that he also did not send the money order to landlord. He has denied suggestion that he himself damaged the beam of demised premises. He has denied suggestion that he did not pay the rent w.e.f. 1.7.2003.

10.8 Court witness Satya Vrat Sharma Executive Engineer HPPWD Una Division has stated that he was appointed as local commissioner by Court. He has stated that he inspected the building and submitted report Ext.CW1/A which is signed by him. He has denied suggestion that he has submitted wrong report relating to demised premises.

11. Submission of learned Advocate appearing on behalf of revisionist that orders of learned Rent Controller and learned first Appellate Authority that demised premises has become unsafe and unfit for human habitation are based upon non-appreciation of oral as well as documentary evidence placed on record is rejected being devoid of any force for the reasons hereinafter mentioned. AW3 Dinesh Sharma has submitted his report Ext.AW3/B which is quoted in toto:-

REPORT OF ARCHITECT

> I personally visited the Old construction of shops and I found this construction is in dilapidated condition. This building was very old and cracks are found on surface of the slabs, beam of the slabs was broken, some settlement and cracks developes. The projection of front side was also in dilapidated condition. There were cracks in whole of the side and back walls. Open was made by breaking the side walls A.C. was fixed, some trees were grown in the slabs on the back side of this building. Under these circumstances this old building can fall at any time and cause injury of any type to general public. And it is necessary to dismantle this old building.

Dinesh Sharma AW3 has specifically mentioned in his report that demised premises would fall at any time and would cause injury to general public. AW3 has submitted in his report that it is necessary to dismantle the old building. Report of AW3 is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the report of AW3 Dinesh Sharma. There is no positive evidence on record that AW3 has hostile animus against tenant at any point of time.

12. Submission of learned Advocate appearing on behalf of revisionist that learned Rent Controller and learned first Appellate Authority did not properly appreciate the report of Court witness i.e. Satya Vrat Sharma Executive Engineer Una Division HPPWD is rejected being devoid of any force for the reasons hereinafter mentioned. Executive Enginner Una Division HPPWD has specifically mentioned in his report Ext.CW1/A placed on record that beam has been dismantled in portion of Ramesh Chand tenant. Executive Engineer HPPWD Una Division has specifically mentioned in his report that some seepage of rain water was also seen. Executive Engineer has specifically mentioned in his report that cracks were seen in walls and projection portion. Executive Enginner Una Division HPPWD has mentioned in his report Ext.CW1/A that demised premises is certainly in deteriorating

stage. It is well settled law that report should be read in entirety and should not be read in isolation. After perusal of report of Executive Engineer Una Division HPPWD Ext.CW1/A it is proved on record that demised premises is certainly in deteriorating stage.

13. Submission of learned Advocate appearing on behalf of revisionist that demised premises is in proper condition is rejected being devoid of any force for the reasons hereinafter mentioned. Tenant did not place on record any counter expert report. There are two expert reports on record i.e. Ext.AW3/B and Ext.CW1/A conducted by Dinesh Sharma and Satya Vrat Sharma. Dinesh Sharma architect has specifically mentioned in his report Ext.AW3/B that demised premises is old building and would fall at any time and would cause injury to general public. Dinesh Sharma AW3 has specifically mentioned in his report that it is necessary to dismantle the old building. Report of Dinesh Sharma Ext.AW3/A is corroborated by report of Executive Engineer Una Division HPPWD Ext.CW1/A wherein Executive Engineer has mentioned in his report that certainly the demised premises is in deteriorating stage. Hence it is held that it is proved on record by way of reports of two experts that demised premises is in deteriorating stage.

14. Submission of learned Advocate appearing on behalf of revisionist that there is no evidence on record that landlord has sufficient funds for reconstruction and on this ground revision petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Tenant did not cross examine the landlord on the point that landlord has no sufficient funds to raise new construction. In view of the fact that tenant did not cross examine the landlord when he appeared in witness box on that point that landlord has no sufficient funds to raise new construction it is not expedient in the ends of justice to allow the revision petition on this ground.

15. Submission of learned Advocate appearing on behalf of revisionst that no approved construction site plan is placed on record on behalf of landlord and on this ground revision petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that filing of approved construction site plan is not *sine qua non* for filing eviction petition. ***See Latest HLJ 2011 (HP) 64 titled Tara Dutt Sharma vs. Sanjeev Pandit.***

16. Submission of learned Advocate appearing on behalf of revisionst that learned Rent Controller and learned first Appellate Authority did not properly appreciate the oral as well as documentary evidence placed on record and on this ground revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the order passed by learned Rent Controller and learned first Appellate Authority. It is held that learned Rent Controller and learned first Appellate Authority have properly appreciated the oral as well as documentary evidence placed on record and learned Rent Controller and learned first Appellate Authority did not cause any miscarriage of justice to tenant in any manner.

17. Submission of learned Advocate appearing on behalf of revisionst that building is not required bonafide by landlord for the purpose of rebuilding and on this ground revision petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that landlord can evict the tenant for the purpose of rebuilding in order to increase the economic utility of premises. It is held that reconstruction for increasing the economic utility of premises cannot be effected without eviction of tenant. ***See Mangan Lal vs. Nana Saheb 2009(1) Civil Court Cases 102 (SC). See Deep Chand vs. Lajwanti 2008(8) SCC 497. See A.K. Jain vs. Prem Kapoor 2008(8) SCC 593. See Som Dutt Sharma vs. Sham Lal 2010(1) Him.L.R.442.*** In view of above stated facts point No. 1 is answered in negative.

Point No. 2 (Relief)

18. In view of findings on point No.1 above revision petition filed by tenant is dismissed. However condition imposed by learned first Appellate Authority that Executing Court will execute the eviction order only after production of approved construction plan is vacated in view of ruling of Apex Court of India in ***Civil Appeal No. 4127 of 2013 titled Hari Dass vs. Vikas Sood (Apex Court of India) decided on 29.4.2013*** and in view of ruling of Apex Court of India in ***Civil Appeal No. 4128 of 2013 titled Hari Dass vs. Kesri Devi (Apex Court of India) decided on 29.4.2013*** and in view of ruling given by Apex Court of India in ***Civil Appeal No. 4129 of 2013 titled Hari Dass Sharma vs. Shiv Prasad (Apex Court of India) decided on 29.4.2013.*** It is further held that tenant will have right of re-entry as per Section 14(3) Sub clause (c) Proviso of H.P. Urban Rent Control Act 1987. It is further ordered that landlord will complete the entire construction within six months. Parties are left to bear their own costs. Revision petition is disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Ankit .....Appellant
Versus
Sanjeev Kumar and others .....Respondents

FAO No.425 of 2009.
Decided on: 26.2.2016

Motor Vehicles Act, 1988- Section 166- Claimant had sustained permanent disability to the extent of 75%- keeping in view, all the factors and decision made by the Tribunal amount of Rs.2 lacs awarded in favour of the claimant along with interest @ 7.5% per annum from the date of the award. (Para-9 to 11)

Cases referred:

R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755
Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771

For the appellant: Mr.D.Ghosh, Advocate.
For the respondents: Nemo for respondent No.1.
Mr.B.M. Chauhan, Advocate, for respondent No.2.
Mr.B.S. Chauhan, Senior Advocate, with Mr.Vaibhav Tanwar, Advocate, for respondents No.3 and 5.
Mr.Ramesh Sharma, Proxy Counsel, for respondent No.4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 3rd June, 2009, passed by the Motor Accident Claims Tribunal(II), Shimla, H.P., (for short, the Tribunal), in Claim

Petition No.44-S/2 of 08/2000, titled Ankit vs. Sanjeev Kumar and others, whereby compensation to the tune of Rs.4.61 lacs, alongwith interest at the rate of 9% per annum from the date of the claim petition till realization, came to be awarded in favour of the claimant, and the insurer was saddled with the liability, (for short, the impugned award).

2. The insurer, the driver and the owner/insured have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to them. Only the claimant has questioned the impugned award on the ground of adequacy of compensation.

3. Thus, the question to be determined in the instant appeal is – Whether the amount awarded by the Tribunal is inadequate? The answer is in the affirmative for the following reasons.

4. Admittedly, the claimant/injured suffered permanent disability to the extent of 75%. The Apex Court in series of cases has laid down certain guidelines as to how compensation has to be granted in injury cases.

5. The Apex Court in case titled as **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others,** reported in **AIR 1995 SC 755,** had discussed all aspects and laid down guidelines how a guess work is to be done and how compensation is to be awarded under various heads in the cases where permanent disability is suffered by the victim of a vehicular accident. It is apt to reproduce paras 9 to 14 of the judgment hereinbelow:

> *"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*
>
> *10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.*
>
> *11. In the case Ward v. James, 1965 (1) All ER 563, it was said:*

"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

13. This Court in the case of C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed (at p. 380):

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

14. In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said :-

"Non-pecuniary loss : the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

6. The said judgment was also discussed by the Apex Court in case titled as **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085,** while granting compensation in such a case. It is apt to reproduce paragraph 7 of the judgment hereinbelow:

"7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be

made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

7. The Apex Court in case titled as **Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787,** also laid down guidelines for granting compensation. It is apt to reproduce paras 8 & 9 of the judgment hereinbelow:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

8. The Apex Court in case titled as **Kavita versus Deepak and others, 2012 AIR SCW 4771,** also discussed the entire law and laid down the guidelines how to grant compensation. It is apt to reproduce paras 16 & 18 of the judgment hereinbelow:

"16. In Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. The heads under which compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. .....

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

9. Applying the above tests, the compensation awarded by the Tribunal can be said to be on the lower side and needs to be enhanced.

10. At this stage, learned counsel for the insurer stated at the Bar that the Insurance Company, in the Lok Adalat, had offered Rs.2.00 lacs to the claimant in addition to the amount already awarded by the Tribunal, which offer was not accepted by the claimant.

11. Keeping in view all the factors and the discussion made by the Tribunal in paragraphs 29 to 38 of the impugned award, I am of the considered view that the ends of justice would be met in case a sum of Rs.2.00 lacs is awarded in favour of the claimant/injured, in addition to the amount already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum from the date of the impugned award till deposit. Ordered accordingly.

12. The learned counsel for the insurer stated that the Insurance Company has already deposited the amount awarded by the Tribunal, alongwith interest as granted by the Tribunal, i.e. Rs.8.00 lacs, in the Registry of this Court. The insurer is directed to deposit the enhanced amount alongwith interest, as above, within a period of six weeks. The

Registry is directed to release the entire amount alongwith up-to-date interest in favour of the claimant forthwith/on deposit, after proper identification.

13. The impugned award is modified, as indicated above. The appeal stands disposed of accordingly.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Hans Raj Thakur and another .....Appellants.
Versus
Leela Wati and another .....Respondents

FAO (MVA) No. 452 of 2009
Date of decision: 26th February, 2016.

Motor Vehicles Act, 1988- Section 166- Claimant had sustained grievous injuries- she had lost her tooth and suffered fracture in the jaw- Tribunal had awarded compensation of Rs.50,000/- which is too meager- claimant had not questioned the award, hence, same was reluctantly upheld- appeal dismissed. (Para-2 to 6)

For the appellants: Mr. Sanjeev Sood, Advocate.
For the respondents: Mr.Baibhav Tanwar, Advocate, for respondent No.1.
Ms. Seema Sood, Advocate, for respondent No.2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral)*

This appeal is directed against the judgment and award dated 25.5.2009, made by the Motor Accident Claims Tribunal Ghumarwin, District Bilaspur, H.P. in MAC No. 19 of 2005/04, titled *Leela Wati versus Hans Raj Thakur and others*, for short "the Tribunal", whereby compensation to the tune of Rs.55,000/- alongwith interest @7.5% per annum came to be awarded in favour of the claimant, hereinafter referred to as "the impugned award", for short.

2. Owner and driver, by the medium of this appeal, have questioned the impugned award on the grounds taken in the memo of appeal.

3. The insurer and claimant have not questioned the impugned award on any ground. Thus, it has attained finality so far as it relates to them.

4. The insured has committed breach of the terms and conditions of the insurance policy read with the mandate of Sections 147 and 149 of the Motor Vehicles Act, for short the "Act". The Tribunal has rightly made the discussion in paras 19 to 21 of the impugned award.

5. It appears that a meager amount has been awarded by the Tribunal in favour of the claimant who has sustained grievous injuries because she has lost her tooth and suffered fracture in the jaw, which is not disputed.

6. The amount awarded is too meager but unfortunately, the claimant has not questioned the same. Thus it is reluctantly upheld.

7. The insurer has to satisfy the impugned award with right of recovery from the owner.

8. Accordingly, the impugned award is upheld and the appeal is dismissed.

9. The insurer is directed to deposit the amount within 8 weeks from today. The Registry on deposit of the same is directed to release the amount in favour of the claimant, strictly as per the terms and conditions contained in the impugned award, through payee's cheque account, or by depositing the same in her bank account, after proper verification.

10. Send down the record forthwith, after placing a copy of this judgment.

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BEFORE HON'BLE MR JUSTICE P.S.RANA, J.

HPPWD through Land Acquisition Collector
HPPWD Winter Field Shimla and others ....Appellants

Versus

Atma Ram son of Shri Thakur Dass & others ....Respondents

RFA No. 2 of 2007
Order Reserved on 20th January 2016
Date of Order 26th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

(Para-6 to 9)

For the Appellants: Mr. M.L. Chauhan Additional Advocate General with Mr.J.S.Rana Assistant Advocate General and Mr.Kusha Sharma Deputy Advocate General.

