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***And***
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**Indian Penal Code, 1860-** Section 201- Essential ingredients to prove offence punishable under Section 201 IPC are that an offence was committed and accused had reasons to believe the commission of such an offence and that they had caused disappearance of the evidence to screen themselves.

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**Indian Penal Code-** Section 302- Accused having an argument with the deceased over accompanying him- sister of the deceased went to the Ram Mandir and when she returned, she saw the accused running towards Ram Mandir- when she went to the house, her sister was found dead- a Darat smeared with blood was also lying on the spot- held, that case is based upon the circumstantial evidence- motive that the accused asked his wife to accompany him but she refused, is a weak motive to provoke a person to commit murder –there is contradiction regarding the time at which the sister of the deceased told another witness about the incident- prosecution witness had admitted that the police had applied blood on the T-shirt of the accused- witness of the recovery had not supported the prosecution case- therefore, in these circumstances, accused could not be held liable for the commission of murder.

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**Indian Penal Code, 1860-** Sections 279 and 304-A- Accused driving the vehicle in a rash and negligent manner and causing death of one person- he was convicted by trial court and conviction was upheld by Appellate Court- held, that the testimony of the eye-witness was duly corroborated by site plan which showed the skid marks to the extent of 29 feet- skid marks proved that the vehicle was being driven at an excessive speed- therefore, the order passed by Trial Court was based upon the reasons and could not be interfered with.

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**Indian Penal Code, 1860-** Sections 279, 337, 338 and 304-A- Accused was found to be driving the vehicle in a rash and negligent manner- ethyl alcohol was found in his blood to the extent of 135.41 mg% and in the urine to the extent of 167.90 mg%- held, that Section 185 of Motor Vehicle Act clearly provides that a person driving a motor vehicle having

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**Motor Vehicle Act, 1988-** Section 166- Deceased died in the accident- deceased was earning Rs. 16,478/- per month- Tribunal had allowed 30% addition by way of future prospects- he was aged 40 years old- Tribunal had applied the multiplier of 14- held, that there is no infirmity with the award passed by Tribunal.

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**Motor Vehicle Act, 1988-** Section 166- Deceased died in the motor vehicle accident- no evidence was led to prove that the driver did not have any valid driving license or that the owner had committed any willful breach of terms and conditions of the insurance policy- no evidence was led to prove that the deceased was travelling as a gratuitous passenger- driver did not deny the averments that the deceased was employed as a labourer for loading or unloading luggage- held, that the Insurance Company is liable to indemnify the insured.

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**Motor Vehicle Act, 1988-** Section 166- Claimant had not led any evidence to prove that he was travelling in the offending vehicle as a passenger and that he had met with an accident- therefore, MACT had rightly dismissed his claim.

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**Motor Vehicle Act, 1988-** Section 166- Claimant practicing as an Advocate -he was travelling in a vehicle in which sand was being carried for the construction of his house- claimant had not pleaded in the claim petition that he had hired the vehicle for carrying his sand- Insured had also not pleaded that the vehicle was hired by claimant for transporting the sand- held, that the claimant was travelling in the vehicle as a gratuitous passenger- Insurance company is liable to satisfy the award with the right of recovery.

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**Motor Vehicle Act, 1988-** Section 166- MACT holding that the owner is liable to satisfy the award to the extent of 70% while insurer was liable to satisfy the award to the extent of 30% on the ground that the registration certificate of the vehicle was transferred in the name of the 'D' and it was not in the name of the owner- held, that the transfer of the vehicle will not absolve the insurance company from its liability- Insurance Company is liable to pay whole of the amount.

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**Motor Vehicle Act, 1988-** Section 166- Tribunal assessing the income of the deceased who was a bachelor as Rs. 2,400/- per month and thereafter assessing the loss of the dependency as Rs. 800/- per month- held, that the assessment is contrary to the decision of the Hon'ble Supreme Court of India in ***Sarla Verma Vs. Delhi Road Transport Corporation AIR 2009 SC 3104***- high court assessed the income of the deceased as Rs. 3,000/- per month and loss of the dependency as 50% i.e. Rs. 1,500/- per month and awarded compensation of Rs.2,70,000/-.

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**Motor Vehicle Act, 1988-** Section 166- Tribunal holding that the claimant was earning Rs. 6,000/- per month, it applied the multiplier of 12 and awarded a sum of Rs.8,64,000/- under the head "loss of income" and Rs.1,23,324.70 under the head "medical expenses', but the Tribunal had not awarded any compensation under the heads of "pain and suffering" and "loss of amenities of life"- held, that the Tribunal is bound to award the compensation under the heads of "pain and suffering" and "loss of amenities of life"- hence, Rs. 1 lakh awarded under the heads of "pain and suffering" and Rs.1,00,000/- awarded under the head of ' loss of amenities of life'.

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**Motor Vehicle Act, 1988-** Section 166- Tribunal holding that claimants had failed to prove that the vehicle was being driven in a rash and negligent manner- held, that there was sufficient evidence on record to prove that vehicle was being driven in a rash and negligent manner – further held that evidence is not to be appreciated as in a criminal case- acquittal in criminal case cannot have any effect on the proceedings before the MACT – when the respondents had admitted that the deceased fell down while boarding Trala- the principle of *res-ipsa loquitur* would be

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**N.D.P.S. Act, 1985-** Section 20- Accused was found in possession of 1.8 k.g of charas at 4:30 P.M near Kali Mata Mandir- one independent witness associated by police did not support the prosecution case- police officials admitted that the place, where accused was apprehended was a busy place- still no other independent witness was associated- held, that the statement given by the police officials can be relied upon but when one independent witness had not supported prosecution case and other was not associated, the search and seizure becomes doubtful and the reliance cannot be placed upon the prosecution version.

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**N.D.P.S. Act, 1985-** Section 20- Accused was found in possession of 12.5 kgs of charas- prosecution not examining the driver of the vehicle which took the police party to the spot and one another witness – the testimonies of the police officials are contradicting each other- no independent witness was associated- non-examination of the independent witness and the other prosecution witness would be fatal to the prosecution.

Title: State Vs. Babu Ram Page-72

**N.D.P.S. Act, 1985**- Section 20 - Link evidence- Parcels were found in torn condition which can lead to an only inference that these were tempered with- further, column Nos. 9 to 12 of NCB form were left blank- therefore, link evidence had not been proved and the accused is entitled to be acquittal.

Title: State of H.P. Vs. Paras Ram Page-52

**N.D.P.S. Act, 1985-** Section 20- Link evidence- PW-5 stating that four sample seals of seal impression T were prepared, whereas, PW-1 and PW-3 stating that only one such sample was prepared- when the case property was opened in the Court, it was sealed with two samples of seal 'K' and three samples of seal T - report of CTL did not record that seal was received or it was tallied- in these circumstances, link evidence has not been proved and the acquittal of the accused is justified.

Title: State Vs. Babu Ram Page-72

**N.D.P.S. Act, 1985-** Section 20 (C)- Accused saw the police party and tried to run away – accused was apprehended and was found in possession of 3 kgs of charas- testimonies of the police officials corroborating each other- there was no independent witness at the spot- therefore, prosecution case cannot be doubted due to non-examination of the independent witness- testimonies of the police official cannot be doubted on the ground that they are police officials-conviction upheld.

Title: Govind Singh Vs. State of H.P. Page-205

**N.D.P.S. Act, 1985-** Sections 18 and 52(3)- Accused was found to be in possession of 2 kgs. 500 grams of opium- held, that the accused and the case property were not immediately taken to the Officer in charge of the nearest police station which is violation of the mandatory provision of Section 52 and the accused is entitled to be acquitted.

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**'P'**

**Protection of Women from Domestic Violence Act, 2005-** Respondent starting beating his wife after the death of his mother- he was working in a Atal Savasthay Seva – respondent had no source of income- the income of the petitioner is about Rs. 20,000- 25,000/- per month- held that the respondent husband is bound to maintain his wife- in these circumstance, granting of Rs. 3,000/- per month as maintenance from the date of the filing of the petition cannot be said to be excessive.

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**'S'**

**Service Law-** Appointment in the public institutions can be made by way of advertisement of vacancy as per Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 by way of appointment by recruitment committee and as per recruitment and promotion rule- since there was no evidence that the appointment of the petitioner was made in accordance with any of the above procedure- therefore, petitioners are not entitled for regularization.

Title: Jai Singh Vs. H.P. State and others Page-41

**Service Law-** Appointment in the public institutions can be made by way of advertisement of vacancy as per Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 by way of appointment by recruitment committee and as per recruitment and promotion rule- since there was no evidence that the appointment of the petitioner was made in accordance with any of the above procedure- therefore, petitioners are not entitled for regularization.

Title: Jeet Ram Sharma Vs. H.P. State and others Page-45

**Specific Relief Act, 1963-** Section 34- Plaintiff was allotted nautor land – he deposited Rs. 16,350/- as Nazarana- plaintiff broke up the land and made it cultivable- however, the allotment was cancelled by Financial Commissioner- Trial Court found that the allotment was made during the ban period- suit was dismissed but state was directed to refund the Nazarana- Appellate Court dismissed the appeal but set aside the order refunding Nazrana- held, that the payment of Nazarana was a consideration for the grant and when the grant was cancelled, the plaintiff is entitled for the refund of the amount- therefore, appeal partly accepted and defendant directed to refund the Nazarana along with interest.

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**'T'**

**Transfer of Property Act, 1882-** Sections 3 and 41- Suit land was earlier owned by defendants No.1 & 2 and others, who sold it to the predecessor in interest of the plaintiffs vide sale deed dated 20.3.1967- mutation No. 644 was attested- however, on the death of the predecessor-in-interest of the plaintiffs, mutation of inheritance was not sanctioned and the suit land was recorded in the ownership and possession of the defendant No.1- defendant No. 2 filed a Civil Suit for recovery against the defendant No. 1 and the suit land was sold in the execution of decree to defendant No. 3- held, that when defendant No. 1 and others had sold the land belonging to them to the predecessor-in-interest of the plaintiffs by way of registered sale deed, defendant No. 3 cannot claim to be the bona fide purchaser for consideration as he would have a notice of the sale deed.

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**FULL TEXT OF THE SPEECH DELIVERED BY HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, CHIEF JUSTICE, HIGH COURT OF HIMACHAL PRADESH, AT PALAMPUR, ON 13TH SEPTEMBER, 2014.**

Hon"ble Mr.Justice Sanjay Karol & Madam Karol, Hon"ble Mr.Justice Tarlok Singh Chauhan, Hon"ble Mr.Justice Sureshwar Thakur, Judicial Officers, Senior Advocates, Advocates, Authorities of ICAR-IHBT, Mediators, Para Legal Volunteers, Press and Media, distinguished guests on the dais, off the dais:

I feel deeply privileged to inaugurate the State Conference on "Mediation & State Meet of Para Legal Volunteers", which is aimed at to understand the concept and framework for mediation, process of mediation, techniques of mediation, role and qualities of mediators and the values and culture of individual litigants.

2. If we go back into the history, Mediation is ancient and has deep roots in our country. In old days, people used to resolve their disputes at the community level.

3. Now, the economic growth and globalization has led to explosion of litigation in our country. No doubt, our judicial system is one of the best in the world, but it is also criticized due to long delays in the resolution of the disputes. Hence, the need of Alternative Dispute Resolution mechanisms, like Mediation, is felt.

4. The concept, implementation and successful continuation of the Mediation programme at District Level can be broadly classified into the following seven stages:

(1) Introduction of the Concept

(2) Training

(3) Establishment of Centres

(4) Referral & Implementation

(5) Monitoring

(6) Output Analysis; and

(7) Continuing Education.

5. Mediation can be characterized as conflict resolution by the involved parties with the help of a neutral agent, who is referred to as the Mediator. This is, in short, the essence of mediation.

6. Mediation has been used in many jurisdictions to facilitate resolution of cases through trained Mediators, who explore, with litigants, the many avenues of settling cases and reaching compromises. In fact, mediation is perceived to be a useful alternative to litigation and is considered to be a model to relieve the workload of the courts. Mediation is

an innovative way of dispute resolution and directly connected with the judicial reforms. The basic assumption behind the concept of mediation is that *dispute is healthy; not solving a dispute is dangerous*. The reason for conflicts is very often not that people do not want to solve their conflicts, but rather that they just do not know how to do that. During the course of mediation, the mediator takes care of the process; the involved parties take care of their topics and contents. The mediator helps the parties to express their feelings, emotions and ideas and takes care of balance between the parties. Settlement through mediation is voluntary, practical, amicable and fair; in mediation parties retain the right to decide for themselves, whether to settle disputes and the terms of any settlement. Tools of negotiation one learns during the mediation process may help in other situations of life too.

7. Mahatma Gandhi in his autobiography, "The Story of My Experiments with Truth", while writing about his experiences in South Africa, said and I quote:

"My joy was boundless. I had learnt the true practice at law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul."

8. Mediation attempts to change dispute from "win-lose" to "win-win". It is a non-adversarial process of helping people to come to an agreement. Mediation is advantageous in numerous ways, such as:

1. The parties have control over the mediation in terms of – firstly its scope i.e. the terms of reference or issues can be limited or expanded during the course of the proceedings; and secondly, its outcome i.e. the right to decide whether to settle or not and the terms of settlement.

2. Mediation is participative, i.e. the parties get an opportunity to present their case in their own words and to directly participate in the negotiation.

3. Mediation is voluntary and any party can opt out of it at any stage if he feels that it is not helping him. The self-determining nature of mediation ensures compliance with the settlement reached.

4. Mediation procedure is speedy, efficient and economical.

5. Mediation procedure is simple and flexible. It can be modified to suit the demands of each case. Flexible scheduling allows parties to carry on with their day-to-day activities.

6. Mediation process is conducted in an informal, cordial and conducive environment.

7. Mediation is a fair process. The mediator is impartial, neutral

and independent. The mediator ensures that pre-existing unequal relationships, if any, between the parties, do not affect the negotiation.

8. The Mediation process is confidential.

9. The Mediation process facilitates better and effective communication between the parties which is crucial for a creative and meaningful negotiation.

10. Mediation helps to maintain/improve/restore relationships between the parties.

11. Mediation always takes into account the long term and underlying interests of the parties at each stage of the dispute resolution process – in examining alternatives, in generating and evaluating options and finally, in settling the dispute with focus on the present and the future and not on the past. This provides an opportunity to the parties to comprehensively resolve all their differences.

12. In mediation the focus is on resolving the dispute in a mutually beneficial settlement.

13. A mediation settlement often leads to the settling of related/connected cases between the parties.

14. Mediation allows creativity in dispute resolution. Parties can accept creative and non-conventional remedies which satisfy their underlying and long term interests.

15. When the parties themselves sign the terms of settlement, satisfying their underlying needs and interests, there will be compliance.

16. Mediation promotes finality. The disputes are put to rest fully and finally, as there is no scope for any appeal or revision and further litigation.

17. Refund of court fees is permitted as per rules in the case of settlement in a court referred mediation.

9. Any programme for mediation cannot be effectively implemented unless and until there is adequate awareness among the consumer of justice. Thus, it is our bounden duty to create awareness among Advocates, Judges and litigant public by using trained Mediators so as to enable them to understand the intricacies of mediation. Role of the parties, advocates and mediators is vital in resolving the entire conflict between the parties through mediation. Thus, the solution lies not only in the hands of judges and justices but in each and every citizen in order to achieve “Justice for all, and by all”.

10. Mediation has a great potential for providing satisfying solutions to disputes. In addition, mediation and other forms of Alternate Dispute Resolution (“ADR”) mechanisms may provide lawyers and other professionals with a possible avenue for diversification.

11. Development of Para Legal Services is another step towards easy access to justice for all stakeholders. National Legal Services

Authority has formulated modalities and has prescribed that the District Legal Services Authority has to identify about 50 volunteers at District Level and about 25 volunteers at Taluk Level and training is to be imparted to such volunteers. Para Legal Volunteers are to be identified from the following target groups:

i) Advocates, Teachers and Lecturers of Government and Private School & Colleges of all levels.
ii) Anganwadi Workers.
iii) Private or Government doctors and other Government employees.
iv) Field level officers of different departments and agencies of the State and Union Governments.
v) Students of graduation and Post graduation in Law, Education, Social Services and humanities.
vi) Members of a political Service oriented Non-Governmental Organizations and Clubs.
vii) Members of Women Neighbourhood Groups,

*Maithri Sanghams*.

viii) Educated Prisoners serving long term sentences in Central Prison and District Prison
ix) Social Workers and volunteers, volunteers of Panchayat Raj and Municipal Institutions.
x) Members of Co-operative Societies.
xi) Members of Trade Unions.
xii) Any other person which the District Legal Services Authority or Taluk Legal Service Committee deems fit to be identified as Para Legal Volunteers.

12. During training programmes, exposure is to be provided to the Para Legal Volunteers for generating legal awareness in respect of constitutional and statutory rights and duties, general civil, criminal and procedural laws, as well as qua the following special issues:

i) Women
ii) Children
iii) Students
iv) Farmers
v) Industrial and Agriculture labour
vi) Prisoners
vii) Victims of natural disaster
viii) Physically challenged, including persons suffering from Mental disorder and mentally retarded persons.
ix) Victims of Trafficking i.e. women and children as well as those suffering from HIV/AIDS.
x) Members of Scheduled Castes and Scheduled Tribes.
xi) Bonded Labour
xii) Consumers

xiii) Senior Citizens.
xiv) And other beneficiaries under Legal Services Authority Act.

13. While imparting training to the Para Legal Volunteers, following topics are to be covered:

(i) Hindu Marriage Act, Christian Marriage Act, Muslim Women's Protection Act and Special Marriage Act. (ii) Child Marriage Restraint Act, 1929.
(iii) Family Court Act, 1994.
(iv) Guardian and Wards Act, 1890
(v) Hindu Minority and Guardianship Act.
(vi) Maternity Benefit Act.
(vii) Medical Termination of Pregnancy Act.
(viii) Dowry Prohibition Act.
(ix) Dowry Harassment
(x) Section 125 Cr.P.C.
(xi) Harassment of working women.
(xii) Protection of Women from Domestic Violence Act, 2005.
(xiii) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.
(xiv) Consumer Protection Act
(xv) Labour Welfare Laws
(xvi) Procedure for claiming compensation under Fatal Accidents Act, Motor Vehicles Act, Workmen"s Compensation Act and compensation from Railway Accident Claims Tribunal.
(xvii) Bonded Labour (Abolition) Act, 1976.
(xviii) F.I.R.
(Xix) Arrest – Bail.
(xx) Rights of Prisoners.
(xxi) Fundamental Rights of accused including prisoners.
(xxii) Fundamental Duties of accused including prisoners.
(xxiii) Registration and Stamp Duty.
(xxiv) Promissory Notes
(xxv) Revenue Laws
(xxvi) *Nyaya Sankalp* programme undertaken by National Legal Services Authority in collaboration with United Nations Development Programme entitled TAHA (Trafficking and AIDS/HIV).

(xxvii) Entitlements conferred on special groups by Governments under various schemes, orders and legislations.
(xxviii) Public Interest Litigation.
(xxix) Lok Adalats, A.D.R. system, Free Legal Services under Legal Services Authorities Act.
(xxx) Any other topic or Act the District Legal Services Authority and Taluk Legal Services Committee deem it necessary, including those related to local problems.

14. We are also in the process of framing policy as to what

procedure has to be adopted for imparting training to the Para Legal Volunteers; moral duties of Para Legal Volunteers and their disqualifications; and also identification of Para Legal Volunteers in Jails.

15. The Para Legal Volunteers can reach the remote areas of the entire State and educate the people. They are the soul and heart of the entire Scheme and they will play an important role for achieving the aim and object enshrined in the Legal Service Authorities Act, 1987 and the Rules & Regulations framed thereunder.

16. I hope and trust that if a collective effort is made with dedication and humanity, we will certainly achieve the aim, object and purpose of mediation at the earliest.

17. I will conclude with the words of Abraham Lincoln, who once said and I quote:

"Discourage litigation. Persuade your neighbours to compromise whenever you can point out to them how the nominal winner is often a real loser, in fees, expenses, and waste of time."

18. Thanking you all for being with us in the spirit of court reforms and continuing judicial education.

-sd-
(Justice Mansoor Ahmad Mir),
Chief Justice.

**FULL TEXT OF THE SPEECH DELIVERED BY HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, CHIEF JUSTICE, HIGH COURT OF HIMACHAL PRADESH** on ***30.8.2014, at Manali.***

Chapter 1 of the Motor Vehicles Act, for short "***the Act***", contains the definition of ***"drivers", "driving licence", "gross vehicle weight", "heavy goods vehicles", "heavy passengers vehicle", "light motor vehicle", "maxicab", "medium goods vehicle", "medium passengers motor vehicle", "motorcab", "motorcar", "motor vehicle" "omnibus", "public service vehicle", "semi trailer", "tractor", "transport vehicle", "unladen weight".*** Amongst other definitions, these are the definitions which the Tribunals have to deal with, while deciding the motor accidents claims cases and have to interpret these definitions, while keeping in view the mandate, purpose, aim and object for the grant of compensation.

2. **Chapter 2** of the Act deals with what is the ***necessity of driving license***, requirements for issuing driving license of different kind of motor vehicles and what is the responsibility of owner of the vehicle under the Act when the vehicle is being driven by the driver in contravention of or in breach of Sections 3 and 4 of Chapter 2, of the Act, i.e., ***necessity for driving license*** and ***age limit in connection with driving of motor vehicles***.

3. Section 3 of the Act specifically provides that no person can drive any motor vehicle on any public place unless he holds an effective driving licence with authorization/endorsement to drive a ***"transport vehicle",*** in terms of section 3 of the Act. Section 4 of the Act provides that no person below the age of ***eighteen years*** shall drive a motor vehicle on any public place, provided that a motorcycle with engine capacity not exceeding 50cc may be driven in a public place by a person, after attaining the age of sixteen years. Sub-clause 2 of Section 4 of the Act provides that person below the age of **21** years subject to exceptions contained in Section **18** of the Act, can drive a "***transport vehicle***" in a public place.

4. Section 5 of the Act mandates that no owner or person having control over or in charge of a motor vehicle shall cause or permit any person to drive the vehicle, who is not having license in terms of Sections 3 and 4 of the Act. Section 6 provides restrictions of holding a driving license. Sub-clause 3 of Section 6 provides that Licensing Authority having the jurisdiction referred to in sub-section (1) of Section 9 of the Act has the power to add to the classes of vehicles, which the driving license authorizes the holder to drive. Section 7 of the Act deals with the ***restrictions on the granting of learner's licences for certain vehicles*** and Section 8 of the Act provides how to apply for issuance and grant of learner's driving license. Section 9 of the Act deals with grant of driving license and what are the pre-requisites for making an application, as per the prescribed format.

5. Section 10 of the Act deals with the "***Form and Contents of License to drive"***. It provides that the Driving License has to be issued as per format prescribed by the Central Government.

6. Sub-clause 2 of Section 10 of the Act provides that driving licence must expressly contain that what type of vehicle, the driver is competent to drive. The driver must be having licence to drive one or more of the following kind of vehicles:

**"motor cycle without gear",** ***"motor cycle with gear", "invalid carriage", "light motor vehicle", "transport vehicle", "road roller",*** motor vehicle of a ***specified description***.

7. Section 11 of the Act provides ***how to make additions to driving license***.

8. I have determined the issue that the driver can drive light motor vehicle without the endorsement of (PSV) in terms of Sections 3 and 10 of the Act. I have discussed Section 2 sub-clause 2, Section 2 (47), Section 2 (21) and other definitions, i.e. Section 2 (16), 2 (17), 2 (18), 2 (20), 2 (23), 2 (24), 2(25),2( 26), 2(28),2 (29), 2(30) and 2 (33), in the series of judgments which are also reported. (FAO **No. 54 of 2012** titled **Mahesh Kumar and anr. vs. Smt. Piaro Devi and others** decided on 25.7.2014, ***FAO No. 129 of 2012*** a/w connected matters titled ***Varinder vs. Darshana Devi and others*** decided on 8.8.2014).

9. In sub-clause 2 of Section 10 of the Act, following kinds of vehicles are not included;

"***heavy goods vehicle", "heavy passengers goods vehicle", "maxicab" "medium goods vehicle", "medium passenger motor vehicle" "omnibus"***. but does contain the word "***light motor vehicle".***

10. The "***light motor vehicle"*** is defined under Section 2 (2) of the Act which provides that ***"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.

11. The word ***"transport vehicle"***, is included in Section 2 (21) of the Act and it is not included, rather used in other definition of the vehicle. The **judgments delivered** on this point are: ***FAO No. 129 of 2012*** a/w connected matters titled ***Varinder vs. Darshana Devi and others*** decided on 8.8.2014 wherein light motor vehicle and medium goods vehicle under Section 2(21) of the Act, has been discussed. The "Light motor vehicle" includes a "transport vehicle."

12. Section 2(23) of the Act defines "medium goods vehicles" -means any "goods carriage" other than a "light motor vehicle" or a "heavy goods vehicle. Section 2 (47) of the Act defines "Transport Vehicle, which reads as under:

***"2(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."***

13. The definitions of ***"medium goods vehicle"*** and ***"light motor vehicle"*** have been discussed by the Supreme Court in ***Annappa Irappa Nesaria 2008 AIR SCW 906*** and by the Himachal Pradesh High Court in ***FAO No. 54 of 2012*** titled ***Mahesh Kumar*** vs. ***Piaro Devi***, decided on 25th July, 2014 same principles have been laid down. In **FAO *320 of 2008 Dalip Kumar and another vs. NIAC Ltd.*** decided on 6.6.2014, it has been held that "Light motor vehicle" under Section 2 (21) means: a "transport vehicle" or "omnibus" the gross vehicle weight of either of which or a motorcar or tractor or road roller the unladen weight of which does not exceed (7500) Kilograms, Refer: (**2008) 3 SCC 464, titled National Insurance company. Ltd. vs. *Annappa Irappa Nesaria,* 2009 ACJ 1411 titled *OIC vs. Angad Kol and others* and 2011 ACJ 2115, titled National Insurance Co. Vs. Sunita Devi.**

**14.** In **FAO *196 of 2008* Sarwan Singh vs. Bimla Sharma** decided on 30.5.2014, it has been held that it is to be pleaded and proved that the driver was having license to drive one kind of vehicle, was found driving another kind of vehicle and that was the cause of accident in view of ***National Insurance Co. Ltd.*** vs. ***Swaran Singh and others,*** reported in ***AIR 2004 SC 1531***

15. ***Chapter 10*** of the Act deals with the ***liability without fault in certain cases.***

*16.* The aim and object of this chapter is to provide immediate relief to the victims of a vehicular accident and without going into trial. The tribunal has to record, *prima facie,* satisfaction, in terms of the documents placed on record, i.e., FIR, Death Certificate/Postmortem report, injury certificate, disability certificate, particulars of driver, owner, insurance policy, in order to achieve the purpose for grant of compensation to the victims of a vehicular accident who do not prey to the social evils and should get redressal of their grievances without any delay.

17. The apex Court in a case reported in (**1991) ACC 306** (**SC)** titled **Shivaji Dayanu Patil and another vs. Smt. Vatschala Uttam More** laid down the guidelines how to grant interim relief/interim award in terms of Section 140 of the Act. I, as a Judge of Jammu and Kashmir High Court, while dealing with the case reported in (**2011) 3 ACC page 411** titled ***National Insurance Co. Ltd. Vs. Nasib Chand***, laid down the principles of law relating to interim relief/interim award.

18. The apex Court in a latest judgment reported in **2012 AIR SCW,** page 10, titled **NATIONAL INSURANCE COMPANY LTD.** *VERSUS* **SINITHA & ORS.,** has discussed the mandate of Sections 140 and 163-A of the Act and principles of "no fault liability" and held that claimant is not to

establish fault or wrongful Act, negligent act or default of the offending vehicle.

19. There were divergent opinions whether interim compensation/relief awarded under Section 140 is appealable and revisable. In **YALLWWA & ORS** *VERSUS* **NATIONAL INSURANCE CO. LTD. & ANR,** reported in **2007 AIR SCW 4590,** it has been held that it is appealable.

20. Section 144 of the Act provides that these provisions are having overriding effect, i.e. Sections 142 and 143 of the Act.

**Overloading cases**:

21. The Supreme Court has laid down guidelines in the cases:

22. ***B.V. NAGARAJU VERSUS M/S. ORIENTAL INSURANCE CO. LTD., DIVISIONAL OFFICE, HASSAN,*** reported in **1996 ACJ 1178,** ***NATIONAL INSURANCE CO. LTD*** *Versus* ***ANJANA SHYAM & ORS.,*** reported in ***2007 AIR SCW 5237, UNITED INDIA INSURANCE CO. LTD. VERSUS K.M. POONAM & ORS.*** reported in **2011 ACJ 917,** and ***National Insurance Co. Ltd. vs. Reena Devi and others,*** **reported in 2013 ACJ 1195.,** how and what method is to be adopted to grant compensation in overloading cases.

23. Chapter 11 of the Act provides that what is the necessity of having ***insurance cover***. Sections 147 and 149 of the Act deals with what are the defenses available to the insurer in case a breach is committed by the insured. The insurer has to plead and prove breach, if any committed by the owner/insured.

24. Section 157 of the Act provides that in the case of transfer of ownership of the vehicle, the certificate of insurance and the policy shall be deemed to have been transferred in favour of the transferee and cannot be a ground to defeat the liability of 3rd party risk: Ref: **AIR 1996 SC 586** titled **M/S. COMPLETE INSULATIONS (P) LTD** *VERSUS* **NEW INDIA ASSURANCE CO. LTD., AIR 1999 SC 1398**, titled **G. GOVINDAN** *VERSUS* **NEW INDIA ASSURANCE CO. LTD. AND OTHERS** and ***AIR 2003 SC 1446***, titled **RIKHI RAM AND ANOTHER** *VERSUS* **SUKHRANIA AND OTHERS.**

25. Section 158 of the Act mandates that owner- insured, driver and insurer have to produce license, insurance policy, driving license, route permit and other documents before the police and the police is under legal obligation to submit all the particulars to the concerned Tribunal in terms of Section 158 (6) of the Act within 30 days and in terms of Section 166 (4), the Tribunal has to treat that report as claim petition filed, is mandatory. The purpose of this provision is to reach to the victims of a vehicular accident, as early as possible. I have recently held to this effect in **FAO No.117 of 2008** titled ***Seema Devi vs. Som Raj and others*** decided on 22.8.2014. The apex Court in **General Insurance Council & Ors. vs. State of Andhra Pradesh & Ors** reported in **2007 (4) ACC 385** in **JAI PRAKASH**

*VERSUS* **NATIONAL INSURANCE COMPANY LIMITED AND OTHERS** reported in **(2010) 2 SCC 607** issued directions to the Police Authorities to implement Section 158(6) and 196 of the Act. The directions were also given to the Claims Tribunals to comply with the provisions of Section 166(4) of the Act.

26. Section 163-A of the Act provides ***structured formula and schedule***. The apex Court in a recent judgment titled **PUTTAMMA & ORS.** *VERSUS* **K. L. NARAYANA REDDY & ANR.,** reported in **2014 AIR SCW 165**, held that it has become redundant by efflux of time and directed the Central government to make proper amendments while keeping in view the price escalation and other socio-economic factors. In **Kalpanaraj & Ors v. Tamil Nadu State Transport Corpn**. reported in **2014 AIR SCW 2982,** the Supreme Court granted one lac compensation under the heads " loss of estate, "loss of expectation of the life" etc., is a departure of the ***Second Schedule***.

27. Chapter 12 of the Act deals with how the Claims Tribunal has to grant compensation in fault liability.

28. The apex Court has laid down guidelines in case Smt. ***Sarla Verma and ors. versus Delhi Transport Corporation and anr.*** *reported in* ***AIR 2009 SC 3104*** and upheld by the larger Bench of the Apex Court in **Reshma Kumari and others versus Madan Mohan and anr.** reported in **2013 AIR SCW 3120**, that what should be the multiplier, is a guiding factor.

29. The apex Court held that what are the grounds of defences available to the insurer and how it is to be pleaded and proved. In **National Insurance Co. Ltd.** *vesus* **Swaran Singh** reported in **AIR 2004 SC 1531,** paras 84 to 105 deals with all types of cases and para 105 in particular contains gist how the insurer can be allowed to avoid the liability.

30. The apex Court in a latest judgment reported in ***Pepsu Road Transport Corporation vs. National Insurance Co. Ltd. (2013) 10 SCC 217,*** para 10 held: that if the owner has made efforts and satisfied himself about the validity of the driving license, he cannot be asked to go here and there and insurer has to be asked to pay the amount and satisfy the claim. The apex Court has also laid down guidelines that the insurer has to plead and prove that the owner has committed willful breach.

31. I have been observing that Tribunals are relying upon the judgments, which have been reversed or overruled by the Supreme Court and also by the High Court of Himachal Pradesh.

32. In ***FAO No. 9 of 2007 titled National Insurance co. Ltd. Vs. Smt. Teji Devi and others***, alongwith connected matter, decided on **22.8.2014**, I held that when the person who had hired the vehicle for transporting his goods for selling and was returning in the same vehicle, cannot be said to an unauthorized/ gratuitous passenger till he reaches the

place from where he had hired the vehicle. The same view had been taken in the case titled **National Insurance Co. Ltd. vs. Kamla and others,** reported in **2011 ACJ 1550,** while referring to the judgment of the apex Court in **NIC co. ltd vs. Cholleti Bharatamma 2008 ACJ 268 (SC).**

33. It is also beaten law of the land that the law laid down later in point of time by the Bench of the High Court in ***2011 ACJ 1550 HP,*** supra holds the field. In the judgment reported in 2011 ACJ 1550 (HP) titled **National Insurance Co. Ltd. vs. Kamla and others,** the leaned Judge discussed the case law which was holding field at that time and took the contrary view, of the judgment in **National Insurance Co. Ltd. v. Maghi Ram 2010 ACJ 2096 (HP)** while referring ***Cholleti Bharatamma's*** case supra.

34. In **National Insurance Co. Ltd vs. Deepa Devi and ors,** reported in **2007 AIR SCW 7882,** the apex Court has set aside the judgment made by the Division Bench of the High Court of Himachal Pradesh, whereby the liability was fastened upon the owner, State Government and the insurer jointly and severally to satisfy the award. In that case, the vehicle was requisitioned by the Government during Assembly Elections met with an accident during the said period and the owner, State Govt., and the insurer were held liable jointly and severally to satisfy the award. The apex Court set aside the same and held only the State liable.

35. The apex Court in a judgment reported in ***(2013) 10 SCC 646*** titled ***Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another,*** laid down that the Tribunals have to decide the cases, while keeping in view the principles of pre-ponderance of probabilities and strict proof is not required. The strict proof of pleadings in terms of Evidence Act and Code of Civil Procedure is not required because it is not an adversial litigation and the Tribunals or the High Courts have to keep in view what is the purpose, aim and object for the grant of compensation**.** Also referred: **N. K. V. BROS. (P.) LTD** *VERSUS* **M. KARUMAI AMMAL AND OTHERS ETC** reported in **AIR 1980 SC 1354, Sohan Lal Passi vs. P. Sesh Reddy and others,** reported in **AIR 1996 SC 2627** and **Smt. Savita vs. Bindar Singh and others**, reported in **2014 AIR SCW 2053**.

36. The apex Court in various judgments right from 1980 held that the purpose for the grant of compensation has to be achieved without any delay. The niceties of law, procedural wrangles and tangles and hyper- technicalities have no role to play. The High Court of Himachal Pradesh in ***FAOs No. 339*** *and* ***340 of 2008 National Insurance Co. vs. Parwati and others,*** decided on 3.1.2014**,** ***FAO 172 of 2006*** titled ***Oriental Insurance Co. Ltd. vs. Shakuntala Devi and others***, decided on 7.3.2014 *and* **FAO** ***396 of 2012*** titled ***Asha & others vs. Moti Ram and others***, decided on 16.5.2014, has also laid down the same principles.

37. In **Fahim Ahmad and ors vs. United India Insurance Co. Ltd.** reported in **2014 AIR SCW 2045**, and **Reshma Kumari & ors vs. Madan Mohan & anr.** reported in **2013 AIR SCW 3120**, the apex Court held

that insurer has not only to plead the breach of the conditions of policy but has also to prove the same by adducing evidence. Also see: the case of: ***Chairman Rajasthan State Road Transport Cor. Vs. Smt. Santosh & Ors.*** *reported in* ***2013 AIR SCW 2791,*** ***National Insurance Co. Ltd.*** **vs.** ***Swaran Singh and others*** , reported in ***AIR 2004 SC 1531 and*** **BIMLA DEVI & ORS.** ***VERSUS*** **HIMACHAL ROAD TRANSPORT CORPN. & ORS.** reported in **2009 AIR SCW 4298**. Judgment delivered by the High Court of Himachal Pradesh in ***tractor case,*** **FAO No**. ***320 of 2008,*** titled ***Dalip Kumar and another vs. National insurance Co. Ltd.*** decided on 6.6.2014, ***FAO No. 306 of 2012 Prem Singh and others versus Dev Raj and others*** decided on 18.7.2014 and ***FAO No. 393 of 2006 titled New India Insurance Co. Vs. Bandana Devi and others***., decided on ***28.3.2014.***

38. **The bouncing of Cheque of premium amount.** ***Section 64 VB Insurance Act*** provides that information about bouncing of the cheque is to be given to the owner and cancellation of policy is to be conveyed to the insured. The insurer has to satisfy the award, If accident takes place till the requisite information is given and conveyed to the insured-owner.

39. The High Court of Himachal Pradesh in **FAO No**. ***316 of 2008*** titled ***M/s New Prem Bus Service vs. Laxman Singh*** decided on 23.5.2014, held that the Insurer has to mandatorily intimate the owner by way of notice about the cancellation of insurance policy and if the accident occurs between the period till the cancellation is conveyed, it is the insurer, who is to be held liable, in terms of judgments in ***New India Assurance Co. vs. Rula and others*** reported in ***AIR 2000 SC 1082, Deddappa & ors Vs. The Branch Manager, National Insurance Co. Ld.*** reported in ***2007 AIR SCW 7948***, ***United India Insurance Co. Ltd vs. Laxmamma & ors.*** reported in ***2012 AIR SCW 2657***. The High Court of Himachal Pradesh also in FAO No.***383 of 2012*** titled **NIC** vs. **Kanta and others** decided on 22.8.2014, **FAO No**. **35 of 2009** titled **NIC vs. Smt. Anjana Sharma and others** decided on 4.7.2014 **and FAO No. 444 of 2009** *titled* **United India Insurance Co. Ltd. vs. Smt. Sanjana Kumari and others** decided on **11th July, 2014,** has held the same principles.

40. What is the effect if the license has expired on the date of accident? Section 15 (3) of the Act provides that license is to be renewed within one month. ***If application for renewal of license is made within a period of 30 days from the date of expiry, it is renewed automatically.***

41. The question may also arise if a license is renewed later in point of time from the date of its expiry, what is its effect.

42. I have discussed all the principles in a case title ***Vinod Kumar vs. UIAC Ltd and another*** (**FAO No**. ***291 of 2007)*** decided on 11.7.2014. The apex Court in **2008 AIR SCW 6512 titled Ram Bab Tiwari vs. UIIC Ltd-** ***Motor Vehicles Act, 1988*** has also discussed the entire law.

43. In ***Vinod Kumar's case supra***, it has been held that if a license was not renewed on the date of the accident but was renewed thereafter, with effect from the date of expiry, the insurer is liable.

**44.** The Bombay High Court in case titled **Emperor vs. Ramdas Nathubhai Shah, A.I.R. (29) 1942 Bombay 216** held that no offence is committed by the driver if a license was not renewed on the date when the concerned authority has made surprise checks, though it was renewed thereafter.

45. The IRDA has issued guidelines on "comprehensive policy", "package policy" and "Act Policy" and insurer has been asked not to contest the claim petition and satisfy the award and if appeals are filed, withdraw the appeals.

46. The Supreme Court has given details of all those judgments and also discussed IRDA policy in ***National Insurance Co. Ltd. Vs. Balkrishnan another 2012 AIR SCW 6286***. The High Court of Himachal Pradesh in **FAO No**. ***226 of 2006*** titled **UIIC Ltd. Vs. Kulwant Kaur,** decided on 28.3.2014 has discussed. The "Package policy". The "package policy" covers the liability of third party also, insured and the occupant also. The legal heirs were held to maintain claim petition and are within their rights to claim compensation. The concept and purpose of "comprehensive policy"/ "Package policy" and "Act policy" defined and held that "comprehensive policy"/ "package policy" covers occupant of the insured vehicle, third party and the owner-insured also in terms of judgment in ***National Insurance Co. Ltd. Vs. Balkrishnan another,*** reported in ***2012 AIR SCW 6286***. I have also delivered the judgment in J & K High Court in ***New India Assurance Co. Ltd. Vs. Shanti Bopanna and others*** reported in **2014 ACJ 219** and this High Court of Himachal Pradesh in ***FAO No. 135 of 2011***, titled ***New India Assurance company Ltd. vs. Smt. Rittu Upadhaya and others*** decided on 20.12.2013, discussed all circulars/guidelines, effect of Act policy, "comprehensive policy" and "package policy" and held that the occupant is covered by the "Comprehensive Insurance Policy".

47. If the claimants have not questioned the adequacy of compensation, the appellate Court has jurisdiction to enhance the compensation in view of ***Nagappa vs. Gurudayal Singh and others,*** reported in ***AIR 2003 SC 674***, ***APSRTC v. M Ramadevi and others*** reported in ***2008 AIR SCW 121***, ***Ningamma vs. United India Insurance Co. Ltd.,*** reported in ***2009 AIR SCW 4916, and Sanobanu Nazirbhai Mirza vs. Ahmedabad Municipal Transport Service,*** reported in ***2013 AIR SCW 5800.***

48. I have also gone through various judgments of the Motor Accidents Claims Tribunals of Himachal Pradesh, which were dismissed, because the accused has been acquitted in those cases, which is not the ground for dismissal of the claim petition. To convict a person, there must be a proof beyond reasonable doubt and for grant of compensation being non-

adversial litigation, it can be decided by applying the principle of pre-ponderance of probabilities. The apex Court in case titled **Dulcina Fernandes & ors vs. Joaquim Xavier Cruz.** reported in (***2013) 10 SCC 646*** held that the plea of negligence on the part of the first respondent, who was driving the pick-up van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probability and certainly not on the basis of proof beyond reasonable doubt.

49. The High Court of Himachal Pradesh has delivered judgments on this point in case ***FAO No. 471 of 2010 titled New India Assurance Co. vs. Rabhal Ram,*** decided on 1.8.2014, ***FAOs No. 339*** and ***340 of 2008*** titled ***NIC versus. Parwati and others*** decided on 3.1.2014 and ***FAO No. 133 of 2010*** titled ***Bajaj Allianz General Insurance Co. Ltd. vs. Ganga Devi &*** others decided on 18.7.2014. The apex Court in case titled ***NKV Bros. (P) Ltd vs. M. karumai Ammal and others AIR 1980 SC 1354*** reported in **AIR 1980 SC 1354**, laid down the same principles.

50. The apex Court in ***Dulcina Fernandes's*** case supra held that the claim petitions cannot be treated or seen as an adversial litigation between the litigating parties to the dispute. It is the duty of the Tribunal to determine the claim petitions, as early as possible.

***-sd-***
**(Mansoor Ahmad Mir),**
**Chief Justice**

**Special guidelines in terms of Section**

**158 (6) of the Act.**

As per statistics, India has large number of road accidents in the world and more than one lac people die in road accidents in a year. I have been observing in the State of Himachal Pradesh that every day the accidents take place and so many people die and sustain injuries. The most of the victims of the accidents are poor persons, who board the bus and who cannot afford their own vehicle. Most of the persons are illiterate, ignorant of their rights and have to wait for many months to take first aid, medical aid and other things, thereafter file claim petitions. The insurance company(ies) take the grounds to defeat the claim petition, which is the matter of serious concern and what I have been observing, while hearing appeals in the High Court of Himachal Pradesh more than 10 years old, appeals are pending for so many reasons, particularly service of driver, owners, production of driving license, particulars of driving license, particulars of road permit, route permit and insurance policy.

2. The Motor vehicles Act has gone through a sea changes and for that purpose, Section 158 (6) of the Motor Vehicles Act, 1988 has been introduced and apex Court has discussed what is the purpose of amendment in: **Dhannalal** vs. **D. P. VIJAYVARGIYA AND OTHERS AIR 1996 SC 2155**, **GENERAL INSURANCE COUNCIL & ORS** *VERSUS* **STATE OF ANDHRA PRADESH & ORS,** reported in ***AIR 2007 SC 2696 titled Jai Prakash versus National Insurance co. Ltd***. reported in ***(2010) 2 SCC 607.***

3. I have laid down guidelines in case **FAO No.117 of 2008** titled ***Seema Devi vs. Som Raj and others.,*** decided on 22.8.2014, and asked all the authorities concerned to follow the mandate in letter and spirit and report compliance without any deviation.

4. The Tribunal must exercise the powers to treat the police report in terms of the mandate of Section 158 (6) of the Act, as claim petition. They can ask the police to submit report, if they fail to do so, they can also ask the Magistrate to ensure compliance of Section 158 (6) of the Act, while granting remand.

**-sd-**
**(Mansoor Ahmad Mir),**
**Chief Justice.**

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

Bhisham Bahadur. …Appellant.

Vs.

State of Himachal Pradesh. …Respondent.

Criminal Appeal No. 400/2010
Reserved on : 27.8.2014
Decided on: 1.9. 2014

**Indian Penal Code**- Section 302- Accused having an argument with the deceased over accompanying him- sister of the deceased went to the Ram Mandir and when she returned, she saw the accused running towards Ram Mandir- when she went to the house, her sister was found dead- a Darat smeared with blood was also lying on the spot- held, that case is based upon the circumstantial evidence- motive that the accused asked his wife to accompany him but she refused, is a weak motive to provoke a person to commit murder –there is contradiction regarding the time at which the sister of the deceased told another witness about the incident- prosecution witness had admitted that the police had applied blood on the T-shirt of the accused- witness of the recovery had not supported the prosecution case- therefore, in these circumstances, accused could not be held liable for the commission of murder. (Para- 17 to 21)

For the Appellant: Mr. Naveen K. Bhardwaj, Advocate
For the Respondent: Mr. Ramesh Thakur, Asstt. A.G.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, Judge.**

This appeal is instituted against the judgment dated 12.7.2010 rendered by the Additional Sessions Judge, Fast Track Court, Kullu in Sessions Trial No. 3 of 2010 whereby the appellant-accused (hereinafter referred to as the "accused" for convenience sake), who was charged with and tried for offence punishable under sections 302 of the Indian Penal Code, has been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 20,000/- and in default of payment of fine, he was further directed to undergo simple imprisonment for a period of one year for the commission of offence under section 302 of the Indian Penal Code.

**2**. Case of the prosecution, in a nutshell, is that PW-1 Sita Thakur was residing in the house of her parents at Manikaran. Geeta Had come to the house of her parents one day prior to Rakshabandhan in the year 2009. Accused came to Manikaran on 12.8.2009 and stayed with his

wife in the house of her parents. Mahinder Kaur had gone to Punjab about 3-4 days prior to the incident. Sita, her father PW-3 Suresh Kumar, deceased Gita and accused were present at the house on the date of the incident. Accused asked his wife to accompany him on 13.8.2009 to Anni. She declined and asked the accused to wait for her mother. Accused got infuriated and started abusing his wife. Sita went to Ram Mandir at about 2-2:30 p.m. for answering the call of nature. When she came back after 3-4 minutes, she saw accused running towards Ram Mandir. Thereafter, accused ran towards Gurdwara. Sita came to her house and found that the door was closed. However, it was not bolted. She went inside and found that Gita was dead and was lying in a pool of blood. One darat Ext. P-1 was lying on the spot. It was stained with blood. The spectacles of the deceased Ext. P-2 were also lying on the spot. There was an injury on the neck of the accused. PW-1 Sita went to the house of her sister, PW-5 Deepa. She narrated the incident to her. PW-5 Deepa came on the spot. Sita went to call her father from Brahm Ganga. The matter was reported to the Police. Statement of PW-1 Sita was recorded Ext. PW-1/A by PW-11 Dulo Ram. It was sent to Police Station for registration of the FIR on the basis of which FIR Ext. PW-10/A was registered. The police invested the case and after investigation of the case, Challan was put up in the Court after completing all the codal formalities.

**3.** Prosecution examined as many as sixteen witnesses in all to prove its case against the accused. Statement of accused under Section 313 Cr.P.C. was recorded. He denied the case of the prosecution in entirety. Learned trial Court convicted and sentenced the accused, as noticed hereinabove.

**4.** Mr. Naveen K. Bhardwaj has vehemently argued that the prosecution has miserably failed to prove its case against the accused.

**5**. Mr. Ramesh Thakur, learned Assistant Advocate General has supported the judgment passed by the trial Court.

**6.** We have heard the learned counsel for the parties and have gone through the record carefully.

**7.** PW-1 Sita Devi has deposed that her sister Gita had come from Anni on 5.8.2009 to celebrate Raksha Bandhan. She was residing with them. Accused came on 13.8.2009. He also stayed in the house of her parents. Her mother had gone to Punjab to the house of her sister. Incident took place on 13.8.2009. She, accused and her sister Gita were present in the house of her parents. Her brother and sisters had gone to play. Her father had gone to Brahm Ganga. Deepa was in her house. Accused asked her sister Gita to accompany him to Anni at 2:30 p.m. She replied that she would leave the home on the arrival of her mother. She went to toilet. It was at some distance. She returned after 3-4 minutes. She found that dead body of her sister was lying on mattresses. The accused was running towards Gurdwara. His clothes were stained with blood. Her sister was bleeding. Blood had spilled over the floor. Blood stained darat was lying on the spot.

Spectacles of her sister were also lying on the spot. She tried to wake up her sister, but she was dead. Her body was cold and she was not moving. She noticed injury on her neck. According to her, injury was caused with darat. She went to the house of Deepa. She told her that brother-in-law has killed her sister. Thereafter, she went to Brahm Ganga to call her father. Her sister brought the Police to the spot. When the accused and deceased were quarrelling, she left to answer the call of nature. Nobody was present on the spot nor any other person came on the spot. In her cross-examination, she has deposed that her sister Deepa was residing in a separate house at a distance of 5-10 mtrs. from the house of her parents. The toilet where she had gone was located at a distance of 10 meters from the house of her parents. She had not talked to any person while going to toilet and coming back from the toilet. She came back within 2-3 minutes. Police post is near to her house. She has also admitted that many people visit Manikaran for going to Ram Mandir and Gurdwara. Brahm Ganga was located at a distance of 5-10 minutes walk from her house. She returned to her house along with her father after about five minutes. Her sister had already left prior to their arrival. When they returned, the Police had already arrived at the spot. There were 3-4 police officials. According to her, when Ext. P-1 to Ext. P-3 were recovered by the Police, accused was not present on the spot. Dead body of her sister was brought from the room to the kitchen by her father. Volunteered that he was thinking that she was alive and he wanted to take her to the doctor. She had admitted in her cross-examination that the Police had applied the blood on the T-shirt of the accused with the help of brush.

**8.** PW-2 Tara Chand has deposed that dead body of the wife of accused and daughter of Suresh Kumar was lying in the house. There was a mark of injury on the neck. The house comprised of a kitchen and one room. The police took photographs. The police recovered Darat, mattresses and spectacles from the spot. He carried dead body towards other side of the river. Sketch of darat was also prepared.

**9**. PW-3 Suresh Kumar is the father of the deceased Gita. His daughter Sita came to him at about 2 p.m. and told that accused had murdered his wife. When he reached the house, his daughter was lying on the mattresses in a pool of blood. There was cut mark on her neck. He tried to pick up her and take her to doctor. However, her neck was severed partially and she was dead. He kept the dead body in the kitchen. Blood spilled over the television and temple. Police arrived on the spot and took the photographs. In his cross-examination, he has deposed that he dragged the body out of the room. The mattress was lying inside the room and it was not brought to the kitchen. PW-4 Hukum Ram has deposed that the blood stained T-shirt of the accused was taken into possession on 13.8.2009 at about 11:15 p.m vide seizure memo Ext. PW2/G.

**10**. PW-5 Deepa is the sister of the deceased. She was sitting in her room on 13.8.2009 at about 3 p.m. Her younger sister Sita came to her and told that accused has killed Gita with darat. She went to Brahm Ganga to narrate this incident to her father. She went to the house of her

parents and found that the dead body of her sister stained with blood was lying on the mattress. One blood stained darat was lying near the dead body. Police seized darat, spectacles and mattresses.

**11**. Statements of PW-6 Paine Ram, PW-7 Ram Krishan, PW-8 Uttam Singh, PW-9 Ved Ram, PW-10 Prem Dass, PW-11 Dulo Ram and PW-12 Sanjeev Chauhan are formal in nature.

**12**. PW-13 Dr. Palzore has conducted the post mortem. He issued post mortem report Ext. PW13/A. He noticed following injures on the dead body.

> "A large incised wound involving neck muscles, vessels, trachea esophagus and also cervical vertebrae;
>
> The wound was anti-mortem in nature;
>
> The rigor mortis was present on all the limbs.
>
> A large incised wound was piercing beyond cervical vertebrae about 8 cm in size in front of neck. A overlapping another incised wound of about 7 cm in size around the neck.
>
> A linear incised wound of about 5-6 cm. incise just above the left ear."

According to him, the deceased died of severe injury in front of neck involving major vessels leading to excessive bleeding, shock and death. According to him, the injuries noticed by them on the dead body could have been caused with the help of darat, Ext. P-1.

**13**. PW-14 Santosh Kumar has deposed that accused was engaged as a servant in his orchard. His wife was residing with him. He was paying them a sum of Rs. 4000/- per month. Gita had left her house on 4.8.2009 to celebrate Rakhi. The accused left his house on 11.8.2009.

**14**. Statement of PW-15 Narpat is formal in nature.

**15**. PW-16 Pawan Kumar has deposed that he reached the spot on 13.8.2009. He conducted the spot inspection. He prepared site plan Ext. PW16/A and sketch Ext. PW2/B. Recoveries of T-shirt etc. were effected. In his cross-examination he has admitted that he has not taken the call details of the accused and deceased in possession.

**16**. DW-1 Dr. Ramesh Chander has deposed that he conducted post mortem of deceased Gita on 14.8.2009. The probable duration between death and post mortem examination was more than 6 hours and less than 24 hours, in his opinion. The death was instantaneous. The body could become cold within 2-3 hours after the death.

**17**. According to PW-1 Sita Devi, accused had asked her sister to accompany him to Anni at 2.30 P.M. She replied that she would leave the home on the arrival of mother. Thereafter a quarrel started. She went to toilet. She came back after 3-4 minutes. She found that dead body of her sister was lying on the mattress and the accused was running towards Gurdwara. A 'darat' was lying on the spot smeared with blood. Thereafter,

she went to the house of PW-5 Deepa. She told that her brother-in-law has killed her sister. She went to Braham Ganga to call her father. PW-3 Suresh Kumar, father of deceased has deposed that his daughter Sita came to him at about 2.00 P.M. and told that accused has murdered his wife. PW-5 Deepa has deposed that she was sitting in her room on 13.8.2009 at about 3.00 P.M. PW-1 Sita came to her and told that accused has killed Gita with darat. She went to Braham Ganga to narrate the incident to her father. Thus, according to PW-1 Sita, the incident has taken place at 2.30 P.M. However, PW-2 Suresh Kumar has deposed that he was informed about the incident at 2.00 P.M. PW-5 Deepa has deposed that PW-1 Sita had come to her at about 3.00 P.M. The timing is significant in this case since according to PW-1 Sita, accused asked deceased to accompany him to Anni at 2.30 P.M. She went to toilet and came back after 3-4 minutes. The toilet was at a distance of 10 meters and the house of PW-5 Deepa was at a distance of 5-10 meters from the house of her parents. If the incident has taken place at 2.30 P.M., there was no occasion for PW-1 Sita Devi to go to Braham Ganta to narrate the incident to PW-3 Suresh Kumar at 2.00 P.M. According to PW-1 Sita, Braham Ganga is located at a distance of 5-10 minutes walk from their house. According to PW-5 Deepa, Sita came to her at 3.00 P.M.

**18**. The dead body was lying in the room. The house comprised of one room and one kitchen. PW-3 Suresh Kumar, in his cross-examination, has testified that dead body was dragged out of the room. Why he has dragged the body from room to kitchen has not been explained satisfactorily. The only explanation PW-1 Sita has given that PW-3 Suresh Kumar was thinking that she might be alive and he wanted to take her to the doctor. In her examination-in-chief, PW-1 Sita has deposed that she tried to wake up her sister, but she was dead. Her body was cold and she was not moving.

**19**. Mr. Ramesh Thakur, learned Assistant Advocate General has vehemently argued that T-Shirt was recovered and the blood was found on the same. PW-1 Sita has testified that the police has applied the blood on the T-shirt of the accused with the help of brush from the floor. It renders the recovery of blood stained 'T' shirt highly doubtful. Rather the manner in which the blood has been planted on the T-shirt of the accused render the entire case of the prosecution untruthful.

**20**. The case is based on circumstantial evidence. There is no eye witness in this case. The motive attributed to the accused is that he asked his wife to accompany him, but she refused. Trivial issue that wife has refused to accompany the accused could not lead to murder, that too, in the afternoon when the sister was also present at the house with the deceased. The house of PW-5 Deepa is only at a distance of 5-10 meters. There were other houses near the police station and the police station was also not very far from the spot of incident. Rather PW-2 Tara Chand, in his cross-examination, has admitted that many houses surrounded their houses and the house of Deepa and the house of her father were located in the same colony and these were adjacent to each other.

**21**. Recovery of darat is also doubtful in view of the fact that PW-2 Tara Chand was declared hostile and was cross-examined by the learned Public Prosecutor. He has denied that the police seized darat, spectacles, mattresses and the cloth having blood in his presence and these were taken into possession vide separate memos. He has denied portions A to A, B to B, C to C and D to D of his previous statement mark 'A' made before the police. He has also denied that the police has seized T-shirt worn by the accused, which was stained with blood. Rather, according to PW-2 Tara Chand, Gita Devi was not at home on 8.8.2009. He did not know where she had gone. Then stated that she had gone with her mother towards Punjab.

**22**. Consequently, in view of analysis and discussion made hereinabove, the prosecution has failed to prove its case beyond reasonable doubt that the accused has committed murder of Gita. The circumstances noticed by us hereinabove creates reasonable doubt in the version of prosecution.

**23**. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 12.7.2010 passed in Sessions Trial No. 3 of 2010 by learned Additional Sessions Judge, Fast Track Court, Kullu is set aside. Accused is acquitted of the charge framed against him by giving him benefit of doubt. Fine amount, if already, deposited be returned to the accused. Since the accused is in jail, he be released forthwith, if not required in any other case.

**24**. The Registry is directed to prepare the release warrant of 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. & HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.**

Union of India & Ors. …Petitioners.

Vs.

Gian Singh Verma & Anr. …Respondents.

CWP No. 6160 of 2014
Decided on: 01.09.2014.

**Constitution of India, 1950-** Article 227- Respondent was appointed as a Stenographer Grade-III in Army Training Command and was promoted as a Stenographer Grade-I- Hon'ble Supreme Court directing in ***M. Nagraj Vs. Union of India etc. 2007 (4) SCT 664*** to extend the benefit of 77th and 85th amendment of the Constitution and to re-frame the rule if necessary- no such exercise undertaken by Union of India- respondent made a representation for the implementation of the judgment but it was rejected on the ground that the judgment was only applicable to the State of U.P. and no

notification was issued by DOPT- held, that the judgment of the Hon'ble Supreme Court of India was binding upon the Union of India and it was bound to be implement the same.

**Case referred:**

M.Nagraj Vs. Union of India etc. 2007(4) SCT 664

For the Petitioners: Mr.Janesh Mahajan, Central Government Counsel.
For Respondents: Nemo.

The following judgment of the Court was delivered:

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**Justice Sureshwar Thakur, Judge (Oral)**

The brief facts, sequelling the institution of the writ petition, at the instance of the petitioners, are of the respondent having joined service with the petitioner-Department as Stenographer Grade-III with the Army Training Command on 17.6.1995. Subsequently, he, in March 2006, was promoted as Stenographer Grade-I. The respondent, through his representation of 2.8.2012, drew the attention of the petitioner-Department to the judgment, rendered by the Hon'ble Apex Court, which was forwarded by the ARTRAC to the competent authority at Delhi, under Annexure A-4. However, the competent authority, in its communication, comprised in Annexure A-5 with OA, rejected the representation of the respondent on the ground that the judgment, rendered by the Hon'ble Apex Court, is applicable to the State of U.P. only. Besides, it was further conveyed to the respondent, under communication of 28.9.2012, that in case of Central Government Employees, a notification for implementation of judgments, passed by the Hon'ble Supreme Court, is notified by the Nodal Agency i.e. DOP&T and since no notification has been issued in the present case for implementing the orders in Central Government offices, no action is required to be taken in the present case on the basis of judgment passed by the Hon'ble Apex Court.

**2.** The respondent was dissatisfied and aggrieved with the rejection of his case for promotion to the post of the Private Secretary, hence, approached Central Administrative Tribunal by way of O.A. No.371/HP/2013. The O.A. was allowed by the Central Administrative Tribunal. A direction was rendered to the petitioner- Department to consider the case of the respondent for the post of private secretary by treating the relevant point as unreserved, if found fit.

**3.** The petitioner-Department is aggrieved by the judgment in O.A. No.371/HP/2013 rendered by the Central Administrative Tribunal and, hence, has assailed it by way of the instant writ petition.

**4.** The judgment of the Central Administrative Tribunal, under challenge before this Court, would warrant interference only in case it is manifest on its plain reading that the view, taken by it, is un-reasonable as well as perverse. A circumspect perusal of and analysis of the judgment of Central Administrative Tribunal, under challenge before this Court, brings

forth the fact that its findings while ultimately rendering relief to the respondent, inasmuch, as, the petitioner-department being directed to consider the case of the respondent for promotion to the post of private secretary by treating the relevant point as un-reserved, hence, denying the benefit of reservation in promotion with consequential seniority to respondent No.5, are anvilled upon a proper appraisal of the factual matrix, as well as, an appropriate application of the apposite case law to it, inasmuch, as, (a) it having, on an analysis on the principles laid down in **M.Nagraj vs. Union of India etc. 2007(4) SCT 664,** wherein it has been mandated that it would be mandatory on the part of the State Government to undertake proper exercise in case any rule was required to be framed by it to extend the benefit of enabling provision in the Constitution by way of 77th and 85th amendment i.e. for reservation in promotion with consequential seniority; (b) in the face of, hence, a mandatory obligation having been cast upon the respective department of the Government before extending the benefit of reservation and promotion with consequential benefit to undertake the proper exercise and it being manifested from the available material on record that uncontrovertedly no such contemplated exercise was undertaken by the petitioner-department within the parameters of the mandate comprised in the judgment of the Hon'ble Apex Court, aforesaid, as such, in absence thereof, the view, as adopted by the Central Administrative Tribunal while rendering a direction to the petitioner-department for considering the case of the respondent for promotion to the post of private secretary by treating the relevant point as un-reserved, was both a tenable, warranted as well as a sustainable view. Obviously, it is not permeated with the vice of perversity or absurdity nor is an unreasonable view. Consequently, it necessitates reverence.

**5.** In view of the above, the petition is dismissed and the judgment, passed by the Central Administrative Tribunal, is affirmed. All the pending CMPs, if any, are also dismissed. No costs.

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

Har Bhajan Singh. ...Petitioner.

Vs.

Krishan Das Verma (died) through LRs. ...Respondents.

CMPMO No.4061 of 2013
Reserved on : 19.8.2014
Decided on: 3.9. 2014

**Code of Civil Procedure, 1908-** Order 39 Rules 1 and 2- Plaintiff filed a suit for declaration that he had become owner by way of adverse possession- defendant asserted that he had become the owner by way of registered sale

deed- held, that adverse possession is to be used as a sword and not as a shield- it cannot furnish a cause of action- defendant had spent huge amount towards construction- therefore, in these circumstances, plaintiff is not entitled for the relief of injunction. (Para-9)

| | |
|---|---|
| For the Appellant: | Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate. |
| For the Respondents: | Mr. Y.P. Sood and Mr. Sanjay Parashar, Advocates for respondents No. 1 (i) to 1 (iii). |

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, Judge.**

This petition is instituted against the order dated 28.2.2013 rendered by the learned District Judge, Shimla in Civil Misc. Appeal No. 48-S/14 of 2012.

**2**. "Key facts" necessary for the adjudication of this petition are that Krishan Das Verma, predecessor-in-interest of the respondents-plaintiffs (hereinafter referred to as the "plaintiffs" for convenience sake), has filed a suit for declaration that he was in physical possession of the land entered as Khasra No. 226 measuring 00-21.18 hectares situated in Mauja Kufri Junga and that by way of adverse possession he has acquired ownership over the suit land. He has also assailed validity of sale deed No. 1873 dated 17.12.2007 in favour of petitioner-defendant (hereinafter referred to as the "defendant" for convenience sake). He has further claimed that subsequent mutation No.73 dated 13.2.2008 and entries in the revenue record with respect to the suit land in favour of the defendant were illegal and wrong. He has also claimed a decree for permanent prohibitory injunction.

**3**. Defendant has filed written statement to the plaint. According to the defendant, he has purchased land in question from Virender Kumar by way of registered sale deed dated 17.12.2007 and pursuant to the sale deed, mutation was attested on 13.7.2008.

**4.** Plaintiff has filed an application under order 39 rules 1 and 2 read with section 151 of the Code of Civil Procedure restraining the defendant from interfering in the ownership and possession of the suit land and changing the nature, alienating and encumbering the same. The application was resisted by the defendant. Civil Judge (Junior Division), Court No.VII, Shimla dismissed the application on 4.6.2012. Plaintiff preferred an appeal against the order dated 4.6.2012 before the learned District Judge, Shimla bearing Civil Misc. Appeal No. 48-S.14 of 2012. The District Judge partly allowed the appeal and order of trial court qua Khasra No. 193 old 26 new was set aside. Order of trial court qua Khasra No.194 old 207 new was affirmed. It is in these circumstances, present petition has been filed.

**5.** Mr. G.D. Verma, learned Senior Advocate has vehemently argued that the District Judge has not taken into consideration three tests necessary for granting interim relief, i.e. prima facie case, balance of convenience and irreparable loss and injury. He has also contended that the District Judge has wrongly relied upon the judgment passed by the Additional District Judge (Fast Track Court), Shimla in Civil Appeal No.17-S/13 of 2004/02.

**6**. Mr. Y.P. Sood has supported the order dated 28.2.2013 passed by the District Judge.

**7**. I have heard the learned counsel for the parties and have gone through the pleadings carefully.

**8.** What emerges from the pleadings of the parties is that defendant has purchased the suit land by way of sale deed No. 1873 dated 17.12.2007. Mutation No.73 was also attested in favour of the defendant on 13.2.2008. As per jamabandis for the years 1996-97 and 2001-2002, Virender Kumar was the owner of the suit land. Plaintiff has filed suit claiming his title by way of adverse possession. In the earlier judgment dated 31.12.2004 rendered by the Additional District Judge (Fast Track Court), Shimla in Civil Appeal No. 17-S/13 of 2004/02, the *lis* was between the different parties.

**9.** Now, as far as claim of adverse possession by the plaintiff is concerned, he has to prove this by leading evidence. Plaintiff has failed to prove his possession prima facie on the suit land. Civil Judge (Junior Division) has passed a well reasoned order and has also taken into consideration that adverse possession is to be used as shield and not as weapon. The District Judge has erred in partly allowing the appeal on 28.2.2013 by ordering the parties to maintain status quo qua Khasra No. 193 old 206 new without taking into consideration the basic principles for grant of ad-interim injunction. Defendant has purchased the suit land and has also spent amount towards construction. Plea of adverse possession is not a cause of action. However, the defence can be legitimately raised in a suit for possession by the other party.

