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HIMACHAL SERIES

(November, 2014)

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SUBJECT INDEX

'A'

Arbitration and Conciliation Act, 1966- Section 11(6)- Petitioner contended that Chairman of the respondent-Company had not appointed an Arbitrator despite the demand raised by the petitioner- respondent stated that Arbitrator was appointed within stipulated period of 30 days from the date of issuance of the notice – petition had become infructuous – record showed that an Arbitrator was appointed with the approval of the Chairman- merely because order of appointment was signed by Chief Engineer does not mean that Arbitrator was appointed by Chief Engineer- fairness and impartiality of arbitrator cannot be doubted at this stage and the petitioner will be at liberty to resort to the remedy in accordance with law- petition dismissed.

Title: M/s Ahluwalia Contracts (India) Ltd. Vs. HPSEB Limited & Another Page-613

'C'

Code of Civil Procedure, 1908 - Section 10 - One civil suit is pending before Learned Civil Judge, Palampur, District Kangra - another suit is pending before Delhi High Court- third suit has been filed before the High Court – an application for staying the proceeding before the High Court filed- held, that Section 10 is applicable only if the first Court is competent to grant the relief claimed in the second suit- suit filed before the high Court is valued at Rs. 2 crores - Civil Judge, Palampur is not competent to grant the relief claimed in the second suit as his pecuniary jurisdiction is restricted to Rs. 10 lacs- therefore, proceedings before High Court cannot be stayed.

Title: Bahar Murtaza Ali and others Vs. Rohini Wahi alias Roohani Page-639

Code of Civil Procedure, 1908- Order 8 Rule 6(A) - Counter-claim- Counter claim, which is beyond pecuniary jurisdiction of the Court cannot be filed before the Court.

Title: Bahar Murtaza Ali and others Vs. Rohini Wahi alias Roohani Page-639

Code of Criminal Procedure, 1973- Section 438- An FIR was registered against the applicant for the commission of offences punishable under Section 307 of IPC and Section 25 of Arms Act- held, that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- the allegations against the applicant are grave and heinous in nature- it is alleged that applicant attempted to murder the injured- the injured is under medical treatment- investigation is at initial stage- custodial interrogation of the applicant is necessary- hence, bail application rejected.

Title: Rafiq Hussain son of Babu Khan Vs. State of H.P. Page-913

Code of Criminal Procedure, 1973- Section 438- An FIR was registered against the applicant for the commission of offences punishable under Section 307 of IPC and Section 25 of Arms Act- held, that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- the allegations against the applicant are grave and heinous in nature- it is alleged that applicant attempted to murder the injured- the injured is under medical treatment- investigation is at initial stage- custodial interrogation of the applicant is necessary- hence, bail application rejected.

Title: Safi Mohammed son of Babu Khan Vs. State of H.P. Page-921

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 302, 341 and 120 of IPC- held that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State – Applicant is facing grave criminal charges and releasing him on bail will adversely affecting the investigation- hence, bail application dismissed.

Title: Kamal Singh son of Shri Rattan Singh vs. State of H.P. Page-899

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 307, 341, 323, 504 and 506 of IPC- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State–in the present case, investigation is complete- challan has been filed in the Court- therefore, it would not to be appropriate to detain the applicant in custody- hence, the applicant is ordered to be released on bail.

Title: Mohit Kumar son of Shri Dalip Singh Vs. State of H.P. Page-907

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 307, 341, 323, 504 and 506 of IPC- held, that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State – State contended that FIR no. 57 of 2004 and FIR No. 60 of 2004 were registered against the applicant and he should not be released on bail- record showed that applicant was acquitted in both the criminal cases- considering the nature of offence, application is allowed and the applicant is ordered to be released on bail.

Title: Firoj Bhutto @ Happy son of Shri Z.A. Bhutto Vs. State of H.P.
Page- 896

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 307, 341, 323, 504 and 506 read with Section 34 of IPC- held that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State – State contended that FIR no. 47 of 2014 and FIR No. 87 of 2014 had been registered against the applicant and applicant should not be released on bail- record showed that applicant had been acquitted in FIR no. 47 of 2014 and the criminal case was pending against the applicant regarding the FIR no. 87 of 2014- further held that mere pendency of the criminal Case is not sufficient to decline the bail to the accused - considering that applicant had joined the investigation, applicant is ordered to be released on bail.

Title: Farooq Bhutto son of Shri Z.A. Bhutto Vs. State of H.P. Page-893

Code of Criminal Procedure, 1973- Section 439 - An FIR was registered against the accused for the commission of offences punishable under Sections

279, 337, 338, 304-A, 489-B and 489-C read with Section 34 of IPC- applicant is facing trial before the Court- case is listed for recording the statement of the accused under Section 313 Cr.P.C. - held that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- the applicant is facing trial for counterfeit currency notes which is an offence against the society and Nation- the fact that trial is at last stage is not sufficient to release the applicant on bail, however the court can be directed to conduct the trial expeditiously- hence, bail application rejected and trial Court directed to dispose of the case within the period of one month.

Title: Jaskaran Singh son of Shri Swaran Singh Vs. State of H.P.
Page- 910

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 316, 498-A, 325 read with Section 34 of IPC - held, that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- In the present case, investigation has been completed- challan has been filed- therefore, it would not be proper to keep applicant in custody- bail granted.

Title: Susheel Kumar son of Shri Chet Ram Vs. State of H.P. Page-924

Code of Criminal Procedure, 1973- Section 439 - An FIR was registered for the commission of offences punishable under Sections 363, 342, 376D, 323, 201 and 511 IPC and Sections 6 and 17 of the Protection of Children from Sexual Offences Act 2012- the allegations against the applicants are that they had committed gang rape upon two minor prosecutrix- such offences are increasing in the society and should be viewed strictly- mere fact that statements under Section 164 Cr.P.C are contradictory is not sufficient to discard the prosecution case at the stage of bail- considering the gravity of the offence and the impact on society, bail application rejected.

Title: Sachin son of Partap Singh Vs. State of H.P. Page- 916

Code of Criminal Procedure, 1973- Section 482 - An FIR was registered for the commission of offences punishable under Sections 363, 366 A and 120-B of IPC at the instance of Respondent No.4 who was proceeded ex-parte- petitioner No. 1/accused and petitioner No. 2/victim solemnized marriage subsequent to the registration of FIR – a child was born out of wedlock- parties approached the High court for quashing of the FIR- the fact that respondent No. 4 allowed himself to be proceeded ex-parte shows that he has no objection for quashing of the FIR- held, that since the parties had entered in to a compromise – therefore, proceeding with the case would be an exercise in futility – further, in order to preserve the institution of marriage and for maintaining peace between the parties who constitute one family, FIR ordered to be quashed.

Title: Samuel Masih & another Vs. State of Himachal Pradesh & others
Page-693

Code of Criminal Procedure, 1973- Section 482 - An FIR was registered for the commission of offences punishable under Sections 420 and 120B, IPC and 13(2) of the Prevention of Corruption Act – it was alleged that petitioner is not an agriculturist and had obtained an agriculturist certificate fraudulently- petitioner claimed to be a legatee under the Will of one Shri Surjeet Singh-

however, mutation was attested in favour of legal heirs- petitioner filed a civil suit which was decreed- decree is stated to be collusive and not conferring any right upon the petitioner- held, that FIR can only be quashed if it does not disclose any offence or is perverse, fictitious or oppressive- on the death of the testator estate vested in the petitioner- H.P. Land Tenancy and Reforms (Amendment) Act, 1995 will not be retrospective and will not affect the completed transactions- decree merely confirmed the recital of the Will and did not confer any fresh title in favour of the petitioner- consequently, it cannot be said that agriculturist certificate issued in favour of the petitioner was fraudulent- hence, petition allowed and FIR quashed.
Title: Seema Luthra Vs. State of H.P. Page-822

Code of Criminal Procedure, 1973- Section 482- Petitioners sought quashing of FIR registered against them for the commission of offences punishable under Sections 498-A and 406 read with Section 34 of IPC- held, that FIR can only be quashed if the allegations made in the same do not constitute an offence – where the allegations satisfy the ingredients of an offence, such power cannot be exercised- it was asserted in the FIR that the accused had harassed deceased physically and mentally compelling her to commit suicide- she was turned out of home and she started living with her husband who threatened her- she went to her maternal home and she asked her husband to take her to his home but he refused to do so- she was residing separately from 2009 to 2011- complaint was made on 10.4.2014- there was no explanation for delay and magnitude and enormity of the physical and mental cruelty were not specified – therefore, it could not be said that the accused intended to cause injury and the danger to her life limb or health- hence, ingredients of Section 498-A were not satisfied- she stated that she had entrusted her jewellery to the petitioner and when she demanded it back, jewellery was not returned, however, the day on which jewellery was entrusted was not mentioned- allegations were vague and unambiguous- hence, FIR ordered to be quashed.
Title: Naveen Sood & Others Vs. State of Himachal Pradesh & another
Page-688

Constitution of India, 1950- Article 226- An FIR was registered against the petitioner for the commission of offences punishable under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988- Department initiated departmental proceedings against the petitioner- the petitioner approached the Administrative Tribunal which granted the interim stay- subsequently, petitioner was convicted by Special Judge, Kangra at Dharamshala- petitioner was removed from the service after his conviction and departmental enquiry was dropped due to severance of the relations of master and servant- conviction was set aside by Hon'ble Supreme Court of India- petitioner was reinstated and the disciplinary authority was directed to proceed further with departmental inquiry- petitioner contended that departmental inquiry had been closed and, therefore, it was not permissible to continue with the inquiry- held, that department had taken a decision on technical ground after the removal of the petitioner- Departmental inquiry will not continue since the master-servant relationship was severed after the removal of the petitioner- once petitioner has been reinstated, the employer has right to continue the departmental proceedings and it cannot be said that mere acquittal in a criminal case is a ground to drop the departmental proceedings- hence, petition dismissed.
Title: Dr. Rakesh Kapoor Vs. State of H.P. & others. Page-797

Constitution of India, 1950- Article 226- Brother of the petitioner was missing since 30.1.2013- FIR was registered for the commission of offences punishable under Sections 364 and 365 IPC at Police Station Sarkaghat, Distt. Mandi- I.O recorded the statements of 56 witnesses but could not find the brother of the

complainant- held, that police had failed to trace out the brother of the petitioner- investigation should be conducted promptly – therefore, in these circumstances, CBI was directed to carry out the investigation within a period of three months and thereafter to put up the challan before the Court in accordance with law.
Title: Pooja Pathania Vs. State of H.P. & ors. Page-776

Constitution of India, 1950- Article 226- Father of the petitioner died in harness on 25.4.2006- he filed an application for considering his case for appointment on compassionate basis – same was rejected on the ground that case of the petitioner does not meet the financial/income criteria fixed by the Government – held, that while computing income of the petitioner pensionery/retiral benefits should not be taken into consideration and State had wrongly included pensionery/retiral benefits while computing annual income- petition allowed and the respondent directed to consider the case of the applicant by ignoring the family pension/retiral benefits.
Title: Prahalad Mishra Vs. State of Himachal Pradesh and another
Page-746

Constitution of India, 1950- Article 226- Petitioner applied for the post of Demonstrator and was appointed as such on tenure post for a period of three years –tenure period expired on 6.9.2014 – petitioner sought extension and the Head of Department recommended her case for extension for a period of six months – however, petitioner was relieved from the post vide order dated 6.9.2014- State contended that post of the Demonstrator was tenure post for a period of three years- policy has been amended and selection has to be made on the basis of walk in interview- Dr. J.S. Chahal had been appointed as Senior Resident and no post is available- held, that post is a tenure post and petitioner has no right to claim extension, which was filled up as per policy in vogue at the relevant time - new incumbent has also joined- therefore, applicant cannot claim appointment against the post- Writ Petition dismissed.
Title: Saruchi Sharma Vs. State of H.P. and others Page-856

Constitution of India, 1950- Article 226- Petitioner joined as Assistant Engineer on the recommendations made by the H.P. Public Service Commission - the Chief Engineer, Shah Nehar Project, Fatehpur sent a letter to the Superintending Engineer stating that there was no justification for providing any SE (Design) keeping in view the work load - IPH sent a letter to the Government of Himachal Pradesh stating that there was one post of SE Shahnehar Project and the work relating to Design in the Office of Chief Engineer, Shahnehar Project shall be attended to by the incumbent of the post of SE Shahnehar Project – petitioner was promoted to the post of SE (Civil) – Government amended recruitment and promotion rules for the post of Chief Engineer Class-I from 30.8.2008 stating that post of Chief Engineer would be filled up by promotion from amongst the SE (Civil) with minimum 25 years service including three years regular service or regular service combined with continuous ad-hoc service as Superintending Engineer (Civil), out of which 3 years essential service must be as Superintending Engineer (Design) - Petitioner was found ineligible as he had not served for 3 years as Executive/Superintending Engineer- petitioner contended that he was looking after the work of design in Shah Nehar Project, Fatehpur- held, that as per the letter, Superintending Engineer was to look after the work of SE (Design) in addition to his duty- petitioner had approved the design in his capacity as Superintending Engineer- therefore, service rendered by him should have been counted while considering his case for promotion- Writ Petition allowed – respondent No. 1 directed to convene a review DPC to consider the case of the petitioner.
Title: Ravender Kumar Jarhyan Vs. State of H.P. & anr. Page-853

Constitution of India, 1950- Article 226- Petitioner was appointed as Workman on temporary basis for a period of 6 months- his employment came to an end after expiry of 6 months- petitioner moved an application which was considered and he was directed to undergo training for a period of two years- when he was undergoing training, he was withdrawn on which he filed an application before the Labour Court- the order of the Labour Court was questioned before the Writ Court which held that the appellant is not a workman – held, that the appellant was not workman- he had not sought any remedy after his engagement came to an end - he accepted his induction as a trainee- he was not performing any job but was undergoing training as a trainee- therefore, he was rightly held not to be a workman.

Title: Pardeep Kumar Vs. Cipla Ltd. & others Page-851

Constitution of India, 1950- Article 226- Petitioner was serving as Professor in the faculty of Pomolgy, now known as "the Department of Fruit Sciences"- he was selected and appointed as Director of Extension Education for a tenure of five years- he made representation for providing increment to him which was rejected- held, that post of Director of Extension Education carried higher responsibilities- the words "other than a tenure basis" in FR 22(1)(a) will not be applicable when the person is appointed to a post involving assumption of duties and responsibilities of greater importance- therefore, petition allowed and the university directed to grant benefit of the increment in accordance with FR 22(1)(a).

Title: Dr. N.K. Joolka Vs. Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni Page-795

Constitution of India, 1950- Article 226- Petitioner was working as Senior Accountant in the office of the Accountant General – he applied for voluntary retirement on 30.9.2004 by giving three months notice- he was informed that his request for voluntary retirement had been accepted and the process of preparation of pension paper had been initiated- petitioner withdrew the notice for voluntary retirement but he was informed that his request for withdrawal was rejected and he would be treated as voluntarily retired- petitioner filed an application before Central Administrative Tribunal which allowed the application and directed the petitioner to return the retiral benefits received by him - the respondent was directed to treat the petitioner on service- however, the back-wages were not granted to the petitioner- held, that the benefit of back-wages was wrongly denied- when the order of retirement was held to be illegal, employee is entitled to the benefit of back-wages- Petition allowed with the direction to the respondent to pay the back-wages and other benefits to the petitioner.

Title: Om Parkash Murarka Vs. Controller and Auditor General of India and others Page-739

Constitution of India, 1950- Article 226- Petitioners were serving in H.P. T.D.C. – they were superannuated in the year 2006-2010 - H.P.T.D.C. adopted the government pattern regarding the release of retirement or gratuity to the employees- Government issued a notification revising the rate of gratuity payable to the employees- petitioners claimed the revision in the gratuity at par with Government employee- held, that even if, provisions of the of the Payment of Gratuity Act are applicable, employee can claim a higher/better benefit on the basis of the decision of the board of directors- petitioners held entitled to the revised rate of gratuity at par with the government employee.

Title: Sukh Ram Chandel Vs. State of H.P. & others Page-859

Constitution of India, 1950- Article 226- Public Interest Litigation- public interest litigation is not maintainable in service jurisprudence- Writ petitioners

claimed that they have a right of consideration which showed that they had an interest- hence, public interest litigation is not maintainable at their instance.
Title: Pankaj Kumar Vs. State of Himachal Pradesh & others Page-830

Constitution of India, 1950- Article 226- Respondent No. 7 was selected for the post of Aaganbari Worker- petitioner asserted that respondent no. 7 was ineligible as her income was more than Rs. 8,000/- per month specified in the rules-Tehsildar, Mandi had conducted an inquiry in which he found that income of petitioner and respondent No.7 was more than the prescribed limit- consequently, he quashed the income certificate - an appeal was filed before Sub Divisional Collector, Sadar, District Mandi, who accepted the appeal and held the certificate to be in order- further appeals were dismissed- no material was brought on record to show that any legal impropriety was committed or there was non-application of mind- appeal dismissed.
Title: Sita Devi Vs. State of H.P & others Page-637

Constitution of India, 1950- Article 226- Settled seniority cannot be unsettled- when the petitioner had remained in deep slumber and had not taken any action, he is not entitled for any relief.
Title: Khub Chand Verma Vs. The State of Himachal Pradesh & others
Page-687

Constitution of India, 1950- Article 226 - State appointed Gram Vidya Upasak Assistant Teacher and Para teachers- services of gram Vidya Upasak and para teachers were subsequently regularized- Writ Petition was filed by one of the Primary Assistant Teacher and the Court held that appointment of teachers was not made in accordance with rule - State was directed to phase out those teachers in a phased manner- State preferred an appeal and contended that there was deficiency of the teachers due to which it had engaged primary assistant teachers –teachers had undergone the training subsequent to their appointment- held, that teachers were not appointed as a stop-gap arrangement- State had decided to regularize them- teachers were not parties before the Writ Court- teachers were appointed in the public interest to improve Pupil Teacher Ratio- large number of vacancies are still available- therefore, in these circumstances, decision to regularize them cannot be said to be bad.
Title: Pankaj Kumar vs. State of Himachal Pradesh & others Page-830

Constitution of India, 1950- Article 226- State Government amended rule 56 of fundamental rule providing an option to the Government servant to continue in service beyond the age of 58 years till 59 years, subject to fulfillment of certain conditions- matter was placed before the Board of Directors of HIMUDA who declined to give benefit to its employees in accordance with amendment made by the State Government- petitioner, an employee of HIMUDA gave option for extension of service – Board did not give any extension to the petitioner but gave extension to another employee-the petitioner was looking after the projects as Executive Engineer- anther employee was given extension on the ground that he was looking after the construction work of many projects- held, that the petitioner was treated in an unfair manner- petitioner had right to be considered for extension of service- he was discriminated against by denying him the benefit of extension and granting the extension to another employee – Writ Petition allowed and the Board directed to consider the case of the petitioner and extend the service of the petitioner by one year. (Para-6 and 7)
Title: D.K.Tandon Vs. State of H.P. & ors. Page-682

Constitution of India, 1950- Article 226- Writ Court allowed the petition of the petitioner and the respondents were directed to give the benefit of two

increments- petitioner had filed a petition seeking relief that respondents be directed to give benefits of FR 22 (1) (a) (1) and to re-fix his pay with consequential benefits- held, that Writ Court had not granted the relief in accordance with relief prayed by the applicant- hence, order modified.
Title: The State of Himachal Pradesh & others Vs. Shri Kashmir Singh
Page-858

Constitution of India, 1950- Article 226- Writ Petition was disposed of on 6.9.2013 on the assurance made by State with liberty to the petitioner or any other affected person to take recourse to appropriate proceedings, including the revival of the writ petition – petitioner filed a public interest litigation for issuing the direction to the state to complete the construction of Theog-Rohru road and to submit the status report periodically- State contended that the Writ Petition is not maintainable and the petitioner was a minister in the previous government who was opposing the petition- Writ petition was politically motivated- held, that the remedy of public interest litigation should not be misused - the Courts should, prima facie, be satisfied that writ petition is not the outcome of political or extraneous considerations or motivated one- petitioner was an ex-minister and, therefore, Writ petition cannot be treated as public interest litigation on his behalf- however, keeping in view the fact that the projected issue is of great importance and relates to public at large- hence, cognizance take suo motu by High Court by appointing an Amicus Curiae to assist the Court - a Committee constituted to monitor the progress of the work and to submit report periodically.
Title: Devinder Chauhan JaitaVs. State of Himachal Pradesh and others.
Page-709

'H'

Himachal Pradesh Tenancy and Land Reforms Act, 1972- Section 104- Widow has a right during her life time - vestment/conferment of the proprietary rights upon the tenant is automatic after the death of widow- proprietary rights cannot be conferred on the basis of Will.
Title: Sunil Singh vs. State of H.P. & others Page-616

Himachal Pradesh Urban Rent Control Act, 1984- Section 14- Landlord sought eviction of the tenant of the ground of personal bona-fide requirement of the shop- landlord had also instituted a case before Rent Controller-1 on the ground of subletting and personal bona fide requirement for the purposes of building and rebuilding- tenant filed an application for staying the proceedings- application was rejected by Rent Controller- held, that the subject matter in the two proceedings was not same and, therefore, there was no need to stay the proceedings- petition dismissed.
Title: Krishna Devi Vs. Amar Jeet Ahuja and others Page-679

Hindu Marriage Act, 1955- Sections13(1)(i)- & 13(1) (i-a)- Husband filed a divorce petition against the wife on the ground of cruelty and adultery – evidence proved that husband called his wife characterless for which he was reprimanded by his mother- he had also misbehaved with the members of his family and his wife- he had made false allegations against the wife that she was living an adulterous life- he used to beat the wife on which she had to file a complaint under Protection of Women from Domestic Violence Act, 2005- held, that in these circumstances, version of the petitioner regarding cruelty and adultery was not proved.
Title: Anurag Sharma Vs. Pratibha Sharma Page-657

Hindu Marriage Act, 1955- Sections 13 (1) (ia) & (ib)- Husband filed a petition for divorce claiming that wife resided with him only for 15 days and thereafter went to the house of her parents- wife claimed that she resided with the husband for 4-5 months and she was harassed by her husband and his family members for bringing insufficient dowry- she had gone to the house of her sister with her husband to attend the Mundan ceremony where husband asked her not to visit her matrimonial home- RW-2 and RW-3 tried to settle the matter- wife was not properly treated when she had gone back and had stayed with the husband- held that husband had deserted the wife, he had not looked after her- husband cannot be allowed to take advantage of his own wrong.