For the Respondents: Mr. Suneet Goel, Advocate.

The following order of the Court was delivered.

P.S. Rana, Judge.

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned District Judge Sirmaur at Nahan on 30.9.2006 in land reference case No. 03-LAC/4 of 2005 titled Atma Ram and others vs. HPPWD.

Brief facts of the case

2. Appellants for construction of Damaka-Di-Johadi Bagthan road proposed to acquire land situated at two villages i.e. village Thakrow measuring 1.08 bighas and village Tankan measuring 3.08 bighas in Tehsil Pachhad District Sirmaur H.P. It is pleaded that notification under Section 4 of Land Acquisition Act 1894 was issued on 28.12.2002 and was published in official gazette on dated 3.1.2003 and award No. 9 of 2004 dated 22.4.2004 was passed by learned Land Acquisition Officer and market rate of acquired land was assessed at the rate of Rs.3500/- (Rupees three thousand five hundred only) per bigha for all categories of land.

3. Land owners demanded Rs.3 lac (Rupees three lac only) per bigha as value of land and reference petitions under Section 18 of Land Acquisition Act 1894 were filed before learned District Judge Sirmaur at Nahan (H.P.). Learned District Judge framed issues and recorded evidence and after hearing both parties announced the award on 30.9.2006 and enhanced compensation of acquired land to the tune of Rs.1,80,000/- (Rupees one lac eighty thousand only) per bigha irrespective of kind and category of land. Learned District Judge also awarded interest at the rate of 12% per annum w.e.f. 28.12.2002 w.e.f. date of notification under Section 4 of Land Acquisition Act 1894 to 22.4.2004. Learned District Judge also awarded solatium at the rate of 30% per annum on the market value and interest at the rate of 9% per annum w.e.f. 28.12.2002 for one year and thereafter at the rate of 15% per annum till the amount is paid/deposited.

4. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 2 of 2007:-

1. Whether RFA No. 2 of 2007 titled HPPWD through Land Acquisition Collector and others vs. Atma Ram & others is covered by decision given by Hon'ble High Court of H.P. on 5.9.2013 in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that other RFAs i.e. RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 were disposed of by Hon'ble High Court of H.P. on 5.9.2013 qua the same award No. 9 of 2004. It is proved on record that inadvertently present RFA No. 2 of 2007 was not listed before the Bench of Hon'ble High Court of H.P. by Registry and same could not be disposed of by Hon'ble High Court of H.P. on the same date.

7. Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 relating to same award on 5.9.2013 remanded the cases back to the Court below for consideration afresh with direction that limited opportunity of leading evidence would be afforded to parties. Hon'ble High Court of H.P. on 5.9.2013 directed District Judge Sirmaur at Nahan that learned District Judge Sirmaur at Nahan would afford an opportunity to claimants as well as to the State to lead evidence only on question of nature of land acquired and sale transaction so placed on record by State. Hon'ble High Court of H.P. further directed that it would be open to the claimants as well as to the State to lead evidence only on these points. Hon'ble High Court further directed that since the case pertains to the year 2003 learned District Judge would make an endeavour to decide the case expeditiously and preferably within six months. Hon'ble High Court further directed parties to appear before District Judge Sirmaur at Nahan on 23.9.2013 and further directed

Registry to immediately send the record back to the Court concerned. Hon'ble High Court of H.P. disposed of all appeals cited supra relating to award No. 9 of 2004 passed by Land Acquisition Officer.

8. Keeping in view the fact that present appeal is also filed relating to same award i.e. award No. 9 of 2004, in order to avoid conflicting award and in order to avoid multiplicity of judicial proceedings inter se the parties and in the ends of justice it is expedient that present RFA should also be govered with decision of RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Point No. 1 is decided accordingly.

Point No. 2 (Relief)

9. In view of findings on point No.1 and in view of the fact that present RFA is covered by decision given by Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 it is ordered that present RFA No. 2 of 2007 will also be governed by decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 and consequently compensation amount awarded by competent authority in aforsaid RFAs will also be deemed awarded in RFA No. 2 of 2007. Parties are left to bear their own costs. RFA No. 2 of 2007 is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA,J.

HPPWD through Land Acquisition Collector
HPPWD Winter Field Shimla and others ....Appellants
Versus
Balbir Singh son of Sh. Bhim Singh & others ....Respondents

RFA No. 3 of 2007
Order Reserved on 20th January 2016
Date of order 26th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

(Para-6 to 9)

For the Appellants: Mr. M.L. Chauhan Additional Advocate General with Mr.J.S.Rana Assistant Advocate General and Mr.Kush Sharma, Deputy Advocate General.

For the Respondents: Mr. Suneet Goel, Advocate.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned District Judge Sirmaur at Nahan on 30.9.2006 in land reference case No. 06-LAC/4 of 2005 titled Balbir Singh and others vs. HPPWD.

Brief facts of the case

2. Appellants for construction of Damaka-Di-Johadi Bagthan road proposed to acquire land situated at two villages i.e. village Thakrow measuring 1.08 bighas and village Tankan measuring 3.08 bighas in Tehsil Pachhad District Sirmaur H.P. It is pleaded that notification under Section 4 of Land Acquisition Act 1894 was issued on 28.12.2002 and was published in official gazette on dated 3.1.2003 and award No. 9 of 2004 dated 22.4.2004 was passed by learned Land Acquisition Officer and market rate of acquired land was assessed at the rate of Rs. 3500/- (Rupees three thousand five hundred only) per bigha for all categories of land.

3. Land owners demanded Rs.3 lac (Rupees three lac only) per bigha as value of land and reference petitions under Section 18 of Land Acquisition Act 1894 were filed before learned District Judge Sirmaur at Nahan (H.P.). Learned District Judge framed issues and recorded evidence and after hearing both parties announced the award on 30.9.2006 and enhanced compensation of acquired land to the tune of Rs.1,80,000/- (Rupees one lac eighty thousand only) per bigha irrespective of kind and category of land. Learned District Judge also awarded interest at the rate of 12% per annum w.e.f. 28.12.2002 w.e.f. date of notification under Section 4 of Land Acquisition Act 1894 to 22.4.2004. Learned District Judge also awarded solatium at the rate of 30% per annum on the market value and interest at the rate of 9% per annum w.e.f. 28.12.2002 for one year and thereafter at the rate of 15% per annum till the amount is paid/deposited.

4. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 3 of 2007:-

1. Whether RFA No. 3 of 2007 titled HPPWD through Land Acquisition Collector and others vs. Balbir Singh and others is covered by decision given by Hon'ble High Court of H.P. on 5.9.2013 in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that other RFAs i.e. RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 were disposed of by Hon'ble High Court of H.P. on 5.9.2013 qua the same award No. 9 of 2004. It is proved on record that inadvertently present RFA No. 3 of 2007 was not listed before the Bench of Hon'ble High Court of H.P. by Registry and same could not be disposed of by Hon'ble High Court of H.P. on the same date.

7. Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 relating to same award on 5.9.2013 remanded the cases back to the Court below for consideration afresh with direction that limited opportunity of leading evidence would be afforded to parties. Hon'ble High Court of H.P. on 5.9.2013 directed District Judge Sirmaur at Nahan that learned District Judge Sirmaur at Nahan would afford

an opportunity to claimants as well as to the State to lead evidence only on question of nature of land acquired and sale transaction so placed on record by State. Hon'ble High Court of H.P. further directed that it would be open to the claimants as well as to the State to lead evidence only on these points. Hon'ble High Court further directed that since the case pertains to the year 2003 learned District Judge would make an endeavour to decide the case expeditiously and preferably within six months. Hon'ble High Court further directed parties to appear before District Judge Sirmaur at Nahan on 23.9.2013 and further directed Registry to immediately send the record back to the Court concerned. Hon'ble High Court of H.P. disposed of all appeals cited supra relating to award No. 9 of 2004 passed by Land Acquisition Officer.

8. Keeping in view the fact that present appeal is also filed relating to same award i.e. award No. 9 of 2004, in order to avoid conflicting award and in order to avoid multiplicity of judicial proceedings inter se the parties and in the ends of justice it is expedient that present RFA should also be govered with decision of RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Point No. 1 is decided accordingly.

Point No. 2 (Relief)

9. In view of findings on point No.1 and in view of the fact that present RFA is covered by decision given by Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 it is ordered that present RFA No. 3 of 2007 will also be governed by decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 and consequently compensation amount awarded by competent authority in aforsaid RFAs will also be deemed awarded in RFA No. 3 of 2007. Parties are left to bear their own costs. RFA No. 3 of 2007 is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

HPPWD through Land Acquisition Collector
HPPWD Winter Field Shimla and others ....Appellants

Versus

Uma Dutt son of Shri Mata Ram & others ....Respondents

RFA No. 1 of 2007
Order Reserved on 20th January 2016
Date of Order 26th February 2016

Land Acquisition Act, 1894- Section 18- Land was acquired for construction of Damaka-Di-Johadi Bagthan road- Land Acquisition Officer assessed market value at the rate of Rs. 3500/- per bigha for all categories of the land – References were made to the District Judge who enhanced the compensation of Rs.1,80,000/- per bigha- other RFAs were listed before the Hon'ble High Court which were remanded with the direction to afford opportunity to lead evidence on the question of nature of acquired land and sale transaction so placed on record by State- in view of Award pronounced in those appeals, RFA ordered to be governed by the decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011.

(Para-6 to 9)

For the Appellants: Mr. M.L. Chauhan Additional Advocate General with Mr.J.S.Rana Assistant Advocate General and Mr.Kush Sharma, Deputy Advocate General.

For the Respondents: Mr. Suneet Goel, Advocate.

The following order of the Court was delivered:

P.S. Rana, Judge.

Present regular first appeal is filed under Section 54 of Land Acquisition Act 1894 against the award passed by learned District Judge Sirmaur at Nahan on 30.9.2006 in land reference case No. 05-LAC/4 of 2005 titled Uma Dutt vs. HPPWD.

Brief facts of the case

2. Appellants for construction of Damaka-Di-Johadi Bagthan road proposed to acquire land situated at two villages i.e. village Thakrow measuring 1.08 bighas and village Tankan measuring 3.08 bighas in Tehsil Pachhad District Sirmaur H.P. It is pleaded that notification under Section 4 of Land Acquisition Act 1894 was issued on 28.12.2002 and was published in official gazette on dated 3.1.2003 and award No. 9 of 2004 dated 22.4.2004 was passed by learned Land Acquisition Officer and market rate of acquired land was assessed at the rate of Rs.3500/- (Rupees three thousand five hundred only) per bigha for all categories of land.

3. Land owners demanded Rs.3 lac (Rupees three lac only) per bigha as value of land and reference petitions under Section 18 of Land Acquisition Act 1894 were filed before learned District Judge Sirmaur at Nahan (H.P.). Learned District Judge framed issues and recorded evidence and after hearing both parties announced the award on 30.9.2006 and enhanced compensation of acquired land to the tune of Rs. 1,80,000/- (Rupees one lac eighty thousand only) per bigha irrespective of kind and category of land. Learned District Judge also awarded interest at the rate of 12% per annum w.e.f. 28.12.2002 w.e.f. date of notification under Section 4 of Land Acquisition Act 1894 to 22.4.2004. Learned District Judge also awarded solatium at the rate of 30% per annum on the market value and interest at the rate of 9% per annum w.e.f. 28.12.2002 for one year and thereafter at the rate of 15% per annum till the amount is paid/deposited.

4. Court heard learned Additional Advocate General appearing on behalf of appellants and learned Advocate appearing on behalf of respondents and Court also perused entire record carefuly.

5. Following points arise for determination in RFA No. 1 of 2007:-

1. Whether RFA No. 1 of 2007 titled HPPWD through Land Acquisition Collector and others vs. Uma Dutt and others is covered by decision given by Hon'ble High Court of H.P. on 5.9.2013 in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011?

2. Relief.

Findings upon point No.1 with reasons

6. It is proved on record that other RFAs i.e. RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 were disposed of by Hon'ble High Court of H.P. on 5.9.2013 qua the same award No. 9 of 2004. It is proved on record that inadvertently present RFA No. 1 of 2007 was not listed before the Bench of Hon'ble High Court of H.P. by Registry and same could not be disposed of by Hon'ble High Court of H.P. on the same date.

7. Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 relating to same award on 5.9.2013 remanded the cases back to the Court below for consideration afresh with direction that limited opportunity of leading evidence would be afforded to parties. Hon'ble High Court of H.P. on 5.9.2013 directed District Judge Sirmaur at Nahan that learned District Judge Sirmaur at Nahan would afford an opportunity to claimants as well as to the State to lead evidence only on question of nature of land acquired and sale transaction so placed on record by State. Hon'ble High Court of H.P. further directed that it would be open to the claimants as well as to the State to lead evidence only on these points. Hon'ble High Court further directed that since the case pertains to the year 2003 learned District Judge would make an endeavour to decide the case expeditiously and preferably within six months. Hon'ble High Court further directed parties to appear before District Judge Sirmaur at Nahan on 23.9.2013 and further directed Registry to immediately send the record back to the Court concerned. Hon'ble High Court of H.P. disposed of all appeals cited supra relating to award No. 9 of 2004 passed by Land Acquisition Officer.