**10**. Accordingly, the petition is allowed. Order dated 28.2.2013 passed by the learned District Judge, Shimla in Civil Miscellaneous Appeal No.48-S/14 of 2012 is set aside. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.

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

Hari Singh ……Appellant.

Vs.

State of H.P. …….Respondent.

Cr. Appeal No. 391 of 2011.
Reserved on: September 02, 2014.
Decided on: September 03, 2014.

**N.D.P.S. Act, 1985-** Section 20- Accused was found in possession of 1.8 k.g of charas at 4:30 P.M near Kali Mata Mandir- one independent witness associated by police did not support the prosecution case- police officials admitted that the place, where accused was apprehended was a busy place- still no other independent witness was associated- held, that the statement given by the police officials can be relied upon but when one independent witness had not supported prosecution case and other was not associated, the search and seizure becomes doubtful and the reliance cannot be placed upon the prosecution version. (Para-18)

For the appellant**:** Mr. Pardeep K. Sharma, Advocate vice Mr. Anup Chitkara, Advocate.
For the respondent**:** Mr. M.A.Khan, Addl. Advocate General.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, J.**

This appeal is instituted against the judgment dated 14.9.2011 and consequent order dated 15.9.2011, rendered by the learned Special Judge, Chamba, in Sessions Trial No. 15 of 2011, whereby the appellant-accused (hereinafter referred to as the accused) who was charged with and tried for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, was convicted and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. One lac and in default of payment of fine, he was further ordered to undergo simple imprisonment for one year. The period already undergone by the accused in custody during the trial was ordered to be set off as per Section 428 Cr.P.C.

**2.** The case of the prosecution, in a nut shell, is that on 5.3.2011, at about 4:15 PM the accused carrying a Naswari colour (dharidar) bag on his right shoulder came from Sarol side. On seeing the police he turned back and started running. On being suspected that he was having narcotic substance in his bag, he was overpowered by ASI Kuldeep Singh, with the help of other police officials. In the meantime, Hanif Mohammad son of Sher Mohammad arrived at the spot and was associated in the investigation as an independent witness. In his presence as well as in the presence of the police officials, ASI Kuldeep Singh apprised the accused of his legal right to be searched before the Magistrate or the Gazetted Officer. He gave his option to be searched by the police. The bag was searched, from which a white coloured plastic envelope, containing charas was recovered. The charas was weighed. It weighed 1 kg and 800 gms. He put the

recovered charas in the same envelope. The envelope was put in the bag and bag was parceled and sealed with ten seals of seal 'K'. Specimen of seal 'K' was also taken on the cloth and facimal of seal on NCB forms. Seal 'K' was handed over to HC Raghubir Singh and parcel containing charas was taken into possession by ASI Kuldeep Singh. '*Ruka*' was prepared and sent to the Police Station, Chamba through H.H.C. Karam Chand. The F.I.R. was registered against the accused. Special report was also sent to the Superintendent of Police, Chamba. He also prepared the site plan and recorded the statement of witnesses on the spot. On reaching the Police Station, ASI Kuldeep Singh produced the case property before S.I. Piar Chand i.e. PW-8 for resealing. Resealing was done and deposited with the MHC. The same was sent to F.S.L. Junga, through Constable Krishan Kumar. The F.S.L. report was got prepared. The investigation was completed and challan was put up after completing all the codal formalities.

**3**. The prosecution has examined as many as 12 witnesses to prove its case. The accused was also examined under Section 313 Cr.P.C to which he pleaded not guilty. The learned Trial Court convicted and sentenced the accused, as stated hereinabove. Hence, the present appeal.

**4.** Mr. Pardeep K.Sharma, Advocate, appearing vice Mr. Anup Chitkara, Advocate, for the accused has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. M.A.Khan, learned Addl. Advocate General, has supported the judgment of the learned Special Judge, Chamba, H.P. dated 14.9.2011 and consequent order dated 15.9.2011.

**5**. We have heard learned counsel for the parties and gone through the records of the case carefully.

**6.** PW-1, Haneef Mohammad deposed that he was doing the business of selling fried fish. He had no knowledge about the case. He was declared hostile. He denied that on 5.3.2011, the police officials met him at Parel bridge at 4:30 near the rain shelter. He denied that the police people apprehended one person alongwith a bag at a distance of about 40-50 meters from the rain shelter. He denied that the person disclosed his name as Hari Singh son of Sh. Chain Lal, resident of Sallain PO Sillagharat Pargana Gudial Tehsil and Distt. Chamba. He also denied that in the presence of H.C. Raghubir Singh, he was associated by the I.O. in the investigation of the case. He denied that the accused was apprised of his legal right to be searched before the Magistrate or Gazetted Officer in his presence. He also denied that the accused consented to be searched by the police present at the spot. He also denied that on checking of the bag, being carried by the accused, 1 kg 800 gms. charas was recovered. He also denied that the recovered charas was put in the same bag and the bag was parceled and sealed with ten seals of seal 'K' in his presence. He also denied that the specimen of seal was affixed on the NCB form in his presence and specimen of seal was taken separately on piece of cloth. He denied portion A to A of memo mark 'A'. However, he has admitted that memo mark 'B' bears his signatures. He denied that memo mark B was prepared by the police after

giving personal search by the police to the accused. He also admitted his signatures on mark 'C'. He denied that the police had searched the bag in the possession of the accused in his presence and on search 1 kg 800 gms. Charas was recovered from it. He also denied that the recovered charas was taken into possession vide mark 'C'. He denied portion A to A of memo mark 'C'. He admitted his signatures on parcel Ext. P-1. He also admitted that the specimen of seal 'K' Ext. PW-1/B bears his signatures in red circle 'A'. He denied that his statement was recorded by the police. He admitted his signatures on arrest memo mark 'D'. He denied that in his presence vide mark 'D', the police informed the accused that charas has been recovered from him as such communicated the grounds of arrest. He was selling fried fish on road side at Ballu and police people used to come and due to this they have made him a witness. In his cross-examination by the learned Advocate, he admitted that he has signed the aforesaid papers in the Police Station. He also admitted that no proceedings were drawn by the police pertaining to this case. He also admitted that he had seen the accused in the Court for the first time.

**7**. PW-2, H.C. Raghubir Singh testified that on 5.3.2011, he along with H.C. Karam Singh, Constable Kishan Singh and A.S.I. Kuldeep Singh, were on patrol duty at Parel bridge near rain shelter in official vehicle being driven by Constable Suresh. Rapat Ext. PW-2/A was recorded to this effect. At about 4:15 PM, from Sarol side, one person was found coming with a bag on his right shoulder. On seeing the police party, he got perplexed, turned back and tried to run. In the meantime, Hanif Mohammad son of Sher Mohammad, resident of Ballu, reached at the spot in his presence. The accused was overpowered at a distance of 40-50 meters from the rain shelter. The accused disclosed his name Hari Singh son of Chain Singh, resident of Sallain, Distt. Chamba. The accused was told about his right to be searched before the Magistrate or the Gazetted Officer. He consented to be searched by the police. The I.O. prepared the consent memo which is Ext. PW-2/B. Thereafter, ASI gave his personal search as well as the search of his I.O. kit and memo to this effect Ext. PW-2/C was prepared. The bag carried by the accused was searched by the I.O. and on search of the bag, one plastic envelope was recovered containing black colored hard substance. On checking, it was found to be charas. Thereafter, I.O. weighed the charas alongwith the envelope. It was found to be 1 kg 800 gms. The charas was put in the same bag and the bag was parceled in a piece of cloth and sealed with ten seals of seal 'K'. Sample of seal 'K' was taken separately on cloth piece which is Ext. PW-1/B. NCB forms in triplicate were filled in. Seal 'K' was also affixed on the NCB forms. The seal after use was handed over to him. The parcel containing recovered charas was taken into possession vide memo Ext. PW-2/D. The I.O. prepared the '*ruka*'. He also prepared the site plan. In his cross-examination, he deposed that first of all, the accused was seen by the I.O. There was no prior information and at that time, they were checking the vehicles. He did not remember, which kind of vehicle was being checked by them at that time. The locality is far away from the spot. The entire proceedings of the spot were conducted in his presence. The rain

shelter is at a distance of ten meters from the place where they were standing. In his cross-examination, he admitted that Chamba Pathankot road is a busy road. He admitted that many people used to wait for bus in the rain shelter. He also admitted that one path leads to Navodiya School. He also admitted that after school hours, the staff of the school used to come to the rain shelter and wait for the buses. As per the spot map, the accused has been shown to be apprehended near Kali Mata temple. Kali Mata temple is opposite to Chamba Pathankot road. He also admitted that from Kali Mata temple, the road touches Chamba-Kiyani road at Sarol. He admitted that the polytechnic is far away from Kali Mata temple. He admitted that the polytechnic and 4-5 shops fall in between Sarol and the place where the accused was apprehended. Many people were there but they were busy in drawing the proceedings.

**8**. PW-3, HHC Karam Singh also deposed the manner in which accused was apprehended and search was carried out. He also deposed the manner in which sealing process was completed. In his cross examination, he admitted that at the time of giving option, the accused, witness Hanif and 5 police officials were present at the spot. He admitted that from Mandir, there is passage leading to Navodaya School. He also admitted that the staff of Navodaya School used to come to Parel bridge for boarding the bus. At that time, it was 4.15 p.m., so they have not seen anybody there. He also admitted that the people used to remain standing at the rain shelter to get bus.

**9**. PW-4, HHC Madan Singh deposed that on 5.3.2011 at about 9.05 PM A.S.I. Kuldeep Singh produced one sealed parcel sealed with 10 seals of seal 'K' containing 1 kg 800 gms charas alongwith NCB forms (triplicate) for resealing to S.I/S.H.O. Piar Chand. He resealed the parcel with three seals of seal 'S'. He also took specimen of seal 'S' on a piece of cloth which is exhibit PW-4/A. Reseal memo Ext. PW-4/B was prepared. Seal 'S' was affixed on NCB form and the seal after use was handed over to him. Thereafter, S.I Piar Chand deposited the case property with the MHC at 9.50 p.m.

**10.** PW-5, HC Joginder Singh deposed that Additional S.H.O. Piar Chand handed over to him one sealed parcel containing 1 kg 800 gms charas. The parcel was having 10 seals of seal 'K' and three seals of seal 'S'. He also deposited with recovery memo, sample seal and NCB form in triplicate. He entered the same in the Malkhana register.

**11**. PW-6, Ramesh Chand deposed that on 6.3.2011, he was officiating as M.H.C. in Police Station Chamba. He sent one sealed parcel sealed with seals 'K' and 'S' alongwith sample seals, recovery memo, copy of FIR and NCB forms (triplicate) vide RC No. 33/2011 through constable Krishan Kumar to FSL Junga. The copy of R.C is Ext. PW-6/A.

**12**. PW-7, Subhash Chand has deposed about the special report sent to the Superintendent of Police, Chamba.

**13**. PW-8, S.I. Piar Chand deposed that A.S.I. Kuldeep Singh produced one sealed parcel sealed with 10 seals of seal 'K' alongwith sample seals, NCB forms (Triplicate) in the police station for resealing at 9.05 PM. He resealed the said parcel with three seals of seal 'S' in the presence of H.H.C. Madan and specimen of seal 'S' was taken on the reverse of seal 'K'. NCB form was filled in and specimen of seal 'S' was taken. The specimen of seal 'S' is Ext. PW-4/A. He prepared reseal memo Ext. PW-4/B. NCB form is Ext. PW-8/A, column Nos. 9, 10, 11 of the same were filled in by him.

**14**. PW-9, Gian Singh is a formal witness.

**15**. PW-10, Kishan Kumar deposed that on 6.3.2011, one sealed parcel sealed with ten seals of seal 'K' alongwith sample seal, NCB forms in triplicate, were handed over to him by M.H.C. Ramesh Chand vide R.C No. 33/11 for being delivered at F.S.L., Junga. He deposited the case property on 7.3.2011 at F.S.L., Junga with the concerned official.

**16**. PW-11, H.C. Devi Chand deposed that on 7.3.2011, M.H.C. Pawan Kumar handed over to him the special report of the case for being delivered at S.P. Office, Chamba. He delivered the same in the office.

**17**. PW-12, A.S.I. Kuldeep Singh, deposed the manner in which the accused was apprehended at about 4:15 PM. The search and sealing process was completed. He prepared the *'ruka'* Ext. PW-12/A. He sent the same to Police Station through H.H.C. Karam Chand. Copy of '*ruka*' was also sent to S.P. Chamba for information. On the basis of *'ruka'*, FIR Ext. PW-5/A was registered in the Police Station. He prepared the site plan and recorded the statement of witnesses. He returned to the Police Station at 9:05 PM and produced the accused and case property alongwith sample seal and NCB forms before the S.I. Piar Chand for resealing. He resealed the same and deposited with the M.H.C. In his cross-examination, he admitted that there was rain shelter on Chamba Pathankot road. He also admitted that Kali Mata Mandir is opposite to Chamba Pathankot road and in between the both, there is a bridge. He also admitted that they were checking the vehicles at Chamba Pathankot road. He also admitted that at one time, the vehicles can be checked at one place. He admitted that the path leads from Kali Mata temple to Navodiya school. He also admitted that from Kali Mata temple, a road leads to Sarol and touches Chamba Kiyani road. He denied that the Sarol Village is 200-250 meters from Kali Mata temple. Volunteered that, it is 500 meters from Kali Mata temple.

**18**. What emerges from the statements is that the accused was apprehended at 4:30 PM near Kali Mata Mandir. Haneef Mohammad is an independent witness. However, Haneef Mohammad has not supported the case of the prosecution in entirety. He was declared hostile. PW-2, H.C. Raghubir Singh has admitted in his cross-examination that Chamba Pathankot road is a busy road. He also admitted that lot of people used to wait for the bus in the rain shelter. He also admitted that one path leads to Navodiya School. The entire staff of the School used to go to the rain shelter and wait for buses. He also admitted that as per the spot map, the accused

has been shown to be apprehended near the Kali Mata temple. The Kali Mata temple is opposite to Chamba Pathankot road. He also admitted that from Kali Mata temple, the road touches Chamba-Kiyani road at Sarol. PW-3, H.H.C. Karam Singh also deposed that there was a Kali Mata Mandir. He also admitted that from the Mandir, there is a passage leading to the Navodiya school. The staff of Navodiya school used to come to Parel bridge for boarding the bus. He also admitted that people remain standing at rain shelter waiting for the buses. PW-12, A.S.I. Kuldeep Singh has also admitted in his cross-examination that when he saw the accused, he was checking the vehicles on Chamba Pathankot road. He admitted that there was a rain shelter on Chamba Pathankot road. He also admitted that kali Mata Mandir is opposite to Chamba Pathankot road and in between the both, there is a bridge. He also admitted that they were checking the vehicles on Chamba Pathankot road. He admitted that a path leads from Kali Mata temple to Navodiya school. He admitted that from Kali Mata temple, a road leads to Sarol and touches Chamba Kiyani road. He denied that Sarol village is 200-250 meters from Kali Mata temple. Volunteered that, it is 500 meters from Kali Mata temple. In his cross-examination, he deposed that approximately, 15-20 vehicles were checked by him. No driver or occupants of the vehicles were associated in the investigation as they were not ready to become a witness. It is evident from the statements of PW-2 H.C. Raghubir Singh, PW-3 H.H.C. Karam Singh and PW-12 A.S.I. Kuldeep Singh that the police was checking the vehicles on a busy Chamba Pathankot road. The Kali Mata temple was also nearby. There was also a rain shelter near the spot when the accused was apprehended. The Navodiya School closed at 4:00 PM and the accused was apprehended at about 4:15 PM. It is not one of those cases where the accused has been apprehended at an isolated place. The police ought to have associated the independent witnesses at the time of apprehending the accused as also carrying out the search and sealing process. As per the statement of PW2, H.C. Raghubir Singh, after school hours, the entire staff of the school used to go to the rain shelter to take buses. PW-12 A.S.I. Kuldeep Singh has deposed that village Sarol was at a distance of 500 meters. Kali Mata Temple is opposite to Chamba Pathankot road and in between there is a bridge. He should have sent police officials to search for independent witnesses from nearby village. PW-12 A.S.I. Kuldeep Singh could easily associate any of the drivers or the occupants of the vehicles being checked by him on a Chamba Pathankot road. His explanation that the drivers or the occupants of the vehicles could not be associated cannot be believed. He should have issued notice to the persons, if they have refused to join the investigation. It is a settled law that the statements made by the official witnesses can be relied upon if they inspire confidence and are natural and consistent. However, in the instant case, the independent witness Haneef Mohammad has not supported the case of the prosecution. The police has not associated any independent witnesses, though readily available at the time when the accused was arrested from a busy place at 4.15 P.M.

**19**. We have also gone through the site plan Ext. PW-12/B. It is clear from this map that the place where the accused was apprehended was a busy place. The police could have easily associated the independent witnesses. Since the independent witnesses though available have not been joined by the prosecution during the course of investigation, arrest and search of the accused becomes doubtful.

**20**. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 14.9.2011 and consequent order dated 15.9.2011, rendered by the learned Special Judge, Chamba, in Sessions trial No. 15 of 2011, is set aside. The accused is acquitted of the charge framed under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, 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.

**21**. 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 RAJIV SHARMA, J. & HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.**

CWP No. 4489/2012 a/w
CWP No.750/2014
Reserved on : 20.8.2014
Decided on: 5.9. 2014

1. CWP No. 4489 of 2012
Praveen Kumar. ...Petitioner.
Vs.
State of Himachal Pradesh and others. ...Respondents.

2. CWP No. 750 of 2014
Ajeet Verma. ...Petitioner.
Vs.
State of Himachal Pradesh and others. ...Respondents.

**Constitution of India, 1950-** Article 226- Petitioner applied for the post of Head Masters (School Cadre) Class-II (Non-Gazetted)- but he was not called for interview as he had passed M.Ed.- Advertisement provided that the candidate must have 2nd Class Master's Degree in Arts/Science or its equivalent from a recognized University- held- M.Ed. is a professional qualification- the duration of B. Ed is one year, whereas, the duration for

M.Ed. is two years- therefore, M.Ed. cannot be considered to be equivalent to M.A. (Para-13)

**Cases referred:**

Dr. Prit Singh Vs. S.K. Mangal and others, 1993 Supp (1) SCC 714 (rel. on)

Dr. Ram Sevak Singh Vs. Dr. U.P. Singh and others, (1992) 2 SCC 189 (dist.)

**(In both the petitions).**

For the Petitioner: Mr. Sanjeev Bhushan, Advocate for petitioner in CWP No. 4489/2012 and for respondent No.5 in CWP No. 750/2014.

Mr. Dilip Sharma, Sr. Advocate with Ms. Shristi Chauhan, Advocate for the petitioner in CWP No.750/2014 and for respondent No.4 in CWP No. 4489/2012

For the Respondents: Mr. Anup Rattan and Mr. M.A. Khan, Addl. A.Gs for the respondent-State.
Mr. D.K. Khanna, Advocate for respondent No.3 in both the petitions.
Mr. J.L. Bhardwaj, Advocate for respondent-University.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, Judge.**

Since common questions of law and facts are involved in both the petitions, the same were taken up together and are being disposed of by a common judgment.

**CWP No. 4489/2012**

**2.** Respondent-State has issued an advertisement on 23.9.2011 whereby applications were invited for filling up 212 posts of Head Masters (School Cadre) Class-II (Non-Gazetted). Petitioner also submitted an application for considering his candidature. Written test was held on 7.2.2012. Petitioner was called for interview for 17.4.2012. However, fact of the matter is that petitioner was not interviewed on the ground that he did not fulfill minimum educational qualification. He approached the Court by way of present petition. According to the petitioner, he was fully eligible and qualified since he possesses M.Ed. qualification. Petitioner was permitted to be interviewed provisionally for the post of Head Master on 12.6.2012. On 27.7.2012, H.P. Public Service Commission was directed to declare the result of all the candidates, including petitioner. Since petitioner was declared successful, H.P. Public Service Commission was directed to recommend the

name of the petitioner for appointment, subject to the outcome of writ petition. However, before issuing actual orders of appointment, respondent Nos. 1 and 2 were directed to seek permission of the Court. On 19.9.2012, the Court clarified previous order dated 27.7.2012 to the effect that it would be open to the Government to make appointments, making it subject to the result of the writ petition. In view of interim orders passed by the Court, petitioner was issued appointment letter on 19.10.2013 (Annexure R-I).

**3**. Respondent No.4 also moved an application for impleadment bearing CMP No.2086/2013. It was allowed by the Court on 26.6.2013 and he was also arrayed as respondent No.4.

**CWP No. 750/2014**

**4**. Petitioner also submitted an application for considering his candidature for the post in question. He qualified the written test. He was interviewed on 9.4.2012. Petitioner has secured 56 marks and respondent No. 5 Praveen Kumar has secured 60 marks as per the result declared by the H.P. Public Service Commission.

**5**. Mr. Sanjeev Bhushan, learned counsel appearing on behalf of petitioner in CWP No. 4489/2012, has vehemently argued that his client was fully eligible and qualified to be considered for the post of Head Master (School Cadre) as per Advertisement No.VIII/2011 dated 23.9.2011.

**6.** Mr. Dilip Sharma, learned Senior Advocate, appearing on behalf of petitioner in CWP No. 750/2014 has vehemently argued that client of Mr. Sanjeev Bhushan was not eligible and qualified to be considered for appointment to the post of Head Master (School Cadre).

**7.** The short legal question involved in these petitions is: whether petitioner Praveen Kumar fulfilled the essential qualification as per Advertisement No.VIII/2011 dated 23.9.2011 or not.

**8**. Advertisement No. VIII/2011 was issued by the H.P. Public Service Commission on 23.9.2011. Essential qualification for the post of Head Master (School Cadre) as per advertisement reads as under:

i. "At least 2nd Class Master's Degree in Arts/Science or its equivalent from a recognized University.

ii. 5 years teaching experience as Trained Graduate Teacher in Senior Secondary Schools/High Schools/Middle Schools of H.P. Government or any Educational Institutions affiliated to H.P. Board of School Education/C.B.S.E./I.C.S.E."

**9**. It would be apt at this stage to refer to column No. 5 of Appendix-II of the advertisement. According to column No.5, the candidate was required to write his/her qualifications codes in the boxes provided for the purpose in figures and to dark the respective circles below the boxes. The list of qualification codes was as under:

| **Qualification** | **Code** |
|---|---|
| BA/B.Sc/B.Com/BBA/BCA | 01 |
| B.Sc (Agriculture) B.Sc.(Horticulture) B. Sc (Forestry) | 02 |
| B.Tech/B.E. (Engg) | 03 |
| MBBS/BDS/B.V.Sc. & A.H. /BAMS/GAMS (with internship) B. Pharmacy | 04 |
| BJMC/Public Relations | 05 |
| LLB | 06 |
| MA/M.Sc./M.Com/MBA/MCA/LLM/MJMC | 07 |
| M.Sc. (Agriculture) M.Sc. (Horticulture) M.Sc. (Forestry) M.Pharmacy | 08 |
| M.Tech/ME (Engg) | 09 |
| MS/MD/MDS | 10 |
| Ph.D/D/M.Phil/NET/SLET | 11 |

The qualification of M.A./M.Sc./M.Com./MBA/ MCA/LLM/MJMC was mentioned against Code No.07.

**10**. The H.P. Public Service Commission has sought clarification from the Education Department whether the candidate having M.Ed. qualification would be considered equivalent to the Master Decree prescribed in Rule 7 (i) in the Recruitment and Promotion Rules or it is to be treated as training qualification higher to the B.Ed. only. The Education Department sent information to the H.P. Public Service Commission on 19.6.2012, which reads as under:

> "M.Ed. qualification is a professional qualification and the M.Ed. Degree is obtained after obtaining B.Ed Degree. B.Ed degree is professional degree in Education and M.Ed is Master Degree in Education, whereas Rule (i) of Rule 7 of the R&P Rules notified on 5.2.1998 for making direct recruitment of H.M's says that there should be a 2nd class Master Decree in Arts/Science or its equivalent from a recognized University. Master Degree in Arts/Science are the Academic Degrees which can't be equated with professional Degree of M.Ed."

**11**. Joint Director, Higher Education has sent communication to the Assistant Registrar (Academic) Himachal Pradesh University on 28.9.2013 seeking clarification whether the M.Ed. post-graduation degree in discipline of education is equivalent to M.A. Arts/Science or its equivalent from University. Respondent-University vide

letter dated 10.10.2013 has informed that M.A./M.Sc. are two years post-graduate academic degrees after B.A. or B.Sc. Similarly, M.Ed. is a professional two years post-graduate degree in education. A candidate who wants to pursue M.Ed. has to do one year B.Ed. after B.A./B.Sc. and only then he/she can pursue M.Ed. As the duration of these post-graduate courses are equal, i.e. two years, they are equivalent degrees.

**12**. According to the reply filed by respondent Nos. 1 and 2 in CWP No.750/2014, as per Recruitment and Promotion Rules of Headmaster, essential qualification for direct appointment as Headmaster is at least 2nd Class Master's degree in Arts/Science or its equivalent from recognized University and Master Degree in Arts/Science are the academic degrees which cannot be equated with professional degree of M.Ed.

**13**. We have gone through the First Ordinances of Himachal Pradesh University 1973 as amended from time to time. According to clause 11.1 of Chapter-XI of the First Ordinances, the duration of Bachelor or Education course is one academic year for regular students and two years for the distance education mode. According to clause 11.12, the duration of Master of Education course shall be one academic year, spread over two semesters. Thus, duration of Bachelor of Education is one year and that of Master of Education is also one year. The respondent-University has erred by clubbing B.Ed. and M.Ed. degrees. The courses are only of one year duration. Thus, it cannot be said that M.Ed. degree is equivalent to Master degree in Arts or Science or its equivalent. It is on the basis of the clarification received by the Director of Education that the petitioner Praveen Kumar has been given appointment on 19.10.2013. He did not fulfill the basic essential qualification as prescribed under sub-rule (i) of rule 7 of the Recruitment and Promotion Rules notified on 5.2.1998 read in conjunction with Advertisement No.VIII/2011 dated 23.9.2011. The advertisement itself has clarified in column No.5 of Appendix-II what would be the post-graduate master degree, i.e. M.A./M.Sc./M.Com/MBA/ MCA/LLM/MJMC. M.Ed. is not provided therein. The duration of all the post-graduations mentioned in column No.5 is two years and duration of B.Ed. degree is one year and M.Ed. is also one year.

**14**. Their Lordships of the Hon'ble Supreme Court in **Dr. Prit Singh Vs. S.K. Mangal and others, 1993 Supp (1) SCC 714** have held that the degree of Master of Arts is an academic qualification, whereas degree of Master of Education is a professional qualification. Their Lordships have further held that when the qualifications required "a consistently good academic record with first or high second class (55% marks/grade B in the seven point scale) Master's degree in any subject", it shall mean an academic qualification like Master of Arts. Their Lordships have held as under:

> "11. It need not be pointed out that the Degree of Master of Arts is an academic qualification, whereas Degree of Master of Education is a professional qualification. According to us, when the qualifications required "a consistently good academic record with first or high second class (55% marks/grade B in the

> seven point scale) Master's Degree in any subject"; (emphasis added) it shall mean an academic qualification like Master of Arts. The said requirement was prescribed with "a consistently good academic record". That Master's Degree shall mean Degree of Master of Arts in any subject, is apparent also from the fact that apart from that degree the candidate was required to possess also "Degree in Education" which will mean B.Ed. or M.Ed. Normally if the expression "Master's Degree" was to include even the Master's Degree in Education (M.Ed.) there was no necessity of prescribing the third requirement of a "Degree in Education".
>
> 12. If the claim of the appellant that "Master's Degree" shall include a Degree of Master of Education, is accepted, it will lead to an anomalous position. A person having secured third division in M.A. who cannot be considered by any University even for the post of Lecturer, will become qualified for being appointed as a Principal of any College, if later he secures a high second class marks in M.Ed. Examination by com- pleting a course of one year. It need not be pointed out that the sole ob- ject of prescribing qualification that the candidate must have a con- sistently good academic record with first or high second class Master's Degree for appointment to the post of a Principal, is to select a most suitable person in order to maintain excellence and standard of teaching in the institution apart from administration. In the present case there is no dispute that in the Master of Arts Examination, the appellant secured only 47.1% marks which is not even a second division. We were informed that in the concerned University, second division is 50% and above. The appellant had not secured even second class marks in his Master of Arts Examination whereas the requirement was first or high second class (55%). The irresistible conclusion is that on the relevant date the appel- lant did not possess the requisite qualifications."

**15**. Mr. Sanjeev Bhushan, learned counsel appearing on behalf of petitioner in CWP No. 4489/2012 has placed strong reliance on **Dr. Ram Sevak Singh Vs. Dr. U.P. Singh and others, (1992) 2 SCC 189**. In Dr. Ram Sevak Singh case, the Master's Decree or an equivalent degree of a foreign university in one of the subjects taught in the college in a subject allied or interconnected therewith was the minimum essential qualification. However, in the case in hand, the minimum essential qualification prescribed is at least 2nd Class Master's Degree in Arts/Science or its equivalent from a recognized University. M.Ed. cannot be treated as Master's degree in Arts/Science.

**16**. Accordingly, in view of the analysis and discussion made hereinabove, CWP No.4489/2012 is dismissed. CWP No. 750/2014 is allowed. Appointment of respondent No.5 in CWP No. 750/2014 vide order

dated 19.10.2013 is quashed and set aside. H.P. Public Service Commission is directed to recommend the case of the petitioner in CWP No.750/2014 strictly as per the merit list drawn for appointment to the State Government within a period of two weeks from today. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.

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

Jiwan Lal Sharma ...Petitioner.
Vs.
Kashmir Singh Thakur ...Respondent.

CMPMO No. 75 of 2014
Reserved on: 28.7.2014
Decided on: 6.9.2014

**Code of Civil Procedure, 1908-** Order 39 Rules 1 and 2- Plaintiff filing a suit seeking injunction to restrain the defendant from forcibly occupying and raising construction over the best portion of three storeyed building – the Court appointing a Mediator for resolving the dispute where the party arrived at a settlement- defendant filed objection to the settlement in the Court- held, that there is no scope of filing of objections to the report of the Mediator- the Court is required to take step by giving notice and hearing the parties and to effect the compromise. (Para-5)

**Case referred:**

Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344

For the petitioner: Mr. Bhupinder Gupta, Sr. Advocate, with Mr. Neeraj Gupta, Advocate.

For the respondent: Mr. N.K.Thakur, Sr. Advocate, with Ms. Ishita Bhandari, Advocate.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, J. (oral)**

This petition is instituted against the order dated 28.12.2013, rendered by the learned Civil Judge (Sr. Divn.) Shimla, H.P., in Civil Suit No. 218-1 of 2010.

**2**. Key facts, necessary for the adjudication of the petition are that the petitioner (hereinafter referred to as the plaintiff ) has filed a suit against the respondent-defendant (hereinafter referred to as the defendant) for permanent prohibitory injunction restraining the defendant from forcibly occupying and raising construction work over the best portion of three storey building as detailed in the plaint. The defendant filed the written statement

and contested the claim of the plaintiff. The plaintiff also moved an application for grant of ad-interim injunction. The trial Court vide order dated 5.5.2011, directed the parties to maintain status quo. The defendant challenged the order dated 5.5.2011 before the learned District Judge, Shimla. The appeal was dismissed by the learned District Judge on 18.8.2012. The trial Court during the pendency of the Civil Suit, under Section 89 of the Code of Civil Procedure and the Rules framed by this Court, with the consent of the parties, referred the matter to the Mediator for resolving the dispute between the parties. Sh. Pawan Thakur, Advocate, was appointed as Mediator vide order dated 4.1.2011. The Deed of Settlement was prepared on 11.1.2011. The parties signed the Deed of Settlement (Annexure P-4). The Mediator submitted the report dated 12.1.2011 to the learned trial Court. The defendant filed objections to the settlement vide Annexure P-6 dated 21.2.2011. The plaintiff filed reply to the objections vide Annexure P-7 dated 3.5.2011. The trial Court passed the order dated 28.12.2013. The learned Civil Judge (Sr. Divn.), Shimla, came to the conclusion that the compromise arrived at between the parties through mediation was not binding upon the parties and the objections were also not maintainable. The learned Civil Judge (Sr. Divn.), Shimla, listed the matter for framing of issues on 4.3.2014. In these circumstances, the plaintiff has filed the present petition challenging the order dated 28.12.2013.

**3**. I have heard the learned Senior Advocates for the parties and gone through the pleadings and impugned order carefully.

**4**. The trial Court has erred by holding that the time limit for completion of the mediation in the instant case has expired. The learned trial Court has quoted Section 6 of the Civil Procedure Mediation Rules, 2005 (hereinafter referred to as the Rules), while coming to this conclusion. Infact, it is Rule 18 of the Rules, which prescribes that on the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated unless the Court which referred the matter enter suo motu or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful, but such extension shall not be beyond a further period of thirty days. The order was passed by the learned trial Court referring the matter to the Mediator on 4.1.2011. The Deed of Settlement was prepared on 11.1.2011. The Mediator submitted the report dated 12.1.2011 to the trial Court.

**5.** According to Rule 17 of the Rules, the parties must understand that the Mediator only facilitates in arriving at a decision to resolve disputes and that he would not and cannot impose any settlement nor does the Mediator give any warranty that the mediation will result in a settlement. The Mediator cannot impose any decision upon the parties. In the instant case, the parties have arrived at a settlement on 4.1.2011. They have signed the statements. The report, as noticed hereinabove, was furnished to the trial Court by the Mediator on 12.1.2011. According to Rule 24, where an agreement is reached between the parties in regard to all the

issues in the suit or some of the issues, the same is to be reduced in writing and signed by the parties or their power of attorney and if any counsel have represented the parties, they are required to attest the signature of their respective clients. The agreement of the parties duly signed and attested is to be submitted to the Mediator who shall, with a covering letter signed by him, forward the same to the Court where the suit is pending. The trial Court, as per sub rule (1) of Rule 25, within 7 days of the receipt of any settlement, is required to issue notice to the parties fixing a date for recording the settlement and such date should not be beyond a further period of 14 days from the receipt of the settlement. Thereafter, as per sub rule (2) of Rule 25, the Court is required to pass a decree in accordance with the settlement so recorded if the settlement disposes of all the issues in the suit. The trial Court has not followed Rule 25 of the Rules. There is no provision for filing the objections against the settlement which is arrived at between the parties duly signed by them. The only requirement after the receipt of the settlement is that the Court, which is seized of the matter, shall issue notice to the parties fixing date for recording the settlement. The defendant has not raised any objection at the time of settlement dated 11.1.2011. The trial Court immediately after the completion of the formalities required under Rule 24, was to take necessary steps as provided under Rule 25, by giving notice and hearing the parties to effect compromise and pass a decree in accordance with the terms of settlement accepted by the parties.

**6**. Their lordships' of the Hon'ble Supreme Court in the case of ***Salem Advocate Bar Association, T.N. Vs. Union of India,*** reported in ***(2005) 6 SCC 344,*** have held that Section 89(2)(d) only means that when mediation succeeds and parties agree to the terms of settlement, the Mediator will report to the Court and the Court, after giving notice and hearing to the parties, "effect" the compromise and pass a decree in accordance with the terms of settlement accepted by the parties. Their lordships' have further held that when the parties come to a settlement upon a reference made by the Court for mediation and the parties want the same, there has to be some public record of the manner in which the suit is disposed of and, therefore, the Court must first record the settlement and pass a decree in terms thereof and, if necessary, proceed to execute it in accordance with law. If the parties do not want the Court to record a settlement and pass a decree, there will be no public record of the settlement. Their lordships' have held as follows:

> "57 A doubt has been expressed in relation to clause (d) of Section 89(2) of the Code on the question as to finaliasation of the terms of the compromise. The question is whether the terms of compromise are to be finalized by or before the mediator or by or before the court. It is evident that all the four alternatives, namely, arbitration, conciliation, judicial settlement including settlement through the Lok Adalat and mediation are meant to be the action of persons or institutions outside the court and not before the court. Order 10 Rule 1-C speaks of the "Conciliation Forum" referring back the dispute to

the court. In fact, the court is not involved in the actual mediation/conciliation. Clause (d) of Section 89(2) only means that when mediation succeeds and parties agree to the terms of settlement, the mediator will report to the Court and the Court, after giving notice and hearing to the parties, "effect" the compromise and pass a decree in accordance with the terms of settlement accepted by the parties. Further, in this view, there is no question of the court which refers the matter to mediation/conciliation being debarred from hearing the matter where settlement is not arrived at. The Judge who makes the reference only considers the limited question as to whether there are reasonable grounds to expect that there will be a settlement, and on that ground he cannot be treated to be disqualified to try the suit afterwards, if no settlement is arrived at between the parties.

62. When the parties come to a settlement upon a reference made by the court for mediation, as suggested by the Committee that there has to be some public record of the manner in which the suit is disposed of and, therefore, the court has to first record the settlement and pass a decree in terms thereof and if necessary proceed to execute it in accordance with law. It cannot be accepted that such a procedure would be unnecessary. If the settlement is not filed in the court for the purpose of passing of a decree, there will be no public record of the settlement. It is, however, a different matter if the parties do not want the court to record a settlement and pass a decree and feel that the settlement can be implemented even without a decree. In such eventuality, nothing prevents them in informing the court that the suit may be dismissed as a dispute has been settled between the parties outside the court."

**7**. Accordingly, order dated 28.12.2013 is set aside. The trial Court is ordered to proceed with the matter strictly as per Rule 25 of the Civil Procedure Mediation Rules, 2005, by issuing notice to the parties and after hearing the parties effect the compromise and pass a decree in accordance with the terms of the settlement arrived at between the parties.

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

Paras Ram ...Petitioner..

Vs.

Ramesh Chand & Ors. ...Respondents.

CMPMO No. 253 of 2014.
Reserved on: 28.8.2014.
Decided on: 08.09. 2014.

**Code of Civil Procedure, 1908-** Order 39 Rules 1 and 2- Plaintiff filing a civil suit claiming himself to be the owner in possession of half of the land and in possession of remaining half of the land as Gair Marussi Tenant- defendants claiming that their predecessor had filed an application for resumption of land which was allowed- held, that when the plaintiff had not challenged the resumption order and the possession was being delivered on the basis of such order, the plaintiff has no prima facie case to seek any injunction- application dismissed. (Para- 7)

For the petitioner: Mr. Vikas Bhardwaj, Advocate.
For the respondent: None.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, J.**

This petition is instituted against the order dated 28.6.2013, rendered by the learned Addl. District Judge (I), Kangra at Dharamshala, in Civil Miscellaneous Appeal No. 11-D/XIV/2012.

**2.** Key facts, necessary for the adjudication of the petition are that the petitioner (hereinafter referred to as the plaintiff ) has filed a suit against the respondents-defendants (hereinafter referred to as the defendants) for permanent prohibitory injunction before the Civil Judge (Sr. Divn.), Kangra, H.P. The suit was contested by the defendants.

**3.** The plaintiff has also moved an application under Order 39, Rules 1 & 2 CPC for restraining the defendants from interfering in the possession of the plaintiff over the suit land, dispossessing him therefrom and threatening to get the revenue entries changed in their favour as "*khud kasht*" in connivance with the revenue staff. The application was also contested by the defendants.

**4.** According to the plaintiff, the land comprised in *khata* No. 135, *Khatauni No.* 211, *Khasra No.* 593, measuring 0-28-63 hectares situated in Mohal Tang, Mauza Narwana, Tehsil Dharamshala, Distt. Kangra, H.P. as per Jamabandi for the year 2008-09 is recorded in the ownership of the parties to the extent of half share each. The plaintiff is owner in possession of half share in the suit land and with respect to the remaining half share of the defendants, he is in possession as "*Gair Marussi Tenant*". The defendants being head strong persons on 20.5.2012, illegally and forcibly started interfering in the suit land in a bid to dispossess the plaintiff therefrom. The defendants further are threatening to get the revenue entries changed in their favour as "*khud Kasht*" in connivance with the revenue staff. According to the defendants, their predecessor-in-interest, namely, Sh. Hari Ram, infact had filed L.R.-V application for resumption of land and the said application was allowed by the Land Records Officer, Dharamshala on 11.2.1991 and in pursuance thereof, the defendants had moved an

application to the Land Records Officer, Dharamshala for implementation of the resumption order. The revenue officials in compliance thereof visited the spot on 30.5.2012 in order to measure, demarcate and prepare tatima of the land. However, the plaintiff alongwith some ladies came to the spot and started quarreling, fighting and abusing the defendants and revenue officials. The plaintiff has refused to part with the possession of the suit land. In view of this, the resumption order could not be implemented.

**5**. The plaintiff filed rejoinder to the reply filed by the defendants to the application for ad-interim injunction. According to the plaintiff, the resumption order dated 11.2.1991 already stood implemented. The learned Civil Judge (Sr. Divn.) Kangra, dismissed the application on 18.8.2012. The plaintiff preferred an appeal before the learned Addl. District Judge, Kangra. The same was dismissed on 28.6.2013. In these circumstances, the plaintiff has filed the present petition challenging the order dated 28.6.2013.

**6.** I have heard Mr. Vikas Bhardwaj, Advocate, learned counsel for the plaintiff and gone through the pleadings and impugned order carefully.

**7**. What emerges from the material placed on record is that the resumption order was passed by the Land Records Officer, Dharamshala in Case No. 171/D titled as Hari Ram vrs. Kalu on 11.2.1991. The resumption order was qua the suit land. The resumption is qua the land comprised in Kh. No. 593 measuring 0-28-63 hectares. The defendants are legally entitled for resumption of the suit land, as per order dated 11.2.1991. The plaintiff, admittedly, has not assailed the order dated 11.2.1991. It has attained finality. The plaintiff has not placed on record order dated 13.2.2005, alleged to have been passed by the Assistant Collector (Ist Grade), Dharamshala. Once the order has been passed by the competent Authority, i.e. the Land Records Officer, the possession was to be handed over to the defendants. The presence of the revenue officials was necessary in order to measure, demarcate and prepare *tatima* of the suit land. There is nothing on record to suggest even remotely that the defendants have forcibly tried to dispossess the plaintiff from the suit land. There is neither prima-facie case nor balance of convenience in favour of the plaintiff. The plaintiff has also failed to prove that he would suffer irreparable loss or injury if the ad-interim injunction is not granted in his favour rather the learned Civil Judge (Sr. Divn.), Kangra at Dharamshala, has allowed the application preferred by the defendants by restraining the plaintiff from interfering, in any manner, in the implementation of the resumption order dated 11.2.1991. There is no illegality or infirmity in the order passed by both the Courts' below. The orders are in conformity with the principles governing the grant of ad-interim injunction.

**8.** Accordingly, there is no merit in the present petition, the same is dismissed, so also the pending application(s), if any.

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

Paras Ram son of Khazana Ram (patient of chronic schizophrenia) through his wife Smt Urmila .....Petitioner.

Vs.

State of H.P. through its Principal Secretary (Revenue) and another. .....Respondents.

CWP No. 10583 of 2011
Reserved On: 8.8.2014
Date of Decision: 8.9.2014

**Constitution of India, 1950-** Article 226- Petitioner was appointed as a Peon- he is suffering from chronic schizophrenia- his wife applied for compassionate appointment- held, that wife of the petitioner was receiving more than Rs. 1 lakh as income- hence, she is not entitled for compassionate appointment as per rule- Further, the order compulsorily retiring the petitioner has been set aside and therefore, she cannot claim compassionate appointment in such circumstance. (Para-6 and 7)

For the petitioner: Mr. J.L.Bhardwaj, Advocate.

For Respondents. Mr. Pushpinder Singh Jaswal, Dy. Advocate General with Mr.J.S.Rana, Assistant Advocate General.

The following judgment of the Court was delivered:

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**P.S.Rana Judge.**

Present Civil Writ Petition filed under Article 226 of the Constitution of India. Brief facts of the case as pleaded are that petitioner Paras Ram was appointed as Peon in the office of respondent No.2 Deputy Commissioner Shimla District Shimla HP. It is further pleaded that petitioner is suffering from chronic schizophrenia. It is further pleaded that thereafter wife of petitioner Smt Urmila Devi applied for employment on compassionate ground. It is further pleaded that Civil Writ Petition No. 850/2010 titled Paras Ram Vs. State of HP and others was filed which was decided on 19.10.2010. It is further pleaded that respondents did not comply the direction of Hon'ble High Court of HP issued in Civil Writ Petition No. 850/2010 titled Paras Ram Vs. State of HP and another decided on 19.10.2010. It is further pleaded that at present vide order dated 16.6.2010 learned Deputy Commissioner Shimla passed office order of retirement of petitioner Paras Ram Peon from government service w.e.f. 16.6.2010 (A.N) under rule 38 of Central Civil Services (Pension) Rules 1972. It is further pleaded that the order of learned Deputy Commission Shimla dated 16.6.2010 is contrary to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (hereinafter referred to as the 'Act'). It is further pleaded that learned Deputy

Commissioner also rejected the claim of Smt. Urmila Devi wife of Sh Paras Ram and her son Deepak Kumar for employment on compassionate ground on dated 28.9.2011. It is further pleaded that order dated 16.6.2010 and order dated 28.9.2011 passed by learned Deputy Commissioner Shimla be set aside. It is further pleaded that son of Sh Paras Ram namely Deepak Kumar be appointed on compassionate ground or consequential salary benefit be given to petitioner Paras Ram.

**2**. Per contra reply filed on behalf of respondents pleaded therein that present petition is not maintainable. It is pleaded that as per medical report Sh Paras Ram is not fit to be retained in service due to his ailment health i.e. chronic schizophrenia. It is further pleaded that Smt Urmila Devi wife of Sh Paras Ram has received an amount of Rs. 1,32,797/- (One lac thirty two thousand seven hundred ninety seven) as retirement dues and is also receiving pension to the tune of Rs.5285/- (Five thousand two hundred eighty five) per month and also receiving income from house property to the tune of Rs. 35,000/- (Thirty five thousand) per annum. It is further pleaded that total income of the family of Sh Paras Ram is exceeding Rs.1,00,000/- (One lac) per annum. It is further pleaded that as per policy of employment on compassionate ground the benefit could be given to those dependents only whose maximum family income does not exceed Rs.1,00,000/-. (One lac). Prayer for dismissal of writ petition sought.

**3**. Court heard learned Advocate appearing on behalf of the petitioner and learned Deputy Advocate General appearing on behalf of respondents and also perused entire records carefully.

**4**. Following points arise for determination in the present civil writ petition:

1. Whether petitioner is legally entitled for benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 as alleged?.
2. Whether wife of petitioner namely Urmila Devi or son of petitioner namely Deepak Kumar are entitled for employment on compassionate ground as alleged?

**Finding upon Point No.1.**

**5.** Submission of learned Advocate appearing on behalf of the petitioner that petitioner is legally entitled for benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 is accepted for the reason hereinafter mentioned. It is proved on record that petitioner Paras Ram is suffering from chronic schizophrenia as per medical certificate placed on record issued by Dr. Gurpartap Singh and Dr. Savinder Singh posted as Medical Officer in Mental Hospital Amritsar. It is also proved on record that Sh Paras Ram has sustained chronic schizophrenia when he was in service. It is proved on record that Sh Paras Ram has not attained the age of superannuation as of today as per service rules. Court is of the opinion that the Persons with

disabilities Act 1995 came into effect w.e.f. 07.02.1996 in order to protect the disabled person as defined under Section 2(i) of the Persons with disabilities Act 1995. Section 47 of the 'Act' is quoted: "(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits. Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or until he attains the age of superannuation whichever is earlier."

**6**. In view of the above stated facts it is held that the case of the petitioner is covered under Section 47 of the Persons with disabilities Act 1995. As per Section 2(i) of the Persons with disabilities Act 1995 persons suffering from mental retardation and Mental illness falls under the Persons with disabilities Act 1995. It is held that petitioner is legally entitled to all the protection mentioned under Section 47 of the 'Act'. See 2008 (1) SCC 579 titled Bhagwan Dass and another Vs. Punjab State Electricity Board. Point No.1 is decided in favour of the petitioner.

**Finding upon Point No.2**.

**7**. Submission of learned Advocate appearing on behalf of the petitioner that the wife of petitioner namely Urmila Devi and son of the petitioner namely Deepak Kumar are also legally entitled for employment on the basis of compassionate ground is rejected being devoid of any force for the reason hereinafter mentioned. It is proved on record that as per affidavit filed by learned Deputy Commissioner Shimla attested by Executive Magistrate Shimla that an amount of Rs. 1,32,797-/- (One lac thirty two thousand seven hundred ninety seven) has been paid to Smt Urmila Devi wife of petitioner Paras Ram as retirement dues. It is proved on record that wife of petitioner namely Urmila Devi is receiving an amount of Rs.5,285/- (five thousand two hundred eighty five) per month as pension. It is proved on record that the wife of petitioner is also earning income of Rs.35,000/- (Thirty five thousand) per annum from house property. It is proved on record that as per compassionate policy the dependent whose maximum family income exceeding Rs.1,00,000/- (One lac) are not entitled for employment on the basis of compassionate ground. Court is of the opinion that two benefits cannot be given to the petitioner i.e. benefit of Section 47 of the 'Act' as well as benefit of employment on compassionate ground simultaneously. As of today Sh Paras Ram is alive and suffering from chronic schizophrenia. Hence it is held that petitioner Paras Ram is legally entitled for one benefit only i.e. benefit of Section 47 of the 'Act'.

**8**. In view of the above stated facts it is held (1) That petitioner Paras Ram will be entitled for all the benefit under Section 47 of the Persons with disabilities Act 1995. It is held that petitioner will be kept on supernumerary post until a suitable post is available or until petitioner Paras Ram attains the age of superannuation whichever is earlier. The office order of learned Deputy Commissioner dated 16.6.2010 Annexure P8 qua

retirement of Sh Paras Ram Peon is set aside. It is held that Sh Paras Ram will be legally entitled for all the consequential benefit of supernumerary post as mentioned under Section 47 of the Persons with disabilities Act 1995 subject to adjustment of all dues paid to Sh Paras Ram through his wife. (ii) Prayer of the petitioner that the wife of Sh Paras Ram namely Urmila Devi or son of the petitioner namely Deepak Kumar be appointed on the basis of compassionate ground declined. Office order of learned Deputy Commission dated 28.9.2011 Annexure P-10 declining employment on compassionate ground to the wife of petitioner Smt Urimila Devi or son of petitioner namely Deepak Kumar is affirmed. It is held that two benefits i.e. benefit of Section 47 of the Persons with disabilities Act 1995 and the benefit of appointment on compassionate ground cannot be granted simultaneously to the petitioner. (iii) Other relief(s) claimed by petitioner declined and it is held that all other relief(s) merged in point No.1 and 2 determined by the Court. Writ petition is accordingly disposed of with no order as to costs. All miscellaneous application(s) are also disposed of.

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

Rajinder Singh Mehta .....Appellant

Vs.

State of H.P. .....Respondent.

Cr. Appeal No. 205 of 2013.
Reserved on: 04.09. 2014.
Decided on: 08.09.2014.

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**Indian Penal Code, 1860-** Sections 279, 337, 338 and 304-A- Accused was found to be driving the vehicle in a rash and negligent manner- ethyl alcohol was found in his blood to the extent of 135.41 mg% and in the urine to the extent of 167.90 mg%- held, that Section 185 of Motor Vehicle Act clearly provides that a person driving a motor vehicle having alcohol exceeding 30 mg per 100 ml is liable to punishment- accused had endangered the personal safety of others by driving the vehicle in a rash and negligent manner with alcohol in his blood- he was rightly convicted.

(Para- 21 & 22)

For the appellant: Mr. B.S.Chauhan, Advocate.

For the respondent: Mr. Neeraj K. Sharma, Dy. Advocate General.

The following judgment of the Court was delivered:

**Justice Rajiv Sharma, J.**

This appeal is instituted against the judgment dated 17.4.2013 of the learned Addl. Sessions Judge, Kinnaur Sessions Division at Rampur Bushahar, H.P., rendered in Case No. 3-AR/7 of 2009/2013, whereby the appellant-accused (hereinafter referred to as the accused), who was charged with and tried for offences under Sections 279, 337, 338 and 304-AA IPC, was convicted and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs. 5,000/- and in default of payment of fine to undergo further simple imprisonment for a period of one year under Section 304-AA of the IPC. He was further sentenced to undergo simple imprisonment for two months and to pay a fine of Rs. 500/- and in default to undergo simple imprisonment for a period of one month under Section 279 of IPC. He was also sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 250/- and in default to undergo further simple imprisonment for a period of 15 days under Section 337 IPC. All the sentences were ordered to run concurrently. The period of detention undergone by the accused was ordered to be set off under Section 428 Cr.P.C.

**2.** The case of the prosecution, in a nut shell, is that on 16.4.2009, after the classes were over, Priyanka Thakur alongwith her friends were waiting for bus at Dakolar near Shangrila Hotel by the side of National Highway No. 22. She was a resident of Village and Post Office Nirmand and taking coaching classes in Sigma Institute for PMT and AIEEE. At about 3:40 PM one white coloured Sumo Jeep came from Rampur side at very high speed and hit the students standing by the side of the road. She alongwith Sapna, Usha, Monika, Satish, Anu and Manjula received injuries and Nidhi received serious injuries. The Sumo Jeep after hitting the students hit the hill side on other side of the road. It was driven by the accused. All the injured including Priyanka Thakur, were taken to the hospital. Nidhi succumbed to the injuries on the spot. The police reached the spot at about 3:45 PM. The police recorded the statement of Priyanka Thakur under Section 154 Cr.P.C. She narrated to the police the manner in which the accident has taken place due to the rash and negligent driving of the accused. The FIR was registered. The post mortem of deceased Nidhi was conducted. The other injured were also medically examined at MGMSC Khaneri. The post mortem report was issued by the Medical Officer. The Tata Sumo jeep was taken into possession. The accused was arrested. His blood and urine samples were preserved and sent to FSL, Junga. The vehicle was mechanically inspected. The investigation was completed and challan was put up after completing all the codal formalities.

**3.** The prosecution has examined as many as 15 witnesses. The statement of the accused under Section 313 Cr.P.C. was recorded. The accused has denied the case of the prosecution in toto. According to him, he was innocent and falsely implicated in the present case. He has also

examined one Raj Kumar as DW-1. The learned Trial Court convicted and sentenced the accused, as stated hereinabove.

**4.** Mr. B.S.Chauhan, Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. Neeraj K. Sharma, Dy. Advocate General, has supported the judgment of the learned Addl. Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, H.P., dated 17.4.2013.

**5.** I have heard learned counsel for both the sides and gone through the material available on record very carefully.

**6.** PW-1, Priyanka Thakur deposed that she was taking coaching for PMT examination in Sigma Institute at Dakolar. On 16.4.2009, she alongwith her friends was waiting for bus at Dakolar. At about 3:30 or 3:45 PM, one Sumo vehicle came from Rampur side in a high speed and ran over them causing injuries to her, Anu, Monika, Satish, Sapna, Usha and Manjula. The vehicle hit against the hill side of the road. Nidhi suffered serious injuries. All the injured including herself were taken to MGMSC, Khenari for treatment. Nidhi succumbed to the injuries. At the time of the accident, they were standing on the side of the road. The accident had taken place due to the rash and negligent driving on the part of the driver of the Sumo Jeep. The accused was driving the vehicle. In her cross-examination, she denied the suggestion that the stones were lying on the left side and when the driver avoided the stones, they got perplexed. She also reiterated that the vehicle had hit them and thereafter they were dragged and as a result of this, they fell down on the road. The Principal of the Institute had accompanied them from the spot to the hospital.

**7.** PW-2, Monika also deposed that on 16.4.2009 at about 3:30 or 3:45 PM, after their classes were over, they were waiting for the vehicle by standing on the side of the road. In the meanwhile, one white colour jeep came from Rampur side in a high speed and in an uncontrolled manner hit against them. In this accident 8 or 9 students suffered injury. She also suffered injury. Nidhi had suffered serious injuries and she died on the spot. The accident has taken place on account of rash and negligent driving on the part of the driver of the vehicle.

**8.** PW-3, Satish Kumar deposed that he was taking coaching in Sigma Institute at Dakolar. On 16.4.2009, at about 3:30 or 3:45 PM, he alongwith other students were waiting for the bus and standing on the side of the road at Dakolar. In the meanwhile, one white colour Sumo came from Rampur side in a high speed and ran over them. In the accident 8-9 students suffered injuries. He also suffered injury. Nidhi suffered grievous injuries and died on the spot. The accident has taken place on account of rash and negligent driving on the part of the driver of the vehicle. The name of the driver of the vehicle was Rajinder Mehta.

**9**. PW-4, Sapna also deposed the manner in which the accident had taken place at about 3:40 PM on 16.4.2009. According to her, she alongwith other students was waiting for the vehicle and standing on the

side of the road at Dakolar. In the meanwhile, one Sumo jeep came from Rampur side in a fast speed and hit against them causing injuries to 9 or 10 students. After the accident they were moved to Khenari hospital for treatment. Nidhi suffered grievous injuries and died on the spot. The accident has taken place on account of rash and negligent driving on the part of the accused.

**10.** PW-5, Dr. Hemant Kumar deposed that on 16.4.2009, he was going from Rampur to Bithal in his vehicle. On the way, he stopped at Dakolar near Bansal Tent House and parked his car on the side of the road. After talking to the owner of the Tent House, he came back and boarded his car. As soon as he got into his car the same was hit from behind by some vehicle and his car was dragged for about 10 feet. He came out and found that his car was hit by a Sumo Jeep coming from Rampur towards Dakolar.

**11.** PW-6, Satya Prakash, is a formal witness.

**12.** PW-7, Anu Raman deposed that on 16.4.2009 at about 3:45 PM, one white Sumo came from Rampur side in a high speed and came towards their side and hit against Nidhi and others including herself. She also suffered injuries and became unconscious and regained consciousness at hospital Khaneri. She came to know that Nidhi had died as a result of the accident. She denied the suggestion, in her cross examination, that heap of stones was lying on the left side of the road and to avoid that heap, the driver turned his vehicle towards the right side.

**13**. PW-8, Jia Lal deposed that he was running a scrap shop at Dakolar for the last 6-7 years. About one and a half years back in the afternoon, children of the Coaching Centre were standing on the road to take lift. One Tata Sumo vehicle came from Rampur side and hit against the students and 6-7 students suffered injuries. He alongwith other people present there arranged to send the injured to the hospital.

**14.** PW-9, Dr. Rajan Uppal, has examined Ms. Sapna and issued MLC Ext. PW-9/B. He also examined Anu Raman and issued MLC Ext. PW-9/C. He examined Ms. Usha and issued MLC Ext. PW-9/D. He also examined Monika and issued MLC Ext. PW-9/E. He examined Priyanka and issued MLC Ext. PW-9/F. He also examined Manchala Gill and issued MLC Ext. PW-9/G. He also examined Satish Thakur and issued MLC Ext. PW-9/H. He also examined the accused at 6:05 PM. According to his observation, there was smell of alcohol. Blood and urine sample were taken and handed over to the police for chemical examination. The opinion was reserved until the receipt of the report of the Chemical Examiner. He recorded his final opinion that the accused had consumed ethyl alcohol. He had examined him and found that he had taken alcohol but was not under the influence of the alcohol. He issued MLC Ext. PW-9/K. In his cross-examination, he deposed that he did not find accused under the influence of the alcohol. He denied the suggestion that there was some pilferage in taking the sample and thereafter sending the same to the Chemical Examiner.

**15**. PW-10, Atul Tandon deposed that on 16.4.2009 at about 3:30 or 3:40 PM, he was standing outside his institute at Dhakolar and the students of his institute were standing on the right side of the road going towards Nogli side and were waiting for the Cab. In the meanwhile, one Sumo vehicle of white colour came from Rampur side in a high speed and hit against the hill side on the left side. In the accident, 7-8 students of his institute suffered multiple injuries and out of this, Miss. Nidhi suffered fatal injury and died. The accident took place on account of rash and negligent driving on the part of the driver of the Sumo vehicle.

**16**. PW-11, HC Sanjeev Kumar has undertaken mechanical examination of the vehicle. He issued report Ext. PW-11/A. According to the report, there was no mechanical defect in the vehicle.

**17**. PW-12, A.S.I. Lalit Negi, deposed that he received a telephonic call in Police Station Rampur at about 3:45 PM and after receiving the same, he visited MGMSC Khaneri. He recorded the statement of Priyanka Thakur Ext. PW-1/A under Section 154 Cr.P.C. He prepared the inquest papers. He also moved an application for conducting the post mortem examination on the body of deceased Nidhi. He also moved an application for the medical examination of the other injured students. He took into possession the accidental vehicle. He also recorded the statement of witnesses under Section 161 Cr.P.C.

**18**. PW-13, Dr. Avinash Sharma conducted the post mortem examination on the dead body of Nidhi. According to him, the cause of death was head injury leading to cardio respiratory arrest. The probable time that elapsed between injury and death was immediate and between death and post mortem was 12 to 36 hours. He issued postmortem report Ext. PW-13/A.

**19**. Statements of PW-14, S.I. Hari Bhagat and PW-15, Inspector Des Raj are formal in nature.

**20**. It is duly established by the prosecution on the basis of the statements of PW-1 Priyanka Thakur, PW-2 Monika, PW-3 Satish Kumar, PW-4 Sapna, PW-7 Anu Raman and PW-10 Atul Tandon, that the accident was caused on 16.4.2009, by the accused while driving Tata Sumo in a rash and negligent manner. The students suffered injuries. They were medically examined and PW-9 Dr. Rajan Uppal has issued MLCs. One of the students, namely, Nidhi died in the accident. Her post mortem examination was conducted by PW-13, Dr. Avinash Sharma. According to him, the cause of death was head injury leading to cardio respiratory arrest. The probable time that elapsed between injury and death was immediate and between death and post mortem was 12 to 36 hours. These witnesses have also deposed that the vehicle was driven at a very high speed. The vehicle driven by the accused has also struck against the car of Dr. Hemant Kumar (PW-5) and then struck the other side of the hill. The defence taken by the accused that there was heap of stones lying on the side of the road and when he was

trying to overt them, the accident has taken place, has rightly been rejected by the learned trial Court.

**21**. The accused was medically examined by PW-9 Dr. Rajan Uppal. He has issued M.L.C. Ext. PW-9/K. He has taken the blood and urine samples of the accused. These were sent to FSL, Junga for chemical analysis. According to the FSL report Ext. PW-15/A, ethyl alcohol was detected in the contents of parcels P-1 and P-2, which contained blood and urine of the accused. The content of ethyl alcohol in blood was 135.41 mg% and in urine was 167.90 mg%. According to PW-9 Dr. Rajan Uppal, the accused was smelling alcohol but on chemical examination, he did not find accused under the influence of the alcohol. The accident has taken place at 3:45 PM and the blood samples were taken at 6:05 PM. The quantity of ethyl alcohol found in the blood and urine sample was on very high side. Though the doctor has stated that the accused was not under the influence of the alcohol but his opinion is contrary to the FSL report Ext. PW-15/A. Even, according to Section 185 of the Motor Vehicles Act, 1988, whosoever while driving, or attempting to drive, a motor vehicle, has, in his blood, alcohol exceeding 30 mg per 100 ml of blood detected in a test by a breath analyser, would come under the category of drunken person. It can safely be concluded that the accused was driving a public service vehicle in a state of intoxication. The accused has caused hurt while endangering life and personal safety of others by his rash and negligent driving on 16.4.2009. He was driving the vehicle in a rash and negligent manner and thereby endangered the human life. The accident caused by the accused has resulted in death of a very young student aged about 18 years. Other students as well, have suffered serious injuries.

**22**. Mr. B.S.Chauhan, Advocate, appearing for the accused has vehemently argued that HHC Radhey Shyam, who has taken blood and urine samples to the FSL, Junga has not been examined by the prosecution. No suggestion has been put to the I.O. by the learned counsel for the accused on this aspect. The accident has taken place on 16.4.2009 and the samples were sent to FSL, Junga on 19.4.2009. Mr. B.S.Chauhan, Advocate, has further argued that the prosecution has not explained as to where the samples remained for five days. No suggestion has been put to the I.O. on this aspect also. But, the fact of the matter is that the samples reached the FSL, Junga intact and were chemically examined by FSL, Junga. The ethyl alcohol was detected in the blood and urine test of the accused, as noticed hereinabove. PW-9, Dr. Rajan Uppal has denied the suggestion that the sample was tampered with. There is no merit in the contention of Mr. B.S.Chauhan, Advocate, that sufficient quantity of blood sample was not taken. Since the FSL has analysed the blood and has given its opinion and in case there was lesser quantity of blood, the same could not be analysed. Thus, the quantity of blood sample was sufficient for examination.

**23**. Accordingly, there is no merit in this appeal, the same is dismissed. The prosecution has proved the case against the accused under Sections 279, 304-AA and 337 IPC. However, taking into consideration that

the accused is a young man, being the first offender and the only bread earner of the family, a lenient view can be taken by reducing the sentence from 7 years to 5 years under Section 304-AA of the IPC. The sentences under Section 279 and 337 IPC are not interfered.

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

Hitesh Tandon. ...Petitioner.
Vs.
Manmohini. ...Respondent.

Criminal Revision No. : 4183/2013
Reserved on 3.9.2014
Decided on: 9.9.2014

**Protection of Women from Domestic Violence Act, 2005-** Respondent starting beating his wife after the death of his mother- he was working in a Atal Savasthay Seva – respondent had no source of income- the income of the petitioner is about Rs. 20,000- 25,000/- per month- held that the respondent husband is bound to maintain his wife- in these circumstance, granting of Rs. 3,000/- per month as maintenance from the date of the filing of the petition cannot be said to be excessive. (Para- 13)

For the Petitioner: Mr. Ramesh Sharma, Advocate.
For the Respondent: Mr. Parveen Chauhan, Advocate.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, Judge.**

This revision petition is directed against the judgment dated 24.5.2013 rendered by the learned Additional Sessions Judge, Chamba in Criminal Appeal No. 16/12.

**2**. "Key facts" necessary for the adjudication of this petition are that respondent filed an application under sections 12 read with sections 17, 18, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005 in the court of Chief Judicial Magistrate, Chamba bearing case No. 347-1/10. According to the averments contained in the application, she was legally wedded wife of petitioner Hitesh Tandon. The marriage between the parties was solemnized according to the Hindu rites and customs prevailing

in the area. Petitioner kept her nicely for about few days after the marriage. He started maltreating the respondent. He also used to give beatings to her. She tolerated inhuman beahaviour of the petitioner in the hope that he would mend his ways with the passage of time. He also levelled allegations of unchastity against her. He used to make sarcastic remarks against her. She was deprived of basic necessities. She was turned out from matrimonial house after administering beatings on 4.8.2010. Petitioner was also proclaiming that he has solemnized second marriage at Dharamshala. Petitioner is hail and hearty. Monthly income of the petitioner is Rs.30,000/-. She has no source of income. She has no house to live.

**3.** Petitioner filed reply to the application. He has denied the allegations made in the application. Learned Chief Judicial Magistrate allowed the application on 23.6.2012. Petitioner was prohibited from committing any act of domestic violence against the respondent. He was ordered to provide at least one room, kitchen and bathroom in the shared house. He and his relatives were restrained from entering in the shared house in which she was residing. He was also restrained from alienating or disposing of room allotted in the shared house to the respondent. She was awarded maintenance of Rs.3,000/- per month from the date of filing the application, i.e. 20.10.2010. Petitioner filed Criminal Appeal No.16/12 against the order dated 23.6.2012 before the Additional Sessions Judge, Chamba. Learned Additional Sessions Judge, Chamba dismissed the appeal on 24.5.2013. Hence, the present petition.