Title: Satish Kumar Vs. Shakuntla Devi Page-624

H.P. Urban Rent Control Act, 1987- Section 14- Landlady filed an Eviction petition on the ground of arrears of rent- respondent denied that she was inducted as tenant or was in occupation of the premises- Rent Controller allowed the Petition- the Appellate Authority held in appeal that respondent was not tenant but was a lessee- held, that once respondent had disputed the jural relationship of landlord and tenant, the Appellate Authority could not have conferred the status of lessee upon the respondent- respondent being in possession could not have denied the title of the landlady- Rent Controller should have simply recorded the statement of the respondent on oath and should have passed conditional order of eviction that in case respondent is found to be in possession, she would be evicted forthwith- when the Court had found respondent to be in possession, she is liable to be evicted and to pay the use and occupation charges.

Title: Sudha Bhargava Vs. Manju Sharma Page-725

'I'

Indian Evidence Act, 1872- Section 3- Appreciation of evidence- it was contended that testimony of PW-1 was not acceptable and he had reported the matter to the police after some days-PW-1 specifically stated that he was under extreme fear that he would also be killed by accused- held, that accused can be convicted on the sole testimony of an eye-witness.

Title: Rikhi Ram son of Shri Kedar Dutt Vs. State of Himachal Pradesh Page-807

Indian Evidence Act- 1872- Section 3- Interested witness would be the one who has some direct interest in having the accused somehow or the other convicted for some animus or for some other reason- merely because, witness had an interest cannot be a ground to discard his testimony.

Title: Tarsem Lal Vs. State of Himachal Pradesh Page-879

Indian Evidence Act, 1872- Section 91- When the piece of land is sold with definite boundaries- boundaries will prevail against the measurement.

Title: Daulat Ram Thakur Vs. State of Himachal Pradesh Page-621

Indian Evidence Act- 1872- Section 134- When the prosecution has already led credible evidence- there was no necessity to multiply number of witnesses.

Title: Tarsem Lal Vs. State of Himachal Pradesh Page-879

Indian Penal Code, 1860- Section 302- Accused caused death of 'K' in the sawmill of 'V' by hitting him with the shovel on the head – testimony of eye-witnesses clearly proved that accused gave beating with the shovel on the head of the deceased and thereafter dragged the deceased towards his house- medical evidence proved that the deceased had died due to head injury which was possible with the sharp edged shovel- the testimony of the eye- witness was

corroborated by other prosecution witnesses- accused made a disclosure statement leading to the recovery of blood clotted stones, shirt and hair- body of deceased was also found in the house of the accused- all these circumstances clearly established the prosecution version – hence, conviction of the accused was justified.

Title: Rikhi Ram son of Shri Kedar Dutt Vs. State of Himachal Pradesh

Page-807

Indian Penal Code, 1860- Section 302- Accused murdered their parents- they burnt their bodies by setting the house on fire- one of the accused confessed to the murder of his parents- police was informed on which FIR was registered – Trial Court held that motive, namely disinheritance from property, extra judicial confession, disclosure statements, which led to recovery of incriminating articles, and recovery of remnants of bodies of the deceased were duly proved- held, that case is based upon circumstantial evidence -in case of circumstantial evidence, prosecution is under a legal obligation to prove the circumstances from which the conclusion of guilt is to be drawn- Court cannot substitute suspicion in place of proof- the extra judicial confession did not inspire confidence- disinheritance from the property was also not established as the accused was issueless and was residing in his own house at Derabasi- issue of inheritance of property was settled about 8 years back – testimonies of witnesses were contradictory- Investigating Officer had not associated any independent witness- Trial Court had disbelieved the prosecution case regarding the accused- testimony of one witness was accepted qua one accused and was rejected qua other which is not permissible- therefore, in these circumstances, accused cannot be held guilty- accused acquitted.

Title: Karamjit Singh @ Amarjit Singh Vs. State of Himachal Pradesh

Page-862

Indian Penal Code, 1860- Section 302 read with Section 30 of Indian Arms Act- hot exchange took place between the accused and his elder son on which accused brought his gun and shot his son at the abdomen - son died at the spot- the fact that deceased had died due to gunshot was proved by medical evidence- the fact that accused possessed gun was not disputed by him- held, that the mere fact that accused had used a deadly weapon would not prove his criminal intent of murdering his own son- there was no prior hostility- the incident had taken place at the spur of the moment- hence, accused acquitted of the commission of offence punishable under Section 302 IPC and convicted of the commission of offence punishable under Section 304 (second part) of the Indian Penal Code.

Title: Ranvir Singh Vs. State of Himachal Pradesh Page-874

Indian Penal Code, 1860 – Section 376- Prosecutrix went to the house of one 'A' for getting her clothes stitched – she was not present but her brother was present who raped the prosecutrix- prosecutrix was proved to be below 18 years but above 16 years and of feeble mind- testimony of prosecutrix was duly supported by independent witness- testimony of the prosecutrix is sufficient to convict the accused- mere absence of DNA profiling is not sufficient to acquit the accused.

Title: Deep Raj @ Baddu vs. State of Himachal Pradesh Page-752

Indian Penal Code, 1860- Sections 302 and 452- Accused came to the house of PW-1 who was teaching her son in the verandah of her house- accused came armed with a dagger and inflicted a fist blow on the stomach of her son- PW-1 and deceased tried to intervene on which accused stabbed the deceased with dagger on her stomach – she was taken to Hospital at Hoshiarpur where she was declared brought dead – prosecution version was duly proved by the

testimony of PW-1, her son and by other witnesses- accused got weapon of offence corroborated the fact that deceased had died due to bodily injury- bodily injury was proved by Medical Officer- prosecution version was duly proved beyond all reasonable doubt.
Title: Tarsem Lal vs. State of Himachal Pradesh Page-879

Indian Penal Code, 1860- Sections 302, 201 and 120-B, read with Section 34 IPC- Dead body of the deceased was found tied from the neck with one side of rope and the other portion of the rope was tied with the branch of tree - dead body was found in a sitting posture- on examination, wounds were found on the person of the deceased- as per prosecution, deceased was killed by his wife with the help of other person- wife made a disclosure statement under Section 27 of Indian Evidence Act-as per medical evidence, cause of the death was asphyxia leading to cardio-respiratory failure- no fractures of thyroid cartilages and hyoid bone were detected- the ligature was also high on the neck- the shirt did not bear any cut marks- disclosure statement was also not proved satisfactorily- house was already open prior to the arrival of the witnesses- held, that in these circumstances, prosecution version is not proved- accused acquitted.
Title: Sant Ram alias Nikku Vs. State of H.P. Page-714

Indian Penal Code, 1860- Sections 306 and 498-A read with Section 34 of IPC- As per prosecution case, accused had treated the deceased with cruelty due to which she had committed suicide- father of the deceased deposed that deceased had told him that her husband was demanding Rs. 50,000/- and motorcycle- brother of the deceased also deposed that deceased had disclosed that her in-laws harassed her and had called her handicapped and Paharan- medical evidence proved that death was due to suicide- deceased had written a suicide note - her husband had abused her on the day of commission of suicide- held, that in these circumstances, husband is guilty of the commission of offence punishable under Section 498-A of IPC.
Title: State of Himachal Pradesh vs. Susheel Kumar son of Shri Gurbachan and others Page-696

Indian Penal Code, 1860- Sections 354 and 323 IPC – As per the prosecution case accused caught hold of the prosecutrix- she cried on which her parents came to the spot and rescued her from the accused- the testimony of the prosecutrix was contradictory to the version narrated by her in the FIR- the other eye-witnesses also made contradictory statements- held, that in these circumstances, prosecution version was not proved- hence, accused acquitted.
Title: State of H.P. Vs. Jeet Singh Page-827

Indian Succession Act, 1925- Section 63- Plaintiff claimed that she being daughter of the deceased is entitled to succeed to his share along with defendants 1 a, b and 2- defendant No. 2 had forged a fictitious document stated to be a “will” of the deceased – defendant No. 2 claimed that Will was executed by the deceased in his favour in the presence of respectable persons- held, that as per evidence, will was duly executed by the deceased – plaintiff was born in the house of her maternal grand-mother and had no inimical relations with the witnesses– defendant No. 2 was looking after the deceased and had performed his last rites – the mere fact that mutation was attested after few years will not render the Will suspicious.
Title: Tek Ram Vs. Bali and others Page-748

‘L’

Land Acquisition Act, 1894- Section 18- Compensation should be fair and reasonable- compensation should be determined on the basis of comparable

sale-exemplars of small plots can be taken into consideration especially when other relevant or material evidence is not available- however, Court has to make suitable deduction.
Title: Collector, Land Acquisition, National Hydro Electric Power Corporation Vs. BhagwanDass and others Page-668

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for construction of Parbati Hydro Electric Project- claimant dis-satisfied with the award, filed a reference petition claiming that land was situated near bazaar and had potential of raising orchards, growing vegetables, construction of commercial buildings and hotels- reference petition was allowed- appellants contended that land was not situated near bazaar and was not marketing centre of the area- no commercial activities were expected and excessive compensation was paid- held, that no evidence was led by the appellants to show that sale deed produced by them pertained to the land having similar potentiality, utility, similarity and advantages as the acquired land- therefore, sale deeds were rightly rejected.
Title: Collector, Land Acquisition, National Hydro Electric Power Corporation Vs. Bhagwan Dass and others Page-668

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for construction of Parbati Hydro Electric Project – some of the land was already the subject matter of the award- acquired land is in the proximity of the headquarters of Sub-Tehsil, Sainj- there is great potentiality for the land to be used for commercial business- held, that the reference Court had rightly granted the parity to the acquired land.
Title: Collector, Land Acquisition, National Hydro Electric Power Corporation Vs. Bhagwan Dass and others Page-668

Land Acquisition Act, 1894- Section 18- Land was acquired for the construction of Nangal-Talwara Rail Line- notification under Section 4 was issued on 21.4.1998- reference Court had taken into consideration the sale deed dated 22.8.1998- held, that sale deed was proximate to the notification and was rightly taken into consideration- subsequent transaction can be relied upon when there were no fluctuations in the prices since the preliminary notification and the date of subsequent transaction.
Title: General Manager, Northern Railway Vs. Gian Chand & others
Page-645

Limitation Act, 1965- Section 5 – An appeal was filed before the Deputy Commissioner, Kangra which was accompanied by an application under Section 5 of Limitation Act for condonation of delay- application was allowed and the delay was condoned- held, that the period of 15 days has been prescribed for the filing of an appeal before the trial Court against the selection and appointment of a person from the date of issuance of appointment letter- an appeal preferred beyond the prescribed period is not maintainable- Section 5 empowers only the Court and not the administrative authority to condone delay- order passed by the Deputy Commissioner, Kangra condoning delay set aside.
Title: Minakshi Vs. State of H.P and others Page-805

'M'

Motor Vehicle Act, 1988- Section 149- Driver possessed a license to drive the light motor vehicle – he was driving a Taxi at the time of accident- held, that driver having a valid light motor vehicle licence is not required to have

endorsement of PSV i.e. public service vehicle- therefore, it cannot be said that driver did not possess a valid driving licence at the time of accident.

Title: Oriental Insurance Company Ltd. Vs. Asha Devi Gosain and Ors.

Page-773

Motor Vehicle Act, 1988- Section 149- Injured was travelling in the vehicle at the time of accident – Insured contended that injured was travelling in the capacity of conductor/cleaner- he was covered under insurance policy- Insurer argued that deceased was travelling as a gratuitous passenger – copy of the application filed by injured before Commissioner under Workmen Compensation Act and copy of the judgment of the Workman Compensation Commissioner showed that the injured had contended that he was a workman which plea was turned down by Commissioner- an application was preferred which was disposed of with liberty to approach the Motor Accident Claimant Tribunal- the findings recorded by Workmen Compensation Commissioner had attained finality- therefore, it was not permissible for the claimant to say that he was travelling as cleaner/conductor- MACT had also held that no goods were found near the place of the accident- therefore, insured was rightly held liable.

Title: Ramesh Chand Khurana Vs. Oriental Insurance Company & another

Page-789

Motor Vehicle Act, 1988- Section 149- MACT held that respondent No. 2 was driving the vehicle- Insurance Company had failed to prove that driver did not possess a valid and effective driving license- copy of driving license showed that driver possessed the licence to drive the vehicle – therefore, insured had not committed any breach- Insurer was rightly held liable.

Title: National Insurance Company Ltd. Vs. Nirmala Devi and Ors.

Page-769

Motor Vehicle Act, 1988- Section 166- Age of the deceased was 42 years at the time of accident- Tribunal had multiplied 15- held, that multiplier of 13 would be applicable. (Para-14)

Title: Oriental Insurance Company Ltd. Vs. Asha Devi Gosain and Ors.

Page-773

Motor Vehicle Act, 1988- Section 166- Age of the deceased was 50 years at the time of accident- Tribunal had applied the multiplier of 11- held, that multiplier of 9 should have been applied.

Title: National Insurance Company Ltd. Vs. Nirmala Devi and Ors.

Page-769

Motor Vehicle Act, 1988- Section 166- Deceased sustained injuries when he was debarking from the bus, which was started by the driver suddenly- claimant claimed that the income of the deceased was Rs. 12,000/- per month- however, no evidence was led to prove this fact- hence, by guess-work income of the deceased can be taken as Rs.6,000/- per month- claimant had lost source of dependency to the extent of 50%, thus, loss of dependency was Rs.3,000/- per month- the multiplier of '6' is applicable- claimant is entitled to the compensation of Rs. 2,16,000/- with interest at the rate of 7.5% per annum.

Title: Tejwanti Vs. Ibrahim Bharti & others Page-792

Motor Vehicle Act, 1988- Section 166- Deceased, riding a motorcycle, was hit by a bus due to which he died on the spot- Tribunal considered the income of the deceased as Rs. 4,000/- per month and determined the loss of dependency as Rs. 2,200/- per month- held, that claimant had specifically pleaded that

deceased was pursuing agriculture/horticulture vocation and this evidence was not rebutted- therefore, income of the deceased could not have been less than Rs. 6,000/- per month – 50% of the income was deducted towards the personal expenses- thus, loss of the dependency would be Rs. 3,000/- per month- age of the claimant was to be taken into consideration to determine the multiplier- therefore, multiplier of 12 was proper- Tribunal had held that deceased had contributed to the negligence and had deducted 30% amount, which was not correct- therefore, amount of Rs. 4,32,000/- was awarded along with interest at the rate of 7.5% per annum.

Title: Kamla Sharma Vs. M/s Bharat Tour & Travels Pvt. Ltd. and others
Page-765

Motor Vehicle Act, 1988- Section 166- FIR lodged against the driver of the vehicle – investigation was conducted and challan was filed before the Court- Investigating Officer specifically stated that accident was the result of rashness and negligence of the driver- this, statement could not be demolished by the State or the Driver- therefore, it was duly proved that accident was the result of rashness and negligence of the driver- driver had also not challenged the findings recorded by the Tribunal- hence, plea that accident had taken place due to contributory negligence could not accepted- appeal dismissed.

Title: State of Himachal Pradesh & another Vs. Suresh Sharma & others
Page-685

'N'

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 4.5 kg. of charas- place of incident was situated on National Highway having heavy flow of traffic- police could not give the registration number of any of the vehicles, which were stopped by them for traffic checking- version of the police that police party tried to stop vehicle but no one stopped was not believable –a tea shop was located at a short distance but no one was called from the tea shop- this shows that sincere efforts were not made to associate independent witness- in these circumstances, prosecution version not reliable-accused acquitted.

Title: Duni Chand Vs. State of H.P. Page-889

N.P.P.S. Act, 1985- Section 20- Accused was found in possession of 7 kg 100 grams of charas- prosecution version regarding sending of rukka was contradictory- testimony of the independent witness also contradicted the prosecution version-No seal impression was put on the NCB form making it difficult for the laboratory to compare the sample seal- held, that in these circumstances, prosecution had not proved its case beyond reasonable doubt.

Title: Inder Singh Vs. State of H.P. Page-758

N.D.P.S. Act, 1985- Section 20- As per prosecution case, accused was found in possession of 1.930 kg. of charas- independent witness had not supported the prosecution version- it was proved that police Station Anni was surrounded by many residential houses and shops and there were houses in the vicinity- however, no person was associated from those houses- police officials stated that efforts were made to associate independent witness but no person was available- held, that it is unbelievable that no one was available in the house- ordinarily houses are occupied in the villages- therefore, testimony of the prosecution witnesses that they tried to associate independent witness cannot be relied upon- hence, accused acquitted.

Title: Mohan Singh Vs. State of H.P. Page-902

N.D.P.S. Act, 1985- Section 20- Petitioner was occupying seat no. 36 in a bus- search of bus was conducted on which the accused was found in possession of

5.5 k.g of charas - there were contradictions in the testimonies of the prosecution witnesses regarding the location of the bag and the number of police officials who had boarded the bus- police officials had straight away gone to Seat No. 36 which showed that they had prior knowledge that the person occupying seat No. 36 had contraband- held, that in these circumstances, the compliance of Section 42 of N.D.P.S. Act was mandatory- since, there was non-compliance of Section 42, hence, accused acquitted.
Title: Raju Vs. State of Himachal Pradesh Page-784

Negotiable Instruments Act, 1881- Section 138- Complainant had advanced an amount of Rs. 2 lacs to the accused- accused issued a cheque which was dishonoured due to insufficient fund on presentation- it has come in evidence that agreement was entered between the complainant and the husband of the accused- agreement was subsequently cancelled- cross-examination of the complainant showed that he did not know the accused- therefore, he had no occasion to advance the loan of Rs. 2 lacs to unknown person- held, that complainant had failed to prove that cheque was issued in discharge of any lawful authority- accused acquitted.
Title: Ses Ram Vs. Reeta Bhardwaj Page-723

'T'

Transfer of Property Act, 1882-Section 122- Plaintiff claimed that she was an illiterate lady with rural background- defendant being the son of her brother residing with her persuaded her to execute a 'Will' in his favour- instead the defendant got executed a gift deed in his favour- defendant never intended to execute a gift deed- hence, she prayed that gift deed be set aside- the gift deed was executed on 18.7.1994- an Ikrarnama was also executed vide which defendant agreed to pay maintenance @ Rs. 100/- per month- no explanation was given for executing Ikrarnama- no receipt was produced to show that defendant was paying Rs. 100/- per month- defendant failed to prove that gift deed was a result of fraud, mis-representation and undue influence- when the deed was executed by illiterate lady, the burden of proving that transaction was free and fair would be upon the beneficiaries.
Title: Hari Ram Vs. Tarlok Chand Page-729

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South Bengal State Transport Corpn. Vrs. Sapan Kumar Mitra and ors., (2006) 2 SCC 584
Srikantha S.M. versus Bharath Earth Movers Ltd. (2005) 8 SCC 314
State Bank of Hyderabad and another Vrs. P. Kata Rao, (2008) 15 SCC 657
State of H.P. versus Parkash Chand and others, 1997 Cri.L.J. 1979
State of Jharkhand and others versus Kamal Prasad and others, 2014 AIR SCW 2513
State of Maharashtra v. Tulshiram Bhanudas Kamble and others, (2007) 14 SCC 627
State of Rajasthan vs. Om Parkash (2002) 5 SCC 745
State of Rajasthan v. Raja Ram, (2003) 8 SCC 180
State of Rajasthan vs. Shera Ram @ Vishnu Dutta 2012(1) SCC 602.
State of Rajasthan vs. Talevar 2011(11) SCC 666
State of U.P. v. Ashok Kumar Srivastava, (1992) 2 SCC 286
State of U.P. vs. Kishanpal and others JT 2008(8) SC 650
State of Uttaranchal vs. Balwant Singh Chaufal & Ors., 2010 AIR SCW 1029
State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal and others, (2010) 3 SCC 571
Subhayya Chakkiliyan vs. Manjam Muthia Goundan and another, AIR 1924 Madras 493
Sukhdev Singh vs. State of Haryana, (2013) 2 SCC 212
Surendra vs. State of Rajasthan AIR 2012 SC (Supp) 78
Suresh Pathrella Vrs. Oriental Bank of Commerce, (2006) 10 SCC 572

'T'

Takdir Samsuddin Sheikh v. State of Gujarat and another, (2011) 10 SCC 158
The State Vs. Captain Jagjit Singh AIR 1962 SC 253
Thoti Manohar v. State of Andhra Pradesh, (2012) 7 SCC 723
Triloki Nath and others vs. State of U.P. AIR 2006 SC 321
Trishala Jain and another vrs. State of Uttaranchal and another, (2011) 6 SCC 47

'U'

Union of India and others Vrs. Naman Singh Shekhawat, (2008) 4 SCC 1
University of Rajasthan & Anr. versus Prem Lata Agarwal, 2013 AIR SCW 989

'V'

Vadivelu Thevar vs. The State of Madras AIR 1957 SC 614
Vineet Kumar Chauhan v. State of U.P., (2007) 14 SCC 660
Virbhan Singh and another vs. State of U.P. AIR 1983 SC 1002
Vireshwar Singh and others versus Municipal Corporation of Delhi and others, 2014 AIR SCW 5480
Virsa Singh v. State of Punjab, AIR 1958 SC 465
Vishwanath Agrawal vs. Sarla Vishwanath Agrawal (2012) 7 SCC 288
Vithal vrs. Narayan, reported in AIR 1931 Nagpur 69

'Y'

Y.K. Singla versus Punjab National Bank and others, (2013)3 SCC 472

BEFORE HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.