8. Keeping in view the fact that present appeal is also filed relating to same award i.e. award No. 9 of 2004, in order to avoid conflicting award and in order to avoid multiplicity of judicial proceedings inter se the parties and in the ends of justice it is expedient that present RFA should also be govered with decision of RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011. Point No. 1 is decided accordingly.

Point No. 2 (Relief)

9. In view of findings on point No.1 and in view of the fact that present RFA is covered by decision given by Hon'ble High Court of H.P. in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 it is ordered that present RFA No. 1 of 2007 will also be governed by decision announced in RFA Nos. 163 of 2006 to 172 of 2006, 174 of 2006 and 494 of 2011 and consequently compensation amount awarded by competent authority in aforsaid RFAs will also be deemed awarded in RFA No. 1 of 2007. Parties are left to bear their own costs. RFA No. 1 of 2007 is disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Smt. Laxmi Devi & others .....Appellants

Versus

Shri Brij Raj & others .....Respondents

FAO No. 219 of 2009
Decided on : 26.02.2016

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that monthly income of the deceased was Rs.3,000/- per month- deceased was bachelor and his age was 22 years at the time of accident- held, that Tribunal had fallen in error in deducting 1/3rd of the amount towards personal expenses of the deceased- 50% of the amount was to be deducted towards personal expenses- thus, claimants had lost source of dependency to the extent of Rs.1,500/- per month, applying multiplier of '16' – Claimants are entitled to Rs. 2,88,000/- (1500/- x 12 x 16) under the head loss of dependency- amount of Rs.10,000/- each awarded under the head loss of 'love and affection', 'loss of estate' and 'funeral expenses'- thus, total

amount of Rs. 3,18,000/- awarded with interest at the rate of 7.5% per annum from the date of filing of the claim petition. (Para-6 to 13)

Cases referred:
Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others versus Madan Mohan and another, 2013 AIR (SCW) 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105

For the appellants : Mr. Rupinder Singh, Advocate.
For the respondents: Mr. G.N. Verma, Advocate, for respondents No. 1 & 2.
Ms. Monika Shukla, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (oral)

This appeal is directed against the award dated 12th March, 2009, made by the Motor Accident Claims Tribunal-II, Sirmaur, District at Nahan, H.P., (hereinafter referred to as 'the Tribunal') in M.A.C. Petition No. 39-N/2 of 2007, titled Smt. Laxmi Devi & others versus Shri Brij Raj & others, whereby compensation to the tune of Rs.1,96,500/- with interest @ 7.5% per annum from the date of filing of the claim petition, came to be awarded in favour of the claimants-appellants herein and the insurer-the Oriental Insurance Company-respondent No. 3 herein, was saddled with the liability, (hereinafter referred to as 'the impugned award').

2. The owner, driver and insurer have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. The claimants have questioned the impugned award on the ground of adequacy of compensation.

4. The only question to be determined in this appeal is – *whether the amount awarded is adequate or inadequate?*

5. On the face of the record, it appears that the amount awarded is inadequate for the following reasons.

6. The claimants have specifically pleaded in para-6 of the claim petition that the monthly income of the deceased was Rs.3,000/- per month, at the relevant time. Admittedly, he was bachelor and his age was 22 years at the time of accident.

7. The Tribunal has fallen in an error in deducting 1/3rd towards the personal expenses of the deceased and in coming to the conclusion that the claimants have lost source of dependency to the tune of Rs. 1,000/- per month. 50% was to be deducted towards his personal expenses, in view the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others** versus **Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104,** upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others** versus **Madan Mohan and another,** reported in **2013 AIR (SCW) 3120** read with the judgment rendered by the Apex Court in case titled as **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.**

8. Accordingly, it is held that the claimants being mother and brothers of the deceased, have lost source of dependency to the tune of Rs.1500/- per month.

9. The Tribunal has rightly applied the multiplier of '16', as per the 2nd Schedule appended to the Motor Vehicles Act read with the ratio laid down by the Apex Court in ***Sarla Verma's, Reshma Kumari's and Munna Lal Jain's,*** cases, *supra*.

10. Thus, the claimants are held entitled to the amount of Rs.1500/- x 12 = 18,000/- x 16 = Rs.2,88,000/- under the head 'loss of dependency'.

11. The Tribunal has fallen in an error in awarding Rs.2,000/- under the head 'funeral expenses' and Rs.2500/- under the head 'loss of estate'. The claimants are held entitled to the tune of Rs.10,000/- each, under the heads 'loss of love and affection', 'loss of estate' and 'funeral expenses'.

12. Viewed thus, the claimants are held entitled to total compensation to the tune of Rs.2,88,000/- + Rs.30,000/- = Rs.3,18,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition.

13. The amount of compensation is enhanced and the impugned award is modified, as indicated above. The appeal is accordingly disposed of.

14. The insurer is directed to deposit the enhanced amount alongwith interest, within a period of six weeks from today before the Registry. On deposit, the Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing in their accounts.

15. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

The New India Assurance Co. Ltd. .....Appellant.

Versus

Smt. Simro Devi and others .....Respondents

FAO (MVA) No. 539 of 2009
Date of decision: 26th February, 2016.

Motor Vehicles Act, 1988- Section 166- Insurer pleaded that Insurance was not subsisting at the time of the accident- deceased was a daily-wager and his minimum wages were taken as Rs.3300/- per month which should not have been less than Rs. 4500/- per month, in view of latest judgment of the Supreme Court- hence, award cannot be said to be excessive but is meager. (Para- 8 to 10)

For the appellant: Mr.Praneet Gupa, Advocate.
For the respondents: Mr.Bhuvnesh Sharma, Advocate, for respondents No. 1 and 2.
Mr. Maan Singh, Advocate, for respondents No. 3 to 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral)*

This appeal is directed against the judgment and award dated 13.08.2009, made by the Motor Accident Claims Tribunal Hamirpur, H.P. in MAC Petition No. 66 of 2007, titled *Simro Devi and another versus Vijay Singh and others*, for short "the Tribunal", whereby compensation to the tune of Rs.5,25,200/- alongwith interest @7.5% per annum came to be awarded in favour of the claimant, hereinafter referred to as "the impugned award", for short.

2. Appellant, by the medium of this appeal, has questioned the impugned award on the grounds taken in the memo of appeal.

3. Claimants and other respondents have not questioned the impugned award on any ground. Thus, it has attained finality so far as it relates to them.

4. Heard.

5. The factum of insurance is not disputed. The grounds taken in the appeal cannot be pressed into service in view of the document i.e. Ext. RW1-C and statement of RW1. However, the learned counsel for the appellant half heartedly argued that the insurance was not subsisting at the time of the accident. This argument is without any force for the simple reason that they have already accepted the claim of the owner and have released the amount so far as it relate to him.

6. The factum of insurance is admitted. The grant of compensation cannot be defeated on flimsy grounds and technicalities have no role to play.

7. Having said so, the appeal does not survive.

8. At this stage, the learned counsel for the appellant argued that the amount awarded is excessive. This argument also cannot be pressed into service. The Tribunal has held that the deceased was a daily-wager and taken his minimum wages to the tune of Rs.3300/- per month which should not have been less than Rs.4500/- per month, keeping in view latest judgment of the Supreme Court and judgments delivered by this Court. Thus, the amount cannot be said to be excessive rather meager.

9. Accordingly, the impugned award needs no interference and the same is upheld and the appeal is dismissed.

10. The insurer is directed to deposit the amount within six weeks from today, if not already deposited. The Registry on deposit of the same is directed to release the amount in favour of the claimants, strictly as per the terms and conditions contained in the impugned, through payee's cheque account, or by depositing the same in her bank account, after proper verification.

11. Send down the record forthwith, after placing a copy of this judgment.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

The New India Assurance Company ...Appellant.

Versus

Pratap Singh and others ...Respondents.

FAO No.387 of 2009
Decided on: 26.02.2016

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver of the vehicle was not having valid and effective driving licence- vehicle was being plied in contravention of the terms and conditions of the insurance policy- however, no evidence was led by Insurer to prove this fact- hence, Insurance Company was rightly made liable to pay compensation.

(Para-11)

For the appellant: Mr.B.M. Chauhan, Advocate.

For the respondents: Mr. Rajiv Rai, Advocate, for respondents No. 1 to 5.
Nemo for respondents No. 6 and 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Subject matter of this appeal is the judgment and award, dated 1st June, 2009, made by the Motor Accident Claims Tribunal-II, Sirmaur District at Nahan, H.P. (for short "the Tribunal") in MAC Petition No. 32-N/2 of 2007, titled as Shri Pratap Singh and others versus Narayan Singh and others, whereby compensation to the tune of ₹ 5,47,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till deposition of the amount came to be awarded in favour of the claimants and against the respondents (for short "the impugned award").

2. The claimants, driver and owner-insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has questioned the impugned award on the grounds taken in the memo of appeal.

4. The claimants have sought compensation to the tune of ₹ 20,00,000/-, by the medium of the claim petition, as per the break-ups given in the claim petition.

5. The respondents in the claim petition resisted the same on the grounds taken in the respective memo of objections.

6. Following issues came to be framed by the Tribunal on 24th June, 2008:

> *"1. Whether the deceased Geeta Devi had died in an accident which was the result of rash and negligent driving of the bus bearing registration No. HP-64-2198 by its driver as alleged? OPP*
>
> *2. If issue No. 1 is proved to what amount of compensation the petitioners are entitled to and from whom? OPP*
>
> *3. Whether the petition is not maintainable? OPR-1*
>
> *4. Whether the petition is bad for non-joinder of necessary parties? OPR-1*

5. Whether the driver of the vehicle was not possessed of a valid and effective driving licence at the time of accident? OPR-2

6. Whether the vehicle was being plied in contravention of the terms and conditions of the insurance policy? OPR-2

7. Relief."

7. Parties have led evidence.

Issue No. 1:

8. The Tribunal, after scanning the evidence, oral as well as documentary, held that the claimants have proved that on 11th February, 2007, at about 8.00 A.M., at place Sunnena (Thutti), the driver, namely Shri Yog Raj Chauhan, while driving the bus, bearing registration No. HP-64-2198, rashly and negligently, caused the accident, in which deceased-Geeta Devi sustained injuries and succumbed to the injuries. The said findings of the Tribunal have not been challenged. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

9. Before I deal with issue No. 2, I deem it proper to determine issues No. 3 to 6.

Issues No. 3 and 4:

10. It was for respondent No. 1 (owner-insured) to prove that the claim petition was not maintainable and was bad for non-joinder of necessary parties, has not led any evidence. Even, respondent No. 1 (owner-insured) has not questioned the impugned award. Accordingly, the findings returned by the Tribunal on issues No. 3 and 4 are upheld.

Issues No. 5 and 6:

11. It was for the insurer to plead and prove that the driver of the offending vehicle was not having a valid & effective driving licence and the vehicle was being plied in contravention of the terms and conditions of the insurance policy, has not led any evidence to prove the same, thus, has failed to discharge the onus. Viewed thus, how can it lie in the mouth of the appellant-insurer that the driver of the offending vehicle was not having a valid and effective driving licence and the owner-insured has committed any willful breach. The Tribunal has rightly determined issues No. 5 and 6, are, accordingly upheld.

Issue No. 2:

12. Learned counsel for the appellant argued that the deceased was a housewife and the amount awarded is excessive. According to him, the claimants have pleaded that the income of the deceased was ₹ 4,000/- per month and a house wife is not earning more than ₹ 3,000/-. The argument is totally misconceived. *Shoe wearer knows where the shoe pinches.* It is only a house wife who maintains the house and other domestic affairs. The Tribunal has rightly made the discussions on issue No. 2 in paras 16 to 20 and 23, need no interference.

13. Having said so, the amount awarded is adequate, cannot be said to be excessive, in anyway.

14. Viewed thus, the impugned award merits to be upheld and the appeal is to be dismissed. Accordingly, the impugned award is upheld and the appeal is dismissed.

15. Registry is directed to release the awarded amount in favour of the claimants strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in their respective bank accounts.

16. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Puran Singh .....Appellant
Versus
Keshav Rachiyata and others ..... Respondents

FAO No.445 of 2009.
Decided on : 26.2.2016

Motor Vehicles Act, 1988- Section 166- Tribunal had recorded the findings that injured remained under treatment for about two years and also remained admitted in different hospitals- petitioner had undergone pain and suffering- compensation has to be awarded commensurate with the pain and sufferings- amount of Rs. 2 lacs awarded under the head 'pain and sufferings' and Rs.1 lac awarded under the head 'future pain and suffering'- claimant had sustained 30% disability in relation to the lower limb and 7.5% qua whole body- claimant is held entitled to Rs.1,000 x 12 x 15 = Rs.1.80 lacs under the head 'future loss of earning'- amount of Rs.50,000/- awarded under the head 'conveyance and other charges', Rs.36,000/- under the head 'attendant charges' and Rs.1,35,000/- under the head 'expenditure on medication'. (Para-5 to 19)

Cases referred:

R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755
Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085
Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787
Kavita versus Deepak and others, 2012 AIR SCW 4771

For the appellant: Mr.Vikas Rathour, Advocate, vice Mr.Tara Singh Chauhan, Advocate.
For the respondents: Neemo for respondents No.1 and 2.
Mr.Deepak Bhasin, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 25th June, 2009, passed by the Motor Accident Claims Tribunal(II), Una, H.P., (for short, the Tribunal), in Claim Petition No.17 of 2006, titled Puran Singh vs. Keshav Rachiyata and others, whereby compensation to the tune of Rs.2.65 lacs, alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization, came to be awarded in favour of the claimant, and the insurer was saddled with the liability, (for short, the impugned award).