**4**. Mr. Ramesh Sharma has vehemently argued that both the courts below have not correctly appreciated the evidence. According to him, respondent herself has started quarreling with the petitioner and has left the matrimonial house. She has taken Rs.four lakhs from the petitioner and has spent the same during election. Petitioner has never given beatings to the respondent. Income of his client was Rs.6,500/- per month. His services were terminated on 16.12.2012. He had opened a clinic in the name of "Himalayan Health Care Clinic" of Electro Homoeopathy at village Sankha, P.O. Kilod, Tehsil and District Chamba. He was unable to earn sufficient money. He was living in rented house and was spending Rs.1,000/- per month.

**5**. Mr. Parveen Chauhan has supported the order and judgment rendered by both the courts below.

**6**. I have heard the learned counsel for the parties and have perused the record carefully.

**7**. Respondent has appeared as AW-1. According to her, the marriage was solemnized on 6.8.2009. She was kept properly when her mother-in-law was alive. Petitioner used to give her beatings. Her husband was working in "Atal Savasthay Seva" and was earning between Rs. 15,000/- to 20,000/- per month. He has also opened a clinic at place Panela. Bank balance of the petitioner was Rs.15 to 20 lakhs. She required a room,

kitchen and bath room and Rs.4,000/- to 5,000/- per month as maintenance.

**8**. Respondent's father Pardeep Kumar has appeared as AW-2. According to him, marriage between the parties was solemnized in the month of August, 2009. Respondent was treated properly till her mother-in-law was alive. Thereafter, his son-in-law and his relatives started torturing her. Petitioner was earlier running a medical store at place Panela and thereafter he started working in "Atal Savasthay Seva" and was earning Rs.20,000/- to 25,000/- per month. His mother was retired as a C.D.P.O. Petitioner has received a sum of Rs.20 to 25 lakhs from his mother on retirement. He was the only son of his parents.

**9.** Petitioner has appeared as RW-1. He was having cordial relations with the respondent. He had opened a shop at place Panela. Thereafter, he closed his shop. Respondent used to quarrel with him. His father paid Rs.1.5 lakhs for B.Ed training to the respondent. His father had given him Rs.4 lakhs for business. However, the same was spent by respondent during election. She also purchased jewelry. Thereafter, she left the matrimonial house. She was residing with her parents. Income of his father-in-law was Rs.30,000/- to 35,000/-. His father was having four rooms house at Jullakari. His father was Naib Tehsildar. His mother has received a sum of Rs.13,32,816/-.

**10**. RW-2 Behmi Ram is the father of the petitioner. According to him, respondent asked him to pay her Rs.1.5 lakhs since she wanted to do B.Ed. training. She left the house of his son. He paid Rs. 4 lakhs to his son to start his own business. His son told that it was taken by the respondent. Income of respondent's father was Rs. 35,000/- to 40,000/-. Income of his son was Rs.6,500/- per month.

**11**. RW-3 Dhano Devi has deposed that she did not know anything about the case. She has never threatened the respondent.

**12**. RW-4 Pushpa has deposed that respondent was kept nicely. She has never seen the parties quarreling. Respondent was residing with her parents. Respondent has left the company without any reason.

**13**. What emerges from the evidence discussed hereinabove is that marriage between the parties was solemnized in the month of August, 2009 according to Hindu rites and customs prevailing in the area. Respondent was treated properly and nicely till her mother-in-law was alive. Thereafter, petitioner has started giving beatings to her. She was given severe beatings on 4.8.2010. She was turned out of her house. She was forced to live with her parents. Income of the petitioner was Rs.20,000/- to 25,000/- per month as per the statements of AW-1 Manmohini and AW-2 Pardeep Kumar. He was working in "Atal Savasthay Seva". House of petitioner's father comprises of 4-5 rooms. There is nothing on record to prove that respondent has sufficient source of income. It is the duty of the petitioner to maintain his wife and not to commit any domestic violence against her. There is nothing on record to prove that petitioner has given a

sum of Rs.4 lakhs to the respondent and she has spent the same during election. Petitioner has not led any evidence that his father has given money to the respondent to do B.Ed. training. Petitioner cannot be absolved of his duty to look after and maintain his wife merely on the ground that her father's income is between Rs.25,000/- to 30,000/- per month. Petitioner's father was working as Naib Tehsildar and his mother has also retired as C.D.P.O. Respondent has not left her matrimonial house voluntarily, but she has been forced to leave the house. Both the courts below have correctly appreciated the evidence led by the parties and the order and judgment passed by the courts below do not warrant any interference by this Court.

**14**. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.

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

Jai Singh S/o Sh Daya Ram ....Petitioner.

Vs.

H.P. State and others. ....Respondents.

CWP No. 8728 of 2012
Reserved on: 5.9.2014
Date of Decision: 10.09.2014

**Constitution of India, 1950-** Article 226- High Court had issued a direction in Jeet Ram Sharma Vs. State of H.P. CWP no. 791 of 1995 decided on 14.11.1995 directing that Secretary (Health) shall issue direction to CMO and BDO to maintain a seniority list of DDT Beldars, to publish same in the notice board and in the office of the CMO and start making appointments according to the seniority- petitioner filing a petition that the directions were not complied with- held, that there is no positive evidence that the seniority lists were prepared and were published in the notice board- hence, the state directed to comply with the directions. (Para-5)

**Service Law-** Appointment in the public institutions can be made by way of advertisement of vacancy as per Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 by way of appointment by recruitment committee and as per recruitment and promotion rule- since there was no evidence that the appointment of the petitioner was made in accordance with any of the above procedure- therefore, petitioners are not entitled for regularization.

For the petitioners: Mr. G.R.Palsra, Advocate.

For Respondents. Mr. M.L.Chauhan, Addl. Advocate General with Mr.Pushpinder Singh Jaswal, Dy. Advocate General.

The following judgment of the Court was delivered:

**P.S.Rana Judge.**

Present Civil Writ Petition filed under Article 226 of the Constitution of India. Brief facts of the case as pleaded are that petitioner was engaged as DDT Beldars in the year 1987-88 by respondent department. It is further pleaded that name of the petitioner was sponsored through concerned employment exchange along with other DDT Beldars. It is further pleaded that petitioner worked with the respondentdepartment till 30.9.1994 when his services were disengaged. It is further pleaded that petitioner filed CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others before Hon'ble High Court of HP which was disposed on dated 14.11.1995. It is further pleaded that Hon'ble High Court of HP in CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others issued following directions to the respondents. (1) That Secretary (Health) to the Government of Himachal Pradesh shall issue instructions to all concerned more particularly Chief Medical Officers of the Districts and Block Development Officers to maintain a seniority list of DDT Beldars. (2) That said seniority list shall be duly published in the notice board of the Block Development Officer and also at the office of Chief Medical Officer of the District and appropriate publicity shall also be given in the neighbouring places where such Beldars are working. (3) That whenever the season starts appointments shall be offered according to the seniority. It is further pleaded that respondents did not comply the directions issued by Hon'ble High Court of HP in CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others. It is further pleaded that respondent department may be directed to issue appointment of DDT Beldars or any post of Class-IV employee as per direction of Hon'ble High Court of HP dated 14.11.1995. It is further pleaded that respondent department may be directed to circulate the seniority list of DDT Beldars to the petitioner prepared as per direction of Hon'ble High Court of HP dated 14.11.1995. Prayer for acceptance of writ petition sought.

**2.** Per contra reply filed on behalf of respondents pleaded therein that petitioner was initially engaged as DDT Beldars on seasonal basis from time to time. It is further pleaded that the work of DDT spray is seasonal work and it is carried out from the month of April to September every year. It is further pleaded that thereafter services of all the DDT Beldars used to be disengaged. It is further pleaded that as per direction of Hon'ble High Court of HP the seniority list of all the DDT Beldar was got prepared and maintained and thereafter all engagements of DDT Beldars on seasonal basis were made strictly as per seniority and in accordance with the sanction of government regarding number of persons to be engaged on year to year basis. It is further pleaded that one of the DDT Beldar was selected as Class-IV because he fulfills the requisite essential criteria in accordance

with Recruitment and Promotion Rules. It is further pleaded that no cause of action accrued in favour of the petitioner. Prayer for dismissal of writ petition sought.

**3.** Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the respondents and also perused entire records carefully.

**4.** Following points arise for determination in the present writ petition:

(1) Whether respondents have complied with the direction of Hon'ble High Court of HP issued in CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others?

(2) Whether petitioner is entitled by way of writ of mandamus for appointment as DDT Beldar or upon any post of Class-IV employee as per direction dated 14.11.1995 issued by Hon'ble High Court of HP?

**Finding upon Point No.1.**

**5**. Hon'ble High Court of HP in CWP No. 719 of 1995 decided on 14.11.1995 titled Jeet Ram and another Vs. State of HP and others issued following directions to respondents.

(1) That Secretary (Health) to the government of Himachal Pradesh shall issue instructions to all concerned more particularly Chief Medical Officers of the Districts and Block Development Officers to maintain a seniority list of DDT Beldars.

(2) That said seniority list shall be duly published in the notice board of the Block Development Officer and also at the office of the Chief Medical Officer of the District and appropriate publicity shall also be given in the neighbouring places where such Beldars are working.

(3) That whenever the season starts appointments shall be offered according to the seniority. Although the respondents have pleaded that they have complied the directions issued by Hon'ble High Court of HP in CWP No. 719 of 1995 but respondents did not place on record the register of seniority list of DDT Beldars prepared by Chief Medical Officer of the Districts and Block Development Officer. There is no positive, cogent and reliable evidence on record that seniority list was duly published in the notice board of the Block Development Officer and in the office of Chief Medical Officer of the District. The submission of learned Advocate appearing on behalf of the respondents that they have complied the direction of Hon'ble High Court of HP issued in CWP No. 719 of 1995 is defeated on the concept of ipse dixit (Assertion made without proof). Only list of selected DDT Beldars for the year 1994 issued by Chief Medical Officer Mandi District Mandi placed on record.

Respondents did not place on record any list of seniority of DDT Beldar prepared after November 14,1995 when civil writ petition was disposed of. Respondents did not assign any cogent reason for non-placing on record the seniority list published in the notice board of Block Development Officer and Chief Medical Officer. There is no evidence on record that after November 14, 1995 Chief Medical Officer of the District and Block Development Officer have maintained the seniority list of DDT Beldars.

**Finding on Point No.2**.

**6**. Submission of learned Advocate appearing on behalf of the petitioner that petitioner is entitled for appointment of DDT Beldar or upon any post of Class-IV employee as per direction dated 14.11.1995 issued by Hon'ble High Court of HP is rejected being devoid of any force for the reason hereinafter mentioned. It is well settled law that respondents is a public institution and it is well settled law that appointment on the public institution is always conducted in the following manner. (1) By way of advertisement of vacancy as per Employment Exchanges (Compulsory Notification of Vacancies) Act 1959. (2) By way of appointment by recruitment committee. (3) As per Recruitment and Promotion Rules. Even the Hon'ble High Court in CWP No. 719 of 1995 did not mention that petitioners would be directly appointed in Class-IV post without following the Recruitment and Promotion Rules. Hon'ble High Court of HP has directed in CWP No. 719 of 1995 that DDT Beldar would be appointed against Class-IV post as per rules only. Hence it is held that appointment of petitioner shall be strictly made as per Recruitment and Promotion Rules.

**7**. In view of the above stated facts it is held (1) That Secretary (Health) to the Government of Himachal Pradesh shall issue instruction to the Chief Medical Officer of the Districts and Block Development Officer to maintain seniority list of DDT Beldars within fortnight. Compliance report by way of affidavit shall be filed in the Registry of Hon'ble High Court of HP by Chief Medical Officers and Block Development Officers within fortnight after receipt of certified copy of the order. (2) It is further held that seniority list of DDT Beldars maintained by Chief Medical Officer of the Districts and Block Development Officer shall be duly published in the notice board of the Block Development Officer and shall also be published in the notice board of the office of Chief Medical Officer of the District. It is further held that appropriate publicity shall also be given in the neighbouring places where the Beldars are working. Compliance report by way of affidavit will be filed within fortnight after receipt of copy of order. (3) It is held that Chief Medical Officer and Block Development Officer shall appoint DDT Beldar in spray season w.e.f April to September every year according to seniority list prepared by Chief Medical Officer and Block Development Officer. (4) The prayer of the petitioner that petitioner be appointed as DDT Beldar or upon any post of Class-IV employee on regular basis is declined in view of the fact that all

appointments upon the public post is governed by Recruitment and Promotions Rules. (5) Other relief(s) claimed by petitioner declined and it is held that all other relief(s) merged in point No.1 and 2 determined by the Court. Writ petition is accordingly disposed of with no order as to costs. All miscellaneous application(s) are also disposed of.

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

Jeet Ram S/o Sh Mani Ram and another. ....Petitioner.
Vs.
H.P.State and others. ....Respondents.

CWP No. 3006 of 2012
Reserved on: 5.9.2014
Date of Decision: 10.09.2014

**Constitution of India, 1950-** Article 226- High Court had issued a direction in Jeet Ram Sharma Vs. State of H.P. CWP no. 791 of 1995 decided on 14.11.1995 directing that Secretary (Health) shall issue direction to CMO and BDO to maintain a seniority list of DDT Beldars, to publish same in the notice board and in the office of the CMO and start making appointments according to the seniority- petitioner filing a petition that the directions were not complied with- held, that there is no positive evidence that the seniority lists were prepared and were published in the notice board- hence, the state directed to comply with the directions. (Para-5)

**Service Law-** Appointment in the public institutions can be made by way of advertisement of vacancy as per Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 by way of appointment by recruitment committee and as per recruitment and promotion rule- since there was no evidence that the appointment of the petitioner was made in accordance with any of the above procedure- therefore, petitioners are not entitled for regularization.

For the petitioners: Mr. G.R.Palsra, Advocate.
For Respondents. Mr. M.L.Chauhan, Addl. Advocate General with Mr.Pushpinder Singh Jaswal, Dy. Advocate General.

The following judgment of the Court was delivered:

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**P.S.Rana Judge.**

Present Civil Writ Petition filed under Article 226 of the Constitution of India. Brief facts of the case as pleaded are that petitioners were engaged as DDT Beldars in the year 1987-88 by respondent

department. It is further pleaded that names of the petitioners were sponsored through concerned employment exchange along with other DDT Beldars. It is further pleaded that petitioners worked with the respondent department till 30.9.1994 when their services were disengaged. It is further pleaded that petitioners filed CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others before Hon'ble High Court of HP which was disposed on dated 14.11.1995. It is further pleaded that Hon'ble High Court of HP in CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others issued following directions to the respondents. (1) That Secretary (Health) to the Government of Himachal Pradesh shall issue instructions to all concerned more particularly Chief Medical Officers of the Districts and Block Development Officers to maintain a seniority list of DDT Beldars. (2) That said seniority list shall be duly published in the notice board of the Block Development Officer and also at the office of Chief Medical Officer of the District and appropriate publicity shall also be given in the neighbouring places where such Beldars are working. (3) That whenever the season starts appointments shall be offered according to the seniority. It is further pleaded that respondents did not comply the directions issued by Hon'ble High Court of HP in CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others. It is further pleaded that respondent department may be directed to issue appointment of DDT Beldars or any post of Class-IV employee as per direction of Hon'ble High Court of HP dated 14.11.1995. It is further pleaded that respondent department may be directed to circulate the seniority list of DDT Beldars to the petitioners prepared as per direction of Hon'ble High Court of HP dated 14.11.1995. Prayer for acceptance of writ petition sought.

**2**. Per contra reply filed on behalf of respondents pleaded therein that petitioners were initially engaged as DDT Beldars on seasonal basis from time to time. It is further pleaded that the work of DDT spray is seasonal work and it is carried out from the month of April to September every year. It is further pleaded that thereafter services of all the DDT Beldars used to be disengaged. It is further pleaded that as per direction of Hon'ble High Court of HP the seniority list of all the DDT Beldar was got prepared and maintained and thereafter all engagements of DDT Beldars on seasonal basis were made strictly as per seniority and in accordance with the sanction of government regarding number of persons to be engaged on year to year basis. It is further pleaded that one of the DDT Beldar was selected as Class-IV because he fulfills the requisite essential criteria in accordance with Recruitment and Promotion Rules. It is further pleaded that no cause of action accrued in favour of the petitioners. Prayer for dismissal of writ petition sought.

**3.** Court heard learned Advocate appearing on behalf of the petitioners and learned Additional Advocate General appearing on behalf of the respondents and also perused entire records carefully.

**4**. Following points arise for determination in the present writ petition:

(1) Whether respondents have complied with the direction of Hon'ble High Court of HP issued in CWP No. 719 of 1995 titled Jeet Ram and others Vs. State of HP and others?

(2) Whether petitioners are entitled by way of writ of mandamus for appointment as DDT Beldar or upon any post of Class-IV employee as per direction dated 14.11.1995 issued by Hon'ble High Court of HP?

**Finding upon Point No.1.**

**5**. Hon'ble High Court of HP in CWP No. 719 of 1995 decided on 14.11.1995 titled Jeet Ram and another Vs. State of HP and others issued following directions to respondents.

(1) That Secretary (Health) to the government of Himachal Pradesh shall issue instructions to all concerned more particularly Chief Medical Officers of the Districts and Block Development Officers to maintain a seniority list of DDT Beldars.

(2) That said seniority list shall be duly published in the notice board of the Block Development Officer and also at the office of the Chief Medical Officer of the District and appropriate publicity shall also be given in the neighbouring places where such Beldars are working.

(3) That whenever the season starts appointments shall be offered according to the seniority. Although the respondents have pleaded that they have complied the directions issued by Hon'ble High Court of HP in CWP No. 719 of 1995 but respondents did not place on record the register of seniority list of DDT Beldars prepared by Chief Medical Officer of the Districts and Block Development Officer. There is no positive, cogent and reliable evidence on record that seniority list was duly published in the notice board of the Block Development Officer and in the office of Chief Medical Officer of the District. The submission of learned Advocate appearing on behalf of the respondents that they have complied the direction of Hon'ble High Court of HP issued in CWP No. 719 of 1995 is defeated on the concept of ipse dixit (Assertion made without proof). Only list of selected DDT Beldars for the year 1994 issued by Chief Medical Officer Mandi District Mandi placed on record. Respondents did not place on record any list of seniority of DDT Beldar prepared after November 14,1995 when civil writ petition was disposed of. Respondents did not assign any cogent reason for non-placing on record the seniority list published in the notice board of Block Development Officer and Chief Medical Officer. There is no evidence on record that after November 14, 1995 Chief Medical Officer of the District and Block Development Officer have maintained the seniority list of DDT Beldars.

**Finding on Point No.2**.

**6**. Submission of learned Advocate appearing on behalf of the petitioners that petitioners are entitled for appointments of DDT Beldars or upon any post of Class-IV employee as per direction dated 14.11.1995 issued by Hon'ble High Court of HP is rejected being devoid of any force for the reason hereinafter mentioned. It is well settled law that respondents is a public institution and it is well settled law that appointment on the public institution is always conducted in the following manner. (1) By way of advertisement of vacancy as per Employment Exchanges (Compulsory Notification of Vacancies) Act 1959. (2) By way of appointment by recruitment committee. (3) As per Recruitment and Promotion Rules. Even the Hon'ble High Court in CWP No. 719 of 1995 did not mention that petitioners would be directly appointed in Class-IV post without following the Recruitment and Promotion Rules. Hon'ble High Court of HP has directed in CWP No. 719 of 1995 that DDT Beldar would be appointed against Class-IV post as per rules only. Hence it is held that appointment of petitioners shall be strictly made as per Recruitment and Promotion Rules.

**7.** In view of the above stated facts it is held (1) That Secretary (Health) to the Government of Himachal Pradesh shall issue instruction to the Chief Medical Officer of the Districts and Block Development Officer to maintain seniority list of DDT Beldars within fortnight. Compliance report by way of affidavit shall be filed in the Registry of Hon'ble High Court of HP by Chief Medical Officers and Block Development Officers within fortnight after receipt of certified copy of the order. (2) It is further held that seniority list of DDT Beldars maintained by Chief Medical Officer of the Districts and Block Development Officer shall be duly published in the notice board of the Block Development Officer and shall also be published in the notice board of the office of Chief Medical Officer of the District. It is further held that appropriate publicity shall also be given in the neighbouring places where the Beldars are working. Compliance report by way of affidavit will be filed within fortnight after receipt of copy of order. (3) It is held that Chief Medical Officer and Block Development Officer shall appoint DDT Beldar in spray season w.e.f. April to September every year according to seniority list prepared by Chief Medical Officer and Block Development Officer. (4) The prayer of the petitioners that petitioners be appointed as DDT Beldars or upon any post of Class-IV employee on regular basis is declined in view of the fact that all appointments upon the public post is governed by Recruitment and Promotions Rules. (5) Other relief(s) claimed by petitioners declined and it is held that all other relief(s) merged in point No.1 and 2 determined by the Court. Writ petition is accordingly disposed of with no order as to costs. All miscellaneous application(s) are also disposed of.

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

State of Himachal Pradesh. …Appellant.
Vs.
Nanak Chand. …Respondent.

Criminal Appeal No. 326/2008
Reserved on : 5.9.2014
Decided on: 10.9. 2014

**N.D.P.S. Act, 1985- Section 20**- Accused stated to be found in possession of 1 kg. 200 grams of charas- MHC stated that three sealed parcels were deposited with him, whereas, he had entered two samples in Malkhana register- there are contradictions in the testimonies of the prosecution witnesses regarding the manner in which ruqua was taken to the police station and the case file was brought to the spot- CFSL had returned the contraband on the ground that NCB form was not in prescribed proforma- prosecution filled a new proforma and sent the same to CFSL, Chandigarh- however, new proforma was not placed on record- held- in view of the contradictions and the failure to establish the link evidence, accused is entitled to acquittal. (Para-14 & 16)

For the Appellant: Mr. Ashok Chaudhary, Addl. A.G.
For the Respondent: Mr. G.R. Palsra, Advocate.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, Judge.**

This appeal is instituted against the judgment dated 11.1.2008 rendered by the Special Judge-II, Mandi in Sessions Trial No. 21 of 2007 whereby the respondent-accused (hereinafter referred to as the "accused" for convenience sake), who was charged with and tried for offence punishable under section 20 of the Narcotic Drugs and Psychotropic Substance Act, 1985 has been acquitted.

**2**. Case of the prosecution, in a nutshell, is that on 12.11.2006 police party was on patrol and Nakka duty on Karsog-Kelodhar-Chatri road. At 4.30 when the police party was at Ultidhar, accused came on foot. He saw the police. He threw his bag Ex.P-4. He tried to run away. He was over-powered. The bag was searched. It contained Charas. It was weighed and found to be 1 kg 200 grams. SI Surti Ram drew two samples of charas of 25 grams each out of the recovered stuff. He packed and sealed the sample charas in separate parcels with seal having impression 'S'. The remaining charas was packed and sealed in separate parcel with seal having

impression 'S'. He also filled in NCB form. He took specimen seal impression on pieces of cloth. He took into possession the case property and seizure memos were prepared. SI Surti Ram also sent rukka through Constable Durga Singh to Police Station, Karsog. Accused was arrested on the spot. The contraband was sent to C.F.S.L, Chandigarh. The Chemical Examiner sent his report. According to the report, the same was charas. Police investigated the case and the challan was put up in the court after completing all the codal formalities.

**3**. Prosecution examined as many as ten witnesses in all to prove its case against the accused. Statement of accused under Section 313 Cr.P.C. was recorded. He denied the case of the prosecution in entirety. Learned trial Court acquitted the accused. Hence, the present appeal.

**4.** Mr. Ashok Chaudhary, learned Additional Advocate General has vehemently argued that the prosecution has proved its case against the accused.

**5.** Mr. G.R. Palsra, learned counsel for the accused, has supported the judgment rendered by the trial court.

**6.** We have heard the learned counsel for the parties and have gone through the record carefully.

**7**. PW-1 Head Constable Dhiraj Singh has deposed that on 12.11.2006, he alongwith SI/SHO Surti Ram, ASI Shriram, Constable Ami Chand and Constable Durga Singh were in official vehicle No.HP-33-8179 on patrol duty. They had laid Nakka at Ultidhar. At 4.30 A.M., one person came from shortcut. When he saw the police party, he got perplexed. He threw away his bag and tried to run away. He was over powered by SI Surti Ram. The bag was searched. It contained charas. It weighed 1 kg 200 grams. SI Surti Ram drew two samples of charas out of the recovered charas of 25 grams each. Two samples of 25 grams each were put in two separate packets and the packets were made into two separate parcels. These were sealed with six seal impressions each having seal impression 'S', whereas the remaining stuff was put in the same bag. It was sealed with same seal impression 'S'. 12 seal impressions were embossed on the same. NCB form in triplicate was also filled in on the spot. The seal after use was handed over by the Investigating Officer to him. He has produced the seal. SI Surti Ram sent rukka through Constable Durga Singh to Police Station, Karsog for registration of case. The sample parcel was sent to C.F.S.L. Chandigarh. It was received back with an objection that columns of NCB form were not filled in properly and fresh NCB form was to be filled in. Thereafter, on 21.11.2006, SHO Surti Ram asked him to handover the seal to him. He handed over the seal having impression 'S' to SHO Surti Ram. Fresh NCB form was filled in vide mark 'A'. SHO Surti Ram after embossing seal impression 'S' on mark 'A' again handed over the ring, which was used for sealing the case property.

**8.** PW-2 Durga Singh has deposed the manner in which accused was arrested and proceedings were completed on the spot. He took

the rukka to the Police Station. He came back with rukka from Ultidhar till 6.00 A.M. He came on foot upto Kelodhar from Ultidhar with rukka and after Kelodhar he came in a vehicle upto Karsog. He came in a truck from Kelodhar at about 6.20 A.M. He did not know how far is Kelodhar from Ultidhar.

**9.** PW-3 Mahant Ram has deposed the manner in which accused was arrested and the seizure and sampling process was completed on the spot. According to him, on 12.11.2006, Constable Durga Singh brought one rukka mark 'B'. It was sent by SI Surti Ram on the basis of which FIR Ex.PW-3/A was recorded. Thereafter, he sent the file through Constable Durga Singh to the spot. On 12.11.2006, SI/SHO Surti Ram deposited with him three sealed parcels. He entered the case property in the Malkhana register. The parcel containing samples were marks A-1 and A-2. NCB form was also deposited. He has brought original register Malkhana vide Ex.PW-3/C. He sent one parcel containing sample charas, NCB form with dockets, copy of FIR, copy of recovery memo and specimen seal impression through constable Ami Chand vide RC No. 84/2006 to C.F.S.L. Chandigarh. He produced RC vide Ex.PW-3/D. On 17.11.2006, constable Ami Chand brought back the parcel containing documents with objection of the C.F.S.L. Chandigarh that NCB form be sent on the new prescribed proforma. Thereafter, SHO Surti Ram again filled in the prescribed NCB form. He asked Head Constable Dhiraj Singh to produce the seal. SHO, again prepared the prescribed NCB form and embossed seal impression 'S' on the same. The seal was again handed over to Dhiraj Singh. Thereafter, on 22.11.2006, he again sent the sealed parcel containing sample alongwith articles, NCB form, specimen seal impression, copy of FIR and recovery memo through constable Ami Chand to C.F.S.L. Chandigarh vide RC No. 84/2006. He filled in column Nos. 1, 2 of the NCB form.

**10**. Statement of PW-4 constable Tarsem Singh is formal in nature.

**11**. PW-5 Constable Amin Chand has deposed that on 15.11.2006, MHC Mahant Ram of Police Station, Karsog handed over to him, one parcel containing sample charas sealed with seal impression 'S' six in number alongwith specimen seal impression, NCB form, copy of FIR, recovery memo vide RC No. 84/2006 for depositing the same with C.F.S.L. Chandigarh.

**12**. Statements of PW-6 Sanjeev Kumar, PW-7 Chander Shekhar, PW-8 Jai Singh and PW-9 Parma Nand are formal in nature.

**13**. PW-10 Surti Ram has deposed the manner in which the accused was apprehended, charas was recovered, it was weighed and sampling procedure was completed. He filled in NCB form. Rukka was sent through Constable Durga Singh to the Police Station, Karsog. He prepared spot map Ex.PW-10/B. The parcel was returned back by C.F.S.L. Chandigarh with an objection that latest NCB form having 12 columns be sent. He prepared fresh NCB form. He took back the seal from Dhiraj Singh

and seal impression was embossed on the NCB form. On 21.11.2006, the parcel containing sample alongwith NCB form old as well as new, copy of recovery memo and copy of FIR were again sent through Constable Amin Chand by the MHC. Docket was prepared. He recorded the statements of witnesses. He sent rukka at 6.00 A.M. through Constable Durga Singh. He went on foot. He returned from the Police Station on foot at the spot 8.30 or 8.45 or 9.00 A.M. He did not see Constable Durga Singh alighting from the bus at the place of occurrence on his return from Police Station. He also did not come on motorcycle.

**14**. According to PW-3 Head Constable Mahant Ram, SI Surti Ram has deposited with him three sealed parcels and he has entered the same in the Malkhana register. However, it is evident from Ex.PW-3/A that only two samples have been deposited in the Malkahana. Mark A-1 has not been deposited in the Malkhana on 12.11.2006. The prosecution has not explained where mark A-1 was kept with effect from 12.11.2006 to 15.11.2006.

**15**. There are also contradictions the manner in which PW-2 Durga Singh has taken the rukka to Police Station and came back. There are variations in the statements of PW-2 Durga Singh and PW-10 Surti Ram to this effect.

**16**. The C.F.S.L. Chandigarh has returned the contraband on the ground that NCB form was not in prescribed proforma. According to PW-10 Surti Ram, he has filled in all the columns on the prescribed proforma and the contraband was thereafter sent for chemical examination to C.F.S.L. Chandigarh. The prosecution has placed on record the copy of old NCB form Ex.PW-3/E and the latest NCB form has not been placed on record. The new proforma was filled in on 21.11.2006. Moreover, Ex.PW-1/A specimen seal impression was placed on record only at the time of recording statement of PW-1 Dhiraj Singh. The documents have been placed on record with the challan. There are inherent contradictions in the statements of the witnesses, which render the case of prosecution doubtful. There is no explanation where mark A-1 remained with effect from 12.11.2006 to 15.11.2006 and why the new NCB form was not exhibited. The trial court has correctly appreciated the evidence led by the prosecution and there is no need to interfere with the well reasoned judgment passed by the trial court.

**17**. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the appeal and the same is dismissed.

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

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

Vs.

Paras Ram @ Suraj .....Respondent.

Cr. Appeal No. 340 of 2008
Reserved on: 4.9.2014
Date of Decision: 10.9.2014

**N.D.P.S. Act, 1985-** Sections 18 and 52(3)- Accused was found to be in possession of 2 kgs. 500 grams of opium- held, that the accused and the case property were not immediately taken to the Officer in charge of the nearest police station which is violation of the mandatory provision of Section 52 and the accused is entitled to be acquitted. (Para-23 & 24)

**N.D.P.S. Act, 1985**- Link evidence- Parcels were found in torn condition which can lead to an only inference that these were tempered with- further, column Nos. 9 to 12 of NCB form were left blank- therefore, link evidence had not been proved and the accused is entitled to be acquittal.
(Para- 26 and 27)

For the Appellant: Mr. P.M.Negi, Deputy Advocate General.
For the respondent: Mr. Lakshay Thakur, Advocate.

The following judgment of the Court was delivered:

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**Sureshwar Thakur, *Judge***

The instant appeal is directed against the judgement of acquittal, rendered on 29.12.2007, by the learned Special Judge, Mandi, H.P., in Sessions trial No.33 of 2004, whereby the respondent has been acquitted for his having committed offence punishable under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein-after referred to as 'NDPS Act').

**2.** The prosecution story, in brief, is that on 7.12.2003, at about 2.15 p.m., a telephonic call was received from some unkown person by ASI Baldev, incharge Police Post, Darang, that scooter, bearing No. HP-33-7358, coming from Narla towards Mandi and some contraband was being carried illegally in the said scooter. Thereafter, the report, under Section 42(2) of the Act, was sent through Constable Brij Lal to Dy. S.P. Ms. Subhra Tiwari. ASI Baldev Singh, along with Constable Ghanshayam, reached at National Highway, near Police Post, Darang, and joined Dr.Ravinder Kaundal, as an independent witness. Scooter, being driven by accused, was stopped and the respondent-accused was apprised that he was being suspected of carrying Charas as he has a right to get himself searched either before a Gazetted Officer or a Magistrate. The accused agreed for his search being carried out from the police party and gave his consent comprised in memo Ext.PB. ASI Baldev gave his personal search to the accused vide memo Ext.PC. Thereafter, he conducted the search of dickey of the scooter, from which two poly bags were recovered containing charas or opium. The recovered charas was weighed and found to be 2 Kgs and 500 grams. The Investigating Officer separated 2 samples of 25 grams each and put them in two sealed packets and sealed with seal H at 6 places. The remaining bulk

was put in a single poly bag and sealed with seal H at 9 places. The seal, after use, was handed over to Dr.Ravinder Kaundal. The I.O. filled up the columns of NCB form Ext.PP and put seal impression H on the said form. The case property was taken into possession vide recovery memo Ex.PE duly signed by the witnesses. The accused was arrested vide memo Ext.PH and given memo of information of commission of offence comprised in memo Ext.PF. ASI Baldev sent Ruka Ext.PN through HHC Balbir for registration of the case and he handed over the same to K.D.Sharma, Inspector Police Station Sadar, who recorded the F.I.R. Ext.PO.

**3**. After receipt of the report of Chemical Examiner Ext.PP/1, it was revealed that the contraband, recovered from the accused, was opium, as such, challan under Section 173 of the Cr.P.C. was prepared and filed in the Court.

**4.** Accused was charged for his having committed offence punishable under Section 18 of the NDPS Act, by the learned trial Court, to which he pleaded not guilty and claimed trial.

**5.** In order to prove its case, the prosecution examined as many as 15 witnesses. On closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded in which he pleaded innocence. On closure of proceedings under Section 313 Cr.P.C., the accused was given an opportunity to adduce evidence, in, defence, and he chose not to adduce any evidence in defence.

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

**7.** The State of H.P. is aggrieved by the judgment of acquittal recorded by the learned trial Court. The learned Deputy Advocate General has concertedly and vigorously contended that the findings of acquittal recorded by the learned trial Court are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross-mis-appreciation of the material on record. Hence, he contends that the findings of acquittal be reversed by this Court in the exercise of its appellate jurisdiction and be replaced by findings of conviction.

**8.** On the other hand, the learned counsel appearing for the respondent-accused has with considerable force and vigour contended that the findings of acquittal recorded by the Court below are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

**9.** 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.

**10**. The first witness, who, stepped into the witness box to prove the prosecution case, is, PW-1 Constable Ghanshyam, who deposes that on 7.12.2003, at about 2.15 p.m., ASI Baldev received a telephonic call in the Police Post, Drang that a scooter, bearing No. HP-33-7358, is coming

from Narla to Mandi and the driver of the scooter is deposed to be carrying some contraband article in the said scooter. Thereafter, he, along with ASI Baldev, stood on the road and Dr.Ravinder Kaundal, running a private clinic, was also called. He further deposes that the scooter was parked by the side of the road and the accused was apprised that he has a legal right to get himself searched either from a Magistrate or a gazetted officer, to which, the accused offered to be searched by the police. He continues to depose that during search, two polythene bags were recovered from the dickey of the scooter, which was weighed and found to be 2.500 kgs. He further deposes that I.O. separated two samples of opium from both the bags of 25 grams each and put them in a parcel and sealed with seal H. The remaining opium was also put in separate parcel and sealed with seal H. The copy of the recovery memo was also supplied to the accused. The I.O. also filled up NCB form in triplicate and impression of seal H was also taken on the NCB form. The I.O. sent ruka through constable Balbir Singh for registration of the case to P.S.Sadar.

**11**. PW-2 Ravinder Kaundal, PW-3 Nirmala Devi, and PW-12 Hem Singh have not supported the prosecution case since during their examination-in-chief they have not supported the prosecution case, hence, they were declared hostile and was requested by the learned public prosecutor to be cross-examined. On his request, having come to be acceded to, they were cross-examined by the learned public prosecutor but no incriminating material against the accused could be elicited from their cross-examination.

**12**. PW-4 Kashmir Singh deposes that on 7.12.2003, a police official came to his shop and asked him to handover scale and weights. Accordingly, he handed over scale along with weights of 2 kgs, 1 kg, 500, 100, 50 grams. Later-on, he took the said scale along with weights, and left the same at his shop.

**13**. PW-5 H.C. Ramesh Chand deposes that on 8.12.2003, report under Section 42(2) Ext.PA was handed over to him by Dy. S.P. Shubhra Tiwari, which was received by her on 7.12.2003. He further deposes that on the same day, special report under Section 57 was handed over to him at 3.50 p.m. by the Dy.S.P, and the same is Ext.PL.

**14**. PW-6 HHC Baldev deposes that on 7.12.2003, SHO K.D.Sharma deposited with him three parcels. He further deposes that SHO also deposited with him NCB form, sample seals H and N and recovery memo etc. and the same were entered in the Malkhana Register. In cross-examination, he deposes that bulk parcel Ext.P-3 is partly damaged and further deposes that when it was deposited with him the parcel was in proper shape.

**15**. PW-7 HHC Mohan Lal deposes that on 10.12.2003, HHC Baldev Singh handed over him one sample parcel, sample seals H and N, NCB form and other documents vide RC No. 008440, which he deposited on

the same day in CTL, Kandaghat. He further deposes that nobody tampered with the case property so long it remained with him.

**16**. PW-8 Constable Brij Jal deposes that on 7.12.2003, at about 12.25 p.m., Constable Liak Chand handed over to him report under Section 42(2), copy of which is Ext.PA and he handed over the same to Dy.S.P. at her residence and she also appended endorsement on the same.

**17**. PW-9 Constable Liak Chand deposes that on 7.12.2003, at about 2.15 p.m., a telephonic call was received that a scooter bearing No.HP-33-7358 was coming from Narla side and opium was being carried in it and he reduced the same in daily diary register vide D.D.No. 12 vide Ext.PA.

**18**. PW-10 Constable Balbir Singh deposes that on 7.12.2003, at about 5.30 p.m., ASI Baldev handed over to him the ruka, three parcels of opium, bearing seal impression H along with the sample seal N, NCB form, etc. to deposit the same at P.S.Sadar, which he deposited at 6.25 p.m. with SHO K.D.Sharma. He further deposes that he handed over the ruka to MHC Gulab Singh, who, on its basis, registered the F.I.R. and handed over the case file back to him.

**19**. PW-11 Inspector K.D.Sharma, deposes that on 7.12.2003, he received a ruka Ext.PN through constable Balbir Singh, on the basis of which, he recorded the F.I.R. He further deposes that Constable Balbir Singh handed over to him bulk parcel Ext.P4. He continues to depose that he re-sealed the case property with his own seal having seal impression N. He further deposes that he deposited the case property with Incharge Malkhana, Baldev Singh, along with NCB form, specimen seals, H and N. In cross-examination, he deposes that Ext.P-3 was not torn at the time of resealing and feigns ignorance when the cloth of the parcel was torn. He further deposes that he has not filled in the column No.9 of the NCB form.

**20**. PW-13 Dy. S.P. Ms. Shubhra Tiwari, deposes that on 7.12.2003, she received information report under Section 42(2) through Constable Brij Lal and she made endorsement on the said report. She continues to depose that on the next day, she received the special report under Section 57 of the Act through Constable Baldev Singh on which she made endorsement.

**21**. PW-14 ASI Baldev Singh deposes that he received the telephonic information about the carrying of contraband in a scooter bearing No.HP-33-7358. He further deposes that he alongwith constable Ghanshyam went towards NH-20 near PP Drang and associated Dr. Ravinder Kaundal, as a witness and stopped the accused. He further deposes that accused agreed for his search to be carried out by the police party and conducted the search of the dickey of the scooter and during such search, two poly bags were recovered, which were containing opium. He continues to depose that he filled in the NCB form in triplicate and put the impression of seal H on the same. He proceeds to depose that the accused was arrested vide memo PH and was duly informed regarding grounds of arrest. He continues to depose

that the case property was sent through HHC Balbir Singh to Police Station alongwith seal H and NCB form and deposes that special report under Section 57 was sent through HHC Balbir Singh. In cross-examination he admits the suggestion that column No. 9 to 12 of the NCB form are blank and also admits that Ext.P-3 Ext.P-4 are torn out from the middle.

**22**. PW-15 Dy.S.P.N.K.Sharma deposes that on 8.6.2004 ASI Baldev Singh, Incharge P.P. Drang, after completion of the investigation, handed over the case file to him and after receiving the report of Chemical Examiner Ext.PP/1, he prepared the challan and presented the same in Court.

**23** The rummaging of the evidence on record by this Court has been thorough and circumspect. The prosecution case, per-se, is hit by pervasive infirmities. The said pervasive infirmities rid as well as ingrain the prosecution case with the vice of prevarication, hence, rendering the genesis of the prosecution case to be both uninspiring as well as untrustworthy. The prime infirmity, which grips the prosecution case, is, of the mandate of Section 52(3) of the NDPS Act, contemplating and enjoining a statutory mandatory duty upon the Investigating Officer who arrests a person and seizes articles under sub section (2) of Section 41, Section 42 and Section 43 or Section 44 to transmit or forward without unnecessary delay both the person arrested and the article seized, to the Officer Incharge of the nearest Police Station or to the Officer In-charge empowered under Section 53, having been infringed. Now for fathoming whether the casting of the statutory mandatory duty upon the Investigating Officer had come to be infracted, an advertence to the testimony of PW-14 is necessary, wherein he deposes that he had taken the accused to the police post, Darang at 6.00 p.m. Obviously, it is palpable that hence he had not taken the accused alongwith the case property to the Police Station, manned by Station House Officer before whom the accused was to be mandatorily produced. Consequently, when there was a mandatory statutory obligation cast upon the Investigating Officer to take the accused arrested by him for his having committed the offence alleged, to the Officer In-charge of the nearest Police Station, who did not man the police post rather manned the Police Station, marks a departure from or transgression on his part of the mandatory statutory obligation cast upon him. The said deposition of I.O. appearing as PW-14 is corroborated by the deposition of PW-15, inasmuch, as, he voices in his deposition the fact that the accused was not either produced by him before the Station House Officer or any other Police Officer, after completion of the codal formalities at the site of occurrence, which deposition with aplomb constrains this Court to conclude that a shady, camouflaged and impartisan investigation has been carried out by the Investigating Officer. Obviously, it cannot gain credence with this Court.

**24**. The inference formed by this Court that the obligation cast under Section 52(3) of the Act upon the Investigating Officer after arresting the accused produce him before the Officer Incharge of the Police Station or the Officer empowered under Section 52(3) being mandatory,

attains sanctity in the face of it being omitted to be canvassed by the learned Deputy Advocate General by citing apposite authorities rendered by the Hon'ble Apex Court pronouncing upon the fact that the said obligation envisaged and contemplated in Section 52(3) of the NDPS Act of the arresting officer or the investigating officer on arresting the accused produce him without unnecessary delay before the officer incharge of police station or the officer empowered is not a mandatory obligation, rather is directory, a firm conclusion hence, can be formed that the obligation aforesaid cast upon the Investigating Officer under Section 52(3) of the NDPS Act is a mandatory obligation and its non compliance vitiates the prosecution case or it renders suspect the genesis of the prosecution version.

**25**. Moreover, the parcels in the instant case were found in a tattered or torn condition, which fact has come to be conceded by PW-14. The tattered condition of the parcel inspires a conclusion that they did not remain intact or gained such a condition as the Investigating Officer or any official of the Police Station concerned had taken to tamper with them. With the forming of such a conclusion the prosecution case is also rendered suspect besides does not gain credence.

**26**. For reiteration, in other words, it has to be concluded that the parcels, as attributable to the accused or portrayed to be purportedly linking the accused in the commission of the offence alleged are not the parcels as may have been allegedly recovered from the purported conscious and exclusive possession of the accused rather it has to be with aplomb concluded that replaced parcels are attributed to the accused. As a corollary, then on substituted, replaced or tampered parcels, this Court cannot record findings of conviction against the accused.

**27**. Preponderantly and pre-eminently Column No. 9 to 12 of the NCB form are blank. The said columns were enjoined to be filled in by the SHO of the Police Station concerned. In case they were omitted to be filled in by the SHO, renders open a conclusion that the Investigating Officer did not produce even the case property for its resealing by the SHO of the concerned Police Station. If the above inference is drawable, then entwined with the inference aforesaid formed on the basis of production of tattered parcels, of replaced or substituted material being projected by the prosecution to be allegedly connecting the accused in the offence alleged, it magnifyingly ensuingly fillips a conclusion that the Investigating Officer has conducted the entire investigation in a slanted and mechanical manner. More so when the abstract of Malkhana Register has not been produced in Court which fact entwined with the fact that Column No. 10 of the NCB form relating to the deposit of the case property in the Police Malkhana has, too, remained unfilled, communicates the fact of the aforesaid omission having been occasioned by the Investigating Officer smothering the truth qua the genesis of the prosecution case. Therefore, this Court cannot place any reliance upon slanted, tainted or vitiated investigation.

**28**. The learned trial Court has appreciated the evidence in a mature and balanced manner and its findings, hence, do not necessitate

interference. The appeal is dismissed being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained. Records of the learned trial Court be sent down forthwith.

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

State of H.P. ...Appellant.
Vs.
Thakur Dass ...Respondent.

Cr.Appeal No.341 of 2008.
Reserved on: 04.09.2014
Decided on: 10.09.2014.

**Indian Penal Code, 1860-** Sections 376, 452 and 506- Accused raped the prosecutrix in her home- she reported the matter to the police after three days on the arrival of her son- prosecutrix failed to disclose the incident to her daughter who arrived prior to her son- hence, the delay assumes significance- no injury were found on her person or the person of the accused- neighbours deposing that they had not heard any cries from the house of the prosecutrix- these circumstances show that the prosecutrix was a consenting party and the acquittal of the accused was justified. (Para-30 and 33)

For the Appellant-State: Mr.Ramesh Thakur, Assistant Advocate General.
For the Respondent: Mr.G.R.Palsra, Advocate.

The following judgment of the Court was delivered:

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**Sureshwar Thakur, Judge.**

The instant appeal is preferred by the State against the judgment, rendered on 31.12.2007, by the learned Sessions Judge, Mandi, H.P., in Sessions Trial No.31 of 2005, whereby, the accused-respondent has been acquitted for the commission of offences under Sections 452, 376 and 506 of the Indian Penal Code.

**2.** Brief facts of the case are that on 9.10.2004, at about 3.00 p.m., the prosecutrix was cleaning her house and in the meantime accused Thakur Dass came there and started threatening the prosecutrix by uttering word "Randi Ab Kahan Jayegi". The prosecutrix, owing to fear, went towards roof of her house and accused also came there and dragged and brought her down in the room and bolted the door from inside. The accused

forcibly opened the string of her Salwar and when she tried to raise cries, the accused gagged her mouth. Thereafter, the accused subjected her to rape. The accused also threatened the prosecutrix not to disclose the incident to any person as he would kill her. At night, the accused sent his son to the house of the prosecutrix, who also threatened the prosecutrix not to disclose the incident to any person or defame his father, otherwise she would be finished. The son of the prosecutrix is working as Coolie and was away from her home at that time and her daughter had gone to graze the cattle. On the third day of the incident, the prosecutrix went to District Courts Mandi and got written complaint Ext.PA which she filed before the S.P., Mandi. Thereafter, the S.P., Mandi ordered the registration of the case against the accused on the basis of which F.I.R. Ext.PN was registered.

**3**. After completion of the necessary investigation, into the offences, allegedly committed by the accused/respondent, challan was filed under Section 173 of the Code of Criminal Procedure.

**4.** The respondent-accused was charged for having committed offences punishable under Sections 452, 376 and 506 of the Indian Penal Code, by the learned trial Court, to which he pleaded not guilty and claimed trial.

**5.** In proof of the prosecution case, the prosecution examined as many as 17 witnesses. On closure of the prosecution evidence, the statement of respondent under Section 313 Cr.P.C. was recorded by the Court, in which he claimed false implication and pleaded innocence. In defence, the respondent/accused examined three witnesses.

**6.** On appraisal of the evidence on record, the learned trial Court acquitted the accused for the commission of offences punishable under Sections 452, 376 and 506 of the Indian Penal Code.

**7.** The State of H.P. is aggrieved by the judgment of acquittal recorded by the learned trial Court. The learned Assistant Advocate General has concertedly and vigorously contended that the findings of acquittal recorded by the learned trial Court are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he contends that the findings of acquittal be reversed by this Court in the exercise of its appellate jurisdiction and be replaced by findings of conviction.

**8.** On the other hand, the learned counsel appearing for the respondent-accused has with considerable force and vigour contended that the findings of acquittal recorded by the Court below are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

**9.** 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.

**10**. The first witness, who stepped into the witness box, to prove the prosecution case, the prosecutrix (PW-1), deposes that she knew the respondent-accused. He is deposed to be her neighbourer. She further deposes that she is widow and her husband died about three years back. She did not remember the date of occurrence, however, she deposes that it was Saturday and it was about 2 ½ years back. About 3.00 p.m., she was cleaning her house with broom, when the accused came inside her house and bolted the door from inside. Thereafter, the accused forcibly removed her salwar. She continues to depose that she raised hue and cry and the accused tried to gag her mouth. Thereafter, the accused subjected her to forcible intercourse. She further deposes that at the relevant time she was all alone in the house and thereafter the accused left her house. She proceeds to depose that her two children had gone to school at that time and her elder son had gone to his work and a daughter to fields to cut grass. When her daughter Bhensru Devi came back to house from the fields, at about 4.30 p.m., she (the prosecutrix) was weeping and narrated herthe entire incident. She further deposes that she did not divulge the incident to her son Bhim, who also returned home in the evening. She proceeds to depose that at night, Raju, son of the accused, came to her house and he asked her that as to why her father was being defamed and threatened of dire consequences. Thereafter, the accused also came at her house and he also threatened and abused her. The prosecutrix (PW-1) further deposes that the accused also threatened her not to disclose the matter to any person and out of fear and shame, she could not report the matter to any person. On third day of the incident, she went to the District Court, Mandi where she got written an application from an Advocate and the same was submitted to S.P., Mandi. The said application is deposed to be Ext.PA and bearing her thumb impression. Thereafter, she submitted the said application at Police Station, Sadar and the case was registered against the accused. She continues to depose that she was got medically examined by the police at Zonal Hospital, Mandi. During her cross-examination, this witness concedes the fact that there are 80-90 houses in village Thata. She denies the fact that immediately adjacent to her house is the house of Vice President Khime Ram, which is at a distance of 10-15 foot steps. She also admits the fact that the house of her 'Devar' Labh Singh is in front of her house, adjoining to the house of Khime Ram. There are houses of Khub Ram and Beli Ram in front of her house. She further deposes that the accused had raped her again about 5-6 months back in Kuhl in the village and she had lodged formal report at Police Post, Pandoh. Police made inquiries about the incident and the accused was taken tothe Police Station. However, she was not medically examined. She admits the fact that the accused was claiming path through her land which she was opposing.

**11**. PW-2 (Bhensru Devi), the daughter of the prosecutrix (PW-1) deposes that on 9.10.2014, she had gone to cow shed which is far away from the house and came back at about 3.00 p.m. and when she returned home, her mother was brooming the room at home. In the meantime, the accused, present in the Court, came and bolted the room from

inside. She further deposes that when she went to cow shed, her mother was all alone at home and when she returned, her mother told her that the accused subjected her mother to forcible sexual intercourse. During her cross-examination, PW-2, deposes that her brother (Bhim Singh) reached home prior to her arrival on that day, however, she feigns ignorance about the exact time of his arrival. She proceeds to depose that they are in good relations with the family of Khime Ram, Up-Pradhan. She admits the suggestion, put to her, that houses of Khime Ram and Labh Singh are at a distance of 5 meters from her house and facing her house. She proceeds to depose that the cow shed is situated at a distance of 2 to 2 ½ hours distance from their house and her mother also went to the cow shed on the next day of the incident. She denies the suggestion, put to her, that she is deposing falsely because of inimical relations of her mother with the accused.

**12**. PW-3, Led Ram, Ward Panch, Gram Panchayat, Deori, deposes that on 13.10.2004, he was associated by the police in investigation of the case along with witness Churamani. On that very date, he deposes that, he came to know that the accused, present in the Court, had committed rape on the prosecutrix (PW-1) on 9.10.2004. He further deposes that the case property, search and seizure from comprised in Ext.PC was filled up by the police which deposed to be bearing his signatures and that of the above witness. During his cross-examination, he deposes that Bhim Singh was working as Coolie with him at the relevant time and he never divulged him about the incident prior to 13.10.2004. He concedes to the fact that the path by the side of house of the prosecutrix is common path. Labh Singh, who is brother of husband of the prosecutrix, was also working with him and he also not narrated any such incident to this witness.

**13**. PW-4 (Dr.Vanita Kappor) deposes that on 12.10.2004, an application comprised in Ext.PE was moved by the police for medical examination of the prosecutrix and she medically examined her at 3.30 p.m. on the same day after obtaining her consent. She found no sign of fresh injury on private parts and thigh of the prosecutrix. She proceeds to depose that after examination, she issued MLC comprised in Ext.PF, which is deposed to be in her hand and bearing her signatures.

**14**. PW-5 (Dr.Jiwa Nand Chauhan) deposes that on 18.10.2004, he examined the accused, present in the Court and identifies him to be the same person brought by the police with the history of raping a lady on 9.10.2004. In his opinion, it has been concluded that there is nothing to suggest that the person examined is not capable of performing sexual act. There was no injury on the surface of the penis of the person examined. He continues to depose that application comprised in Ext.PJ was produced before him by the police which deposes to be bearing his signatures and after examination, he issued MLC comprised in Ext.PJ. During his cross examination, he denies the suggestion, put to him, that initially he gave opinion that the person examined is not capable of performing sexual act.

**15**. PW-6 (Tara Chand Sharma) deposes that on 12.10.2004, the prosecutrix approached him and requested him to write in Hindi an application and he had written the application on the information given by her, which is Ext.PA. He continues to depose that later he read over the application to her and she put the thumb impression on the said application in his presence.

**16**. PW-7 (Dele Ram) has not supported the prosecution case since during their examination-in-chief having not supported the prosecution witness, he was declared hostile and was requested by the learned public prosecutor to be cross-examined, on his request having come to be acceded to he was cross-examined by the learned public prosecutor but no incriminating material against the accused could be elicited from his cross-examination.

**17**. PW-8 (HHC Raj Kumar) deposes that on 12.10.2004 one complaint Ext.PA forwarded by the S.P. was received by him. He entered the said application in the daily diary at No. 11 dtd. 12.10.2004, copy of which is Ext.PM, which was sent to P.S. Sadar Mandi for the registration of the case under Section 376 IPC.

**18**. PW-9 (HC Rajeev Kumar) deposes that on 12.10.2004, he received copy of DD No.11 comprised in Ext.PM on the basis of which F.I.R. comprised in Ext.PN was registered by him, which is deposed to be in his hand and bearing his signatures. He further deposes that he also appended an endorsement at portion A to B on the back side of Ruqua comprised in Ext.PM and the case file was sent to Police Post, Pandoh for investigation.

**19**. PW-10 (Constable Prakash Chand) deposes that on 17.10.2004, he, along with Dole Ram witness, was associated in the investigation of the case. He further deposes that the accused, present in the Court, produced his underwear which was taken into possession vide recovery memo comprised in Ext.PK and seizure form Ext.PO which is deposed to be bearing his signatures as well as that of Dole Ram witness. In his cross-examination, he deposes that underwear Ext.P-8 was produced by the accused at his house in village Thata and village Thata is at a distance of 10 kilometers from Police Post, Pandoh.

**20**. PW-11 (ASI Bhim Sen) deposes that on 12.10.2004, the prosecutrix came to Police Post City, Mandi and produced complaint comprised in Ext.PA forwarded by the S.P., Mandi which was entered in the daily diary and thereafter he wrote Ext.PE to the M.O. for medical examination of the prosecutrix and obtained the MLC after deputing LC Rekha Devi with the prosecutrix.

**21**. PW-12 (N.K.Sharma) deposes that the investigation of the case was conducted by ASI Ram Lal, Incharge, Police Post, Pandoh, who is dead now and after verifying the investigation, he prepared the challan and presented the same in the Court. During his cross-examination, he denies the suggestion, put to him, that Ram Lal has conducted the investigation in a biased manner so as to implicate the accused.

**22**. PW-13 (LC Rekha Devi) deposes that on 13.10.2004, she accompanied the prosecutrix to Zonal Hospital, Mandi for her medical examination and after her medical examination, the doctor issued MLC and handed over two sealed parcels, along with specimen seals, to her. Both the sealed parcels, along with specimen seals, were deposited by her with HHC Baldev Singh. She further deposes that so long as the parcels remained in her possession, nobody tampered with the same.

**23**. PW-14 (Constable Jagdish Chand) deposes that on 13.10.2004, ASI Ram Lal, Incharge, Police Post, Pandoh, deposited with him one sealed parcel, sealed with seal-L, said to be containing Salwar and Kameez of the prosecutrix along with specimen seal-L which is deposed to be entered in the Malkhana Register. He continues to depose that on 17.10.2004, ASI Ram Lal deposited with him one sealed parcel said to be containing underwear of accused which was sealed with seal-R along with specimen seal-R and both the above sealed parcels were handed over to HHC Roshan Lal on 18.10.2004 along with specimen seals L and R vide RC No.21/04 for depositing the same in Police Station, Sadar, Mandi.

**24**. PW-15 (Dharam Chand) deposes that the sealed parcel handed over to him by HHC Baldev alongwith specimen seal were deposited by him at F.S.L.Junga vide R/C No. 171/04 and so long as these sealed parcels remained in his possession nobody tampered with the same. During his cross-examination he denies the suggestion put to him that no such articles were handed over to him by the Addl. MHC, P.S.Sadar, Mandi and then at FSL, Junga.

**25**. PW-16 ( HHC Baldev Singh) deposes that he had made the entries regarding the receipt and dispatch of the case property in the Malkhana Register No. 19, which is Ext.PS.

**26**. PW-17 (HHC Roshan Lal) is a formal recovery witness and deposes that so long the case property remained with him none tampered with the same.

**27**. DW-1 (Khub Ram) deposes that he knows the prosecutrix and the accused as they are from his village. He deposes that his house is at a distance of 15 feet from the house of the prosecutrix. He further deposes that prosecutrix is his Bhabhi in relation. He further deposes that the police enquired from them about the incident and they divulged that nothing had happened in the way as mentioned by the prosecutrix in the F.I.R.

**28**. DW-2 (Ved Ram) deposes that his house is at a distance of 5-6 meters from the house of Gindu Devi. He further deposes that there are 5-6 houses near to his house. He continues to depose that Gindu Devi or any of her family member never told him any incident of rape prior to visit of the police.

**29**. DW-3 (Keshav Ram) deposes that his house is at a distance of 50 meters from that of the prosecutrix. He further deposes that

on 13.10.2004, they came to know that the prosecutrix has made a report against the accused regarding rape. He continues to depose that the prosecutrix had a dispute with the accused relating to path. During his cross-examination, he feigns ignorance that the prosecutrix had lodged complaint in such like cases prior to the present incident in the Panchayat or Court.

**30**. The prosecutrix (PW-1) was allegedly subjected to forcible sexual intercourse at the instance of the accused. She, in her deposition, comprised in her examination-in-chief, has concerted to corroborate the genesis of the occurrence, comprised in complaint Ext.PA. She purportedly has lent corroboration to the depositions of PW-2 and PW-3. On a wholesome analysis of the depositions of the prosecution witnesses, aforesaid, the learned trial Court concluded that no implicit reliance can be placed on the testimonies of the prosecution witnesses, hence, concluded that the charges against the accused convincingly stands not proved. The learned Sessions Judge, had found the version of the prosecution witnesses un-inspiring as well as discrepant, hence, had concluded that they were unworthy of credence nor carry any probative value. This Court would not upset or reverse the findings recorded by the learned Sessions Judge in favour of the accused unless on a discerning study of the testimonies of the prosecution witnesses, it emerges that even while their testimonies are bereft of any inter-se or intra-se contradictions, hence, credible as well as inspiring have been untenably construed to be discardable by the learned Sessions Judge or the learned Sessions Judge while recording findings of acquittal in favour of the accused had not appreciated the material placed on record or mis-appreciated the evidence on record which, hence, has occasioned substantial miscarriage of justice necessitating of warranting interference by this Court. While proceeding to analyze the testimonies of the prosecution witnesses, initially comprised in the deposition of the prosecutrix, who appeared as PW-1, for gauging, whether it is or is not bereft of any inter-se or intra-se contradictions vis-à-vis the depositions of other prosecution witnesses, namely, PW-2 (Bhensru Devi) and PW-3 (Led Ram) as well as DWs, so as to render it, hence, credible or not credible, the preponderant fact, which engages the attention of this Court, is (i) of hers having made an initial disclosure of the incident to her daughter PW-2, who purportedly arrived home prior to the arrival of her son Bhim Singh. Hence, in the face of the arrival of her daughter PW-2 prior to the arrival of her son Bhim Singh, she deposes that the initial disclosure of the incident could not be made to Bhim Singh. However, the factum of Bhim Singh, having arrived home later than PW-2 and which later arrival of her son Bhim Singh precluded the prosecutrix to make an initial disclosure of the incident to her son, stands belied and is stripped of its veracity, in the face of PW-2 deposing that Bhim Singh, son of PW-1 and her brother had reached home prior to her arrival. With falsity being lent to the factum of the deposition of the prosecutrix of her son Bhim Singh having arrived home later than PW-2, it, hence brings forth intra-se contradictions vis-à-vis the testimonies of PW-1 and PW-2 qua the fact of the disclosure of the incident to even PW-2 by the

prosecutrix. If the above inference is drawable, consequently, it, (ii) appears that the prosecutrix omitted to disclose the incident promptly to even her daughter PW-2 as a concomitant then, if there was no prompt disclosure of the incident by the prosecutrix to her son Bhim Singh or even to PW-2, the natural sequel is that the prosecutrix had consensually succumbed to the purported forcible sexual intercourse perpetrated on her person by the accused. The inference, aforesaid, get impetus and momentum from the fact that (iii) even though the incident occurred on 9.10.2004, however, an F.I.R. qua the occurrence, as divulged by PW-1 came to be lodged only on 12.10.2004. Even qua the belated lodging of the F.I.R. qua the occurrence, there is no palpable explanation emanating from the prosecution. When delay in the lodging of the F.I.R. has remained unexplained, despite the Police station being located at a distance of about 1 ½ kilometers, and her on the next date having gone to collect grass by covering a distance of about 2 ½ kilometers, this Court is, as such, constrained to conclude that the version comprised in the deposition of PW-2 is both concocted as well as pre-meditated, hence, enjoys no sanctity, besides it conveys that the sexual intercourse, if any, perpetrated on the person of the prosecutrix by the accused, was consensual.

**31**. The factum of the prosecutrix having voluntarily succumbed to the sexual overtures of the accused gets fortified by the factum of the MLC of the prosecutrix comprised in Ext.PF omitting to record any injury portraying hers having resisted the purported sexual intercourse perpetrated on her person by the accused. For omission of portrayal of any marks of injuries, abrasions and bruises on the person of the prosecutrix in the MLC of the prosecutrix prepared by Dr.Vanita Kapoor (PW-4) comprised in Ext.PF, secures a formidable conclusion that she consensually succumbed to the purported sexual intercourse. Even the MLC of the accused comprised in Ext.PJ does too also omit to demonstrate any bruises, injuries or abrasions on his person as would have existed in case the prosecutrix had violently resisted the perpetration of the alleged forcible sexual intercourse on her person by the accused. Omission of reflection in the MLC of the accused of any injuries, bruises or abrasions on his person, connotes as well as signifies, that such omissions of reflections of injuries, abrasions or bruises on his person, portray the fact that the prosecutrix had voluntarily succumbed to the alleged perpetration of the forcible sexual intercourse on her person by the accused.

**32**. Since the prosecutrix in her cross-examination has leveled allegations against the accused having also subsequent to the alleged incident inasmuch, as, 5-6 months prior to her statement being recorded in the Court subjected her to forcible sexual intercourse, whereas when such allegations per-se do not attain any truth in the face of her having not reported the matter either to the police or to the Panchayat hence begets the conclusion that even the fateful incident which occurred on 9.10.2004 is wholly concocted and invented or as the subsequent incident attributed to the accused is spurious so also the incident which occurred on 9.10.2004, is, both vitiated as well as spurious.

**33**. The defence witnesses who deposed as DW-1, DW-2 and DW-3 hence voiced in their respective deposition that they are in close proximity to the house of the prosecutrix and that they are closely related to the prosecutrix yet in one voice they have unanimously deposed that no disclosure qua the incident was made to them by the prosecutrix, besides they have omitted to depose in their respective examinations in chief that they over heard any shrieks or screams emanating from the house of the prosecutrix where the said incident took place. The aforesaid disclosure in their depositions communicates that the prosecutrix has omitted to scream or shriek as she was a consenting partner or had consensually succumbed to the sexual act perpetrated on her person on the fateful day. Even the Investigating Officer, who, after completion of the investigation, died and, hence, the learned counsel for the defence was deprived of an opportunity to cross examine him for ascertaining the reason for his omitting to associate the DWs in the investigation, despite the fact that theirs houses are located in immediate proximity to the site of occurrence, renders open an inference that they were deliberately or intentionally not joined in the investigation carried out by him as he intended to smother the truth qua the incident. The impartisan investigation carried out by him, hence, does not gain any credence. The learned trial Court has appreciated the testimonies of the prosecution witnesses in a fair, balanced and mature manner. Its appreciation of the testimonies of the prosecution witnesses does not suffer from any vice or taint or perversity.

**34**. Consequently, the appeal is dismissed and the impugned judgment of acquittal rendered by the learned trial Court in favour of the respondent/accused does not warrant any interference from this Court and the same is maintained and affirmed. Records of the trial Court below be sent down forthwith.

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**BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.**

Dharmender Singh and another …Appellants/plaintiffs.

Vs.

Layak Ram and others. …Respondents/defendants.

RSA No. 304 of 2003.
Reserved on: 03.09.2014.
Decided on: 11.09.2014.

**H.P. Land Revenue Act-** Sections 38 and 45- Entry in the revenue record- Plaintiff claiming to be the owner in possession of the suit land with the allegations that earlier suit land was owned and possessed by one 'K' and was inherited by his wife 'D' on his death who had executed a Will in favour of the plaintiff- defendant shown to be the owner in the column of the ownership- 'K' was recorded to be possession in the copy of Jamabandi in

the year 1956-57- his status was "Bila Lagaan Batsawar Malkiyati Khud"- held, that this entry is not sufficient to construe that 'K' was the owner as the entry was never reflected in the column of the ownership- no mutation was attested in favour of 'K' on the basis of any sale deed or conveyance - therefore, 'K' had no title and plaintiff would not become the owner on the basis of will. (Para-8)

For the Appellants: Mr. Karan Singh Kanwar, Advocate.
For the Respondents: Mr. Onkar Jairath, Advocate.

The following judgment of the Court was delivered:

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**Sureshwar Thakur, Judge**

The instant appeal is directed against the judgment and decree, rendered on 13.5.2003, in Civil Appeal No.61-CA/13 of 2002 by the learned District Judge, Sirmaur District at Nahan, H.P., whereby, the learned First Appellate Court allowed the appeal, preferred by the defendants.