M/s Ahluwalia Contracts (India) Ltd. …….Petitioner
Versus
HPSEB Limited & Another ……Respondents

Arb. Case No. 57 of 2014.
Decided on: 14th November, 2014

Arbitration and Conciliation Act, 1966- Section 11(6)- Petitioner contended that Chairman of the respondent-Company had not appointed an Arbitrator despite the demand raised by the petitioner- respondent stated that Arbitrator was appointed within stipulated period of 30 days from the date of issuance of the notice – petition had become infructuous – record showed that an Arbitrator was appointed with the approval of the Chairman- merely because order of appointment was signed by Chief Engineer does not mean that Arbitrator was appointed by Chief Engineer- fairness and impartiality of arbitrator cannot be doubted at this stage and the petitioner will be at liberty to resort to the remedy in accordance with law- petition dismissed. (Para- 9 to 14)

Case referred:
Indian Oil Corporation Limited & Others versus Raja Transport Private limited, (2009) 8 SCC, 520

For the petitioner : Mr. S.K. Maniktala & Mr. Ankush Dass, Advocates
For the respondents : Mr. J.S. Bhogal, Senior Advocate with Mr. Satish Sharma, Advocate.

The following judgment of the Court was delivered:

Dharam Chand Chaudhary, J. (oral).

In this petition under Section 11(6) of the Arbitration and Conciliation Act, a prayer has been made for appointment of Arbitrator in terms of clause 4.41.1 of the contract agreement, Annexure P-4. The complaint is that the Chairman of the respondent-Company has not appointed the Arbitrator irrespective of the demand in this regard raised vide notice dated 4th August, 2014 (Annexure P-25) served upon the respondent-Company by the petitioner contractor.

2. In response to the petition on behalf of the respondent-Company, a question of maintainability on the ground that the arbitrator stands appointed well within the period of thirty days from the date of issuance of the notice vide order Annexure R-1 by the competent authority, has been raised. The petition therefore, has been sought to be dismissed on this score alone.

3. Mr. S.K. Maniktala Advocate assisted by Mr. Ankush Dass, Advocate has vigorously argued that the appointment of the arbitrator has not been made by the competent authority within thirty days from the date of issuance of notice Annexure P-25. Also that on the basis of order Annexure R-1, the Arbitrator has been appointed to resolve the dispute qua which no notice ever was served upon the petitioner-contractor. Mr. Maniktala, has further canvassed that the officer, Chief Engineer (Generation) HPSEB Limited Sundernagar, is under the direct control of Director Technical, who has rejected

the claims of the contractors sought to be referred for resolution to the Arbitrator. Mr. Maniktala, therefore, apprehends that the Arbitrator so appointed may not conduct the proceedings in a fair and impartial manner.

4. Mr. J.S. Bhogal, Senior Advocate, assisted by Mr. Satish Sharma, Advocate while reiterating the stand of the respondent-Company in reply to the petition has urged that the appointment has been made by the competent authority i.e. the Chairman strictly in accordance with the terms of contract agreement. Mr. Bhogal has fairly submitted that during the course of the proceedings by the Arbitrator, the claims as referred to in the notice Annexure P-25 certainly will be looked into by the arbitrator. Also that the recital in the order of appointment that "for non completion of the Turnkey Project by M/s Ahluwalia Contracts (India) Ltd." should not be misconstrued to infer that the claims of the petitioner-contractor will not be entertained or looked into. It has further been canvassed that the respondent-Company has appointed the arbitrator and any grouse in this behalf of the petitioner-contractor can be taken care of under the provisions in the Arbitration and Conciliation Act by the Arbitrator so appointed.

5. On analyzing the submissions made on both sides and also the record including the original one pertaining to the appointment of the arbitration make it crystal clear that "Circle Head Draughtsman" (CHDM) in the office of Superintendent Engineer (P&M), Shimla has prepared note dated 28.8.2011 with regard to the appointment of the arbitrator for perusal and order by the competent authority. Para 6 of the note reads as follows:

> " The Firm's Advocate (Maniktala & Associates) vide letter No.SKM/Gen/14-2303/R dated 09.08.2014 (Annexure-A) has forwarded the copy of their letter No.SKM/Gen/14-2303 dated 04.08.2014 wherein the firm has issued notice and requested to appoint Arbitrator. The reply of notice is annexed as Annexure-B"

6. The CHDM has suggested the following for being appointed as Arbitrator:-

> " The Chief Engineer (PCA), HPSEBL, Vidyut Bhawan, Shimla-04.
>
> Or
>
> The Chief Engineer (MM), HPSEBL, Vidyut Bhawan, Shimla-04.
>
> Or
>
> The Chief Engineer (SO & P), HPSEBL, Vidyut Bhawan, Shimla-04.
>
> Or
>
> The Chief Engineer (Gen.), HPSEBL, Sundernagar.
>
> Or
>
> The Chief Engineer (Comm.), HPSEBL, Shimla-04."

7. The papers were routed through proper channels i.e. right from the Assistant Executive Engineer upto the Chairman of the respondent-Corporation on 28.8.2014 itself. The Chief Engineer (P&M) in his note at Sl. No.11 has given the following proposal for appointment of Arbitrator:-

> " May appoint by designation, Chief Engineer (Generation) as Arbitrator and concerned ASE/Sr. Xen (Designs) o/o

> S.E. (Designs) E.S. Hamirpur as presenting officer in the matter please."

8. The papers were further routed to the Chairman of the respondent-Company through the Managing Director and the Chairman has approved the proposal reproduced supra. This has resulted in issuance of office order Annexure R-1, dated 30.8.2014.

9. The original record amply demonstrates that the appointment of Arbitrator vide Annexure R-1 has approval of the Chairman. Merely that the order Annexure R-1 has been signed by Chief Engineer (P&M), Shimla should not be taken to infer that it is the Chief Engineer, who has appointed the Arbitrator. The Arbitrator rather has been appointed by a competent authority i.e. Chairman well within thirty days from the date of issuance of the notice Annexure P-25 by the petitioner-contractor.

10. It cannot also be said that the Arbitrator so appointed will not adjudicate the claims of the petitioner-contractor detailed in the notice Annexure P-25 for the reasons that the notice was placed before the authorities at the time of submission of papers for appointment of arbitrator. The arbitrator has, therefore, been appointed after taking into consideration the notice and the claims laid therein by the petitioner-contractor. It is for this reason that the copy of the order of appointment of arbitrator has been endorsed to the petitioner-contractor through Shri S.K. Maniktala, Advocate as it is he who issued the notice to the respondent-Company on behalf of the petitioner-contractor.

11. The words in the order "for non completion of the Turnkey Project by M/s Ahluwalia Contracts (India) Ltd." denote to the name of the work awarded to the petitioner-contractor and non completion thereof and should not be made to understand that the Arbitrator has not been appointed consequent upon the issuance of notice by the petitioner-contractor and rather on the request of respondent-Company without serving the petitioner-contractor with a notice in this behalf. There should be no doubt qua the adjudication of the claims of the petitioner-contractor raised in the legal notice Annexure P-25 by the Arbitrator, of course taking into consideration the counter claims, if any, of the respondent-Company also. Mr. Bhogal, therefore, is absolutely justified in claiming that the petition is not maintainable in view of the appointment of the arbitrator made by the competent authority well within the time prescribed therefor. The petitioner-contractor, if aggrieved, in any manner whatsoever, by such appointment is at liberty to set into motion the machinery provided under the Arbitration and Conciliation Act itself.

12. If coming to the apprehension of Mr. Maniktala that the fair and impartial proceedings are not expected from the arbitrator so appointed, irrespective of this Court has held that this petition is not maintainable, it would not be improper to conclude that such apprehension is not well founded particularly when the agreement to which the petitioner-contractor is one of the parties provides for appointment of an arbitrator atleast in the rank of Chief Engineer by the Chairman of the respondent-Company. This also deals with other grounds of the petitioner-contractor that the Arbitrator has not been appointed by name but by designation for the reasons that in the agreement there is no requirement of appointment of the Arbitrator by name.

13. The fairness and impartiality of the Arbitrator cannot be doubted at this stage and in the event of an instance of partiality and biasness comes to the notice of the petitioner-contractor; he will be at liberty to resort to the

remedy in this regard available to him in accordance with the provisions contained under the Act. The apex Court in para 39 of the judgment rendered in ***Indian Oil Corporation Limited & Others*** versus ***Raja Transport Private limited***, ***(2009) 8 SCC, 520*** no doubt has observed that the Government/Statutory authorities have to reconsider their policy of appointment of employee Arbitrator in deference to the specific provisions of the new Act reiterating the need for independence and impartiality in the arbitration proceedings, however, at the same time it has further been observed by the apex Court in the judgment supra that the independence or impartiality of an Arbitrator, a Senior Officer, should not be doubted in the absence of any specific evidence.

14. In view of what has been said hereinabove, the petition is dismissed. Pending application(s), if any, shall also stand disposed of.

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

CWP No. 6735 of 2014 & connected matters.
Reserved on: 16.10.2014.
Decided on: 17.11.2014.

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1. CWP No. 6735 of 2014.
Sunil Singh ......Petitioner.
Versus
State of H.P. & others. ....Respondents.

2. CWP No. 6736 of 2014.
Sunil Singh ......Petitioner.
Versus
State of H.P. & others. ....Respondents.

3. CWP No. 6743 of 2014.
Sunil Singh ......Petitioner.
Versus
State of H.P. & others. ....Respondents.

4. CWP No. 6768 of 2014.
Sunil Singh ......Petitioner.
Versus
State of H.P. & others. ....Respondents.

5. CWP No. 6770 of 2014.
Sunil Singh ......Petitioner.
Versus
State of H.P. & others. ....Respondents.

Himachal Pradesh Tenancy and Land Reforms Act, 1972- Section 104- Widow has a right during her life time - vestment/conferment of the proprietary rights upon the tenant is automatic after the death of widow- proprietary rights cannot be conferred on the basis of Will. (Para-11)

For the petitioner(s): Mr. B.S.Attri, Advocate in all the petitions.

For the respondents: Mr. Ashok Chaudhary, Addl. Advocate General-for respondent-State.

Mr. V.S.Rathore, Advocate, for private respondents in all the petitions.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

Since common questions of law and facts are involved in these petitions, these are taken up together for being disposed of by a common judgment. However, in order to maintain clarity, the facts of each petition have been considered separately.

CWP No. 6735 of 2014.

2. The Assistant Collector Ist Grade, Shahpur, District Kangra on 28.3.2001 conferred proprietary rights in favour of respondents No. 4 to 7 vide Annexure P-3, mutation No. 352. The petitioner filed an appeal before the Collector bearing appeal No. 34 of 2001. The appeal was dismissed by the Collector on 6.8.2003. The petitioner filed an appeal before the learned Divisional Commissioner bearing appeal No. 278 of 2003 against the order dated 6.8.2003. The Divisional Commissioner Kangra at Dharamshala accepted the appeal on 20.3.2006. Respondents No. 4 to 7 filed the revision before the Financial Commissioner bearing No. 145 of 2006. The learned Financial Commissioner allowed the revision on 14.1.2009 and the order passed by the Divisional Commissioner on 20.3.2006 was set aside. The petitioner assailed the order dated 14.1.2009 by filing CWP No. 1329 of 2009. It was decided by the learned Single Judge of this Court on 22.4.2013. The order dated 14.1.2009 was set aside. The Financial Commissioner (Appeals), was directed to decide the matter afresh within three months. The Financial Commissioner (Appeals), decided the revision alongwith the analogous matters on 15.7.2014. The learned Financial Commissioner (Appeals) held that his predecessor has rightly set aside the order passed by the learned Commissioner, Kangra dated 20.3.2006. The revision petitions were accepted and order dated 28.5.2001 of the learned A.C. Ist Grade, conferring proprietary rights on the tenants was found to be in accordance with law vide order dated 15.7.2014.

CWP No. 6736 of 2014.

3. The Assistant Collector Ist Grade, Shahpur, District Kangra on 28.3.2001 conferred proprietary rights in favour of the respondents No. 4 & 5. The petitioner filed an appeal before the Collector bearing appeal No. 30 of 2001. The appeal was dismissed by the Collector on 6.8.2003. The petitioner filed an appeal before the learned Divisional Commissioner bearing appeal No. 275 of 2003 against the order dated 6.8.2003. The Divisional Commissioner Kangra at Dharamshala accepted the appeal on 20.3.2006. Respondents No. 4 & 5 filed the revision before the Financial Commissioner bearing No. 142 of 2006. The learned Financial Commissioner allowed the revision on 14.1.2009. The petitioner challenged the order dated 14.1.2009 by filing CWP No. 1302 of 2009. It was decided by the learned Single Judge of this Court on 22.4.2013. The order dated 14.1.2009 was set aside. The Financial Commissioner (Appeals), was directed to decide the matter afresh within three months. The Financial Commissioner (Appeals), decided the revision alongwith the analogous matters on 15.7.2014. The learned Financial Commissioner (Appeals) held that his

predecessor has rightly set aside the order passed by the learned Commissioner, Kangra dated 20.3.2006. The revision petitions were accepted and order dated 28.5.2001 of the learned A.C. Ist Grade, was upheld.

CWP No. 6743 of 2014.

4. Proprietary rights were conferred upon the private respondents and predecessor-in-interest by the Assistant Collector Ist Grade, Shahpur, District Kangra vide order dated 28.3.2001. The petitioner filed an appeal against the conferment of proprietary rights on the private respondents bearing appeal No. 31 of 2001. The appeal was dismissed by the Collector on 6.8.2003. The petitioner filed an appeal before the learned Divisional Commissioner bearing appeal No. 276 of 2003 against the order dated 6.8.2003. The Divisional Commissioner Kangra at Dharamshala accepted the appeal on 20.3.2006. The private respondents filed the revision before the Financial Commissioner bearing No. 143 of 2006. The learned Financial Commissioner allowed the revision on 14.1.2009. The petitioner challenged the order dated 14.1.2009 by filing CWP No. 1330 of 2009. It was decided by the learned Single Judge of this Court on 22.4.2013. The order dated 14.1.2009 was set aside. The Financial Commissioner (Appeals), was directed to decide the matter afresh within three months. The Financial Commissioner (Appeals), decided the revision alongwith the analogous matters on 15.7.2014.

CWP No. 6768 of 2014.

5. Proprietary rights were conferred upon respondent No.4 by the Assistant Collector Ist Grade, Shahpur, District Kangra vide order dated 28.3.2001. The petitioner filed an appeal against the conferment of proprietary rights bearing No. 33 of 2001. The appeal was dismissed by the Collector on 6.8.2003. The petitioner filed an appeal before the learned Divisional Commissioner bearing appeal No. 277 of 2003 against the order dated 6.8.2003. The Divisional Commissioner Kangra at Dharamshala accepted the appeal on 20.3.2006. The private respondent No.4 filed the revision before the Financial Commissioner bearing No. 144 of 2006. The learned Financial Commissioner allowed the revision on 14.1.2009. The petitioner challenged the order dated 14.1.2009 by filing CWP No. 1328 of 2009. It was decided by the learned Single Judge of this Court on 22.4.2013. The order dated 14.1.2009 was set aside. The Financial Commissioner (Appeals), was directed to decide the matter afresh within three months. The Financial Commissioner (Appeals), decided the revision alongwith the analogous matters on 15.7.2014. The earlier order passed by the Financial Commissioner (Appeals) on 14.1.2009 was upheld.

CWP No. 6770 of 2014.

6. Proprietary rights were conferred upon respondents No.4 to 7 by the Assistant Collector Ist Grade, Shahpur, District Kangra vide order dated 28.3.2001. The petitioner filed an appeal against the conferment of proprietary rights bearing No. 32 of 2001. The appeal was dismissed by the Collector on 6.8.2003. The petitioner filed an appeal before the learned Divisional Commissioner bearing appeal No. 274 of 2003 against the order dated 6.8.2003. The Divisional Commissioner Kangra at Dharamshala accepted the appeal on 20.3.2006. The private respondent No.4 filed the revision before the Financial Commissioner bearing No. 141 of 2006. The learned Financial Commissioner allowed the revision on 14.1.2009. The petitioner challenged the order dated 14.1.2009 by filing CWP No. 1302 of 2009. It was decided by the learned Single Judge of this Court on 22.4.2013. The order dated 14.1.2009 was set aside. The Financial Commissioner (Appeals), was directed to decide the matter afresh

within three months. The Financial Commissioner (Appeals), decided the revision alongwith the analogous matters on 15.7.2014. The earlier order passed by the Financial Commissioner (Appeals) on 14.1.2009 was upheld.

7. Mr. B.S.Attri, Advocate, for the petitioners has vehemently argued that the proprietary rights could not be conferred upon the private respondents. According to him, Phoolan Devi has executed 'Will' dated 28.9.2000 in favour of his client. He also contended that his client was in the armed forces and was minor when the 'Will' was executed. On the other hand, Mr. Ashok Chaudhary, learned Addl. Advocate General has supported the order passed by the learned Financial Commissioner (Appeals) passed on 15.7.2014. According to him, the widow has only limited right till her death. He also contended that the proprietary rights could not be conferred by way of 'Will' dated 28.9.2000. Mr. V.S.Rathore, Advocate, appearing for the private respondents has also supported the orders of the Financial Commissioner (Appeals) dated 15.7.2014.

8. We have heard the learned counsel for the parties and also gone through the orders very carefully.

9. The private respondents and their predecessor-in-interest were tenants of one Sh. Kirpa Ram. Late Sh. Kirpa Ram died issueless. The entire property was inherited by his widow Smt. Phoolan Devi. She executed a 'Will' dated 28.9.2000 in favour of the petitioner. The private respondents were conferred proprietary rights qua the entire land under their tenancy and the mutations No. 350, 351, 352, 354 and 355 were attested in their favour on 28.3.2001. The petitioner has challenged the orders whereby the proprietary rights were conferred upon the private respondents before the Collector. The Collector has dismissed the appeals on 6.8.2003. The petitioner challenged the order dated 6.8.2003 before the Divisional Commissioner, Kangra at Dharamshala, by filing appeals. The appeals were allowed by the Divisional Commissioner, Kangra Division Kangra on 20.3.2006. The private respondents have challenged the order dated 20.3.2006 rendered in appeals preferred by the petitioner before the Financial Commissioner. The learned Financial Commissioner vide a detailed order dated 14.1.2009 set aside the order passed by the Divisional Commissioner, Kangra Division Kangra in appeal No. 145 of 2006 and analogous appeals. The petitioner challenged the order passed by the Financial Commissioner dated 14.1.2009, as noticed by us hereinabove, before this Court. The learned Single Judge of this Court remanded the matter to the Financial Commissioner (Appeals). The Financial Commissioner (Appeals) reiterated the earlier order dated 14.1.2009 of the Financial Commissioner (Appeals).

10. Section 104 (8) and (9) of the H.P. Tenancy and Land Reforms Act, 1972 reads as under:

> "**104. Right of tenant other than occupancy tenant to acquire interests of landowner. (8)-** Save as otherwise provided in sub-section (9), nothing contained in sub-section (1) to (6) shall apply to a tenancy of landowner owner during the period mentioned for each category of such landowners in sub-section (9), who,-
>
> (a) is a minor or unmarried woman, or if married, divorced or separated from husband or widow; or
>
> (b) is permanently incapable of cultivating land by reason of any physical or mental infirmity; or
>
> (c) is a serving member of the Armed Forces; or

(d) is the father of the person who is serving in the Armed Forces, up to the extent of inheritable share of such a member of the Armed Forces on the date of his joining the Armed Forces, to be declared by his father in the prescribed manner.