2. The insurer, the driver and the owner/insured have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to

them. Only the claimant has questioned the impugned award on the ground of adequacy of compensation.

3. Thus, the question to be determined in the instant appeal is – Whether the amount awarded by the Tribunal is inadequate?

4. I have heard the learned counsel for the parties and have gone through the record as also the impugned award. It is apt to reproduce paragraphs 4, 21, 26 and 27 of the impugned award hereunder:

> *"4. The petitioner had been immediately rushed to the Maheshwari Hospital Pvt. Limited, Maheshwari Nagar, Bye Pass, Mathura from where he had been shifted to Safdarjang Hospital, New Delhi on the same day. He was stated to have discharged on 19.11.2005 from Safdarjang Hospital. After having been operated on 30.10.2005, he was again admitted to Safdarjang Hospital on 23.11.2005 for the treatment of his injured right leg, which was also operated on 6.12.2005 and was discharged therefrom on 12.12.2005. He continued to receive follow up treatment up till 28.12.2005 from Safdarjang Hospital. Thereafter he received treatment from the Baraj Life Care Hospital & Trauma Centre, Jalandhar Road, Hoshiarpur (Pb.).*
>
> *21. To substantiate the aforesaid fact he examined Dr.Rachhpal Singh, Incharge Bharaj Life Care Hospital & Trauma Centre, Jalandhar Road, Hoshiarpur. He has appeared as PW3. As per this witness the petitioner Puran Singh had been admitted in his Hospital on 9.1.2006 with septicemia due to infected nailing of the femur. He was operated and discharged on 22.1.2006. He has proved and placed on record discharge slip vide Ext.PW3/A. Further as per him the patient was against admitted for another operation on 5.7.2006 and discharged on 4.8.2006. The petitioner was again admitted on 4.10.2006 for plating and grafting of femur and was discharged on 10.10.2006. He was again admitted on 12.10.2006 for removal of the plates and discharged on 15.10.2006. The bills in relation to the treatment and the aforesaid operations have been placed and proved as Ext.PW-3/B to Ext.PW-3/F. As per the doctor about Rs.60,000/- had been spent by the petitioner on the bills issued by the Hospital.*
>
> *26. As per PW2 Dr.S.P. Kanwar, the petitioner has been assessed to be permanently disabled to the extent of 30% in relation to the right lower limb as per Ext.PW2/A. He has further denied that the disability will be decreased with the passage of time. As per the doctor the disability qua whole body can be reckoned at 7.5%. Since admittedly the disability is only respect of right lower limb it can really be reckoned 7.5% in respect of the whole body. Seieing to be the age of the petitioner which was around 25 years at the time of accident, and that he was working as driver it can well be presumed that he was atleast earning Rs.3,000/- per month. After the standard deducting in relation to his owner needs that is 1/3rd of his income, his income is assessed as Rs.2,000/- and applying multiplier of 16, the total loss of future earning at 7.5% comes to approximately Rs.40,000/- (7.5% of Rs.3,84,000/-) and the petitioner is held entitled to the same on account of future loss of earning.*
>
> *27. The evidence on record goes to show that the petitioner was bed ridden for sufficiently long time and had to regularly got for follow up treatment right from 2005 till 2007, to be precise till 15.10.2007 he had to undergo many operations. He did suffer pain and mental agony for almost 2 years."*

5. The Tribunal has positively recorded the finding that the claimant/injured remained under treatment for about two years and during this period, he also remained admitted in different hospitals for a pretty long time, i.e. from 30th October, 2005 till 19th

November, 2005, from 23rd November, 2005 till 12th December, 2005, in Safdarjang Hospital, from 9th January, 2006 till 22nd January, 2006, 5th July, 2006 to 4th August, 2006, from 4th October, 2006 to 10th October, 2006 and lastly from 12th October, 2006 to 15th October, 2006 in Bharaj Life Care Hospital & Trauma Centre, Jalandhar. He was operated upon several times during the period of his hospitalization.

6. Thus, from the above, it is clear that the petitioner has undergone pain and suffering a lot and because of the disability suffered by the claimant, has to undergo pain and suffering throughout his life. Therefore, the compensation to be awarded in such injury cases must be commensurate with the pain and sufferings undergone and has to undergo as also disability suffered by the claimant.

7. The Apex Court in series of cases has laid certain guidelines as to how compensation has to be granted in injury cases.

8. The Apex Court in case titled as **R.D. Hattangadi versus M/s Pest Control (India) Pvt. Ltd. & others,** reported in **AIR 1995 SC 755,** had discussed all aspects and laid down guidelines how a guess work is to be done and how compensation is to be awarded under various heads in the cases where permanent disability is suffered by the victim of a vehicular accident. It is apt to reproduce paras 9 to 14 of the judgment hereinbelow:

> *"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*
>
> *10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a life long handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.*
>
> *11. In the case Ward v. James, 1965 (1) All ER 563, it was said:*
>
> *"Although you cannot give a man so gravely injured much for his "lost years", you can, however, compensate him for his loss during his shortened span, that*

is, during his expected "years of survival". You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and Juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money."

12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

13. This Court in the case of C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 SC 376, in connection with the Fatal Accidents Act has observed (at p. 380):

"In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable."

14. In Halsbury's Laws of England, 4th Edition, Vol. 12 regarding non-pecuniary loss at page 446 it has been said :-

"Non-pecuniary loss : the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases."

9. The said judgment was also discussed by the Apex Court in case titled as **Arvind Kumar Mishra versus New India Assurance Co. Ltd. & another, 2010 AIR SCW 6085,** while granting compensation in such a case. It is apt to reproduce paragraph 7 of the judgment hereinbelow:

"7. We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and

reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

10. The Apex Court in case titled as **Ramchandrappa versus The Manager, Royal Sundaram Aliance Insurance Company Limited, 2011 AIR SCW 4787,** also laid down guidelines for granting compensation. It is apt to reproduce paras 8 & 9 of the judgment hereinbelow:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

11. The Apex Court in case titled as **Kavita versus Deepak and others, 2012 AIR SCW 4771,** also discussed the entire law and laid down the guidelines how to grant compensation. It is apt to reproduce paras 16 & 18 of the judgment hereinbelow:

"16. In Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions:

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. The heads under which compensation is awarded in personal injury cases are the following:

"Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. .....

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

12. Applying the above tests, the compensation awarded by the Tribunal can be said to be on the lower side and needs to be enhanced.

13. The claimant, as is evident from the discussion made hereinabove, had suffered a lot and has to suffer throughout his life. Therefore, the claimant is held entitled to a sum of Rs.2.00 lacs under the head 'pain and suffering undergone' and Rs.1.00 lac under the head 'future pain and suffering'.

14. Another fact which cannot be overlooked is that because of the accident, the claimant suffered 30% disability in relation to the lower limb and 7.5% qua whole body, which would affect the prospects of his earnings in future also. Therefore, the claimant is held entitled to Rs.1,000 x 12 x 15 = Rs.1.80 lacs under the head 'future loss of earning'.

15. It is also evident from the facts of the case that the claimant was taken to hospital on many occasions. The Tribunal has awarded only Rs.30,000/- under the head 'conveyance and other charges', which, to my mind, is meager and needs to be enhanced. Accordingly, a sum of Rs.50,000/- is awarded in favour of the claimant under the head 'transportation charges'.

16. In addition to above, this Court cannot be oblivious to the fact that the claimant remained under treatment for about two years and during that period, also

remained hospitalized for a considerable long period on different occasions, as discussed hereinabove. Therefore, by exercising guess work, attendant charges at the rate of Rs.3000/- per month are also required to be awarded in favour of the claimant at least for a period of one year. Hence, the claimant is also awarded Rs.3,000 x 12 = Rs.36,000/- under the head 'attendant charges'.

17. The Tribunal, after examining the material placed on record, has rightly awarded a sum of Rs.1,35,000/- under the head 'expenditure on medication'. However, again the Tribunal has fallen in error in not awarding any amount for future treatment. Therefore, keeping in view the facts of the case, I deem it proper to award a sum of Rs.1.00 lac under the head 'expenses qua future treatment'.

18. In view of the above discussion, the claimant is held entitled to a sum of Rs.8,01,000/-, under the following different heads:

i) Pain and sufferings undergone: Rs.2.00 lacs.

ii) Future pain and sufferings: Rs.1.00 lac

iii) Loss of future earning: Rs.1,000 x 12 x 15 = Rs.1.80 lacs

iv) Transportation charges: Rs.50,000/-

v) Attendant charges: Rs.36,000/-

vi) Medical expenses incurred: Rs.1,35,000/-

vi) Expenses qua future treatment: Rs.1,00,000/-

19. The above amount shall carry interest at the rate of 7.5% per annum from the date of the claim petition till deposit.

20. The impugned award is modified as indicated above and the appeal is allowed. The insurer is directed to deposit the enhanced amount alongwith interest within a period of six weeks from today and on deposit, the Registry is directed to release the entire amount in favour of the claimant forthwith, after proper identification.

21. The appeal stands disposed of accordingly.

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BEFORE HON'BLE MR JUSTICE MANSOOR AHMAD MIR, C.J.

Rachh Pal .....Appellant.
Versus
Smt. Sudesh Garg and others .....Respondents.

FAO (MVA) No. 447 of 2009
Date of decision: 26th February, 2016.

Motor Vehicles Act, 1988- Section 166- Compensation of Rs. 5,71,000/ awarded in favour of the claimants- amount has been deposited by the appellant which has been paid to the claimants- award upheld and the appeal dismissed as settled. (Para-1 and 2)

For the appellant: Mr.Deepak Kaushal, Advocate.
For the respondents: Mr.K.D. Sood, Sr. Advocate with Mr. Sanjeev Sood, Advocate, for respondents No. 1 and 2.

Mr. Lalit Sharma, Advocate, for respondent No.5.
Nemo for respondents No. 3 and 4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice, *(Oral)*

This appeal is directed against the judgment and award dated 1.6.2009, made by the Motor Accident Claims Tribunal-II Sirmaur District at Nahan, H.P. in MAC Petition No. 24-N/2 of 2006, titled *Smt. Sudesh Garg and another versus Om Prakash and others*, for short "the Tribunal", whereby compensation to the tune of Rs.5,71,000/- came to be awarded in favour of the claimants, hereinafter referred to as "the impugned award", for short.

2. The learned counsel for the appellant stated at the Bar that the appellant has paid the entire amount to the claimants before the Tribunal. His statement is taken on record. Accordingly, the impugned award is upheld and the appeal is disposed of as settled. The statutory amount deposited by the appellant in this Registry be released to him.

C.O. No. 562/2009.

3. In view of the order passed in the appeal, the cross objections are disposed of.

4. Send down the record forthwith, after placing a copy of this judgment.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

Smt. Sitara Begum .....Appellant
Vs.
Mohd Nawab & others ....Respondents.

FAO No. 304 of 2009
Decided on : 26.02.2016

Motor Vehicles Act, 1988- Section 166- Claimants pleaded that accident had taken place due to the negligence of the respondent No.1- respondents No.1 to 5 stated that accident was the result of rash and negligent driving of the deceased who was driving the motorcycle and could not control the same- claimants examined the witnesses to prove this fact- however, no evidence was led by the respondent to prove the contrary- held, that it was prima facie proved that Tractor was being driven rashly and negligently by respondent No.1- the income of the deceased can be taken as Rs.4,000/- per month by guess work - after deducting 1/3rd amount towards personal expenses, claimants have lost source of dependency to the extent of Rs.2,500/- per month- multiplier of '16' applicable- thus, claimants are entitled to Rs. 4,80,000 (2500/- x 12 x 16) under the head loss of dependency – amount of Rs.10,000/- each awarded under the heads 'loss of love and affection', 'loss of consortium', 'loss of estate' and 'funeral expenses' along with interest @ 7.5% per annum from the date of the filing of the petition. (Para- 7 to 15)

Cases referred:
Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another, AIR 2009 SC 3104
Reshma Kumari & others Vs. Madan Mohan and another, 2013 AIR (SCW) 3120
Munna Lal Jain & another versus Vipin Kumar Sharma & others, 2015 AIR SCW 3105.

For the appellant	:	Appellant in person with Mr. Ashok Tyagi, Advocate.
For the respondents	:	Mr. Bimal Gupta, Senior Advocate with Mr. Vineet Vashisht, Advocate, for respondents No. 1 to 4. Respondent No. 5 stands deleted. Mr. G.D. Sharma, Advocate, for respondent No. 6. Nemo for respondent No. 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (oral)

This appeal is directed against the award dated 16th December, 2008, made by the Motor Accident Claims Tribunal-I, Sirmaur, District at Nahan, H.P., (hereinafter referred to as 'the Tribunal') in M.A.C. Petition No. 114-MAC/2 of 2005, titled Smt. Sitara Begum & another versus Mohd.Nawab & others, whereby the claim petition came to be dismissed, for short, 'the impugned award'.

2. The owner-cum-driver of the offending vehicle, i.e. tractor and the insurer have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

3. Only, one of the claimants, Smt. Sitara Begum has questioned the impugned award, on the grounds taken in the memo of appeal.