**2**. Brief facts of the case are that the appellants/plaintiffs filed a suit for permanent prohibitory injunction restraining the defendants from interfering in their peaceful possession over the land comprised in Khasra No. 485/428 measuring 15.7 Bighas and land comprised in Khasra No. 165 measuring 4.15 Biswas situated in Village Bhuppur, Tehsil Paonta Sahib, District Sirmaur. The plaintiffs have alleged that the land was owned and possessed by Kalyan Singh and after his death, his wife Smt. Daropti Devi, inherited the same and after death of Smt. Daropti Devi the plaintiffs have inherited the entire property on the basis of a Will dated 22.3.1980 and necessary mutation No. 602 dated 3.9.1996 was also attested in their favour. The defendants, who are only shown owners in the column of ownership in the Jamabandi but they never remained in possession of the suit property as the land was sold to Shri Kalyan Singh, hence, the defendants have no concern with the suit property and even the entry in the column of ownership in favour of defendants and others is also illegal and is not binding on the plaintiffs. The defendants tried to take forcible possession of the suit property and they also threatened to dispossess the plaintiffs. The plaintiffs have prayed for the grant of the relief of permanent injunction restraining the defendants from interfering in the suit property.

**3**. The defendants/respondents contested the suit and filed written statement taking preliminary objections that the suit of the plaintiffs is not maintainable as they have no locus standi. The plaintiffs have no right, title or interest in the suit property and they have not come to Court with clean hands. They have further alleged that Khasra No. 165 measuring 4.15 bighas is in possession of the defendants, who are cultivating the same as owners and the entries in favour of Kalyan Singh regarding this land are incorrect and are not binding on them. On merits, they have admitted that Kalyan Singh was owner in possession of land measuring 15.7 bighas

comprised in Khasra No. 485/428 and he was having no right, title or interest over land comprised in Khasra No. 165 measuring 4.15 Bighas. They have denied the remaining contents of the plaint and alleged that the question of dispossession of the plaintiffs does not arise as they have no right, title or interest over the suit property. Smt. Daropti has never inherited the suit property nor she was competent to execute any Will qua the suit property in favour of the plaintiffs and they have prayed for the dismissal of the suit.

**4**. The plaintiffs/appellants filed replication to the written statement of the defendants/respondents, wherein, they denied the contents of the written statement and re-affirmed and re-asserted the averments, made in the plaint.

**5**. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. Whether Kalyan Singh was occupying the suit land as owner in possession on the basis of sale in his favour, as alleged? OPP.
2. Whether Smt. Daropti inherited the suit land from Sh. Kalyan Singh her husband after his death, as alleged? OPP.
3. Whether Smt. Daropti Devi had executed a valid Will dtd. 22.3.1980 in support of the suit land in favour of the plaintiffs, as alleged? OPP.
4. Whether the entries in favour of defendants and others regarding ownership of the suit land is illegal, wrong and fraudulent, as alleged? OPP.
5. Whether the plaintiffs are entitled for the relief of injunction, as claimed? OPP.
6. Whether the suit is not maintainable, as alleged? OPD.
7. Whether the plaintiffs have no locus-standi to filing the suit, as alleged? OPD.
8. Whether the plaintiffs have no cause of action, as alleged? OPD.
9. Whether the entries qua possession of Kalyan Singh over the suit land in the record are incorrect and false, as alleged? OPD.
10. Whether the mutation No. 602 in favour of plaintiffs is wrong and false, as alleged, if so its effect? OPD.
11. Relief.

**6**. On appraisal of the evidence, adduced before the learned trial Court, the learned trial Court decreed the suit of the plaintiffs/appellants, to the extent that the defendants were restrained from interfering in the suit land comprised in Khasra No. 165 measuring 4 bighas 15 biswas situated at village Bhuppur, Tehsil Paonta Sahib. In appeal, preferred before the learned first Appellate Court by the defendants against the judgment and decree of the learned trial Court, the learned first Appellate Court dismissed the suit of the plaintiffs.

**7.** Now the appellants/plaintiffs have instituted the instant Regular Second Appeal before this Court, assailing the findings, recorded in, the impugned judgment and decree rendered by the learned first Appellate Court. When the appeal came up for admission on 29.8.2003, this Court, admitted the appeal instituted by the appellants/plaintiffs, against the judgment and decree, rendered by the learned first Appellate Court, on, the hereinafter extracted substantial question of law:-

> 1. Whether the learned District Judge has misconstrued, misinterpreted and misapplied the evidence on record and the view taken by him in the impugned judgement, decree is not possible on the basis of material on record?

**Substantial question of Law No.1.**

**8**. Uncontrovertedly, the parties are not at contest qua the ownership of land measuring 15-7 bighas comprised in Khasra No. 485/428. The lis intere-se the parties at contest is qua an area measuring 4 bighas 15 biswas comprised in Khasra No. 165. Daropti Devi, since deceased, on demise of Kalyan Singh, the predecessor-in-interest of the plaintiffs, purported owner in possession of the suit property executed a Will qua the suit property in favour of the plaintiffs, on strength thereof, the plaintiffs canvassed that with their predecessors-in-interest having a valid and sustainable title qua the suit land, as such, now they step into his shoes and have acquired rights as owners in possession of the suit property. The controversy, which has to be put at rest is whether Kalyan Singh, under whom Daropti Devi, the mother of the plaintiffs, derived an interest in the suit property and conveyed it by way of a testamentary disposition executed by him in her favour by the plaintiffs, had any tenable as well as a valid and subsisting title, qua the suit property. For gauging the fact whether Kalyan Singh, under whom his widow Daropti Devi (since deceased), and now the plaintiffs on the strength of the latter, having executed a testamentary disposition qua the suit property, claim right of owners in possession of the suit property, ever had an invincible title qua the suit property, an advertence is required to make an entry existing in Ext.P-6 Jamabandi for the year 1956-57 qua the suit property wherein Kalyan Singh, predecessor-in-interest of the plaintiffs was reflected to have the status of "Bila Lagaan Batsawar Malkiyati Khud". On the strength of the aforesaid entry, the counsel for the plaintiffs/appellants contends that hence Kalyan Singh, the predecessor-in-interest of the plaintiffs had in the year 1956-57, as conveyed by Ext.P-6, become owner of the suit property, hence, his widow Daropti was empowered to execute a testamentary disposition qua the suit property in favour of the plaintiffs. A reading of the entry appearing in the column of possession existing in Jamabandi Ext.P-6 reflecting the status of Kalyan Singh the predecessor-in-interest of the plaintiffs over the suit land as "Bila Lagaan Batsawar Malkiyati Khud" does not for the reason; (a) of their being no reflection in the column of ownership of Kalyan Singh being the owner of the suit property; (b) their being no attestation of mutation on the score or on the strength of any purported sale transaction having occurred or taken

place inter-se Kalyan Singh and the previous owners constitute it to be construable or connoting or communicating the fact of Kalyan Singh having ever acquired a valid and subsisting title over the suit property. The entry in the column of possession in Ext.P-6 does when rather forcefully conveying the factum of Kalyan Singh, the predecessor-in-interest of the parties at contest to be "Bila Lagaan Batsawar Malkiyati Khud" does not empower it to articulate or bespeak the factum of Kalyan Singh being its recorded owner, in pursuance to a sale transaction having occurred inter-se him and the previous land owners, rather garners a conclusion that the occurrence of the aforesaid entry is significatory of the fact that it has mechanically or perfunctorily occurred therein without their being any sale transaction inter-se Kalyan Singh or the previous owners. Had a sale transaction inter-se Kalyan Singh and the previous owner occurred or taken place necessarily then its occurrence, would have found communication in the column of ownership of Jamabandi qua the suit land comprised in Ext.P-6 in pursuance to the attestation of a preceding mutation recording the fact of a sale transaction inter-se Kalyan Singh and the previous owners having taken place. An omission thereof, for reiteration, constrains this Court to conclude that no sale transaction inter-se Kalyan Singh and previous owners ever took place. Moreso, in absence of occurrence in the revenue record of an entry conveying the conferment of the status aforesaid upon Kalyan Singh, to be voiced by the recording of or attestation of mutation of sale which occurred inter se Kalyan Singh and the previous owners, for concluding that Kalyan Singh was bestowed or conferred the status as an owner qua the suit property, as a corollary, its absence constrains this Court to conclude that the entry in Ext.P-6 conferring the status of "Bila Lagaan Batsawar Malkiyati Khud" upon Kalyan Singh has been unilaterally or arbitrarily recorded or is not in pursuance or preceded to by any valid order of any revenue authority. Consequently, it has no force or sanctity, rather it has to be construed to be non-est. In sequel, it has to be emphatically concluded that Kalyan Singh, predecessor-in-interest of the plaintiffs never was bestowed with or conferred with the status of owner of the suit land and that the entry in Ext.P-6 comprising the Jamabandi for the year 1956-57 qua the suit land is liable to be construed to be of carrying no probative value in determining the issue over which the parties are engaged.

**9**. The effect of this Court construing Ext.P-6 to be non-est and its further sequelling the concomitant effect of the predecessor-in-interest of the plaintiffs having acquired no title over the suit land, as a corollary then the effect of Will, if any, executed by widow Daropti Devi in favour of plaintiffs does not vest in them any right, title or interest over the suit property. Even the effect of the extant Jamabandi apposite to the suit land omitting to convey that on the demise of Kalyan Singh in January, 1980, the name of Daropti Devi as widow was reflected in the column of possession qua the suit property, rather, fillips a conclusion that when presumption of truth is to be lent to the revenue record comprised in the Jamabandi qua the suit land comprised in Ext.P-13 conveying the fact of the suit property to be recorded in possession of the defendants and when no

apposite evidence carrying any probative worth has been adduced to rebut the said presumption, it, has to be concluded that the defendants are in possession of the suit land, as aptly concluded by the learned First Appellate Court. Hence, the plaintiffs are not entitled to the relief of injunction. The substantial question of law is answered against the plaintiffs-appellants and in favour of defendants-respondents. Appeal dismissed. Impugned judgment and decree of the first Appellate Court maintained and affirmed. The parties are left to bear their own costs.

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**BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J. & HON'BLE MR. JUSTICE P.S. RANA, J.**

State of H.P. ...Appellant.
Vs.
Babu Ram ...Respondent.

Criminal Appeal No.4 of 2007
Reserved on : 16.7.2014
Date of Decision: 11.09.2014

**N.D.P.S. Act, 1985-** Section 20- Accused was found in possession of 12.5 kgs of charas- prosecution not examining the driver of the vehicle which took the police party to the spot and one another witness – the testimonies of the police officials are contradicting each other- no independent witness was associated- non-examination of the independent witness and the other prosecution witness would be fatal to the prosecution. (Para 9 to 15)

**N.D.P.S. Act, 1985-** Section 20- link evidence- PW-5 stating that four sample seals of seal impression T were prepared, whereas, PW-1 and PW-3 stating that only one such sample was prepared- when the case property was opened in the Court, it was sealed with two samples of seal 'K' and three samples of seal T - report of CTL did not record that seal was received or it was tallied- in these circumstances, link evidence has not been proved and the acquittal of the accused is justified. (Para-26 to 31)

**Cases referred:**

Prandas Vs. The State, AIR 1954 SC 36

Govindaraju alias Govinda Vs. State by Srirampuram Police Station and another, (2012) 4 SCC 722

Tika Ram Vs. State of Madhya Pradesh, (2007) 15 SCC 760

Girja Prasad Vs. State of M.P., (2007) 7 SCC 625)

Aher Raja Khima Vs. State of Saurashtra, AIR 1956 SC 217

Tahir Vs. State (Delhi), (1996) 3 SCC 338

Mohammed Ankoos and others Vs. Public Prosecutor, High Court of Andhra Pradesh, Hyderabad (2010) 1 SCC 94

For the Appellant : Mr. Ashok Chaudhary, Additional Advocate General, Mr.Vikram Thakur, Deputy Advocate General and Mr. J.S. Guleria, Assistant Advocate General.

For the Respondent : Mr. Sanjeev Kuthiala, Advocate.

The following judgment of the Court was delivered:

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**Sanjay Karol, Judge**

State has appealed against the judgment dated 18.9.2006 of the learned Special Judge, Fast Track, Kullu, District Kullu, Himachal Pradesh, passed in Sessions Trial No.5 of 2005, titled as *State v. Babu Ram,* challenging the acquittal of respondent Babu Ram (hereinafter referred to as the accused), who stands charged for having committed an offence punishable under the provisions of Sec. 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act).

**2.** It is the case of prosecution that SI Dorje Ram (PW-5) alongwith Constable Partap Singh (PW-3), Constable Mehar Chand ((PW-4) and HC Narain Singh (not examined), left Police Station, Kullu on patrol duty and detection of crime. At about 12.30 a.m., police party laid Naka on a footpath, between Jai Nallah and Rasol Bridge. The footpath leads to Rasol Bridge constructed over Parbati River. On 25.8.2004 at about 3.15 a.m., accused was seen walking in a torch light carrying a sack. He was coming from the side of Rasol Bridge. In the flash of a torch light, police party saw the accused and stopped him. On query, accused disclosed that he was carrying Charas in the sack. Mehar Chand (PW-4), who was asked to search for independent witnesses, returned after 20 minutes, as Sadhus, who were present in the nearby temple, refused to associate themselves as witnesses. Consequently, after associating police officials Mehar Chand (PW-4) and Narain Singh (not examined) as witnesses, Dorje Ram (PW-5) searched the sack, from which Charas, in the shape of Chapattis, Tikkis and Battis, was recovered. The same was weighed and found to be 12.5 kgs. Two samples, each weighing 25 grams, were drawn. Sample parcels as also bulk parcel were sealed with six seals of impression 'T'. Sample seals, four in number, were prepared. Column No.8 of the NCB form, in triplicate, was filled up by Dorje Ram. Seal after use was handed over to Narain Singh. Ruka (Ex.PW-5/B) was sent through Constable Partap Singh (PW-3) to Police Station, Kullu, where FIR No.408, dated 25.8.2004 (Ex. PW-6/A), under the provisions of Section 20 of the NDPS Act, was registered. Partap Singh (PW-3) took the case file and handed it over to Dorje Ram. Accused was arrested on the spot and number of the FIR was recorded on all the documents so

prepared on the spot. Thereafter, police party proceeded to the Police Station and handed over the case property to SHO Badri Singh (PW-6), who resealed the samples as also the bulk parcel with his seal impression 'K' (three in number). He also filled up Column Nos.9 to 11 of the NCB form. Thereafter he deposited the case property, including the NCB forms and the sample seals, with MHC Rup Singh (PW-1). On 25.8.2004, Rup Singh (PW-1) sent one sample through Constable Partap Singh (PW-3) which was deposited at CTL Kandaghat, vide Road Certificate (Ex. PW-1/D) on 26.8.2004. Report (Ex. PA) of the Chemical Analyst, which revealed the sample to be Charas, was obtained by the police and taken on record. With the completion of investigation, which 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 NDPS Act, to which he did not plead guilty and claimed trial.

**4.** In order to establish its case, prosecution examined as many as six witnesses and statement of the accused under the provisions of Section 313 of the Code of Criminal Procedure was also recorded, in which he pleaded innocence and false implication. He also examined two witnesses in his defence.

**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. Ashok Chaudhary, learned Additional Advocate General, on behalf of the State as also Mr. Sanjeev Kuthiala, Advocate, 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 Vs. 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." "

**9.** Having minutely perused the testimonies of prosecution witnesses, we find no reason to interfere with the impugned judgment. Testimonies of prosecution witnesses cannot be said to be inspiring in confidence. There are contradictions, material in nature, impeaching credit of the witnesses, rendering them to be unreliable and unbelievable.

**10** In the instant case, we find that two witnesses i.e. Narain Singh and driver of the vehicle in which the police party went to the spot have not been examined in Court. Their examination was absolutely necessary, in view of material contradictions, which have emerged on record, which we shall discuss herein after. Also, explanation for non-association of independent witnesses cannot be said to be convincing or inspiring in confidence.

**11.** There is no independent witness. 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.

**12**. 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.

**13.** 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 Vs. State by Srirampuram Police Station and another,*** **(2012) 4 SCC 722;** ***Tika Ram Vs. State of Madhya Pradesh,*** **(2007) 15 SCC 760;** ***Girja Prasad Vs. State of M.P.,*** **(2007) 7 SCC 625); and** ***Aher Raja Khima Vs. State of Saurashtra,*** **AIR 1956**].

**14**. Apex Court in ***Tahir Vs. 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."

**15**. In view of the aforesaid statement of law, we shall now discuss the testimonies of police officials present on the spot, which we must state, on examination, we find to be absolutely uninspiring in confidence.

**16**. SI Dorje Ram (PW-5) admits that documents pertaining to search and seizure operations were scribed, under his instructions, by members of the police party, out of which only three have been examined in Court. Witness to recovery of the contraband substance is Mehar Chand (PW-4) and Narain Singh (not examined). Testimony of Mehar Chand (PW-4), as we shall discuss herein later, does not inspire confidence. Under these circumstances, non-examination of Narain Singh as also driver of the vehicle in which the police party proceeded to the spot acquires significance.

**17**. We find genesis of prosecution story of having left the Police Station in the late hours of night and having set up a Naka in the night intervening 24.8.2004 and 25.8.2004, not to be inspiring in confidence at all. This we say so for the contradictions/improbabilities/variations/ discrepancies in the testimonies of police officials, namely Partap Singh (PW-3), Mehar Chand (PW-4) and Dorje Ram (PW-5). According to Dorje Ram (PW-5), he left Police Station, Kullu alongwith Narain Singh, Constable Partap Singh and Constable Mehar Chand in a Police vehicle driven by Tej Ram. Police party left on 24.8.2004 at 10.15 p.m. The purpose was “patrolling and detection of crime towards Manikaran side”. Now, there is nothing on record to establish departure of the police party from the Police Station. What was the crime, which was sought to be detected towards Manikaran side, has not been disclosed. Now, if crime was to be detected at Manikaran side then why is it that police laid a Naka and that too on a foot path, at an isolated place between Jai Nallah and Rasol Bridge. This fact has not been disclosed. It is not the prosecution case that they had any prior intimation of drug trafficking and as such had set up a Naka at that point. How far was the Naka from the road, where the vehicle was parked, has not been disclosed by the prosecution.

**18**. Further, Rup Singh (PW-1) admits that Daily Diary does not record either the departure or arrival of the vehicle allegedly taken for patrol duty. Also, he could not state as to whether Tej Ram was posted as a driver at Police Station, Banjar or not. Thus, who took the police party in the vehicle remains unexplained and unestablished. The genesis of the prosecution story is thus rendered to be shaky and doubtful.

**19**. Partap Singh (PW-3) could not state as to whether there was any temple at a distance of 200-250 metres towards Manikaran side or not. He states not to have seen Katagla or Kalaith Bridge or for that matter Katagla village. It has nowhere come that Katagla Bridge is near Kasol. According to Mehar Chand (PW-4), Naka was laid at a place which is 100 metres behind Kasol Bridge. But then he does not know the distance between Kasol Bridge and Jai Nallah. He has not even seen village Rasol and does not know the distance between village Rasol and Parbati River. He has

not even seen Katagal or Kalaith Bridge. Was he really a member of the Police Party? It does not appear so.

**20**. Also, testimony of this witness belies version of Dorje Ram (PW-5), according to whom Naka was laid between Jai Nallah and Rasol Bridge, which is constructed over Parbati River. Thus, there is major discrepancy, variation or contradiction with regard to the place of recovery of Charas, rendering the prosecution case to be doubtful, if not false.

**21**. In the instant case, it has come on record through the testimony of Dorje Ram (PW-5) that a temple where Sadhus were residing was just at a distance of 150 metres. Also, village Katagla was just at a distance of 500 to 600 metres from the place where Naka had been set up. Dorje Ram admits that from the place where Naka was set up, he brought the accused alongwith the sack containing Charas, to the vehicle. The reason being that it had started to drizzle. Now, if search and seizure operations were not carried out on the spot i.e. the place of Naka, where he came to know that the sack contained Charas, then why is it that he did not deem it appropriate to take the accused either directly to the Police Station or the place where Sadhus were sleeping or the nearby village. Undisputedly, in the instant case no independent witness was associated for carrying out the search and seizure operations. By the time Dorje Ram brought the accused to the vehicle parked on the road he knew that Sadhus sleeping in the closeby temple had refused to associate themselves as witnesses. Under these circumstances, he could have conveniently driven the vehicle to the nearest place of habitation to associate independent witnesses.

**22**. What further renders the prosecution case to be doubtful is the version of Mehar Chand (PW-4) and Dorje Ram (PW-5), on the point of non-association of independent witnesses. According to Mehar Chand, on the asking of Dorje Ram he went to the nearby temple and despite his request, 2-3 Sadhus present there refused to associate themselves as witnesses. As such, he returned and informed Dorje Ram about the same. We do not find his version to be trustworthy, which in fact is self contradictory,for he could not state the exact number of Sadhus, who were sleeping and also clarifies to have spoken only with one Sadhu, whose name also he does not remember. Be that as it may, why is it that then Dorje Ram did not take the contraband substance to the Police Station or nearby village for carrying out search and seizure operations, instead of choosing to associate PW-4 and Narain Singh as witnesses for such purpose. It is not that police party had any threat from the accused or apprehension of his fleeing away from the spot. Also Dorje Ram (PW-5) admits not to have taken any action against the Sadhus for their refusal to be associated as witnesses.

**23**. Still further, Dorje Ram (PW-5) states that there were 3-4 Sadhus who had refused to associate themselves as witnesses but admits that “he had no talk with those Sadhus”. Then on what basis does he depose such fact. If Mehar Chand had spoken with only one Sadhu then how could Dorje Ram depose that 3-4 Sadhus had expressed their

unwillingness to be associated as witnesses. Thus, either of the witnesses has deposed falsely. Further, Dorje Ram (PW-5) did not make any inquiry about the Sadhus or the place of temple or the name of Pujari. It is not that Dorje Ram was not aware of the temple. He admits to have seen it for the last 2-3 years.

**24**. There is yet another unexplained circumstance. Dorje Ram (PW-5) does not state from where he got the scales or the weights. According to him, upon weighment, Charas was found to be 12.5 kgs, which was packed in a sack (Ex. P-3). Now, it is not the proven case that police party was carrying the IO Kit.

**25**. Further, we find there is discrepancy in the testimonies of Partap Singh (PW-3), Mehar Chand (PW-4) and Dorje Ram (PW-5), with regard to the form of the contraband substance. According to PW-3 accused was carrying a white coloured bag from which Charas wrapped in a polythene envelope was recovered. He is silent with regard to the form of Charas. PW-4 states that Charas was in the shape of Chappatis, Tikkis and Battis, which version is contradicted by PW-5, according to whom it was in the shape of Chappatis and sticks.

**26**. Noticeably, there is discrepancy with regard to the number of samples of seal impression 'T'. PW-5 states that four sample seals of seal impression 'T' were prepared whereas according to Rup Singh (PW-1) and Partap Singh (PW-3) only one such sample was prepared. Also, PW-5 states that sample seal was handed over to Narain Singh, who remains unexamined in Court.

**27**. Contradiction with regard to sample seal acquires significance when we further examine the prosecution case on the point of link evidence.

**28**. While recording statement of Mehar Chand (PW-4), trial Court observed that:-

> "(At this stage the learned P.P. has produced parcel Ex. P-1 (larger) and has put forth a request that the same may be allowed to be opened by him in order to get the case property identified from the witnesses. The sealed parcel is containing <u>two seal impressions of seal K and 3 seal impressions of seal T which are intact.</u> Two seal impressions are partially broken and the seal impressions are nto visible. There are signs of two seal impressions but neither there is vax nor seal impressions but it appears from the parcel that same is fully stitched on and has not been tampered with in any manner. Hence allowed to be opened. It is found t o contain sack and charas in the shape of Chapati Tikki and Baties."
>
> (Emphasis supplied)

**29**. This observation of the Court totally knocks down the prosecution case, rendering the testimony of Dorje Ram (PW-5) to be unbelievable, according to whom, he had affixed six seal impressions of

impression 'T' on each parcel. Significantly, Court observed that the parcel produced was having three seal impressions of seal 'T'. Further report of CTL does not record that sample of the seal was received or tallied, though it is so recorded in the Road Certificate (Ex. PW-1/D) that three seals of impression 'K' were sent but whether they were handed over or not remains unexplained and proven on record.

**30**. According to Dorje Ram (PW-5), four samples of seal impression 'T' were prepared. Sample seal was handed over by him to Narain Singh who has not been examined in Court. Why so? has not been explained. In view of weak evidence on the point of link evidence, it became incumbent upon the prosecution to have examined the witness and produce the sample seal in Court. Absence thereof has seriously prejudiced the accused as major link of evidence stands concealed.

**31**. Be that as it may, Dorje Ram states that he handed over the case property alongwith the sample seals to Badri Singh (PW-6), who in turn states that he deposited the same with Rup Singh (PW-1). In Court PW-1 states that he received only two seal samples but in the Road Certificate there is mention of three seals and as per the record only one sample was deposited with the CTL. Significantly, in the report of the expert, it is not so recorded that seal on the sample was compared with the sample seal. This is to be seen in the backdrop of contradiction pertaining to the number of seals affixed on the samples and the observation made by the trial Court with regard to the broken seals on the contraband substance. Link evidence is not complete. Most importantly, bulk parcel produced in the Court was having broken seals for which no explanation is forthcoming. This has caused serious apprehension and doubt about the factum of search and seizure of the contraband substance from the conscious possession of the accused.

**32**. Also identity of the seized contraband substance produced in the Court itself is in doubt. Dorje Ram had also raided the video parlour of the accused at a place known as Jari. This was on 26.8.2004 when an unclaimed sack (Ex. P-3) was recovered. While exhibiting this parcel in Court there is no typographical error. Now if Ex. P-3 was recovered at the time when video parlour was raided, then how is it that the sack having same exhibit was recovered on 25.8.2004. Rup Singh (PW-1) admits that alongwith the sample in question he had also sent samples of other cases to the laboratory. Hence, possibility of the samples being mixed up cannot be ruled out, particularly when Partap Singh (PW-3) states that only one sample seal was prepared on the spot.

**33**. There is yet another contradiction on record. According to Dorje Ram (PW-5), he gave his personal search to the accused whereas according to Mehar Chand (PW-4) same was given to Narain Singh, the person who scribed such memo has not been examined in Court.

**34**. The testimonies of prosecution witnesses are uninspiring in confidence. No reasonable explanation for non-association of independent

witness is forthcoming. Also, link evidence is weak. As such, 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 12.5 kgs of Charas.

**35**. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully appreciated the evidence so placed on record by the parties.

**36**. 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 Vs. 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 SURESHWAR THAKUR, J.**

State of H.P. ...Appellant/Plaintiff.
Vs.
Prabhu & Anr. ...Respondents/Defendants.

RSA No.294 of 2003.
Reserved on: 01.09.2014.
Decided on: 11.09.2014.

**Limitation Act, 1963-** Article 58- State instituting a suit on 16.1.1992 seeking declaration that decree passed on 31.5.1971 was bad being collusive- further asserting that it came to the knowledge of the plaintiff on 21.1.1990 and limitation was started running from the said day- held, that Ld. A.C. 2nd Grade had ordered the correction of the revenue record in 1973- matter was carried in the appeal and the order was set aside- further an appeal was taken to the Collector who ordered that the name of the defendant No.1 be recorded as tenant- State was represented by ADA- State was also a party in an appeal against rejection of the mutation- these facts clearly show that the State was aware of the pendency of the proceedings- hence, its plea that the State was not aware that the any proceedings were pending cannot be accepted.

For the Appellant: Mr.Ravinder Thakur, Addl.A.G. with Mr.Vivek Attri, Dy.A.G.

For the Respondents: Mr.K.D.Sood, Sr.Advocate with Mr.Sanjeev Sood, Advocate.

The following judgment of the Court was delivered:

**Sureshwar Thakur, Judge**

The instant appeal is directed against the judgment and decree, rendered on 29.10.2002, in Civil Appeal No. 64 of 1995, by the learned District Judge, Hamirpur, H.P., whereby, the learned First Appellate Court dismissed the appeal, preferred by the plaintiff/appellant.

**2.** Brief facts of the case are that the plaintiff/appellant instituted a suit for declaration on the allegations that the land, comprised in Khasra No. 245 (old Khasra No. 510) measuring 42 kanals 10 marlas was in the ownership and possession of the plaintiff-State of Himachal Pradesh, which fact is evident from the entries of copy of jamabandi for the year 1977-78 and prior to that it was shown recorded in the name of Gram Sabha. This land has now been vested in the State of H.P. free from all encumbrances under the H.P.Village Common Land (vesting and Utilisation) Act, 1974 vide mutation No. 175. Defendant No.1 obtained a decree against Gram Sabha, Dhanwan represented through defendant No.2 from the Court of Sub Judge, 1st Class, Hamirpur in Civil Suit No. 378 of 1969 decided on 31.5.1971. This decree is collusive obtained fraudulently by defendant No.1 in connivance with defendant No.2 as in the above noted suit the defendant No.2 filed written statement and contested the suit of defendant No.1. But in the meantime the learned counsel for defendant No.2 Sh. B.C.Uppal, Advocate, made statement in the Court and admitted the claim of defendant No.1. In the entries of Jamabandi for the year 1966-67 there is nothing in the revenue record to show that defendant No.1 was tenant at will under defendant No.2 and the entry qua tenancy was incorporated only in jamabandi for the year 1971-72 which shows that at the time when the aforesaid suit was filed in Court, neither defendant No.1 was tenant at will nor in hostile possession over the suit land for the last 35-36 years. Thus it is clear that the entry showing Sh.Prabhu Ram defendant No.1 as tenant at will of the suit land was recorded in jamabandi for the year 1971-72 collusively. An enquiry was also conducted by the Land Reforms Officer, Bhoranj, on 26.4.1990 and this entry showing defendant No.1 Prabhu Ram tenant at will was found to have been recorded wrongly. The collusion of defendants is also clear as they got the compromise decree dated 31.6.1971 on the basis of statements made by the learned counsel for the parties. Even the Sarpanch himself had no authority to make any statement as an application had been filed by Sh. Hari Singh and other under Order 1 Rule 10 CPC for making them party in which it was alleged that defendant No.1 had filed suit in collusion with defendant No.2. The said settlement of the defendants No. 1 and 2 was to defeat the legitimate right, title and interest of

the plaintiff-State of H.P. Therefore, the judgement and decree dated 31.5.1971 passed by Sub Judge, Ist Class, Hamirpur, being collusive is null and void and inoperative against the plaintiff. The plaintiff came to know about the said collusion only on 22.11.1990 when defendant Prabhu Ram filed an appeal against the order of Assistant Collector, 1st Grade, Bhoranj, dated 26.4.1990. From the documents attached with the appeal, the plaintiff came to know that in the civil suit vide which decree was passed in favour of said Prabhu, the plaintiff-State of H.P. was not party in that suit. As such, the plaintiff filed this suit for declaration against the defendants.

**3.** The defendants/respondents contested the suit and filed written statement, thereby they took preliminary objections firstly to the effect that the suit is not within limitation, secondly that the plaintiff has no cause of action, thirdly that the plaintiff is stopped from challenging the entry of tenancy in favour of Prabhu Ram as this entry was incorporated as per order passed by the Collector himself and lastly that the suit against defendant No.2 is not maintainable as he is not Pradhan of Gram Sabha, Dhanwan. On merits, the defendants denied the allegations contained in the plaint. The defendants alleged that Prabhu Ram was tenant qua the suit land on payment of rent at the rate of Rs.10/- per annum as is evident from the entries of Jamabandi for the year 1971-72. The defendants further alleged that no doubt in the year 1973 correction was made against the entry of said Prabhu in the column of possession but it was without jurisdiction as on an appeal filed by said Prabhu before Collector the case was remanded to Assistant Collector, 1st Grade for further inquiry and fresh decision. Consequently, the Assistant Collector, Ist Grade made fresh enquiry who referred to the judgement and decree of Sub Judge, 1st Class date 31.5.1971 and also of appeal filed by Sh. Bakshi Ram etc. in the Court of learned District Judge, Hamirpur who dismissed their appeal on 25.7.1972 and Prabhu Ram was held in possession of Khasra No. 510 measuring 42 kanals 10 marlas and his entry of possession was ordered to be restored from Kharif 1973. Therefore, the plaintiff cannot take advantage of the entries of Jamabandi for the year 1977-78 which are quite wrong. After the enforcement of H.P.Tenancy and Land Reforms Act, Prabhu Ram automatically became owner qua the suit land from 3.10.1973. The judgment and decree obtained by Prabhu Ram against Gram Sabha Dhanwan is perfectly right, legal and sustainable. All the other allegations made by the plaintiffs in plaint are denied by the defendants in toto. As such, the defendants alleged that the suit of the plaintiff is not maintainable and is liable to be dismissed.

**4**. On the pleadings of the parties, the learned trial Court struck the following issues inter-se the parties in contest:-

1. Whether the judgment and decree dated 31.5.1971 in civil suit No. 378 of 1969 of Sub Judge, 1st Class, Hamirpur, is null and void and not binding on the rights of the plaintiff? OPP.

2. Whether the suit is not maintainable as alleged?

3. Whether the suit is barred by time? OPD-1.

4. Whether the plaintiff is estopped from challenging the entry of tenancy of defendant as alleged? OPD-1.

5. Relief.

**5**. On appraisal of the evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiff. In appeal, preferred before the learned first Appellate Court by the plaintiff/appellant, against the judgment and decree of the learned trial Court, the learned first Appellate Court also dismissed the appeal.

**6.** Now the plaintiff/appellant has instituted the instant Regular Second Appeal before this Court, assailing the findings, recorded in the impugned judgment and decree recorded by the learned first Appellate Court. When the appeal came up for admission on 29.10.2003, this Court, admitted the appeal instituted by the plaintiff/appellant, against the judgment and decree, rendered by the learned first Appellate Court, on, the hereinafter extracted substantial questions of law:-

1. That the judgment and decree of both the Courts below are contrary to the provisions of the Punjab Village Common Land Act, 1961 and H.P.Village Common Land (Vesting, Utilisation and Regulation) Act, 1974 and are liable to be set-aside.

2. That the findings of both the Courts below qua the limitation are contrary to the provisions of Article 112 of the Limitation Act, 1963. Hence, the judgment and decree of both the Courts below are liable to be set-aside.

**Substantial Questions of Law No.1 & 2.**

**7**. Initially, it will be apposite to advert to the relevant material, available on record, for adjudging the factum of the tenability of the contention of the learned Additional Advocate General focused upon the effect of erroneous findings, having been rendered by both the Courts below, on the apposite issue of the non-maintainability of the suit on the score of it having been barred by limitation, as rendition of findings on the preceding substantial question of law would hinge upon the fate of adjudication of the substantial question of law relating to maintainability of the suit on the ground of it, as returned by both the Courts below being barred by limitation. For the reasons, to be recorded hereinafter, this Court does not find any merit or tenacity in the contention of the learned Additional Advocate General who has with full force and vehemence, canvassed that the view adopted by the learned Courts below in declaring the suit of the plaintiff/appellant to be not maintainable while being hit by Article 58 of the Limitation Act, is both perverse as well as unreasonable and warrants interference by this Court.

(a) The suit, instituted by the plaintiff-appellant, was for setting-aside the decree, rendered in a previous suit, in which the State was not a party,

bearing registration No.378 of 1969 on score of it having been obtained by collusion inter-se the plaintiff and defendant No.1. The period prescribed in Article 58 of the Limitation Act for a decree of declaration in a previous suit being set-aside, on the score of it being obtained by fraud or collusion, is a period of three years from the accrual of the right to sue. The learned Additional Advocate General contends that the factum of the previous decree sought to be declared null and void, on the score it having been obtained by fraud or collusion came to the knowledge of the plaintiff or the plaintiff became aware of it on 22.1.1990, as such, he contends that hence the limitation for institution of a suit for setting aside the previous decree, aforesaid, commenced there-from and the civil suit having been instituted by the plaintiff within three years from the date of its acquiring knowledge or having become aware of the factum of the previous decree renders it to be within limitation. However, for the following reasons the said contention necessitates its being dispelled (a) The material on record demonstrating the fact of the Assistant Collector 2nd Grade in 1973 on noticing defendant No.1 to be neither owner or in possession of the suit land had proceeded to order correction of the entries in the revenue record, inasmuch, as, of defendant No.1 being directed to be reflected as tenant under the State of H.P. Consequently, entries qua the suit land were corrected. However, the defendant No.1 preferred an appeal against the order of the Assistant Collector 2nd Grade before the Assistant Collector 1st Grade, Hamirpur. The Assistant Collector 1st Grade, Hamirpur, dis-concurred with the order rendered by the Assistant Collector 2nd Grade and proceeded to hence restore the entries qua the suit land in favour of defendant No.1 from Kharif crop 1973. However, the order of the Assistant Collector 1st Grade, Hamirpur, was carried in appeal by one Ganga Ram before the Collector, Hamirpur in case being No. 92 of 1981 decided under Ext.D-14. In the aforesaid appeal, preferred by one Ganga Ram against the order of the Collector 1st Grade before the Collector, Hamirpur, the State of Himachal Pradesh was arrayed as respondent No.3 apart there-from the Collector, Hamirpur in the said appeal was respondent No.3 and was represented by the Additional District Attorney. The Collector while being seized of the appeal preferred before him agreed with the order rendered by the Assistant Collector 2nd Grade whereby the latter had directed the correction of the revenue entries qua the suit land, inasmuch, as, the State of H.P. being ordered to be reflected as owner thereof, whereas defendant No.1 being ordered to be incorporated as a tenant under the State of H.P. in the apposite column of the Jamabandi qua the suit land. Moreover, the Collector, Hamirpur, ordered for the carrying out a fresh enquiry with a further direction to associate the State of Himachal Pradesh before the Assistant Collector, Hamirpur. What is pre-eminently divulged by Ext.D-14, the order rendered by the Collector, Hamirpur is that the State of H.P. which was arrayed as respondent No.3 in appeal before him was represented by the Additional District Attorney. Consequently, with the representation of the plaintiff in the proceedings before the District Collector, Hamirpur, it is not open for the learned Additional Advocate General to contend that in the proceedings in appeal taken up before the Collector, Hamirpur and which sequelled the rendition of a judgment by him comprised

in Ext.D-14 qua the suit land that then the factum of the rendition of a judgment and decree in case Civil Suit No. 378 of 1969 previously decided in favour of defendant No.1 on 31.5.1971 was neither in the know of the plaintiff nor it was aware of its rendition till 1990. Consequently, it has to be firmly held that even though the State of H.P. acquired knowledge of the judgment of the previous litigation inter-se the defendant and Gram Sabha, Dhanwan in the year 1981, yet, it having omitted to as prescribed by Article 58 of the limitation Act, challenge the judgment and decree previously rendered in favour of defendant No.1 by the Civil Court of competent jurisdiction on 31.5.1971, within three years thereafter, bars the suit instituted on 16.1.1992, to be hit by limitation. Consequently, it is rendered not maintainable.

(b) It is manifest from the material on record that the State of Himachal Pradesh, the plaintiff in the instant case, was a party in case No.36 of 1988, which constituted an appeal preferred by defendant No.1 against the rejection of mutation No.253 under order of 29.2.1988 by the Assistant Collector, 2nd Grade Bhoranj. The said order rendered by the Assistant Collector, 2nd Grade Bhoranj is comprised in Ext.D-15 and is rendered on 17.11.1988. In the face their being a revelation in Ext.D-15 of a judgment having been rendered previously in favour of defendant No. 1 on 31.5.1971 bespeaks the fact that in the year 1988 also, the plaintiff-State of H.P. was in the know of or was aware of the judgment and decree rendered in favour of defendant No.1 in the previous litigation adjudicated on 31.5.1971. In face thereof, the plaintiff-State of H.P. having omitted to within the period of limitation prescribed under Article 58 of the Limitation Act for setting aside the decree previously rendered by the Civil Court of competent jurisdiction on the score of it having been obtained by fraud or collusion or despite it having then acquired knowledge of the rendition of a decree in favour of defendant No.1 by a Civil Court of competent jurisdiction, to assail it within the prescribed period of limitation inasmuch, as, within three years of its having acquired such knowledge, renders the suit time barred, as aptly concluded by both the Courts below.

**8.** The summon bonum of the above discussion is that this Court is constrained to uphold the findings recorded by both the Courts below on the issue of maintainability as also on the issue of the suit of plaintiff being barred by limitation. The view as taken by both the Courts below is reasonable and based on a proper appreciation of material on record and does not suffer from any perversity or absurdity nor also warrants any interference by this Court, sequelling this Court to hold that tenable and sustainable findings on the issue of limitation as well as maintainability of the suit of the plaintiff, have been recorded by both the Courts below. This Court is constrained to answer both the substantial questions of law in favour of the defendants/respondents and against the plaintiff/appellant.

**9.** The result of the above discussion is that the appeal, preferred by the plaintiff/appellant, is dismissed and the judgments, rendered by the learned Courts below, are affirmed and maintained and suit

of the plaintiff is dismissed. However, the parties are left to bear their own costs.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Smt. Biasan Devi and others ...Appellants.
Vs.
Kartar Chand and others ...Respondents.

FAO (MVA) No. 160 of 2013.
Judgment reserved on 5.9.2014
Date of decision: 12.09. 2014.

**Motor Vehicle Act, 1988-** Section 166- Tribunal holding that claimants had failed to prove that the vehicle was being driven in a rash and negligent manner- held, that there was sufficient evidence on record to prove that vehicle was being driven in a rash and negligent manner – further held that evidence is not to be appreciated as in a criminal case- acquittal in criminal case cannot have any effect on the proceedings before the MACT – when the respondents had admitted that the deceased fell down while boarding Trala- the principle of *res-ipsa loquitur* would be applicable and the burden would shift upon the respondents to prove that there was no rashness or negligence. (Para- 15 to 19)

**Cases referred:**

NKV Bros. (P) Ltd Vs. M. karumai Ammal and others AIR 1980 SC 1354

Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another (2013) 10 SCC 646

Sarla Verma Vs. Delhi Road Transport Corporation, AIR 2009 SC 3104

For the appellants: Mr.Jagdish Thakur, Advocate.
For the respondents Mr.K.D. Sood, Sr. Advocate with Mr. Mukul Sood, Advocate, for respondents No. 1 and 2.
Mr. B.M. Chauhan, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice.**

The claimants have invoked the jurisdiction of this court by the medium of this appeal under Section 173 of the Motor Vehicles Act, hereinafter referred to as "the Act" for short, for setting aside the award dated 16.1.2013, passed by the Motor Accidents Claims Tribunal Hamirpur, H.P, for short "The Tribunal" in MAC Petition No. 63 of 2010 titled Smt.

Biasan Devi and others vs. Shri Kartar Chand and others, whereby the claim petition of the claimants came to be dismissed, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

**2.** The claimants/appellants being the victims of a vehicular accident had filed claim petition before the Tribunal below for the grant of compensation to the tune of Rs.10 lacs with interest @ Rs. 12% per annum, as per the break-ups given in the claim petition.

**Brief Facts:**

**3**. It is averred in the claim petition that the deceased Rattan Chand was an ex-serviceman, drawing Rs.10,000/- per month as pension, was also employed as clerk in Dev Bhumi Tralla Union, Hamirpur, drawing a salary of Rs.4000/- per month, became victims of a vehicular accident on 1.6.2008 while going to his home in a vehicle (Tralla) bearing registration No. HP-22-6618, being driven by respondent No. 2 Rakesh Khan in a rash and negligent manner, sustained injuries and succumbed the injuries. FIR No. 174 of 2008 came to be registered in police station Hamipur under Sections 279 and 304-A Indian Penal Code, for short "IPC".

**4.** Respondents resisted the clam petition by filing replies.

**5.** The following issues came to be framed by the Tribunal on 19.8.2011.

(i) Whether Rattan Chand died in accident, which had taken place due to rash and negligent driving of vehicle No. HP-22-6618 by its driver Rakesh Khan, as alleged? OPP.

(ii) If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation, if so, to what amount and from whom? OPP.

(iii) Whether the petition is not maintainable? OPRs

(iv) Whether the petitioners have no cause of action and locus-standi to file the present petition? OPRs.

(v) Whether the driver of the vehicle No. HP-22-6618 was not holding a valid and effective driving licence at the time of accident? OPR3.

(vi) Whether the vehicle in question was being driven in contravention of terms and conditions of the Insurance Policy? OPR3.

(vii) Relief.

**6.** The claimants examined PW1 Dr. K.C. Chopra, PW2 H.C. Sunil Kumar, PW3 Bakshi Ram, claimant No. 1 Smt. Biasan Devi herself appeared as witnesse in the witness-box as PW4, PW5 Surender

Kumar and PW6 Khem Chand. The claimants have also placed on record documents, i.e., postmortem report, FIR, salary certificate, Pariwar Register, Pension Payment Order, exhibited as Ext. PW1/A to Ext. PW3/A, Ext. PW5/A and Ext. PW6/A respectively.

**7**. The respondents have also placed on record copy of insurance policy, driving licence and copy of judgment dated 9.8.2010 passed in criminal case No. 156-I of 2008/146-II of 2008 titled State of H.P. versus Rakesh Khan exhibited as Ext. R-1, Ext. RW1/A and Ext. RX, respectively.

**8**. The Tribunal held that the claimants have failed to prove that driver has driven the vehicle rashly and negligently and decided issue No.1 against the claimants/appellants and in favour of the respondents and dismissed the claim petition.

**9**. The finding returned by the Tribunal on issue No.1 is trash one and it appears that perhaps, the Presiding Officer has not gone through the mandate of Section 168 of the Act read with the Rules, even has ignored the aim and object for the grant of compensation and what is the standard of proof. However less said is the better.

**Brief resume of the evidence on the record.**

**10**. PW1 Dr. K.C. Chopra deposed that he has conducted the postmortem Ext. PW1/A of deceased Rattan Chand and opined that the death was outcome of the road accident.

**11**. PW2 Head Constable Sunil Kumar deposed that he has conducted the investigation of the FIR No. 174 of 2008 Ext. PW2/A and during the investigation he found that accused-driver-respondent No. 2 herein was, prima facie, involved in the commission of the offence punishable under Sections 279 and 304-A, of the IPC and presented the challan against him before the Chief Judicial Magistrate, Hamirpur, H.P. On conclusion of the trial, the said Court acquitted the accused-respondent No. 2 herein.

**12**. PW3 Bakshi Ram deposed that deceased Rattan Chand was working as Clerk in the Tralla Union and was drawing salary to the tune of Rs.4000/- per month and proved the contents of the salary certificate Ext. PW3/A. He further stated that on the unfortunate date, i.e., on the day of the accident, the deceased was going back to his home after performing duties, met with an accident which was caused by the driver of the offending vehicle (Tralla) mentioned supra. The family members of the deceased were dependent upon him and they have lost the source of dependency.

**13**. One of the claimants Biasan Devi also appeared as witness in the witness-box as PW4, as stated above and deposed that she is the widow of her husband who was earning Rs.10,000/- as pension and drawing Rs. 4,000/- as salary from the Tralla Union and was also performing other vocations, met with an accident when he was coming back to his home in offending vehicle (tralla). PW5 Surender Kumar proved the copy of Pariwar

Register Ext. PW5/A and PW6 Khem Chand proved the contents of Pension Payment Order Ext. PW6/A.

**14**. The respondents have not led any evidence in rebuttal except statement of driver Rakesh Khan who appeared as RW1 in the witness-box. Thus, the evidence led by the claimants have remained unrebutted.

**15**. While examining the evidence, oral as well as documentary, it is crystal clear that the claimants have proved that the driver has driven the offending vehicle rashly and negligently and caused the accident in which deceased lost his life. Thus, there was sufficient evidence on record that the claimants are victims of a vehicular accident which was caused by the driver of the vehicle, i.e., respondent No. 2 herein while driving the vehicle in a rash and negligent manner. The Tribunal has fallen in error in discussing and appreciating the evidence as if he was discussing and appreciating the evidence in a criminal case, which is to be proved beyond reasonable doubt. The apex court in case titled **NKV Bros. (P) Ltd Vs. M. karumai Ammal and others** reported in **AIR 1980 SC 1354** held that the acquittal cannot be a ground for dismissal of a claim petition. In a criminal case, the case is to be proved beyond reasonable doubt, while determining the claim petition; it is to be proved by preponderance of probabilities and strict proof of pleadings is not required. It is apt to reproduce para 3 of the said judgment herein:

> "3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the Courts, as has been observed by us earlier in other case, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasissing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their "neighbour". Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parcimony practised by tribunals. We must remember that judicial tribunals are State organs and Art. 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There

is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

**16**. The apex court in **Dulcina Fernandes and others vs. Joaquim Xavier Cruz and another (2013) 10 SCC 646,** held that rules of pleadings are not strictly applicable in the claim petitions. It is apt to reproduce relevant portion of para-8 of the aforesaid judgment herein:-

"8.In United India Insurance Company Limited V. Shila Datta & Ors. while considering the nature of a claim petition under the Motor Vehicles Act, 1988 a three-judge-bench of this Court has culled out certain propositions of which Propositions (ii), (v) and (vi) would be relevant to the facts of the present case and, therefore, may be extracted hereinbelow: ( SCC p. 518, para 10)

"10(ii) The rules of the pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo motu initiated by the Tribunal."

** **

**17**. It is also apt to mention herein that the Tribunal has also lost sight of the replies filed by the owner, driver and insurer. The driver and owner have admitted paras 8 and 9 of the claim petition. Thus, admitted the accident, which took place on 1.6.2008 within the jurisdiction of police station Hamirpur and FIR was lodged. They have admitted para 24 of the claim petition, but has stated that the deceased died due to his own fault. Thus, it is admitted by the driver and owner that deceased died in the road accident in use of the aforesaid motor vehicle.

**18**. The insurer has also pleaded and admitted in para 2 of the reply that deceased died while he tried to board himself in the tralla from the back side of the tralla and he fell down on the road as the tralla was going in normal speed on left side. It is apt to reproduce para 2 of the reply filed by insurer herein:

"2.That no cause of action accrued to the petitioners against the answering respondent to file the petition because the deceased Rattan Chand was a gratuitous/ unauthorized passenger whose risk is not covered under the Insurance Policy. Moreover, the deceased Rattan Chand died due to his own act of negligence while he tried to board himself in the traula from the back side of the traula and the deceased fell

down on the road as the Traula was going in normal speed on left side. Thus, the accident has occurred due to rash and negligent act of the deceased Rattan Chand."

**19**. It is beaten law of the land that risk lies on the driver and principle of res ipsa loquitur is attracted.

**20**. Having said so, it is held that claimants have proved by leading oral as well as documentary evidence that driver has driven the offending vehicle in a rash and negligent manner and caused the accident.

**21**. The onus to prove issues No. 3 to 6 was on the respondents but they have not led any evidence thus, are to be decided against the respondents.

**22**. The learned counsel for the respondents have not addressed any argument, in order to show how the claim petition was not maintainable. Thus, Issue No. 3 is decided against the respondents and in favour of the claimants.

**23**. Respondents have also failed to prove that claimants had no locus standi or cause of action to file the claim petition. However, as discussed hereinabove, the claimants being victims of a vehicular accident have rightly invoked the jurisdiction of the Tribunal and had locus standi to file the claim petition. Accordingly, Issue No. 4 is decided in favour of the claimants and against the respondents.

**24**. It was for the insurer to plead and prove that the driver of offending vehicle was not holding a valid and effective driving licence at the time of the accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy. The insurer has not led any evidence. Thus, Issues No. 5 and 6 are to be decided in favour of the claimants and against the respondents. Therefore, issues No. 5 and 6 are decided accordingly.

**25**. The factum of insurance policy is not disputed. Mr. B.M. Chauhan, learned counsel for respondent No. 3 stated that deceased was a gratuitous passenger, thus owner has committed willful breach and insurer is not liable. The argument is misconceived for the simple reason that insurer has pleaded in para 2, quoted supra that deceased tried to board the tralla and died. It was for the insurer to plead and prove that deceased was a gratuitous passenger and owner has committed willful breach. As discussed hereinabove, it has failed to do so. Thus, the insurer is to be saddled with the liability.

**26**. The claimants have pleaded and proved that deceased was receiving pension to the tune of Rs.10,000/- per month and drawing Rs.4000/- as salary from Tralla Union, at the time of the accident and have lost source of dependency. Keeping in view the age of the deceased read with other factors, I deem it proper to hold that claimants have, at least, lost

source of dependency to the tune of Rs.8000/- per month after deducting 1/3rd his pocket expenses.

**27**. The claimants have given the age of the deceased as "50" years in the claim petition, which is not denied by the respondents. Claimant No. 1 Biasan Devi herself appeared as witness and deposed that age of the deceased was 50 years, which is supported by the statement of doctor, who has conducted the postmortem and recorded the age of the deceased as "50" years in Ext. PW1/A. Therefore, keeping in view the Schedule appended to the Act read with **Sarla Verma Vs. Delhi Road Transport Corporation, reported in AIR 2009 SC 3104**, multiplier of "9" is just and appropriate multiplier.

**28**. Accordingly, it is held that the claimants are entitled to the compensation to the tune of Rs.8000x12x9 total of which comes to Rs.8,64,000/- with interest @ 6 % per annum from the date of filing the claim petition till its realization.

**29**. As a corollary, the insurer-respondent No. 3 is held liable to pay the compensation. Respondent No.3 is directed to deposit the aforementioned amount alongwith interest, within six weeks from today in the Registry of this Court and on deposit, the same shall be released to the claimants in equal shares.

**30**. The impugned award is set aside. The claim petition is allowed, as indicated above. The appeal is accordingly allowed. Send down the record, forthwith.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Hamid Mohd. .....Appellant

Vs.

Rishi Pal & others ..... Respondents

FAO No. 8 of 2007

Date of decision: 12.09.2014

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**Motor Vehicle Act, 1988-** Section 166- Tribunal holding that the claimant was earning Rs. 6,000/- per month, it applied the multiplier of 12 and awarded a sum of Rs.8,64,000/- under the head "loss of income" and Rs.1,23,324.70 under the head "medical expenses', but the Tribunal had not awarded any compensation under the heads of "pain and suffering" and "loss of amenities of life"- held, that the Tribunal is bound to award the compensation under the heads of "pain and suffering" and "loss of amenities

of life"- hence, Rs. 1 lakh awarded under the heads of "pain and suffering" and Rs.1,00,000/- awarded under the head of ' loss of amenities of life'.

(Para-12 & 13)

**Cases referred:**

R.D. Hattangadi Vs. M/s Pest Control (India) Pvt. Ltd. & others, AIR 1995 SC 755

Josphine James Vs. United India Insurance Co. Ltd. & anr, 2013 AIR SCW 6633

For the appellant: Mr. C.N. Singh, Advocate.
For the respondents: Nemo for respondents No.1 and 2.
Ms. Sunita Sharma, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice** (oral)

This appeal is directed against the award dated 10th September, 2009, passed by the Motor Accident Claims Tribunal, Mandi (for short, "the Tribunal") in Claim Petition No.23 of 1999, titled Sh. Hamid Mohd. vs. Rishi Pal & others, whereby a sum of Rs.9,90,000/- alongwith interest at the rate of 9% per annum came to be awarded as compensation in favour of the claimant and against the insurer (for short the "impugned award").

**2.** The claimants have questioned the impugned award only on the ground of adequacy of compensation.

**3.** The owner, driver and the insurer have not questioned the impugned award on any count. Thus, the same has attained finality so far it relates to them.

**4.** Despite service, there is no representation on behalf of respondents No.1 and 2 are set ex-parte.

**Brief facts**

**5.** It is averred in the claim petition that the claimant is the victim of vehicular accident, which was caused by the driver, namely, Rajinder Kumar while driving the offending vehicle bearing registration No.CHO IV-1459 on 4.6.1998 rashly and negligently, the said vehicle hit the claimant, who was driving the Scooter bearing registration No.HP-33-2923, sustained injuries, rendering him permanent disabled.

**6.** The claimant has filed the claim petition for grant of compensation to the tune of Rs.50,00,000/- as per the break-ups given in the claim petition.

**7.** The respondents resisted the claim petition by filing replies.

**8.** The following issues came to be framed in the claim petition:-

> "1. Whether the claimant sustained injuries due to the rash and negligent driving on the part of respondent No.2? OPP
>
> 2. Whether the claimant sustained injuries due to his own rash and negligent driving as alleged? OPR-2
>
> 3. Whether the claim petition is bad for non-joinder of necessary parties as alleged? OPR-2
>
> 4. Whether the insurer is not liable to indemnify the injured as alleged? OPR-3
>
> 5. To what amount the claimant is entitled to receive as compensation? OPP.
>
> 6. Relief."

**9.** The claimant has examined eight witnesses. The respondents have not examined any witness. Thus, the evidence of the claimant remained un-rebutted.

**10**. The Tribunal, after scanning the evidence, held that the claimant has proved that due to the rash and negligent driving of the driver he sustained injuries. At the cost of repetition, the owner, driver and the insurer have not questioned the same. Thus, it has attained finality and the findings returned on issues No.1 to 4 are upheld.

**11**. The Tribunal has held that the claimant was earning Rs.6,000/- per month and applied the multiplier of '12' though on lower side and awarded Rs.8,64,000/- under the head "loss of income" and Rs.1,23,324.70 under the head "medical expenses', but the Tribunal has not awarded any compensation under the heads of "pain and suffering" and "loss of amenities of life".

**12**. The Apex Court in case titled as **R.D. Hattangadi Vs. M/s Pest Control (India) Pvt. Ltd. & others, reported in AIR 1995 SC 755,** has discussed all aspects and laid down guidelines how a guess work is to be done and how compensation is to be awarded under the heads pecuniary and non-pecuniary damages. In other judgment, the Apex Court in **Josphine James Vs. United India Insurance Co. Ltd. & anr, reported in 2013 AIR SCW 6633**, has laid down the guidelines.

**13**. Keeping in view the guidelines laid down by the Apex Court in the judgments (supra), I deem it proper to award Rs.1,00,000/- under the head of 'pain and suffering' and Rs.1,00,000/- under the head of ' loss of amenities of life'.

**14**. The award amount is enhanced and the claimant is held entitled to Rs.11,90,000/-. The insurer is directed to deposit the enhanced amount of Rs.2,00,000/- within eight weeks in the Registry of this Court and

in default, it will carry interest at the rate of 6% per annum from today till the date of deposit. On deposition, the Registry is directed to release the award amount in favour of the claimant, strictly in terms of the conditions contained in the impugned award, through payee's account cheque, after proper identification.

**15**. The impugned award is modified, as indicated above. The appeal stands disposed of alongwith all miscellaneous applications accordingly.

**********

**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Karam Chand .....Appellant

Vs.

Kanta Devi & others ..... Respondents

FAO No.6 of 2007
Date of decision: 12.09.2014

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**Motor Vehicle Act, 1988-** Section 166- Claimant had not led any evidence to prove that he was travelling in the offending vehicle as a passenger and that he had met with an accident- therefore, MACT had rightly dismissed his claim. (Para 1 & 2)

For the appellant: Mr. Jagdish Thakur, Advocate.

For the respondents: Nemo for respondent No.1.
Mr. Vinod Chauhan, Advocate vice Mr. Ajay Sharma, Advocate, for respondent No.2.
Mr. Deepak Bhasin, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice** (oral)

This appeal is directed against the award dated 10th November, 2006, passed by the Motor Accident Claims Tribunal (II), Fast Track Court, Hamirpur (for short, "the Tribunal") in MAC Petition No.38 of 2004/RBT 28 of 2005, titled Karam Chand vs. Kanta Devi & others, whereby the claim petition came to be dismissed(for short the "impugned award").

**2**. At least, the claimant has to plead and prove that he is the victim of vehicular accident, has not led any evidence to that effect.

**3**. I have gone through the record. There is not an iota of evidence to the effect that the claimant was traveling in the offending vehicle as passenger, which met with an accident. Even as per the medical

record/evidence, the claimant has not suffered even a simple injury or bruise due to the said alleged accident.

**4.** The appellant-claimant has failed to prove all the ingredients which are required in order to grant compensation as per the mandate of Section 166 of the Motor Vehicles Act, 1988.

**5.** Having said so, the impugned award is upheld and the appeal is dismissed alongwith all pending applications.

**********

**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Smt. Narbada Devi .....Appellant.

Vs.

Smt. Kamla Devi and another ...Respondents.

FAO (MVA) No. 75 of 2007
Date of decision: 12.09. 2014.

**Motor Vehicle Act, 1988-** Section 166- Tribunal assessing the income of the deceased who was a bachelor as Rs. 2,400/- per month and thereafter assessing the loss of the dependency as Rs. 800/- per month- held, that the assessment is contrary to the decision of the Hon'ble Supreme Court of India in ***Sarla Verma Vs. Delhi Road Transport Corporation AIR 2009 SC 3104***- high court assessed the income of the deceased as Rs. 3,000/- per month and loss of the dependency as 50% i.e. Rs. 1,500/- per month and awarded compensation of Rs.2,70,000/-.

(Para-4 & 5)

**Cases referred:**

Sarla Verma Vs. Delhi Road Transport Corporation, reported in AIR 2009 SC 3104

Reshma Kumari & ors vs. Madan Mohan & anr., reported in 2013 AIR SCW 3120

For the appellant: Mr. B.S. Chauhan, Advocate.

For the respondents: Nemo for respondent No. 1.
Mr. Deepak Bhasin, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

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

This appeal is directed against the award dated 02.01.2007, passed by the Motor Accident Claims Tribunal (Fast Track)

Shimla, H.P, for short "The Tribunal" in MAC Petition No. 77-S/2 of 2005/2004 titled Smt. Narbada Devi vs. Smt. Kamla Devi and another, on the ground of adequacy of compensation, hereinafter referred to as "the impugned award", for short.

**2.** The driver, owner and insurer have not questioned the impugned award on any ground, thus, attained finality, so far as it relates to them.

**3.** The claimant has questioned the impugned award on the ground of adequacy of compensation.

**4.** The Tribunal while determining issue No. 5 held that deceased being bachelor at the time of accident, was earning Rs.2400/- per month and after making deductions held that the claimant has lost source of dependency to the tune of Rs.800/- per month, i.e., 1/3rd of the monthly income of the deceased. The assessment made by the Tribunal, on the face of it, is bad in law and not in accordance with the mandate rendered in **Sarla Verma Vs. Delhi Road Transport Corporation,** reported in **AIR 2009 SC 3104**, upheld in **Reshma Kumari & ors vs. Madan Mohan & anr.,** reported in **2013 AIR SCW 3120.**

**5.** Having said so, I hereby hold that the Tribunal has fallen in error in assessing the income of the deceased and the loss of income. It can be safely held that the income of the deceased was Rs.3000/- per month while treating him as a labourer. 50% is to be deducted towards his personal expenses and 50% is loss of source of dependency. Thus, it is held that the claimant has lost source of dependency to the tune of Rs.1500/- per month.

**6.** Admittedly, the age of the deceased was 21 years at the time of the accident and the Tribunal has rightly held that the age of the deceased was 21 years but has fallen in error in applying the multiplier. The multiplier of "15" was applicable, as per the Schedule appended to the Motor Vehicles Act read with **Sarla Verma's** judgment supra. Thus, I hereby hold that the multiplier of "15" is applicable.

**7.** In the given circumstances, it is hereby held that the claimant is entitled to compensation to the tune of Rs.1500x12x15 total of which comes to Rs.2,70,000/- with interest @ Rs.6 % per annum, as awarded by the Tribunal, from the date of filing the claim petition, till its realization.

**8.** Other issues are not in dispute. Thus, findings on the said issues have attained finality and are upheld.

**9.** Accordingly, the compensation is enhanced and impugned award is modified, as indicated above. Respondent No. 2 is directed to deposit the enhanced amount within eight weeks in the Registry of this Court. On deposit, the amount be released in favour of the claimant, through payee's account cheque.

**10**. The appeal stands disposed of accordingly. Send down the record, forthwith.

**********

**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Shri Sewak Ram .....Appellant.

Vs.

Desh Raj and another ...Respondents.

FAO (MVA) No. 442 of 2010
Date of decision: 12.09. 2014.

**Motor Vehicle Act, 1988-** Section 166- Deceased being bachelor having income of Rs. 4,500/- per month- claim petition filed by his father- held, that the loss of the dependency is to be taken 50% and thus, compensation of Rs. 4,50,000/- along with interest @ 9% per annum awarded.

(Para 9 to 11)

**Cases referred:**

Sarla Verma versus Delhi Road Transport Corporation, AIR 2009 SC 3104

Reshma Kumari & ors vs. Madan Mohan & anr. 2013 AIR SCW 3120

For the appellant: Mr.G.C. Gupta, Sr. Advocate with Ms. Meera Devi, Advocate.

For the respondents Mr.Satyen Vaidya, Advocate, for respondent No. 1.
Nemo for respondent No. 2.

The following judgment of the Court was delivered:

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

Respondent No. 2, despite service and despite having given power of attorney on the file is neither present nor there is any representation on its behalf, hence ex parte proceedings are drawn against him.

**2**. The challenge in this appeal is to the award dated 31.8.2010, passed by the Motor Accident Claims Tribunal Shimla, H.P, for short "The Tribunal" in MAC Petition No. 1-S/2 of 2009 titled Sh. Sewak Ram vs. Shri Desh Raj and another, on the ground of adequacy of compensation, hereinafter referred to as "the impugned award", for short.

**3**. The driver and owner have not questioned the impugned award on any ground, thus, it attained finality, so far as it relates to them.

**4.** The claimant has not questioned the impugned award on any other ground. In the given circumstances, I deem it proper not to return findings on issues No. 1, 3 and 4, are upheld.

**5.** In order to determine whether the compensation is adequate, just or otherwise, brief facts are to be noticed.

**6.** The claimant/appellant being the victim of a vehicular accident, had filed claim petition before the Tribunal for the grant of compensation to the tune of Rs.10 lacs, as per the break-ups given in the claim petition, on the ground that respondent No. 1, namely, Desh Raj driver of the offending HRTC Bus No. HP-07-5487 had driven the said vehicle in a rash and negligent manner on 17.11.2008 at Mundaghat and caused the accident. The deceased sustained injuries while de-boarding the said bus and succumbed to the injuries. The deceased was 25 years of age at the time of accident and his income was Rs.5000/- per month and was also having income from agricultural vocations to the tune of Rs. 10,000/-, per month.

**7.** The Tribunal, after making assessment came to the conclusion that monthly income of the deceased was Rs.4500/-.

**8.** I am of the considered view that the Tribunal has rightly made the assessment but has fallen in error in assessing the loss of dependency and has lost sight of the judgment of the apex Court delivered in **Sarla Verma versus Delhi Road Transport Corporation,** reported in **AIR 2009 SC 3104**, upheld in **Reshma Kumari & ors vs. Madan Mohan & anr.** reported in **2013 AIR SCW 3120.**

**9.** The claimant is father of the deceased, who has lost his budding son, source of help and hope in the old age. 50% was to be deducted towards his personal expenses and 50% was to be held as loss of source of income. Thus, it is held that the claimant has lost source of dependency to the tune of Rs.2250/- per month.

**10.** Admittedly, the age of the deceased was 25 years at the time of the accident and the Tribunal has rightly held that the age of the deceased was 25 years but has again fallen in error in applying the multiplier. The multiplier of "15" was applicable, after taking deductions, as per the Schedule appended to the Motor Vehicles Act read with **Sarla Verma's** judgment supra. Thus, I hereby hold that the multiplier of "15" is applicable.

**11.** Viewed thus, it is hereby held that the claimant is entitled to compensation to the tune of Rs.2250x12= 2,70,000x15 = Rs.4,05,000/- with interest @ Rs.9 % per annum, as awarded by the Tribunal, from the date of filing the claim petition, till its realization.