(9) In the case of landowners mentioned in clauses (a) to (d) of sub-section (8), the provisions of sub-sections (1) to (6) shall not apply:-

(a) in case of minor during his minority and in case of other persons mentioned in clauses (a) and (b) of sub-section (8) during their life time;

(b) in case of persons mentioned in clauses (c) and (d) sub-section (8) the period of their service in the Armed Forces subject to resumption of land by such persons to the extent mentioned in first proviso to clauses (d) and (dd) of sub-section (1) of section 34.

"Provided that nothing contained in this section shall apply to such land which is either owned by or is vested in Government under any law, whether before or after the commencement of this Act, and is leased out to any person.""

11. It is evident from the combined reading of sub-sections (8) and (9) of Section 104 that the widow has only limited right during her life time and thereafter the vestment/conferment of proprietary rights upon the tenants is automatic as per language of Section 104 (1)(iii) of the Act. In the instant case(s), Sh. Kirpa Ram has died issueless. The widow of late Sh. Kirpa Ram has inherited his estate. She also died on 5.3.2001. The land of the widow could not be vested in favour of tenants during her life time. However, the proprietary rights were to be conferred upon the respondents immediately after the death of widow. The proprietary rights could not be conferred upon the petitioner on the basis of 'Will' dated 28.9.2000. The H.P. Tenancy and Land Reforms Act, 1972 is an agrarian reform. The enactment has been made to confer ownership on the tillers. The rights of the private respondents could not be defeated by way of 'Will' dated 28.9.2000. Rather, it would be against the public policy. Since the rights could not be conferred by Phoolan Devi on the petitioner at all on the basis of 'Will' dated 28.9.2000, whether the petitioner was minor or member of armed forces would be of no consequence. The orders passed by the Financial Commissioner (Appeals) dated 14.1.2009 and 15.7.2014 are strictly in conformity with law. The Financial Commissioner has discussed the entire evidence and legal issues involved in the Revision petitions while setting aside the order dated 20.3.2006, passed by the Divisional Commissioner, Kangra, at Dharamshala. It is reiterated that Phoolan Devi could not alienate the land in favour of the petitioner by way of 'Will' dated 28.9.2000 since she had the right to retain the land during her life time only as per law.

12. Mr. B.S.Attri, Advocate, for the petitioner has also argued that the petitioner was not heard at the time of attestation of mutations on 28.3.2001. The petitioner was not at all required to be heard at the time of attestation of the mutations since he has no legal right. The proprietary rights have rightly been conferred upon the private respondents vide mutations attested on 28.3.2001.

13. Accordingly, there is no merit in these petitions and the same are dismissed. Pending application(s), if any, shall also stand disposed of.

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

Daulat Ram Thakur. ...Appellant.
Versus
State of Himachal Pradesh. ...Respondent.

RSA No. 440 of 2002
Reserved on : 17.11.2014
Decided on: 19.11.2014

Indian Evidence Act, 1872- Section 91- When the piece of land is sold with definite boundaries- boundaries will prevail against the measurement. (Para-17 to 19 and 21)

Cases referred:
Subhayya Chakkiliyan vs. Manjam Muthia Goundan and another, AIR 1924 Madras 493
Shailendranath Mitra vs. Girijabhushan Mukherji, AIR 1931 Calcutta 596
K.S. Nanji and Co. vs. Jatashankar Dossa and others, AIR 1961 SC 1474
Piyunglan Devi vs. Kashmir Chand, 1991 (a) Current Law Journal (H.P.) 412

For the Appellant: Mr. Neeraj Gupta, Advocate.
For the Respondent: Mr. R.P. Singh, Asstt. A.G.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This Regular Second Appeal is directed against the judgment and decree dated 20.7.2002 rendered by the District Judge, Solan in Civil Appeal No. 9-S/13 of 2001.

2. "Key facts" necessary for the adjudication of this Regular Second Appeal are that appellant-plaintiff (hereinafter referred to as the "plaintiff" for convenience sake) filed a suit for declaration against the respondent-defendant (hereinafter referred to as the "defendant" for convenience sake). According to the plaintiff, the suit land was purchased by him from Raja Durga Singh, the then owner of the suit land at village Kather, Solan. The Musabi and Aks of the lands of village were torn. Thus, the land was purchased as described by boundaries in the registered sale deed dated 12.1.1971 Ext. PW1/A. The land was mentioned as Khasra No. 227/470/2014/2001 min measuring 109-19 and 227/471/1991 as 6 biswas and the boundaries were specifically mentioned. According to the plaintiff, Khasra Nos. 676, 677, 678, 679 and 660 were owned and possessed by him. According to him, as per law the boundaries were to prevail over area as Musabi and Aks being torn and the actual area was mentioned by guess work.

3. The suit was contested by the defendant. According to the defendant, plaintiff has purchased land measuring 110 bighas 5 biswas vide registered sale deed No.6 dated 16.1.1971. The mutation was attested. Land was sold to the plaintiff by annexing Tatima with the sale agreement. Defendant has specifically denied that the plaintiff has purchased suit land bearing Khasra Nos. 676, 677, 678, 679 and 660. Defendant has also denied possession of the plaintiff over the suit land. The initiation of the proceedings, under Section 163

of the H.P. Land Revenue Act, was also justified. The plea of adverse possession was specifically denied.

4. Learned Senior Sub Judge framed issues on 11.8.1994. He decreed the suit on 15.12.2000. Defendant preferred an appeal before the District Judge, Solan against the judgment and decree dated 15.12.2000. He allowed the same on 20.7.2002. Hence, the present Regular Second Appeal. It was admitted on 26.9.2002 on the following substantial questions of law:

1. **"Whether the impugned judgment and decree of the first appellate court is against the settled principle of law that in case of conflict in area and boundary of the land in dispute, the boundary would prevail?**

2. **Whether the first appellate court relied upon inadmissible evidence which if excluded would have resulted in opposite view?**

3. **Whether the first appellate court erred and misread the revenue record to hold that the land, subject matter of dispute, fell in allotable pool?"**

5. Mr. Neeraj Gupta, learned counsel for the appellants has supported the judgment and decree dated 15.12.2000 passed by the learned Senior Sub Judge, Solan. According to him, in case of conflict in area and boundary dispute, the boundaries must prevail as against the measurement.

6. Mr. R.P. Singh, learned Assistant Advocate General has supported the judgment and decree dated 20.7.2002 passed by the learned District Judge.

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

8. Since all the substantial questions of law are interconnected and interlinked, the same are taken together for determination to avoid repetition of discussion of evidence.

9. Plaintiff has appeared as PW-1. According to him, he has purchased the land from Raja Durga Singh in the year 1971 vide sale deed. The Musabi, Latha and Aks were torn. The possession was delivered to him. He has proved copy of sale deed Ex. PW-1/A. In the settlement proceedings wrong entries were recorded. He has filed an application before the Tehsildar qua wrong entries recorded by the settlement authorities. The entries qua four Khasra Numbers were decided in his favour and qua many Khasra numbers, i.e. Khasra numbers 676, 677, 678, 679, 660, he was directed to file a suit. He was in possession of the suit land. He was never dispossessed. He has proved copy Ext. 1/B and copy of Aks Shajra Ext. PW-1/C. In his cross-examination, he has deposed that he has purchased land measuring 110 bigha 5 biswas of land by way of sale deed. The land was not demarcated at any point of time. He has also admitted that adjoining to this land, the boundaries of the common land are situated.

10. PW-2 Shamsher Singh has testified that he has seen the suit land. The suit land was owned by Raja Durga Singh. The state has no legal right, title or interest over the suit land. He was not aware about the settlement proceedings. He has admitted that his father was tenant of Raja Durga Singh.

11. PW-3 Dr. P.C. Sharma has deposed that he has seen the suit land. His land was adjoining to the suit land measuring 9 bighas. According to him, Lathha and Musabi were torn.

12. PW-4 Joginder Singh has testified that he was General Attorney of Raja Durga Singh. The land was sold to plaintiff. The Musabi and Latha were torn. The suit land was described by boundaries and the plaintiff was also put in possession of the suit land. The plaintiff has not encroached upon the government land.

13. PW-5 Mansa Ram has testified that he remained Field Kanungo from 1976 to 1979. The application was filed before him for demarcation by Hira Nand. He went to the spot. He inspected the spot. The revenue record was torn and Tatima and Musabi were not available. Thus, the demarcation could not be carried out.

14. According to Ext. PW-1/A, the plaintiff has purchased Khasra No. 2014/2001 min measuring 109 bighas and 19 biswas and Khasra No. 1991 measuring 6 biswas. It is stated in Ext. PW-1/A that shajra and musabi were torn. There is no reference of Khasra Nos. 676, 677, 678, 679 and 660 in the sale deed Ext. PW-1/A. The plaintiff has not led any tangible evidence to show that Khasra Nos. 676, 677, 678, 679 and 660 were the new Khasra numbers of old Khasra numbers 2014/2001 min or 1991.

15. Mr. R.P. Singh, learned Assistant Advocate General has drawn attention of the Court to Ext. PX-12. According to Ext. PX-12, old Khasra numbers of Khasra Nos. 660, 676, 677, 678 and 679 were 2014/2001 min, 2109/2003/2 min, 2109/2003/2 min, 2109/2002/2 min and 2109/2002/2 min. None of the PWs have deposed about the old and new Khasra numbers of the suit land. Rather it is established from PW-1/B Jamabandi for the year 1989-90 that defendant is owner in possession of the suit land. The total area sold to the plaintiff was 110 bighas and 5 biswas as per Ext. PW-1/A. PW-1 to PW-5 have not stated about the Khasra numbers which were in possession of the plaintiff.

16. The plaintiff has not led any tangible evidence to prove adverse possession. The ingredients of adverse possession are required to be pleaded and proved. None of the witnesses has deposed that when possession of plaintiff became hostile to the true owner. It was necessary for the plaintiff to prove that his possession was hostile to the true owner by leading cogent and reliable evidence. The plaintiff has rather not led any evidence to rebut entries in Ext. PW-2/B. It was necessary for him to prove that his possession was peaceful, uninterrupted, hostile, and open to the knowledge of true owner.

17. Learned Single Judge of Madras High Court in ***Subhayya Chakkiliyan*** vs**. *Manjam Muthia Goundan and another***, AIR 1924 Madras 493, has held that ordinarily when a piece of land is sold with definite boundaries, unless it is very clear from the circumstances surrounding the sale that a smaller extent than what is covered by the boundaries was intended to be sold, the rule of interpretation is that boundaries must prevail as against the measurements.

18. The Division Bench of Calcutta High Court in ***Shailendranath Mitra*** vs. ***Girijabhushan Mukherji***, AIR 1931 Calcutta 596, have held that where there is a seeming inconsistency as between boundaries and the area stated in the instrument, it is permissible to have recourse to extrinsic evidence and evidence of user by acts of parties for the purpose of gathering the real intention of the parties to the instrument.

19. Their Lordships of the Hon'ble Supreme Court in ***K.S. Nanji and Co.*** vs. ***Jatashankar Dossa and others***, AIR 1961 SC 1474 have held that a map referred to should be treated as incorporated in the lease and as forming part of the document. Where the map is drawn to scale and the boundary is clearly demarcated, the Courts are right in accepting the boundaries drawn in the plan without embarking upon and attempt to correct them with reference to the revenue records.

20. Mr. Neeraj Gupta has also strongly relied upon ***Piyunglan Devi*** *vs.* ***Kashmir Chand***, 1991 (a) Current Law Journal (H.P.) 412. There is no dispute with the proposition that when there is conflict in area and boundary dispute, boundary prevails. However, in the instant case, plaintiff has failed to link that the suit land was purchased vide Ex.PW-1/A. Thus, this abstract principle of law is not applicable in the present case.

21**.** In the present case, Khasra numbers alongwith boundaries have been given. According to recital in Ext. PW-1/A, the land was measured at the time of giving possession to the plaintiff. The judgment cited by Mr. Neeraj Gupta, learned counsel for the plaintiff are not applicable to the facts and circumstances of the present case for the simple reason that plaintiff could not succeed in proving that Khasra Nos. 676, 677, 678, 679 and 660 were purchased by him vide Ext. PW-1/A. The stand of the plaintiff is contrary to the revenue record Ext. PX-12. The judgments cited by Mr. Neeraj Gupta could be applicable in case plaintiff had succeeded in establishing that he has purchased these Khasra numbers alongwith Khasra nos. 2014/2001 and 1991. It is also not the case of the plaintiff that he is in possession of land measuring less than 110 bighas.

22. The first appellate Court has correctly appreciated the oral as well as documentary evidence led by the parties and there is no need to interfere with the well reasoned judgment passed by first appellate Court below. The substantial questions of law are answered accordingly.

23. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the appeal and the same is dismissed. Pending application, if any, also stands disposed of. No costs.

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

Satish Kumar ……Appellant.
Versus
Shakuntla Devi …….Respondent.

FAO No. 400 of 2014.
Reserved on: 17.11.14
Decided on: 19.11.2014.

Hindu Marriage Act, 1955- Sections 13 (1) (ia) & (ib)- Husband filed a petition for divorce claiming that wife resided with him only for 15 days and thereafter went to the house of her parents- wife claimed that she resided with the husband for 4-5 months and she was harassed by her husband and his family members for bringing insufficient dowry- she had gone to the house of her sister with her husband to attend the Mundan ceremony where husband asked her not to visit her matrimonial

home- RW-2 and RW-3 tried to settle the matter- wife was not properly treated when she had gone back and had stayed with the husband- held that husband had deserted the wife, he had not looked after her- husband cannot be allowed to take advantage of his own wrong.
(Para-11)

Cases referred:
Bipinchandra Jaisinghbai Shah versus Prabhavati, AIR 1957 SC 176
Lachman Utamchand Kirpalani versus Meena alias Mota, AIR 1964 SC 40
Smt. Rohini Kumari versus Narendra Singh, AIR 1972 SC 459
Shobha Rani v. Madhukar Reddi AIR 1988 SC 121
Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511
Manisha Tyagi vs. Deepak Kumar 2010(1) Divorce & Matrimonial Cases 451
Ravi Kumar vs. Julumidevi (2010) 4 SCC 476
Pankaj Mahajan vs. Dimple Alias Kajal (2011) 12 SCC 1
Vishwanath Agrawal vs. Sarla Vishwanath Agrawal (2012) 7 SCC 288

For the appellant: Mr. Nipun Sharma, Advocate.
For the respondent: Ms. Soma Thakur, Advocate, vice counsel.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This FAO is directed against the judgment dated 14.8.2013, rendered by the learned Addl. District Judge (III), Kangra at Dharamshala, in HMA Petition No. 7-N/III/06.

2. Key facts, necessary for the adjudication of this appeal are that the appellant has filed the petition under Section 13 (1) (ia) & (ib), of the Hindu marriage Act, 1955 for dissolution of marriage on the grounds of desertion and cruelty. The marriage between the appellant and the respondent was solemnized on 7.10.2002 according to Hindu rites, customs and ceremonies. The respondent resided with the appellant only for about 15 days and thereafter she went to the house of her parents. The respondent started behaving indifferently with the petitioner and she insisted not to stay with him as her marriage was not solemnized with her consent by her parents. The appellant tried to make the respondent understand, but she did not adhere to the appellant. He had also gone on 2.3.2003 and 6.7.2003 to the respondent to bring her back. The parents of the respondent wanted to keep the appellant as ***'Khana Damad'*** in their house. However, the appellant refused to do so. The respondent subjected the appellant with cruelty. She has deserved him. She had deliberately killed the child of the appellant in her womb by illegal abortion with malafide intention not to settle with the appellant.

4. The petition was contested by the respondent by filing reply. According to the averments contained in the reply, the respondent stayed with the appellant for 4-5 months. The appellant and his mother started torturing her. They used to taunt her for dowry articles and cash. The appellant used to come daily in the state of intoxication. He used to give beatings to the respondent. The respondent has categorically denied that she has left the company of the appellant. The Mundan ceremony in the house of the sister of the respondent was solemnized. The appellant accompanied the respondent to attend the ceremony. After attending the ceremony, the appellant directed the

respondent not to come back to his house. Thereafter, the appellant never went to the respondent's house to bring her back and settle the matter. She gave birth to a child on 30.7.2003. The female child was born dead. No maintenance was provided to the respondent. She has moved application under Section 125 Cr.P.C. A sum of Rs. 800/- per month was granted as maintenance to the respondent. However, during the course of execution proceedings, the Court asked the appellant to take the respondent back with him. The appellant agreed for that and on 18.11.2006 the respondent was taken back. However, after 5-6 months, the appellant used to show a photograph of one girl and forced the respondent to give him in writing to bring that girl to his house. When the respondent refused to do so, the appellant started maltreating the respondent. When she was 6-7 months pregnant, she was forced by the appellant to go to her parental house. She gave birth to another child in the year 2007.

5. The rejoinder was filed by the appellant. The issues were framed by the learned Addl. District Judge (III), Kangra at Dharamshala on 13.7.2010. The learned Addl. District Judge (III), Kangra at Dharamshala, dismissed the petition on 14.8.2013.

6. I have heard the learned counsel for the parties and also gone through the record and judgment dated 14.8.2013 carefully.

7. What emerges from the evidence placed on record is that the marriage was solemnized between the appellant and the respondent on 7.10.2002 according to Hindu rites and customs.

8. According to the appellant, the respondent has treated him with cruelty and also deserted him. The appellant has appeared as PW-1. In his cross-examination, he has admitted that he alongwith the respondent had gone to attend '*mundan ceremony'* at the house of the sister of the respondent. They remained there during night. He also deposed that he left the respondent in the house of her sister. He has also admitted that he has never gone to the respondent's house to take her back. He has also admitted that the respondent has given birth to female child in her parental house. He has never gone to see respondent and even the child. He had shown his ignorance about the birth given to dead child by the respondent on 30.7.2003. In the petition, it is stated that respondent had herself killed the child in the womb. However, when he appeared in the Court, he had shown ignorance about this fact that dead child was born to the respondent. He was not providing maintenance to the respondent.

9. Respondent has appeared as RW-1. She has corroborated the facts stated in the reply. RW-2 Prem Singh is the father of the respondent. He has testified that the appellant has left the respondent in the house of her sister when the parties had gone to attend the '*mundan ceremony'*. RW-3 Balbir Singh, deposed that he had gone to the house of the appellant with the father of the respondent. However, he found that the appellant did not want to keep the respondent as his wife. The mother of the appellant wanted to keep another lady with the appellant.

10. The respondent was constrained to move an application under Section 125 Cr.P.C. She was awarded maintenance of Rs. 800/- per month. However, in order to avoid the payment of maintenance, he agreed to bring back the respondent. The respondent stayed with him for 5-6 months. Thereafter, the appellant again created adverse circumstances and forced the respondent to go to her parental house. The girl child was born in the year 2007. He has not gone even to see respondent or newly born child. The appellant has also

admitted that the respondent wanted to live with him but he himself did not want to reside with the respondent.

11. Mr. Nipun Sharma, Advocate, for the appellant has also argued that the appellant infact had gone to the house of the respondent to bring her back. However, no evidence to this effect has been produced. RW-2 Prem Singh and RW-3 Balbir Singh have tried to settle the matter amicably by visiting the house of the appellant. Respondent was not decently treated when she had gone back and stayed with the appellant for 5-6 months. The respondent always wanted to live in the company of the appellant. It is the appellant who has deserted the respondent. He cannot be permitted to take advantage of his own fault. The respondent has never treated the appellant with cruelty. The appellant's behavior rather towards respondent was abnormal. He has not looked after the respondent. She was forced to file petition for maintenance. He had agreed to bring the respondent back only to avoid the payment of maintenance as ordered by the Court. He has not even cared to see his wife at the time of delivery in the year 2007. The respondent has been neglected by the appellant.

12. Their Lordships of the Hon'ble Supreme Court in ***Bipinchandra Jaisinghbai Shah*** *versus* ***Prabhavati***, AIR 1957 SC 176 have held that two essential conditions must be there to prove the desertion: (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Their Lordships have held that desertion is a matter of inference to be drawn from the facts and circumstances of each case. Their Lordships have held as under:

> "What is desertion? "Rayden on Divorce" which is a standard work on the subject at p.128 (6th Edn.) has summarized the case-law on the subject in these terms:-
>
> "Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party".
>
> The legal position has been admirably summarized in paras 453 and 454 at pp. 241. to 243 of Halsbury's Laws of England (3rd Edn.), VoL 12, in the following words:-
>
> "In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases. Desertion is not the withdrawal from a place but from the state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least three years immediately preceding the presentation of the petition where the offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. Desertion is a continuing offence".

Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances to each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co- exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the (animus deserendi) coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied of bringing cohabitation permanently to a close. The law in England has prescribed a three years period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decides to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end, and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted

spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court. In this connection the following observations of Lord Goddard CJ. in the case of Lawson v. Lawson, 1955-1 All E R 341 at p. 342(A), may be referred to :-

"These cases are not cases in which corroboration is required as a matter of law. It is required as a matter of precaution....... "

With these preliminary observations we now proceed to examine the evidence led on behalf of the parties to find out whether desertion has been proved in this case and, if so, whether there was a bona fide offer by the wife to return to her matrimonial home with a view to discharging marital duties and, if so, whether there was an unreasonable refusal on the part of the husband to take her back.

13. Their Lordships of the Hon'ble Supreme Court in ***Lachman Utamchand Kirpalani*** *versus* ***Meena alias Mota***, AIR 1964 SC 40 have held that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. Their Lordships have further held that the burden of proving desertion - the 'factum' as well as the 'animus deserendi' is on the petitioner and he or she has to establish beyond reasonable doubt to the satisfaction of the Court, the desertion throughout the entire period of two years before the petition as well as that such desertion was without just cause. Their Lordships have held as under:

"The question as to what precisely constitutes "desertion" came up for consideration before this Court in an appeal for Bombay where the Court had to consider the provisions of S. 3(1) of the Bombay Hindu Divorce Act, 1947 whose language is in pari materia with that of S. 10(1) of the Act. In the judgment of this Court in Bipin Chandra v. Prabhavati, 1956 SCR 838; ((S) AIR 1957 SC 176) there is an elaborate consideration of the several English decisions in which the question of the ingredients of desertion were considered and the following summary of the law in Halsbury's Laws of England (3rd Edn.) Vol. 12 was cited with approval :

"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the order without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases." The position was thus further explained by this Court. "If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently the cease cohabitation, it will not amount to desertion. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there, (1) the factum of separation, and (2) the intention of bring cohabitation permanently to an end (animus deserndi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.. . . . .

Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time." Two more matters which have a bearing on the points in dispute in this appeal might also be mentioned. The first relates to the burden of proof in these cases, and this is a point to which we have already made a passing reference. It is settled Law that the burden of proving desertion -

the "factum" as well as the "animus deserendi" - is on the petitioner; and he or she has to establish beyond reasonable doubt, to the satisfaction of the Court, the desertion throughout the entire period of two years before the petition as well as that such desertion was without just cause. In other words, even if the wife, where she is the deserting spouse, does not prove just cause for her living apart, the petitioner-husband has still to satisfy the Court that the desertion was without just cause. As Dunning, L. observed : (Dunn v. Dunn

(1948) 2 All ER 822 at p. 823) :

"The burden he (Counsel for the husband) said was on

her to prove just cause (for living apart). The argument

contains a fallacy which has been put forward from time to time in many branches of the law. The fallacy lies in a failure to distinguish between a legal burden of proof laid down by law and a provisional, burden raised by the state of the evidence . . . . The legal burden throughout this case is on the husband, as petitioner, to prove that this wife deserted him without cause. To discharge that burden, he relies on the fact that he asked her to join him and she refused. That is a fact from which the court may infer that she deserted him without cause, but it is not bound to do so. Once he proves the fact of refusal, she may seek to rebut the inference of desertion by proving that she had just cause for her refusal; and, indeed, it is usually wise for her to do so, but there is no legal burden on her to do so. Even if she does not affirmatively prove just cause, the Court has still, at the end of the case, to ask itself: Is the legal burden discharged? Has the husband proved that she deserted him without cause? Take this case. The wife was very deaf, and for that reason could not explain to the Court her reasons for refusal. The judge thereupon considered reasons for her refusal which appeared from the facts in evidence, though she had not herself stated that they operated on her mind. Counsel for the husband says that the judge ought not to have done that. If there were a legal burden on the wife he would be right, but there was none. The legal burden was on the husband to prove desertion without cause, and the judge was right to ask himself at the end of the case: Has that burden been discharged?"

14. Their Lordships of the Hon'ble Supreme Court in ***Smt. Rohini Kumari versus Narendra Singh***, AIR 1972 SC 459 have explained the expression 'desertion' to mean the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage.

> "Under Section 10 (1) (a) a decree for judicial separation can be granted on the ground that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. According to the Explanation the expression "desertion" with its grammatical variation and cognate expression means the desertion of the petitioner by the
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> other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage. The argument raised on behalf of the wife is that the husband had contracted a second marriage on May 17, 1955. The petition for judicial separation was filed on August 8, 1955 under the Act which came into force on May 18, 1955. The burden under the section was on the husband to establish that the wife had deserted him for a continuous period of not less than two years immediately preceding the presentation of the petition. In the presence of the Explanation it could not be said on the date on which the petition was filed that the wife had deserted the husband without reasonable cause because the latter had married Countess Rita and that must be regarded as a reasonable cause for her staying away from him. Our attention has been invited to the statement in Rayden on Divorce, 11th Edn. Page 223 with regard to the elements of desertion According to that statement for the offence of desertion there must be two elements present on the side of the deserting spouse namely, the factum, i.e. physical separation and the animus deserendi i.e. the intention to bring cohabitation permanently to an end. The two elements present on the side of the deserted spouse should be absence of consent and absence of conduct reasonably causing the deserting spouse to form his or
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> her intention to bring cohabitation to an end. The requirement that the deserting spouse must intend to bring cohabitation to an end must be understood to be
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> subject to the qualification that if without just cause or excuse a man persists in doing things which he knows his wife probably will not tolerate and which no ordinary woman would tolerate and then she leaves, he has deserted her whatever his desire or intention may have been. The doctrine of "constructive desertion" is discussed at page 229. It is stated that desertion is not to be tested by merely ascertaining which party left the matrimonial home first. If one spouse is forced by the conduct of the other to leave home, it may be that the spouse responsible for the driving out is guilty of desertion. There is no substantial difference between the case of a man who intends to cease cohabitation and leaves the wife and the case of a man who with the same intention compels his wife by his conduct to leave him."

15. Their Lordships of the Hon'ble Supreme Court in the case of **Shobha Rani v. Madhukar Reddi** reported in **AIR 1988 SC 121** have explained the term "cruelty" as under:

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in elation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon, [1966] 2 All E.R. 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacityor incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty."

16. Their Lordships of the Hon'ble Supreme Court in **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511**, have enumerated some instances of human behaviour, which may be important in dealing with the cases of mental cruelty, as under:

"98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost mpossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger

or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

17. Their Lordships of the Hon'ble Supreme Court have held in **Manisha Tyagi vs. Deepak Kumar** reported in **2010(1) Divorce & Matrimonial Cases 451**, as under:

"24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonable be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that would be harmful or injurious to continue the cohabitation with the other spouse. Therefore, to establish cruelty it is not necessary that physical violence should be used. However, continued ill-treatment cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However, in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of

the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce."

18. Their Lordships of the Hon'ble Supreme Court have held in **Ravi Kumar vs. Julumidevi** reported in (2010) 4 SCC 476, as under:

"19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial case can be of infinite variety – it may be subtle or even brutal and may be by gestures and word. That possible explains why Lord Denning in Sheldon v. Sheldon held that categories of cruelty in matrimonial case are never closed.

21. This Court is reminded of what was said by Lord Reid in Gollins v. Gollins about judging cruelty in matrimonial cases. The pertinent observations are (AC p.660)

"‥ In matrimonial cases we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

22. " About the changing perception of cruelty in matrimonial cases, this Court observed in Shobha Rani v. Madhukar Reddi at AIR p. 123, para 5 of the report: (SCC p.108, para 5)

"5. It will be necessary to bear in mind that there has been (a) marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which

> they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties."

19. Their Lordships of the Hon'ble Supreme Court have held in **Pankaj Mahajan vs. Dimple Alias Kajal** reported in (2011) 12 SCC 1, as under

> "36. From the pleadings and evidence, the following instances of cruelty are specifically pleaded and stated. They are:
>
> i. Giving repeated threats to commit suicide and even trying to commit suicide on one occasion by jumping from the terrace.
>
> ii. Pushing the appellant from the staircase resulting into fracture of his right forearm.
>
> iii. Slapping the appellant and assaulting him. iv. Misbehaving with the colleagues and relatives of the appellant causing humiliation and embarrassment to him.
>
> v. Not attending to household chores and not even making food for the appellant, leaving him to fend for himself.
>
> vi. Not taking care of the baby.
>
> vii. Insulting the parents of the appellant and misbehaving with them.
>
> viii. Forcing the appellant to live separately from his parents.
>
> ix. Causing nuisance to the landlord's family of the appellant, causing the said landlord to force the appellant to vacate the premises.
>
> x. Repeated fits of insanity, abnormal behaviour causing great mental tension to the appellant.
>
> xi. Always quarreling with the appellant and abusing him.
>
> xii. Always behaving in an abnormal manner and doing weird acts causing great mental cruelty to the appellant."

20. Their Lordships of the Hon'ble Supreme Court have held in **Vishwanath Agrawal vs. Sarla Vishwanath Agrawal** reported in **(2012) 7 SCC 288** as under:

> "22. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.
>
> 28. In Praveen Mehta v. Inderjit Mehta, AIR 2002 SC 2582 it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair

inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other."

21. In the instant case, the appellant has failed to prove that the respondent has deserted him. The appellant has also failed to prove that the respondent has treated him with cruelty.

22. Accordingly, there is no merit in this appeal, the same is dismissed. No costs.

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

Sita Devi .....Petitioner.
Versus
State of H.P & others ....Respondents

CWP No. 5089 of 2014-F
Reserved on : 13.11.2014.
Decided on : 19.11.2014

Constitution of India, 1950- Article 226- Respondent No. 7 was selected for the post of Aaganbari Worker- petitioner asserted that respondent no. 7 was ineligible as her income was more than Rs. 8,000/- per month specified in the rules-Tehsildar, Mandi had conducted an inquiry in which he found that income of petitioner and respondent No.7 was more than the prescribed limit- consequently, he quashed the income certificate - an appeal was filed before Sub Divisional Collector, Sadar, District Mandi, who accepted the appeal and held the certificate to be in order- further appeals were dismissed- no material was brought on record to show that any legal impropriety was committed or there was non-application of mind- appeal dismissed. (Para-2)

For the Petitioner: Mr. Vinod Thakur, Advocate.
For the Respondents: Mr. Anup Rattan, Additional Advocate General with Mr. Ramesh Thakur, Assistant Advocate General for respondents No. 1 to 6.
Mr. Vijay Chaudhary, Advocate, for respondent No. 7.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge.

Respondent No. 7 was selected for appointment to the post of Anganbadi worker in Anganbadi Centre Gadhraur. Subsequent to her selection for appointment as Anganbadi worker, she secured her appointment in the capacity aforesaid. However, the writ petitioner is aggrieved by the appointment of respondent No. 7 in the capacity aforesaid. The petitioner prays for quashing and setting aside the appointment of respondent No. 7 as Anganbadi worker. In trite the grievance ventilated against the appointment of respondent No. 7 is couched in the factum of hers being ineligible in as much as her income in infraction of the apposite guidelines governing the selection and appointment of

Anganbadi worker by the respondents No. 1 to 6, falling above the maximum ceiling of Rs.8000/- per annum. The rendition of pronouncements comprised in Annexure P-12 of 10.12.2013 and P-14 of 24.6.2014 by the competent authority seized with the matter qua the selection of respondent No. 7 have been assailed to be anvilled upon both mis-appreciation or non-appreciation of apposite material on record. Consequently, a prayer for both Annexures P-12 and P-14 being quashed and set aside is voiced in the writ petition.

2. Even though, previous to the rendition of orders comprised in Annexure P-12, the Tehsildar, Sadar, Mandi, had in his report of 21.4.2011, qua fulfillment of income criteria by both the petitioner and respondent No. 7 enunciated therein that since both the petitioner and respondent No. 7 had in the relevant year an income more than the prescribed limit, hence he proceeded to cancel the income certificates issued earlier by his office. In his report the Tehsildar Sadar, Mandi of 21.4.2011, had hence pronounced the ineligibility of both the petitioner and respondent No. 7 for being considered for selection and consequent appointment to the post of Anganbadi worker on the score of their income falling outside/above the maximum ceiling of income per annum prescribed in the apposite rules. The same had come to be challenged by the aggrieved before the Sub Divisional Collector, Sadar, District Mandi, who accepted their appeal. Consequently, the Reports of the Tehsildar, Sadar, Mandi of 21.4.2011 and 3.7.2012 were set aside. The concomitant effect thereof was that the certificates issued to both the petitioner and the respondent No. 7 qua their income were held to be in order at the stage when the authority who rendered Annexure P-11 came to be seized of the matter. On an appeal having been preferred by the petitioner herein before the learned Deputy Commissioner, he under Annexure P-12, on an incisive consideration of the material as laid before him had concluded that the order rendered by the Sub Divisional Collector comprised in Annexure P-11, whereby he set aside the report of 3.7.2012 pronounced by the Tehsildar Sadar, Mandi, whereby the latter had cancelled the income certificate, was anvilled upon a circumspect as well as an in-depth analysis of the material in consonance with the apposite guidelines. The petitioner herein was aggrieved by the order comprised in Annexure P-12, hence, came to institute an appeal before the Divisional Commissioner, Mandi, District Mandi, H.P. The Divisional Commissioner, Mandi in his orders comprised in Annexure P-14 dismissed the appeal preferred by the petitioner herein. Consequently, the appeal preferred by the petitioner herein against the impugned order rendered by the Deputy Commissioner, was dismissed. The authority aforesaid in the penultimate paragraph of his pronouncement has magnifyingly portrayed therein the factum of existence of a patent mistake committed by the Tehsildar Sadar in recalculating the income of both the parties and the actual size of the family on an appropriate reckonable date for computing and assessing the income of the petitioner and respondent No. 7. The conclusions as well as inferences as arrived at by the authority who pronounced and rendered the order comprised in Annexure P-14 while affirming the order rendered in Annexure P-12 are anvilled upon an appropriate assessment of the material on record. The learned counsel for the petitioner has been unable to portray before this Court that the findings and inferences arrived at by the authority who rendered Annexure P-14 in as much as it having inferred that the Tehsildar had committed an apparent and patent mistake in recalculating income of both the petitioner and the respondent No. 7 as well as the actual size of their families as it stood on the appropriate reckonable date i.e. 1.1.2004 are infirmed on the score of both the authorities who rendered Annexure P-12 and P-14 having omitted to consider the apposite/germane material on record or theirs having been prodded to record such a finding or

having arrived at findings and inferences aforesaid while mis-appreciating the apposite material on record. In the absence of material on record forthrightly pronouncing the factum of the authorities who rendered Annexures P-12 and P-14 having committed a legal impropriety comprised in theirs excluding germane and apposite material and including discardable material, the inevitable conclusion which ensues is that hence the orders comprised in Annexure P-12 of 10.12.2013 and P-14 of 24.6.2014, cannot be construed to have acquired any taint or blemish of non-application of mind. Consequently, this Court is constrained to uphold the orders comprised in Annexures P-12 of 10.12.2013 and P-14 of 24.6.2014. Hence, the present petition stands dismissed, as also pending applications, if any.

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BEFORE HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Mrs. Bahar Murtaza Ali and others ...Non-applicants/Plaintiffs
Versus
Mrs. Rohini Wahi alias Roohani ...Applicant/Defendant

OMP No. 122 of 2014 In
C.S. No. 4084 of 2013
Reserved on: 20.11.2014.
Decided on: December 09, 2014.

Code of Civil Procedure, 1908 - Section 10 - One civil suit is pending before Learned Civil Judge, Palampur, District Kangra - another suit is pending before Delhi High Court- third suit has been filed before the High Court – an application for staying the proceeding before the High Court filed- held, that Section 10 is applicable only if the first Court is competent to grant the relief claimed in the second suit- suit filed before the high Court is valued at Rs. 2 crores - Civil Judge, Palampur is not competent to grant the relief claimed in the second suit as his pecuniary jurisdiction is restricted to Rs. 10 lacs- therefore, proceedings before High Court cannot be stayed. (Para- 7, 8 and 13)

Code of Civil Procedure, 1908- Order 8 Rule 6(A) - Counter-claim- Counter claim, which is beyond pecuniary jurisdiction of the Court cannot be filed before the Court. (Para-9 to 11)

Cases referred:

Barthels and Luders GmbH versus M.V. 'Dominique' AIR 1988 Bombay 380

Cofex Exports Ltd. versus Canara Bank AIR 1977 Delhi 355,

Gurbachan Singh versus Bhag Singh and others AIR 1996 SC 1087

Jag Mohan Chawla and anther versus Dera Radha Swami Satsang and others AIR 1996 SC 2222.

For the Non-applicants/ Plaintiffs	:	Ms. Anu Tuli and Mr. K.B. Upadhyay, Advocates.
For the Applicant/Defendant:		Mr. Rajnish Maniktala, and Ms.Shreya Chauhan, Advocates.

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge

The applicant/defendant has preferred this application under Section 10 of the Code of Civil Procedure for staying the present suit.

2. The facts as detailed in this application are that till date there are three civil suits filed by the parties before different Courts. These suits have been filed after death of Faiz Murtaza Ali, the details of these civil suits are given as under:

(a) Civil Suit No. 920 of 2013 is pending before the Civil Judge, Palampur, District Kangra, H.P. and was filed on 6.8.2013. This suit was filed by the defendant because the plaintiffs wanted to take the forcible possession of the suit property armed with an illegal order passed by the Deputy Commissioner, Kangra at Dharamshala, who had no jurisdiction to pass any such orders. The pleadings of the parties will go to show that the replying defendant claims the ownership of the property on the basis of Will dated 14.4.2013 and conferring of this property on the defendant by virtue of mehar. The factum of marriage between the defendant and the deceased Faiz Murtaza Ali has been denied by the plaintiffs. It is alleged that Faiz Murtaza Ali never executed the Will dated 14.4.2013.

(b) Civil Suit No. 1815/2013, "Mrs. Bahar Murataza Ali and others vs. Rohini Wahi alias Roohani and others" is pending before Hon'ble Delhi High Court. This suit has been filed on 11.9.2013. In this suit, the Will dated 14.4.2013 alongwith another Will dated 19.6.2013 has been challenged. It is stated by the plaintiffs that the deceased Faiz Murtaza Ali has never executed these Wills and they are absolute owners of the properties alongwith a prayer for permanent injunction.

(c) Civil Suit No. 4048 of 2013 "Mrs. Bahar Murtaza Faiz Ali vs. Rohani Ali alias Roohani" has been filed before this Hon'ble court i.e. present suit. Though the present suit has been titled as the suit for possession, declaration, permanent and mandatory injunction but essentially in terms of the prayers and pleadings, the plaintiffs have challenged the Will dated 14.4.2013 and have alleged that the defendant was never married to the deceased Faiz Murtaza Ali and that the plaintiffs are the only heirs of deceased Faiz Murtaza Ali.

As per the applicant, the matter directly and substantially in issue in all these three suits are:

(i) Whether the defendant is legally wedded wife of deceased, Faiz Murtaza Ali ?

(ii) Whether the defendant was given the present suit property by virtue of mehar?

(iii) Whether the deceaed, Faiz Murtaza Ali, had executed the Will dated 14.4.2013?

(iv) Whether the plaintiffs and defendant would be entitled to inherit the properties of the deceased, Faiz Murtaza Ali, being his heirs in accordance with the Muslim Law.

As such, the present suit, according to the applicant, is required to be stayed in terms of Section 10 of Civil Procedure Code because the matter in issue in the present suit is directly and substantially in issue in previously instituted suits between the parties.

3. The non-applicants/plaintiffs in their reply submitted that the provisions of Section 10 of the Code of Civil Procedure were not at all attracted to the facts of the present case because of the following reasons:

"3. That Civil Suit No. 820 of 2013 is pending before the Civil *Judge, Palampur, District Kangra, H.P. wherein the parties are as follows: Rohini Wali – the plaintiff and Shahnaz Ali, Seher Ali Saini and Bhisham Saini – the defendants, however, in the present suit (Civil Suit No. 4084/13) Bhisham Saini is not a party. Plaintiff No.1 herein is also not a party to Civil Suit No. 820 of 2013. Further, it is relevant to mention here that the Ld. Civil Judge, Palampur has no jurisdiction with regard to declaration of right, title and possession of the suit property due to lack of pecuniary jurisdiction.*

4. That CS (PS) No. 1815 of 2013 filed by the plaintiffs is pending before the Hon'ble High Court of Delhi at New Delhi wherein the plaintiffs seek declaration of purported WILLS dated 14.04.2013 & 19.06.2013 as null and void and wherein all the beneficiaries of the purported WILLS dated 14.4.2013 and 19.6.2013 including the defendant herein Rohini Wali @ Rophani have been made defendants. Again in CS (OS) No. 1815/2013, Mr. Bhisham Saini is not a party. Further, the suit property is not within the jurisdiction of the Delhi High Court and also no relief has been claimed in respect of the suit property before the Hon'ble Delhi High Court, therefore, the Hon'ble Delhi High Court has no jurisdiction to pass any order in respect of right, title and possession of the suit property."