4. Heard. The impugned award merits to be set aside for the following reasons.

5. Claimants Sitara Begum and Uzma are the mother and widow of Mohammad Javed, deceased, respectively. The claimants have specifically averred in the claim petition that the accident was outcome of rash and negligent driving of Mohammad Nawab, i.e. respondent No. 1, who had driven the offending tractor, rashly and negligently, on 11.10.2005 and caused the accident, at about 5.50 a.m., at Brahampur Shri Ram Chander Mission, Yoga Ashram, Roorki, in which, Javed Mohammad sustained injuries and succumbed to the same.

6. Respondents No. 1 to 5 have specifically averred in their objections to the claim petition that the accident was outcome of the rash and negligent driving of the deceased, who was driving the motor cycle bearing No. UP-11-N-5483, rashly and negligently, could not control the same and struck against the tractor. Thus, they have admitted that the accident was outcome of the use of the motor vehicle, which runs contrary to the findings returned by the Tribunal in paras 9 to 11 of the impugned award.

7. The claimants have specifically averred in the claim petition that driver Mohammad Nawab had driven the tractor, rashly and negligently and caused the accident. They have also examined witnesses to this effect. The respondents have not led any evidence to the contrary.

8. It is *prima-facie* proved that the tractor was being driven, rashly and negligently by driver Mohammad Nawab. Even otherwise, the doctrine of *Res Ipsa Loquitor* has to be applied and the driver had to take precaution, which he has failed to do so.

9. Having said so, the claimants have proved issue No. 1. Accordingly, the findings returned by the Tribunal on issue No. 1 are set aside and it is held that Mohmmad Nawab had driven the tractor, rashly and negligently and caused the accident, in which Mohammand Javed had lost his life.

10. The next question is- *as to what amount of compensation, the claimants are entitled to?*

11. Admittedly, the age of the deceased was 28 years at the time of accident. The claimants have specifically averred in the claim petition that his income was Rs. 8,000/- per month, at the time of accident. While exercising the guess work, it can be safely held that the monthly income of the deceased would not have been less than Rs. 4,000/- at the relevant time. After deducting one-third towards the personal expenses of the deceased, it can be held that the claimants have lost source of dependency to the tune of Rs. 2500/- per month.

12. The multiplier of '16' is applicable in this case, as per the 2nd Schedule appended to the Motor Vehicles Act read with the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others** versus **Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104,** upheld by a larger Bench of the Apex Court in a case titled as **Reshma Kumari & others** versus **Madan Mohan and another,** reported in **2013 AIR (SCW) 3120** read with the judgment rendered by the Apex Court in case titled as **Munna Lal Jain & another versus Vipin Kumar Sharma & others,** reported in **2015 AIR SCW 3105.**

13. In view of the ratio laid down by the apex Court in the cases, *supra,* the claimants are held entitled to the tune of Rs.2500/- x 12 = Rs.30,000 x 16 = Rs.4,80,000/- under the head 'loss of dependency'.

14. Keeping in view the recent judgments of the Apex Court, a sum of Rs.10,000/- each, is also awarded under the heads 'loss of love and affection', 'loss of consortium', 'loss of estate' and 'funeral expenses' in favour of the claimants.

15. Having said so, it is held that the claimants are entitled to compensation to the tune of Rs.4,80,000/- + Rs. 40,000/- total amounting to Rs. 5,20,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

16. Now the question is – *who is to be saddled with liability?*

17. The factum of insurance is admitted. Accordingly, the insurer-insurance, i.e. respondent No. 6 is saddled with the liability.

18. The claimants Sitara Begum and Uzma are entitled to the compensation in equal shares.

19. The insurer-Insurance Company is directed to deposit the awarded amount within eight weeks from today. On deposit, the award amount be released in favour of the claimants, in equal shares, strictly as per the terms and conditions contained in the impugned award, through payees' account cheque or by depositing it in their accounts. In case, claimant Uzma fails to appear, her share be deposited in the fixed deposit for a period of five years.

20. Accordingly, the impugned award is set aside, the compensation to tune of Rs. 5,20,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization, is awarded in favour of the claimants and the appeal is disposed of.

21. Send down the records after placing a copy of the judgment on the Tribunal's file.

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BEFORE HON'BLE MR JUSTICE P.S.RANA, J.

Surender Kumar son of Girdhari Lal. .....Petitioner.

Versus

State of HP and others. .....Non-petitioners.

CWP No. 10059 of 2012.
Order reserved on:11.12.2015.
Date of Order: February 26,2016

Industrial Disputes Act, 1947- Section 25- Petitioner was engaged on daily wage basis- his services were terminated in violation of mandatory provisions of Industrial Disputes Act- petitioner submitted demand notice for reconciliation of matter but conciliation failed- Labour Court dismissed the reference- respondent pleaded that petitioner was appointed as Driver on casual basis till the joining of new driver- petitioner was not ready to serve on daily wages and thereafter H was engaged- services of the petitioner were terminated in the year 2006- hence, no work was available for the driver - appointment of petitioner was stop gap arrangement- petitioner had not impleaded H and no order can be passed against him- petitioner was appointed as driver on daily wages for 89 days only or till the joining of the new driver- petitioner never completed 240 days in a calendar year- appointment on public post is always made through selection process and through recommendation of selection committee in accordance with law- there is no evidence on record that petitioner was appointed by proper advertisement, by adopting the proper selection process - regularization by way of back door entry is not permissible- Labour Court had rightly appreciated the evidence – petition dismissed. (Para-7 to 9)

Cases referred:
Mool Raj Upadhyaya Vs. State of HP and others, 1994 Supp (2) SCC 316
Mohd. Ali Vs. State of HP and others, Latest HLJ 2015 HP 93

For the petitioner: Mr.V.D.Khidtta, Advocate.
For non-petitioners: Mr.Rupinder S.Thakur, Addl. Advocate General with Mr. J.S.Rana, Asstt. Advocate General.

The following order of the Court was delivered.

P.S.Rana Judge.

Present civil writ petition is filed under Article 226/227 of the Constitution of India with prayer that award dated 12.6.2012 passed by learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala HP be quashed and set aside. Further prayer sought that petitioner be recommended as driver on daily wage basis with all seniority and back wages benefit.

BRIEF FACTS OF THE CASE:

2. It is pleaded that in the month of January 2003 petitioner was engaged as driver on daily wage basis in the office of non-petitioner No.2 namely Block Development Officer Karsog District Mandi HP. It is further pleaded that in the month of January 2006 services of petitioner were terminated in violation of mandatory provisions of Industrial Disputes Act 1947. It is further pleaded that thereafter on August 2006 petitioner submitted demand notice for reconciliation of matter but conciliation failed. It is further pleaded that thereafter reference was sent by learned Labour Commissioner Shimla to learned Labour Court Dharamshala. It is further pleaded that learned Presiding Judge Labour Court-cum-Industrial Tribunal Dharamshala did not grant any relief. Prayer for acceptance of civil writ petition sought.

3. Per contra response filed on behalf of non-petitioners pleaded therein that petitioner was engaged as driver on casual basis w.e.f. 19.11.2003 to 22.5.2004. It is further pleaded that petitioner was engaged on daily wage till joining of new driver. It is further pleaded that petitioner was not willing to serve on daily wage and thereafter Sh Hem Singh was engaged. It is further pleaded that services of petitioner were terminated in the year 2006 because there was no work available for driver. It is further pleaded that there was no approval of finance department for continuous of service of petitioner. It is further pleaded that petitioner was appointed for limited duration only on temporary basis and his employment came to an end with expiry of the period. It is further pleaded that appointment of petitioner was stop gap arrangement. It is further pleaded that petitioner is not entitled to any relief. Petitioner also filed re-joinder and re-asserted the allegations mentioned in writ petition.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Advocate appearing on behalf of non-petitioners and also perused entire record carefully.

5. Following points arise for determination in the present writ petition:

(1) Whether civil writ petition is liable to be accepted as mentioned in memorandum of grounds of writ petition and whether Sh Hem Singh is necessary party in writ petition ?

(2) Relief.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that Sh Hem Singh was appointed as driver on regular basis in the year 2008 and petitioner was appointed on daily wage basis in the year 2003 and continued to work till 2006 and on this ground writ petition be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. In the present writ petition petitioner did not implead Sh Hem Singh as non-petitioner who is necessary party. It is well settled law that in judicial proceedings no one should be condemned unheard. It is held that no adverse order against Sh Hem Singh can be passed without impleading him as co-non-petitioner. It is held that writ petition is bad for non-joinder of necessary party i.e. Sh Hem Singh.

7. Submission of learned Advocate appearing on behalf of petitioner that petitioner was engaged on daily wage and non-petitioners have violated the principle of last come first go is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that vide letter dated 4.3.2005 issued by Deputy Commissioner Mandi petitioner was appointed as driver on daily wages for 89 days only or till joining new driver on contract basis. It is proved on record that petitioner did not complete 240 days in a calendar year. It is proved on record that petitioner has served as follow:

Sr.No.	Calender Year	Total number of days in a calendar year
1.	2003	19 days
2.	2004	69 days
3.	2005	208 days
4.	2006	3 days

Above stated working days remain un-rebutted on record. There is no positive, cogent and reliable evidence on record that petitioner has worked for more than the days mentioned supra. It was held in case reported in 1994 Supp (2) SCC 316 titled Mool Raj Upadhyaya Vs. State of HP and others that employee who has completed 240 days in a calendar year should be appointed as work charge employee. There is no evidence on record that petitioner has completed 240 days continuously in a calendar year. On the contrary it is proved on record that petitioner was appointed as stop gap arrangement on daily wage. Also see Latest HLJ 2015 HP 93 titled Mohd. Ali Vs. State of HP and others. It is held that in public post automatic appointment is not warranted. Appointment on public post is always conducted through selection process and through recommendation of selection committee in accordance with law. There is no evidence on record that petitioner was appointed by way of proper advertisement selection process and there is no evidence on record in order to prove that petitioner was appointed by selection committee constituted in accordance with law. Regularization of service by way of back door entry is not permissible under law upon public post. On the contrary it is proved on record that petitioner was appointed as stop gap arrangement only on daily wage. RW1 Satinder Thakur Block Development Officer Karsog appeared before learned Labour Court in person and deposed that no work is available in the office for the petitioner as regular driver Sh Hem Singh is working in the office. It is proved on record that there is only one post of driver in the office of non-petitioner No.2 i.e. Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur has stated in positive manner when he appeared in witness box before learned Labour Court that Sh Hem Singh was appointed as driver in the year 2008 in the office of Block Development Officer Karsog District Mandi HP. RW1 Satinder Thakur Block Development Officer has stated in positive manner that petitioner did not work for more than 240 days in a calendar year. RW1 has further stated in positive manner that no fictional breaks was given to petitioner. Testimony of RW1 Satinder Thakur Block Development Officer Karsog is trust worthy, reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of RW1 Satinder Thakur. There is no evidence on record in order to prove that RW1 Satinder Thakur has hostile animus against petitioner at any point of time.

8. Letter Ext RW1/B, RW1/C, RW1/D, RW1/E, RW1/F and RW1/G proved in positive manner that appointment of petitioner was only on daily wage as stop gap arrangement. Letter Ext RW1/B to RW1/G remains un-rebutted on record.

9. Submission of learned Advocate appearing on behalf of petitioner that order passed by learned Labour Court is perverse against facts and contrary to law is also rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the award passed by learned Labour Court. Learned Labour Court has properly discussed oral as well as documentary evidence placed on record. It is held that finding of learned Labour Court is based upon oral as well as documentary evidence on record and are in consonance with law. It is held that there is no illegality in the award passed by learned Labour Court Dharamshala HP. In view of the fact that petitioner was appointed on daily wage as stop gap arrangement and in view of fact that petitioner did not complete 240 days in a calendar year court is of the opinion that it is not expedient in the ends of justice to

interfere in the award passed by learned Labour Court. Hence point No.1 is answered accordingly.

Point No.2 (Relief).

10. In view of finding upon point No.1 civil writ petition filed under Article 226/227 of the Constitution of India is dismissed. No order as to costs. Writ petition is disposed of. All miscellaneous application(s) are also disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.

United India Insurance Co.Ltd. .....Appellant
Versus
Sabra Bibi and others ..... Respondents

FAO No.434 of 2009.
Decided on : 26.2.2016

Motor Vehicles Act, 1988- Section 149- Tribunal had awarded compensation of Rs.4.38 lacs, along with interest at the rate of 9% per annum from the date of filing of the claim petition till deposit- Tribunal had saddled the insurer with the right of recovery- once the Tribunal had recorded the findings the deceased was traveling in the vehicle as gratuitous passenger, the Insurer was rightly saddled with liability with the right of recovery- appeal dismissed. (Para-2 to 4)

Case referred:
Oriental Insurance Company vs. Smt.Veena Devi, and other connected matters, 2014(3) Him L.R. 1969

For the appellant: Mr.Lalit K. Sharma, Advocate.
For the respondents: Mr.Ramakant Sharma, Senior Advocate, with Ms.Soma Thakur, Advocate, for respondents No.1 and 2.
Mr.Ramesh Sharma, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral)

This appeal is directed against the award, dated 25th July, 2009, passed by the Motor Accident Claims Tribunal(I), Kangra at Dharamshala, H.P., (for short, the Tribunal), in Claim Petition No.47-N/II-2005, titled Sabra Bibi and another vs. Mohammad Ali and others, whereby compensation to the tune of Rs.4.38 lacs, alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till deposit, came to be awarded in favour of the claimants, and the insurer was saddled with the liability, with a right of recovery, (for short, the impugned award).