**12.** Accordingly, the compensation is enhanced and impugned award is modified, as indicated above. Respondent No. 2 is directed to deposit the enhanced amount within six weeks from today in the Registry of this Court. On deposit, the amount be released in favour of the claimant, through payee's cheque account.

**13.** The Tribunal is directed to release the entire amount deposited before it, in favour of the claimant, as per the terms and conditions contained in the impugned award.

**14.** The appeal stands disposed of accordingly. Send down the record, forthwith.

**********

**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Trishal Devi & others .....Appellants
Vs.
Jai Kumar & others ..... Respondents

FAO No.42 of 2007 a/w Anr.
Date of decision: 12.09.2014

**Motor Vehicle Act, 1988-** Sections 147 and 149- there is no requirement of getting the PSV certificate in case of LMV, and the insurance company is liable to indemnify the insured- Appeal dismissed. (Para- 4 to 6)

For the appellants: Mr. Ajay Sharma, Advocate.
For the respondents: Mr. Bhuvnesh Sharma, Advocate, for respondents No.1 and 2.
Mr. G.C. Gupta, Senior Advocate with Ms. Meera Devi, Advocate, for respondent No.3.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice** (oral)

These appeals are directed against the award dated 29th November, 2006, passed by the Motor Accident Claims Tribunal (II), Fast Track Court, Hamirpur (for short, "the Tribunal") in MAC Petition No.24 of 2004 RBT 51 of 2005, titled Trishla Devi & others vs. Jai Kumar & others, whereby a sum of Rs.4,51,100/- alongwith interest at the rate of 6% per annum came to be awarded as compensation in favour of the claimants and against the insurer (for short the "impugned award").

**2.** In FAO No.55 of 2007, the insurer has questioned the impugned award on the ground that the driver, namely, Jai Kumar of the offending vehicle was not having the valid and effective driving licence, the owner has committed willful breach of the terms and conditions of the insurance policy read with the mandate of Section 149 of the Motor Vehicles Act, 1988 (for short "the M.V. Act"). Thus, the Tribunal has fallen in error in saddling the insurer with liability to satisfy the award.

**3**. In FAO No.42 of 2007, the claimants have sought enhancement of compensation on the grounds taken in the memo of appeal read with the claim petition.

**4**. I have gone through the claim petition and perused the record. The Tribunal, after scanning the evidence, oral as well as documentary, rightly held the claimants are entitled to compensation to the tune of Rs.4,51,100/-, is just and appropriate compensation.

**5.** In view of the facts and circumstances of the case, the Tribunal has rightly saddled the insurer with liability for the following reasons. This Court in judgment dated 25th July, 2014, passed in **FAO No.54 of 2012**, tilted **Mahesh Kumar and another vs. Smt. Piaro Devi and others** held that the driver who was having the effective and valid driving licence to drive the light motor vehicle requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

> "10. 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
>
> "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."
>
> 11. 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.

12. 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.

13. In this backdrop, we have to go through Section 3 and Section 10 of the MV Act. It is apt to reproduce Section 3 of the Act herein:

> **"3. Necessity for driving licence. -** (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."

14. It mandates that the driver should have the licence to drive a particular kind of vehicle and it must contain endorsement for driving a transport vehicle. In this section, the words "light motor vehicle" are not recorded. Meaning thereby, this section is to be read with the definition of other vehicles including the definition given in Section 2 (47) of the MV Act except the definition given in Section 2 (21) of the MV Act for the reason that Section 2 (21) of the MV Act provides, as discussed hereinabove, that it includes transport vehicle also.

15. My this view is supported by Section 10 of the MV Act, which reads as under:

> "**10. Form and contents of licences to drive.** - (1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.
>
> (2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the

holder to drive a motor vehicle of one or more of the following cases, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description."

16. Section 10 (2) (d) of the MV Act contains "light motor vehicle" and Section 10 (2) (e) of the MV Act, which was substituted in terms of amendment of 1994, class of the vehicles specified in clauses (e) to (h) before amendment stand deleted and the definition of the "transport vehicle" stands inserted. So, the words "transport vehicle" used in Section 3 of the MV Act are to be read viz-a-viz other vehicles, definitions of which are given and discussed hereinabove.

17. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case titled as **National Insurance Co. Ltd. versus Muhammad Sidiq Kuchey & ors.,** being **LPA No. 180 of 2002,** decided on **27th September, 2007,** has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

"The question now arises as to whether the driver who possessed driving licence for driving abovementioned vehicles, could he drive a passenger vehicle? The answer, I find, in the judgment passed by this court in case titled National Insurance Co. Ltd. Vs. Irfan Sidiq Bhat, 2004 (II) SLJ 623, wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorization of having PSV endorsement in terms of Rule 41 (a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgement hereunder:-

"13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorization in terms of

> rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.
>
> .....
>
> 17. In the case of Mohammad Aslam Khan (CIMA no. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E" licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle under section 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle."

In the given circumstances of the case PSV endorsement was not required at all."

18. The purpose of mandate of Sections 2 and 3 of the MV Act came up for consideration before the Apex Court in a case titled as **Chairman, Rajasthan State Road Transport Corporation & ors. versus Smt. Santosh & Ors.,** reported in **2013 AIR SCW 2791,** and after examining the various provisions of the MV Act held that Section 3 of the Act casts an obligation on the driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It is apt to reproduce paras 19 and 23 of the judgment herein:

> "19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semi-trailer is attached; Section 2(34) defines public place; Section 2(44) defines 'tractor' as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines `trailer' which means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle. Section 3 of the Act provides for necessity for driving license; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving license; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age

limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax etc.

20. .....

21. .....

22. .....

23. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of the said Section. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are 'goods carriage', 'heavy goods vehicle', 'heavy passenger motor vehicle', 'invalid carriage', 'light motor vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor vehicle', 'motor-cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi- trailer', 'tourist vehicle', 'tractor', 'trailer' and 'transport vehicle'."

19. The Apex Court in another 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."

**6.** Having glance of the above discussions, I hold that the endorsement of PSV was not required and the owner has not committed any breach of the insurance policy. Thus, the Tribunal has rightly saddled the insurer with the liability.

**7.** Viewed thus, both the appeals are dismissed alongwith all pending applications.

**8.** The Registry is directed to release the awarded amount in favour of the claimants, strictly in terms of the conditions contained in the impugned award through payee's account cheque, after proper identification.

**********

**BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J.**

Dilesh Kumar ...Petitioner

Vs.

Central Bureau of Investigation & others. ...Respondents.

Cr. Revision No. 168 of 2014
Date of Decision: 15.09.2014.

**Code of Criminal Procedure, 1973-** Sections 306 – pardon was tendered by CJM to two accused and the case was also tried by her- it was contended that after tendering the pardon, accused has to be committed to the Court of Sessions, irrespective of the fact whether it is triable as a warrant trial or a Sessions trial- held, that the Court of Chief Judicial Magistrate, Shimla was a designated Court to hear and try matters arising out of investigation conducted by the CBI, therefore, accused could not have been committed to the Court of the Sessions or the case could not have been transferred to any other Courts.

(Para-9)

**Cases referred;**

Bawa Faqir Singh Vs. Emperor, AIR 1938 Privy Council 266

Suresh Chandra Bahri Vs.State of Bihar, AIR 1994 SC 2420

Sitaram Sao alias Mungeri Vs.State of Jharkhand, (2007) 12 SCC 630

Dilip Sudhakar Pendse & another Vs. Central Bureau of Investigation, (2013) 9 SCC 391 (rel. on)

For the Petitioner: Mr. K.S. Thakur, Advocate.

For the Respondents: Mr. Sandeep Sharma, Sr. Advocate with Mr.Pankaj Negi, Advocate, for respondent No.1.

The following judgment of the Court was delivered:

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**Sanjay Karol, J (oral)**

On 22.04.2010 a complaint came to be lodged with the Superintendent of Police, State Vigilance and Anti Corruption Bureau, Dharamshala, District Kangra. In crux, a grievance was made out that Rajesh Thakur, Director, Thakur College of Education, Kangra, H.P., sought job at Government College, Dhaliara (H.P.) on the basis of false/forged certificates of Magadh University Bodh Gaya. Also his family members obtained forged certificates from the Bihar Intermediate Education Council Patna, used again for seeking employment with the Government of Himachal Pradesh. On the asking of the original complainant, this Court vide judgment dated 03.05.2012 in CWP No.6453 of 2010, titled as V.P. Alhuwalia Versus

State of H.P. & others, directed the investigation to be conducted by the Central Bureau of Investigation. Accordingly regular case FIR No.RC0962012S0007 dated 06.06.2012 was registered with the Central Bureau of Investigation, Shimla Branch. With the completion of investigation, final report dated 15.05.2013 was presented before the Court of Chief Judicial Magistrate, Shimla-cum-Special Judicial Magistrate, CBI, Shimla naming the present petitioner Dilesh Kumar to be one of the accused persons. Allegedly he is the kingpin and issued/procured fake and forged degrees and certificates in favour of gullible persons of the State. On 24.10.2013, Court of Chief Judicial Magistrate, Shimla, in an application filed under Section 306 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), for grant of tender of pardon, passed order(s) in favour of applicants, accused Mohd. Mazahar and Lal Bihari Singh (Annexures P-3 and P-4). Applicants were examined on oath by the concerned Magistrate at the time of grant of tender of pardon.

**2.** Subsequently on 25.10.2013, supplementary final report was filed by the Investigating Agency, specially recording grant of tender of pardon in favour of accused Mohd. Mazahar and Lal Bihari Singh. It appears that perhaps this fact escaped attention of the Court and as such on 29.10.2013, the concerned Court also took cognizance, amongst others, against them. As such, cognizance against all eleven accused persons was erroneously taken, which mistake was subsequently rectified with the passing of order dated 12.11.2013, when names of the approvers (Mohd. Mazahar and Lal Bihari Singh) were deleted from the column of accused persons who were then added as witnesses in the column of witnesses. Noticeably there was no challenge to this order. Also propriety and legality of such order is not a subject matter of challenge in these proceedings.

**3.** Present petitioner, who was arrested in connection with the case, applied for regular bail, which prayer was not only turned down by this Court, but also by Hon'ble the Supreme Court of India vide order dated 07.02.2014, when trial was expedited with a direction to be concluded within a period of nine months.

**4.** It is also not in dispute that subsequent to filing of the present petition dated 24.06.2014, statements of Mohd. Mazahar and Lal Bihari Singh stand recorded as witnesses during trial, with adequate opportunity afforded to all the accused persons, including the present petitioner, for cross-examining them. Undisputedly, pursuant to directions issued by Hon'ble the Supreme Court of India, out of 147 witnesses, 48 witnesses already stand examined.

**5**. Now petitioner is seeking quashing of proceedings in the following terms:-

> "It is, therefore, most respectfully and humbly prayed that this petition may very kindly be allowed and the impugned proceedings in case RC No.096012S0007, dated 06.06.2012 titled as CBI versus Rajesh Thakur &

> others for offences under Sections 420, 467, 468, 471 read with 120-B of the Indian Penal Code, pending before the Learned Chief Judicial Magistrate Shimla, now fixed for remaining prosecution witnesses w.e.f. 02.07.2014 to 08.07.2014, may kindly be quashed as the entire proceedings stands vitiated, after calling for the record of the Trial Court case, in the interest of justice and fair play. In case Hon'ble Court is of the view that the provisions of S. 397 Cr.PC. are not attracted, the provisions of S. 482 Cr.P.C. may be involved."

**6**. Mr. K.S. Thakur, learned counsel for the petitioner, has urged that (1) Under Section 306(5) (a) (i) Cr.P.C. when cognizance is taken by the Chief Judicial Magistrate, case has to be committed for trial to the Court of Sessions, irrespective of the fact whether it is triable as a warrant trial or a Sessions trial. (2) Under sub clause (a) of Section 306(4) Cr.P.C. at the time of taking cognizance by the Court below, both the approvers were required to be examined with an opportunity afforded to the accused, for cross-examination. This was not done in the present case. Thus according to the learned counsel trial stands vitiated. In support, he refers to decision reported in **Bawa Faqir Singh Vs. Emperor, AIR 1938 Privy Council 266**; **Suresh Chandra Bahri Vs.State of Bihar, AIR 1994 SC 2420** and **Sitaram Sao alias Mungeri Vs.State of Jharkhand, (2007) 12 SCC 630**.

**7**. Mr. Sandeep Sharma, learned Senior counsel appearing on behalf of Central Bureau of Investigation, vehemently opposed the petition and invited my attention to the decision in **Dilip Sudhakar Pendse & another Vs. Central Bureau of Investigation, (2013) 9 SCC 391.**

**8**. For the sake of ready reference and better appreciation, provisions of Section 306 Cr.P.C. are reproduced as under:-

> "306. Tender of pardon to accomplice. – (1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.
>
> (2) This section applies to –
>
> (a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge

appointed under the Criminal Law Amendment Act, 1952 (46 of 1952).

(b) any offence punishable with imprisonment which may extended seven years or with a more severe sentence.

(3) Every Magistrate who tenders a pardon under sub-section (1) shall record-

(a) his reasons for so doing;

(b) whether the tender was or was not accepted by the person to whom it was made,

and shall, on application made by the accused, furnish him with a copy of such record free of cost.

(4) Every person accepting a tender of pardon made under sub-section (1) –

(a) shall be examined as a witness in the Court of the magistrate taking cognizance of the offence and in the subsequent trial, if any;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.

(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case, –

(a) commit it for trial –

(i) to the Court of Session if the offence is triable exclusively by the Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;

(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by the Court;

(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself." (Emphasis supplied)

**9.** Dealing with the first contention, it be only observed that in the present case, only the Chief Judicial Magistrate, Shimla is the concerned designated Court to hear and try matters arising out of investigation conducted by the Central Bureau of Investigation. Thus Mr.

Sandeep Sharma, learned Senior counsel is right in contending that in the given facts and circumstances, relevant provisions applicable are sub-Section 5(b) of Section 306 Cr.P.C, for in the instant case, Chief Judicial Magistrate, being the designated Court alone had the jurisdiction to conduct the trial. Neither the matter was triable by the Court of Sessions nor was cognizance taken by any Magistrate. In the instant case question of committal does not arise. The apex Court in **Dilip Sudhakar (supra)** has also dealt with the issue holding that :-

> "12. Mr. Rakesh K. Khanna, learned Additional Solicitor General appearing for the respondent, on the other hand, contended that under sub-section (5)(a)(i) two options were available. He submitted that the matter has to be committed to the Court of Sessions undisputedly if the offence was triable exclusively by that court. He, however, maintained that even if the matter was not exclusively triable by the Court of Session, it could still be committed to that court, if the cognizance is taken by the Chief Metropolitan Magistrate. In the facts of the present case, the charges which are leveled against the appellants are all triable by the Magistrate's court, and there is no dispute about that, the cognizance is taken by the Additional Chief Magistrate and not by the Chief Metropolitan Magistrate. That being so, it is not possible to accept this submission of Mr. Khanna." (Emphasis supplied)

**10**. In view of the aforesaid discussion, ratio of law laid down in **Bawa Faqir (supra)** and **Suresh Chandra (supra**) is inapplicable in given facts and circumstances.

**11**. Coming to the second point, it be only observed that accused Mohd. Mazahar and Lal Bihari Singh were granted tender of pardon on 24.10.2013 and at that time both of them were examined on oath by the concerned Court. Subsequently during trial, these persons stand examined as witnesses and opportunity afforded to all the accused for cross-examining them. Provisions of sub-section 4 of Section 306 Cr.P.C. are unambiguously clear. The requirement being that a person accepting tender of pardon be examined as a witness, first by the Court taking cognizance of the offence and then during trial. In the instant case, initially Court taking cognizance had examined these persons and their statements recorded on oath. Also during trial these persons stand examined as witnesses with adequate opportunity afforded to the accused to cross-examine them. Thus there is no procedural illegality committed by the Court below, vitiating the trial in any manner.

**12**. The decision rendered in **Sitaram Sao (supra),** in the given facts and circumstances, is squarely inapplicable. There the Court was dealing with the case where accused stood convicted on the basis of testimony of an accomplice in whose favour no formal order of pardon was

passed by the concerned Court. In an appeal, the High Court remanded the matter back, when such defect was cured by passing of order of pardon and examination of such approver with opportunity afforded to the accused to cross-examine. It is in this backdrop, contentions raised by the convicts in para 14, were answered in para 23 of the said report, wherein Court held that the stage of examining the approver comes only after grant of pardon whereafter he is examined as a witness in the presence of the accused and also cross-examined.

**13**. In view of the aforesaid discussion, I do not find any favour with the submissions so made at the Bar on behalf of present accused and as such, present petition, devoid of merit, is dismissed. Pending application(s), if any, also stand disposed of.

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

Rajesh Kumar .....Appellant.
Vs.
State of H.P. .....Respondent.

Cr. Appeal No. 443 of 2012.
Reserved on: September 11, 2014.
Decided on: 15.09.2014.

**Code of Criminal Procedure, 1973-** Section 313- Statement recorded under Section 313 Cr.P.C is not substantive piece of evidence, but it can be used to corroborate the prosecution version- it can be used in conjunction with the prosecution evidence but no conviction can be recorded on the basis of statement recorded under Section 313 Cr.P.C. (Para-30)

**Indian Penal Code, 1860-** Section 201- Essential ingredients to prove offence punishable under Section 201 IPC are that an offence was committed and accused had reasons to believe the commission of such an offence and that they had caused dis-appearance of the evidence to screen themselves.

**Case referred:**
Ashok Kumar Vs. State of Haryana, (2010) 12 SCC 350

For the appellant: Mr. N.S.Chandel, Advocate.
For the respondent: Mr. M.A. Khan, Mr. Ashok Chaudhary and Mr. Parmod Thakur, Addl. AGs with Mr. Ramesh Thakur, Asstt. AG.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, J.**

This appeal is instituted against the judgment dated 24..9.2012 rendered by the learned Addl. Sessions Judge, Fast Track Court, Shimla, in

Sessions Trial No. 1-R/7 of 2011, whereby the appellant-accused (hereinafter referred to as the accused) who was charged with and tried for offences under Sections 302, 201 and 392 IPC, was convicted and sentenced for the offence punishable under Section 302 IPC to undergo imprisonment for life and to pay fine of Rs. 5,000/-. He was also sentenced to undergo rigorous imprisonment for a period of five years for the commission of offence under Section 392 IPC and also sentenced to undergo rigorous imprisonment for a period of one year for commission of offence under Section 201 IPC. All the sentences were ordered to run concurrently.

**2**. The case of the prosecution, in a nut shell, is that on 18.8.2011 some unidentified person informed the police that the dead body was floating in Pabbar river near Mandli Bridge. The police reached the spot. The photographs of the dead body inside the river were clicked and it was taken out from the river. The dead body was sent to C.H.C. Sandhasu, for post mortem. The viscera and sample of blood were also preserved. The wife of the deceased, Sunita Devi got her statement recorded with the police that on 17.8.2011 her husband went to Chirgaon for gambling. Her husband disclosed to her son Prince that he was taking Rs. 45,000/- alongwith him. At about 1:00 PM her son received call from her husband whereby the deceased instructed him to look after the orchard properly. At about 4:00 PM, her husband again rang up Prince and told him that he is playing cards in the rented place of Sethi at Sandshu. On 18.8.2011 at about 6:30 AM, her husband again instructed her son to protect the orchard from the menace of monkeys and also gave instructions that he should tie a dog in the orchard. On 19.8.2011, the local residents and her other relatives asked her to accompany to hospital. She saw the dead body of her husband. The dead body was having injury on the back side of the head. In order to destroy the evidence, somebody had thrown the body in the Pabbar river. On the basis of statement of PW-1 Sunita Devi FIR Ext PW-21/A was also registered. The police investigated the matter. Site plan was prepared. The police took into possession the disposable cups, blood stained soil and leaves of the apple plants. The investigation was competed and the challan was put up after completing all the codal formalities.

**3.** The prosecution has examined as many as 21 witnesses to prove its case. The accused was also examined under Section 313 Cr.P.C to which he pleaded not guilty. According to him, he was falsely implicated in the case and claimed to be innocent. He also deposed that the police took all money which he brought from Delhi after selling the apples. The learned Trial Court convicted and sentenced the accused, as stated hereinabove. Hence, the present appeal.

**4**. Mr. N.S.Chandel, Advocate, appearing for the accused has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. M.A.Khan, learned Addl. Advocate General, has supported the judgment of the learned Addl. Sessions Judge, Fast Track Court, Shimla, H.P. dated 24.9.2012.

**5.** We have heard learned counsel for the parties and gone through the judgment and records of the case carefully.

**6.** The statement of Sunita Devi, PW-1 was recorded under Section 154 Cr.P.C. vide memo Ext. PW-1/A. According to the averments contained in the '*rukka*', her husband used to gamble. On 17.8.2011, her husband left the house at 9:30 AM telling them that he was going to Chirgaon. Her son Prince Kumar, PW-2 told her that her husband had taken Rs. 30,000/- from the house and Rs. 15,000/- were already in his pocket. On the same day at about 1:00 PM, her husband telephoned Prince Kumar that he was at Sandashu. He asked to take care of the orchard and protect it from the parrots. Her husband again gave a telephonic call from Sandashu that he is in the quarter of Sethi and they were playing cards. On 18.8.2011, in the morning at 6:30 AM, her husband told her son PW-2, Prince that he should take care of the orchard from the monkey menace. On 19.8.2011, she was told to visit Chirgaon Sandashu hospital. She went to the hospital. She came to know that her husband has died. The dead body was kept in the hospital. She noticed injury on the back side of her husband's head and blood was oozing out. According to her, somebody has killed her husband by hitting him on the back of his head and the body was disposed of in Pabbar river to destroy the evidence.

**7.** Sunita Devi has appeared as PW-1. According to her, on 17.8.2011 at about 9:00 AM, her husband told her that he was going to Chirgaon. He disclosed to her son Prince that he is having Rs. 15,000/- and is also taking Rs. 30,000/- from the house. At about 6:00 PM, her husband informed prince that he was at Sandashu in the house of Sethi, Forest Guard. He also told to her son that he will come in the morning as he was betting money on cards in the house of Sethi. He gave instructions to her son that he should convey his mother to prepare local eatables for him. He also instructed Prince on 18.8.2011 at 7:00 AM on telephone to take the dog to the orchard. Her husband did not return on 18.8.2011. On 19.8.2011, the villagers asked her to accompany them to Sandhasu hospital alongwith her son. She alongwith her son reached at hospital and found her husband dead. He was having wound on his head. The police recorded the statement under Section 154 Cr.P.C. vide memo Ext. PW-1/A. In her cross-examination, she testified that on 18.8.2011, they received telephone call from the residence of Sethi, Forest Guard, Sandhasu. Her husband and son, both were having mobile phones.

**8**. PW-2, Prince Kumar deposed that on 17.8.2011, at about 9:00 AM, his father told him that he was going to Chirgaon. His father used to gamble a lot. At about 1:00 PM, his father asked to look after the orchard properly and to protect it from the parrots. He told him that he was at Sandhasu. At about 4:00 PM he received another call from his father and his father disclosed to him that he was in the house of Forest Guard, Sethi. He also gave instructions that he should convey to his mother that she should prepare a local dish for him. He also instructed him on 18.8.2011 at 6:30 AM on telephone, to take the dog to the orchard. On 18.8.2011, his

father did not return. On 19.8.2011, the villagers asked them to accompany them to Sandhasu hospital. He went to the hospital alongwith his mother. His father was dead having injury on the head. It appeared from the wound that some heavy object was struck against his head. In his cross-examination, he has categorically admitted that all the telephonic calls were received by him from the house of Sethi situated at Sandhasu. He did not know where his father had gone on 18.8.2011. He admitted that his father had altercation with Manoj and Mehar Chand of their village for betted amounts. He denied that his father was intoxicated when his body was recovered.

**9.** PW-3, Shashi Kant deposed that on 17.8.2011, he handed over the keys of his official accommodation to his friend Virender Sethi and came to Rohru. He came back from Rohru in the night. He saw some persons including Virender Sethi gambling in his official accommodation. He asked them not to play cards in his room but they replied that they were playing cards just for time pass. He took the meals and went for sleep. Those persons kept on playing the cards. When he woke up in the morning at about 6:30 AM, he found no one in his quarter. In the evening, he came to know that Khem Singh who was playing cards in his room was found dead on the banks of river Pabbar. He inquired from the villagers about the dead body. In his cross-examination, he admitted that he used to visit the government accommodation of Virender Sethi situated at Sandhasu.

**10**. PW-4, Jai Pal deposed that he was staying with Virender Sethi in his room for the last 5-6 months. On 17.8.2011, Virender Sethi called him at Jangla in the quarter of Shashi Kant. There were 6-7 persons in the room of Shashi Kant. They were talking to each other. He was declared hostile and cross-examined by the learned Public Prosecutor. He did not remember whether the accused was amongst those persons who were playing cards in the house of Shashi Kant. He remained in the house of Shashi Kant for some time and thereafter he kept on roaming on the road for 3-4 hours. He admitted that he went to his house on a motorcycle at 11:00 PM. He admitted that Virender Sethi called him on 18.8.2011 at 6:00 AM and asked him to come on motorcycle to take him back to the room. When he was coming to Jangla, then he saw Khem Singh coming alongwith another person about 1 km ahead of Jangla and they were going towards Badiara. He denied the suggestion that the person who was alongwith Khem Singh was also present in the room of Shashi Kant on 17.8.2011. Volunteered that, there were about 6-7 persons in the house of Shashi Kant, but he did not recognize them. Khem Singh requested him to give him lift to village Badiara but he told him that he was going to pick up Virender Sethi from Jangla. He did not disclose the name of second person to the police.

**11**. PW-5, Virender Sethi deposed that he had hired accommodation at Sandhasu and earlier Jai Pal was sharing accommodation with him. Now-a-days, he was residing alone. They used to gamble. They were 9-10 friends and they used to remain in contact with each other on

telephone. On 17.8.2011, they contacted each other at about 5:00 PM and planned to assemble at the accommodation of Shashi Kant. They all reached by 8:00 PM in the quarter of Shashi Kant. He alongwith Panna Lal, Suresh, Rajesh alias Guddu alias Lagnu, Naresh, Baldev, Satish, Khem Singh and Hari Krishan assembled in the house of Shashi Kant. Jai Pal dropped him at Jangla on motorcycle and returned back to Sandhasu. They continued playing cards at 8:00 PM till 3:00 AM. Jai Pal went to Sandhasu after 10:00 PM after taking meals. Khem Singh won most of the games and collected huge amount of money in that gambling. The accused lost almost all his money in gambling. He also lost Rs. 10,000/-. Khem Singh and Lagnu left that place in between 5:30 to 6:00 AM. At about 6:00 AM, he rang up his roommate to pick him up from Jangla. He came on his motorcycle towards Sandhasu side. Jai Pal told him that Khem Singh and Rajesh met him 1 Km away from Jangla and they were going towards Badiara. Panna Lal and Hari Krishan disclosed to him on telephone that Secretary Dev Raj told them that Khem Singh met them at about 6:00 AM near Village Badiara. He was associated by the police on 29.8.2011 alongwith Panna Lal and Hari Krishan. Manita, the sister of accused produced his washed clothes. The accused admitted that he wore those clothes on the date of incident and he also identified those clothes worn by the accused on the date of incident. These were taken into possession by the police vide recovery memo Ext. PW-5/A. Ext. P-2 is the pant and Ext. P-3 is the shirt. Thereafter, Panna Lal handed over 30 currency notes of Rs. 500/- each to the police which he won from accused Lagnu at about 1:00 PM on 18.8.2011 in gambling bet. Panna Lal also told him that when he inquired from accused that from where he brought the money, when he lost all his money in gambling at Jangla. The accused disclosed to Panna Lal that the money was taken from *Aharati.* In his cross-examination, he admitted that Jai Pal did not tell him about the name of second person walking alongwith Khem Singh. His statement qua this effect in examination-in-chief that Jai Pal told him about the name of the accused was not correct to that extent.

**12**. PW-6, Padam Singh deposed that on 18.8.2011 at about 9:00 AM accused Rajesh alias Lagnu came to his house and handed over Rs. 20,000/- to him in the denomination of Rs. 500/-and 1000/-. The accused also handed over documents related to sale purchase of apple which he brought from Delhi alongwith that money. He also handed over to him Rs. 20,000/-.

**13** PW-7, Dev Raj deposed that at about 7:15 AM on 18.8.2011 when he reached near Badiara godown, then two persons met him. One of them was Khem Singh resident of Kharshali. They were going from Badiara to Chirgaon. The second person who was accompanying Khem Singh was not identified by him anywhere after 18.8.2011. He was declared hostile and cross-examined by the learned Public Prosecutor. He admitted that his statement was recorded by the police on 22.8.2011.

**14**. PW-8, Panna Lal deposed that he was running a meat shop at Chirgaon bazaar. On 17.8.2011, at about 5:00 PM Sethi Guard

called him to Jangla for playing cards. At about 8:00 PM, they all reached in the house of Shashi Kant, Forest Guard. They continued playing cards till 3:00 AM. He alongwith Raju Shop-keeper came back in his own vehicle. He lost Rs. 10,000/- to Rs. 11,000/-. Lagnu also lost all his money in gambling. Lagnu picked Rs.2500/- for meeting out expenses. On 18.8.2011 at about 12.45 Hari Krishan and Guddu reached at his house and again started playing cards. Guddu alias Rajesh lost Rs.15,000/- and thereafter he left his house. In his cross examination, he admitted that they were called to the Police Station for 5-6 days continuously. He admitted that the accused has told them that he was coming from Delhi after selling his apples.

**15**. PW-9, Gian Devi is the wife of the accused. She deposed that her husband went to Delhi with consignment of apple on 13.8.2011. He returned back from Delhi on 17.8.2011 at 8.30 PM.

**16**. PW-10, Hari Krishan deposed that he alongwith Up Pradhan Raj Kumar of Sundha Gaura came to the Police Station. In their presence, the accused made disclosure statement to the police that he could identify the place where he committed the murder. The disclosure statement was recorded vide memo Ext. PW-10/A. They started from the police station on two vehicles, one official and one private and went to Mandli. The accused in their presence identified the place where he killed Khem Singh by the side of river Pabbar. Memo to this effect Ext. PW-10/B was prepared. The police also picked up three stones from that place having blood stains. The accused also disclosed that he killed him with those stones. Three stones were taken into possession vide recovery memo Ext. PW-10/C. The police also took into possession six other stones having blood stains vide recovery memo Ext. PW-10/D. The soil was also lifted from the bank of the river Pabbar vide recovery memo Ext. PW-10/E. He was declared hostile. In his cross examination by the learned Public Prosecutor, he admitted that his statement was recorded by the police on 22.8.2011. In his cross examination by the learned defence counsel, he admitted that the signatures on all the memos, identification memo and disclosure statement were taken at the Police Station, Chairgaon after preparing all the documents within two hours. He also admitted that the police had called him telephonically to the Police Station. He visited the spot on 18.8.2011 and then he did not notice any stone or hair etc. on the spot. Volunteered that, he only identified the dead body on that day.

**17**. PW-11, Narayan Singh deposed that he gave Rs.17,000/- to accused Rajesh Kumar. The accused met him on 19.8.2011 at village Jagholi. He asked him to return his money but he showed his inability to return the whole amount. In his cross examination, he admitted that accused used to earn Rs.70,000/- to Rs.80,000/- by selling apple crops.

**18**. PW-12, H.H.C. Sheeshi Ram has deposed that on 14.9.2011, wife of the accused handed over 40 currency notes of Rs.500/- denomination i.e. Rs. 20,000/- to the I.O. The currency notes were taken into possession vide recovery memo Ext. PW-9/A.

**19**. PW-13, Shamsher Singh has taken the photographs of stones, disposable cups, dry leaves and the soil having blood stains. The police also took into possession the disposable cups having blood stains and dried leaves. All the articles were wrapped in a parcel and taken into possession by the police.

**20**. PW-14, Surinder Singh is a formal witness.

**21** PW-15, Constable Rajesh Kumar deposed that Narayan Singh in his presence handed over 20 currency notes of Rs. 500/- denomination to the police and disclosed that the alleged money was handed over to him by Rajesh alias Guddu on 20.8.2011. He also disclosed to the police that Rajesh borrowed Rs.17,000/- from him.

**22**. PW-16, Constable Arun Kumar is a formal witness.

**23**. PW-17, Dr. Mahesh Jaswal has conducted the post mortem. The post mortem report is Ext. PW-17/C. According to him, the deceased died due to intracranial hemorrhage with excessive blood loss leading to hypovolemic shock. The probable time between injury and death was instantaneous to a few minutes. The time between death and post mortem was 18 to 30 hours. In his cross examination he has admitted that he has not gone through the FSL report nor it was shown to him at any time by the police, so he could not say that deceased was drunk at the relevant time.

**24**. PW-18, H.C. Balbir Singh deposed that he deposited the Punlidas in the Malkhana after making relevant entries.

**25**. PW-19, A.S.I. Kalil Ahmad deposed that on 18.8.2011 some unknown person informed the police telephonically that a dead body was lying in the river Pabbar near Mandli bridge. He visited the spot and found the dead body near Forest Rest House in river Pabbar. The dead body was taken out from river Pabbar to the bank. The photographs of the dead body were again clicked and the dead body was identified by the local inhabitants. The dead body was taken to C.H.C. Sandashu for conducting the post mortem. The post mortem was conduced on 20.8.2011. The viscera was preserved. In his cross-examination, he admitted that it has come in his investigation that the deceased was chronic gambler. Khem Singh went to Sandhasu side for gambling at about 9:30 PM on 17.8.2011. He admitted that the son of the deceased told him that he received telephonic call at about 4:30 PM on 17.8.2011 from his father that he is playing cards in the quarter of Sethi at Sandhasu. He also admitted that the son of the deceased told him that he is still playing cards in the quarter of Sethi and asked him to tie a dog in the orchard at about 6:30 AM on 18.8.2011.

**26**. PW-20, S.I.Kanshi Ram deposed that the wife of the accused associated the police. She handed over Rs. 20,000/-given to her by her husband.

**27**. PW-21, Rajinder Singh deposed that he received the statement of Sunita Devi through Constable Rajesh Kumar at about 4:30

PM. FIR Ext. PW-21/A was registered by him. He prepared the site plan. On conducting search of nearby places where the dead body was recovered, he found stones having blood stains and disposable glasses in the apple orchard near the road. In the presence of Hari Krishan and Raj Kumar the accused made the disclosure statement Ext. PW-10/A that he could identify the place where he killed the deceased on 18.8.2011. The accused led the police party and the witnesses to that place where he committed the offence. The identification memo Ext. PW-10/B was prepared. He also prepared the site plan Ext. PW-21/E. The police also noticed blood stains on the stones lying by the side of river Pabbar. The stones were also taken into possession. The accused was arrested on 22.8.2011. In his cross-examination, he admitted that it has come in the investigation that the accused returned from Delhi with money after selling his apple crop.

**28**. According to Ext. PW-1/A, PW-2 Prince Kumar received telephonic call at 1:00 PM from his father that he was at Sandhasu on 17.8.2011 and he should take care of the orchard. He again received a telephonic call at 4:00 PM on the same day from his father informing him that he was at Sandhasu in the house of Sethi and they were playing cards. He again received a telephonic call on 18.8.2011 at 6:30 AM from her husband and he told his son to save the orchard from monkey menace. PW-1, Sunita Devi in her cross-examination has also deposed that at about 6:00 PM her husband informed Prince that he was at Sandhasu in the house of Sethi, Forest Guard. He also told her son that he would come in the morning as he was gambling in the house of Sethi. In her cross-examination, she has also reiterated that on 18.8.2011, they received telephone from the residence of Sethi Forest Guard, Sandhasu. PW-2, Prince Kumar has also deposed that on 17.8.2011 at about 1:00 PM, her father asked to look after the orchard and to save them from Parrots. His father told him that he was at Sandhasu. At about 4:00 PM on the same day, he received another call from his father who disclosed to him that he is in the house of Forest Guard, Sethi. He also gave him instructions that he should convey to his mother that she should prepare food for him. He also instructed him on 18.8.2011 at 6:30 AM to take the dog to the orchard. In his cross-examination, he admitted that all the telephonic calls were received by him from the house of Sethi situated at Sandhasu. However, PW-3 Shashi Kant, deposed that he handed over the keys of his official residence to his friend Virender Sethi and came to Rohru. He returned from Rohru and reached in the house at night. He saw some persons gambling in his official accommodation. He took meals and went for sleep but they kept on playing the cards. When he woke up at about 6:30 AM, he found no one in the quarter. In his cross-examination he admitted that he used to visit the government accommodation of Virender Sethi which was situated at Sandhasu. PW-4 Jai Pal deposed in his cross-examination that on 17.8.2011, Virender Sethi called him at Jangla in the quarter of Shashi Kant. There were 6-7 persons in the room of Shashi Kant. It discloses that the house of Shashi Kant was at Jangla. PW-5, Virender Sethi deposed that he had accommodation at Sandhasu and earlier Jai Pal was sharing accommodation with him. Now-a-days, he was residing alone. In the

adjoining beat Shashi Kant was posted as Forest Guard. He hired accommodation at Jangla. They used to play cards. They were 9-10 friends and remained in contact with each other on telephone. On 17.8.2011, they contacted each other at about 5:00 PM and planned to assemble at the accommodation of Shashi Kant.

**29**. What emerges from the statements of the witnesses is that there are two versions. According to the contents of PW-1/A, the statement of PW-1 Sunita Devi and PW-2 Prince Kumar, the deceased was playing cards in the house of Virender Sethi (PW-5) at Sandhasu. However, as per the statements of PW-3 Shashi Kant, PW-4 Jai Pal and PW-5 Virender Sethi, they were playing cards in the house of Shashi Kant at Jangla. Virender Sethi PW-5 had hired accommodation at Sandhasu and Shashi Kant PW-4 at Jangla. It has also come in the statement of PW-19 ASI Kalil Ahmad that the son of deceased told him that he received telephonic call at about 4:30 PM on 17.8.2011 from his father that he was playing cards in the quarter of Sethi at Sandhasu. He admitted that the son of the deceased told him that he is still playing cards in the quarter of Sethi and asked him to tie a dog in the orchard at about 6:30 AM on 18.8.2011. PW-21, Rajinder Singh in his cross-examination has deposed that he was not told by the son of the deceased that he was playing cards in the quarter of Virender Sethi at Sandhasu but that statement was made to ASI Khalil Ahmad, by the son of the deceased.

**30**. The learned Trial Court has taken into consideration the statement made by the accused under Section 313 Cr.P.C. that he was playing cards at Jangla. The statement recorded under Section 313 Cr.P.C. is not a substantive piece of evidence. The purpose of statement under Section 313 Cr.P.C. is to put the entire incriminating circumstances gathered by the prosecution to the accused. Their lordships' of the Hon'ble Supreme Court in the case of ***Ashok Kumar Vs. State of Haryana,*** reported in ***(2010) 12 SCC 350,*** have held that the prosecution case must stand on its own legs. It cannot take weakness of the defence case. Their lordships' have held that the statement of the accused under Section 313 Cr.P.C. cannot be regarded as substantive evidence but it can be used to corroborate prosecution case. The use of the statement under Section 313 Cr.P.C in evidence is permissible. The Courts' may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. The conviction of the accused cannot be based merely on the statement made under Section 313 Cr.P.C. as it cannot be regarded as a substantive piece of evidence. Their lordships' have held as under:

> "29. Now we may proceed to discuss the evidence led by the prosecution in the present case. In order to bring the issues raised within a narrow compass we may refer to the statement of the accused made under Section 313, Cr.PC. It is a settled principle of law that dual purpose is sought to be achieved

when the Courts comply with the mandatory requirement of recording the statement of an accused under this provision. Firstly, every material piece of evidence which the prosecution proposes to use against the accused should be put to him in clear terms and secondly, the accused should have a fair chance to give his explanation in relation to that evidence as well as his own versions with regard to alleged involvement in the crime. This dual purpose has to be achieved in the interest of the proper administration of criminal justice and in accordance with the provisions of the Cr.P.C. Furthermore, the statement under Section 313 of the Cr.PC can be used by the Court in so far as it corroborates the case of the prosecution. Of course, conviction per se cannot be based upon the statement under Section 313 of the Cr.PC.

30. Let us examine the essential features of this section and the principles of law as enunciated by judgments of this Court, which are the guiding factor for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime.

31. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept

and now it has attained, more or less, certainty in the field of criminal jurisprudence.

32. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any, enquiry or trial but still it is not strictly an evidence in the case. The provisions of Section 313 (4) of the Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in as evidence for or against the accused in any other enquiry or trial for any other offence for which, such answers may tend to show he has committed. In other words, the use of a statement under Section 313 of Cr.PC as an evidence is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

33. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.PC as it cannot be regarded as a substantive piece of evidence. In the case of Vijendrajit Ayodhya Prasad Goel v. State of Bombay [AIR 1953 SC 247], the Court held as under:

> "3. .....As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under Section 342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory does not seem to be correct. The statement under Section 342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

**31**. The statement of the accused under Section 313 Cr.P.C. was required to be read in conjunction with the statements of PW-1 Sunita

Devi, PW-2 Prince Kumar, PW-4 Jai Pal, PW-5 Virender Sethi and PW-7 Dev Raj.

**32**. The learned trial Court has also relied upon the theory of '*last seen together*' to convict the accused and has relied upon the statements of PW-4 Jai Pal, PW-5 Virender Sethi and PW-8 Panna Lal. PW-4 Jai Pal, deposed that on 17.8.2011, Virender Sethi called him at Jangla in the quarter of Shashi Kant. There were 6-7 persons in the room of the Shashi Kant. They were talking with each other. He was declared hostile. He did not tell the police that Virender disclosed him that they were gambling. He also denied the suggestion that some persons also came to the house of Shashi Kant and they also started playing the cards. He did not remember whether accused was amongst them or not. He admitted that Khem Singh deceased was there in the house of Shashi Kant. According to him, he was called by Virender Sethi on 18.8.2011 at 6:00 AM. He asked him to come on motorcycle to take him back to the room. When he came back to Jangla, he saw Khem Singh coming alongwith another person about 1 Km ahead of Jangla and they were going towards Badiara. He denied the suggestion that the person who was alongwith Khem Singh was also present in the room of Shashi Kant on 17.8.2011. Volunteered that, there were 6-7 persons in the house of Shashi Kant, but he did not recognize them. He admitted that Khem Singh told him that the person accompanying him is related to him and they were going to the house of the relative of that person. He has not disclosed the name of second person to the police.

**33**. PW-5, Virender Sethi deposed that they continued playing cards from 8:00 PM till 3:00 AM. Jai Pal went to Sandhasu at about 10:00 PM after taking the meals. He did not play cards with them. Khem Singh won most of the games and collected huge amount of money in that gambling. The accused lost the entire money. He also lost Rs. 10,000/-. Khem Singh and Lagnu left that place in between 5:30 to 6:00 AM. He rang up Jai Pal to pick him up from Jangla at about 6:00 AM. He along with Baldev and Jai Pal went on the same motorcycle towards Sandhasu side. Jai Pal told him that Khem Singh and Rajesh met him 1 Km away from Jangla and they were going towards Badiara. PW-4, Jai Pal has categorically deposed that he has only seen another person with the deceased when he was coming to Jangla. However, he has denied the suggestion that the person alongwith Khem Singh was also present in the room of Shashi Kant on 17.8.2011. PW-4, Jai Pal has also deposed that he has not disclosed the name of second person to the police. PW-5 Virender Sethi, in his cross-examination has admitted that Jai Pal did not tell him about the name of the second person walking alongwith Khem Singh deceased and his statement qua this fact in examination-in-chief that Jai Pal told him about the name of the accused was not correct to that extent.

**34**. PW-8, Panna Lal has testified that at about 8:00 PM, they all reached in the house of Shashi Kant Forest Guard. They continued playing cards till 3:00 AM. He alongwith Raju, Shopkeeper came back in his own vehicle. He lost Rs. 10,000/- to 11,000/-. Lagnu also lost all his money

in gambling. Lagnu picked Rs. 2500/- for meeting out his expenses. On 18.8.2011, at about 12:45 PM, Hari Krishan and Guddu reached at his house and again started playing cards. Guddu alias Rajesh lost Rs. 15,000/- and thereafter he left his house. In his cross-examination, he admitted that the police has summoned them to the Police Station for 3-4 days. It is not believable that the accused after committing murder would visit the house of PW-8, Panna Lal and again gamble. According to the prosecution evidence, the accused has lost the entire money. However, PW-8 Panna Lal deposed, as noticed hereinabove, that Hari Krishan and Guddu again started playing cards and Guddu alias Rajesh lost Rs. 15,000/-.

**35**. PW-7, Dev Raj has deposed that at about 7:15 AM, when he reached near Badiara godown, then two persons met him. One of them was Khem Singh resident of Kharshali. They were going from Badiara to Chirgaon. The second person who was accompanying Khem Singh was not identified by him anywhere after 18.8.2011. He was declared hostile. He denied the suggestion that he identified the accused at Police Station Chirgaon, when he was alongwith other person. He also denied the suggestion that the accused disclosed his name as Rajesh alias Lagnu. PW-7, Dev Raj has merely stated that he has seen a person with Khem Singh but he has not seen that person after 18.8.2011. Thus, the theory of '*last seen together'* has not been proved by the prosecution.

**36**. PW-5, Virender Sethi deposed that the sister of the accused produced his washed clothes from her house and the same were taken into possession by the police vide recovery memo Ext. PW-5/A. Ext. P-2 is the pant and shirt is Ext. P-3. PW-10, Hari Krishan deposed that the accused made disclosure statement Ext. PW-10/A to the effect that he could get the place identified where he has committed the murder. Memo Ext. PW-10/B was prepared identifying the place. The police also picked up three stones from the spot and these were taken into possession vide recovery memo Ext. PW-10/D. In his cross-examination, he admitted that the signatures on all the memos, identification memo and disclosure statement were taken at the Police Station Chirgaon, after preparing all the documents within two hours. The documents were prepared by one Hawaldar. He was called to the Police Station telephonically. When he visited the spot on 18.8.2011, he did not notice any stone or hair on the spot. Volunteered that, he had only identified the dead body on that day.

**37**. The statement of PW-10, Hari Krishan makes the identification of the spot and recovery of stones doubtful. The defence taken by the accused was that he had gone to Delhi to sell his apple and has come back with the money. PW-8, Panna Lal has admitted in his cross-examination that accused had told him that he was coming from Delhi after selling his apples. PW-9, Gian Devi is the wife of the accused. She has also deposed that her husband had gone to Delhi with the consignment of apple on 13.8.2011 and came back from Delhi on 17.8.2011 at 8:30 PM. PW-11 Narain Singh, in his cross-examination, has admitted that accused Guddu earns Rs. 70,000/- to 80,000/- by selling apple crop. PW-21, Rajinder Singh

has also admitted in his cross-examination that it has come during the course of investigation that accused returned from Delhi with money after selling his apple crop.

**38**. According to PW-2 Prince Kumar, his father was not intoxicated at the time of his death. However, as per the opinion in the FSL report Ext. PW-20/B, the traces of ethyl alcohol were detected in the contents of parcels P-1 and P-2.

**39**. Mr. M.A. Khan, Addl. Advocate General, has drawn the attention of the Court to Ext. PW-20/D. According to the conclusions of Ext. PW-20/D, complete DNA profile of deceased Khem Singh has been obtained from Ext. P-12, stone. Complete DNA profile of accused Rajesh Kumar has also been obtained from Ext. P-16b, shirt of the accused. According to PW-5, Virender Sethi, he was associated by the police on 29.8.2011 alongwith Panna Lal and Hari Krishan. Manita, the sister of the accused produced his washed clothes. Thus, it shows that the recovered clothes were washed and there could not be any blood on the shirt of the accused. According to PW-5 Virender Sethi, the accused has admitted that he wore those clothes on the date of incident and he also identified those clothes worn by the accused on the date of the incident. The dead body was recovered on 18.8.2011. The statements of PW-4, Jai Pal and PW-7, Dev Raj were recorded on 22.8.2011. The statement of Gian Devi, PW-9 was recorded on 14.9.2011. Similarly, the statement of PW-10, Hari Krishan was recorded on 22.8.2011. The statement of PW-11, Narain Singh was recorded on 30.8.2011. The statements under Section 161 Cr.P.C. are required to be recorded with promptitude. There is no explanation given by the I.O. as to why the statements of these witnesses were recorded after a considerable lapse of time. There is reasonable doubt whether the accused was at place Sandhasu or at Jangla. The theory of '*last seen together*' has also not been proved by the prosecution. The disclosure statement is also doubtful, on the basis of which, the spot was identified and stones recovered. The DNA profile cannot be believed in view of the statement of PW-5, Virender Sethi.

**40**. The prosecution has also failed to prove that the accused has robbed Khem Singh, killed him and threw his body in the Pabbar river to destroy the evidence. According to the accused, he had gone to Delhi to sell his apples and has got the money by sale proceeds of the apples. His defence is also probablized from the statements of the witnesses i.e. PW-8 Panna Lal, PW-9 Gian Devi and PW-21 Rajinder Singh that he had gone to Delhi to sell his apples. The facts and circumstances from which conclusion for guilt is sought to be drawn by the prosecution, has not been established beyond doubt. Thus, the accused cannot be convicted under Section 302 and 392 of the IPC.

**41**. The essential ingredients to prove offence under Section 201 IPC are that an offence was committed and accused had reasons to believe the commission of such an offence, that with such knowledge or belief he caused any evidence of the commission of that offence to disappear or gave any information relating to that offence which he then knew or

believed to be false and he did so with the intention of screening the offender from legal punishment. Since, we have already held that the prosecution has failed to prove the case against the accused under Sections 302 and 392 IPC beyond reasonable doubt, Section 201 IPC is also not attracted. The case is based on circumstantial evidence. It is necessary for the prosecution to prove the entire chain of circumstances in order to prove the guilt. In the instant case, the prosecution has failed to prove the entire chain of circumstances. Thus, the prosecution has failed to prove its case against the accused beyond reasonable doubt.

**42**. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 24.9.2012, rendered by the learned Addl. Sessions Judge, Fast Track Court, Shimla, in Sessions trial No. 1-R/7 of 2011, is set aside. The accused is acquitted of the charges framed under Sections 302, 201 and 392 IPC, 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.

**43**. 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 DHARAM CHAND CHAUDHARY, J.**

Shri Mohar Singh and others. .....Appellants.

Vs.

Shri Krishan Chand and others. .....Respondents.

RSA No.549 of 2001.
Judgment reserved on: 19.08.2014.
Decided on: 16.09.2014.

**Transfer of Property Act, 1882-** Sections 3 and 41- Suit land was earlier owned by defendants No.1 & 2 and others, who sold it to the predecessor in interest of the plaintiffs vide sale deed dated 20.3.1967- mutation No. 644 was attested- however, on the death of the predecessor-in-interest of the plaintiffs, mutation of inheritance was not sanctioned and the suit land was recorded in the ownership and possession of the defendant No.1- defendant No. 2 filed a Civil Suit for recovery against the defendant No. 1 and the suit land was sold in the execution of decree to defendant No. 3- held, that when defendant No. 1 and others had sold the land belonging to them to the predecessor-in-interest of the plaintiffs by way of registered sale deed, defendant No. 3 cannot claim to be the bona fide purchaser for consideration

as he would have a notice of the sale deed.
(Para- 19 and 20)

**Code of Civil Procedure, 1908-** Section 100- High Court should be slow to interfere with the concurrent finding of fact recorded by Trial Court and Appellate Court unless or until the finding so recorded are perverse.
(Para-17)

**H.P. Land Revenue Act, 1954-** Section 45- Entries in the revenue record do not confer any title upon any person. (Para-21)

**Cases referred:**

Amiya Bala Dutta and others Vs. Mukut Adhikari and others, (2011) 11 SCC 628.

B. Venkatamuni Vs. C.J. Ayodhya Ram Singh and others, (2006) 13 SCC 449.

Union of India and others Vs. Vasavi Co-operative Housing Society Ltd. and others, 2014(1) Shim. LC 411

Dharam Singh Kapoor and others Vs. Om Parkash and others, 2008(2) Shim.LC 370

For the appellants : Mr. Bhupender Gupta, Senior Advocate, with Mr. Neeraj Gupta, Advocate.

For the respondents: Mr. Anand Sharma, Advocate, for respondent No.3.
None for respondents No.1 and 2.

The following judgment of the Court was delivered:

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**Dharam Chand Chaudhary, J.**

Plaintiffs, in the trial Court, are in second appeal as they are aggrieved by the judgment and decree dated 20.8.2001, passed by learned District Judge, Kullu, in Civil Appeal No.49 of 2001, whereby the judgment and decree dated 16.1.2001, passed by learned Senior Sub Judge, Kullu in Civil Suit No.168 of 1993 has been affirmed.

**2.** The subject matter of dispute is the land entered in Khasra No.1048, Khata Khatauni No.196/230, measuring 3-3 bighas, situate in Phati Kalwari, Kothi Palach, Tehsil Banjar, District Kullu, of which, as per copy of Jamabandi for the year 1965-66 Ext.PX, Devta Lakshmi Narayan was recorded as owner through its "*Kardar*" Atma Ram, whereas defendant No.1 Beli Ram and others in possession thereof in lieu of rendering services to the deity. Defendant No.2 and others had sold the entire suit land, i.e., 3 bighas 3 biswas to Saran Pat, the predecessor-in-interest of the plaintiffs vide sale deed dated 20.3.1967 Ext.PW-2/A. Mutation No.644 was also attested and sanctioned in favour of said Shri Saran Pat on 17.5.1967 as is apparent from the entries below remarks

column of the Jamabandi Ext.PX. Rapat Ext.PY also came to be entered to this effect in the *Roznamacha Wakyati* for the year 1966-67 of Patwar Circle Chehani, Tehsil Banjar. On the death of Saran Pat, mutation of inheritance of the suit land was not sanctioned and attested in the names of plaintiffs, his legal heirs, and the suit land in subsequent Jamabandis for the year 1990-91, Ext.P.3/Ext.DG, 1985-86 Ext.DE and Khasra Girdawari Ex.DH came to be recorded in the ownership and possession of Shri Beli Ram, defendant No.1 and others. The possession thereof allegedly remained initially with late Shri Saran Pat and after his death with the plaintiffs.

**3.** Defendant No.2 filed the suit against defendant No.1 for the recovery of Rs.10,000/-. The same was decreed *ex-parte* vide judgment and decree dated 28.6.1988, Ext.P.1 and P.2, respectively against defendant No.1. Defendant No.2 initiated execution proceedings and the suit land to the extent of 1/4th share was attached as well as ordered to be sold by the Court in an open auction to realize the suit amount. Defendant No.3 being the highest bidder, purchased 1/4th share of defendant No.1 in the suit land alongwith his other landed property in an open auction and sale certificate Ext.DA came to be issued in her favour by learned Sub Judge 1st Class, Kullu District at Kullu. Rapat Ext.DI to this effect came to be recorded in *Roznamcha Wakyati* for the year 1990-91.

**4.** The grouse of the plaintiffs, as disclosed from the plaint, is that defendant No.1 Beli Ram an intelligent and shrewd man taking advantage of the simplicity of Saran Pat, their father, in connivance with the revenue staff managed that the mutation of inheritance on the death of their father is not attested and sanctioned in their names and to the contrary got civil suit filed from defendant No.2, not opted to appear and contest the same deliberately and intentionally. Not only this, but later on got the suit land attached during the execution proceedings and put the same on auction. The plaintiffs, who on the death of their father occupied the suit land, were under the impression that they are owners thereof. The sale of the suit land in favour of defendant No.3, therefore, has been sought to be declared illegal, null and void and the result of fraud played upon the plaintiffs by defendants No.1 and 2. The plaintiffs came to know about sale of the suit land to defendant No.3 in an open auction during the first week of September, 1993 when the said defendant herself disclosed to plaintiff No.2 that the suit land was purchased by her in an open auction and that sale certificate also stands issued in her favour by the Court on 19.12.1990, hence the suit for declaration and permanent prohibitory injunction against the defendants.

**5.** Defendant No.1, when put to notice, has admitted the plaintiffs' claim in toto as set out in the plaint.

**6.** Defendant No.2 while denying the plaintiffs' case being wrong, has submitted that neither suit land was sold to Saran Pat nor he was ever put in possession thereof. It is also denied that they raised an orchard over the suit land. The suit land throughout remained in the ownership and possession of defendant No.1. It is submitted that had the

plaintiffs been in possession of the suit land, they could have filed objections and got the same released from attachment. It is further submitted that he got the suit land attached and sold in an open auction because he had to recover money from defendant No.1, Beli Ram.

**7.** Defendant No.3 in separately filed written statement has raised preliminary objections qua maintainability, estoppel, limitation, jurisdiction of the civil Court to try and entertain the suit and non-joinder of necessary parties. On merits, she has also denied the entire case as set out in the plaint and has come forward with the version that in the year 1967 the suit land was recorded in the ownership of Devta Lakshmi Narayan of Phati Kalwari, whereas in possession of defendant No.1, Smt. Uttmu, Prem Singh, Parmeshwari Lal and others in the capacity of tenants under the deity. On coming into force of HP Ceiling on Land Holdings Act the suit land was declared surplus and vide orders passed by Collector all rights, title and interest of Devta Lakshmi Narayan stood extinguished as well as vested in the State of Himachal Pradesh. Defendant No.2 and others, however, continued to be in possession thereof in the capacity of tenants under the State of Himachal Pradesh and ultimately on conferment of proprietary rights became owners thereof. Thereafter in the year 1989 Prem Singh, one of the co-sharers, has sold his share in the suit land and some other land to one Bhole Ram, the husband of defendant No.3 and one Thakru, whereas Parmeshwari Lal, another co-sharer also sold his share to Bhole Ram and Thakru aforesaid in the year 1987. Shri Bhole Ram and Thakru became owners of the suit land to the extent of their share sold to them by S/Shri Prem Singh and Parmeshwari Lal. The share of defendant No.1, Beli Ram, was purchased by defendant No.3 in an open auction. It has further been submitted that in the year 1967 Beli Ram, Prem Singh and Smt. Uttmu were not in exclusive possession of the suit land but occupying the same in the capacity of tenants alongwith their co-tenants Paremshwari Lal and Krishan Chand etc. They, however, could have not sold the suit land to Saran Pat.

**8.** In replication to the written statements filed on behalf of defendants No.2 and 3 the plaintiffs have denied the contents of preliminary objections being wrong and reiterated the entire case as set out in the plaint.

**9.** Learned trial Court after holding full trial has dismissed the suit while recording findings on issues No.1 to 5 as follow:

> "15. Thus, having regard to entire evidence on record, it can safely be concluded that land in suit was never owned and possessed by Shri Beli Ram, Smt. Uttmu and Prem Singh at the time of sale, i.e., on 23.3.1967 nor Shri Beli Ram, Smt. Uttmu and Prem Singh could sell the same to Saran Pat, predecessor-in-interest of plaintiffs vide sale deed dated 23.3.1967 being not the owners of the same and the alleged sale deed dated 23.3.1967 is merely the fictitious sale deed and as such is of no consequence as plaintiffs are not the owners in possession of the land in suit and the sale certificate dated 19.12.1990

> issued by Sub Judge, 1st Class, Kullu in favour of Smt. Sheela Devi, defendant No.3 is legal, valid and binding on plaintiffs and defendants No.1 and 2 and since the plaintiffs are not found to be owners o the land in suit hence they are not entitled to relief of possession. Accordingly, all the above issues are decided against the plaintiffs and in favour of defendant No.3."

**10** The question qua maintainability of the suit, estoppel, limitation, jurisdiction and non-joinder of necessary parties have, however, been answered against the defendants while answering issues No.6 to 11 in favour of the plaintiffs.

**11**. In appeal, learned lower appellate Court after taking into consideration the given facts and circumstances and also the evidence available on record as well as the case law dismissed the appeal with following observations:

> "35. On facts and face of the case in hand, the authorities referred, appear to have no application with due apology to their Lordship I say so. Because it has come through admission of PW4 Sher Singh who participated in court auction that auction was conducted and defendant-3 was highest bidder. There were also other bidders. Plaintiffs are not proved possessing the land nor they have any right, title or interest therein. So sale was rightly held valid because defendant-2 obtained decree against defendant-1 and as a result executed decree qua his interest in the suit land. In such auction it was rightly purchased for valuable consideration by the defendant-3.
>
> 36. In such circumstances, it is apparent that plaintiffs are neither owners nor in possession of the suit land. It has been rightly purchased in court auction by defendant-3. Plaintiffs are also not entitled to alternative plea of possession. Hence suit was rightly dismissed by the learned trial Court. Points answered accordingly."

**12**. Challenge to the judgment and decree passed by learned lower appellate Court is on the grounds, *inter alia*, that the same suffers with material illegalities and irregularities on account of non-framing of proper points which were required to be adjudicated upon. The area where the property in dispute situates, has the application of Punjab Tenancy Act and Punjab Security of Land Tenures Act, the provisions thereof are stated to be ignored. The findings that the land was vested in the State of Himachal Pradesh are stated to be beyond the scope of pleadings nor any issue was framed to this effect. The findings that the sale of the suit land in favour of Saran Pat are bad in law and contrary to the evidence available on record not sustainable. The revenue record produced in evidence rather stated to be misled and misconstrued. The admission made by defendant No.1 in the

written statement qua the title of the plaintiffs in the suit land, the suit could have not been dismissed. In case Beli Ram (defendant No.1) allegedly has no title in the suit land and the competency to transfer the same in favour of Saran Pat by way of sale proceedings in execution petition should have also been held illegal, null and void and the sale of the suit land to defendant No.3 in an open auction should also have been held illegal, null and void, having conveyed no title in her favour.

**13**. This appeal has been admitted on the following substantial questions of law:

1. Whether the lower appellate Court has wrongly formulated point No.1 which was beyond the scope of the pleadings of the parties and was not a subject matter of issue before the trial Court, is not the impugned judgment rendered by the lower appellate Court vitiated by taking into consideration such question which was extraneous to the dispute?

2. Whether both the Courts below have acted beyond their jurisdiction to put unnecessary reliance on the entries in the revenue records, presumption to which stood rebutted on account of Exhibit PW-2/A and Exhibit PY showing the valid transfer of title in favour of Saran Pat, predecessor in interest of the plaintiff-appellants and delivery of possession? When the title of the plaintiff-appellants over the suit property was not in question, are not the findings of both the Courts below holding the plaintiff-appellants not to be owner in possession, illegal, erroneous and perverse?

3. Whether the findings of both the courts below in upholding the validity of the decree obtained ex-parte by defendant No.2 as the sale of the property in favour of defendant No.3 in execution of such decree, behind the back of the plaintiff-appellants to be valid are incapable of being sustained being on account of misreading of the pleadings and relevant evidence and non-consideration of the material evidence rendered such findings to be erroneous, illegal and perverse?

4. Whether the lower appellate Court has misread the provisions of Punjab Tenancy Act and Punjab Security of Land Tenures Act to record the findings that the sale made by defendant No.1 and other co-owners in favour of Shri Saran Pat was illegal, null and void, when the same could not have been questioned by the defendants who were claiming title through the same person? Have not both the Courts below gone beyond their jurisdiction in setting aside the title of the plaintiff-appellants when no other part of the property was sold?

5. Whether both the Courts below have ignored the basic principles of law that even if the title of the predecessor-in-interest of the plaintiff-appellants was invalid for any reason, the same matured due to afflux of time in assertion of the right of the plaintiff-appellants as owner, has not the correct legal position misunderstood vitiating the entire judgment and decree?

6. Whether both the Courts below have misread the evidence in denying the relief of injunction to the plaintiff-appellants by holding that the plaintiff-appellants are neither owner nor in possession of the suit property?

**14**. Shri Bhupender Gupta, learned Senior Advocate assisted by Shri Neeraj Gupta, Advocate, appearing on behalf of appellants-plaintiffs has mainly emphasized that the factum of the suit land having been purchased by the father of the plaintiffs, Shri Saran Pat, stands established on record as per own stand of the first defendant in written statement he filed to the suit and also by way of the sale deed Ext.PW-2/A. The said sale transaction having not been challenged nor questioned by any one in the Court of law, establish the title of the plaintiffs in the suit land. The question that the vendor Beli Ram (defendant No.1), Smt. Uttmu and Prem Singh were not owners of the suit land and rather tenants under the deity (Devta Lakshmi Narayan), hence could have not conveyed the title qua suit land by way of sale thereof to Saran Pat, should have not been taken to non-suit the plaintiffs, as according to Mr. Gupta, had Beli Ram etc. been not owners of the suit land how defendant No.3 could have acquired the same even if it is presumed that she has purchased the same in an open auction. It has further been argued that undue weightage cannot be given to the entries in the revenue record nor such entries prove the title of a person in any property and it is the sale deed like in the present case, which proves the title of a person qua the property purchased. Therefore, according to Mr. Gupta, when the sale deed Ext.PW-2/A stands satisfactorily proved and mutation of the suit land was also attested in the name of Saran Pat, the suit could have not been dismissed.

**15**. On the other hand, Shri Anand Sharma, Advocate, learned Counsel representing respondent No.3-defendant, has strenuously contended that the concurrent findings of facts recorded by both Courts below can not be interfered with in the present appeal. Also that defendant No.3 is the bonafide purchaser of the suit land. The land according to him, was attached in execution proceedings and when put to sale in an open auction defendant No.3 purchased the same being the highest bidder. It has further been contended that defendant No.3 has purchased the suit land to the extent of the share of Beli Ram, the first defendant. Learned Counsel, therefore, has sought the dismissal of the appeal.

**16**. On analyzing the rival submissions and also taking into consideration the evidence available on record, it is 1/4$^{th}$ share of defendant

No.1 Beli Ram in the suit land measuring 3-3 bighas, i.e., less than one bigha, the subject matter of dispute in the present lis. True it is that both Courts below have non-suited the plaintiffs and the present is a case of concurrent findings.

**17**. As per the settled legal principles, in a case of concurrent findings, recorded after proper analysis and appreciation of evidence by the trial Court and lower appellate Court, in a Regular Second Appeal under Section 100 of the Code of Civil Procedure, the High Court should be slow and normally not interfere therewith, unless and until the findings so recorded are perverse. It is held so by the Hon'ble Apex Court in **Amiya Bala Dutta and others Vs. Mukut Adhikari and others, (2011) 11 SCC 628.** Similar is the ratio of the judgment, again that of Hon'ble Apex Court in **B. Venkatamuni Vs. C.J. Ayodhya Ram Singh and others, (2006) 13 SCC 449**.

**18**. The legal questions arise for determination by this Court, besides mis-appreciation and misreading of the evidence produced by the parties on both sides also pertain to the validity and legality of the sale deed Ext.PW-2/A which was never assailed by any one in a Court of law and acquiring of title pursuant to this document by the predecessor-in-interest of the plaintiffs, Shri Saran Pat.