4. It is further submitted that it is only this Court which has jurisdiction to pass the decree in respect of the right, title and possession of the suit property, whereas the relief claimed in the other suits are entirely different and only some of the parties are common. It is further contended that in the suit pending before the Civil Judge, Palampur, the parties are different and above-all that Court has no jurisdiction with regard to declaration of right, title and possession of the suit property due to lack of pecuniary jurisdiction. It was lastly submitted that the plaintiffs alone are the natural heirs of late Sh. Faiz Murtaza Ali and have challenged the legal status of the defendant, who is simply a trespasser in the suit property.

5. I have heard learned counsel for the parties and have also gone through the records carefully.

6. Section 10 of the Code of Civil Procedure (for short 'Code') reads thus:-

"10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government][***] and having like jurisdiction, or before [the Supreme Court].

Exlanation.- The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action."

The applicability of this provision would be attracted if;

Firstly, the matter in issue in the suit is directly and substantially in issue in a previously instituted suit between the same parties;

Secondly, the previously instituted suit is pending-

i) in the same Court in which the subsequent suit is brought; or

ii) in any other Court in India (whether superior, inferior or co-ordinate); or

iii) in any Court beyond the limits of India established or continued by the Central Government; or

iv) before the Supreme Court; and

Thirdly, where previously instituted suit is pending in any of the Courts mentioned in clause (b) or clause (c), such Court is a Court of jurisdiction competent to grant the relief claimed in the subsequent suit.

7. One of the essential ingredients of applicability of Section 10 of the Code is the competency of the first Court to grant the reliefs claimed in the second suit. Now it would be seen that the suit filed before this Court has been valued at Rs.2 crores and is, therefore, admittedly not triable by the Civil Judge, Palampur, whose jurisdiction in terms of the notification No.HHC/PJ/93-I—dated 03.10.2013 is only to try the suit whose pecuniary jurisdiction is Rs.10,00,000/-. The relevant portion of the notification is extracted below:-

"The High Court of Himachal Pradesh, in exercise of the powers vested under Section 29 read with Section 10 and 11 of the Himachal Pradesh Courts Act, 1976 as well as in supersession of the Notification dated, 8.4.2009, has been pleased to pass the following orders :-

I. District Judges/Addl. District Judge

The court of District Judge/Additional District Judge shall have the pecuniary jurisdiction in all original Civil Suits the value of which exceeds Rs. 20,00,000/- (Rupees twenty lacs) but does not exceed Rs.30,00,000/-(Rupees Thirty lacs).

II. Civil Judge (Senior Division)

The Court of Civil Judge (Senior Division) shall exercise the Jurisdiction in all original Civil Suits the value of which exceeds Rs.10,00,000/-(Rupees Ten Lacs) but does not exceed Rs.20,00,000/-(Rupees Twenty lacs).

III. Civil Judge (Junior Division)

The court of civil Judge (Junior Division) shall exercise the jurisdiction in all original Civil Suits the value of which does not exceed Rs.10,00,000/-(Rupees ten lacs)."

8. It would also be clear from a bare reading of the aforesaid notification that all suits valued above Rs.30 lacs would only be triable and adjudicated by this Court. It cannot be disputed that the jurisdiction would include both pecuniary as well as territorial. It is also a trite that jurisdiction with reference to the subject-matter of a claim depends only upon the allegations in the plaint and not upon the allegations in the written statement. It is also equally settled that a counter-claim for all purposes has to be treated as an independent suit and is governed by the rules as are applicable to the plaint. A reference to the counter claim is being made only because the case law cited by the plaintiffs-respondents relates to cases where counter-claim had

been filed beyond pecuniary jurisdiction of the Courts and were held to be not maintainable.

9. The learned counsel for the plaintiffs-respondents has vehemently contended that in case a counter claim which is in the nature of a plaint is filed outside the pecuniary jurisdiction of the Court, the same cannot be allowed to be introduced. In support of his submissions, he has placed reliance upon the judgment of the Bombay High Court in ***Barthels and Luders GmbH*** *versus* ***M.V. 'Dominique' AIR 1988 Bombay 380*** relevant portion whereof reads thus:-

> ***"6.Under Order 8, R.6A of the Code of Civil Procedure a defendant in a suit may set up by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not. The proviso set out that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. Under O.8, R.6, therefore, once a suit has been filed the defendant can set up by way of counter-claim any right or claim against the plaintiff which arises before the defendant has delivered his defence or before the time limited for delivering his defence has expired. This counter-claim may be a claim in the nature of damages also. The only restriction as set out in the provision is that the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. There is no restriction regarding territorial jurisdiction of the Court. This is because the suit and the counter-claim are in many ways not two independent proceedings but a united proceeding. Although O.8, R.6A provides that the counter-claim is to be treated as a plaint and is to be governed by the rules applicable to plaints, it is not to be treated as a completely separate suit. Infact O.8, R.6A sub-rule(2) the counter-claim is to be treated as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim, so that both the proceedings can be disposed of by a common judgment."***

10. In **Cofex Exports Ltd.** versus **Canara Bank AIR 1977 Delhi 355**, the following observations have been made:-

> ***"34. The following things are in common in set off and counter claim:***
>
> ***(1) None should exceed the pecuniary limits of the jurisdiction of the Court;***
>
> ***(2) Both are pleaded in the written statement, if the law governing the Court permits such plea being raised by the defendant in the written statement;***
>
> ***(3) The plaintiff is expected to file a written statement in answer to a claim for set off or to a counter claim;***
>
> ***(4) Even if permitted to be raised, the Court may in appropriate cases direct a set off or counter claim being tried separately;***
>
> ***(5) A defendant cannot be compelled to plead a set off nor a counter claim; he may as well maintain an***

independent action for enforcing the claim forming subject matter of set off or counter claim;

(6) Both are liable to payment of court-fee under sch.1 Art. 1 of Court-fees Act, 1870;

(7) Dismissal of suit or its withdrawal would not debar a set off or counter claim being tried, may be followed by a decree against the plaintiff."

11. I find considerable force in the contentions raised by the plaintiffs-respondents because the Hon'ble Supreme Court in ***Gurbachan Singh*** *versu****s Bhag Singh and others AIR 1996 SC 1087*** has clearly held that though the counter claim for possession by defendant can be entertained in a suit filed for injunction by the plaintiff by virtue of Order 8 Rule 6(A) (1) but the same should not exceed pecuniary jurisdiction of the Court. Relevant para thereof reads as follows:-

"3. It is true that Rule 6A(a) was introduced by Amendment Act of 1976. Preceding the amendment it was settled law that except in a money claim counter claim or set off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set off in addition to a counter claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counter claim or set off had accrued to defendant either before or after the filing of the suit. The limitation was that the counter claim or set off must be pleaded by way of defence in the written statement before the defendant filed his written statement or before the time limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the Court. In other words, by laying the counter claim pecuniary jurisdiction of the Court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction. Thus considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained by operation of Order 8 Rule 6(A)(1) of C.P.C."

12. This position of law was reiterated in ***Jag Mohan Chawla and anther*** *versus* ***Dera Radha Swami Satsang and others AIR 1996 SC 2222.***

13. Thus, in view of what has been discussed above, it can safely be concluded that since the Court at Palampur does not have the pecuniary jurisdiction to entertain the subsequent suit which has been filed before this Court and has been valued at `2 crores for the purpose of jurisdiction, the proceedings in the present suit cannot be stayed. Accordingly this application being without merit is dismissed.

14. Before parting, it may be observed that a number of decisions have been cited by the parties, however, the same deal with the general principles regarding applicability of Section 10 of the Code and do not deal with the specific cases as are applicable to the facts of the present case and, therefore, the judgment is not being burdened by citing and discussing those decisions.

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

RFA Nos. 163 to 172 of 2008
Reserved on: 24.11.2014.
Decided on: 25.11.2014.

1. RFA No. 163 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Gian Chand & others ....Respondents.

2. RFA No. 164 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Kishna & others ....Respondents.

3. RFA No. 165 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Mahi Ram & others ....Respondents.

4. RFA No. 166 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Tirath Ram & another ....Respondents.

5. RFA No. 167 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Gian Chand & others ....Respondents.

6. RFA No. 168 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Santosh Devi & others ....Respondents.

7. RFA No. 169 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Kashav Chander & others ....Respondents.

8. RFA No. 170 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Ram Singh & anr. ....Respondents.

9. RFA No. 171 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Dev Raj & others ....Respondents.

10. RFA No. 172 of 2008
General Manager, Northern Railway ......Appellant.
Versus
Roshan Lal & ors. ....Respondents.

Land Acquisition Act, 1894- Section 18- Land was acquired for the construction of Nangal-Talwara Rail Line- notification under Section 4 was issued on 21.4.1998- reference Court had taken into consideration the sale deed dated 22.8.1998- held, that sale deed was proximate to the notification and was rightly taken into consideration- subsequent transaction can be relied upon when there were no fluctuations in the

prices since the preliminary notification and the date of subsequent transaction. (Para- 17 to 22)

Cases referred:

Administrator General of West Bengal vrs. Collector, Varanasi, (1988) 2 SCC 150

Periyar and Pareekanni Rubbers Ltd. vrs. State of Kerala, (1991) 4 SCC 195

Karan Singh and others. vrs. Union of India, (1997) 8 SCC 186

A. Natesam Pillai vrs. Special Tahsildar, Land Acquisition, Tiruchy, (2010) 9 SCC 118

Rishi Pal Singh and others vrs. Meerut Development Authority and another, (2006) 3 SCC 205

Trishala Jain and another vrs. State of Uttaranchal and another, (2011) 6 SCC 47,

Bilkis and others vrs. State of Maharashtra and others, (2011) 12 SCC 646

R. Sarangapani vrs. Special Tahsildar Karur Dindigul Broadguage Line, (2011) 14 SCC 177

Digamber and others vrs. State of Maharashtra and others, (2013) 14 SCC 406

For the appellant(s): Mr. Rahul Mahajan, Advocate.

For the respondents: Mr. Parmod Thakur, Addl. AG with Mr. Neeraj K. Sharma, Dy. AG and Mr. J.S.Guleria, Asstt. AG, for respondent-State.
Mr. G.R.Palsra and Mr. T.S. Chauhan, Advocates, for the respective respondents.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

Since common questions of law and facts are involved in these RFAs, these are taken up together for being disposed of by a common judgment.

2. These regular first appeals are directed against the common award dated 29.9.2007, whereby the learned Addl. District Judge, Una, H.P., has enhanced the compensation.

3. Key facts, necessary for the adjudication of these regular first appeals are that the notification under Section 4 of the Land Acquisition Act was issued for acquiring the land for the construction of Nangal-Talwara Rail Line from Una to Churaru on 21.3.1998. The notification under Sections 6 & 7 of the Act was issued by the Land Acquisition Collector, Una on 18.11.1998. The Land Acquisition Collector made the award for acquiring 3-74-68 hectares of land. The respondents-claimants, feeling aggrieved by the award made by the Land Acquisition Collector, Una filed references under Section 18 of the Act for making reference to the Court on the grounds that the land acquired by the appellants was of great potential value. The land was situated near Una city. The land was situated at Una to Dhamandari road. According to the claimants, the market value of the land was not less than 25,000/- per marla. The land acquired was fertile. The land was also situated in the vicinity of Dera Baba Rudru and Jhalehra town.

4. According to the appellants, the land acquired was situated far away from the Una town as well as from Una Dhamandari road. The issues

were framed by the learned Addl. District Judge, Una on 14.2.2006. The learned Addl. District Judge, Una, partly allowed the land references and claimants were held entitled to enhanced market value at the uniform rate of Rs. 25,000/- per kanal for all categories of the acquired land as per their respective shares recorded in the statement recorded under Section 19 of the Act alongwith the statutory benefits. Hence, these regular first appeals.

5. Mr. Rahul Mahajan, Advocate, has vehemently argued that the learned Addl. District Judge, Una, has wrongly relied upon Ext. PW-2/A for enhancing compensation. According to him, the market value of the land vide Ext. RW-1/A to RW-1/K was less than what has been awarded by the learned Addl. District Judge, Una. He lastly contended that the learned Addl. District Judge, Una has taken into consideration the sale deeds pertaining to small plots of land though the land acquired was big chunk of land. On the other hand, Mr. G.R.Palsra, Advocate, has supported the award dated 29.9.2007.

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

7. The notification under Section 4 of the Act was published in the H.P. Gazettee on 21.3.1998. The notifications under Sections 6 & 7 were published on 18.11.1998. The land has been acquired for the construction of Railway Line. The learned Addl. District Judge, Una, has clubbed the matters and has recorded common evidence on all these petitions.

8. PW-1 Piare Lal has proved copy of location plan Ext. PW-1/A and PW-1/B, site plan. He has proved these documents after visiting the spot. PW-2 Jugal Kishor, Registration Clerk, has proved sale deed Ext. PW-2/A. PW-3 Suram Singh, deposed that he has sold land measuring 0-01-12 hect. for a sum of Rs. 10,000/- to Jagtar Singh son of Sh. Amar Nath. The copy of sale deed is Ext. PW-2/A. He has put his signatures on the same. He has received a sum of Rs. 10,000/- from Jagtar Singh. In his cross-examination, he deposed that the money was required by him for the marriage of his daughter. PW-4 Jagtar Singh deposed that in the year 1998, he has purchased land measuring 0-01-12 hect. About 6 marlas from Sh. Suram Singh for a sum of Rs. 10,000/- vide sale deed Ext. PW-2/A. He has signed the same. He has paid a sum of Rs. 10,000/- to Suram Singh. PW-5 Shamsher Singh deposed that in the year 2005, he has purchased 6 marlas of land from Gian Chand for a sum of Rs. 60,000/- as per Ext. PW-2/B. This land was situated near the railway track. One of the claimants Gian Chand has appeared as PW-6. He has led his evidence by filing an affidavit. According to the averments contained in his affidavit, the acquired land was capable of raising two crops. It was irrigated, however, in the revenue record entry to this effect was not made. The map was prepared by P.L. Bains. This land is situated near Una-Takka road, Jhalera Takka road and Dangehra Takka road. The potential of the land is on the higher side since it abuts this road and suitable for construction of shops, hotel and industry etc. The land is situated near Una town. They used to earn livelihood by cultivating the same. The compensation paid by the Land Acquisition Collector was meager. The Una was fast developing town. They were entitled to Rs. 25,000/- per kanal. In his cross-examination, he has denied the suggestion that the land was not abutting the road. He denied the suggestion that one portion of the acquired land was '*banjar kadim*' and remaining '*birani avval'.*

9. RW-1 Joginder Singh, Naib Tehsildar, has produced the record of the Land Acquisition Collector. The award was made by the Land Acquisition Collector on 18.9.2000 after completing all the formalities.

10. The notification under Section 4 of the Act was issued on 21.4.1998. The learned Addl. District Judge, Una, has rightly taken into consideration Ext. PW-1/A dated 22.7.1998. it was proximate to the notification dated 21.4.1998. According to this sale deed Ext. PW-1/A, PW-3 Suram Singh has sold land measuring 0-01-12 hect. for a sum of Rs. 10,000/- to Jagtar Singh. He has proved copy of sale deed Ext. PW-2/A. He has received the consideration amount for 10,000/- from PW-4. PW-4 Jagtar Singh has deposed in his examination-in-chief that he has purchased land measuring 0-01-12 hect. about 6 marlas from PW-3 Suram Singh PW-2/A for a consideration of Rs. 10,000/-. PW-1 Pyare Lal has proved Ext. PW-1/A and Ext. PW-1/B, location plan and site plan, respectively. PW-2 Jugal Kishor, Registration Clerk has brought the original record and he has proved sale deed Ext. PW-2/A. Now, as far as statement of PW-5 Shamsher Singh is concerned, it cannot be taken into consideration for the simple reason that PW-5 Shamsher Singh has purchased the land from Gian Chand in the year 2005.

11. Mr. Rahul Mahajan, Advocate, has also argued that the large chunk of land has been acquired but the learned Addl. District Judge, Una, has taken into consideration exemplar Ext. PW-1/A of small piece of land. The appellant has not placed on record copy of any sale deed in proximity to before and after the notification dated 21.4.1998. It is now well settled that the exemplars of small plots can be taken into consideration but the suitable deductions are required to be made while determining the market price of the land.

12. Their lordships of the Hon'ble Supreme Court in the case of ***Administrator General of West Bengal vrs. Collector, Varanasi,*** reported in ***(1988) 2 SCC 150,*** have held that subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further, under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. However, this principle would be applicable to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. In the instant case, the appellant has not put any suggestion that there was any fluctuation in the prices from the date of preliminary notification and the date of subsequent notification. Their lordships have held as under:

> "13. The sale transaction at Ext. 24 was an year later. Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. This Court in State of U. P. v. Maj. Jitender Kumar, (See AIR 1982 SC 876 (877)) observed :
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> > "......It is true that the sale deed Ext. 21 upon which the High Court has relied is of a date three years later than the Notification under S. 4 but no material was produced before the Court to suggest that there was any fluctuation in the market rate at

> Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex. 21 under which the Housing Society itself had purchased land in the neighbourhood of the land (in) dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ex. 21..."

But this principle could be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction. In the present case appellant did not endeavour to show that between the date of preliminary notification i.e. 4-7-1959 and the date of Ext. 24 i. e. 18-8-1960 there was no appreciation in the value of land in the area. Therefore, Ext. 24 cannot be relied upon as affording evidence of the market value as on 4-7-1959. We cannot accept the argument that the price indicated in Ext. 24 should be accepted after allowing an appropriate deduction for the possible appreciation of the land values during the period of one year. Apart from other difficulties in this exercise, there is no evidence as to the rate and degree of appreciation in the values of land so that the figure could be jobbed backwards from 14-7-1960 to 4-7-1959."

13. Their lordships of the Hon'ble Supreme Court in the case of ***Periyar and Pareekanni Rubbers Ltd. vrs. State of Kerala,*** reported in ***(1991) 4 SCC 195,*** have held that the compensation should be fair and reasonable and not arbitrary and unreasonable. Their lordships have held that when the courts are called upon to fix the market value of the land the best evidence of the value of the property is the sale of acquired land to which claimant himself is a party, in its absence the sales of the neighbouring lands. The underlying principle to fix a fair market value with reference to comparable sale is to reduce the element of speculation. In a comparable sale the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bonafide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired and (4) it should possess similar advantages. Their lordships have held as under:

> "10. Therefore, the transaction relating to the acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. When the Courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sale are to be looked into. These features would be established by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original sale deed or certified copy thereof should be tendered as evidence. The underlying principles to fix a fair market value with reference to comparable sales is to reduce the element of speculation. In a comparable sales the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired; and (4) it should possess similar advantages. These should be

established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and bona fide transactions. As held by this Court in Collector, Rajgarh v. Hari Singh Thakur, (1979) 2 SCR 183 : (AIR 1979 SC 472) that fictitious and unreal transactions of speculative nature brought into existence in quick succession should be rejected. In that case it was found by majority that these sale deeds are brought up sales. In Administrator General of West Bengal v. Collector. Varanasi (1988) 2 SCR 1025, that the price at which the property fetches would be by a willing seller to a willing purchaser but not too anxious a buyer, dealing at arm's length. The prices fetched for similar lands with similar advantages and potentialities and the bona fide transactions of the sale at time of preliminary notification are the usual, and indeed the best, evidence of the market value. Other methods of valuation are resorted to if the evidence of sale of similar land is not available. The prices fetched for smaller plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Smaller plots always would have special features like the urgent need of the buyer, the advantageous situation, the like of the buyer etc.

17. In Narasingh Rao's case, I have dealt with in paragraph 8 thus: "The object of the inquiry is to bring on record the price fetched or capable of fetching, the relative situation of the land acquired and the subject of the sale transaction, their fertility, suitability, nature of the use to which they are put to, income derived or other special distinctive features possessed of by the respective lands either single or some or all relevant to the facts in issue. In this process the courts are not mere umpires but to take intelligent participation and to see whether the counsel on either side are directing towards this goal or the court itself to intervene in this regard. "Therefore, it is the paramount duty of the courts of facts to subject the evidence to close scrutiny, objectively assess the evidence tendered by the parties on proper considerations thereof in correct perspective to arrive at reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. The neighbourhood lands possessed of similar potentialities or same advantageous features or any advantageous special circumstances available in each case also are to be taken into account. Thus, the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometime trench on the border of the guesswork but mechanical assessment has to be eschewed. The Judges are to draw from their experience and the normal human conduct of parties in bona fide and genuine sale transactions is the guiding star in evaluating evidence. Misplaced sympathies or undue emphasises solely on the claimants' right to compensation would place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

18. In V. R. Katarki v. State of Karnataka, C. A. No. 4392 of 1986, D/- 22-3-1990, decided by Bench of this Court to which one of us (K. Ramaswamy, J.) is a member, the appellant apart from other charges, was imputed with misconduct of fixing in his capacity as Civil Judge at Bagalkot, "higher valuation than was legitimate of the lands." After conducting enquiry he was dismissed from service and when he challenged it, the High Court upheld it on the judicial side. On further appeal., since the appeals against higher valuation were pending in the

> High Court, without going into that question, while confirming the dismissal laid the rule thus: "We would like to make a special mention of the position that even if that assessment of valuation is modified or affirmed in an appeal as a part of the judicial process, the conduct of the judicial officer drawable from an overall picture of the matter would yet be available to be looked into. In appropriate. cases it may be opened to draw inferences even from judicial acts" of the misconduct. The rule of conduct spurned by this Court squarely put the nail on the official act as a refuge to fix arbitrary and unreasonable market value and the person concerned shall not camouflage the official act to a hidden conduct in the function of fixing arbitrary or unreasonable compensation to the acquired land. Equally it is salutary to note that the claimant has legal and legitimate right to a fair and reasonable compensation to the land he is deprived of by legal process. The claimant has to be recompensated for rehabilitation or to purchase similar lands else where. In some cases for lack of comparable sales it may not be possible to adduce evidence of sale transactions of the neighbouring lands possessed of same or similar quality. So insistence of adduction of precise or scientific evidence would cause disadvantage to the claimants in not getting the reasonable and proper market value prevailing on the date of' notification under Section 4(l). Therefore it is the paramount duty of the Land Acquisition Judge authority to keep before him always the even scales to adopt pragmatic approach without indulging in facts of imagination" and assess the market value which is reasonably capable to fetch reasonable market value. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case, The guiding star would be the conduct of a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market condition as on the date of the notification under Sec. 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value."