2. The insured/owner, the driver and the claimants have not questioned the impugned award on any count, thus, the same has attained finality so far as it relates to

them. Only the insurer has questioned the impugned award on the ground that the Tribunal has fallen in error in saddling the insurer with the liability with a right of recovery.

3. I have gone through the impugned award as also the record of the case. The Tribunal has recorded categorical finding to the effect that the deceased was traveling in the offending vehicle as gratuitous passenger. Therefore, the Tribunal saddled the insurer with the liability, with a right of recovery from the owner. It is not understandable as to why the appellant/insurer has questioned the impugned award by the medium of the instant appeal. The impugned award has been passed against the owner of the offending vehicle, who has not questioned the same. The Tribunal, in order to provide immediate succor to the victims of a vehicular accident, has rightly directed the insurer to pay the compensation at the first place and also protected it by granting the right of recovery from the owner.

4. This Court, after following the law laid down by the Apex Court, has already taken the similar view in case titled as **Oriental Insurance Company vs. Smt.Veena Devi, and other connected matters, 2014(3) Him L.R. 1969,** and catena of other judgments.

5. Having said so, there is no merit in the appeal and the same is dismissed. The Registry is directed to release the entire amount, alongwtih interest, in favour of the claimants, strictly in terms of the impugned award.

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BEFORE HON'BLE MR JUSTICE MANSOOR AHMAD MIR, C.J.

United India Insurance Company ...Appellant.
Versus
Rakesh Kumar and others ...Respondents.

FAO No. 403 of 2009
Decided on: 26.02.2016

Motor Vehicles Act, 1988- Section 149- Insurer pleaded that driver did not have a valid driving licence- insurer had not led any evidence to prove that the driver did not have a valid and effective driving licence to drive the vehicle and that the owner had committed willful breach or had not exercised due care and caution- appeal dismissed. (Para-6 to 8)

For the appellant: Mr. P.S. Chandel, Advocate.
For the respondents: Mr. Abhay Kaushal, Advocate, vice Mr. T.S. Chauhan, Advocate, for respondent No. 1.
Nemo for other respondents.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Challenge in this appeal is to the judgment and award, dated 19th June, 2009, made by the Motor Accident Claims Tribunal, Fast Track Court, Una, District Una, H.P. (for short "the Tribunal") in MAC Petition No. RBT 16/05/03, titled as Rakesh Kumar versus Surinder Kumar and others, whereby compensation to the tune of Rs. 1,25,000/- with interest @ 6% per annum from the date of filing of the petition came to be awarded in

favour of the claimant-injured and against the respondents (for short "the impugned award").

2. The claimant-injured, driver and the owners-insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. Appellant-insurer has questioned the impugned award so far it relates only to issues No. 4 and 5. Thus, I deem it proper to reproduce only issues No. 4 and 5 framed by the Tribunal herein:

> *"4. Whether the tractor in question was being used against the terms and conditions of insurance policy as alleged, if so its effect? OPR-5*
>
> *5. Whether respondent No. 1 was not having any valid and effective driving licence at the relevant time as alleged, if so its effect? OPR-5"*

Issue No. 4:

4. Appellant-insurer has not led any evidence to prove that the offending vehicle was being used in violation of the terms and conditions of the insurance policy. However, I have gone through the averments contained in the claim petition, wherein it has been specifically averred that the material was being taken for the personal use of the driver of the owners-insured. Thus, it cannot be said that the offending vehicle was being used in violation of the terms and conditions contained in the insurance policy.

5. It was for the appellant-insurer to plead and prove the said issue, has not led any evidence to this extent, thus, has failed to discharge the onus. Accordingly, the findings returned by the Tribunal on issue No. 4 are upheld.

Issue No. 5:

6. It was for the appellant-insurer to lead evidence and prove that the driver of the offending vehicle was not having a valid and effective driving licence to drive the offending vehicle.

7. Learned counsel for the appellant-insurer argued that the driver of the offending vehicle was having a fake licence, which is factually incorrect. The document, Ext. RW-1/A, which has been proved before the Tribunal, does disclose that the driving licence was valid one and the driver of the offending vehicle was having an effective driving licence.

8. Even otherwise, it was for the appellant-insurer to plead and prove that the owners-insured of the offending vehicle have committed a willful breach or they have not exercised due care and caution, has not led any evidence to this effect, thus, has failed to prove the said factum.

9. Having said so, the impugned judgment is well reasoned, needs no interference.

10. Accordingly, the impugned award is upheld and the appeal is dismissed.

11. Registry is directed to release the awarded amount in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in his bank account.

12. Send down the record after placing copy of the judgment on Tribunal's file.

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BEFORE HON'BLE MR. JUSTICE P.S.RANA, J.

Vijender Sharma son of Parkash Sharma. .....Revisionist/Tenant.

Versus

Smt. Uma Devi W/o Bhajan Lal. .....Non-revisionist/Landlady.

Civil Revision No. 119 of 2014.
Order reserved on: 31.12.2015.
Date of Order: February 26, 2016**.**

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Landlady filed an application pleading that premises had become unsafe for human habitation- it required repair which cannot be carried out without vacating the premises- premises was required bonafide by the landlady as her son got married and second son is also going to marry- tenant denied these allegations- it was contended that landlady had not pleaded that she was not occupying another residential premises and that she had not vacated any such building without any sufficient cause- held, that there was no evidence to prove that landlady had another residential building in Urban area and that she had vacated the residential building within five years from the date of filing of the Eviction Petition- other tenants had agreed to vacate the premises on demand- mere fact that eviction petition has not been filed against them is not sufficient to dismiss the eviction petition- non examination of the expert is not material in view of the admission of the tenant that retaining wall had collapsed- petition cannot be dismissed on the ground that site plan was not filed by the landlady- it was duly proved that one son had married and other was going to marry- hence, plea of the landlady that she had insufficient accommodation is acceptable- Revision petition dismissed. (Para- 11 to 17)

Cases referred:

Mangan Lal Vs. Nana 2009(1) Civil Court Case 102 (Apex Court).
Deep Chand Vs. Lajwanti 2008 (8) SCC 497
A.K.Jain Vs. Prem Kapoor 2008 (8) SCC 593
Som Dutt Vs. Sham Lal 2010 (1) Himachal law reports 442

For the revisionist: Mr.Mahesh Sharma, Advocate.
For Non-revisionist Mr.G.D.Verma, Sr. Advocate with Mr. B.C.Verma, Advocate.

The following order of the Court was delivere:

P.S.Rana, Judge.

Present revision petition is filed under Section 24(5) of HP Urban Rent Control Act 1987 against the order of learned Rent Controller Theog District Shimla HP dated 3.4.2012 announced in rent petition No. 19-2 of 2010 titled Smt. Uma Devi Vs. Sh Vijender Sharma and against the order of learned appellate authority announced in rent appeal No. 1-T-13b of 2013/12 titled Vijender Sharma Vs. Smt. Uma Devi .

BRIEF FACTS OF THE CASE:

2. Smt. Uma Devi landlady filed a eviction petition against tenant under Section 14 of HP Urban Rent Control Act 1987 pleaded therein that demised premises is residential in nature and was given on rent @ 500/- per month in the year 2000. It is further pleaded that electric fittings, water and all other amenities provided in the premises. It is further

pleaded that demised premises have become unsafe for human habitation. It is further pleaded that demised premises required repair from inner side and same could not be conducted without vacating the tenant. It is further pleaded that demised premises also required by landlady for her bonafide use as the accommodation of landlady is not sufficient because one son of landlady got married and second son of landlady also going to marry recently. Prayer for acceptance of revision petition sought.

3. Per contra response filed on behalf of tenant pleaded therein that landlady is harassing tenant and obstructing supply of water to tenant without any reasonable cause in demised premises. It is further pleaded that demised premises did not require any repair. It is further pleaded that demised premises is fit for human habitation. It is further admitted that during rainy season in the year 2010 some portion of existing retaining wall was collapsed. It is further pleaded that same was immediately re-constructed after 2/3 months. It is further pleaded that present eviction petition filed by landlady just to cause mental harassment to tenant. Prayer for dismissal of eviction petition sought.

4. As per pleadings of parties following issues framed by learned Rent Controller.

1. Whether disputed premises are unfit for human habitation and required for repair by the applicant, as prayed for?. .....OPA.

2.Whehter disputed premises are required by the applicant for her bonafide use as accommodation, as alleged? ....OPA.

3. Whether other tenants are also residing in the same premises, as alleged?. ...OPR.

4. Relief.

Learned Rent Controller decided issues No. 1 to 3 in affirmative and directed tenant to deliver vacant possession of the premises to landlady within a period of two months from the date of order.

5. Feeling aggrieved against the order of learned Rent Controller tenant filed rent appeal No. 1-T-13 B of 2013/12 before learned appellate authority titled Vijender Sharma Vs. Uma Devi. Learned appellate authority decided rent appeal on dated 31.7.2014 and dismissed the appeal filed by tenant.

6. Feeling aggrieved against the or der dated 31.7.2014 passed by learned appellate authority revisionist filed present revision petition.

7. Court heard learned Advocate appearing on behalf of revisionist and learned Advocate appearing on behalf of non-revisionist and also perused entire record carefully.

8. Following points arise for determination in present revision petition:

1. Whether revision petition filed by tenant is liable to be accepted as mentioned in memorandum of grounds of revision petition?.

2. Relief.

Finding on point No.1 with reasons:

9. PW1 Uma Devi has stated that a demised premise was given upon rent @ 500/- per month in the year 2000. She has stated that electricity and water facilities have been provided in the demised premises by landlady. She has stated that demised premises were constructed thirty years ago. She has stated that other tenants are ready to vacate demised premises. She has stated that she has constructed a retaining wall which was damaged during rainy season. She has stated that vacant premises are essential for repair.

She has stated that repair could not be conducted without vacation of tenants. She has stated that she has two sons and one son has got married and she would marry second son recently. She has stated that she has no accommodation for her family members. She has stated that she also issued notice to tenant Ext PW1/A. She has stated that entire building is comprised of five storeys. She has stated that building was constructed 30 to 35 years ago. She has stated that there are five other tenants in the same building. She has stated that other tenants are voluntarily ready to vacate the premises. She has denied suggestion that she has filed eviction petition just to harass the tenants. She has denied suggestion that she does not require the building for bonafide purpose.

10. RW1 Vijender Sharma has stated that he is tenant since 11.9.2000 on rent @ 500/- per month. He has stated that there are six other tenants in the same building. He has stated that landlady did not file any eviction petition against other tenants. He has stated that landlady is residing in fourth storey of the building. He has stated that landlady and her children used to block the supply of water and used to harass him. He has stated that one son of landlady is married and another son is un-married. He has stated that there are no cracks in demised premises. He has stated that building is in a proper condition. He has stated that present eviction petition filed just to harass the tenant in illegal manner. He has denied suggestion that cracks have developed in the demised premises due to fall of retaining wall.

11. Submission of learned Advocate appearing on behalf of revisionist that landlady did not plead that she is not occupying another residential building owned by her in urban area concerned and that she has not pleaded that she did not vacate any such building without any sufficient cause within five years of filing of present eviction petition and on this ground revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. There is no evidence on record in order to prove that landlady has another residential building in urban area. There is no evidence on record that landlady has vacated residential building in urban area within five years from filing present eviction petition. Even tenant did not plead above stated facts in the response. In the absence of pleadings it is not expedient in the ends of justice to dismiss the eviction petition filed by landlady.

12. Submission of learned Advocate appearing on behalf of revisionist that there are other tenants in the building and landlady did not file any eviction petition against other tenants and also did not place on record any agreement relating to eviction of demised premises against other co-tenants and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. Landlady has specifically stated when she appeared in witness box that other co-tenants have agreed to vacate the premises when demanded by landlady. Above stated statement of landlady remains un-rebutted on record. Revisionist did not examine any other co-tenants in order to prove that other tenants have not voluntarily agreed to vacate the premises as per demand of landlady.

13. Submission of learned Advocate appearing of behalf of revisionist that there is no evidence of expert on record that cracks have developed in the inner side of the building and same could not be repaired without eviction of tenants and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. Landlady has specifically stated when she appeared in witness box that retaining wall was fallen and thereafter cracks developed in the demised premises from inner side of building. Even revisionist has admitted that retaining wall was collapsed. Court is of the opinion that repair of inner wall of demised premises is essential in present case for

the safety of inhabitants. It is mandatory duty of landlady to keep demised premises in proper condition and to ensure the safety of inhabitants of the demised premises.

14. Submission of learned Advocate appearing on behalf of revisionist that site plan is not filed by landlady and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. In the present case there is no dispute inter se the parties qua tenancy and there is no dispute inter se the parties qua location of building. Court is of the opinion that site plan is essential when there is dispute inter se the parties qua demised premises and when there is dispute inter se the parties qua location of building. In the present case landlady has specifically mentioned in eviction petition in positive manner that demised premises is situated in ward No.2 Theog near Janog post office and Tehsil Theog District Solan HP. Even photographs of the building are placed on record and court is of the opinion that present eviction petition cannot be dismissed on the ground that site plan was not filed along with eviction petition by landlady.