**19**. No doubt, Devta Lakshmi Narayan was recorded owner of the land in dispute. Defendant No.1, Beli Ram, his daughter-in-law, Smt. Uttmu were in possession of half portion thereof in equal shares, whereas the remaining half was in the possession of S/Shri Prem Singh, Parmeshwari Lal and Krishan Chand sons and Smt. Ram Dei daughter as well as Smt. Piar Dassi, widow of Chande Ram in equal shares. The sale deed Ext.PW-2/A reveals that it is Beli Ram (defendant No.1), Smt. Uttmu and Prem Singh had sold their entire share in the suit land and also other landed property belonging to them to Saran Pat, the predecessor-in-interest of the plaintiffs. The execution of this document stands proved from the testimony of Shri Budh Ram (PW-2), one of the marginal witnesses to this document. Even defendant No.1 Beli Ram himself has admitted in the written statement filed to the suit that the suit land was sold by Prem Singh etc. to Saran Pat vide sale deed Ext.PW-2/A. Rapat Ext.PY was also recorded in the *Roznmacha Wakiati*. The entries under the remarks column of Jamabandi Ext.PX/PZ demonstrate the attestation of mutation No.644 on 17.5.1967 consequent upon the sale of the suit land vide sale deed Ext.PW-2/A in the name of Saran Pat. The sale deed Ext.PW-2/A is duly registered with Sub Registrar. The same has not been questioned by any one including defendant No.3, who purchased the suit land to the extent of share of defendant No.1 Beli Ram in an open auction. On the other hand, in view of such entries in the revenue record showing conveyance of the suit land to Saran Pat, the said defendant cannot be said to be a bonafide purchaser because had the revenue record been examined by her carefully, would have come to know about the transaction of sale having already taken place between Beli Ram

aforesaid and his daughter-in-law Smt. Uttmu as well as Prem Singh on one side and Saran Pat on the other.

**20**. True it is that in the subsequent Jamabandis for the year 1985-86 Ext.DE and 1990-91 Ext.P.3/DG as well as Khasra Girdawari from Kharif 1991 to Kharif 1993 Ext.DH Beli Ram etc. have been shown owners in possession of the suit land and there is no reference of the name of Saran Pat in the said record. Said Shri Saran Pat or the plaintiffs cannot be held responsible for not maintaining the subsequent revenue record as per actual and factual position because of not the Incharge of the said record. Rather in view of execution of the sale deed Ext.PW-2/A in favour of Saran Pat, entry qua this transaction in *Roznamcha Wakyati* Ext.PY as well as attestation and sanction of mutation No.644 in his favour should have been taken care of by the revenue staff for making entries with respect to the suit land in the records prepared subsequently.

**21**. It is in this backdrop, there being no entries in subsequent record reflecting the name of Saran Pat or his successors, i.e., the plaintiffs, is hardly of any help to the defendants nor is a circumstance to be relied upon against the plaintiffs for the reasons that as per settled legal principles entries in revenue record do not confer title in respect of any property. This Court draws support in this behalf from the judgment of the Apex Court in **Union of India and others Vs. Vasavi Co-operative Housing Society Ltd. and others, 2014(1) Shim. LC 411**, which reads as follows:

> "17. This Court in several Judgments has held that the revenue record does not confer title. In ***Corporation of the City of Bangalore*** *v.* **M. Papaiah and another** *(1989) 3 SCC 612* held that "it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law." In ***Guru Amarjit Singh*** v. ***Rattan Chand and others*** (1993) 4 SCC 349 this Court has held that "that the entries in Jamabandi are not proof of title". In ***State of Himachal Pradesh*** v. ***Keshav Ram and others*** (1996) 11 SCC 257 this Court held that "the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."
>
> 18. The Plaintiff has also maintained the stand that their predecessor-in-interest was the Pattadar of the suit land. In a given case, the conferment of Patta as such does not confer title. Reference may be made to the judgment of this Court in ***Syndicate Bank*** *v.* ***Estate Officer & Manager, APIIC Ltd. & Ors.*** (2007) 8 SCC 361 and ***Vatticherukuru Village Panchayat*** *v.* ***Nori Venkatarama Deekshithulu & Ors.*** (1991) Supp. (2) SCC 228."

**22**. Similar is the ratio of the judgment delivered by a Co-ordinate Bench of this Court in **Dharam Singh Kapoor and others Vs. Om Parkash and others, 2008(2) Shim.LC 370.**

**23**. Both Courts below have erroneously placed reliance on the entries in the revenue record while non-suiting the plaintiffs and discarding the sale deed Ext.PW-2/A as well as the other record, i.e., Jamabandi for the year 1965-66 Ext.PX and the Rapat *Roznamcha Wakyati* Ext.PY. As a matter of fact, it is the sale deed which could have been given weightage and without there being any evidence to show that the same was ever declared illegal or null and void, should have been relied upon and the suit decreed.

**24**. The plaintiffs have pleaded fraud having been played by defendant No.1 in connivance with defendants No.2 and 3. Jai Singh, plaintiff No.1, as PW-1 has also stated so in so many words while in the witness box. Even from the given facts and circumstances also, it can be gathered that Civil Suit No.104 of 1987 was filed by defendant No.2 in connivance with defendant No.1. It is for this reason defendant No.1 allowed himself to be proceeded against *ex-parte* and the suit was decreed *ex-parte*. Defendant No.2 Krishan Chand though contested the suit and filed written statement, however, opted not to step into witness box to the reasons best known to him. Meaning thereby that he did so intentionally and deliberately in order to avoid the questions which could have been put to him on behalf of the plaintiffs qua his connivance with defendants No.1 and 3. The ingredients of fraud played upon the plaintiffs by Beli Ram in connivance with defendant No.2, therefore, also stand established. Though, defendant No.3 is an auction purchaser as is apparent from the sale certificate Ext.DA issued by learned Sub Judge 1st Class, Kullu, District Kullu and also the entries in *Roznamcha Wakyati* vide Rapat Ex.DI. Mutation No.1527 qua 1/4th share of defendant No.1 in the suit land also stands sanctioned and attested in her favour. She, however, cannot be said to be a bonafide purchaser for the reason that defendant No.1 Beli Ram had already sold the same to Saran Pat, therefore, the share of Beli Ram in the suit land could have not been sold. Even if Beli Ram etc. have no title in the suit land when it was sold to Saran Pat in that event also with the passage of time Saran Pat and on his death his successors, the plaintiffs can reasonably be believed to have acquired title therein, particularly when sale deed Ext.PW-2/A and mutation of the suit land attested in the name of Saran Pat, not has been challenged by anyone. Merely that deity was owner of the suit land at the relevant time and also there being no entries showing the name of Saran Pat or his successors in the subsequent records, in the light of the discussion hereinabove should have not taken into consideration to non-suit the plaintiffs. The findings to the contrary recorded by both the Courts below, therefore, are certainly the result of misreading and mis-appreciation of the evidence available on record, hence perverse. The substantial questions of law stand answered accordingly. The impugned judgment and decree is, therefore, quashed and set aside. Consequently, the appeal is allowed and the suit of the plaintiffs is decreed for the relief of declaration that they are

owners in possession of the suit land to the extent of the share of defendant No.1, Beli Ram and the auction thereof in favour of defendant No.3 is illegal, null and void as well as not binding on the plaintiffs. The sale certificate Ext.DA is also held to be illegal, null and void. The defendants are restrained from causing any interference over the possession of the plaintiffs in the suit land. The parties to bear their own costs.

**********

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

Paryatan Avam Jan Kalyan Samiti. …Petitioner.

Vs.

State of Himachal Pradesh and others. …Respondents.

CWP No. 3040 of 2013
Reserved on: 10.9.2014
Decided on: 16.9. 2014

**Constitution of India, 1950-** Article 226- Municipal Corporation Act, 1994- Section 85 and 170- M.C. Shimla passed a resolution revising the water rates for domestic water connection within and outside the area of Muncipal Corporation- the State Government issued a notification regarding the increased water rates- held, that Section 170(2) of M.C. Act provides that the rates of the domestic supply shall be fixed by the Government- Section 85 of the Act empowers the Corporation to levy a fee and user charges for the services provided by it- provision of Section 170(2) excludes the applicability of the Section 85- therefore, Municipal Corporation had no authority to pass the resolution and State was not competent to notify the water rates.
(Para-8 and 9)

For the Petitioner: Mr. Ajay Sharma, Advocate.

For the Respondents: Mr. Anup Rattan, Mr. M.A. Khan, Addl. A.Gs with Mr. Ramesh Thakur, Asstt. A.G. for respondents No.1 and 2.
Mr. Hamender Chandel, Advocate for respondent No.3.

The following judgment of the Court was delivered:

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**Justice Rajiv Sharma, Judge.**

Members of the petitioner's Samiti are residents of Kufri and Chharbara. They are supplied water by respondent No.3-Municipal Corporation, Shimla. Respondent-State has issued notification dated 6.10.2013 under section 170 of the Municipal Corporation Act, 1994 (hereinafter referred to as the 'Act' for brevity sake) revising the rates of water

supply within and outside the areas of Municipal Corporation with immediate effect. These rates were to be increased @ 10% every year. Respondent-Corporation vide resolutions dated 29.9.2012, 28.2.2013, 15.3.2013 and 29.3.2013 has revised the water rates for domestic water connections within and outside the areas of Municipal Corporation.

**2**. Mr. Ajay Sharma has vehemently argued that water charges are to be fixed by the State Government and the Municipal Corporation, Shimla has no authority to do so.

**3.** Mr. Anup Rattan, learned Additional Advocate General for respondent No.1 and 2 and Mr. Hamender Chandel, Advocate for respondent No.3, have vehemently argued that the Municipal Corporation has the authority to prescribe the water charges under newly substituted section 85 of the Act.

**4**. We have heard the learned counsel for the parties and have gone through the pleadings carefully.

**5.** Chapter-VIII of the Himachal Pradesh Municipal Corporation Act, 1994 deals with the taxes and fees. Un-amended section 85 of the Act reads as under:

> "85. (1) Subject to the prior approval of the State Government the Corporation may in the manner prescribed, levy a fee with regard to the following:-
>
> (i) a fee on advertisements other than advertisements in the newspapers;
>
> (ii) a fee on building applications;
>
> (iii) development fee for providing and maintaining civic amenities in certain areas;
>
> (iv) a fee with regard to lighting;
>
> (v) a fee with regard to scavenging;
>
> (vi) a fee in the nature of costs for providing internal services in a building scheme or town planning scheme;
>
> (vii) any other fee as deemed fit by the corporation for services rendered.
>
> 2. The rates at which and the conditions subject to which the fees as laid down in sub-section (1), may be levied by the Corporation, would be decided by the Government."

**6.** Section 85 was substituted vide Act No.32 of 2011. According to the reply filed by respondent No.1, amendment was carried out with effect from 20.2.2012.

**7.** Mr. Ajay Sharma has drawn the attention of the Court to sub-section (2) of section 170 of the Act. Section 170 reads as under:

> "170. Supply of water to connected premises.

(1) The Commissioner may, on application by the owner of any building arrange for supplying water from the nearest main to such building for domestic purposes in such quantities as he deems reasonable, and may at any time limit the amount of water to be supplied whenever he considers necessary.

(2) Apart from the charges for the domestic supply at rates as may be fixed by the Government, additional charges will be payable for the following supplies of water:-

(a) for animals or for washing vehicles where such animals or vehicles are kept for sale or hire;

(b) for any trade, manufacture or business;

(c) for fountains, swimming baths, or for any ornamental or mechanical purposes;

(d) for gardens or for purposes of irrigation;

(e) for watering loads and paths;

(f) for building purposes."

**8.** Sub-section (2) of section 170 is contained in Chapter-XII of the Act. Section 170 is a charging section and specifically provides that the rates of the domestic supply shall be fixed by the Government. Section 85 is general and empowers the Corporation to levy a fee and user charges for the services provided by it at such rates and in such manner as may be determined by the Corporation from time to time. Provisions of sub-section (2) of section 170 of the Act exclude the applicability of section 85 contained in Chapter-VIII. Earlier rates as per notification dated 6.10.2003 were also prescribed by the State Government.

**9.** Mr. Hamender Chandel has also drawn the attention of the Court to Annexure R-3/A dated 19.2.2014 whereby the State Government has conveyed the ex-post facto approval to water tariff approved by the Municipal Corporation vide resolution No. 3 (II) dated 29.9.2012. The water tariff/charges are to be fixed by the State Government and the Corporation had no authority to pass the resolution. Since the resolution was in contravention of the mandatory provisions of section 170 (2) of the Act, there was no occasion for the State Government to grant ex-post facto sanction to the resolution dated 29.9.2012. Section 85 has been substituted, as noticed hereinabove with effect from 20.2.2012, but there is no corresponding amendment in sub-section (2) of section 170 of the Act.

**10.** Accordingly, the present petition is allowed. Annexures P-5 and P-6 are quashed and set aside. However, it shall be open to the respondent-State to fix the rates of water charges henceforth in accordance with law. Pending application(s), if any, also stands disposed of. No costs.

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

Ajay Sipahiya & others ..... Petitioners.
Vs.
State of H.P. and others .....Respondents

CWPIL No. 12/2014.
Date of decision: 17.09. 2014.

**Constitution of India, 1950-** Article 226- The direction issued to the authorities to alleviate the suffering of the accident victims.
(Para-3)

For the petitioners: Mr. Ajay Sipahiya petitioner in person.
For the respondents: Mr. Shrawan Dogra, Advocate General with Mr. Romesh Verma, Additional Advocate General, Mr. J.K. Verma & Mr. Kush Sharma, Deputy Advocate Generals, for respondents No. 1,2,4, 5 and 6.
Mr. G.S. Rathore, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

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

Respondents have failed to file reply and compliance report, in terms of order dated 4th September, 2014.

**2**. Mr. Shrawan Dogra, the learned Advocate General and Mr. G.S. Rathore, Advocate, for respondent No. 3 sought and are granted four weeks' time to do the needful, in terms of order dated 4th September, 2014.

**3.** Keeping in view the interest of public at large read with the fact that vehicular traffic accidents are occurring in the entire State of Himachal Pradesh at the highest rate, may be because of the conditions of the roads or the reckless driving or for any other reasons, the ultimate sufferer/victim of which is public at large, who loses their lives in the accidents or become permanent and partially disabled, we deem it proper to pass the following directions, in addition to the directions already passed vide order dated 4th September, 2014:

(I) The Himachal Pradesh Police to start the website in which all the relevant information/documents are placed, which can be downloaded by the claimants, insurance companies as well as the Tribunals;

(II) The registers be maintained at police Station level indicating the details which shall contain details of date of dispatch of FIR and Form 54 of the Motor Accidents Claims Tribunals. The

column containing details of information not included in Form 54 along with the reasons for non-availability, shall also be maintained in the Register;

(III) The supply of copies of FIR and other documents to the claimants/Tribunal on the date of registration and other documents within a stipulated period prescribed by sub clause 6 of Section 158 of the Act;

(IV) Entries be made in red ink in the index of FIR about the date of dispatch of report and information, supra;

(V) The Deputy Superintendents of police in each district must check the dispatch registers mandatorily in every six months and must ensure the compliance;

(VI) The Superintendents of Police, Deputy Superintendents of Police and Station House Officers to record in the final reports, submitted to the Magistrate in terms of sub clause 2 of Section 173 of the Code of Criminal Procedure about the compliance of Sub section (6) of Section 158 of the Act-Rule 150 of the Rules and Form 54. It must also contain details to whom the information was given and what kind of information was given;

(VII) The monitoring cell, i.e., "MAC Monitoring Cell" be created in each district headed by the Deputy Superintendents of Police to monitor the delivery of Form 54 and other requisite information, i.e., to ensure the compliance of the mandate of Section 158 (6) of the Act;

(VIII) The Presiding Officers of Motor Accidents Claims Tribunals must convene meeting once in a month with all the stake holders, i.e. police, prosecution agencies, insurance officers in order to ensure that the compliance is made and the grievance of the sufferers is redressed without delay;

(IX) The Superintendents of Police must weekly conduct review and ensure that the entire information, i.e. submission of FIRs, documents in terms of Form 54 and other information which is not contained in Form 54 must be placed on the website, so that, it can be downloaded by the Claims Tribunals/claimants;

(X) The Station House Officers must ensure installation of the Check-List Boards in their Office Rooms;

(XI) The Magistrate while granting the remand must ensure that the Investigating Agencies and Station House Officers have complied with the mandate of Section 158 (6 ) of the Act.

**4.** The Principal Secretary (Home) to the Government of Himachal Pradesh, the Director General of Police, District and Sessions

Judges and Superintendents of Police of all the districts are directed to report compliance, in terms of the directions made supra and also in terms of directions contained in order dated 4th September, 2014. List on 3rd November, 2014. Copy dasti.

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

Mr. Inderjit Kumar Dhir .....Appellant
Vs.
State of HP and others ...Respondents.

LPA No. 150 of 2014.
Date of decision: 17.09.2014.

**Constitution of India, 1950-** Article 226- Petitioner filed a Writ Petition seeking a direction that the pension and the other retiral benefits be granted to him and he be enrolled as the member of ECHS- petitioner was discharged from the Army on 30.6.1970 and he had given a representation to the President of India on 9.10.2006- his petition was dismissed on the ground that delay from 30.6.1970 till 9.10.2006 was not explained- held, that the delay is an important factor and has to be taken into consideration while granting the relief under Article 226 of the Constitution of India- there is no infirmity in the order passed by the Court- Appeal dismissed.

**Cases referred:**

R & M Trust Vs. Koramangala Residents Vigilance Group and others, (2005) 3 Supreme Court Cases 91

S.D.O. Grid Corporation of Orissa Ltd. and others Vs. Timudu Oram, 2005 AIR SCW 3715

Srinivasa Bhat (Dead) by L.Rs. & Ors. Vs. A. Sarvothama Kini (Dead) by L.Rs. & Ors., AIR 2010 Supreme Court 2106

Bhakra Beas Management Board Vs. Kirshan Kumar Vij & Anr., AIR 2010 Supreme Court 3342

Delhi Administration and Ors. Vs. Kaushilya Thakur and Anr., AIR 2012 Supreme Court 2515

Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu, (2014) 4 Supreme Court Cases 108

For the appellant: Mr. Vijender Katoch, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General with Mr. Romesh Verma, Mr. V.S. Chauhan, Additional Advocate Generals, and Mr. Kush Sharma, Deputy Advocate General, for respondents No. 1 to 3.

Mr. Vipul Sharda, proxy counsel for respondent No.4.

The following judgment of the Court was delivered:

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

This appeal is directed against the judgment and order dated 07.08.2013, passed by the learned Single Judge in CWP No. 5291/2012, titled Inderjeet Kumar Dhir vs. State of H.P. and others, whereby the writ petition filed by the writ petitioner came to be dismissed, on the grounds taken in the memo of appeal, hereinafter referred to as "the impugned judgment" for short.

**2.** The petitioner in the writ petition had sought following reliefs:

> "(a) Appropriate writ, order or direction for quashing the letter dated 14.12.2011 issued by the respondent whereby pension and other retiral benefits have been denied to the petitioner and direct the respondent to release pension and other retiral benefits to the petitioner alongwith entire arrears;
>
> (b) Direct the respondent to enroll the petitioner member of ECHS or other Government health scheme so that at least medical care of the petitioner and his wife can be taken care of at this advance stage of life."

**3**. The petitioner had joined the Himachal Government Transport Department in the month of October, 1954. When the petitioner was working as Garage Supervisor, he was relieved to join Indian Army on 8.1.1964, was discharged from the Indian Army on 30.6.1970. He made first representation to His Excellency President of India on 9.10.2006 for the grant of pension.

**4**. The Writ Court, after examining the pleadings, dismissed the writ petition on the ground that petitioner has not explained the delay, which had crept-in in filing the writ petition right from 30.6.1970 to 9.10.2006.

**5.** The Apex Court in a case titled as **R & M Trust Vs. Koramangala Residents Vigilance Group and others,** reported in **(2005) 3 Supreme Court Cases 91,** held that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution;

delay defeats equity and delay cannot be brushed aside without any plausible explanation. It is apt to reproduce para 34 of the judgment herein:

> "34. There is no doubt that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution. We cannot disturb the third-party interest created on account of delay. Even otherwise also why should the Court come to the rescue of a person who is not vigilant of his rights?"

**6.** The Apex Court in cases titled as **S.D.O. Grid Corporation of Orissa Ltd. and others Vs. Timudu Oram, reported in 2005 AIR SCW 3715,** and **Srinivasa Bhat (Dead) by L.Rs. & Ors. Vs. A. Sarvothama Kini (Dead) by L.Rs. & Ors.,** reported in **AIR 2010 Supreme Court 2106,** has also discussed the same principle. It would be profitable to reproduce para 9 of the judgment in **Timudu Oram's case (supra)** herein:

> "9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that the GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others (supra), 1999 AIR SCW 3383 : AIR 1999 SC 3412. The High Court has also erred in awarding compensation in Civil Appeal No. ..... of 2005 (arising out of SLP (C) No. 9788 of 1998). The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 cannot be justified."

**7.** It would also be apt to reproduce para 39 of the judgment rendered by the Apex Court in **Bhakra Beas Management Board Vs. Kirshan Kumar Vij & Anr.,** reported in **AIR 2010 Supreme Court 3342,** herein:

> "39. Yet, another question that draws our attention is with regard to delay and laches. In fact, respondent No. 1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the mater and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it

is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal."

**8**. The Apex Court has considered the same issue and point in a case titled as **Delhi Administration and Ors. Vs. Kaushilya Thakur and Anr.,** reported in **AIR 2012 Supreme Court 2515.** It is apt to reproduce para 10 of the judgment herein:

"10. We have heard Shri H.P. Raval, learned Additional Solicitor General and Shri Rishikesh, learned counsel for respondent No.1 and perused the record. In our view, the impugned order as also the one passed by the learned Single Judge are liable to be set aside because,

(i) While granting relief to the husband of respondent No. 1, the learned Single Judge overlooked the fact that the writ petition had been filed after almost 4 years of the rejection of an application for allotment of 1000 sq. yards plot made by Ranjodh Kumar Thakur. The fact that the writ petitioner made further representations could not be made a ground for ignoring the delay of more than 3 years, more so because in the subsequent communication the concerned authorities had merely indicated that the decision contained in the first letter would stand. It is trite to say that in exercise of the power under Article 226 of the Constitution, the High Court cannot entertain belated claims unless the petitioner offers tangible explanation State of M.P. v. Bhailal Bhai (1964) 6 SCR 261.

(ii) The claim of Ranjodh Kumar Thakur for allotment of land was clearly misconceived and was rightly rejected by the Joint Secretary (L&B), Delhi Administration on the ground that he was not the owner of land comprised in khasra No. 70/2. A bare reading of Sale Deed dated 12.7.1959 executed by Shri Hari Chand in favour of Ranjodh Kumar Thakur shows that the former had sold land forming part of khasra Nos. 166, 167 and 168 of village Kotla and not khasra No.70/2. This being the position, Ranjodh Kumar Thakur did not have the locus to seek allotment of land in terms of the policy framed by the Government of India. The payment of compensation to Ranjodh Kumar Thakur in terms of the award passed by the Land Acquisition Collector and the enhanced compensation determined by the Reference Court cannot lead to an inference that he was the owner of land forming part of Khasra No.70/2. In any case, before issuing a mandamus for allotment of 1000 square yards plot to the writ petitioner, the High Court should have called upon him to produce some tangible evidence to prove his ownership of land forming part of Khasra No.70/2. Unfortunately, the learned Single Judge and the Division Bench of the High Court did not pay serious attention to the stark reality that Ranjodh Kumar Thakur was not the owner of land

mentioned in the application filed by him for allotment of 1000 square yards land."

**9.** The Apex Court in a latest case titled as **Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T. Murali Babu,** reported in **(2014) 4 Supreme Court Cases 108,** has taken into consideration all the judgments and the development of law and held that delay cannot be brushed aside without any reason. It is apt to reproduce paras 13 to 17 of the judgment herein:

> "13. First, we shall deal with the facet of delay. In Maharashtra SRTC v. Balwant Regular Motor Service,, AIR 1969 SC 329, the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221, which is as follows: (Balwant Regular Motor Service case, AIR 1969 SC 329, AIR pp. 335-36, para 11)
>
> > "11. .....Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.' (Lindsay Petroleum Co. case, PC pp/ 239-40)"
>
> 14. In State of Maharashtra v. Digambar, (1995) 4 SCC 683, while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that: (SCC p. 692, para 19)
>
> > "19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's

> entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct."

15. In State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566 : AIR 1987 SC 251, the Court observed that : (SCC p. 594, para 24)

> " 24. .....it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."
>
> It has been further stated therein that: (Nandlal Jaiswal case, (1986) 4 SCC 566 : AIR 1987 SC 251, SCC p. 594, para 24)
>
> "24. ..... If there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction."
>
> Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and

> inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.
>
> 17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

**10**. The same principles have been laid down by this Court in **LPA No. 48 of 2011** titled **Shri Satija Rajesh N. vs. State of Himachal Pradesh and others** decided on 26.8.2014.

**11**. The petitioner is stated to have not joined back the respondent-Corporation. The Writ Court has rightly recorded the reasons given in para 2 of the impugned judgment. It is apt to reproduce para 2 of the judgment herein.

> "2. It is averred in the petition that he has approached respondent-Corporation to join duties. This averment has been denied by the respondents. The petitioner has failed to lead any tangible evidence to prove that he ever tried to join back his parent Department. The petitioner was discharged from Indian Army on 30.6.1970. He has made first representation to His Excellency President of India only on 9.10.2006 for grant of pension. Delay between 30.6.1970 to 9.10.2006 has not been explained by the petitioner. It is also not in dispute that the petitioner has not joined the respondent-Corporation after serving the Indian Army. The petitioner had served the respondent-Corporation w.e.f. October 1954 to 8.1.1964.

Thereafter, he joined Indian Army. In case the petitioner had joined back the respondent-Corporation in that eventuality his service rendered in the Military could be counted under Rule 19 of the CCS (Pension) Rules. Since the petitioner was not reemployed in civil service, he is not entitled to benefit of service rendered by him in the Army towards pension. The petitioner has left the Himachal Government Transport Department on 8.1.1964. The case of the petitioner at this belated stage cannot be ordered to be considered towards release of the pension/pensionary benefits."

**12**. Having said so, the impugned judgment is upheld and the appeal is dismissed. The pending applications, if any, stand disposed of.

**********

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

Laxmi Narain & Ors. …Appellants

Vs.

Kuldeep Singh & Ors. …Respondents.

LPA No. 236 of 2011 a/w Ors.
Reserved on 23.8.2014
Decided on: 17.09.2014

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**Constitution of India, 1950-** Article 12- Whether a Writ Petition is maintainable against the Jogindra Central Co operative Bank Ltd. – held, that Bank is discharging similar duties and functions as H.P. State co-op. Bank and is also engaged in banking business- since, H.P. State Co.-op. Bank has already been held to be not a State in ***C.K. Malhotra Vs. H.P. State Coop Bank and others 1993 (2) Sim.L.C 243***- therefore, Jogindra Central Co. Operative Bank will not fall within the definition of the State.

(Para-17 and 18)

**Constitution of India, 1950-** Article 226- Whether a Writ Petition will lie against the Jogindra Central Co. Op. Bank- held, that although, the Writ can be issued against any person or authority, yet language of Article 226 cannot be interpreted literally to include private person to settle the private dispute- therefore, a Writ does not lie against the Jogindra Central Co.op. Bank.

(Para-21)

**Cases referred;**

Binny Ltd Vs. Sadavisan 2005 (6) SCC 657

C.K. Malhotra Vs. H.P. State Coop Bank and others 1993 (2) Sim.L.C 243

Central Board of Dawoodi Bohra Community Vs. State of Maharashtra (2005) 2 SCC 673

Thalappalam Ser. Co-op. Bank Ltd. and others vs. State of Kerala and others 2013 AIR SCW 5683

| | |
|---|---|
| For the Appellants : | Mr. Surinder Saklani, Advocate |
| For the Respondents : | Mr. Dilip Sharma, Senior Advocate with Ms. Nishi Goel, Advocate, for respondent No. 1 to 3. |
| | Mr. Shrawan Dogra, Advocate General with Mr. Romesh Verma, Mr. V.S. Chauhan, Addl.AGs, Mr. J.K. Verma, and Mr. Kush Sharma, Dy. AGs, for respondents No. 4 and 5. |
| | Mr. Ramakant Sharma, Advocate, for respondent No.6. |

The following judgment of the Court was delivered:

**Tarlok Singh Chauhan, Judge**

The preliminary question required to be determined in these appeals is whether a writ petition is maintainable against Jogindra Central Co operative Bank Ltd. The learned Single Judge considered this objection and concluded as follows:

> "1. the respondent-Bank, i.e. Central Cooperative Bank Ltd. is an "instrumentality"/agency" of the State Government, thus it is a State within the meaning of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of this Court;
>
> 2. that the Central Cooperative Bank Ltd. is an "authority" as well as "person" within the meaning of Article 226 (1) of the Constitution of India and amenable to the writ jurisdiction of this Court;
>
> 3. the writ would lie against the functionaries of the State who passes the order under the Himachal Pradesh Cooperative Societies Act, 1968 and Rules framed thereunder.
>
> 4. the State Government is having majority share capital in the respondent-Bank;
>
> 5. the State of Himachal Pradesh exercises deep and pervasive control over the Bank financially, functionally and administratively since out of 13 Directors, 4 are nominated through the State Government and one Managing Director who is also appointed by the State Government is also one of the Directors of the respondent-Bank;

> 6. the State Government exercises control over the functioning of the respondent-Bank in view of the provisions cited here-in-above commencing from the registration up to the winding up of the Co-operative Societies;……."

**2.** Before we proceed, it may be noticed that after the aforesaid impugned judgment had been rendered by the learned Single Judge, a learned Division of this court, while hearing CWP No.3634 of 2012 vide order dated 20.7.2012 referred the following question of law for consideration by Full Bench:

> (i) "Whether the Kangra Central Co operative Bank, the Himachal Pradesh State Co operative Bank Ltd and the Central Co operative Bank are State within the meaning of Article 12 of the Constitution of India and;
>
> (ii) whether a writ would lie against them?".

**3.** While answering the first part of the question insofar the respondent Bank is concerned, it was held

> "10. That takes us to Central Cooperative Bank, whether it is a State within the meaning of Article 12. As regards this Bank, the decision pressed into service is of the learned Single Judge of this Court in the case of Mehar Chand and another vs. Central Cooperative Bank and others12. No decision of the Division Bench of this court has been brought to our notice, which has taken in CWP No. 641 of 2002 decided on 26th September, 2007 the view that the said Bank was State within the meaning of Article 12 of the Constitution. Thus understood, it is again not a case of conflicting opinion of two coordinate Benches of the same High Court on the point. If the matter of Bank were to proceed before the learned Single Judge of this Court perhaps the Single Judge Bench would be bound by the said decision, unless it was persuaded to take a different view in which case the only option available to that Judge would be to refer the matter to Larger Bench. In that case, the matter could proceed before the Division Bench of two Judges of our High Court and may not require consideration by a Full Bench. On the other hand, if the issue was to be raised before the Division Bench, in the first instance, and that Bench was not inclined to follow the view taken by the learned Single Judge Bench of this Court, it would be free to take a different view and hold that the Bank is not a State within the meaning of Article 12 of the Constitution of India. Since the writ petition pertaining to Bank is still pending, ordinarily, therefore, the issue ought to be dealt with by the Division Bench in the first instance and not by the Full Bench of the High Court. In other words, the pending writ petition pertaining to Bank must proceed before the concerned Bench, who would be free to take

appropriate decision in the matter and including keeping in mind the contours expounded by the Apex Court in S.S. Rana's case (supra). We are inclined to take this view as the question would be a mixed question of fact and law, which can be conveniently dealt with by the concerned Bench. In other words, we do not intend to express any view one way or the other with regard to the correctness of the decision in the case of Mehar Chand (supra) and leave the same open to be considered by the appropriate Bench."

**4.** Thereafter the Hon'ble Full Bench answered the reference in the following manner :

"15. For the view taken by us on both facets of the referred questions, we proceed to answer the Reference as under:

(1) The question as to whether Kangra Bank is a State within the meaning of Article 12 of the Constitution of India, is no more res integra. It has been authoritatively answered by the Apex Court in S.S. Rana's case (supra).

(2) Even in the case of H.P. State Cooperative Bank Ltd., the question has been answered by the Division Bench of our High Court in Chandresh Kumar Malhotra's case (supra). There is no conflicting decision of coordinate Bench of this Court necessitating pronouncement on that question by the Full Bench.

(3) In the case of Central Cooperative Bank, the decision in Mehar Chand's case (supra) is rendered by the learned Single Judge of this Court and no conflicting decision of the co-ordinate Bench muchless of the Division Bench or Larger Bench of our High Court with regard to the stated Bank has been brought to our notice. In any case, the said question can be conveniently answered by the Division Bench in appropriate proceedings whether in the form of writ petition or Reference made by the learned Single Judge of this Court, as the case may be. As and when such occasion arises, the issue can be answered on the basis of settled legal principles and including keeping in mind the exposition of S.S. Rana's case (supra) of the Apex Court concerning another Cooperative Bank constituted under the Himachal Pradesh State Cooperative Act.

(4) As regards the second part of the question as to whether a writ would lie against the stated Cooperative Banks, we hold that it is not appropriate to give a definite answer to this question. For, it would depend on several attending factors. Further, even if the said Banks were held to be not a State within the meaning of Article 12, the High Court in exercise of powers under Article 226 of the Constitution of India, can certainly issue a writ or order in the nature of writ even against

> any person or Authority, if the fact situation of the case so warrants. In other words, writ can lie even against a Corporative Society. Whether the same should be issued by the High Court would depend on the facts of each case."

**5**. Now, coming back to this case it may be observed that the learned counsel for the respondents have candidly conceded that it would be difficult for them to support the proposition that the Jogindra Central Co operative Bank Ltd is a State within the meaning of Article 12 of the Constitution of India in view of the exposition of law laid down by Full Bench judgment of this court in Vikram Chauhan's (supra), but then after placing reliance on second part of the question framed in Vikram Chauhan's case (supra) would contend that a writ would still lie against the respondent bank under Article 226 of the Constitution whereby this court can certainly issue a writ, order or direction against any person or authority if the fact situation of the case so warrants.

**6.** Before we consider the aforesaid issue any further, we may take note of the fact that the learned Single Judge, after taking into consideration the objects of the bank, concluded that it was acting as a public authority and had public duty to perform and the obligation is also of a public nature. It was held in the following manner:

> "Accordingly, the factor No.5 of Ajay Hasia's judgment is also fulfilled and the respondent-bank can be termed as an agency/instrumentality of the Government. <u>It is also clear from the objects of the Bank as enumerated in paras supra that it is acting as public authority and has a public duty to perform and the obligation is also of public nature</u>."

Bye law-4 deals with the objects of the bank which are re-produced in entirety as under:

> "4. Objects. –
>
> The objects for which the Bank is established are as follows:-
>
> a) to promote the economic interest of the members of the Bank in accordance with the co- operative principles and to facilitate the operations of the Co-operative Societies registered under the Act;
>
> b) to serve as balancing centre and clearing house for Co-operative Societies in its area of operation;
>
> c) to organize the provision of credit for agriculturists, artisans, labourers and others in its area of operation, to function generally as an integrated district organization for the provision of agriculture, marketing, production, supply and processing, credit to agriculturists, artisans, labourers and others and their societies to develop co-operative credit and to ensure efficient

performance of the functions relating there to through the Co-operative Societies in the area of operation;

d) to make loans and advances and grant overdrafts and cash credit limits to,-

(i) member of societies and individuals members; and

(ii) a person other than a member with prior permission of the Board; subject to the loan making policy specified by the Bank.

e) to collect bills, drafts, cheques and other negotiable instruments on behalf of members and non members and to provide them remittance facilities also;

f) to buy and sell securities for the investment of its surplus funds and to act as an agent for buyers and sellers of securities of the Government of India or of the State Government, Treasury Bills or other securities as specified in clauses (a), (b), (c) and (d) of Section 20 of Indian Trust Act, 1882 and to transfer, endorse, pledge such securities or shares and other assets of the Bank for raising funds or to lodge them as collateral security for money borrowed by the bank;

g) to undertake exchange business by drawings, accepting endorsing, negotiating, selling or otherwise dealing in bills of exchange, or other negotiable instruments with or without security;

h) to receive money in current, savings, fixed or other accounts and to raise or borrow from time to time such sums or money as may be required for the purpose of Bank to such extent and upon such conditions as the Board may think fit;

i) to open its branches, pay offices, extension counters, etc. in the area of operation of the bank with the prior approval of Registrar;

j) to create and maintain funds for the benefit of its staff members or ex-staff members and their dependants;

k) to act as a Banking Agent for the Government of Himachal Pradesh, Public Bodies, corporations or for any bank or bankers in the area of operation on such terms and conditions as mutually agreed upon between the bank and other party subject to the provision of the Act, if any;

l) to advise societies in the matters of principles and practices of banking and inspect them as and when necessary for the purpose;

m) to facilitate the operations of any society;

n) to act as a custodian of the Reserve Fund of societies;

o) to undertake liquidation work of affiliated societies indebted to the bank on conditions laid down by the Registrar and agreed upon by the Board with a view to facilitate recoveries from the affiliated societies;

p) to subscribe to the Share capital of the Cooperative societies, Rural Banks and other Cooperative institutions as and when necessary subject to the provisions of section 19 of the Banking Regulation Act 1949 (as applicable to the co-operative societies.);

q) to acquire, construct, maintain, alter building or work necessary or convenient for the purpose of the Bank and to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, or turn to account or otherwise deal with all or any part of the property;

r) to obtain refinance from Reserve Bank of India (RBI), National Bank for Agriculture and Rural Development (NABARD), Small Industries Development Band of India (SIDBI), Industrial Development Bank of India (IDBI), Himachal Pradesh State Co-operative Bank Limited; (HPSCB) and other agencies for the promotion of the business of the Bank;

s) to invest the funds of the Bank as per its Bye laws;

t) to implement various schemes for the Development of affiliated Co-operative Societies such as providing guarantee for the deposits held by them and any other scheme of the State Government approved by the Registrar;

u) to do any other form of business which the Banking Regulation Act or State Government, the Registrar, National Bank for Agriculture and Rural Development may specify as a form of business in which it is lawful for the Bank to engage;

v) to provide to its constituents facility of safe deposit and lockers; and

w) to manage sell and realise any property which may come into the possession of the Bank in satisfaction or part satisfaction of any of its claims; and

x) to acquire and hold and generally deal with any property or any right, title or interest in any such property which may form the security or part of the security for any loan or advance or which may be connected with any such security; and

y) to carry on and transact every kind of guarantee and indemnity business; and

z) to do in general all such things as are incidental or conducive to the promotion or advancement of business of the Bank;

**7.** The learned Single Judge formulated the following points for consideration:

> 1. Whether the respondent Bank i.e. Jogindra Central Cooperative Bank Ltd is an agency/instrumentality of the State Government?.
>
> 2. Whether the Jogindra Central Co operative Bank falls within the scope of expression 'any person' or 'authority' under Article 226(1) of the Constitution of India or not?
>
> 3. Whether the petition is maintainable against the orders passed by the functionaries of the State under the provisions of Himachal Pradesh Co operative Societies Act, 1968 and Rules framed thereunder?.

**8**. Point No.1 was answered by holding the respondent Bank to be an authority/instrumentality of the State and the State within the meaning of article 12 of the Constitution of India and thus amenable to the writ jurisdiction of this court. In view of the concession now given by respondents with respect to point No.1, we are primarily concerned with question No.2 which reads thus:

> "Whether the Jogindra Central Co operative Bank falls within the scope of expression 'any person' or 'authority' under Article 226(1) of the Constitution of India or not?"

**9**. This point was answered in the following manner:

> "Point No.2:
>
> The Hon'ble Supreme Court has held in Ahri Anadi MuktaSadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Others v. V.R. Rudani and Others, AIR 1989 SC 1607 that the term "authority" used in Article 226 (1), in the context, must receive a liberal meaning unlike the term in Article 12. Their Lordships of the Hon'ble Supreme Court have held as under:-
>
> "The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light

of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative Act 4th Ed. P.540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

In the above cited judgment their Lordships have held that the form of the body concerned is not very much relevant and what is relevant is the nature of the duties imposed on the body.

It is evident from the observations made here-in-above that the respondent-Bank is discharging the public duties. The State Government exercises a deep and pervasive control over the functioning of the Bank share capital. In view of the duties discharged by the respondent-Bank it can safely be held that the respondent-Bank is an "authority" within the meaning of Article 226(1) of the Constitution of India.

Now the Court has to consider the meaning of expression" person" given in the context of Article 226 (1) of the Constitution of India. The expression "person" has been defined by the Himachal Pradesh General Clauses Act, 1968 under Section 2(35), which reads thus:

"2 (35), "person" shall include any company or association or body of individuals whether incorporated or not;"

Their Lordships of the Hon'ble Supreme Court in (1999) 1 SCC 741 (supra) have held that "person" under Section 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. Their Lordships have further held that when the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. The language employed in

Section 2(42) of the General Clauses Act and of the Section 2(35) of the Himachal Pradesh General Clauses Act, 1968 is para-materia. Their Lordships have held in U.P. State Cooperative Land Development Bank Ltd. versus Chandra Bhan Dubey and Others as under:

"In view of the fact that control of the State Government on the appellant is all-pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India." Person" under Section 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association of body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution of any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the

Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226."

It is evident from the language employed in Section 10 that the respondent-Bank is a body corporate having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. The State Government is also a member of the Society as per Section 17 of the Act read with Bye-law 6. The State Government had contributed about 50% share capital as per the balance sheets reproduced herein-above. The respondent-Bank will fall within the expression "person" for the purpose of Article 226 (1) of the Constitution of India on the basis of clause 2(35) of the Himachal Pradesh General Clauses Act, 1968 and also being a body corporate under Section 10 of the H.P. State Co-operative Societies Act, 1968.

In view of the law laid down by the Hon'ble Supreme Court in AIR 1989 SC 1607 and (1999) 1 SCC 741 the Central Co-operative Bank Ltd. falls within the expression "any person" or "authority" under Article 226 (1) of the Constitution of India and is amenable to the writ jurisdiction of this Court though registered under the H.P. Co-operative Societies Act, 1968.

The matter requires to be considered from another angle by comparing Article 12 of the Constitution of India vis-à-vis Article 226 (1) of the Constitution of India. Article 12 comes into play only when a person is seeking enforcement of his fundamental rights. The fundamental rights can be enforced against the bodies which are mentioned in Article 12 of the Constitution of India alone. The expression "authority" mentioned in Article 226 (1) is required to be interpreted differently from the expression 'other authorities' in Article 12 of the constitution of India. The High Court under Article 226 (1) of the Constitution of India can issue writs for the enforcement of fundamental rights as well as for any other purpose. The expression "authority" and "any person" as

mentioned in Article 226 (1) has to be interpreted liberally. The High Court has the jurisdiction to issue writs to any authority or a person which is discharging public duties akin to Governmental functions."

**10**. Relying upon the Bye laws and the aforesaid observations of the learned Single Judge, respondents would contend that in terms of the observations contained in paras 12 to 14 of the Full Bench judgment in Vikram Chauhan's case, writ petition would be maintainable against the bank as it was performing public duty and function. Here, it would be apt to collect quote paras 12 to 14 of the observations made by the Hon'ble Full Bench, upon which heavy reliance has been placed by the respondents:

> 12. That takes us to the second part of the question formulated by the Division Bench, as to whether a writ would lie against the State Cooperative Banks? This question, essentially, touches upon the scope of power of the High Courts to issue certain writs as predicated in Article 226 of the Constitution of India. This is completely independent issue. In a given case, in spite of the opinion recorded by the Court that the respondent concerned in a writ petition, filed under Article 226 of the Constitution of India, is not a State within the meaning of Article 12 of the Constitution of India. Even then, the High Court can exercise jurisdiction over such respondent in view of the expansive width of Article 226 of the Constitution of India. It is well established position that the power of the High Courts under Article 226 is as wide as the amplitude of the language used therein, which can affect any person – even a private individual – and be available for any other purpose –even one for which another remedy may exist (RohtasIndustries Ltd. and another vs. Rohtas Industries Staff Union and others)15. In the case of Engineering Mazdoor Sabha and another vs. Hind Cycles Ltd.16, the Court opined that even if the Arbitrator appointed under Section 10-A is not a Tribunal for the purpose of Article 136 of the Constitution in a proper case, a writ may lie against his Award under Article 226 of the Constitution. In the case of Praga Tools Corporation vs. C.A. Imanual and others, the Apex Court held that it was not necessary that the person or the Authority on whom the statutory duty is imposed need be a public official or an official body. That a mandamus can be issued even to an official or a Society to compel him to carry out the terms of the statute under or by which the Society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing their undertakings Further, a mandamus would lie against a Company constituted by a statute for the purposes of fulfilling public responsibilities. In the same decision, the Apex Court examined the amplitude of the term "Authority" used in

Article 226 of the Constitution. The Court opined that it must receive liberal meaning unlike the term in Article 12 of the Constitution. It went to observe that the words "any person or authority" used in Article 226 cannot be confined only to statutory authorities and instrumentalities of the State. It may cover any other person or body performing public duty irrespective of the form of the body concerned. It is emphasized that what is relevant for exercising power is the nature of the duty imposed on the body which must be a positive obligation owned by the person or Authority. Depending on that finding, the Court may invoke its authority to issue writ of mandamus. In the case of Life Insurance Corporation of India vs. Escorts Ltd. And others the Constitution Bench opined that the question must be "decided in each case" with reference to particular action, the activity in which the State or the instrumentality of the State is enacted when performing the action, the public law or private law, character of the Constitution and most of the other relevant circumstances. In a given case, it may be possible to issue writ of mandamus for enforcement of public duty which need not necessarily to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract, as noted by Professor de Smith, which exposition has found favour with the Apex Court.

13. The Apex Court after referring to catena of decisions and authorities in the case of UP State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others has succinctly delineated the scope of authority under Article 226 of the Constitution. In para 27 of this decision, the Court opined that Article 226 while empowering the High Court for issue of orders or direction to any Authority or person does not make any difference between public functions or private functions, but did not go to elaborate that question in the fact situation of that case. It is unnecessary to multiply the authorities on the point except to observe that a writ would lie against even a Cooperative Society or Company. But that does not mean that the Court is bound to issue such a writ. It is the prerogative of the High Court to issue writ to any person or authority, which is not a State or an instrumentality of the State. The Court would do so with circumspection and keeping in mind the well defined parameters. Whether in the fact situation of a given case, the Court ought to exercise its authority to issue writ or order in the nature of writ under Article 226 of the Constitution, will have to be answered on the basis of the settled principles, on case to case basis. Thus, it will be inapposite to put it in a straight jacket manner that

every writ petition filed against the Cooperative Banks must be dismissed as not maintainable or otherwise.

14. Counsel appearing for the parties invited our attention to several other decisions. However, we do not intend to dilate on all those authorities any further, except to mention the same. Counsel appearing for the Kangra Bank had relied on two Judges Bench decision in the case of Zorastrian Cooperative Housing Society Ltd. And another vs. District Registrar, Cooperative Societies (Urban and others)20, which took the view that a Cooperative Society cannot be treated as State unless it fulfills the tests spelt out in Ajay Hasia's case by the Constitution Bench of the Apex Court, followed in the case of Praga Tools (supra). Reference was also made to the seven Judges Bench of the Apex Court in the case of Pradeep Kumar Biswas vs. Indian Institutes of Chemical Biology and others21 and another decision in the case of Bhadra Shahakari S.K. Niyamita vs. Chitradurga Mazdoor Sangh and others22, which deals with the question as to whether the appellant, Cooperative Society can be treated as State within the meaning of Article 12 of the Constitution. The learned Senior counsel for the H.P. Cooperative Society invited our attention to the decision of two Judges Bench of the Apex Court in General Manager, Kishan Sahkari Chini Mills Ltd. Sultanpur, UP vs. Satrughan Nishad and others23, to contend that even if it is a case of nominated Directors of Society that does not presuppose that the State has perennial control over the Society. Reliance is also placed on the another decision of the Apex Court in the case of Shri Anadi Mukta Sadguru S.M.V.S.J.M.S. Trust vs. V.R. Rudani and others24 and in case of Zee Telefilms Ltd. and another vs. Union of India and others."

**11**. The observations contained in paragraphs 12 to 14 in Vikram Chauhan's case have already been considered in detail by this bench in CWP No. 6709 of 2013 titled Sanjeev Kumar & ors Vs. State of HP & ors decided on 4.8.2014, and it was held:

"18. It was on the basis of the aforesaid reasoning that the principle in paragraph-15(4) was laid down by the Hon'ble Full Bench which have been completely read out of context by the petitioners. The fact situation in the present case does not attract the applicability of the principles laid down herein. This is not a case where the respondents have been imposed with the public duty, as already held by this court in Chandresh Kumar Malhotra's case (supra). Moreover, it is settled law that it is neither desirable nor permissible to pick out a word or a sentence from the judgment, divorced from the context of the question under consideration and treat it to be the complete

> `law' declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their reasoning. (See: Commissioner of Income Tax vs. Sun Engineering Works (P) Ltd. (1992) 4 SCC 363. Likewise, it is also to be borne in mind that the observations in the judgment cannot be read like a text of a statute or out of context. [See: Hindustan Steel Works Construction Ltd. Vs. Tarapore & Co. and another (1996)5 SCC 34].

**12**. Admittedly, the Bank in question is a co operative Society registered under the H.P.Co operative Societies Act and Rules under which three types of societies have been contemplated:

> "2(xx) 'secondary society' is a society of which at least one member is a Co op. society.;
>
> (xxi) 'primary society' means a society which does not enroll societies as its member'
>
> (xxii) 'apex society' means a secondary society the area of operation of which extends to the whole of the territory of Himachal Pradesh, or even beyond."

**13**. Indisputably, the H.P. State Co operative Bank is the only apex Co operative society which like the bank in question is conducting banking business. The second largest co-operative Bank is the Kangra Central Co operative Bank which like the respondent Bank, it is only a secondary society. It is also not disputed that it has been conclusively held not only by the Hon'ble Full Bench of this court, but even by the Hon'ble Supreme Court that writ against both the aforesaid banks is not maintainable. Therefore, while determining the question involved in the present case, these facts will have to be borne- in-mind.

**14**. A body is said to be performing public functions when it seeks to achieve some collective benefit for the person or a section of public and is accepted by the public or that section of public as having authority to do so, a body is, therefore, said to be exercise public functions when it intervenes or participates in social or economic affairs in the public interest. The Hon'ble Supreme Court in **Binny Ltd Vs. Sadavisan 2005 (6) SCC 657**, while considering the right of an employee of a private company to enforce his contract or service by noting power of judicial review of the High Court under Article 226 of the Constitution observed as under:

"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognize the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted". Non-governmental bodies such as these are just as capable of abusing their powers as is government."

After considering various decisions, the Hon'ble Supreme Court further held as under:

"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England 3rd ed. Vol. 30, page-682,

"1317. A public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public and not for private profit."

There cannot be any general definition of public authority or public action. The facts of each case decide the point.

**15**. In **Jatya Pal Singh Vs. Union of India**, the Hon'ble Supreme Court has considered in detail as to what would be the public functions and has categorically held that a body would be said to be performing public functions when it seeks to achieve some collective benefit for the public or a section of the public as would be clear from the following:

> "48. Dr.K.S. Chauhan had also relied on the United Kingdom Human Rights Act, 1998 (Meaning of Public Function) Bill which sets out the factors to be taken in account of determining whether a particular function is a public function or the purpose of sub section (3) (b) of Section 6 of the aforesaid Act. Section1 enumerates the following factors which may be taken into account for determining he question as to whether a function is a function of public nature.
>
> "1. (a) the extent to which the State has assumed responsibility for the function in question;
>
> (b) The role and responsibility of the State in relation to the subject matter in question
>
> (c ) the nature and extent of the public interest in the function in question.
>
> (d) the nature and extent of any statutory power or duty in relation to the function in question.
>
> (e) the extent to which the State, directly or indirectly, regulates, supervises or inspects the performance of the function in question.
>
> (f) the extent to which the State makes payment for the function in question.
>
> (g) Whether the function involves or may involve the
>
> use of statutory coercive powers.
>
> (h) the extent of the risk that improper performance of the function might violate an individual's convention right.
>
> For the avoidance of doubt, the purposes of Section 6(3) (b) of the Human Rights Act, 1998, as per the said Bill a function of a public nature includes a function which is required or enabled to be performed wholly or partially at public expenses, irrespective of:
>
> "2.(a) the legal status of the person who performs the function, or
>
> (b) Whether the person performs the function by reason of a contractual or other agreement or arrangement."

"49.In our opinion, the functions performed by VSNL/TCL examined on the touchstone of the aforesaid factors cannot be declared to be the performance of a public function. The State has divested its control by transferring the functions performed by OCS prior to 1986 on VSNL/TCL."

"50. Dr. Chauhan had also relied on Binny Ltd whereby this Court reiterated the observations made by this Court in Dwarka Nath V ITO. It was observed that (Binny Ltd case, SCC pp. 665-66, para 11)

"11.....It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest."

"51. This Court also quoted with approval Commentary on Judicial Review of Administrative Action (5th Edn) by de Smith, Woolf and Jowell. In Chapter 3 Para 0.24 therein it has been stated as follows: (Binny Ltd case, SCC p.666, para 11)

" A body is performing a 'public function' when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. . Bodies therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest.

Public functions need not be exclusive domain of the State. Charities, self regularity organizations and other nominally private institutions ( such as Universities, the Stock Exchange, Lloyd's of London, Churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognize the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted. Non governmental bodies such as these are just as capable of abusing their powers as is Government."

"52. These observations make it abundantly clear that in order for it to be held that the body is performing a public function, the appellant would have to prove that the body seeks to achieve some collective benefit for the public or a section of public and accepted by the public as having authority to do so.

> "53. In the present case, as noticed earlier, all telecom operators are providing commercial service for commercial considerations. Such an activity in substance is no different from the activities of a bookshop selling books. It would be no different from any other amenity which facilitates the dissemination of information or data through any medium. We are unable to appreciate the submission of the learned counsel for the appellants that the activities of TCL are in aid of enforcing the fundamental rights under Article 19(1) (a) of the Constitution. The recipients of the service of the telecom service voluntarily enter into a commercial agreement for receipt and transmission of information.
>
> "54. The function performed by VSNL/TCL cannot be put on the same pedestal as the function performed by private institution in imparting education to children. It has been repeatedly held by this Court that private education service is the nature of sovereign function which is required to be performed by the Union of India. Right to education is a fundamental right for children up to the age of 14 as provided in Article 21-A. Therefore, reliance placed by the learned counsel for the appellants on the judgment of this Court in Andi Mukta would be of no avail. In any event, in the aforesaid case, this Court was concerned with the non payment of salary to the teachers by Andi Mukta Trust. In those circumstances, it was held that the Trust is duty bound to make payment and, therefore, a writ in the nature of mandamus was issued."

**16**. Now, we proceed to determine as to whether the respondent bank is discharging any public duties closely related to the governmental function. In our considered view, the duties and functions of the respondent bank can best be compared with the H.P. State Co operative Bank Ltd since, as observed earlier, both are Co operative societies and at the same time are also conducting banking business. The H.P. State Cooperative Bank Ltd has framed its Bye-laws and Bye-law No.4 deals with the objects of the Bank and is reproduced in entirety as under:

> "4. Objects. –
>
> The objects for which the Bank is established are as follows:-
>
> a) to promote the economic interest of the members of the Bank in accordance with the co- operative principles and to facilitate the operations of the Co-operative Societies registered under the Act;
>
> b) to serve as balancing centre and clearing house for Co-operative Societies in the State of Himachal Pradesh registered under the Act.

c) to organize the provision of credit for agriculturists in the State of Himachal Pradesh, to function generally as an integrated State organization for the provision of agriculture, marketing, and processing credit to agriculturist and their societies to develop Co operative credit and to ensure efficient performance of the functions relating there to through the Central Co-operative Bank and other Co operative Societies in the State.

d) to make loans and advances to and pen overdrafts and cash credit accounts for the members of the society with or without security.

(e) To lend money or grant overdraft or open cash credits for all persons against the security of:

(i) Gold and Silver, either is bars or ornaments

(ii) Agricultural or Industrial produce.

(iii) Licenced warehouse receipts, life insurance policies, salary bills or Government servants, Trustee securities as defined under Section 20 of the Indian Trust Act and such other securities as may be approved by the Registrar/Reserve Bank of India from time to time.

Provided that the financial accommodation against the above mentioned securities shall be allowed subject to such condition as the Registrar may prescribe from time to time.

Provided that loans and advances may also be granted to the depositors against the security of their deposits without their being enrolled as members of the Bank.

Provided further that subject to prior approval of the Registrar, the loans and advances under this bye-laws may also be made without security.

f) to collect bills, drafts, cheques and other negotiable instruments on behalf of members and non members and to provide them remittance facilities also;

g) to buy and sell securities for the investment of its surplus funds and to act as an Agent for buyers and sellers of securities of the Government of India or of the State Government, Treasury Bills, or other securities as specified in clauses (a), (b), (c) and (d) of Section 20 of Indian Trust Act, and to transfer, endorse, pledge such securities or shares and other assets of the Bank for raising funds or to lodge them as collateral security for money borrowed by the bank;

h) to undertake exchange business by drawings, accepting endorsing, negotiating, selling or otherwise dealing in bills of

exchange, or other negotiable instruments with or without security;

i) to receive money in current, savings, fixed or other accounts and to raise or borrow from time to time, such of money as may be required for the purpose of Bank to such an extent and upon such conditions as the Board may think fit;

j) to open its branches/offices , in the Sate or outside the State within the previous sanction of the Registrar;

k)To carry on and manage the affairs of a society, the committee of which has been suspended or superseded under the Act and rules framed there under.

l) To start and maintain funds calculated to benefit its staff members or ex-staff members and their dependents;

m) to act as a Banking Agent for the Government of Himachal Pradesh, Public Bodies, corporations or for any bank or bankers in the State on such terms and conditions as mutually agreed upon between the bank and other party with the sanction of the Registrar;

n) to advice Banks and Societies in the matter of principles and practice of Banking and inspect them as and when necessary for the purpose;

o) (i) to receive from constituents for safe custody and/or

realization of interest Govt. paper; shares, debentures and deposit receipts and valuables title deeds, insurance policies etc. with or without any fees.

(ii) to provide to its constituents facility of safe deposit lockers.

p) to act as a custodian of the Reserve Fund of Central Co operative Bank and Societies.

(q) to undertake liquidation work of affiliated societies indebted to the bank on conditions laid down by the Registrar and agreed upon by the Board with a view to facilitate recoveries from the affiliated societies;

r) to take over the Central Co operative Banks with their Branches or any other Banking institutions functioning in the State as a going concern or otherwise on such terms and conditions as may be deemed proper and agreed upon between the Bank and the party subject to the approval of the Government/Registrar;

s) to subscribe to the Share Capital of the Cooperative societies, Central Cooperative Banks and other Cooperative institutions

if and when necessary subject to the provisions of section 19 of the Banking Regulation Act.

t) to acquire, construct, maintain, alter building or work necessary or convenient for the purpose of the Bank and to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, or turn to account or otherwise deal with or any part of the property;

u) to establish, promote and maintain the cadre of key personal for the benefit of affiliated Central Co operative Banks and the Co operative Societies.

v) to engage in any form of business which the State Govt. may specify and to do in general all such things as are incidental or conducive to the promotion or advancement of business of the bank.

**17**. Now in case the objects of the H.P. State Co operative Bank are compared with the objects of the respondent bank, as set out in detail in para-6 supra, it would be seen that the objects of both these Banks are virtually paramateria. If that be so, then the next question which would arise for consideration is as to whether the H.P. State Co operative Bank based upon its objects is discharging public functions. This question is no longer resintegra and has been considered in detail by a Division Bench of this Court in **C.K. Malhotra Vs. H.P. State Coop Bank and others 1993 (2) Sim.L.C 243** and this court repelled the argument in the following manner:

> "87. The 5th test, namely, functions of the society being of public importance and closely related to the Government function. In international Airport Authority's case (supra) the expression 'Government function' has been pointed out to be vague and of indefinite description. In a welfare State like ours, it is difficult to demarcate between Governmental and non governmental function and it is also equally difficult to say with precision as to what is function of public importance and what is not. For the two Banks, as per their respective bye laws, the main objects are to promote the economic interests of the members of the Bank in accordance with co operative principles and to facilitate the operations of the Co operative Societies registered under the Act. The others are to serve as balancing centre and clearing house for Co operative Societies to organize the provisions of credit for agriculturists in the State, to function generally as an integrated organization for providing agricultural, marketing and processing credit to agriculturists and other societies, to develop co operative credit, to make loans and advances etc. to the member of the societies, to lend money and grant over drafts, to do the other normal banking functions to act as banking agent for the Government of Himachal Pradesh/Public bodies, Corporations etc. to advise

> banks and Societies in the matters of principles and practices of banking and numerous other objects mainly connected with normal banking business and also to engage in any other form of business that the State Government may specify.
>
> "88. Considering these objects of the two banks, generally what can be noticed is that the main objects are for conducting the normal banking transactions particularly in relation to Co operative societies and also to Co operative Societies and also to act as banking agent for the government. The entire function has to be with the sole aim and object for promoting the economic interest of the members of the bank in accordance with the co operative principles and to facilitate the banking operations of the Co operative societies registered under the Act."
>
> "92. The aims and objects of the three Societies and the nature of business being carried on cannot be termed as functions impregnated with government character or tied or entwined with government, thus, it is not possible to say that the three societies satisfied the 5th test enunciated by the Supreme Court."

**18**. It would thus be seen that while considering the same objects, similar functions and similar Bye-laws, learned Division Bench of this court had clearly opined that the nature of business being carried out by it could not be termed as functions impregnated with government character or tied or entwined with government and it did not satisfy the 5th test enunciated in Ajay Hasia's case (supra).

**19**. This judgment was a binding precedent not only on the Single Judge but is also binding upon this Bench. We need not delve on the issue of binding precedents any further as the same has been repeatedly concluded by various Constitution Bench judgments of the Hon'ble Supreme Court. Reference in this regard can conveniently be made to the Constitution Bench decision in **Central Board of Dawoodi Bohra Community Vs. State of Maharashtra (2005) 2 SCC 673**, wherein after considering the law laid down by the various Constitution Benches, the legal position was summed up in the following terms:

> (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.
>
> (2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an

opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The above said rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh & Ors. and Hansoli Devi & Ors.(supra).

**20**. There is yet another reason for holding the writ petition to be not maintainable and that is the recent judgment rendered by the Hon'ble Supreme Court in **Thalappalam Ser. Co-op. Bank Ltd. and others vs. State of Kerala and others 2013 AIR SCW 5683**. No doubt, the primary issue in this case pertained to the applicability of the provisions of Right to Information Act to the Cooperative society and also the Registrar. However, one of the issues therein also related to the question as to whether the cooperative society was a "State" within the meaning of Article 12 of the Constitution. The Hon'ble Supreme Court after discussing the entire law on the subject has come to a categorical finding that the cooperative societies which were the subject matter of the lis do not fall within the expression "State" or an "instrumentality of the State" within the meaning of Article 12 of the Constitution and were therefore, not subject to all constitutional limitations as enshrined in Part-III of the Constitution.

**21**. The Hon'ble Supreme Court drew a distinction between a body which is created by a statute and a body which after coming into existence is government in accordance with the provisions of the statute and held that the societies and the bodies falling under the latter could not be termed to be statutory bodies, but only corporates. It also took note of the fact that merely because a private body is acquired in public interest it did not mean that the party whose property was acquired was performing or discharging any function or duty of public character though it would be so for the acquiring authority. The Hon'ble Supreme Court further took note of the celebrated decision in **S.S. Rana Vs. Registrar, Co-operative Societies** and held that the State had no say in the functions of the society and all

matters regarding membership, acquisition of shares and all other matters were governed by the Bye laws under the Act. The relevant findings of the Hon'ble Supreme Court are as follows:

> "Co-operative Societies and Article 12 of the Constitution:
>
> 13. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression "State" within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution. This Court in U.P. State Co-operative Land Development Bank Limited v. Chandra Bhan Dubey and others (1999) 1 SCC 741, while dealing with the question of the maintainability of the writ petition against the U.P. State Cooperative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. In All India Sainik Schools employees' Association v. Defence Minister-cum- Chairman Board of Governors, Sainik Schools Society, New Delhi and others (1989) Supplement 1 SCC 205, this Court held that the Sainik School society is "State" within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State Government and by the Central Government and the overall control vests in the governmental authority and the main object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy."'
>
> 14. This Court in Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others (1976) 2 SCC 58, while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:
>
> > "10.....It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion,

sufficient to clothe the institution with a statutory character……."

15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

16. This Court in Federal Bank Ltd. v. Sagar Thomas and Others (2003) 10 SCC 733, held as follows:

> "32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority".

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in S.S. Rana v. Registrar, Co-operative Societies and another (2006) 11 SCC 634. In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co- operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Co-operative Societies Act this Court held as follows:

> "9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.
>
> 10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterized as public authority?

> 11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in Ajay Hasia v. Khalid Mujib Sehravardi. [See Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban).]
>
> 12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment."

**22**. Article 226 of the Constitution states that:

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, or for the enforcement of any part of the rights conferred by Para-III and for any other purposes.

(2) The power conferred by clause (1) to issue directions, order or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is

made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks form the date on which it is received or from the date on which the coy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not to disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated."

The language of Article 226 is no doubt very wide when it states that a writ can be issued 'to any person or authority' on an enforcement of any rights conferred by part-III and for any other purpose. However, the aforesaid language in Article 226 cannot be interpreted and understood literally. We cannot apply the literal rule of interpretation while interpreting this Article or else it would follow that a writ can even be issued to any private person or to settle even private disputes.

**23**. Undoubtedly, individuals and private bodies and in certain cases societies and companies registered under the statutes do not fall within the inclusive definition of State under Article 12 of the Constitution. However, persons and legal entities created under various laws have been brought within the expansive definition by judicial interpretation. It is no more resintegra that the body can be termed to be an instrumentality or agency of the State while performing public functions and discharging public duties irrespective of its birth by non-legislative action as the existence of such entity, be statutory or non-statutory is irrelevant because it is only the nature of the activity which becomes a determinative factor to bring it within the purview of instrumentality or authority under Article 226 of the Constitution of India.

**24**. From the above discussion judged by any yardstick, the functions to be performed by the respondent bank are, in no manner, governmental functions so as to bring them within the compass of public duty or public functions to enable us to compel the respondent bank to yield to the jurisdiction of this court under Article 226 or for that matter to enable the court to assume jurisdiction over the respondent bank.

**25**. In view of the aforesaid clear exposition of law, not only by this Court but also by the Hon'ble Apex Court, we have no other option but to hold that no writ petition against Jogindra Central Co op Bank Ltd

would be maintainable where the writ is directed and relief claimed is only against the Jogindra Central Co operative Bank Ltd. Therefore, appeals are allowed accordingly and the judgment passed by learned Single Judge taking contrary view is set aside.

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

Meena Kumari ...Petitioner.

Vs.

Union of India & others ...Respondents.

CWP No. 1764 of 2012-G
Decided on: 17.09.2014

**Constitution of India, 1950-** Article 226- Power to interfere with the executive decision- petitioner filed a writ petition questioning the funding to Mahila Mandal Programmes - State filing a reply that the Mahila Mandal scheme was withdrawn as the schemes was being implemented through other programmes- held, that the Court cannot interfere in the executive decision- unless there is arbitrariness and when the decision making process is not questioned but the decision arrived at by the authority is questioned the writ, petition is not maintainable. (Para- 7 to 13)

**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

Mrs. Asha Sharma Vs. Chandigarh Administration and others, 2011 AIR SCW 5636

Bhubaneswar Development Authority and another Vs. Adikanda Biswal and others, (2012) 11 SCC 731

For the petitioner: Mr. Bipin C. Negi, Advocate.

For the respondents: Mr. Ashok Sharma, Assistant Solicitor General of India, for respondents No. 1 and 3.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh Verma & Mr. V.S. Chauhan, Additional Advocate Generals, and Mr. Kush Sharma, Deputy Advocate General, for respondent No. 2.

Mr. Rajesh Verma, Advocate, vice Mr. Narender Sharma, Advocate, for respondent No. 4.

The following judgment of the Court was delivered:

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

Petitioner has called in question Annexures P-7 and P-8, whereby funding to the Mahila Mandal Programmes stands withdrawn, on the grounds taken in the writ petition.