14. Their lordships of the Hon'ble Supreme Court in the case of ***Karan Singh and others. vrs. Union of India,*** reported in ***(1997) 8 SCC 186,*** have held that in the absence of any evidence of sale of land on the date of issue of notification under Section 4 of the Act, under certain conditions the post-notification transactions of sales of land can be relied upon in determining the market value of the acquired land. One of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purposes of fixing the market value of the acquired land. Their lordships have held as under:

> "5. Before we advert to the argument raised on behalf of the appellants, it has to be borne in mind while deciding these appeals, this Court is not required to reappraise the evidences which were considered by the Courts below. But what concerns us is whether correct or legal principles were applied in arriving at the market value of the acquired land in awarding compensation to the claimants. When a land is compulsorily acquired, what is basically required to be done for awarding compensation is to arrive at the market value of the land on the date of notification under Section 4 of the Act. The market value of a piece of land for determining compensation under Section 23 of the Act would be

the price at which the vendor and the vendee (buyer and seller) are willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transaction on the date of notification issued under Section 4 of the Act or few days before or after the issue of notification under Section 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land has to be assessed in terms of those transactions. The sale of land on or about the issue of notification under Section 4 of the Act is stated to be the best piece of evidence for determining the market value of the acquired land. Often evidence on transaction of sale of land on or few days before the notification under Section 4 is not available. In the absence of such evidence contemporaneous transactions in respect of lands which had similar advantages and disadvantages would be the good piece of evidence for determining the market value of the acquired land. In case the same is not also available, the other transaction of land having similar advantages nearer to the date of notification under Section 4 of the Act would guide in determination of the market value of acquired land. In the present case, in the absence of evidence of any transaction or sale of land on the date of issue of notification under Section 4 of the Act, the Court would be justified in relying upon the transaction of sale of land having similar advantages nearer to the notification issued under Section 4 of the Act which can be taken as a guide for determining the market value of the acquired land and compensation to be awarded to the claimants. Thus the transaction of sale of land after the issue of notification under Section 4 of the Act can guide the Court in fixing the market value of the acquired lands under certain conditions. In the case of Administrator General of West Bengal v. Collector, Varanasi, AIR 1988 SC 943, it was held thus (at p. 948) :

> "Such subsequent transaction which are not proximate in point of time to the acquisition can be taken into account for purpose of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value."

15. Their lordships of the Hon'ble Supreme Court in the case of ***A. Natesam Pillai vrs. Special Tahsildar, Land Acquisition, Tiruchy,*** reported in ***(2010) 9 SCC 118,*** have held that small area of land in exemplar though not comparable with acquired land may not be an excellent guide but it is still a better guide than other documents exhibited, and same can be used as a relevant yardstick to assess just and reasonable compensation. Their lordships have held as under:

> "18. The small area of land measuring 1710 sq. ft. was sold for Rs. 20,000/- as per Ex. A3 dated 15.7.92 which works out to a value of Rs. 11/- per sq. ft. A comparison of the two plots, namely, land in Ex. A3 and the acquired land shows that they are not identical. While the land in Ex. A3 may not be an excellent guide it is still a better guide than any other document exhibited on record. The same could be used as a relevant yardstick to assess the just and reasonable compensation in the present case."

16. Similarly, their lordships have held that sale deed which is dated post-notification is generally ignored, however, evidence is led to show that there was no increase in price despite such acquisition. Their lordships have held as under:

> "11. It is important to note that Ex. A1 and Ex. A4 are sale deeds executed subsequent to the date of notification under Section 4(1) and for this reason, the High Court held these to be irrelevant for the purpose of determining compensation. The first clause of Section 23 of the Act clearly provides that the amount of compensation awarded for the land acquired is required to be determined on the basis of market value of the land at the time of publication of the notification under Section 4 of the Act. Therefore, it is the duty of both of the Land Acquisition Officer as also of the Court to determine the actual compensation payable for the land acquired by referring to evidence regarding fair and just compensation near about the proximate date or on the date itself of the publication of the notification under Section 4.
>
> 12. At times, in order to prove the actual, fair and just compensation for the land acquired, sale deeds of the adjacent land or nearabout adjacent land are produced to indicate the trend of the value of the land within the near vicinity of the acquired land. Such sale deeds are taken notice of generally when they are prior in point of time to the date of notification, and any sale deed which is post notification dated is generally ignored, unless evidence is led to show that there was no increase in price despite such acquisition.
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> 14. As a result of such acquisition, the market value of the adjacent land would generally, and in most cases, go up and therefore, such post notification transaction may not be a sound criterion to determine and assess the value of the acquired land. In the present case, the appellant has also not adduced any evidence to show that the market value of adjacent land has not increased in the interregnum. The Reference Court and the High Court were justified in rejecting these sale deeds from consideration. We must, therefore, keep the aforesaid two sale deeds outside our consideration while assessing and determining the just and fair compensation for the acquired land. Ex. A2 is also a sale deed but the same also is not a safe guide as the price for the land covered therein was later on increased to make it in parity with the government prescribed rate."

17. Thus the learned Addl. District Judge, Una has taken into consideration the sale deed Ext. PW-2/A dated 22.7.1998. The notification under Section 4 of the Act is dated 21.4.1998 and is within the period of proximately 3 months.

18. Their lordships of the Hon'ble Supreme Court in the case of ***Rishi Pal Singh and others vrs. Meerut Development Authority and another,*** reported in ***(2006) 3 SCC 205,*** have held that exemplars of small plots can be taken into consideration specially when other relevant or material evidence not available, provided adequate discount given in that behalf. Their lordships have held as under:

> "5. On merits the learned counsel submits with reference to the impugned judgment of the High Court that only two reasons have been given by the High Court for setting aside the order of the Reference Court and remanding the case back to it. First reason is that exemplars relied upon by the Reference Court are of small plots of land whereas the

acquisition is of a large tracts of land i.e. about 180 acres. The second reason given in the impugned judgment for remand is that exemplars filed by the acquiring authority i.e. appellants before us, were not considered by the Reference Court. The learned counsel for the appellants has taken us through the judgment of the Reference Court to show that both the reasons given by the High Court in its impugned order are factually incorrect. With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount for taking the exemplars of smaller plots into consideration. It appears that the attention of the High Court was not drawn to this part of the judgment of the Reference Court which has resulted in the High court completely overlooking the relevant discussion in the judgment of the Reference Court."

19. Their lordships of the Hon'ble Supreme Court in the case of ***Trishala Jain and another vrs. State of Uttaranchal and another,*** reported in ***(2011) 6 SCC 47,*** have held that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. Their lordships have held as under:

"44. It is thus evident from the above enunciated principle that the acquired land has to be more or less developed land as its developed surrounding areas, with all amenities and facilities and is fit to be used for the purpose for which it is acquired without any further expenditure, before such land could be considered for no deduction. Similarly the sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction. On such principles each case would have to be considered on its own merits.

81. It is not in dispute before us that sale instance at serial No. 108 falls in the Revenue Estate of the same Village and as recorded by the Reference Court, in LA Case No. 121 of 1994, it is situated at a distance of 1= furlong from the acquired land. The acquired land belonging to the claimants forms part of Khasra No.39/2 while, in the same Reveue Estate, the sale instance at serial No. 108 is part of Khasra No. 410. Thus a sale deed related to a land in such proximity of time and distance cannot be said to be incomparable sale instance, i.e. it has to be taken as a comparable sale instance. Though it relates to the sale of a smaller plot of land but is certainly bigger than the land sold by the claimants between themselves. Its location and potential, if not identical in absolute terms, is certainly comparable for the purposes of determining market value of the land in question.

82. It is a well established principle that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the Court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. We have already held that keeping in view the surrounding developed areas and location and potential of the land it will meet the ends of justice if 10% deduction is made from the estimated market value of the acquired land."

20. Their lordships of the Hon'ble Supreme Court in the case of ***Bilkis and others vrs. State of Maharashtra and others,*** reported in ***(2011) 12 SCC 646,*** have held that the following factors are required to be considered for determining compensation:

(i) Conversion of acquired land into non-agricultural land;

(ii) Potential for which land was reasonably capable of being used;

(iii) Existence of some structures;

(iv) Proximity to highway.

In the present case also, the land is situated on the either side of the road. It is in close proximity to town. It is of great potential for development. The potentiality of the land has to be taken into consideration for determining compensation.

21. Their lordships of the Hon'ble Supreme Court in the case of ***R. Sarangapani vrs. Special Tahsildar Karur Dindigul Broadguage Line,*** reported in ***(2011) 14 SCC 177,*** have held that in absence of any other exemplars, small pieces of land can be taken into consideration after applying appropriate deduction. Their lordships have held as under:

"19. Equally erroneous is the approach adopted by the High Court in fixing market value of the remaining land. Although, the appellants' argument that the Reference Court should not have segregated land covered by the trees for the purpose of fixing market value of the remaining land may not be acceptable because once market value of the trees was separately fixed, there could be no justification for clubbing the two types of land for the purpose of fixing market value, the High Court committed serious error by ignoring the two sale instances - Ext. A4 and A5 and, at the same time, applying 1/3 rd cut. It is true that the two sale instances related to a small parcel of land but, in the absence of any other exemplar, such sale instance could be relied upon for the purpose of fixing market value of the acquired land, on which trees had not been planted, after applying an appropriate cut. By Ext.A4 dated 8.9.1982, 21 cents land was sold for a sum of Rs.41,500/-. The same piece of land was sold vide Ext. A5 dated 6.7.1983 at the same price, i.e. Rs.41,500/-. The notification under Section 4(1) was published on 30.5.1984. If the rule of escalation in the land price evolved by this Court is applied, then a minimum increase of 10% is to be added to the price specified in Ext. A5. Thus, as on the date of Section 4(1) notification, the approximate value of 21 cents land would be Rs.45,550/-. This would be equivalent to approximately Rs.2,169/- per cent and Rs.2,27,750/- per acre. Though, the respondent did not produce any evidence to show the amount, which was likely to be spent on making the land useful for the purpose of laying

Broad Gauge Line, if 1/3rd cut applied by the High Court is considered reasonable in view of the principles laid down by this Court in Kasturi v. State of Haryana (2003) 1 SCC 354, which were reiterated in Tejumal Bhojwani v. State of U.P. (2003) 10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer & Mandal Revenue Officer (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority (2004) 10 SCC 745, market value of the acquired land will be about Rs.1,50,000/- per acre.

20. We also agree with Shri Nageswara Rao that the appellants should be given the benefit of the principles laid down by the Constitution Bench in Sunder v. Union of India (supra). It appears that attention of the High Court was not drawn to that judgment else it would have, in all probability, extended the benefit of that judgment to the appellants.

21. In the result, the appeals are allowed. The impugned judgments are set aside and the award passed by the Reference Court is restored with modification that the appellants shall be entitled to interest on the enhanced amount with effect from 11.3.1985, i.e. the date on which possession of land was taken by the Railway Department. They shall also be entitled to interest on solatium and additional amount in terms of the judgment in Sunder v. Union of India (supra). The respondent is directed to pay the balance amount of compensation and interest to the legal representatives of the landowners within a period of 3 months from the date of receipt/production of copy of this judgment."

22. Their lordships of the Hon'ble Supreme Court in the case of ***Digamber and others vrs. State of Maharashtra and others,*** reported in ***(2013) 14 SCC 406,*** have reiterated that the Land Acquisition Collector is required to keep in mind the following factors:

(i) Existing geographical situation of the land.

(ii) Existing use of the land.

(iii) Already available advantages, like proximity to National or State Highway or road and/or developed area.

(iv) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

23. The land is situated near Una town. Una town is fastly developing town. The land is also situated on Una-Takka road, Jhalera Takka road and Dangehra Takka road. The appellants have not led any evidence except by producing DW-1, Joginder Singh, who has proved the award made by the Land Acquisition Collector, dated 18.9.2000. There is no record of comparable sales available on record other than document Ext. PW-2/A. According to the sale deed Ext. PW-2/A, the rate of one kanal also comes to Rs. 33,340/- for *abbi* kind of land. The acquired land is connected with the metalled roads. The learned Addl. District Judge, has rightly reduced the rate of land 33340 per kanal to Rs. 25,000/-. The land acquired is for the construction of the railway track and thus the same was to be assessed irrespective of its classification. According to the revenue record, the land of the claimants is other than the classified as '*banjar kadim*' or *'birani avval',* as per the revenue record. The market value assessed by the learned Addl. District Judge at the uniform rate of Rs. 25,000/- is legal. The claimants have rightly been held entitled to other statutory benefits, as per law.

24. There is no merit in the contention of Mr. Rahul Mahajan, Advocate, that the excess amount has been awarded contrary to Ext. RW-1/A to RW-1/K prepared by the government agency. The market value has been assessed on the basis of the sale deed Ext. PW-1/A, which was in close proximity to the notification issued under Section 4 of the Act on 21.4.1998.

25. Accordingly, there is no merit in these RFAs and the same are dismissed.

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

Anurag Sharma ……Appellant.
Versus
Pratibha Sharma …….Respondent.

FAO No. 208 of 2014.
Reserved on: 03.11.14
Decided on: 26.11.2014.

Hindu Marriage Act, 1955- Sections13(1)(i)- & 13(1) (i-a)- Husband filed a divorce petition against the wife on the ground of cruelty and adultery – evidence proved that husband called his wife characterless for which he was reprimanded by his mother- he had also misbehaved with the members of his family and his wife- he had made false allegations against the wife that she was living an adulterous life- he used to beat the wife on which she had to file a complaint under Protection of Women from Domestic Violence Act, 2005- held, that in these circumstances, version of the petitioner regarding cruelty and adultery was not proved. (Para-13 to 15)

Cases referred:

Dr. N.G.Dastane vrs. Mrs. S. Dastane, AIR 1975 SC 1534
Shobha Rani v. Madhukar Reddi AIR 1988 SC 121
Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511
Manisha Tyagi vs. Deepak Kumar 2010(1) Divorce & Matrimonial Cases 451
Ravi Kumar vs. Julumidevi (2010) 4 SCC 476
Pankaj Mahajan vs. Dimple Alias Kajal (2011) 12 SCC 1
Vishwanath Agrawal vs. Sarla Vishwanath Agrawal (2012) 7 SCC 288

For the appellant: Mr. Sunil Mohan Goel, Advocate.
For the respondent: Ms. Reeta Goswami, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is directed against the judgment dated 11.3.2014, rendered by the learned District Judge, Kullu, in HMP No. 19 of 2011 (23 of 2012) 499 of 2013.

2. Key facts, necessary for the adjudication of this appeal are that the appellant-petitioner (hereinafter referred to as the appellant) has filed the petition under Section 13 (1) (i) & 13(1) (i-a) of the Hindu marriage Act, 1955 for dissolution of marriage by decree of divorce against the respondent. According to the appellant, the marriage between the appellant and the respondent was solemnized on 3.6.2010 at Sauli Khad, Mandi, H.P., according to Hindu rites, customs and ceremonies. The appellant was posted as Labour Officer at Bilaspur till 5.11.2010. Thereafter, he was transferred to Kullu. The marriage was arranged by the parents, Uncle and Aunt of the appellant. The appellant was disowned by his father from his movable and immovable property on 26.7.2005 by publishing a notice in the newspaper in Hindi Daily '*Dainik Bhaskar'*. The appellant told the respondent not to have any contact with his father, however, despite this, the respondent visited the father of the appellant. Once, the father of the appellant had come to Bilaspur and had stayed there for three days, the appellant raised objection. The respondent took side with the father of the appellant. The respondent used to talk with the father of the appellant on telephone ignoring the warning of the appellant. In the month of August, 2010, the respondent insisted to go to Shimla to meet his father. The appellant never gave consent to the respondent. However, respondent did not pay any heed and went to Shimla. The respondent stayed with the father of the appellant for a week and he offered her costly gifts. The respondent used to call him "Soordass, divorcee and outdated person". He even demanded pornographic films and beer to drink from the appellant. He joined in the month of November, 2010 as Labour Officer at Kullu. The respondent instead of coming to Kullu went to Shimla without informing him. On 19/20.5.2011, the appellant had to attend the training camp at HIPA, Shimla and at that time the respondent asked the appellant that she also wants to accompany the appellant to Shimla. The appellant booked a room in Hotel at Shimla. However, after reaching Shimla, the respondent refused to stay with the appellant in hotel and went to Vikas Nagar. The father of the appellant was residing at Vikas Nagar. The appellant stayed in hotel all alone. On 21.5.2011, when he went to the house of his father to bring back the respondent, he saw the respondent and his father in a compromising position. The respondent was living in adultery. In the month of July, 2011, the respondent had insisted to go to Jaipur to meet her friend Kumar Gaurav. The appellant objected to it. The respondent left the company of the appellant and even attempted to commit suicide. On 28.8.2011, the appellant was staying at Hotel Sandhya Palace, District Kullu. In the morning his father and parents of the respondent, her sister and Uncle came to Hotel and used abusive language. They gave beatings to him. He contacted police and reached Police Station Bhunter. He filed a complaint in the Court of learned CJM, Kullu. On 23.8.2011 at 8:00 PM, two persons at the instance of the respondent had threatened him with dire consequences. On 6.9.2011, after the filing of the complaint in the Court of learned CJM, Kullu, both the parties were called in the Chamber by the learned CJM, Kullu for amicable settlement. However, the behavior of the respondent did not change.

3. The petition was contested by the respondent. She admitted the marriage between the parties. She also admitted that it was the second marriage of the appellant. He had divorced his first wife. She denied the allegations contained in the petition. She denied that the relationship between the appellant and his father were strained. She denied that she was having any illicit relations with the father of the appellant. She also denied that the father of the appellant has visited house at Bilaspur with the consent of the appellant. The appellant used to call her '*Charitrahin*'. She admitted that on 19/20.5.2011, she had gone to Shimla with the appellant. She denied that the

appellant has booked hotel at Shimla. The appellant himself has taken her to the house of his father. They stayed in the house of the father of the appellant. She specifically denied that on 21.5.2011, the appellant had found her in compromising position with the father of the appellant. The appellant has settled the earlier dispute with his first wife and paid Rs. 3,00,000/-.

4. The appellant filed the replication. The learned District Judge, Kullu dismissed the petition on 11.3.2014. Hence, this appeal.

5. Mr. Sunil Mohan Goel, Advocate, has vehemently argued that the learned District Judge, Kullu, has misconstrued the evidence. According to him, his client has proved that the respondent has treated his client with cruelty and was living a adulterous life. On the other hand, Ms. Reeta Goswami, Advocate, has supported the judgment dated 11.3.2014.

6. I have heard the learned counsel for the parties and also gone through the record and judgment dated 11.3.2014 carefully.

7. PW-1 Dharmesh Kumar has proved e-mail Ext. PW-1/A. PW-2 Jeevan Ram, deposed that he was not aware about the strained relations between the husband and wife. It was their private life. He was not in a position to comment on the same. PW-3 Tenzin Bodh deposed that on 20.8.2011, he has gone to hotel Sandhya Palace at 7:30 PM. He enquired from the Manager of the hotel as to in which room the appellant was staying. He came to know that he was staying in Room No. 106. When he went to room No. 106, he saw the quarrel has taken place. Two ladies were standing outside the door. They have not permitted him to go inside. There were two persons inside. One was very tall and the second was of short statured. The name of one person was Duni Chand. The tall man had caught hold of the appellant and the short stature man was hitting the appellant with his kicks and fist blows. One of the person was the father of the appellant. In his cross-examination, he has categorically admitted that he has not apprised the police about the incident seen by him.