15. Submission of learned Advocate appearing on behalf of revisionist that premises is not bonafide required by landlady for her own use and occupation is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that landlady has two sons. It is proved on record that one son of landlady is married. It is also proved on record that landlady has another un-married son. It is proved on record that landlady is in possession of two rooms set only. Court is of the opinion that two rooms set is not sufficient for landlady and other family members because landlady proposes to marry her younger son and each married sons required separate accommodation in order to enjoys matrimonial life in harmonious and peaceful manner.

16. Submission of learned Advocate appearing on behalf of revisionist that there is no evidence on record in order to prove that demised premises is required by landlady for the purpose of re-construction and on this ground revision petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that learned Rent Controller has framed issue No.1 to the effect that whether demised premises requires by landlady for repair purpose and learned Rent Controller has given finding that demised premises requires by landlady for repair purpose. It is well settled law that landlady can repair her premises at any time in accordance with law for the safety of inhabitants of the premises. See. Mangan Lal Vs. Nana 2009(1) Civil Court Case 102 (Apex Court). See Deep Chand Vs. Lajwanti 2008 (8) SCC 497. See A.K.Jain Vs. Prem Kapoor 2008 (8) SCC 593. See Som Dutt Vs. Sham Lal 2010 (1) Himachal law reports 442.

17. Submission of learned Advocate appearing on behalf of revisionist that learned Rent Controller and learned appellate authority did not properly appreciate oral as well as documentary evidence placed on record and have caused miscarriage of justice to revisionist is also rejected being of any force for the reasons hereinafter mentioned. Court has carefully perused the orders passed by learned Rent Controller and learned first appellate authority. It is held that learned Rent Controller and learned first appellate authority have properly appreciated oral as well as documentary evidence placed on record. It is held that no mis-carriage of justice is caused to the revisionist. In view of above stated facts point No.1 is answered in negative.

Point No.2 (Relief).

18. In view of finding on point No.1 revision petition is dismissed. Orders of learned Rent Controller and learned first appellate authority are affirmed. No order as to costs. Revision petition is disposed of. Pending application if any also disposed of.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

Himachal Road Transport Corporation .....Appellant.
Versus
Lekh Ram .....Respondent.

LPA No.42 of 2015 a/w connected LPAs.
Decided on: February 27, 2016.

Constitution of India, 1950- Article 226- A direction was issued by the Single Judge to examine the case of the petitioners in the light of the orders of the appointment, which were contrary to the appointment policy- it was conceded by the petitioner that direction to examine the case of the petitioners in accordance with the offer of the appointment is not legally correct – he prayed that direction be issued to examine the case of the petitioners in the light of the policy which was prevailing at the time when the writ petitioners approached the writ respondents for appointment on compassionate ground - LPA disposed of with the direction to examine the case of the petitioners in the light of the decision of the Court in ***Surinder Kumar vs. State of H.P. and others, ILR 2015 HP (VI) 842 (DB).*** (Para-1 to 5)

Case referred:
Surinder Kumar vs. State of H.P. and others, Latest HLJ 2016 (HP)(DB) 113: {ILR 2015 HP (VI) 842 (DB)}

For the Appellant(s): Mr.Ajay Mohan Goel, Advocate.
For the Respondent(s): Mr.V.D. Khidta, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

All these appeals are directed against the judgments, dated 29th October, 2014 and 5th November, 2014, passed by a learned Single Judge of this Court, whereby the learned Single Judge has directed the writ respondents (appellants herein) to examine the cases of the writ petitioners in light of the orders of appointment i.e. Annexure P-12, Annexure P-10, Annexures P-14 & P-15, Annexure P-9, and Annexures P-24 and P-25, annexed with respective writ petitions, which were also not in consonance with the policy prevailing at the relevant point of time for making appointments on compassionate ground.

2. At this stage, the learned counsel for the writ petitioners (respondents herein) stated that it is a fact that the impugned judgments, in so far as they relate to examining the case of the writ petitioners in accordance with the offer of appointment are concerned, the same are not legally correct. It was further submitted that the instant Letters Patent Appeals may be disposed of by directing the respondents to examine the cases of the writ petitioners in light of the policy which was prevailing at the time when the writ petitioners approached the writ respondents for employment on compassionate ground.

3. The controversy viz. a viz. applicability of the policy stands settled by this Court in its latest decision in **Surinder Kumar vs. State of H.P. and others, Latest HLJ 2016 (HP)(DB) 113,** wherein, amongst others, following two questions were framed by this Court:

"(ii) Which date would be relevant viz. a viz. applicability of the Policy - whether the date of death of the employee or the date when the application was presented, for the first time, for seeking employment on compassionate ground or the date on which the application came up for consideration before the Authorities, and whether a claim for compassionate appointment can be decided on the basis of subsequent amendment, when the application was presented prior to such amendment?

(iii) If an applicant was in lis and his case was directed to be reconsidered, whether the claim of such applicant is to be determined as per the policy which was existing at the time of passing the order or as per the policy which was in place at the time of staking claim for the first time or as per the policy existing at the time of consideration?"

4. After dilating upon different decisions of the Apex Court, this Court held that the case of the applicant would be considered as per the provisions of the Policy prevalent at the time when, for the first time, the application for appointment on compassionate ground was made to the Department. It is apt to reproduce paragraphs 63 and 64 of the said decision hereunder:

"63. Applying the ratio to the cases in hand and keeping in view the provisions of the Policy in question, we hold that the date of death of the employee is not to be taken into consideration while seeing the applicability of the Policy. Similarly, the date on which the application comes up for consideration before the competent Authority is also of no importance, since, because of the lackadaisical approach of the Departments, such cases may have been kept pending for a pretty long time and during that period, the policy may have been amended. Thus, the applicants, in such circumstances, cannot be made to suffer for the inaction on the part of the Authorities.

64. Accordingly, we hold that the case of the applicant would be governed by the provisions of the Policy which was in place at the time when the application, for the first time, was made by the applicant to the Department, and in the case of a minor, the right to apply would commence from the date he/she attained majority, as given in the Scheme and his/her application would be considered as per the Policy/Scheme which was in vogue at the time of presenting the application. In the matters where the Court or the Tribunal has directed the Authorities to consider the case of the applicant afresh, the claim of the applicant has to be determined as per the policy applicable at the time of presenting the application for the first time before the Department concerned. Points No.(ii) and (iii) are answered accordingly."

5. In view of above discussion, all the Letters Patent Appeals are disposed of by directing the writ respondents to examine the cases of the writ petitioners in light of the decision of this Court in Surinder Kumar's case supra and the observations made herein above, and make a decision within a period of six weeks from today. Pending CMPs, if any, also stand disposed of.

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BEFORE HON'BLE MR.JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR.JUSTICE TARLOK SINGH CHAUHAN, J.

Parveen Kumar ...Petitioner.
VERSUS
State Election Commission and others ...Respondents.

CWP No.24 of 2016.
Decided on: February 27, 2016.

Constitution of India, 1950- Article 226- Writ Petition has become infructuous in view of subsequent developments and by the efflux of time- hence, same is dismissed as infructuous. (Para-1)

For the petitioner: Mr.Ashok Thakur, Advocate.
For the Respondents: Ms.Nishi Goel, Advocate, for respondent No.1.
Mr.Shrawan Dogra, Advocate General, with Mr.Anup Rattan and Mr.Romesh Verma, Addl.A.Gs. and Mr.J.K. Verma, Dy.A.G., for respondents No.2 to 5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, C.J. (Oral)

In view of the subsequent developments and by the efflux of time, the writ petition has become infructuous and the same is dismissed as such. However, the petitioner is at liberty to seek appropriate remedy.

2. Pending CMPs, if any, also stand disposed of.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

The State of H.P. & another. .....Appellants.
Versus
Kehar Singh & another. .....Respondents.

LPA No. 297 of 2011
Date of order: 27.02.2016

Constitution of India, 1950- Article 226- Directions were issued to the respondents to take action in terms of the judgment titled ***Gauri Dutt & others vs. State of H.P.,*** reported in ***Latest HLJ 2008 (HP) 366***- held, that judgment was passed on the basis consent and LPA does not lie against the consent judgment – appeal dismissed. (Para-1 and 2)

Case referred:
Gauri Dutt & others vs. State of H.P., Latest HLJ 2008 (HP) 366

For the appellants: Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, Deputy Advocate General for the respondents.

For the respondents: Nemo.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice. *(Oral).*

This Letters Patent Appeal is directed against the judgment and order dated 18.08.2010, made by the learned Single Judge of this Court in CWP(T) No. 6865 of 2008, titled Kehar Singh versus State of H.P. & others, whereby the writ petition filed by the writ petitioner-respondent herein came to be disposed of with a direction to the writ respondents-appellants herein to take necessary action in terms of directions contained in ***Gauri Dutt & others vs. State of H.P.,*** reported in ***Latest HLJ 2008 (HP) 366*** (for short "impugned judgment"), on the grounds taken in the memo of appeal.

2. We have gone through the impugned judgment and are of the considered view that a consent judgment has been passed and LPA will not lie against the consent judgment.

3. Accordingly, the impugned judgment is upheld and the appeal is dismissed alongwith pending applications, if any.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

State of H.P. and another .....Appellants

Versus

Rewa Shankar Kaushik Shastri and others .....Respondents.

LPA No. 263 of 2011
Date of decision: 27th February, 2016.

Constitution of India, 1950- Article 226- Judgment passed by the Court was cryptic- cases of the writ petitioners are squarely covered by the judgment passed by this Court in ***Paras Ram versus State of Himachal Pradesh and another CWP(T) No. 7712 of 2012,*** decided on 19.5.2009 – respondent directed to examine the case of the petitioner in the light of the judgment and to take the decision within six weeks. (Para-1 to 3)

For the appellants: Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Addl. AGs, and Mr. J.K. Verma, Deputy Advocate General.

For the respondents: Mr. Anshul Attri, proxy Advocate for Mr. Neel Kamal Sood, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice ***(Oral)***

This Letters Patent Appeal is directed against the judgment dated 30.8.2010, made by the learned Single Judge of this Court in CWP(T) No.2354 of 2008, titled *Rewa Shankar Kaushik versus State of Himachal Pradesh and others,* whereby the writ petition filed by the petitioner came to be allowed, hereinafter referred to as "the impugned judgment", for short, on the grounds taken in the memo of appeal.

2. The impugned judgment, on the face of it, is cryptic. The learned counsel for the writ petitioners- respondents herein stated at the Bar that the cases of the writ petitioners/respondents herein are squarely covered by the judgment made by this Court in ***Paras Ram versus State of Himachal Pradesh and another CWP(T) No. 7712 of 2008,*** decided on 19.5.2009 and respondents may be directed to examine the cases of the writ petitioners and make a decision within a time frame. Mr. J.K. Verma, learned Deputy Advocate General has no objection to this proposition. Their statements are taken on record.

3. In the given circumstances, the writ respondents are directed to examine the cases of the writ petitioners in the light of the judgment referred to supra and make a decision within six weeks from today.

4. Having said so, the LPA is allowed and the impugned judgment is modified, as indicated hereinabove. Pending applications, if any stand disposed of.

****

BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Ghan Shayam ...Appellant.

Versus

State of Himachal Pradesh and another ...Respondents.

LPA No.158 of 2011
Decided on: 29.02.2016

Constitution of India, 1950- Article 226- Writ petitioner approached the Court to seek direction against the respondent to regularize his services with 1996 with all consequential benefits and release the arrears of payment- prior to this, writ petitioner had approached the Administrative Tribunal vide OA No. 143 of 1991 decided on 3.12.1996- OA was disposed of with the observations that the writ petitioner had already completed 10 years of the services on December 31, 1995 as Pump Operator and as per the statement of learned Additional Advocate General, his services for regularization will be considered from 1996- relying upon the order of the Administrative Tribunal, the writ petition was dismissed by the Court- held, that the Writ petitioner could not have claimed any relief which was not prayed in that lis as the relief claimed was hit by Order 2 Rule 2 CPC read with Section 11 CPC- Writ Petition was rightly dismissed- appeal also dismissed. (Para-1 to 8)

For the appellant: Mr. Ramakant Sharma, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice. *(Oral)*

This appeal is directed against the judgment and order, dated 5th May, 2010, made by the Writ Court in CWP (T) No. 5163 of 2008, titled as Shri Ghan Shyam versus State of Himachal Pradesh and another, whereby the writ petition filed by the appellant-writ petitioner came to be dismissed (for short "the impugned judgment").

2. It is apt to reproduce the reliefs sought by the appellant-writ petitioner in OA No. 1287 of 1998, which was transferred to this Court and came to be diarized as CWP (T) No. 5163 of 2008, herein:

> *"(i) That the respondents may very kindly be directed to regularise the services of the applicant w.e.f. due date i.e. the year 1996 with all consequential benefits.*
>
> *(ii) That the respondents may further be directed to release the running pay scale to the applicant from 5.9.89 to 31.12.1995 and the arrears of payment be released with interest.*
>
> *(iii) That the respondents may further be directed to produce the entire record pertaining to the case of the applicant for the kind perusal of this Hon'ble Tribunal.*
>
> *(iv) Any other order/relief to which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be passed in favour of the applicant and against the respondents."*

3. It would be profitable to record herein that the appellant-writ petitioner had already approached the H.P. State Administrative Tribunal (for short "the Tribunal") by the medium of OA No. 143 of 1991, which was decided by the learned Tribunal on 3rd December, 1996, and the following order came to be passed:

> *"The original record produced by the learned Additional Advocate General which shows that the applicant has completed 10 years service on December 31, 1995 as Pump Operator. From 1996 his case will be considered for regularisation. He further submits that none of the applicant's junior has been regularised.*
>
> *In these circumstances no other and further order needs be passed. The application is finally disposed of in above referred to terms."*

4. The grievance of the appellant-writ petitioner as on 3rd December, 1996, stands clinched by the said order, dated 3rd December, 1996.