**2**. The respondents have filed separate replies.

**3.** Respondents No. 1 and 3 in their reply have stated that the respondents have made a conscious decision after taking into consideration all the schemes in operation and were of the view that this scheme is to be discontinued and accordingly, it is discontinued. It is apt to reproduce paras 4 and 5 of the reply on merits filed by respondents No. 1 and 3 herein:

> "4. That in reply to the contents of para 6 & 7 of the petition it 8is submitted that Rajiv Gandhi National Creche scheme and ICDS (Integrated Child Development scheme) are two different scheme/Programmes being run through Central Social Welfare Board and State Govt. respectively. Both these programmes cater different beneficiaries however respondents take very care to avoid any overlapping of any programme.
>
> 5. That in reply to the contents of para 8 & 9 of the respondent board in order to avoid overlapping took conscious decision to freeze funds on account of remuneration under Mahila Mandal Scheme at that level in the year 1998. The scheme for the benefits of children in the age group of 0-6 are being run under ICDS and Rajiv Gandhi Creche programmes."

**4.** Respondent No. 2 has also filed separate reply. It is apt to reproduce para 3 of the preliminary submissions herein:

> "3. That it is pertinent to mention here that in Govt. sector State Govt. is running Anganwadi Centres under centrally sponsored scheme of Integrated Child Development Scheme, under which services like non-formal pre school education, immunization, health and nutrition education, health check up and referral services etc are provided to the children and women. At present more than 18000 Anganwadi Centres are being run in the State. It is submitted that through Anganwadi Centres besides services like non-formal pre school education, immunization, health and nutrition education, health check up and referral services counseling services to the mothers of the newly born children and to newly wedded couples and pregnant and nursing mothers re also

> provided by Anganwadi Workers and this programme has become flagship programme for women and children. Due to universalisation of Integrated Child Development Scheme in the State other similar programmes for women and children like Balwadi, Creche, Mahila Mandal and family and Child Welfare Projects programmes have become redundant."

**5.** Respondent No. 4, in its reply, has stated that respondents have made a conscious decision. It is apt to reproduce para 6 of the reply on merits filed by respondent No. 4 herein:

> "6. That the contents of para 10 of the petition are admitted to the extent that the Central Social Welfare Board has decided to discontinue the Mahila Mandal Scheme however owing to the reason that these schemes are being implemented through other schemes. It is incorrect that NGOs were asked only not to induct fresh staff. It is submitted that the respondent board has decided to discontinue the scheme w.e.f. 1-4-2012."

**6**. The moot question is – whether the Writ Court can interfere with the decision made by the Executive or any Authority?

**7.** It is beaten law of land that the Writ Court has no jurisdiction to interfere in the executive functions unless case for judicial review is carved out.

**8.** 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 policy decision of the Government, unless there is arbitrariness on the face of it.

**9.** 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."

**10**. The Apex Court in the case titled as **Mrs. Asha Sharma Vs. 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 non arbitrariness 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)]."

**11**. It appears that the respondents have examined all aspects and made the decision. Thus, it cannot be said that the decision making process is bad. The Court can not sit in appeal and examine correctness of policy decision. The Apex Court in the case titled as **Bhubaneswar Development Authority and another Vs. 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."

**12**. This Court in the cases titled as **Nand Lal & another Vs. State of H.P. & others,** being **CWP No. 621 of 2014; Sher Singh Vs. State of H. P. & others,** being **CWP No. 7115 of 2013 and Gurbachan Vs. State of H.P. & others,** being **CWP No. 4625 of 2012** has also laid down the same proposition of law.

**13**. Applying the test to the instant case, the petitioner has not questioned the decision-making process but has questioned the decision arrived at by the authorities.

**14**. Having said so, this petition merits dismissal. Accordingly, the petition is dismissed alongwith all pending applications.

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**BEFORE HON'BLE MR. JUSTICE SURESHWR THAKUR, J.**

Prem Singh & Anr. ...Plaintiffs/Appellants.
Vs.
State of H.P. ...Defendant/Respondent.

RSA No.307 of 2003.
Reserved on: 10.09.2014.
Decided on: 17.09.2014.

**Specific Relief Act, 1963-** Section 34- Plaintiff was allotted nautor land – he deposited Rs. 16,350/- as Nazarana- plaintiff broke up the land and made it cultivable- however, the allotment was cancelled by Financial Commissioner- Trial Court found that the allotment was made during the ban period- suit was dismissed but state was directed to refund the Nazarana- Appellate Court dismissed the appeal but set aside the order refunding Nazrana- held, that the payment of Nazarana was a consideration for the grant and when the grant was cancelled, the plaintiff is entitled for the refund of the amount- therefore, appeal partly accepted and defendant directed to refund the Nazarana alongwith interest. (Para-7)

For the Appellants: Mr. K.D. Sood, Sr. Advocate with Mr. Arjun K. Lall, Advocate.
For the Respondent: Mr.Ravinder Thakur, Addl.A.G. with Mr.Tarun Pathak and Mr.Vivek Attri, Dy.A.Gs.

The following judgment of the Court was delivered:

**Sureshwar Thakur, Judge**

The instant appeal is directed against the judgment and decree, rendered on 2.6.2003, in Civil Appeal No.117 of 2000, by the learned District Judge, Bilaspur, H.P., whereby, the learned First Appellate Court dismissed the appeal, preferred by the plaintiffs /appellants, affirming the judgment and decree, rendered by the trial Court, on 31.8.2000.

**2.** Brief facts of the case are that the predecessor-in-interest of the appellants, namely, Budhu (the original plaintiff), instituted a suit for declaration with consequential relief of permanent injunction against the defendant/respondent, on the allegations that he had been owner in possession of land, comprised in Khata/Khatauni No.47/51 min, Khasra Nos.322/304/1, measuring 7-2 bighas, situated in revenue estate Kothi, Pargna Rattanpur, Tehsil Sadar, District Bilaspur. It is averred that the plaintiff had applied for allotment of the suit land in his favour by way of exchange to the State. The application of the plaintiff had been considered and allowed vide order dated 19.3.1990 passed by the Deputy

Commissioner. The plaintiff had given his land measuring 7-2 bighas of revenue estate, Majher to the State. The plaintiff had deposited a sum of Rs.16,350/- as Nazrana for getting the suit land in exchange. After allotment of the suit land in his favour by way of exchange, the plaintiff had broken-up and cleared for cultivating the suit land. The plaintiff had spent a sum of Rs.25,000/- on the development of the suit land. The Financial Commissioner, H.P. vide order dated 16.8.1995, unauthorizedly and illegally, had cancelled the allotment of the suit land in favour of the plaintiff. The order dated 16.8.1995 of Financial Commissioner was wrong, illegal and liable to be set aside. The defendant/State was sought to be restrained from interfering with the ownership and possession of the plaintiff of the suit land by issuance of a decree of perpetual injunction. With these allegations, the plaintiff had instituted the suit in the learned trial Court on 8.2.1996.

**3**. The defendant/respondent contested the suit by filing written statement wherein the State/defendant had taken the preliminary objections inter alia maintainability, cause of action, jurisdiction and improper valuation of the suit. On merits, the defendant/respondent had denied the ownership and possession of the plaintiff of the suit land. It is averred that the plaintiff had applied for exchange of the suit land in his favour with his land measuring 7-2 bighas of revenue estate, Majher. The Deputy Commissioner vide order dated 19.3.1990 had allowed the exchange. The proprietors had instituted a revision against the order dated 19.3.1990 before the Financial Commissioner. The Financial Commissioner vide order dated 16.8.1995 had set aside the order dated 19.3.1990, passed by the Deputy Commissioner. The plaintiff was stated to have manipulated the exchange of the suit land in his favour by dubious means. The plaintiff has been averred by the defendant not entitled to any relief much less to the discretionary relief of permanent injunction.

**4**. The plaintiffs/appellants did not choose to file the replication to the written statement of the defendant/respondent. On the pleadings of the parties, the learned trial Court struck following issues inter-se the parties in contest:-

1. Whether the plaintiff is owner in possession of the suit land? OPP

2. Whether the order of Deputy Commissioner dated 19.3.1990 is legal and valid, as alleged? OPP

3. Whether the order of Financial Commissioner dated 16.8.1995 is illegal against law. If so, its effect? OPP

4. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as prayed for? OPP

5. Whether the suit of the plaintiff is not maintainable in the present form? OPD.

6. Whether the plaintiff has no cause of action to file the present suit? OPD

7. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD

8. Whether this Court has no jurisdiction to entertain and decide the present suit? OPD

9. Relief.

**5.** On appraisal of the evidence, adduced before the learned trial Court, the learned trial Court dismissed the suit of the plaintiff/appellant, entitling him only to Nazrana of Rs.16,350/- with interest from the date of deposit and till its realization, as well as cost made by him the development of the suit land after the proper assessment by the competent authority. In appeal, preferred before the learned first Appellate Court, against the judgment and decree of the learned trial Court, by the plaintiff/appellant, the learned first Appellate Court dismissed the appeal.

**6.** Now the plaintiffs/appellants have instituted the instant Regular Second Appeal before this Court, assailing the findings, recorded by the learned first Appellate Court, in, its impugned judgment and decree. When the appeal came up for admission on 12.3.2003, this Court, admitted the appeal instituted by the defendant/appellant, against the judgment and decree, rendered by the learned first Appellate Court, on, the hereinafter extracted substantial questions of law:-

1. Whether the modification of the judgment of the trial Court by District Judge disallowing the interest on Rs.16,350/- without filing of Cross appeal or Cross Objections is sustainable in law?

2. Whether the exchange could be cancelled without refund of the Nazarana and interest and the return of the land given in exchange without having the exchange invoked by filing a suit?

**Substantial questions of Law No. 1 and 2.**

**7.** The learned counsel for the plaintiffs/appellants does not contest the tenability of the concurrent findings, recorded by both the learned Courts, of the grant of the suit land by way of Nautor under Ext.P-8 to the plaintiff being legally fallible, as such, liable to be set aside, it being made in favour of the plaintiffs/appellants, at a time when a ban against the allotment of land by way of Nautor to the landless persons was in existence. His address before this Court is confined to the fact of the learned trial Court in its judgment and decree while dismissing the suit of the plaintiff having held him entitled to a Nazrana of Rs.16,350/- with interest from the date of its deposit until its realization. He contends that when the said relief, as afforded in favour of the plaintiff, remained un-assailed at the instance of the defendant-respondent by filing a cross appeal before the learned first Appellate Court, hence, it was legally unwarranted for the learned first Appellate Court to modify the relief, aforesaid, as accorded by the learned

trial Court in favour of the plaintiff-appellant, inasmuch, as, it, while affirming the verdict of the learned trial Court, of the plaintiff-appellant being entitled to a sum of Rs.16,350/-, to omit to afford in his favour the benefit of or relief of interest on the amount, aforesaid, from the date of its deposit till its realization. The reason, as afforded by the learned First Appellate Court, in denying to the plaintiff-appellant the relief of interest on the amount of Rs.16,350/- is of the plaintiff-appellant enjoying the usufruct of the said land since it is grant in his favour till the rendition of judgments and decrees against him by both the Courts below. The amount of Rs.16,350/- deposited as Nazrana by the plaintiff-appellant with the defendant-respondent, on the grant of Nautor land in his favour being set aside, was uncontrovertedly as well as undisputedly, in the absence of evidence portraying that it was unrefundable to him, was refundable to him, as it constituted the consideration or the *quid pro quo* for the grant, besides, it also constituted the ingrained/inherent fact, that on cancellation of the grant of Nautor land in favour of plaintiff-appellant, the plaintiff-appellant was entitled to its refund. The reason, as afforded by the learned first Appellate Court of interest accrued on the amount aforesaid, being deniable to the plaintiff-appellant on the score of his having used the usufruct of the land, is untenable, inasmuch, as, (a) there is no demonstrable condition in the grant of the suit land as Nautor made in favour of the plaintiff-appellant of his being disentitled to the interest accrued on the amount aforesaid, in case, for violation of the conditions of the grant or for any other reason the grant of suit land by way of Nautor land is cancelled; (b) want of any apparent and palpable condition in the grant of the suit land by way of Nautor to the plaintiff-appellant that on his taking to utilize the usufruct of the suit land even when it is cancelled would render him to be disentitled to the interest accrued on the amount of Rs.16,350/- deposited as Nazrana or as a *quid pro quo* for the allotment of the suit land to him by way of Nautor. Consequently, in the absence of the aforesaid material on record, it was wholly untenable for the First Appellate Court to disallow the relief of interest on the amount of Rs.16,350/- which had been rather aptly and tenably decreed in favour of the plaintiff-appellant by the learned trial Court. Moreso, when the defendant-respondent had not filed any cross-appeal or cross-objections before the First Appellate Court assailing the relief as afforded aforesaid by the learned trial Court in favour of the plaintiff-appellant.

**8.** This Court accepts the submission of the learned counsel for the plaintiffs and directs that the appeal be allowed to the extent that the relief, as afforded in favour of the plaintiffs/appellants by the learned trial Court, be accorded to the plaintiffs/appellants. Accordingly both the substantial questions of law are answered in favour of the plaintiffs/appellants and against the defendant/respondent. No costs.

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**BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J.**

Roshan Lal ...Petitioner.
Vs.
State of H.P. ...Respondent.

Cr.Revision No.109 of 2007
Reserved on: 10.09.2014.
Decided on: 17.09.2014.

**Indian Penal Code, 1860-** Sections 279 and 204-A- Accused driving the vehicle in a rash and negligent manner and causing death of one person- he was convicted by trial court and conviction was upheld by Appellate Court- held, that the testimony of the eye-witness was duly corroborated by site plan which showed the skid marks to the extent of 29 feet- skid marks proved that the vehicle was being driven at an excessive speed- therefore, the order passed by Trial Court was based upon the reasons and could not be interfered with. ( Para-10)

For the petitioner: Mr.Rakesh Dhaulta, Advocate.
For respondent: Mr.Ravinder Singh Thakur, Addl.A.G. with Mr.Tarun Pathak and Mr.Vivek Singh Attri, Dy.A.Gs.

The following judgment of the Court was delivered:

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**Sureshwar Thakur, Judge.**

The instant revision is directed against the judgment, rendered on 10.8.2007, by the learned Sessions Judge, Kullu, H.P., in Criminal Appeal No.10 of 2006, affirming the findings, recorded by learned Judicial Magistrate, 1st Class, Manali, District Kullu, in Cr.Case No.20-1/2004/42-II of 2004, whereby, the petitioner has been convicted and sentenced as follows:-

| Sr.No. | Offence | Sentence imposed. |
|---|---|---|
| 1. | 279 IPC | to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo simple imprisonment for a period of 15 days; |
| 2. | 304-A IPC | to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo simple imprisonment for a period of one month; |

| | | |
|---|---|---|
| 3. | 187 of the Motor Vehicles Act | to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo simple imprisonment for a period of 15 days. |

All the sentences imposed were to run concurrently.

***2.*** The facts, in brief, are that on the evening of 29.11.2003, at about 7.30 p.m., near PWD Office, Manali, the accused, while driving a bus, bearing registration No.HP-34A-2825 on a public road, knocked down a scooter, bearing registration No.HP-34-5234, which resulted in causing death of its occupant Norbu Lama. The accused instead of helping the injured fled away from the spot. A telephonic message was received in the police and after recording Rapat No.Ext.PW-5/E, the police rushed to the spot, where statement of complainant under Section 154 Cr.P.C., comprised in Ext.PW-1/A was recorded, on the basis of which F.I.R. Ext.PW-3/A has come to be registered. The matter was investigated by PW-5 (ASI Bhagat Ram) who prepared spot map, comprised in Ext.PW-5/A, taken into possession the scooter, along with its documents, vide seizure memo Ext.PW-1/B as well as the offended bus vide seizure memo Ext.PW-1/C. Other documents of the bus were also taken into possession vide seizure memos Exts.PW-5/B and PW-5/C. The investigating officer got the vehicles mechanically examined. Mechanical reports are comprised in Ext.PW-2/A and Ext.PW-2/B. He has also obtained inquest report Ext.PW-5/D, post mortem report Ext.PA and photographs Ext.P-1 to P-7, negatives thereof Ext.P-8 to P-15. Statements of witnesses were recorded under Section 161 Cr.P.C. On completion of investigation, challan was presented against the accused to face trial for the offences punishable under Sections 279, 337, 338, 304-A IPC.

***3.*** Notice of accusation was put to the accused for his having committed offence punishable under Sections 279, 337, 338, 304-A IPC, by the learned trial Court, to which he pleaded not guilty and claimed trial.

***4.*** In order to prove its case, the prosecution examined as many as 5 witnesses. On closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded in which he pleaded innocence. On closure of proceedings under Section 313 Cr.P.C., the accused was given an opportunity to adduce evidence, in, defence, and he examined one witness in defence.

***5.*** On appraisal of the evidence on record, the learned trial Court, returned findings of conviction against the petitioner/revisionist. In appeal, preferred by the revisionist/petitioner before the learned Sessions Judge against the judgment of conviction rendered by the learned trial Court, the learned Sessions Judge dismissed the appeal.

***6.*** The petitioner/revisionist is aggrieved by the judgment of conviction recorded by the learned Courts below. The learned counsel for the petitioner has concertedly and vigorously contended that the findings of conviction recorded by the learned Courts below are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he contends that the findings of conviction be reversed by this Court in the exercise of its appellate jurisdiction and be replaced by findings of acquittal.

***7.*** On the other hand, the learned Additional Advocate General appearing for the respondent-State has with considerable force and vigour contended that the findings of conviction recorded by the learned Courts below are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

***8.*** Learned counsel on either side have been heard at length and entire record has been rummaged with proper care and caution.

***9.*** The counsel for the revisionist, before this Court, would succeed only in the event of his having persuaded this Court that appreciation of the evidence by the learned Courts below being ridden with vice of perversity as well as absurdity or also interference with the impugned judgment, rendered by the learned Sessions Judge, Kullu, would be warranted by this Court in case, it is displayed that both the Courts below have omitted to appreciate the entire evidence on record or had omitted to appreciate the evidence in a wholesome manner.

***10.*** The learned Sessions Judge, while returning findings of conviction against the accused, had relied upon the testimonies of an eye witness, who is also the complainant, as the victim was unfit at the apposite stage to record his statement. The victim of the accident succumbed to the injuries, sustained by him in the accident. Sangnu Lama, the complainant, as well as the eye witness to the occurrence, has unequivocally rendered a vivid ocular account of the fateful accident, which occurred on 29.11.2003. He has communicated in his deposition of the revisionist/accused driving at an excessive speed a bus bearing registration No.HP-34A-2825 near PWD Office, Manali, in the evening, sequelling its collision with a scooter bearing registration No.HP-34A-5234 on which the deceased was atop, resulting in his falling on the road, as also his sustaining injuries from which blood started oozing out. His deposition comprised in his examination-in-chief, has during his ordeal of his cross-examination remained unshred both qua the fact of his presence at the site of occurrence and also qua the account qua the occurrence, as rendered by him in his examination-in-chief. In the face of his deposition, in his examination-in-chief, having remained unshred and unscathed, constitutes it to be a valuable piece of evidence, as also it then enjoys probative sinew and sanctity. Reliance on it, as placed by the learned Sessions Judge, while recording findings of conviction against the accused, was not misplaced. Moreso, when the site plan, comprised in Ext.PW-5/A, marks the fact of the road at the site of accident being 28 feet wide and after application of brakes skid marks of the tyres have been depicted in it to have

traveled up to a distance of 29 feet, too, corroborates the ocular account qua the negligence of the revisionist in sequelling the accident as deposed by complainant Sangnu Lama. Besides when it portrays the factum of the accused-revisionist driving the vehicle at an excessive speed, hence, being negligent, as also his having in wanton disregard of the cannon of his being enjoined to obey the rules of due care and caution, driving it on the inappropriate side of the road, negates the effect, if any, as tenably concluded by the learned Sessions Judge of the deceased, while not possessing a driving licence, hence, his being negligent and the accident being in sequel to his negligence.

***11.*** The learned counsel for the revisionist has emphasized upon the factum of the learned Sessions Judge having dispelled the gravity of or the probative worth of the deposition of DW-1 portraying the factum of deceased being negligent in driving his scooter. However, in the learned Sessions Judge having pronounced upon the inefficacy of the deposition of DW-1, inasmuch, as, his having deposed qua the accident which occurred on 29.11.2002, whereas, the accident occurred, as a matter of fact, on 29.11.2003, is, a weighty and grave reason for dispelling the testimony of DW-1. Consequently, the contention of the learned counsel for the revisionist that the testimony of DW-1 has been untenably discarded, carries no weight or force. Moreso, it appears that he has rendered a concocted and a sham account of the occurrence, inasmuch, as, in case he was an eye-witness to the occurrence as also in case he intended to project the innocence of the accused, he, at the initial stage, rather, ought to have endeavoured to concert to record his statement under Section 161 Cr.P.C. before the Investigating Officer. His having omitted to do so, constrains this Court to conclude that, hence, he was a sham witness, who rendered a prevaricated account of the occurrence, which as tenably done by both the Courts below, was discardable. Hence, there is no merit in this petition, which is accordingly dismissed. The judgments, rendered by the Courts below, are maintained and affirmed. No costs.

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

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

Vs.

Gulsher Mohd. ...Respondent.

Cr.Appeal No.328 of 2008
Reserved on: 06/09/2014.
Date of Decision : 17.09.2014.

**N.D.P.S. Act, 1985-** Section 20- Accused found in possession of 500 grams of charas- however, he was acquitted by Trial Court on the ground that

independent witnesses were not examined and one witness had turned hostile- held, that the testimonies of the police officials corroborated each other and there were no contradictions in their testimonies and in these circumstances, non-examination of independent witness was not material- when the hostile witness had admitted his signature on the seizure memo, his testimony could not be used for doubting the prosecution version- hence, the acquittal by Trial Court was unjustified- accused convicted. (Para-19)

**N.D.P.S. Act, 1985-** Link evidence- there was discrepancy in the weight of the sample as found at the spot and weight of the same as analyzed in the laboratory- held, that when the sample impressions were tallied and were not found broken, the minor discrepancy in the weight of the sample is not sufficient to make the prosecution case suspect. (Para-20)

For the Appellant: Mr.Ramesh Thakur, Asstt.Advocate General.
For the respondent: Mr.Ramakant Sharma, Advocate.

The following judgment of the Court was delivered:

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**Sureshwar Thakur, Judge**

The instant appeal is directed against the judgement of acquittal, rendered on 10.3.2008, by the learned Sessions Judge, Sirmaur District at Nahan, H.P., in Sessions trial No.07-ST/7 of 2005, whereby the respondent/accused has been acquitted for his having committed offence punishable under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein-after referred to as 'NDPS Act').

**2**. The prosecution story, in brief, is that on 21.2.2004, at about 4:00 p.m., Incharge CIA Inspector N.S.Rathour (PW-11), along with HC Mujahir Khan, Constables Shamim Akhtar (PW-1), Hussain Singh (PW-4) and Kamal Khan (PW-9), was present at Miserwala, Tehsil Paonta Sahib in connection with detection of Excise and Narcotics cases when a secret information was received by PW-11 that accused Gulsher Mohammad has been dealing in narcotic drugs illegally at his Sweet Shop and used to sell Charas in small quantity to the customers, which he used to keep in the Sweets counter inside his shop. The reasons of belief comprised in Ext.PW-4/A, reduced into writing and were sent to SDPO, Paonta Sahib through Constable Hussan Singh. Accordingly, a raiding party was formed in which PW-11 had joined Ashish Kumar (PW-2) and Yusuf Ali being independent witnesses, besides the other police officials, named herein-above. The police party accordingly arrived at the Sweet Shop of accused, where the accused was found present in his shop. Thereafter, the accused was informed by PW-11 about the secret information, so received. The option of the accused, to be searched either by a Gazetted Officer or by a Magistrate, too, was recorded, for which the accused agreed to be searched by the Police Officer. The consent memo comprised in Ext.PW-1/A, in that regard, was reduced

into writing. The policemen and independent witnesses also gave their search to the accused and nothing incriminating was recovered from them. Thereafter, the memos were prepared. The search of the shop of the accused was then conducted in presence of the witnesses, on which a polythene packet was recovered from the lower shelf of the sweet counter. On opening the said packet, it was found containing Charas in the shape of sticks. The Charas was weighed and was found to be 500 grams. The police also got it photographed and out of the Charas, so recovered, two samples of 25 grams each were drawn separately, which, along with the bulk part of the Charas, were taken into possession after being duly sealed with seal impression 'T'. The seal, after use, was handed over to witness Yusuf Ali. The recovery memo comprised in Ext.PW-1/F was prepared accordingly. The FSL (NCB) forms were also filled in on the spot. Ruqua comprised in Ext.PW-11/A was sent through Constable Kamal Khan to the Police Station for registration of the case and on the basis of which FIR Ext.PW-8/B was registered. The case property was taken to Police Station, Paonta Sahib and was handed over to SHO along with NCB Form and specimen seal, who re-sealed the parcels with seal impression 'H' and issued certificate comprised in Ext.PW-8/C. The sample Charas was sent to CTL, Kandaghat with specimen seal and NCB Form vide RC No.26/2004. The special report Ext.PW-7/A was also sent to SDPO, Paonta Sahib. The police also prepared the site plan comprised in Ext.PW-11/B. Thereafter, on receipt of Chemical Examiner's report Ext.PW-8/D and on completion of investigation by the police in the matter, the challan was presented in the Court of learned Judicial Magistrate 1st Class, Court No.1, Paonta Sahib, under Section 20 of the NDPS Act, who vide order dated 1.3.2005, committed the case to the Court of learned Sessions Judge, Sirmaur.

**3**. Accused was charged for his having committed offence punishable under Section 18 of the NDPS Act, by the learned trial Court, to which he pleaded not guilty and claimed trial.

**4.** In order to prove its case, the prosecution examined as many as 11 witnesses. On closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded in which he pleaded innocence. On closure of proceedings under Section 313 Cr.P.C., the accused was given an opportunity to adduce evidence, in, defence, and he chose not to adduce any evidence in defence.

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

**6.** The State of H.P. is aggrieved by the judgment of acquittal recorded by the learned trial Court. The learned Assistant Advocate General has concertedly and vigorously contended that the findings of acquittal recorded by the learned trial Court are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross-mis-appreciation of the material on record. Hence, he contends that the findings of acquittal be reversed by this Court in the exercise of its appellate jurisdiction and be replaced by findings of conviction.

**7.** On the other hand, the learned counsel appearing for the respondent-accused has with considerable force and vigour contended that the findings of acquittal recorded by the Court below are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit 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.** The first witness, who, stepped into the witness box to prove the prosecution case, is, Shamim Akhtar (PW-1). He in his deposition has deposed a version which is in square tandem with the genesis of the prosecution version, as referred to herein-above. During his cross-examination, this witness concedes that the shop of accused is on the National Highway which leads from Paonta to Nahan and there is a chowk near the shop and the said national Highway is being used for traffic during the day as well as night time. He feigns ignorance if 4-5 servants were working in the shop of the accused. He denies the fact that NCB Forms were not filled in on the spot and special report was not prepared on the spot nor the same was sent to Dy.S.P. Paonta Sahib. He also denied that he was not associated by Inspector Narbir during the investigation of this case nor any recovery of contraband (Charas) was made in his presence.

**10**. PW-2 (Ashish Kumar) since he, during his examination-in-chief, having not supported the prosecution version, he was declared hostile and was requested by the learned Public Prosecutor to be cross-examined. On his request, having come to be acceded to, he was cross examined by the learned Public Prosecutor but no incriminating material against the accused could be elicited from his cross-examination. In his cross-examination, PW-2 did not remember if copy of Ext.PW-1/F was handed over to the accused and he had signed the same in token of having received the copy. He denies the fact that at the time of search, seizure proceedings and weighment of Charas, photographs were taken by the photographer when the Charas was weiged, however, he deposes that the photographs were taken at Majra Chowki. He concedes to the fact that the seal on parcels was neither affixed in his presence nor it was handed over to some one.

**11**. PW-3 (Rajinder Kumar) deposes that he was associated by the police in the investigation on 21.2.2004 and was called at Missarwala, however, he feigns ignorance that he did not know the name of Shopkeeper. He further deposes that the shop was of halwai. Photographs comprised in Ext.P-1 to P-4 have been deposed to be seen by this witness and were deposed to be the same which were taken at the shop, when weighment of Charas was made. In his cross-examination, he admits that the search, seizure and sealing proceedings were neither made in his presence nor the seal was handed over to any witness in his presence.

**12.** PW-4 (Constable Hussan Singh) has proved the information (grounds of belief) which was reduced to writing and he was directed to take the information to SDPO, Paonta Sahib and he took the information to SDPO, Paonta Sahib, the copy of the same is deposed to be comprised in Ext.PW-4/A. He further deposes that the information was given to SDPO, Paonta Sahib and Ext.PW-4/A bears his endorsement. During his cross-examination, this witness admits that it took one hour to reach Missarwala and he was not aware about the secret information received by the Investigating Officer, however, when grounds of belief were recorded, he was briefed about the information.

**13.** PW-5 (HHC Surat Singh) deposes that on 23.2.2004, HC Raj Kumar, In-charge Malkhana, Paonta Sahib, vide RC No.26/04 handed over him sample of Charas duly sealed in for depositing at CTL, Kandaghat and deposited the sample along with necessary papers the same day and after his return, the receipt was handed over to HC Raj Kumar. During his cross-examination, this witness concedes that neither he was handed over any sample nor he deposited the same at CTL, Kandaghat.

**14.** PW-6 (HC Raj Kumar) deposes that on 23.2.2004, he sent one sample along with specimen seals and FSL Forms to CTL, Kandaghat through HHC Surat Singh, who deposited them the same day and the receipt was handed over to him. He proceeds to depose that the sample and necessary papers were handed over to HHC Surat Singh vide RC No.26/2004. He has also proved the Malkhana Register and Road Certificate Register. During his cross-examination, he deposes that he did not remember the time when the case property was deposited in the malkhana by Inspector Khajana Ram.

**15.** PW-7 (Dy.S.P. BS Thakur) deposes that on 21.2.2004, reasons of belief were received in his office at 5.00 p.m. which are Ext.PW-4/A and bearing his signatures. He further deposes that on 22.2.2004, at about 10:45 a.m., a special report comprised in Ext.PW-7/A was received in his office and the same is deposed be bearing his endorsement. He continues to depose that the special report was received in Dak and reasons of belief were brought by a Constable. During his cross-examination, he denies to the suggestion, put to him, that Ext.PW-4/A was not sent by the Investigating Officer through Constable to him and the same was not received by him.

**16.** PW-8 is Inspector/SHO Khajana Ram, who, in his deposition, has deposed a version, which is in square tandem with the genesis of the prosecution version, as referred to herein-above. During his cross-examination, this witness denied the suggestion, put to him, that the Investigating Officer did not deposit the samples with him nor they were bearing the seal impression 'T'. He denies the suggestion put to him that he did not hand over the case property to HC Raj Kumar for depositing the same in the Malkhana.

**17.** PW-9 is Constable Kamal Khan, who, in his deposition, has deposed a version, which is also in square tandem with the genesis of the prosecution version, as referred to herein-above. During his cross-examination, this witness deposes that PW Ashish Kumar and Yusuf Ali were called by HC Mujahid Khan. After receipt of secret information, it took 15 minutes to record the grounds of belief and the raiding party was formed near the bridge.

**18.** PW-10 (Constable Suresh Kumar) deposes that on 21.2.2004, a rapat was recorded in Roznamcha about the departure of Inspector CIA, along with Mujahid Khan, HC Shamim Akhtar and C.Kamal Khan and C.Hussan Singh. In his cross-examination, he denies the suggestion, put to him, that on 21.2.2004, Mujahid Khan, Shamim Akhtar, Kamal Khan had not gone for patrolling.

**19.** PW-11 is the statement of Inspector Narveer Singh Rathore, who, in his deposition, has deposed a version, which is also in square tandem with the genesis of the prosecution version, as referred to herein-above. During his cross-examination, this witness deposes that a special report was prepared at the Police Station. He denies the suggestion that except special report, no other report was sent to SDPO, however, he stated that the grounds of belief had already been sent by him to the SDPO. He concedes the fact that if the report is not addressed, it cannot be ascertained to whom it was addressed. Ext.PW-4/A was not scribed by him, however, the same is deposed to be dictated by him to the police personnel, present in the team.

**20.** The prosecution witnesses have deposed in tandem and harmony with each other qua each of the links in the chain of circumstances which connect the accused in the commission of alleged offence, hence, consequently when the testimonies of prosecution witnesses are bereft of any inter-se or intra-se contradictions, in sequel, implicit reliance ought to have been placed on the testimonies of the official witnesses by the learned trial Court. In aftermath, when this Court concludes that the testimonies of the official witnesses, while being shorn of any inter-se or intra-se contradictions, hence, rendered their testimonies to be constituting a credible piece of evidence qua the offence alleged against the accused, it was unwarranted and legally insagacious or unwise for the learned trial Court to have emphasized upon the factum of PW-2 having turned hostile and the other witnesses having not come to be examined on behalf of the prosecution. For reiteration, when the testimonies of the official witnesses constituted inspiring as well as a credible piece of evidence qua the offence alleged against the accused, any insistence made by the learned trial Court upon the non-examination of other independent witness was wholly unnecessary. It may have been necessary in case the prosecution evidence was denuded of its efficacy as well as truth given the existence of inter-se or intra-se contradictions in the testimonies of official witnesses, whereas, when it was not, insistence upon the examination of the other independent witness was uncalled for. Moreso, for the selfsame reason of the testimonies of the

official witnesses inspiring confidence rendered insignificant even the factum of one of the independent witnesses PW-2 having turned hostile. Besides, pre-eminently, the reason for so concluding, is grooved in the preponderant factum of his having not denied the existence of his signatures on the memos, obviously then given the fact that he has omitted to depose in his respective testimony that he appended his signatures thereon under compulsion or duress. As a sequel, then he is bound by the recitals recorded therein. As a concomitant then his having reneged from the recitals recorded in the memo is of no consequence, as it comprises oral evidence in derogation to or in detraction to the recorded contents qua search, seizure and recovery comprised in Ext.PW-1/F, which oral evidence in detraction from or in derogation to the scribed contents admitted to be signatured by the aforesaid PW, is barred or interdicted by Section 91 and 92 of the Indian Evidence Act. As a corollary then, it has to be emphatically concluded that his turning hostile is of no consequence and ought not to have prevailed upon the learned trial Court to on the said anvil conclude that the prosecution case is permeated with doubt, more so when a reading of the testimonies of the official witnesses omits to convey existence of any inter-se or intra-se contradictions in their respective testimonies, as such, when theirs testimonies are both credible or inspiring, theirs being ousted from appreciation or theirs being discarded, was unwarranted.

**21.** The ensuing conclusion, which invincibly flows is that the learned trial Court in recording findings of acquittal in favour of the accused on the score, aforesaid, has committed a legal mis-demeanor, inasmuch, as, of having both mis-appraised the probative value of the deposition of the official witnesses as well as not appreciated the import of the non-examination of one independent witness and also the import of the other independent witness (PW-2) having turned hostile, in, a proper legal perspective, in entwinement and in conjunction with the entirety of the prosecution evidence portraying proof of each of the links in the chain of prosecution evidence.

**22.** Another major and preeminent reason, which untenably prevailed upon the learned trial Court to record findings of acquittal in favour of the accused/respondent was of samples of Charas weighing 25 grams each having been drawn up from the bulk, yet, with the report of the Chemical Analyst, comprised in Ext.PW-2/A, divulging the fact of the weight of the samples of Charas, sent to it for analysis, hence, being deficient in weight vis-à-vis its weight at the stage contemporaneous to its extraction from the bulk, at the site of occurrence, constrained it to conclude that, hence, the opinion rendered by the Chemical Analyst, comprised in Ext.PW-8/D was on the stuff / item of contraband, other than recovered at the site of occurrence. Also, then, a conclusion that the consummate link, comprised in the report of the Chemical Analyst existing in Ext.PW-2/B did not forcefully connect the accused/respondent in the commission of the offence, was drawn. However, the said deficiency was minimal as well as negligible, rather it is attributable to desiccation or evaporation. Moreover, when it has been cogently and forcefully displayed by the report of the Chemical Analyst

that the seal impression existing on NCB Form and on the sample parcel on comparison revealed theirs tallying with each other, in sequel, when, hence, the sample parcels, as extracted from the bulk at the site of occurrence, at the apposite stage, remained intact and un-tampered with qua which, too, proof comprised in apposite suggestions, projected to the Investigating Officer, during his cross-examination, has remained un-earthed, prods this Court to conclude that the rendition of opinion by the Chemical Analyst comprised in Ext.PW-2/D, was on the sample of Charas extracted from the bulk at the site of occurrence at the apposite stage. Therefore, this Court is driven to derive a conclusion that the opinion rendered by the Chemical Analyst comprised in Ext.PW-8/D was on the very same parcel, as extracted from the bulk at the apposite stage, at the site of occurrence. As a natural corollary then, the consummate link in the chain of circumstances, remains convincingly established. For the reasons afforded herein-above, the learned trial Court having committed a legal mis-demeneour in not mis-appreciating the material pieces of evidence and as such necessitates interference by this Court. Consequently, the appeal, preferred by the State, is allowed and the judgment, rendered on 10.3.2008, by the learned Sessions Judge, Sirmaur District at Nahan, H.P., is set aside and the accused is convicted for his having committed an offence under Section 20 of the NDPS Act.

**23.** To be heard on quantum of sentence on 26.9.2014, on which date, the convict be produced before this Court.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. & HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.**

Dr. Shikha Sood ...Petitioner.

Vs.

State of H.P. & another ...Respondents.

CWP No. 3025 of 2014 a/w Anr.
Reserved on: 11.09.2014
Decided on: 18.09.2014

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**H.P. Medical Education Service Rules, 1999- Constitution of India, 1950-** Article 226- Petitioners obtained the post graduate degree in the year 1997 and 2005- they completed senior residency/ registrarship in the years 2001 and 2010- petitioners claiming that they are entitled to the selection by promotion from the date of attaining qualification – respondent contended that petitioners are entitled to promotion on the basis of merit-cum-seniority- held, that as per Rule 11 promotion to the post of Assistant Teacher is to be made by selection from those officers who are possessing the post graduate degree and having three years teaching experience- petitioner

should not only be eligible but must fall within zone of consideration to get promotion- further held, that acquisition of the degree does not entitle a person to claim seniority from the day of acquisition of qualification.
(Para-9 to 18)

**Cases referred:**
Union of India & Ors. Vs. B.S. Darjee & Anr., 2011 AIR SCW 6336

R.B. Desai and another Vs. S.K. Khanolker and others, (1999) 7 Supreme Court Cases 54

Dr. Purshotam Kumar Kaundal Vs. State of H.P. and Ors., reported in 2014 AIR SCW 1262

Indian Airlines Ltd. and others Vs. S. Gopalakrishnan, (2001) 2 Supreme Court Cases 362

Shailendra Dania and others Vs. S.P. Dubey and others, (2007) 5 Supreme Court Cases 535

V.K. Naswa Vs. Home Secretary, Union of India and others, (2012) 2 Supreme Court Cases 542

For the petitioner: Mr. Lokender Paul Thakur, 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 & Mr. Kush Sharma, Deputy Advocate Generals.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice.**

The writ petitioners in both the writ petitions have sought the following reliefs amongst others, on the grounds taken in the respective writ petitions:

> "(i) That a writ in the nature of mandamus may be issued directing the respondents to reckon the seniority for promotion to the post of Assistant Professor (Super Specialty) from the date a person acquires the qualification as provided in clause 11 of the HP Medical Education Service Rules, 1999 as amended vide notification dated 28/06/2008.
>
> (ii) That further a writ in the nature of mandamus may be issued directing the respondents to make promotions to the post of Assistant Professor (Super Specialty) by considering the person by maintaining an order from the date of their attaining the essential qualifications meaning

thereby that the person who has attained essential qualification i.e. having a post graduation degree and has attained three years required teaching experience, first he should be considered prior to the persons who have attained this qualification on a later date and by further directing the respondents not to consider the seniority of the person as Medical Officer only for making such promotions."

**2**. The identical question of law, rather, interpretation of Clause 11 of H.P. Medical Education Service Rules, 1999 (hereinafter referred to as "the Rules"), as amended vide notification, dated 28th June, 2008, is involved in both the writ petitions, we deem it proper to dispose of both these writ petitions by this common judgment.

**3.** The writ petitioners in CWP No. 2450 and 3025 of 2014 have completed MBBS in the years 1991 and 1997, came to be appointed in the years 1993 and 1998, have obtained Post Graduate degree in the years 1997 and 2005 in different disciplines, i.e. MD/MS in Obstetrics & Gynaecology and MD in Radio Diagnosis, completed senior residency/ registrarship in the years 2001 and 2010, respectively, and entitled for their selection by promotion to the post of Assistant Professor (Super Specialty) from the date(s) they have attained the essential qualification, i.e. the Post Graduate degree. Further, it is averred that they have also attained three years' teaching experience, which is also required.

**4.** Precisely, the case of the writ petitioners is that they have obtained the Post Graduate degree earlier in point of time, thus, are entitled to selection by promotion to the post of Assistant Professor (Super Specialty) from the said dates and the candidates, who have obtained the Post Graduate degree thereafter, are to be selected/promoted thereafter.

**5.** Respondents No. 1 and 2 have resisted the writ petitions by filing separate replies, but on similar grounds. It is contended that the post of Assistant Professor is a selection post, is to be filled up on merit-cum-seniority basis and not on the basis of seniority alone. The seniority is to be determined as per the Recruitment and Promotion Rules, 1999 (hereinafter referred to as "the R&P Rules") occupying the field. The seniority is not to be determined from the date of obtaining the Post Graduate degree. While making selection by promotion, ACRs of the candidates are to be taken into consideration by the Departmental Promotion Committee read with their assessment and the place in the seniority list. The Rules nowhere provide that an officer, who has obtained the Post Graduate degree at the relevant point of time is to be appointed from that date.

**6.** Respondent No. 3 in CWP No. 2450 of 2014 has resisted the writ petition on the ground that he is senior to the writ petitioner, was appointed on 2nd September, 1992 and is figuring at serial No. 788 in the seniority list of Medical Officers, dated 5th March, 2001, whereas the writ **petitioner is figuring at serial No. 1050.**

**7.** Respondent No. 4 in CWP No. 2450 of 2014 has also resisted the writ petition on the ground that he is senior to the writ petitioner as he was appointed on 28th February, 1991, was regularized on 14th January, 1993 and is figuring at serial No. 266 whereas the writ petitioner is figuring at serial No. 489 in the seniority list of Medical Offices of H.P. Health and Family Welfare Department, as it stood on 1st July, 2008.

**8.** Further, it is contended that the writ petitioner has not challenged the seniority list and now cannot make a claim for change of seniority list and try to unsettle the position, which has been settled long back. It is also contended that the post of Assistant Professor is a selection post, is to be filled up by promotion from amongst the members of H.P. Civil Medical Service (General Wing), having recognized Post Graduate degree and at least three years' teaching experience in the concerned specialty after Post Graduation. The cases of the writ petitioners were not considered by the concerned Authorities for the reason that they were not falling within the zone of consideration for promotion.

**9.** It is apt to reproduce Rule 11 of the Rules, as amended vide notification, dated 28th June, 2008, herein:

> "**Sr. No. 11. -** By appointment (by selection) from amongst the members of H.P. Civil Medical Service (General Wing) having Post Graduate degree and Post Doctoral degree or its equivalent qualifications in the concerned super specialty and possess at least three years teaching experience as Lecturers/ Registrar / Demonstrator / Tutor / Senior Resident / Chief Resident in the concerned specialty after doing Post graduation in the concerned specialty failing which by direct recruitment or on contract basis."

**10**. While going through Rule 11 (supra), it is crystal clear that promotion to the post of Assistant Professor is to be made by selection from those officers, who are possessing Post Graduate degree and having three years' teaching experience. The Rule nowhere mandates that the date of obtaining the Post Graduate degree is the relevant factor for determining the eligibility. The consideration zone is of all those officers as per seniority position read with the fact that they possess Post Graduate degree and three years' teaching experience.

**11**. The Apex Court in a case titled as **Union of India & Ors. Vs. B.S. Darjee & Anr., reported in 2011 AIR SCW 6336,** held that for consideration for promotion, a person must not only be eligible but must fall within zone of consideration. It is apt to reproduce para 7 of the judgment herein:

> "7. We, therefore, find that although the respondent no.1 was eligible for consideration for promotion to the post of Head Constable having completed ten years of

> service as Constable, he could not be considered for promotion in the years 1998, 1999 and 2000 on account of his lower position in the seniority list of Constables and Lance Naiks, who had been rationalized as Constables, were considered for promotion because they had been placed above respondent no.1 in the seniority list. The High Court has by impugned order directed consideration of the respondent No.1 for promotion to the post of Head Constable during the years 1998, 1999 and 2000 because it took the view that not only Lance Naiks but also Constables who have put in ten years' service were eligible to be considered for promotion to the post of Head Constable. The High Court has failed to appreciate that, for consideration for promotion, a Constable must not only be eligible, but also must come within the zone of consideration and as per the circulars dated 21.01.1998, 07.01.1999 and 08.01.2000 (Annexures P5, P6 and P7 to the Special Leave Petition), the respondent No. 1, though eligible, did not come within the zone of consideration for promotion to the post of Head Constable. The High Court was, therefore, not right in issuing a direction in the impugned order to the appellants to consider respondent no.1 for promotion in the post of Head Constable for the years 1998, 1999 and 2000. (We may mention here that the respondent No.1 has been considered, in the meanwhile, and has been promoted as Head Constable in the year 2000)."

**12**. Respondent No. 4 in CWP No. 2450 of 2014 was senior, having both qualifications, was falling in the zone of consideration, was considered for promotion to the post of Assistant Professor by the Departmental Promotion Committee.

**13**. It is not the case of the writ petitioners that the official respondents/Departmental Promotion Committee has taken into consideration those persons, who were not having the requisite qualifications.

**14**. Thus, the argument of the learned counsel for the writ petitioners that the date of obtaining the Post Graduate degree is crucial, is not correct.

**15**. The Rules, which were occupying the field at the relevant point of time and are manning the field, are to be taken into consideration.

**16**. The Apex Court in a case titled as **R.B. Desai and another Vs. S.K. Khanolker and others, reported in (1999) 7 Supreme Court Cases 54,** discussed the issue and held that earlier acquisition of eligibility does not give any such priority to the candidates unless Rules specifically provide the same. It is apt to reproduce paras 9 and 10 of the judgment herein:

> "9. We are unable to agree with this reasoning of the High Court. As noticed above, promotion to the post of AFOs is made from the post of RFOs to the extent of 75% of the vacancies. There is no dispute that both the appellants and the first respondent belong to the cadre of RFOs. The only difference between them being that the appellants were promotees in the said cadre while the first respondent was a direct recruit. It is an accepted principle in service jurisprudence that once persons from difference sources enter a common cadre, their seniority will have to be counted from the date of their continuous officiation in the cadre to which they are appointed. On facts, there is no dispute that the appellants entered the RFO's cadre on a date anterior to that of the first respondent, therefore, in the cadre of RFOs, the appellant are senior to the first respondent. However, to be considered for promotion, the rule required RFOs to acquire the eligibility as provided therein. Therefore, the question for consideration is : can the acquisition of an earlier eligibility give an advantage to the first respondent as against the appellants when an avenue for promotion opens in the cadre of ACFs even though at that point of time the appellants had also acquired the required eligibility? We are of the opinion that if at the time of consideration for promotion the candidates concerned have acquired the eligibility, then unless the rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. The rule under consideration does not give any such priority to the candidates acquiring earlier eligibility and, in our opinion, rightly so. In service law, seniority has its own weightage and unless and until the rules specifically exclude this weightage of seniority, it is not open to the authorities to ignore the same.
>
> 10. The High Court has relief upon the language of Note 1 of the rule to come to the conclusion that the persons with earlier date of eligibility have a weightage over others solely on the basis that the note required the list of eligibility to be maintained on the basis of the date of acquisition of such eligibility, hence eligibility has preference over seniority. Our reading of the said note

> does not persuade us to give any such preference. If the rule did contemplate such advantage, it would have stated so in specific terms. We also do not see any special objective in giving preference to the date of eligibility as against seniority. Eligibility, of course, has a relevant object but date of acquisition of eligibility, when both competing persons have the eligibility at the time of consideration cannot, in our opinion, make any difference."

**17**. The Apex Court in a latest judgment rendered in a case titled as **Dr. Purshotam Kumar Kaundal Vs. State of H.P. and Ors., reported in 2014 AIR SCW 1262,** held that the eligibility criterion only requires a recognized Post Graduate degree and those persons are to be taken into consideration who are possessing the said Post Graduate degree. The Apex Court has nowhere held that the date from which the degree is obtained is the date of determining the eligibility. Had that been the intention of the Legislature, then they would have differently provided the criteria accordingly.

**18**. The Apex Court in the cases titled as **Indian Airlines Ltd. and others Vs. S. Gopalakrishnan, reported in (2001) 2 Supreme Court Cases 362; Shailendra Dania and others Vs. S.P. Dubey and others, reported in (2007) 5 Supreme Court Cases 535;** and **V.K. Naswa Vs. Home Secretary, Union of India and others, reported in (2012) 2 Supreme Court Cases 542,** has laid down the same principle. It is apt to reproduce paras 9, 11, 16 and 18 of the judgment rendered by the Apex Court in **V.K. Naswa's case (supra)** herein:

> "9. In *Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364: AIR 1989 SC 1899,* this Court while dealing with a case like this at hand observed: (SCC p. 374, para 19)
>
> "19. ..... While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. *The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive."*
>
> *(emphasis added)*
>
> 10. .....
>
> 11. Similarly in *Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd., (1999) Supp (1) SCC 323,* this Court held that the court cannot fix a period of limitation, if not fixed by the legislature, as "the courts can admittedly interpret the law and do not make laws".

> The court cannot interpret the statutory provision in such a manner "which would amount to legislation intentionally left over by the legislature".
>
> 12. .....
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> 13. .....
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> 14. .....
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> 15. .....
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> 16. In *State of U.P. v. Jeet S. Bisht, (2007) 6 SCC 586,* this Court held that issuing any such direction may amount to amendment of law which falls exclusively within the domain of the executive/legislature and the court cannot amend the law.
>
> 17. .....
>
> 18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."

**19**. The writ petitioners have not questioned the seniority list, which was published long back and has attained finality. While considering the in-service candidates for promotion on merit-cum-seniority basis against a selection post, those candidates are to be taken into consideration who fall in the zone of consideration as per seniority list read with the requisite qualification.

**20**. Admittedly, private respondent No. 4 was having the requisite qualification and was falling in the zone of consideration. The writ petitioners in both the writ petitions are not falling in the zone of consideration because they are much juniors and can be considered at the time when they will fall in the zone of consideration.

**21**. It is also apt to mention herein that even the writ petitioners have not questioned the seniority list in the writ petitions.

**22**. The writ petitioners have also not questioned Rule 11 of the Rules (supra).

**23**. This Court cannot issue writ of mandamus commanding the respondents to reckon the seniority for promotion to the post of Assistant Professor (Super Specialty) from the date when a candidate acquires qualifications. This is the job and prerogative of the official respondents and not of this Court. This Court has only interpreted the Rules and as per the Rules, as discussed hereinabove, that a candidate, at the time of falling in the zone of consideration, must have Post Graduate degree alongwith three years teaching experience.

**24**. Having said so, both the writ petitions deserve dismissal. Accordingly, both the writ petitions are dismissed alongwith all pending applications, if any. Interim directions, if any, are also vacated.

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**BEFORE HON'BLE MR. JUSTICE SANJAY KAROL, J. & HON'BLE MR. JUSTICE P.S. RANA, J.**

Govind Singh ...Appellant.
Vs.
State of H.P. ...Respondent.

Criminal Appeal No.226 of 2009
Reserved on : 19.8.2014
Date of Decision : 18.09.2014

**N.D.P.S. Act, 1985-** Section 20 (C)- Accused saw the police party and tried to run away – accused was apprehended and was found in possession of 3 kgs of charas- testimonies of the police officials corroborating each other- there was no independent witness at the spot- therefore, prosecution case cannot be doubted due to non-examination of the independent witness- testimonies of the police official cannot be doubted on the ground that they are police officials-conviction upheld. (Para-16)

**Cases referred:**

Govindaraju alias Govinda Vs. State by Srirampuram Police Station and another, (2012) 4 SCC 722

Tika Ram Vs. State of Madhya Pradesh, (2007) 15 SCC 760

Girja Prasad Vs. State of M.P., (2007) 7 SCC 625)

Aher Raja Khima Vs. State of Saurashtra, AIR 1956

Tahir Vs. State (Delhi), (1996) 3 SCC 338,

For the Appellant : Mr. Anoop Chitkara, Advocate.
For the Respondent : Mr. Ashok Chaudhary, Additional Advocate General, Mr. Vikram Thakur & Mr. Puneet Rajta, Deputy Advocates General.

The following judgment of the Court was delivered:

**Sanjay Karol, Judge**

Appellants-convict Govind Singh, hereinafter referred to as the accused, has assailed the judgment dated 27.7.2009/28.7.2009,

passed by Special Judge, Mandi, Himachal Pradesh, in Sessions Trial No.1 of 2009, titled as *State of Himachal Pradesh v. Govind Singh*, whereby he stands convicted of the offence punishable under the provisions of Section 20(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act) and sentenced to undergo imprisonment for a period of ten years and pay fine of Rs.1,00,000/- and in default thereof to further undergo imprisonment for a period of one year.

**2.** It is the case of prosecution that on 25.10.2008, Police Party, headed by Satya Parkash (PW-11), was on patrol duty near Aut, Thallaut and Larji Dam side. Satya Parkash was accompanied by Constable Hari Singh (Pw-1), Duni Chand (not examined) and Constable Inder Dev (PW-7). Police party saw the accused, carrying a bag on his shoulder, coming from Shihli side. Seeing the police party, he became perplexed and tried to flee away. On suspicion, he was apprehended and disclosed his name as Govind Singh. The bag was searched and one polythene packet containing Charas was recovered. By associating police officials present on the spot, contraband substance was weighed and found to be 3 kgs. Satya Parkash (PW-11) drew two samples, each weighing 25 grams, and sealed them with four seal impressions of seal 'N'. Parcels were marked as A-1 and A-2. Bulk parcel was sealed separately with the very same seal impression, bearing six seals. The contraband substance was seized. NCB form (Ex. PW-11/A) was filled up in triplicate. Rukka (Ex. PW-11/B) was sent through Constable Inder Dev (PW-7) to Police Station, Aut, on the basis of which FIR No.148/08, dated 25.10.2008 (Ex.PW-2/A) was recorded by SHO Amar Nath (PW-2). Case file was taken back to the spot. Accused was arrested. Special report (Ex. PW-5/A) was also sent to the concerned Higher Authorities. With the completion of necessary investigation, Satya Parkash handed over the case property to SHO Amar Nath, who resealed the samples as also the bulk parcel with his seal impression 'Y' (four and six seals). Thereafter, case property was entrusted to MHC Dina Nath (PW-6), who deposited the same in the Malkhana and made entry in the Malkhana Register (Ex.PW-6/A). Bhup Singh (PW-3) took one sample for analysis to the Forensic Science Laboratory (FSL), Junga. Report (Ex. PW-9/A) was obtained by the police, which confirmed the contraband substance to be Charas. With the completion of investigation, which 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 NDPS 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 up the following defence:

> "I was working as domestic servant at the house of H.C. Satya Parkash and did not make payment of wages of six

months to me. On demand to make payments of wages, he has implicated me in a false case."

**5.** Based on the testimonies of witnesses and the material on record, trial Court convicted the accused of an offence punishable under the provisions of Section 20(C) of the NDPS Act and sentenced him as aforesaid. Hence, the present appeal by the accused.

**6.** Assailing the judgment, Mr. Anoop Chitkara, learned counsel for the accused, has invited our attention to the testimonies of the prosecution witnesses. According to the learned counsel, prosecution case stands rendered doubtful, on account of following three circumstances: (i) Non-association of independent witnesses by the police party; (ii) sample was not made homogeneous; and (iii) defence of the accused stands probablized.

**7.** Having heard learned counsel for the parties as also perused the record, we are of the considered view that in the instant case testimonies of prosecution witnesses fully inspire confidence. There are neither any contradictions nor any improbabilities, variations, discrepancies, rendering the prosecution case to be doubtful in any manner.

**8.** The fact that police officials were on patrol duty on the relevant date, time and spot stands proved not only by Hari Singh (PW-1), but also Inder Dev (PW-7) and Satya Parkash (PW-11). No independent witness was associated by the police.

**9.** 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.

**10.** 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.

**11.** 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 Vs. State by Srirampuram Police Station and another*, (2012) 4 SCC 722; *Tika Ram Vs. State of Madhya Pradesh*, (2007) 15 SCC 760; *Girja Prasad Vs. State of M.P.*, (2007) 7 SCC 625); and *Aher Raja Khima Vs. State of Saurashtra*, AIR 1956].**

**12.** Apex Court in ***Tahir Vs. 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."

**13.** In view of the aforesaid statement of law, when examined, even with circumspection, the testimonies of police officials present on the spot, who conducted the search and seizure operations, to be inspiring in confidence.

**14.** Satya Parkash (PW-11) has categorically deposed that when police party reached Larji Dam side, they saw the accused who was carrying a bag on his shoulder. Seeing the police party, accused got perplexed and tried to flee away, but however, on suspicion was apprehended. The bag was searched in the presence of Constables Duni Chand (not examined) and Hari Singh (PW-1). From the bag, one polythene

envelope was recovered. It contained Charas in the shape of sticks and balls. The same was weighed with the weights and scale, contained in the IO Kit, and was found to be of 3 kgs. Two samples of 25 grams each were separated and marked as A-1 and A-2. They were sealed with seal impression 'N', four in number. Remaining bulk Charas was put inside the polythene envelope, which was put in the bag, which was sealed with the very same seal impression, bearing six seals. Specimen seal (Ex. PW-1/A) was handed over to Constable Hari Singh (PW-1). NCB form (Ex. PW-11/A) was filled up in triplicate. Contraband substance was seized vide recovery memo (Ex.PW-1/B), which was signed by Constable Hari Singh and Duni Chand. Rukka (Ex. PW-11/B) was taken through Constable Inder Dev, on the basis of which FIR (Ex. PW-2/A) was registered. Accused was served grounds of arrest and was arrested vide Memo (Ex. PW-1/C). This witness also handed over the case property to the SHO. Also, Special Report (Ex. PW-5/A) was sent through Constable Amit Barwal (PW-4) to the Office of Additional Superintendent of Police. In Court, he has identified the bulk sealed parcel (Ex. P-2), envelope/bag (Ex. P-4 & P-5).

**15.** We find that extensive cross-examination of this witness has not rendered his original version to be shaky or uninspiring in confidence in any manner. In fact, his version stands fully corroborated by Hari Singh (PW-1), who has further explained that weights and scales were carried by the I.O. in his Kit. Also, Inder Dev (PW-7) has supported the version of recovery of Charas from the conscious possession of the accused.

**16.** No doubt, these police officials stand extensively cross-examined and an endeavour was made to establish that independent witnesses could have been associated, but then from the unrebutted testimony of Satya Parkash (PW-11), we find that all proceedings took place on the spot, where no independent person was otherwise available. Accused who was trying to flee away, was apprehended and on suspicion his bag was searched. It was a case of chance recovery. Police was carrying I.O. Kit containing all material and as such proceedings were conducted on the spot in the early hours of 25.10.2008. As such, non-association of independent witnesses in the given facts and circumstances, particularly when testimony of police officials, even when examined with circumspection, fully inspires confidence, cannot be said to be fatal. It cannot be said that witnesses have deposed falsely or their credit stands impeached, rendering their testimonies to be unworthy of credence or the witnesses to be unreliable or untrustworthy. Thus, non-association of independent witnesses stands reasonably explained.

**17.** It be also observed that prosecution case stands fully established even by link evidence. Satya Parkash entrusted the case property to SHO Amar Nath (PW-2), who in turn affixed his seal and handed over the same to MHC Dina Nath (PW-6). Conjoint reading of testimonies of these witnesses would only reveal that the case property was received, sealed and safely kept in the Malkhana. That seal 'Y' was affixed by SHO Amar Nath also stands proved on record. Malkhana Register (Ex. PW-6/A) and the Road

Certificate (Ex. PW-3/A) stand proved on record. There is proper entry of the contraband substance and other case property recorded therein. Report of the FSL (Ex.PW-9/A) is also on record, certifying the contraband substance to be Charas. Bhup Singh (PW-3), who took the sample for chemical examination, has also deposed that as long as the sample remained with him, the same remained intact. Case property was also produced in the Court and the seals were found to be intact.

**18.** On the basis of Rukka (Ex. PW-11/B), FIR (Ex.PW-2/A) was registered by SHO Amar Nath. We also find that Satya Parkash sent information of the recovery of the contraband substance to the superior officer, which fact stands proved through the testimony of Amit Barwal (PW-4) and Lachhman Dass (PW-5).

**19.** Case of the prosecution is that Charas was recovered from one polythene packet. It was in the shape of sticks and balls. No doubt, Satya Parkash (PW-11) does state that he made the sample homogeneous, but then it is not the case of prosecution either that Charas was recovered from more than one packet. Samples were drawn from the Charas so recovered, which was in the shape of sticks and balls. Hence, this fact alone would not render the prosecution case to be fatal. Report of the FSL clearly reveals that the sealed sample was opened, weighed and tested. Also there is not much variation in the weight of the sample. In any case, no prejudice can be said to have been caused to the accused.

**20.** Defence taken by the accused cannot be said to have been probablized at all. Satya Parkash categorically denies the suggestion so put to him in this regard. Noticeably, accused has not led any evidence to even prima facie show that he was engaged as a domestic servant in the house of the Investigating Officer. As such, the plea only merits rejection.

**21.** In our 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.

**22.** For all the aforesaid reasons, we find no reason to interfere with the well reasoned 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 MANSOOR AHMAD MIR, C.J. & HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.**

H.P. State Electricity Board Ltd. & Anr. ...Applicants/appellants.

Vs.

Baldev Verma ...Respondent.

CMP(M) No.1097 of 2014.
Decided on: 18.09.2014.

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**Limitation Act, 1963-** Section 5- Writ Petition was decided on 26.12.2012- LPA was filed against the writ after delay of one year, two months and seventy days- the appellant sought condonation of delay on the ground that they had no knowledge regarding the decision of the case- however, no date of the knowledge of the decision was given- held, that the Law of limitation binds everybody and when no satisfactorily reason was given for the condonation of delay, the delay could not be condoned. (Para- 2 to 7)

**Cases referred:**

Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr., AIR 2012 SC 1506

Union of India & Ors. Vs. Nripen Sarma, AIR 2011 SC 1237

Balwant Singh (dead) Vs. Jagdish Singh & Ors., AIR 2010 SC 3043

PERUMON BHAGVATHY DEVASWOM, PERINADU VILLAGE Vs. BHARGAVI AMMA (DEAD) BY LRS & ORS, (2008) AIR SCW 6025

For the Appellants: Mr.Satyen Vaidya, Advocate.
For the Respondent: Mr.Surender Saklani, Advocate.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, C.J. (Oral)**

By the medium of this application, the applicants have sought condonation of delay of 1 year, 2 months and 17 days, which has crept-in, in filing the appeal, on the grounds taken in the memo of application.

**2**. We have gone through the application. The application is vague. The applicants have given reason for not filing the appeal in paragraph 2 of the application and paragraphs No.1, 3 and 4 contain routine averments. It is apt to reproduce paragraph 2 of the application hereunder:

> "2. That it is the respectful submission of the Applicants/Appellants herein that they could not file the L.P.A. within the period of limitation in as much as the Board has not

> received the certified copy of the judgment rather have no knowledge regarding the decision of this case, the knowledge was acquired only on receipt of copy of Execution Petition No.4057 of 2013. Besides, the Applicants/Appellants have to exhaust a long channel to reach as a final conclusion."

**3**. The Writ Petition, i.e. CWP No.4217 of 2011, titled Baldev Verma vs. Himachal Pradesh State Electricity Board Ltd. and anr., came to be decided as far back as on 26th December, 2012. The applicants have not disclosed the date of knowledge i.e. the date of receipt of the copy of the judgment, in the entire application.

**4**. We may refer to the decision of the Apex Court in **Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr., AIR 2012 SC 1506,** wherein it was observed that the law of limitation binds everybody, including the Government Departments and the claim on account of inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies having become available. It is profitable to reproduce paragraphs 12 and 13 of the said decision hereunder:

> "12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.
>
> 13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a

special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

**5**. The Apex Court in **Union of India & Ors. Vs. Nripen Sarma, AIR 2011 SC 1237,** while dismissing the appeal, filed by the Union of India, on the ground of delay, observed in paragraphs No.4, 6 and 7, as under:

"4. We have also gone through the condonation of delay application which was filed in the High Court. In our considered view, the High Court was fully justified in dismissing the appeal on the ground of delay because no sufficient cause was shown for condoning the delay.

Xxxxxxxxx xxxxxxxxxxxx

6. The Union of India ought to have been careful particularly in filing this Civil Appeal because the Division Bench, by the impugned order, has dismissed the appeal before it on the ground of delay. It is a matter of deep anguish and distress that majority of the matters filed by the Union of India are hopelessly barred by limitation and no satisfactory explanations exist for condoning inordinate delay in filing those cases.

7. On consideration of the totality of the facts and circumstances, we are constrained to dismiss this appeal on the ground of delay. However, in the larger interest, we are keeping the question of law open."

**6.** It has also been held by the Apex Court in **Balwant Singh (dead) Vs. Jagdish Singh & Ors., AIR 2010 SC 3043,** that the applications for condonation of delay cannot be allowed as a matter of right and in a routine manner. It is profitable to reproduce paragraph 16 of the said decision hereunder:

"16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of

delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications."

**7.** The Apex Court has laid down similar principles in **PERUMON BHAGVATHY DEVASWOM, PERINADU VILLAGE Vs. BHARGAVI AMMA (DEAD) BY LRS & ORS, (2008) AIR SCW 6025,** which has been referred to in paragraph 15 of its judgment by the Apex Court in Balwant Singh's case (supra).

**8**. Having said so, no case is made out for condonation of delay. Therefore, the application is dismissed. Consequently, the Letters Patent Appeal is dismissed as time barred, alongwith pending CMPs, if any.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Dilbag Singh .....Appellant.

Vs.

Rakesh Kumari and others ...Respondents.

FAO (MVA) No. 31 of 2007.
Judgment reserved on 12.9.2014
Date of decision: 19.09. 2014.

**Motor Vehicle Act, 1988-** Section 166- MACT holding that the owner is liable to satisfy the award to the extent of 70% while insurer was liable to satisfy the award to the extent of 30% on the ground that the registration certificate of the vehicle was transferred in the name of the 'D' and it was not in the name of the owner- held, that the transfer of the vehicle will not absolve the insurance company from its liability- Insurance Company is liable to pay whole of the amount. (Para-15 to 21)

**Cases referred:**

G. Govindan Vs. New India Assurance Company Ltd. and others, AIR 1999 SC 1398

Rikhi Ram and another Vs. Smt. Sukhrania and others, AIR 2003 SC 1446

United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and others, (2006) 4 SCC 404

For the appellant: Mr.Jagdish Thakur, Advocate.
For the respondents: Mr.Rakesh Chandel, Advocate, for respondent No. 1.
Mr. Rajinder Sharma, Advocate, for respondent No. 2.
Mr. B.M. Chauhan, Advocate, for respondent No. 4.
Mr. G.D. Sharma, Advocate, for respondent No. 5.
Nemo for respondents No. 3 and 6.

The following judgment of the Court was delivered:

**Mansoor Ahmad Mir, Chief Justice.**

The claimant has invoked the jurisdiction of this Court, by the medium of this appeal, under Section 173 of the Motor Vehicles Act, hereinafter referred to as "the Act" for short, for setting aside the award dated 30.10.2006, passed by the Motor Accidents Claims Tribunal, Una, H.P, for short "The Tribunal" in MAC Petition No. 34 of 2004 titled Rakesh Kumari versus Jugal Kishore and others, whereby compensation to the tune of Rs.1,08,200/- came to be awarded in favour of the claimant/respondent No. 1 herein, hereinafter referred to as "the impugned award", for short, on the grounds taken in the memo of appeal.

**2.** The Tribunal, after examining the claim petition, held that tanker No. HP-20-5935 and bus No. HP-20-A-2619 have caused the accident in which the claimant-respondent No. 1 herein sustained injuries. The insurer of tanker, i.e., the New India Assurance Co. was saddled with 70% liability and insurer of Bus, i.e. United India Insurance Co. was exonerated from the liability thereby directing Dilbag Singh owner-cum-driver of bus No. HP-20-A-2619 to satisfy the impugned award to the extent of 30%.

**3.** The claimant, owner, driver and insured of the offending tanker, insurer of bus No. HP-20-A-2619 and Balbir Singh owner of bus have not questioned the impugned award on any ground, thus it attained finality so far as it relates to them.

**4.** The only dispute in this appeal is whether the Tribunal has rightly directed the owner-cum-driver of the bus to satisfy the award to the extent of 30%. Thus, I deem it proper not to discuss issues No.1, 4,5 to 10. Accordingly, findings returned on the said issues are upheld.

**5.** In view of the dispute raised in this appeal, issue Nos. 2, 3 and 11 are required to be determined.

**Brief Facts:**

**6.** Rakesh Kumari claimant filed claim petition being victim of a vehicular accident which was caused by the drivers of two offending vehicles, i.e., bus No. HP-20-A-2619 and tanker No.HP-20-5935, by driving the aforesaid vehicles in a rash and negligent manner on 18.5.2004 at village Jalgran in Una Tehsil, District Una, H.P. in which the claimant had sustained injuries. The claimant had claimed compensation to the tune of Rs.5,25,000/-, as per break-ups given in the claim petition.

**7.** The claim petition was contested and resisted by all the respondents and following issues came to be framed by the Tribunal:

(i). Whether petitioner Rakesh Kumar sustained injuries in a motor accident caused by rash and negligent driving of two vehicles (i) bus (No.HP-20-A-2619) and a tanker (No.HP-20-5935), by Dilbag Singh (respondent No.4) and Naranjan Singh (respondent No.2), respectively, on May 18,2004. OPP.

(ii) If the above issue 1 is proved, to what extent did each of the two drivers contribute to the accident. OPP

(iii) Whether the petitioner is entitled to compensation, if so, to what amount and from whom. OPP

(iv) Whether the real owner of the bus in question was Balbir Singh and petition is bad on account of his non-joinder. OPR 2.

(v) Whether the driver of the tanker was not having a valid and effective driving lilcence at the time of accident. OPR 3.

(vi) Whether the tanker in question was insured with respondent No. 3. OPP

(vii) Whether the tanker was being plied in violation of the terms and conditions of the Insurance Policy. OPR 3.

(viii) Whether the petitioner was herself a tortfeasor. if so, to what effect. OPR 5.

(ix) Whether the petition is bad for misjoinder of parties. OPR 5.

(x) Whether the driver of the bus (No. HP-20-A-2619) was not holding a valid and effective driving licence at the time of the accident. OPR 5.

(xi) Whether the bus in question was being driven in violation of the terms and conditions of the insurance policy. OPR 5.

(xii) Relief.

**8.** The claimant has examined Rajinder Puri, C.M.O, Dr. V.K. Raizada, H.C. Rajinder Kumar and claimant herself appeared in the witness-box.

**9.** Dilbag Singh owner of the bus and driver of tanker Niranjan Singh also appeared in the witness-box and got recorded their statements.

**10**. The Tribunal, after scanning the evidence, oral as well as documentary, held that the accident was outcome of rash and negligent driving of both the drivers and issue No. 1 came to be decided in favour of the claimant and against respondents No. 2 and 4.

**11**. The Tribunal, after determining the claim petition held the claimant entitled to Rs.1,08,200/- as compensation which is not in dispute and also held that the tanker was insured and owner has not committed any willful breach. The driver was having a valid and effective driving llicence and directed the insurer of the tanker, i.e., the New India Assurance Company to satisfy the award to the extent of 70%.

**12**. The learned counsel for the insurer stated that the insurance company has satisfied the impugned award to the extent of 70%.

**13**. The Tribunal held that the owner of the bus has committed willful breach and saddled the owner Dilbag Singh with the liability to the extent of 30%.

**14**. The learned counsel for the appellant argued that the Tribunal has fallen in error in holding that the owner has committed willful breach.

**15**. The appellant is admittedly owner of the bus and factum of insurance is not disputed. The only dispute is that the insurance policy was in the name of the registered owner and not in the name of Dilbag Singh, i.e., transferee of the vehicle who has been directed to satisfy the impugned award to the above extent. The Tribunal has fallen in error in deciding the said issue.

**16**. It is apt to reproduce Section 157 of the Act as under:

> **"157. Transfer of certificate of insurance.**
>
> (1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.
>
> [Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

> (2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance."

**17**. While going through the aforesaid provision, one comes to an inescapable conclusion that transfer of a vehicle cannot absolve insurer from third party liability and the insurer has to satisfy the claim.

**18**. My this view is fortified by the Apex Court Judgment in case titled as **G. Govindan Vs. New India Assurance Company Ltd. and others, reported in AIR 1999 SC 1398.** It is apt to reproduce paras-10, 13 & 15 of the aforesaid judgment herein:

> " 10. This Court in the said judgment held that the provisions under the new Act and the old Act are substantially the same in relation to liability in regard to third party. This Court also recognised the view taken in the separate judgment in Kondaiah's case that the transferee-insured could not be said to be a third party qua the vehicle in question. In other words, a victim or the legal representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.
>
> 11. .....
>
> 12. .....
>
> 13. In our opinion that both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of the conflicting decisions on this aspect among the various High Courts.
>
> 14. .....
>
> 15. As between the two conflicting views of the Full Bench judgments noticed above, we prefer to approve the ratio laid down by the Andhra Pradesh High Court in Kondaiah's case (AIR 1986 Andh Pra 62) as it advances the object of the Legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy. In other words in accord with the well-settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on

the interpretation of relevant sections as it promotes the object of the Legislature in protecting the third party (victim) interest. The ratio laid down in the judgment of Karnataka and Delhi High Courts (AIR 1990 Kant 166 (FB) and AIR 1989 Delhi 88) (FB) (supra) differing from Andhra Pradesh High Court is not the correct one."

**19**. The Apex Court in case titled as **Rikhi Ram and another Vs. Smt. Sukhrania and others, reported in AIR 2003 SC 1446** held that in absence of intimation of transfer to Insurance Company, the liability of Insurance Company does not cease. It is apt to reproduce paras 5, 6 & 7 of the judgment, supra, herein:-

"5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject matter of an insurance can claim the benefit of an insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Ss. 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

7. For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act."

**20**. The Apex Court in latest judgment titled as **United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and others, reported in (2006) 4 SCC 404** has held the same principle. It is apt to reproduce paras- 12 & 13 of the said judgment herein:

"12. In Rikhi Ram v. Sukhrania [(2003) 3 SCC 97 : 2003 SCC (Cri) 735] a Bench of three learned Judges of this Court had occasion to consider Section 103-A of the 1939 Act. This Court reaffirmed the decision in G. Govindan case and added that the liability of an insurer does not cease even if the owner or purchaser fails to give intimation of transfer to the Insurance

Company, as the purpose of the legislation was to protect the rights and interests of the third party.

13. Thus, in our view, the situation in law which arises from the failure of the transferor to notify the insurer of the fact of transfer of ownership of the insured vehicle is no different, whether under Section 103-A of the 1939 Act or under Section 157 of the 1988 Act insofar as the liability towards a third party is concerned. Thus, whether the old Act applies to the facts before us, or the new Act applies, as far as the deceased third party was concerned, the result would not be different. Hence, the contention of the appellant on the second issue must fail, either way, making a decision on the first contention unnecessary, for deciding the second issue. However, it may be necessary to decide which Act applies for deciding the third contention. In our view, it is not the transfer of the vehicle but the accident which furnishes the cause of action for the application before the Tribunal. Undoubtedly, the accident took place after the 1988 Act had come into force. Hence it is the 1988 Act which would govern the situation."

**21**. This Court in **FAO No. 7 of 2007** titled as **Ashok Kumar & another versus Smt. Kamla Devi & others** decided on 05.09.2014, has also laid down the same principles.

**22**. Thus, the issues are decided accordingly and the impugned award is modified. The United India Assurance Company is saddled with 30% liability and is directed to deposit, the amount in the Registry of this Court, within six weeks from today. On deposit, the same be released in favour of the claimant. If the appellant has deposited any amount, the same be released in favour of the appellant through payee's account cheque.

**23**. The impugned award is modified, as indicated above. The appeal is accordingly allowed. Send down the record, forthwith.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Himachal Road Transport Corporation ...Appellant
Vs.
Parveen Kumari and others ...Respondents.

FAO No.369 of 2012
Reserved on : 12.09.2014
Pronounced on: 19.09. 2014.

**Motor Vehicle Act, 1988-** Section 166- Deceased died in the accident- deceased was earning Rs. 16,478/- per month- Tribunal had allowed 30% addition by way of future prospects- he was aged 40 years old- Tribunal had applied the multiplier of 14- held, that there is no infirmity with the award passed by Tribunal. (Para-11)

**Cases referred:**
Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121

Reshma Kumari and others Vs. Madan Mohan and another, 2013 AIR (SCW) 3120

For the Appellant: Mr.Vikrant Thakur, Advocate.
For the Respondents: Mr.Rajesh Mandhotra, Advocate, for respondents No.1 and 2.
Nemo for respondent No.3.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, C.J.**

Appellant-Himachal Road Transport Corporation has thrown challenge to the award, dated 7th March, 2012, passed by Motor Accident Claims Tribunal-III, Kangra, Himachal Pradesh, (hereinafter referred to as the Tribunal), whereby Claim Petition No.158-D/09/2010, titled as Parveen Kumari and Anr. Vs. Himachal Road Transport Corporation and Anr., came to be determined by awarding compensation to the tune of Rs.24,58,032/-, with interest at the rate of 7.5% per annum from the date of filing of the Claim Petition till its realization, in favour of the claimants (respondents No.1 and 2 herein) and the appellant/owner was saddled with the liability, (for short, the impugned award).

**2.** Facts of the case, in brief, are that claimants, being the unfortunate widow and daughter of deceased Jagdeep Malhotra, who became victim of a vehicular accident, caused by Kuldeep Chand, driver, while driving the offending HRTC bus bearing registration No.HP-53-2642, rashly and negligently from Mandi to Pathankot, have filed the claim petition for grant of compensation, as per the break-ups given in the claim petition. The offending bus hit the motor cycle bearing No.HP-39B-0111, at Shahpur, on which the deceased was traveling, who sustained injuries and succumbed to the same. FIR No.51/2009 was registered at Police Station, Shahpur. It was averred that the deceased was serving as Lance Head Constable in Himachal Pradesh Police and was earning Rs.16,478/- per month as salary.

**3.** Respondents resisted the Claim Petition by filing separate replies.

**4.** On the pleadings of the parties, the following issues were framed by the Tribunal:

1. Whether the deceased Jagdeep has died in an accident with the offending vehicle bus bearing registration No. HP-53-2642 as a result of rash and negligent driving by respondent No.2 driver of the offending vehicle on 12-4-2009 at Shahpur, Distt. Kangra, H.P. and thereby the petitioners being dependent of the deceased are entitled for compensation, if so the extent, and liability thereof, as alleged? OPP.

2. Whether the petition is not maintainable, as alleged? OPR

3. Whether the petition is bad for non-joinder of necessary parties, as alleged? OPR

4. Whether the petitioners are estopped by their own act, conduct and acquiescence to file the present petition, as alleged? OPR

5. Relief.

**5**. The claimants have examined five witnesses in all, in support of their claim, while respondents examined three witnesses, including the driver of the offending vehicle who stepped into the witness box as RW-1.

**6.** The Tribunal, after scanning the pleadings and the evidence, held that the driver Kuldeep Chand had driven the offending bus rashly and negligently. I have examined the record. There is ample evidence on the file to the effect that the driver, namely, Kuldeep Chand, had driven the offending Bus rashly and negligently and hit the motor cycle on which the deceased was traveling, as a result of which, the deceased sustained injuries and succumbed to the same. Thus, the findings returned by the Tribunal on issue No.1 are upheld.

**7.** It was for the appellant and the driver to prove how the Claim Petition was not maintainable, failed to do so. Admittedly, the claimants, being the victims of vehicular accident, filed the Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act), and therefore, the same was maintainable. Thus, issue No.2 was rightly decided by the Tribunal.

**8.** The Driver or the owner had to plead and prove that the petition was hit by non-joinder of parties. I wonder why issue No.3 was framed. However, the driver and the owner have not led any evidence to prove this issue. Thus, the findings recorded by the Tribunal on issue No.3 are also upheld.

**9.** The owner and the driver have pleaded that the claimants are caught by law of estoppel, act, conduct and acquiescence. It is not known how such a plea was taken. However, there is no evidence on the file to the effect that how the victims of a vehicular accident can be

restrained from claiming compensation under the Act, which is a social legislation and under which, compensation is to be granted without succumbing to the niceties of law and procedural wrangles and tangles. Having said so, issue No.4 came to be rightly decided by the Tribunal.

**10.** Claimants have examined HHC Rakesh Kumar as PW-2 to prove the salary certificate of the deceased. The Tribunal, after examining the evidence led by the claimants, held that the deceased was earning Rs.16,470/-. The Tribunal also allowed 30% addition by way of future prospects, and after making deductions, keeping in view the dictum of 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) 3120,** held that the claimants have lost source of dependency to the tune of Rs.14,274/- per month.

**11.** The deceased, as per the record and pleadings i.e. paragraph 3 of the Claim Petition, was 40 years of age at the time of the accident and the Tribunal has rightly taken his age as 40 years and has applied multiplier '14', which is just and appropriate in view of Schedule 2 appended with the Act, read with the judgments (supra). The Tribunal has also rightly awarded Rs.10,000/- and Rs.50,000/- under the heads funeral charges and loss of love and affection, respectively, cannot be said to be excessive in any way.

**12**. Having said so, the appeal merits to be dismissed and the same is dismissed accordingly. Consequently, the impugned award is upheld. The Registry is directed to release the award amount 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.**

FAO (MVA) No. 68 of 2007 &
FAO No. 69 of 2007
Date of decision: 19.09. 2014.

**FAO No. 68 of 2007.**

National Insurance Co. Ltd. ...Appellant.
Vs.
Smt. Hima Devi and others ...Respondents.

**FAO No. 69 of 2007.**

Kesari Lal ...Appellant.
Vs.
Smt. Hima Devi and others ...Respondents.

**Motor Vehicle Act, 1988-** Section 166- MACT held that the Insurance Company is liable to satisfy the award- an appeal preferred by the Insurance company- held- the Insurance Company had failed to prove on record that there was a breach of terms and conditions of the policy- Insurance policy covered the driver and, therefore, the Insurance Company is liable to pay the amount of compensation. (Para-10 & 11)

For the appellant: Mr.Ashwani K. Sharma, Advocate in FAO No.68/07 & Ms. Leena Guleria in FAO No.69/07.

For the respondents: Mr.Rajesh Mandhotra, Advocate, for respondent No.1.(both appeals)

Ms. Leena Guleria, Advocate, for respondent No. 2 in FAO No.68/07 and Mr. Ashwani K. ?Sharma, for respondent No. 2 in FAO NO.69/07.

Respondent No. 3 ex parte.

The following judgment of the Court was delivered:

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

The insurer has filed the appeal being FAO No. 68 of 2007, against the award dated 11.1.2006, passed by the learned Motor Accident Claims Tribunal-II Mandi, H.P. in Claim Petition No. 15 of 2001 titled Smt. Hima Devi vs. Sh. Kesari Lal & others, for short "the impugned award", on the ground that the Tribunal has fallen in error in asking the insurer to satisfy the award.

**2.** The owner has filed the appeal being FAO No. 69 of 2007, on the ground that the Tribunal has fallen in error in granting the right of recovery to the insurer.

**3.** The claimant has not questioned the impugned award on any ground, thus the impugned award attained finality, so far as it relates to the claimant.

**4.** The owner/insured has also not questioned the impugned award on any other ground, except saddling the liability and right of recovery.

**Brief facts.**

**5.** It is averred that the deceased was travelling as a labourer in a tractor bearing registration No.HP-31-3175, which met with an accident and so many persons sustained injuries, including deceased, namely, Thakur Singh who succumbed to the injuries. FIR No. 47 of 1999, dated 27.4.1999 came to be registered in police station Karsog. The claimant being mother of the deceased had filed claim petition before the Tribunal for

grant of compensation to the tune of Rs.5 lacs, as per the break-ups given in the claim petition.

**6.** The insurer and insured resisted the claim petition and following issues came to be framed by the Tribunal.

(i) Whether the deceased son of petitioner Hima Devi died in accident took place on 27.4.1999 at about 11 a.m. at village Hiundi when he met with accident of tractor bearing No. HP-31-3175 owned by respondent No. 1 and driven by respondent No.2 in a rash and negligent manner? OPP.

(ii) If Issue No. 1 is proved in affirmative and whether the petitioner is entitled to compensation, if so, to what extent and from whom? OPP.

(iii) Whether the petition is bad for non-joinder and mis-joinder? OPR-1

(iv) Whether the driver of the vehicle, who was driving at the time of accident was not having effective driving licence and the vehicle was being driven in contravention of the insurance policy? OPR-3.

(v) Relief.

**7.** The parties have led evidence.

**8.** The Tribunal, after scanning the evidence held that the claimant is entitled to compensation to the tune of Rs. 2,40,400/- with 7 ½ % interest from the date of filing the claim petition till its realization.

**9**. There is no dispute viz-a-viz issues No. 1 and 3. Thus, the findings returned by the Tribunal on these issues are upheld. Findings on issues No. 2 and 4 are in dispute so far as the same relate to the saddling of the liability and right of recovery.

**10.** The clamant has led evidence that driver, namely Ramesh Chand had driven the tractor aforesaid rashly and negligently and caused the accident which is not in dispute, thus, findings on issue No. 1 are upheld. Respondent No.1-owner has failed to prove that claim petition was bad for mis-joinder and non-joinder of necessary parties. Even otherwise, the mother being victim of a vehicular accident, filed claim petition and was maintainable in terms of police report and in terms of Section 158 (6) of the Motor Vehicles Act,1988. Accordingly findings on issue No. 3 are upheld.

**11.** The compensation granted by the Tribunal cannot be said to be inadequate or excessive in any way. The insurance policy is on the file. The Tractor was insured and risk of the driver was covered. Even otherwise, tractor cannot carry passengers. The Tribunal has rightly scanned the evidence and document Ext. RA at page 45 of the record, which do disclose that risk of third party and driver was covered and risk of labourer

was not covered. Thus, the findings on issues No. 2 and 4 are accordingly upheld.

**12.** Having said so, the impugned award is upheld and the appeal is dismissed. Send down the record, forthwith.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

National Insurance Co. Ltd. .....Appellant.
Vs.
Sh. Jyoti Ram and anr. ...Respondents.

FAOs (MVA) No. 80 of 2007 a/w Ors.
Date of decision: 19.09.2014.

**Motor Vehicle Act, 1988-** Section 140- Appeal against interim award- held, that interim award can be granted on the basis of prima facie case and there is no necessity to go into the merit- the Insurance Company had failed to establish that the interim award was bad and there was no prima facie evidence of the accident- Appeal dismissed. (Para- 2 to 6)

**Cases referred:**
Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More (1991) ACC 306 (SC)
National Insurance Co. Ltd. Vs. Nasib Chand, (2011) 3 ACC page 411

For the appellant: Mr.Sandeep Sharma, Sr. Advocate, with Mr. Ajeet Sharma, Advocate.
For the respondents: Mr.Surinder Saklani, Advocate, for respondents No. 1 to 3.
Mr. T.S. Chauhan, Advocate, for respondent No. 4.

The following judgment of the Court was delivered:

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

These three appeals are outcome of a common interim award dated 2.1.2007, for short "the impugned award" passed by the learned Motor Accident Claims Tribunal Mandi, H.P. , hereinafter referred to as "the Tribunal", for short, in three different claim petitions, in terms of Section 140 of the Motor Vehicles Act, 1988, for short "the Act" on the principle of no fault liability.

**2.** It is beaten law of the land that interim award passed under Section 140 of the Act is appealable but cannot be questioned on flimsy grounds. Section 140 of the Act mandates that the interim award can be granted on the basis of prima facie proof to the effect that the accident is outcome of rash and negligent driving of the driver of a motor vehicle, the vehicle is insured and the victim has sustained permanent disability or has succumbed to the injury.

**3.** The apex Court in a case reported in (**1991) ACC 306** (**SC)** titled **Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More** laid down the guidelines how to grant interim relief/ award, in terms of Section 140 of the Act.

**4.** I, as a Judge of Jammu and Kashmir High Court, while dealing with the case reported in (**2011) 3 ACC page 411** titled **National Insurance Co. Ltd. Vs. Nasib Chand**, laid down the guidelines for grant of interim award. It is apt to reproduce paras 3, 6, 18 & 19 of the said judgment herein.

> "3. The crux of the matter is whether the defence projected and taken by the appellant-insurer in terms of Section 149 of the Act can be pressed into service at the time of determination of application under Section 140 of the Act for grant of interim award on no fault liability. The answer is negative for the following reasons.
>
> 6. Claims under Section 140 of the Act cannot be defeated on the ground that the owner has committed the breach or the insurer has a defence in terms of Section 149 of the Act, which requires determination after leading evidence.
>
> 18. In terms of section 140, 141, 158(6) and 166(4) read with the Rules (supra), the Claims Tribunal is required to satisfy itself while determining the petition under section 140 of the Act in respect of the following points.
>
> i. The accident has arisen out of the use of motor vehicle;
>
> ii. The said accident resulted in death or permanent disablement;
>
> iii. The claim is made against the owner and insurer of the motor vehicle involved in the accident.
>
> 19. The Claims Tribunal after examining the FIR and the disability certificate came to the conclusion that claimant-respondent no.1 has prima facie established all the ingredients which are required for determination of the petition under section 140 of the Act on no fault liability. The appellant-insurer has not denied the factum of insurance. Thus it is admitted that the vehicle was insured at the relevant point of time. The Tribunal has strictly followed the procedure

contained in sections 140 and 141 of the Act read with the Rules (supra)."

**5.** The apex Court in a latest judgment reported in **2012 AIR SCW,** page 10, titled **National Insurance Company Ltd. vs Sinitha and Ors**, has discussed the mandate of Sections 140 and 163-A of the Act and principles of "no fault liability" and held that claimant is not to establish fault or wrongful act, negligent act or fault of the offending vehicle.

**6.** I have gone through the impugned award, which is speaking one, needs no interference.

**7.** Having said so, no interference is required. The appeals are dismissed. Send down the records.

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**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Oriental Insurance Company. ...Appellant

Vs.

Lekh Raj and Ors. ...Respondents**.**

FAO No.58 of 2007
Reserved on: 12.9.2014
Pronounced on: 19.09.2014.

**Motor Vehicle Act, 1988-** Section 166- Deceased died in the motor vehicle accident- no evidence was led to prove that the driver did not have any valid driving license or that the owner had committed any willful breach of terms and conditions of the insurance policy- no evidence was led to prove that the deceased was travelling as a gratuitous passenger- driver did not deny the averments that the deceased was employed as a labourer for loading or unloading luggage- held, that the Insurance Company is liable to indemnify the insured. (Para- 9 and 10)

For the Appellant: Mr.Ashwani K. Sharma, Advocate.

For the Respondents: Mr.Pushpinder Singh, Proxy Counsel, for respondents No.1 and 2.

Nemo for respondent No.3.

Mr.Naveen K. Bhardwaj, Advocate, for respondent No.4.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, C.J.**

Subject matter of this appeal is the award, dated 29th December, 2006, made by the Motor Accident Claims Tribunal, Chamba,

(hereinafter referred to as the Tribunal), in Claim Petition No.71 of 2005, titled Lekh Raj and anr. Vs. Reena Thakur and others, whereby compensation to the tune of Rs.2,66,000/-, with 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 claimants and the insurer was saddled with the liability, (for short, the impugned award).

**2**. The insurer, feeling aggrieved and dissatisfied, has questioned the impugned award on various grounds taken in the memo of appeal.

**Brief facts:**

**3.** Kiran Kumar became victim of the vehicular accident, which was caused by the driver, namely, Pankaj Kumar, while driving the vehicle bearing registration No.HP-48-1277, rashly and negligent on 15th October, 2005 at 8.30 a.m., at Mai-ka-Bag, Chamba Town, sustained injuries and succumbed to the same. The claimants, being the parents of the deceased, sought compensation to the tune of Rs.7.00 lacs as per the break-ups given in the claim petition. It was averred by the claimants that the deceased was a labourer, earning Rs.5,000/- per month by performing the job of loading and unloading, of 24 years of age at the time of accident and they, being dependant on the deceased, lost source of dependency.

**4**. The owner, the driver and the insurer resisted the Claim Petition by filing replies.

**5.** On the pleadings of the parties, the following issues were settled by the Tribunal:

1. Whether on 15.10.2005 at 8.30 AM at Mai-Ka-Bag, Chamba town, Shri Kiran Kumar son of petitioners had died in a vehicular mishap due to rash and negligent driving of respondent No.2 Pankaj Kumar 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 in the present form? OPR

4. Whether the petitioners have no cause of action to file the petition? OPR 1 & 2

5. Whether the petitioners are estopped from filing the petition due to the wrong acts of the deceased as alleged? OPR 1 & 2

6. Whether the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident as alleged? OPR 3

7. Whether the offending vehicle was being plied in contravention of the conditions of the Insurance Policy as alleged? OPR 3

8. Whether the deceased was a gratuitous passenger hence insurance company is not liable to pay any compensation as alleged? OPR 3

9. Relief.

**6.** In order to prove their case, the claimants examined three witnesses, the driver and the owner examined one witness, while the insurer led no evidence.

**7.** The Tribunal after scanning the evidence held that the claimants have proved, by leading oral as well as documentary evidence, that the driver was driving the offending vehicle rashly and negligently and caused the accident, in which deceased Kiran Kumar sustained injuries and succumbed to the same. Thus, the findings returned on issue No.1 are upheld.

**8.** To prove issues No.3, 4 and 5, the respondents have led no evidence. Thus, the Tribunal has rightly decided these issues against the respondents and accordingly, the findings returned by the Tribunal on these issues are upheld.

**9.** Onus to prove issues No.6 and 7 was on the insurer. The insurer has not led any evidence to prove that the driver was not having a valid driving licence. The insurer has also failed to lead any evidence to the effect that the owner had committed any willful breach and the vehicle was being driven in violation of the route permit or the terms contained in the insurance policy. Thus, the Tribunal has rightly decided Issues No.6 and 7 against the insurer.

**10**. As far as issue No.8 is concerned, the insurer had to prove that the deceased was traveling in the offending vehicle as gratuitous passenger, had not led any evidence to that effect. The claimants have specifically averred in paragraphs 10 and 24 of the Claim Petition that the deceased was engaged by the owner and the driver as a labourer for loading and unloading the goods. The driver and the owner have not denied the said factum. The insurer has not denied the averments contained in paragraph 24 of the Claim Petition specifically. However, in reply to the averments contained in paragraph 10, it was pleaded that the deceased was traveling in the offending vehicle as gratuitous passenger, but failed to prove the same.

**11.** The insurer in the memo of appeal has taken a U-turn by pleading that the deceased was himself responsible for causing the accident, was a tortfeasor and the accident was the outcome of his misadventure in trying the hands on the wheels without any knowledge of driving a vehicle, which plea was never taken by the insurer before the Tribunal. Thus, the ground taken in the appeal is an afterthought.

Therefore, the findings returned by the Tribunal are liable to be upheld and the same are upheld.

**12**. So far as issue No.2 is concerned, the Tribunal, after making guess work, assessed the monthly income of the deceased at Rs.2,000/- and after deducting 50% towards his personal expenses, held that the claimants lost source of dependency to the tune of Rs.1,000/- per month. The Tribunal has rightly made the assessment. Thus, the findings returned by the Tribunal are also upheld.

**13**. Having said so, the appeal merits to be dismissed, the same is dismissed accordingly and the impugned award is upheld. The Registry is directed to release the award amount 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.**

Oriental Insurance Company .....Appellant
Vs.
Smt. Veena Devi & others ...Respondents

FAO (MVA) No. 273 of 2011 a/w Ors.
Reserved on : 12.09.2014
Decided on : 19.09.2014

**Motor Vehicle Act, 1988-** Sections 149 and 166- Insurance Company pleading that Tempo Trax was not a passenger vehicle but it was a private vehicle and it did not cover the risk to the passengers- the claimants pleaded that they were travelling in the vehicle as passengers - route permit showed that the vehicle was not a passenger vehicle and it had no permission to carry the passengers- Insurance policy also disclose that vehicle was meant for a private and not the passenger-held that the insured had committed breach of terms and conditions of the policy and the insurance company is not liable to pay the amount. (Para- 15 to 17)

**Cases referred:**

New India Assurance Co. Ltd., Vs. Annakutty and others, AIR 1993 Kerala 299

Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy & others, AIR 2003 SC 1009

M/s National Insurance Co. Ltd. Vs. Baljit Kaur and others, AIR 2004 SC 1340

Manager, National Insurance Co. Ltd. Vs. Saju P. Paul and another 2013 AIR SCW 609

National Insurance Co. Ltd. Vs. Swaroopa & others, 2006 AIR SCW 3227

New India Assurance Co. Ltd. Vs. Vedwati & others 2007, AIR SCW 1505

Dulcina Fernandes and others Vs. Joaquim Xavier Cruz and another, (2013) 10 Supreme Court Cases 646

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

| | |
|---|---|
| For the appellant : | Mr. G.C. Gupta, Senior Advocate with Ms. Meera Devi, Advocate. |
| For the respondents: | Mr. Rajiv Rai, Advocate, for respondent No. 1. |
| | Mr. Jagdish Thakur, Advocate, for respondents No. 2 & 3. |

The following judgment of the Court was delivered:

***Mansoor Ahmad Mir, Chief Justice.***

All these appeals are outcome of a motor vehicular accident, involving vehicle-Tempo Trax bearing registration No.HP-33/T-9832, thus I deem it proper to club all these appeals and determine by this common judgment.

**Brief facts:**

**2**. Smt. Veena Devi and Smt. Sita Devi, while traveling in Tempo Trax, bearing registration No. HP-33/T-9832, as passengers, met with an accident, which was caused by driver, namely, Shri Sanjeev Kumar, while driving the said vehicle, rashly and negligently, on 22nd October, 2006, at 7.30 a.m., at Tihri in Kot-Dhar, Police Station Talai, District Bilaspur, H.P.; sustained injuries; shifted to Community Health Centre, Barsar, District Hamirpur, H.P.; referred to Indira Gandhi Medical College and Associated Hospital, Shimla and remained admitted there from 22nd October, 2006 to 18th November, 2006.

**3**. Smt. Veena Devi filed MAC Petition No. 68 of 2007, titled as Veena Devi Vs. Shri Rajesh Kumar & others, for grant of compensation to the tune of Rs.5,00,000/, before the Motor Accident Claims Tribunal, Bilaspur, District Bilaspur, hereinafter referred to as "the Tribunal", as per the break-ups given in the claim petition. The Tribunal, after scanning the evidence, oral as well as documentary, awarded compensation to the tune of Rs.4,91,500/- with interest at the rate of 7.5% per annum in favour of the claimant and against the owner-insured, namely, Rajesh Kumar and the driver, however, the insurer-Oriental Insurance Company was directed to

satisfy the awarded amount, at the first instance, with right of recovery, hereinafter referred to as "impugned award-I".

**4**. Smt. Sita Devi filed MAC Petition No. 69 of 2007 before the Tribunal for grant of compensation to the tune of Rs.5,00,000/-; the Tribunal awarded compensation to the tune of Rs.3,25,670/- with interest at the rate of 7.5% per annum in favour of the claimant and saddled the owner and driver with liability, however, the insurer-Oriental Insurance Company was directed to satisfy the awarded amount, at the first instance, with right of recovery, hereinafter referred to as "impugned award-II".

**5**. The respondents resisted the claim petitions on the grounds taken in the respective memo of objections.

**6.** The Tribunal, on the pleadings of the parties, framed common issues in both the petitions. It is apt to reproduce the issues framed in MAC Petition No. 68 of 2007:

> *1. Whether the petitioner had sustained injuries on account of rash and negligent driving of Jeep (Tempo Trax No. HP-33-T-9832 being driven by Shri Sanjiv Kumar, respondent no. 2 on 22.10.2006 at about 7.30 p.m., near Tihri in Kot Dhar, District Bilaspur, H.P.? ….OPP*
>
> *2. If issue No. 1 supra is proved in affirmative, to what amount of compensation the petitioner is entitled to and from whom? ….OPP*
>
> *3. Whether the vehicle in question was being driven by an unauthorized person who had no valid and effective driving licence to drive such class of vehicle, at the relevant time? …OPR-3*
>
> *4. Whether the petitioner was traveling in the offending vehicle as gratuitous passenger at the relevant time which is in contravention of the terms and conditions of the insurance policy? …OPR-3*
>
> *5. Whether the offending vehicle was driven without proper documents, at the relevant time? …OPR-3*
>
> *6. Relief."*

**7**. The insurer-Oriental Insurance Company has questioned both the impugned awards, by the medium of FAOs No. 273 of 2011 and 274 of 2011, on the ground that the Tribunal has fallen in error in saddling it with liability as the owner-insured has committed willful breach of the terms and conditions of the Insurance Policy read with the mandate of Section 149 of the Motor Vehicles Act, 1988, hereinafter referred to as "the Act".

**8**. The owner-insured and the driver have also questioned both the impugned awards, by the medium of FAOs No. 302 of 2011 and 307 of 2011, on the ground that the insurer-Insurance Company was required to

prove the contents of the Insurance Policy and to plead and prove how the owner-insured has committed willful breach, which it failed to do so.

**9.** Claimant Veena Devi has not questioned impugned award-I, on any count, thus it has attained finality so far as it relates to her.

**10.** In FAO No. 357 of 2011, claimant Sita Devi has questioned impugned award-II, on the ground of adequacy of compensation.

**Issue No. 1.**

**11**. The factum of rash and negligent driving by the driver, occurrence of the accident and sustaining injuries by the injured-claimants are not in dispute. Thus, the findings returned by the Tribunal on this issue in both the petitions are upheld.

**Issue No. 3.**

**12**. The insurer has not led any evidence to prove that the offending vehicle was being driven by a person who was not authorized to do so. There is ample evidence on record to the effect that the driver was having a valid and effective driving licence to drive the offending vehicle. Thus, the findings returned by the Tribunal on this issue in both the petitions are also upheld.

**Issue No. 5.**

**13**. The insurer has also failed to prove that the offending vehicle was being driven without proper documents. Thus, the findings returned by the Tribunal on this issue in both the petitions are also upheld.

**Issues No. 2 & 4.**

**14**. Now coming to issues No. 2 & 4, which are inter-linked, the insurer-Insurance Company has specifically pleaded in its reply that Tempo Trax was not a passenger vehicle, but it was a private vehicle and was insured as per the terms and conditions contained in the Route Permit, Ext. RW-2/B read with the Act. The Insurance Policy is not covering the risk of the passengers.

**15**. The claimants in the claim petitions have pleaded that they were traveling in the offending vehicle as passengers. While going though the Route Permit, Ext. RW-2/B and the other documents on the record, one comes to an inescapable conclusion that the offending vehicle was not a passenger vehicle and no permission was granted to carry passengers.

**16**. The learned Counsel for the owner-insured and the driver failed to indicate or prove that the offending vehicle was a passenger vehicle and was having insurance policy or route permit as passenger vehicle.

**17**. Copy of Insurance Policy, Ext. R-X is on the files, which do disclose that the vehicle in question was meant for private persons and not for the passengers.

**18**. The definition of word "passenger" is given in ***Black's Law Dictionary*** as under:-

> "In general, a person who gives compensation to another for transportation. Shapiro v. Bookspan, 155 Cal.App. 2d, 353, 318, P.2d 123, 126. The word passenger has however various meanings, depending upon the circumstances under which and the context in which the word is used; sometimes it is construed in a restricted legal sense as referring to one who is being carried by another for hire; on other occasions, the word is interpreted as meaning any occupant of a vehicle other than the person operating it. American Mercury Ins. Co. v. Bifulco, 74 N.J. Super, 191, 181 A.2d, 20, 22.
>
> The essential elements of "passenger" as opposed to "guest" under guest statute are that driver must receive some benefit sufficiently real, tangible, and substantial to serve as the inducing cause of the transportation so as to completely overshadow mere hospitality or friendship; it may be easier to find compensation where the trip has commercial or business flavor. Friedhoff v. Engberg, 82 S.D. 522, 149 N.W. 2d 759, 761, 762, 763.
>
> A person whom a common carrier has contracted to carry from one place to another, and has, in the course of the performance of that contract, received under his care either upon the means of conveyance, or at the point of departure of that means of conveyance."

**19**. In the ***New Oxford Dictionary,*** the word "passenger" is defined as under:

> "A traveller on a public or private conveyance other than the driver, pilot or crew.
>
> • A member of a team or group who does far less effective work than the other members."

**20**. In ***Webster"s Enclyclopedic Unabridged Dictionary,*** the definition of ward "passenger" is given as under:

> "1.a person who is traveling in an automobile, bus, train, airplane, or other conveyance, esp. one who is not the driver, pilot, or the like.
>
> 2. a wayfarer, traveler."

**21**. The Kerala High Court in a case titled as **New India Assurance Co. Ltd., Vs. Annakutty and others, AIR 1993 Kerala 299,**

has defined the "word" passenger. It is apt to reproduce paras-13 & 14 of the judgment *(supra*) herein:-

> "13. We are of the view that the import of the word 'passenger', occurring in S. 95(2) of the Motor Vehicles Act, has been unduly qualified or cut down and the wider meaning applicable to the said word in common parlance or found in the dictionaries has not been given effect to in the said decision. In the Concise Oxford Dictionary 1990 Edition at page 869, the meaning of the word 'passenger' is stated thus:
>
> > "a traveller in or on a public or private conveyance other than the driver, pilot, crew etc."
> >
> > For the word 'traveller', the meaning is given thus, at page 1300:
> >
> > "A person who travels or is traveling"
> >
> > The meaning of the word 'travel' is given thus at page 1300:
> >
> > "Go from one place to another, make a journey, esp. of some length or abroad."
>
> It is a matter of common knowledge that all passenger vehicles carry persons even beyond the seating or standing capacity allowed by the Rules for the particular vehicle. Such persons do travel in the bus; they perform journey from place to place. Can this common import and understanding of the word be ignored, by giving an unduly restricted meaning to the word 'passenger' as a person who is provided with seating accommodation or whose travel is permitted by standing capacity, permitted for the vehicles under the Rules? In our considered view, the import of the word 'passenger' cannot be restricted by reference to the Motor Vehicles Rules, by which the seating accommodation is provided or standing in the vehicle is specifically permitted. The dictionary meaning is of wide import and we can look into the dictionary meaning of the term, in the absence of any definition in the Act for understanding the meaning to be given to a particular word Commissioner of Income-tax v. Benoy Kumar Sahas Roy, AIR 1957 SC 768 at 772 para 10. It is a salutary principle of statutory construction that in construting the words in a section, the first task is to give the words therein their plain and ordinary meaning and then to see whether the context or some principle of construction requires that some qualified meaning should be placed on those words. Gardiner v. Admiralty Commissioner, 1964 (2) All ER 93 at 97 (HL). The import of words cannot be cut down by arbitrary addition or retrenchment in language. With great respect to the learned Judge, who rendered the decision in Subramani's case (1990 (1) ACJ 37) and National Insurance Co.'s case 1990(2) ACJ 821,

we are unable to hold that the word 'passenger' occurring in S. 95(2) of the Motor Vehicles Act, should be limited to the case of a person who travels in the vehicle either by remaining seated in the seating accommodation provided or by standing in vehicles where travel by standing is specially permitted. We are of the view that any person who performs the journey in the bus will be passenger. He will continue to be a passenger even at the time of alighting from the bus, if his physical contact with the bus still remains. We are of the view that the ordinary connotation of the word 'passenger' cannot be restricted or limited to only those persons who travel in the vehicle either by remaining seated in the seating accommodation provided or by standing in vehicles where travel by standing is specially permitted. We concur with the view stated in Venkataswami Motor Service's case 1989 (1) ACJ 371 ; (1989 All LJ 868) para 20.

14. In Pandit Ram Saroop's case 1988 ACJ 500, as a learned single Judge of the Delhi High Court was faced with a different situation. There, a person boarded the bus at 'G' stop and the destination point was 'O'. The bus did not stop at the point 'O'. If it had stopped there, the person could have got down. What happened was, the bus went ahead without stopping at the point 'O" preventing the person from getting down at the point of destination. The bus went much ahead and when the person was trying to get down, the bus started and its rear wheels ran over him and killed him. The learned single Judge held that the character of the deceased as a passenger came to an end at the bus stop 'O', for which destination he had obtained the ticket. We are of the view that though this decision held that the deceased was not a passenger at the time of the accident, by a different reasoning, it cannot be said that the deceased was not performing a journey at the time when he was trying to get down from the bus and met with the accident. In the light of our reasoning that the word 'passenger' should be given the wide meaning so long as the person is performing the journey, with great respect to the learned Judge, we are unable to accept the decision in Pandit Ram Saroop's case 1988 ACJ 500 as laying down the correct law."

**22**. The claimants have admitted that they were traveling in the offending vehicle as passengers and not as labourers or owners of goods. The owner-insured has not denied the said fact.

**23**. The Apex Court in a case titled as **Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy & others,** reported in **AIR 2003 SC 1009** has held that if the passenger is traveling in the goods vehicle and the said vehicle meets with an accident, the insurer is not liable. It is apt to reproduce para-11 of the judgment (supra), herein:

> "11. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

**24**. The same principle was laid down by the Apex Court in a case titled as **M/s National Insurance Co. Ltd. Vs. Baljit Kaur and others**, reported in **AIR 2004 SC 1340.** It is apt to reproduce paras 7 & 20 of the aforesaid judgment, herein:-

> "7. In the case of New India Assurance Co. Ltd. v. Asha Rani (supra), it was held that the previous decision in Satpal Singh case, was incorrectly rendered, and that the words "any person" as used in S. 147 of the Motor Vehicles Act, 1988, would not include passengers in the goods vehicle, but would rather be confined to the legislative intent to provide for third party risk. The question in the subsequent judgment in Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy (supra), involved, as in the present case, the liability of the Insurance Company in the event of death caused to a gratuitous passenger travelling in a goods vehicle. The Court held that the Tribunal and the High Court were not justified in placing reliance upon Satpal Singh case (supra), in view of its reversal by Asha Rani (supra), and that, accordingly, the insurer would not be liable to pay compensation to the family of the victim who was travelling in a goods vehicle.
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> 20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in S. 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for

the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."

**25**. The Apex Court in a case titled as **Manager, National Insurance Co. Ltd. Vs. Saju P. Paul and another** reported in **2013 AIR SCW 609** in para 16 has held as under:-

> "In the present case, Section 147 as originally existed in 1988 Act is applicable and, accordingly, the judgment of this Court in Asha Rani (supra) is fully attracted. The High Court was clearly in error in reviewing its judgment and order delivered on 09.11.2010 in review petition filed by the claimant by applying Section 147(1) (b)(i). The High Court committed grave error in holding that Section 147(1) (b)(i) takes within its fold any liability which may be incurred by the insurer in respect of the death or bodily injury to any person. The High Court also erred in holding that the claimant was travelling in the vehicle in the course of his employment since he was a spare driver in the vehicle although he was not driving the vehicle at the relevant time but he was directed to go to the worksite by his employer. The High Court erroneously assumed that the claimant died in the course of employment and overlooked the fact that the claimant was not in any manner engaged on the vehicle that met with an accident but he was employed as a driver in another vehicle owned by M/s. P.L. Construction Company. The insured (owner of the vehicle) got insurance cover in respect of the subject goods vehicle for driver and cleaner only and not for any other employee. There is no insurance cover for the spare driver in the policy. As a matter of law, the claimant did not cease to be a gratuitous passenger though he claimed that he was a spare driver. The insured had paid premium for one driver and one cleaner and, therefore, second driver or for that purpose 'spare driver' was not covered under the policy."

**26**. The Apex Court in a case titled as **National Insurance Co. Ltd. Vs. Swaroopa & others,** reported in **2006 AIR SCW 3227** has also laid down the same principle. It is apt to reproduce para 4 of the judgment *(supra)* herein:

> "Respondent Nos. 1 to 6 are the legal representatives of the deceased who died in an accident on 28th January, 1996 leading to the filing of a claim petition on 9th July, 1996 under the provisions of the Motor Vehicles Act, 1988. By order dated 20th August, 1998, the Motor Accident Claims Tribunal (for short, "the Tribunal") granted compensation both against the appellant-Insurance Company and the owner of the vehicle,

> Respondent No. 7 herein. The appeal filed in the High Court by the appellant-Insurance Company disputing its liability to pay to the legal representatives of the deceased was dismissed on 27th August, 2002, in view of the law then prevailing as a result of the decision of this Court in New India Assurance Company v. Satpal Singh (2000 (1) SCC 237). The said decision has now been overruled by this Court in New India Assurance Company Limited v. Asha Rani & Ors (2003 (2) SCC 223) wherein it has been held that an Insurance Company will not be liable to pay compensation in respect of a gratuitous passenger being carried in a goods vehicle if the vehicle meets with an accident. In this view, we set aside the impugned judgment of the High Court affirming the order of the Tribunal. The claim petition against the appellant shall stand dismissed. We, however, clarify that the amount of compensation, if any, that may have been paid to Respondent Nos. 1 to 6 shall be recoverable by the Insurance Company from the owner of the vehicle, Respondent No. 7, herein and not from the legal representatives of the deceased."

**27**. In **New India Assurance Co. Ltd. Vs. Vedwati & others** reported in **2007, AIR SCW 1505**, the Apex Court in paras-14 & 15 has held as under:

> "14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.
>
> 15. Our view gets support from a recent decision of a three-Judge Bench of this Court in New India Assurance Company Limited v. Asha Rani and Ors. (2002 (8) Supreme 594] in which it has been held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award."

**28**. Having glance of the aforesaid decisions, the claimants were traveling in the said vehicle as passengers, but route permit was not for carrying passengers. Thus, the Tribunal has rightly held that the owner-insured has committed willful breach.

**29.** Learned Counsel for the owner-insured and the driver argued that it was for the insurer to plead and prove the terms and conditions of the insurance policy by leading evidence. The argument of the learned Counsel is devoid of any force because it is the admitted case of the parties that the offending vehicle was Jeep (Tempo Trax), was not a passenger vehicle and was being driven in breach of the terms and

conditions of the Insurance Policy. The owner-insured cannot plead and say that the insurance policy has not been proved.

**30**. It is a beaten law of land that the procedural rules are not applicable strictly, as held by the Apex Court in a case titled as **Dulcina Fernandes and others Vs. Joaquim Xavier Cruz and another,** reported in **(2013) 10 Supreme Court Cases 646.**

**31**. Having said so, the appeals filed by the owner and the driver, i.e. FAO No. 302/2011 and 307 of 2011, are dismissed.

**32**. The insurer has to satisfy the impugned awards for the reason that the claimants are the third party and the Tribunal has rightly directed the insurer to satisfy the impugned awards with right of recovery.

**33**. Viewed thus, the appeals filed by the Insurance Company, i.e. FAOs No. 273 of 2011 and 274 of 2011 are also dismissed.

**34**. I have gone through the impugned awards. The Tribunal after taking into consideration the claim petitions, pleadings and the evidence on the files, has rightly assessed the compensation, cannot be said to be excessive, in any way, but is just and appropriate. The Tribunal has given the details how the claimants are entitled to awarded amount.

**35**. It is apt to reproduce para-20 of the impugned award-II herein:-

> "20. Hence, as per the details given below, the petitioner is entitled for compensation as under:
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> | | | |
> |---|---|---|
> | i) | Future loss of income | Rs.2,26,800/- |
> | ii) | Attendant Charges | Rs.10,000/- |
> | iii) | Treatment charges | Rs.30,670/- |
> | iv) | Transportation charges | Rs.18,200/- |
> | v) | Pain and sufferings | Rs.40,000/- |
> | | Total: | Rs.3,25,670/- |

**36**. The assessment made by the Tribunal is as per the mandate of law laid down by the Apex Court in case titled as **Sarla Verma (Smt.) and others Vs**. **Delhi Transport Corporation and another**, reported in **AIR 2009 SC 3104** and upheld by a larger Bench of the Apex Court in case titled as **Reshma Kumari & others Vs. Madan Mohan and another,** reported in **2013 AIR (SCW) 3120**.

**37**. Having said so, the appeal filed by the claimant, i.e. FAO No. 357 of 2011 is also dismissed.

**38**. All these appeals merit to be dismissed, are dismissed. The impugned awards are upheld.

**39**. Registry is directed to release the awarded amount in favour of the claimants, strictly as per the terms and conditions contained in the impugned awards.

**40**. Send down the records after placing copy of the judgment on the record.

**********

**BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J.**

Sh. Rajeev Chauhan .....Appellant
Vs.
Shri Hari Chand Bramta & others ...Respondents

FAO (MVA) No. 343 of 2008 a/w Anr.
Decided on : 19.09.2014

**Motor Vehicle Act, 1988-** Section 166- Claimant practicing as an Advocate -he was travelling in a vehicle in which sand was being carried for the construction of his house- claimant had not pleaded in the claim petition that he had hired the vehicle for carrying his sand- Insured had also not pleaded that the vehicle was hired by claimant for transporting the sand- held, that the claimant was travelling in the vehicle as a gratuitous passenger- Insurance company is liable to satisfy the award with the right of recovery. (Para- 23 and 25)

**Cases referred:**

New India Assurance Co. Ltd., Vs. Annakutty and others, AIR 1993 Kerala 299

Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy & others, AIR 2003 SC 1009

M/s National Insurance Co. Ltd. Vs. Baljit Kaur and others, AIR 2004 SC 1340

Manager, National Insurance Co. Ltd. v. Saju P. Paul and another 2013 AIR SCW 609

National Insurance Co. Ltd. Vs. Swaroopa & others, 2006 AIR SCW 3227

New India Assurance Co. Ltd. Vs. Vedwati & others 2007, AIR SCW 1505

For the appellant : Mr. Peeyush Verma, Advocate.
For the respondents: Mr. V.S. Rathore, Advocate, for respondent No. 1.

Respondent No. 2 deleted.
Mr. Suneet Goel, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

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**Mansoor Ahmad Mir, Chief Justice**(oral)

Both these appeals are outcome of a common award, dated 15.03.2008, made by the Motor Accident Claims Tribunal, Shimla (hereinafter referred to as "the Tribunal") in MAC Petition No. 36-S/2 of 2005, titled *Shri Hari Chand Bramta* versus *Shri Rajeev Chauhan & others,* whereby and whereunder compensation to the tune of Rs.2,69,676/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization, came to be awarded in favour of the claimant and against the insurer-National Insurance Company Limited, with right of recovery from the driver and the insured-owner, hereinafter referred to as "impugned award".

**2.** The owner-insured has questioned the impugned award by the medium of FAO No. 343 of 2008, on the ground that the Tribunal has fallen in error in saddling him with liability.

**3**. By the medium of FAO No. 412 of 2008, the insurer-Insurance Company has questioned the impugned award on the ground that the Tribunal has fallen in error in asking it to satisfy the impugned award.

**4.** The claimant has not questioned the impugned award, on any count. Thus, it has attained finality, so far as it relates to him.

**5.** Thus, the only question for determination in these appeals is- whether the Tribunal has rightly directed the insurer-Insurance Company to satisfy the impugned award, at the first instance, with right of recovery.

**Brief facts:**

**6.** Claimant Shri Hari Chand Bramta, who is practicing as an Advocate, has filed the claim petition before the Tribunal for grant of compensation to the tune of Rs.8,00,000/-, as per the breaks-up given in the claim petition. It is pleaded in the claim petition that on 27.04.2004, he was traveling in vehicle-Truck bearing registration No. HP-07-5357; was driven by the driver, namely, Sant Ram, rashly and negligently; was carrying sand for construction of his house; met with an accident, at about 1.30 a.m., at Dharkoti on Kuddu-Chhajpur Road, Tehsil Jubbal, District Shimla, sustained injuries; shifted to Civil Hospital Rohroo; referred to Indira Gandhi Medical College, Shimla and remained admitted there from 27.04.2004 to 11.06.2004.

**7**. The respondents resisted the claim petition on the grounds taken in the memo of objections.

**8.** The Tribunal, on the pleadings of the parties, framed following issues on 17.05.2006:

1. Whether the petitioner while traveling in a truck No. HP-07-5357 on 27.4.2004 suffered injuries when truck met with an accident due to rash and negligent driving by respondent No. 2, as alleged? ….OPP

2. If issue No. 1 is proved, whether petitioner is entitled for compensation, if so, what amount and from whom? ….OPP

3. Whether the petition is not maintainable? …OPR

4. Whether the driver respondent No. 2 at the time of accident was not holding effective and valid driving licence, as alleged? …OPR

5. Whether the vehicle was being plied in violation of statutory documents, as alleged? …OPR-3

6. Whether the petition is collusive between respondents No. 1 & 2? …OPR 1 & 2.

7. Whether the petitioner was a gratuitous passenger in a goods carrier, as alleged?….OPR-3

8. Relief."

**9**. The claimant examined ASI Prem Singh (PW-2), Dr. Kamaljit Singh (PW-3), Shri Amar Singh (PW-4) and Shri Rajinder (PW-5) and Shri Sant Ram (PW-6). Claimant Shri Hari Chand Bramta also appeared in the witness box as PW-1. He placed on record copy of F.I.R. (Ext. PW-1/A), bills of medicines (Ext. PW-1/1 to PW-1/136), prescription slips, (Ext. PW-1/B to PW-1/D), photocopies of treatment (Ext. PW-3/1 to PW-3/39), discharge slip, (Mark-A), and prescription slips (Mark-B to M). The owner also appeared in the witness box as RW-1/1. The insurer has examined Shri S.S. Jasrota as RW-3/1, in support of its defence. Respondents also placed on record copy of R.C. (Ext. RW-1/A), insurance cover note (Ext. RW-1/B), copy of driving licence (Ext. RW-1/C), letters of Insurance Company (Ext. PW-1/D to Ext. PW-2/E), receipt of sand, (Ext. RX), letter dated 13th July, 2004 (Ext. RY) and copy of Insurance Policy (Ext. RW-3/1-A).

**Issue No. 1.**

**10**. The Tribunal, after examining the pleadings and scanning the evidence, held that driver, namely, Sant Ram, has driven the offending vehicle, rashly and negligently, on the fateful day; the claimant who was traveling in the said truck, sustained injuries. The said issue is not in dispute. Accordingly, the findings returned by the Tribunal on this issue are upheld.

**Issues No. 3 & 4**

**11**. Onus to prove these issues was upon the owner-insured, driver and the insured, which they failed to do so. The findings returned by the Tribunal on these issues are also not in dispute. Accordingly, the findings returned by the Tribunal on these issues are upheld.

**Issues No. 2, 5, to 7.**

**12**. Now coming to these issues, which are inter-linked, the claimant in the claim petition has specifically pleaded that he is practicing as an Advocate; was traveling in the offending vehicle in which sand was being carried for construction of his house. In para-10, he has specifically pleaded that he had boarded the offending vehicle for his native place Sansog at Kuddu, Tehsil and District Shimla. The claimant has not pleaded in the claim petition that he had hired the said vehicle for carrying sand. The insurer-Insurance Company has specifically pleaded in its reply that the claimant was travelling in the offending truck as a gratuitous passenger and the risk was not covered. The insured-owner has not pleaded in his reply that the vehicle was hired by the claimant and met with the accident.

**13**. In terms of the Insurance Policy on the file, Ext. RW-3/1-A, the risk of passenger is not covered.

**14.** The definition of word "passenger" is given in ***Black's Law Dictionary*** as under:-

> "In general, a person who gives compensation to another for transportation. Shapiro v. Bookspan, 155 Cal.App. 2d, 353, 318, P.2d 123, 126. The word passenger has however various meanings, depending upon the circumstances under which and the context in which the word is used; sometimes it is construed in a restricted legal sense as referring to one who is being carried by another for hire; on other occasions, the word is interpreted as meaning any occupant of a vehicle other than the person operating it. American Mercury Ins. Co. v. Bifulco, 74 N.J. Super, 191, 181 A.2d, 20, 22.
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> The essential elements of "passenger" as opposed to "guest" under guest statute are that driver must receive some benefit sufficiently real, tangible, and substantial to serve as the inducing cause of the transportation so as to completely overshadow mere hospitality or friendship; it may be easier to find compensation where the trip has commercial or business flavor. Friedhoff v. Engberg, 82 S.D. 522, 149 N.W. 2d 759, 761, 762, 763.
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> A person whom a common carrier has contracted to carry from one place to another, and has, in the course of the performance of that contract, received under his care either

upon the means of conveyance, or at the point of departure of that means of conveyance."

**15**. In the ***New Oxford Dictionary,*** the word "passenger" is defined as under:

"A traveller on a public or private conveyance other than the driver, pilot or crew.

• A member of a team or group who does far less effective work than the other members."

**16**. In ***Webster"s Enclyclopedic Unabridged Dictionary,*** the definition of ward "passenger" is given as under:

"1.a person who is traveling in an automobile, bus, train, airplane, or other conveyance, esp. one who is not the driver, pilot, or the like.

2. a wayfarer, traveler."

**17**. The Kerala High Court in a case titled as **New India Assurance Co. Ltd., Vs. Annakutty and others,** reported in **AIR 1993 Kerala 299,** has defined the "word" passenger. It is apt to reproduce paras-13 & 14 of the judgment *(supra*) herein:-

"13. We are of the view that the import of the word 'passenger', occurring in S. 95(2) of the Motor Vehicles Act, has been unduly qualified or cut down and the wider meaning applicable to the said word in common parlance or found in the dictionaries has not been given effect to in the said decision. In the Concise Oxford Dictionary 1990 Edition at page 869, the meaning of the word 'passenger' is stated thus:

"a traveller in or on a public or private conveyance other than the driver, pilot, crew etc."

For the word 'traveller', the meaning is given thus, at page 1300:

"A person who travels or is traveling"

The meaning of the word 'travel' is given thus at page 1300:

"Go from one place to another, make a journey, esp. of some length or abroad."

It is a matter of common knowledge that all passenger vehicles carry persons even beyond the seating or standing capacity allowed by the Rules for the particular vehicle. Such persons do travel in the bus; they perform journey from place to place. Can this common import and understanding of the word be ignored, by giving an unduly restricted meaning to the word 'passenger' as a person who is provided with seating accommodation or whose travel is permitted by standing capacity, permitted for the vehicles under the Rules? In our

considered view, the import of the word 'passenger' cannot be restricted by reference to the Motor Vehicles Rules, by which the seating accommodation is provided or standing in the vehicle is specifically permitted. The dictionary meaning is of wide import and we can look into the dictionary meaning of the term, in the absence of any definition in the Act for understanding the meaning to be given to a particular word Commissioner of Income-tax v. Benoy Kumar Sahas Roy, AIR 1957 SC 768 at 772 para 10. It is a salutary principle of statutory construction that in construting the words in a section, the first task is to give the words therein their plain and ordinary meaning and then to see whether the context or some principle of construction requires that some qualified meaning should be placed on those words. Gardiner v. Admiralty Commissioner, 1964 (2) All ER 93 at 97 (HL). The import of words cannot be cut down by arbitrary addition or retrenchment in language. With great respect to the learned Judge, who rendered the decision in Subramani's case (1990 (1) ACJ 37) and National Insurance Co.'s case 1990(2) ACJ 821, we are unable to hold that the word 'passenger' occurring in S. 95(2) of the Motor Vehicles Act, should be limited to the case of a person who travels in the vehicle either by remaining seated in the seating accommodation provided or by standing in vehicles where travel by standing is specially permitted. We are of the view that any person who performs the journey in the bus will be passenger. He will continue to be a passenger even at the time of alighting from the bus, if his physical contact with the bus still remains. We are of the view that the ordinary connotation of the word 'passenger' cannot be restricted or limited to only those persons who travel in the vehicle either by remaining seated in the seating accommodation provided or by standing in vehicles where travel by standing is specially permitted. We concur with the view stated in Venkataswami Motor Service's case 1989 (1) ACJ 371 ; (1989 All LJ 868) para 20.

14. In Pandit Ram Saroop's case 1988 ACJ 500, as a learned single Judge of the Delhi High Court was faced with a different situation. There, a person boarded the bus at 'G' stop and the destination point was 'O'. The bus did not stop at the point 'O'. If it had stopped there, the person could have got down. What happened was, the bus went ahead without stopping at the point 'O" preventing the person from getting down at the point of destination. The bus went much ahead and when the person was trying to get down, the bus started and its rear wheels ran over him and killed him. The learned single Judge held that the character of the deceased as a passenger came to an end at the bus stop 'O', for which destination he had obtained the ticket.

> We are of the view that though this decision held that the deceased was not a passenger at the time of the accident, by a different reasoning, it cannot be said that the deceased was not performing a journey at the time when he was trying to get down from the bus and met with the accident. In the light of our reasoning that the word 'passenger' should be given the wide meaning so long as the person is performing the journey, with great respect to the learned Judge, we are unable to accept the decision in Pandit Ram Saroop's case 1988 ACJ 500 as laying down the correct law."

**18**. The Apex Court in a case titled as **Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy & others,** reported in **AIR 2003 SC 1009** has held that if the passenger is traveling in the goods vehicle and the said vehicle meets with an accident, the insurer is not liable. It is apt to reproduce para-11 of the judgment (supra), herein:

> "11. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

**19**. The same principle was laid down by the Apex Court in a case titled as **M/s National Insurance Co. Ltd. Vs. Baljit Kaur and others**, reported in **AIR 2004 SC 1340.** It is apt to reproduce paras 7 & 20 of the aforesaid judgment, herein:-

> "7. In the case of New India Assurance Co. Ltd. v. Asha Rani (supra), it was held that the previous decision in Satpal Singh case, was incorrectly rendered, and that the words "any person" as used in S. 147 of the Motor Vehicles Act, 1988, would not include passengers in the goods vehicle, but would rather be confined to the legislative intent to provide for third party risk. The question in the subsequent judgment in Oriental Insurance Co. Ltd. v. Devireddy Konda Reddy (supra), involved, as in the present case, the liability of the Insurance Company in the event of death caused to a gratuitous passenger travelling in a goods vehicle. The Court held that the Tribunal and the High Court were not justified in placing reliance upon Satpal Singh case (supra), in view of its reversal by Asha Rani (supra), and that, accordingly, the insurer would not be liable to pay compensation to the family of the victim who was travelling in a goods vehicle.
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20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in S. 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."

**20**. The Apex Court in a case titled as **Manager, National Insurance Co. Ltd. v. Saju P. Paul and another** reported in **2013 AIR SCW 609** in para 16 has held as under:-

"In the present case, Section 147 as originally existed in 1988 Act is applicable and, accordingly, the judgment of this Court in Asha Rani (supra) is fully attracted. The High Court was clearly in error in reviewing its judgment and order delivered on 09.11.2010 in review petition filed by the claimant by applying Section 147(1) (b)(i). The High Court committed grave error in holding that Section 147(1) (b)(i) takes within its fold any liability which may be incurred by the insurer in respect of the death or bodily injury to any person. The High Court also erred in holding that the claimant was travelling in the vehicle in the course of his employment since he was a spare driver in the vehicle although he was not driving the vehicle at the relevant time but he was directed to go to the worksite by his employer. The High Court erroneously assumed that the claimant died in the course of employment and overlooked the fact that the claimant was not in any manner engaged on the vehicle that met with an accident but he was employed as a driver in another vehicle owned by M/s. P.L. Construction Company. The insured (owner of the vehicle) got insurance cover in respect of the subject goods vehicle for driver and cleaner only and not for any other employee. There is no insurance cover for the spare driver in the policy. As a matter of law, the claimant did not cease to be a gratuitous

passenger though he claimed that he was a spare driver. The insured had paid premium for one driver and one cleaner and, therefore, second driver or for that purpose 'spare driver' was not covered under the policy."

**21**. The Apex Court in a case titled as **National Insurance Co. Ltd. Vs. Swaroopa & others,** reported in **2006 AIR SCW 3227** has also laid down the same principle. It is apt to reproduce para 4 of the judgment *(supra)* herein:

"Respondent Nos. 1 to 6 are the legal representatives of the deceased who died in an accident on 28th January, 1996 leading to the filing of a claim petition on 9th July, 1996 under the provisions of the Motor Vehicles Act, 1988. By order dated 20th August, 1998, the Motor Accident Claims Tribunal (for short, "the Tribunal") granted compensation both against the appellant-Insurance Company and the owner of the vehicle, Respondent No. 7 herein. The appeal filed in the High Court by the appellant-Insurance Company disputing its liability to pay to the legal representatives of the deceased was dismissed on 27th August, 2002, in view of the law then prevailing as a result of the decision of this Court in New India Assurance Company v. Satpal Singh (2000 (1) SCC 237). The said decision has now been overruled by this Court in New India Assurance Company Limited v. Asha Rani & Ors (2003 (2) SCC 223) wherein it has been held that an Insurance Company will not be liable to pay compensation in respect of a gratuitous passenger being carried in a goods vehicle if the vehicle meets with an accident. In this view, we set aside the impugned judgment of the High Court affirming the order of the Tribunal. The claim petition against the appellant shall stand dismissed. We, however, clarify that the amount of compensation, if any, that may have been paid to Respondent Nos. 1 to 6 shall be recoverable by the Insurance Company from the owner of the vehicle, Respondent No. 7, herein and not from the legal representatives of the deceased."

**22**. In **New India Assurance Co. Ltd. Vs. Vedwati & others** reported in **2007, AIR SCW 1505**, the Apex Court in paras-14 & 15 has held as under:

"14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

15. Our view gets support from a recent decision of a three-Judge Bench of this Court in New India Assurance Company Limited v. Asha Rani and Ors. (2002 (8) Supreme 594] in which it has been held that Satpal Singh's case (supra) was not

> correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award."

**23**. Having glance of the aforesaid decisions, the claimant was travelling in the said vehicle as gratuitous passenger.

**24**. Viewed thus, the Tribunal has rightly held that the claimant was travelling in the offending vehicle as a gratuitous passenger.

**25**. Having said so, the findings returned by the Tribunal on these issues are also upheld and need no inference.

**26**. The insurer has to satisfy the impugned award, at the first instance, for the reason that the claimant is the third party and the Tribunal has rightly directed the insurer to satisfy the impugned award, with right of recovery.

**27**. Viewed thus, both the appeals merit to be dismissed, are dismissed as such. The impugned award is upheld.

**28**. Registry is directed to release the awarded amount in favour of the claimant, strictly as per the terms and conditions contained in the impugned award.

**29**. Send down the records after placing copy of the judgment on the record.

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