5. The appellant-writ petitioner cannot claim any relief, which he has not prayed in that lis or which had accrued to him or was available and, if prayed, was not granted, in view of the mandate of the provisions contained in the Code of Civil Procedure (for short "CPC"), particularly, Order 2 Rule 2 CPC read with Section 11 CPC.

6. The question is – whether the appellant-writ petitioner has sought for any relief which has accrued to him in terms of the order, dated 3rd December, 1996? No such relief has been sought for.

7. Having said so, the Writ Court has rightly made the impugned judgment, needs no interference.

8. Accordingly, the impugned judgment is upheld and the appeal is dismissed alongwith all pending applications.

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BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.

Hans Raj Khimta ... Petitioner/DH
Versus
Smt. Kanwaljeet Kaur alias Sardarni Babli ... Respondent/JD

Civil Revision No. 128 of 2012
Reserved on : 5.1.2016
Date of Decision : February 29, 2016

Himachal Pradesh Urban Rent Control Act, 1987- Section 14- Rent Controller ordered the eviction of the tenant on account of arrears of rent- tenant instead of paying/tendering the rent to the landlord deposited it with the Rent Controller vide cheque dated 13.8.2009- held, that tenant in order to escape from the eviction has to pay the amount to the landlord - deposit with the Rent Controller will not help the tenant- application filed by the landlord allowed. (Para-2 to 7)

Cases referred:
Madan Mohan & another vs. Krishan Kumar Sood, 1994 Supp. (1) SCC 437
Wazir Chand vs. Ambaka Rani & another, 2005 (2) Shim. L.C. 498,
Atma Ram vs. Shakuntala Rani, (2005) 7 SCC 211

For the petitioner : Mr. Ajay Sharma, Advocate, for the petitioner.
For the respondent : Mr. R. K. Bawa, Sr. Advocate, with Mr. Ajay Sharma, Advocate, for the respondent.

The following judgment of the Court was delivered:

Sanjay Karol, J.

Petitioner who is the landlord filed a petition for ejectment against the respondent/tenant, inter alia on the ground of non payment of rent under the provisions of Section 14 of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as the "Act"). Such petition stood decided by the Rent Controller, Solan, Distt. Solan, H.P. vide order dated 23.7.2009 passed in Rent Petition No. 14/2 of 2007, titled as Hans Raj Khimta vs. Smt. Kanwal Jeet Kaur alias Sardarni Babli whereby the tenant was ordered to deposit the arrears of rent up to 31.7.2009. As per statutory requirement, needful was to be done within a period of 30 days. There is no dispute that the said order has attained finality. The amount due stood quantified by the Rent Controller. Undisputedly the tenant did not

pay/tender the same to the landlord but instead deposited it with the Rent Controller vide cheque dated 13.8.2009. This was so done within a period of 30 days.

2. The issue which arises for consideration is as to whether such payment is a valid tender, entitling the tenant for the benefit of not being evicted, in terms of the third proviso of sub-section (2) of Section 14 of the Act, thus rendering the order of ejectment to be unexecutable?

3. For determining the controversy in issue, the relevant provisions of the "Act" (Section-14, Section 20 & Section 21) are reproduced as under:-

"Section 14 (1). A tenant in possession of a building or rented land shall not be evicted there from in execution of a decree passed before or after the commencement of this Act or otherwise, whether before or after the termination of the tenancy, except in accordance with the provisions of this Act.

(2). A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied –

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at the rate of 9 percent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;

Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 percent per annum:

Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non payment of rent due from him, shall not be evicted as a result of his order, if the tenant pays the **amount due** within a period of 30 days from the date of the order; or

(ii) to (iv) … … ; or

(v) … … ;

The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:"

… …

… …

"Section 20. Receipt to be given for rent paid. – (1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable.

(2) Every tenant who makes payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a

written receipt for the amount paid to him duly signed by the landlord or his authorized agent.

(3) If the landlord or his authorized agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorised agent, by order, direct the landlord or his authorised agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid."

"Section 21. Deposit of rent by the tenant. – (1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 20 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner.

(2). … …" **[Emphasis supplied]**

4. Careful perusal of the aforesaid provisions leads to one conclusion. Section 14 of the Act does not envisage a situation whereby tenant can deposit the amount with the Rent Controller. Neither does Sections 20 and 21 provide for such a mechanism. In fact the latter provision deals with a totally different fact situation, enabling the law abiding tenant to deposit the rent upon refusal of the landlord in accepting the same.

5. Evidently the provisions of the Section save the tenant from getting the order of ejectment executed only and only if the amount due is paid within the stipulated period of time.

6. The expression used in the third proviso is "pays" and not "deposit" the amount so determined by the Rent Controller. The Section itself does not provide for deposit of the amount with the Rent Controller, after the order is passed. As such the only meaning which can be given to the expression "pay" (third proviso) and "tender" (Part (i) of sub-section 2 of Section 14) is that the rent is to be directly paid to the landlord and not deposited in the Court. In the given facts and circumstances provisions of Section 21 cannot be invoked, for there was neither any tender by the tenant nor any refusal by the landlord in accepting the rent. In fact the tenant herself does not rely upon the said provisions, for she did not deposit the rent by filing the application as stipulated under the provisions. Significantly no intimation of deposit of rent was sent to the landlord within thirty days from the date of passing of the order.

7. It is not the case of the tenant that after depositing the amount in court, an intimation was sent to the landlord. No request was made to the landlord for withdrawal of the same. It is only after expiry of the statutory period of 30 days, when the landlord filed an application for execution, did he learn that the amount stood deposited in the Court.

8. Though such fact would not have any bearing on the outcome of the present petition, but is only reflective of the mindset of the tenant, who even for the subsequent period, in perpetuity continued to commit default in payment of rent, thus forcing the landlord to file another petition for ejectment, pendency of which is not disputed before this Court.

9. The tenant also cannot be allowed to take advantage of the fact that the cheque deposited by her stood encashed and entered in the records of the rent controller.

The cheque was in the name of the Rent Controller and not the landlord. As such, court encashed it. There was no prayer made before the Rent Controller for remitting the rent to the landlord or informing him of such action. The tenant took recourse to such action at his own peril. It is also not her case that she did so under any legal advise.

10. The apex Court in *Madan Mohan & another vs. Krishan Kumar Sood,* 1994 Supp. (1) SCC 437 explained the purpose behind the Rent Controller specifying, in the order of eviction, the exact amount of rent payable by the tenant. While harmoniously construing the provisions, and more specifically proviso to Section 14, Court reiterated that the tenant must effectively know with certainty the amount he is liable to pay, enabling him to comply with the clause of exception, saving him from ejectment.

11. Now what is the meaning of the expression "amount due" is no longer *res integra* and stands sufficiently explained through various judicial pronouncements including *Madan Mohan (supra)* and CMPMO No. 156 of 2015, titled as *Sanjay Kumar vs. Smt. Pushpa Devi*, decided on 6.01.2016.

12. In *Madan Mohan (supra)* the Court observed that:

> "15. In such cases it will be advisable if the controller while passing the order of eviction on the ground specified in clause (i) of sub-Section (2) of Section 14 of the Act specifies the "amount due" till the date of the order and not merely leave it to the parties to contest it after passing of the order of eviction as to what was the amount due.
>
> 16. Surely the Rent Control Acts, no doubt, are measures to protect tenants from eviction except on certain specified grounds if found established. Once the grounds are made out and subject to any further condition which may be provided in the Act, the tenants would suffer ejectment. Again the protection given in the Acts is not to give licence for continuous litigation and bad blood."
>
> [Emphasis supplied]

13. This court in *Sanjay Kumar (supra)* observed as under:

> "22. The words "tender" and "pay" have not been defined under the Act. This Court in *Satsang Sabha, Akhara Bazar, Kullu vs. Shrimati Kartar Kaur,* Latest HLJ 2003 (HP) 1006, observed as under:
>
> "16. In *Sheo Ram vs. Thabar* (AIR 1951 Punjab 309), the word tender has been defined to be offer of lawful money which must be actually produced to the creditor by producing and showing the amount to the creditor or to the person to whom the money is to be paid. A mere offer to pay does not constitute a valid tender. The law insists upon an actual, present physical offer.
>
> 17. The word 'pay' has been defined in *Parmeshri v. Atti,* (1957 PLR 318) to mean to give money or other equivalent in return for something or in discharge of an obligation."
>
> 23. The expression used in the third proviso is "pays" and not deposit. The Section itself does not provide for depositing the amount in the Court after passing of the order. As such the only meaning which can be given to the expression "pay" and "tender" is that the rent is to be directly paid to the landlady and not deposited in the Court. At this juncture it be only observed that the Act does provide a mechanism for depositing the rent in the Court. Sections 20 and 21 of the Act deal with the same. But then in the given facts and circumstances these provisions cannot be invoked, for there was neither

any tender by the tenant nor any refusal by the landlady to accept the rent. Significantly no intimation of deposit of rent was sent to the landlady within thirty days from the date of passing of the order.

24. Conjoint reading of the first and the third proviso of Section 14(2)(i) of the Act mandates that the tenant is also required to pay the stipulated interest, not only till the date of the passing of the order, but till the date of payment of the amount due, which could not have been calculated by the Rent Controller for want of certainty, as it was left to the discretion of the tenant to deposit the same within thirty days from the date of passing of the order. As such, the tenant was duty bound to calculate interest thereupon, and pay or tender the same to the landlady.

25. This question of payment of interest for the period up to thirty days, from the date of passing of the order never came up for consideration in any of the decisions referred to hitherto before.

26. It is neither the intent nor the mandate of the legislature that after the parties finish off one round of litigation, they would be relegated to another round of litigation for recovery of the amount due, which would include the costs and interest.

27. Once the order of eviction is passed, the executing Court is duty bound to execute its orders and as laid down in *Madan Mohan (supra), Bilasi Ram vs. Bhanumagi,* 2007 (1) Shim. L.C. 88 and *Rewat Ram vs. Ashok Kumar & others,* 2012 (3) Shim. L.C. 1265, no question of equity or hardship would arise for consideration, at this stage."

... .

"36. As stands laid down by the Full Bench of this Court in *Wazir Chand (supra),* it is the duty of the tenant to be vigilant and explain the reason or cause for shortfall in the amount of deposit.

37. At the cost of repetition it is reiterated that protection under the Act is only till such time the tenant dutifully complies with the same. The third proviso necessarily has to be read conjunctively with the first proviso to the sub-Section. In the instant case, tenant did not pay the amount to the landlord. She directly, without tendering it to him and not on account of his refusal, deposited the amount in the Court, which she did purely at her risk, responsibility, so also consequences. It is not his case that on account of any legal advise it was so done.

14. A Full Bench of this Court in *Wazir Chand vs. Ambaka Rani & another,* reported in 2005 (2) Shim. L.C. 498, has also explained that the expression "amount due" so used in the third proviso to the Section would include the component of rent, interest and the costs.

15. The apex Court in *Atma Ram vs. Shakuntala Rani*, (2005) 7 SCC 211 observed as under:-

"18. In *E. Palanisamy v. Palanisamy*, (2003) 1 SCC 123 the provisions of T. N. Buildings (Lease and Rent Control) Act, 1960 came up for consideration. The requirement of the Act was somewhat similar to the Rajasthan Rent Act and the A. P. Rent Act considered by this Court in *Kuldeep Singh v. Ganpat Lal* , (1996) 1 SCC 243 and *M. Bhaskar v. J. Venkatarama Naidu,* (1996) 6 SCC 228. Reiterating the view in *Kuldeep Singh v. Ganpat Lal,* (1996) 1 SCC 243 and *M.*

Bhaskar v. J. Venkatarama Naidu, (1996) 6 SCC 228 this Court observed : (SCC pp. 127 & 128, paras 5 & 8)

> "The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains expression provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i. e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh v. Ganpat Lal,* (1996) 1 SCC 243 and *M. Bhaskar v. J. Venkatarama Naidu,* (1996) 6 SCC 228.
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> * * *
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> Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking section 8 (5) of the Act without following the procedure contained in the earlier sub-sections i. e. sub-sections (2) , (3) and (4) of section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. "

19. It will thus appear that this Court has consistently taken the views that in Rent Control legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision."

16. There is serious default on the part of the tenant in complying with not only spirit but also letter of the law.

17. Hence for all the aforesaid reasons present petition needs to be allowed. Order dated 27.9.2012, passed by Rent Controller Solan, Distt. Solan, H.P. in Case No. 20/10 of 2009, titled as *Hans Raj Khimta vs. Shrimati Kanwal Jeet Kaur alias Sardarni Babli*, is quashed and set aside. Application filed by the landlord before the Rent Controller as also this petition stand allowed. Pending application(s), if any, also stand disposed of accordingly.

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