8. The appellant has led his evidence by filing Ext. PW-4/A. He has reiterated the averments contained in the petition in his affidavit. He deposed about the marriage which has taken place between the parties on 3.6.2010. There is reference to his posting at Bilaspur till 5.11.2010. He was disowned by his father from the movable and immovable property on 26.7.2005. He was married with Smt. Monika Sharma. He got divorce by mutual consent. His father has visited Bilaspur without his wish. He objected to the same. He had gone to Shimla with his wife in the month of August, 2010 without his consent. She came back to Bilaspur on 8.8.2010. She brought costly gifts. She used to call him "Soordass, divorcee and outdated person". He joined his duty as Labour Officer at Kullu on 6.11.2010. He had come to Shimla on 19-20.5.2011 to attend training at HIPA. The respondent refused to stay with him and went to Vikas Nagar. When he went to the house of his father on 21.5.2011 to bring her back, he caught his father and the respondent in the compromising position. She wanted to go to Jaipur to see her friend Kumar Gaurav. She used to quarrel with him. She has also tried to commit suicide. The respondent, his father-in-law, brother-in-law and father misbehaved with him on 20.8.2011 at hotel Sandhya Palace, Shamshi. He filed application under Section 156(3) Cr.P.C. before the learned C.J.M., Kullu on 30.8.2011. He did not know whether all the members of the family were alive or not. He did not know when his father retired. He also admitted that when he was posted as Labour Officer at Bilaspur, the respondent stayed with him. According to him, the house of his father could be at Vikas Nagar. He admitted that on 20.8.2011, his parents and

mother-in-law and father-in-law had come to Sandhya Palace Hotel to settle the matter. He did not know that his mother was involved in the incident. When his father has offered alto car, he was not present on the spot. He has also submitted representations to the Chief Justice of the High Court and DGP, Himachal Pradesh.

9. The respondent has appeared as RW-2. She has led her evidence by filing RW-2/A. She has admitted the marriage with the appellant on 3.6.2010. She remained with her husband at Bilaspur. Thereafter, he was transferred to Kullu on 6.11.2010. He has called her characterless. This fact was brought to the notice of her mother-in-law. She was beaten up by the appellant. She has to file a case against the appellant under the Protection of Women from Domestic Violence Act, 2005 in the month of December, 2011. Her father-in-law and mother-in-law were the witnesses. The matter was decided in her favour on 5.10.2012. The appellant has not filed an appeal against the order dated 5.10.2012. He has sent the complaints to the Chief Justice of the High Court and DGP on 5/6.9.2011. The appellant has beaten her. She was saved by her mother-in-law. The appellant has leveled false and baseless allegations against her that she was caught in compromising position with her father-in-law. She has never uttered words "Soordass, divorcee and outdated person" to him. She has never told him to go to Jaipur. The father of the appellant has never given her any costly gifts.

10. RW-3 Rajinder Kumar has led his evidence by filing Ext. RW-3/A. According to him, 8 years back, he was working as Manager in Hotel Sandhya Palace. Anurag Sharma has stayed in room No. 106 from 18.8.2011 to 20.8.2011. No altercation has taken place in the hotel.

11. RW-4 Raj Kumar has tendered his evidence by filing RW-4/A. According to the averments contained in the affidavit, the appellant is his son and the marriage between the appellant and the respondent was solemnized on 3.6.2010. He was posted as Labour Officer at Bilaspur and thereafter at Kullu. His wife Santosh told him on 7.7.2011 that appellant has called his wife characterless. They have visited the hotel Sandhaya Palace on 20.8.2011. The appellant has mis-behaved with the members of the family. The appellant used to beat respondent. He has also broken the T.V. He and his wife were witnesses in the case filed under the Protection to Women from Domestic Violence Act, 2005. The matter was decided in favour of the respondent on 5.10.2012. In his cross-examination, he deposed that the first wife was divorced by the appellant by mutual consent. He was also pushed when he tried to save his wife.

12. The appellant's mother has appeared as RW-5. She has led the evidence by filing affidavit RW-5/A. it is stated in the affidavit that the marriage between the appellant and the respondent was solemnized on 3.6.2010. Her daughter-in-law had told her on 7.7.2011 that the appellant has called her characterless. She also deposed the manner in which all the family members had gone to hotel Sandhya palace on 20.8.2011 and the appellant has misbehaved with her. She was one of the witnesses in a case filed by the respondent against the appellant under the Protection to Women from Domestic Violence Act, 2005.

13. What emerges from the evidence discussed hereinabove, is that the marriage between the parties was solemnized on 3.6.2010 at Mandi. The appellant was posted at Bilaspur. The respondent stayed with him. The appellant was transferred to Kullu as Labour Officer. The appellant has called the respondent characterless. He was reprimanded by his mother. He had also misbehaved with the members of his family and respondent at Sandhaya Palace

Hotel. The appellant has made reckless and irresponsible allegations against the respondent. The appellant has gone to the extent of leveling false allegations without any proof that the respondent was living adulterous life with his father. The appellant had come to Shimla with his wife. He insisted his wife to stay in the hotel. The wife went to Vikas Nagar where the parents were staying. His mother was also staying in the house. It is not believable that the father-in-law would commit such a heinous act with his daughter-in-law in the presence of his wife and would keep the door open. According to his statement, in cross-examination the house of the father could be at Vikas Nagar. He has not led any evidence to prove that his wife was provided with any gifts by the appellant's father. The parents of the appellant and the respondent have tried to settle the matter amicably. They have visited the Sandhya Palace Hotel. He, instead of mending his ways has misbehaved with the mother. His mother was saved by the appellant's father. He is a divorcee. His marriage was solemnized with one Monika Sharma. He has obtained divorce by mutual consent. It has come in the statement of respondent's witnesses that appellant used to administer beatings to respondent. The respondent was constrained to file a complaint against the appellant under the Protection to Women from Domestic Violence Act, 2005. The same was decided in favour of the respondent on 5.10.2012. The appellant's father and mother had appeared as witnesses against the appellant at Mandi. He has not filed any appeal against the order dated 5.10.2012. He has also gone to the extent of making false complaints against the respondent and the family members before the Chief Justice of this Court and DGP, Himachal Pradesh. No action was ever taken on these complaints.

14. Now, as far as disowning of the appellant by his father is concerned, by issuing notice in the daily edition of vernacular newspaper, no consequential steps were ever taken of divesting him of movable or immovable property. He has made false allegations that his wife tried to go to Jaipur. She has denied the suggestion that she has adulterous relations with the father of the appellant. It was not expected from a person working as Labour Officer to make such reckless allegations against his father and wife. The appellant cannot take advantage of his own wrongs rather, he has treated the respondent with cruelty by making reckless allegations and irresponsible statement against his family members and his wife. The wife while appearing as RW-2, has categorically denied that she has ever called him "Soordass, divorcee and outdated person". The appellant had been giving beatings to the respondent. He was told to mend his ways by the mother-in-law of the respondent. He has also broken the T.V. as per the statement of his father.

15. The case of the respondent has been fully supported by her father-in-law and mother-in-law. The matter is required to be considered from another angle. The appellant deposed that on 19-20.5.2011 he booked the room in Hotel at Shimla. He did not name the hotel where he had booked the room. The case of the appellant is that his father has disowned him. Thus, there was no occasion for him to visit his father. The allegations like calling the respondent as '*Charitrahin*' has definitely traumatized her.

16. Their lordships of the Hon'ble Supreme Court in the case of ***Dr. N.G.Dastane vrs. Mrs. S. Dastane,*** reported in ***AIR 1975 SC 1534,*** have held that Section 23 confers on the Court the power to pass a decree if it is "satisfied" on matters mentioned in clauses (a) to (e) of the Section. It is true that the proceedings under the Act being essentially of a civil nature, the word "satisfied" in Section 23 must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle.

The impossible is weeded out at the first stage, the improbable at the second. Their lordships have held as under:

> "24. The normal rule which governs civil proceedings is that a fact can be said to be estabilshed if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, section 3, a fact issaid to be proved when the court either believes it to exist or considersits existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where. the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue"(1) ; or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear" (2). But whether the issue is one of cruelty or of a loan on a promote, the test to apply is whether on a preponderance of robabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.
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> 26. Neither section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor section 23 which governs the jurisdiction of the court to pass a decree in any proceeding under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is "satisfied" on matters mentioned in clauses(a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases.
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> 28. In England, a view was at one time taken that the petitioner in a matrimonial petition must establish his case beyond a reasonable doubt but in Blyth v. Blyth(P), the House of Lords held by a majority that so far as the grounds of divorce or the bars to divorce like connivance or condonation are concerned, "the case; like any civil case, may be proved by a preponderance of probability". The High Court of Austraila in Wright v. Wright (2) , has also taken the view that "the civil and not the criminal standard of persuasion applies to matrimonial causes, including issues of adultery". The High Court was therefore in error in holding that the petitioner must establish the charge of cruelty "beyond reasonable doubt". The High Court adds that "This must be in accordance with the law of evidence", but we are not clear as to the implications of this observation."

17. The appellant in the present case has failed to bring his case within the ambit of preponderance of probabilities. He has not led any direct or corroborative evidence to substantiate the plea of cruelty and adultery.

18. Their Lordships of the Hon'ble Supreme Court in the case of **Shobha Rani v. Madhukar Reddi** reported in **AIR 1988 SC 121** have explained the term "cruelty" as under:

> "4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.
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> 5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon, [1966] 2 All E.R. 257 (259) "the categories of cruelty are not closed." Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty."

19. Their Lordships of the Hon'ble Supreme Court in **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511**, have enumerated some instances of human behaviour, which may be important in dealing with the cases of mental cruelty, as under:

"98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant

danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

20. Their Lordships of the Hon'ble Supreme Court have held in **Manisha Tyagi vs. Deepak Kumar** reported in **2010(1) Divorce & Matrimonial Cases 451**, as under:

"24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonable be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that would be harmful or injurious to continue the cohabitation with the other spouse.

Therefore, to establish cruelty it is not necessary that physical violence should be used. However, continued ill-treatment cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However, in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce."

21. Their Lordships of the Hon'ble Supreme Court have held in **Ravi Kumar vs. Julumidevi** reported in (2010) 4 SCC 476, as under:

"19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it ma be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial case can be of infinite variety – it may be subtle or even brutal and may be by gestures and word. That possible explains why Lord Denning in Sheldon v. Sheldon held that categories of cruelty in matrimonial case are never closed.

21. This Court is reminded of what was said by Lord Reid in Gollins v. Gollins about judging cruelty in matrimonial cases. The pertinent observations are (AC p.660)

> ".. In matrimonial cases we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

22. " About the changing perception of cruelty in matrimonial cases, this Court observed in Shobha Rani v. Madhukar Reddi at AIR p. 123, para 5 of the report: (SCC p.108, para 5)

> "5. It will be necessary to bear in mind that there has been (a) marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may

not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties."

22. Their Lordships of the Hon'ble Supreme Court have held in **Pankaj Mahajan vs. Dimple Alias Kajal** reported in (2011) 12 SCC 1, as under

"36. From the pleadings and evidence, the following instances of cruelty are specifically pleaded and stated. They are:

i. Giving repeated threats to commit suicide and even trying to commit suicide on one occasion by jumping from the terrace.

ii. Pushing the appellant from the staircase resulting into fracture of his right forearm.

iii. Slapping the appellant and assaulting him. iv. Misbehaving with the colleagues and relatives of the appellant causing humiliation and embarrassment to him.

v. Not attending to household chores and not even making food for the appellant, leaving him to fend for himself.

vi. Not taking care of the baby.

vii. Insulting the parents of the appellant and misbehaving with them.

viii. Forcing the appellant to live separately from his parents.

ix. Causing nuisance to the landlord's family of the appellant, causing the said landlord to force the appellant to vacate the premises.

x. Repeated fits of insanity, abnormal behaviour causing great mental tension to the appellant.

xi. Always quarreling with the appellant and abusing him.

xii. Always behaving in an abnormal manner and doing weird acts causing great mental cruelty to the appellant."

23. Their Lordships of the Hon'ble Supreme Court have held in **Vishwanath Agrawal vs. Sarla Vishwanath Agrawal** reported in **(2012) 7 SCC 288** as under:

"22. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

28. In Praveen Mehta v. Inderjit Mehta, AIR 2002 SC 2582 it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be

> assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other."

24. In the instant case, the appellant has miserably failed to prove that he was treated with cruelty by the respondent or she was living adulterous life with his father. These allegations are rather baseless.

25. Accordingly, there is no merit in this appeal, the same is dismissed with costs quantified at Rs. 10,000/-.

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

RFA No.6 of 2008 alongwith RFAs No. 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21 and 22 of 2008
Reserved on: 25.11.2014
Decided on : 26.11.2014

1. **RFA No. 6/2008**

Collector, Land Acquisition, National Hydro Electric Power Corporation.
…Appellant.

Versus

Bhagwan Dass and others. …Respondents.

2. **RFA No. 8/2008**

Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.

Versus

Chet Ram (died) through LRs and others. …Respondents

3. **RFA No. 9/2008**

Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.

Versus

Purva Devi and others. …Respondents

4. **RFA No. 10/2008**

Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.

Versus

Dote Ram and others. …Respondent.

5. **RFA No. 11/2008**

Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.

Versus

Dile Singh (died) through LRs and others.
…Respondents.

6. **RFA No. 12/2008**

Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.

Versus

Chet Ram and others. …Respondents.

7. **RFA No. 13/2008**

Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Hukami and others. …Respondents.

8. **RFA No. 14/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Dot Ram and others. …Respondents.

9. **RFA No. 15/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Narayan Chand alias Narayan Singh and others. …Respondents.

10. **RFA No. 17/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Raghubir Singh and others. …Respondents.

11. **RFA No. 18/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Tej Ram and others. …Respondents.

12. **RFA No. 19/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Sher Singh and others. …Respondents.

13. **RFA No. 20/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Tek Chand and others. …Respondents.

14. **RFA No. 21/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Prem Chand and others. …Respondents.

15. **RFA No. 22/2008**
Collector, Land Acquisition, National Hydro Electric Power Corporation
…Appellant.
Versus
Jave Ram and others. …Respondents.

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for construction of Parbati Hydro Electric Project- claimant dis-satisfied with the award, filed a reference petition claiming that land was situated near bazaar and had potential of raising orchards, growing vegetables, construction of commercial buildings and hotels- reference petition was allowed- appellants contended that land was not situated

near bazaar and was not marketing centre of the area- no commercial activities were expected and excessive compensation was paid- held, that no evidence was led by the appellants to show that sale deed produced by them pertained to the land having similar potentiality, utility, similarity and advantages as the acquired land- therefore, sale deeds were rightly rejected. (Para-11)

Land Acquisition Act, 1894- Section 18- Land of the claimant was acquired for construction of Parbati Hydro Electric Project – some of the land was already the subject matter of the award- acquired land is in the proximity of the headquarters of Sub-Tehsil, Sainj- there is great potentiality for the land to be used for commercial business- held, that the reference Court had rightly granted the parity to the acquired land. (Para-11)

Land Acquisition Act, 1894- Section 18- Compensation should be fair and reasonable- compensation should be determined on the basis of comparable sale-exemplars of small plots can be taken into consideration especially when other relevant or material evidence is not available- however, Court has to make suitable deduction. (Para-25 and 29)

Cases referred:

Periyar and Pareekanni Rubbers Ltd. vrs. State of Kerala, (1991) 4 SCC 195,

Rishi Pal Singh and others vrs. Meerut Development Authority and another, (2006) 3 SCC 205

Trishala Jain and another vrs. State of Uttaranchal and another, (2011) 6 SCC 47

Bilkis and others vrs. State of Maharashtra and others, (2011) 12 SCC 646,

R. Sarangapani vrs. Special Tahsildar Karur Dindigul Broadguage Line, (2011) 14 SCC 177

Digamber and others vrs. State of Maharashtra and others, (2013) 14 SCC 406,

For the Appellant :	Mr. K.D. Shreedhar, Sr. Advocate with Mr. Rajnish Maniktala and Mr. Yudhvir Singh Thakur, Advocates.
For the Respondents:	Mr. Parmod Thakur, Addl. A.G. with Mr. Neeraj K.Sharma, Dy. A.G. and Mr. R.P. Singh, Asstt. A.G. for the respondent-State in all the appeals. Mr. Sanjeev Kuthiala and Mr. Sunil Mohan Goel, Advocates for the respective respondents.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

Since common questions of law and facts are involved in all these appeals, the same were taken up together for hearing and are being disposed of by a common judgment.

2. These appeals are instituted against the award dated 29.9.2007 rendered by the Additional District Judge, Fast Track Court, Kullu in Reference Petitions No. 67/2003 6/2004, 68/2003 7/2004, 70/2003 9/2004, 71/2003 10/2004, 80/2003 15/2004, 79/2003 16/2004, 76/2003 17/2004, 77/2003

18/2004, 78/2003 19/2004, 81/2003 20/2004, 82/2003 21/2004, 83/2003 22/2004, 28/2003 38/2004, 27/2003 39/2004, 26/2003 40/2004, 29/2003 41/2004 and 30/2003 42/2004.

3. "Key facts" necessary for the adjudication of these appeals are that a notification under section 4 of the Land Acquisition Act, 1894 was issued on 5.12.2000 whereby it was proposed to acquire the land situated in Phati Dhaugi, Sub-Tehsil Sainj for the construction of Parbati Hydro Electric Project. After the completion of the procedural formalities under sections 6 and 7 of the Land Acquisition Act, 1894, the Land Acquisition Officer-Sub Divisional Officer (Civil), Kullu announced the award on 4.1.2002. Respondents-claimants (hereinafter referred to as the "claimants" for convenience sake) dissatisfied with the award of the Land Acquisition Collector preferred Reference Petitions under section 18 of the Land Acquisition Act before the Land Acquisition Collector. According to the averments contained in the reference petitions, the market value of the land has not been determined in accordance with law and the same was liable to be modified and enhanced. According to the claimants, land was situated near Sainj Bazaar, which was market centre of the area. The land has potential of raising orchards, growing vegetables, construction of commercial buildings and hotels. According to them, the market value of the land was not less than ten lakhs per bigha at the time of issuance of notification under section 4 of the Land Acquisition Act.

4. According to the appellant, the land was not situated near Sainj Bazaar and the same was not the marketing centre of the area. No commercial activities were expected in or around the area. Due, adequate and reasonable compensation has been paid to the claimants. It was denied that the value of the land was Rs. 10 lakhs per bigha.

5. Learned Additional District Judge, Fast Track Court, Kullu, after appreciating the oral as well as documentary evidence held the claimants entitled for the grant of Rs.20,000/- per biswa (Rs.4 lakhs per bigha) irrespective of nature, kind and classification of acquired land. The claimants were also held entitled to statutory benefits. Hence, the present appeals.

6. Mr. K.D. Shreedhar, learned Senior Advocate for the appellant has vehemently argued that the Additional District Judge, Fast Track Court, has wrongly assessed the market value of the land at Rs. 20,000/- per biswa. He then contended that the Additional District Judge has taken into consideration the value of the small plots. He has also contended that the sale deeds produced by appellant, i.e. Ex.R-1 to Ex.R-11 have not been taken into consideration.

7. Mr. Sanjeev Kuthiala, Advocate and Mr. Sunil Mohal Goel, Advocate have supported the award dated 29.9.2007.

8. I have heard the learned counsel for the parties and have gone through the award and records meticulously.

9. The notification under section 4 of the Land Acquisition Act, 1894 was issued on 5.12.2000. The award has been made by the Land Acquisition Collector-cum-Sub Divisional Officer (Civil), Kullu on 4.1.2002. The land has been acquired for the construction of Parbati Hydro Electric Project. The acquired land is situated at Phati Dhaugi.

10. PW-1 Tej Singh has testified that the lands of the claimants were situated in Phati Dhaugi. The lands were adjacent to Sainj Bazaar. These were acquired by National Hydro Electric Power Corporation for the construction of

colony of Parwati Project. The lands were situated by the side of Aut-Sainj road. The value of the acquired lands was more than 10 lakhs per bigha. However, the Land Acquisition Collector has assessed the value of acquired lands inadequately. There were shops, residential houses, hotels, rest house, schools, dispensary and bank adjacent to the acquired land. Lands have been reserved by the claimants for the construction of commercial complex. The lands of Bhimi Ram and Khub Ram etc. had been acquired by the National Hydro Power Corporation for the construction of colony of Parbati Project. The award of Collector was challenged before learned District Judge, Kullu. He has enhanced the compensation to Rs. 20,000/- per biswa. According to him, compensation has also not been awarded adequately for the acquired land and for fruit and non-fruiting bearing trees. He was cross-examined. In his cross-examination, he has admitted that the acquired land was situated on the left side of the river. Most of the land falls in Sainj area. The distance between Sainj and Banjar was 20-25 KMs. The distance between Dhaugi and Sub Tehsil Headquarters, Sainj is 4 KMs. He has denied that this area was developed after the acquisition of land by N.H.P.C.

11. PW-2 Padam Singh has led his evidence by way of affidavit. It is specifically averred in the affidavit that on 14.9.2000, he has purchased two biswas of land for Rs.90,000/- from Yogender Pal. Sale was duly registered. He has proved copy of sale deed Ex.P-1.

12. PW-3 Prem Chand has also led his evidence by way of affidavit. According to the averments contained in the affidavit, he has sold land measuring 0-1-10 bighas for Rs.45,000/- to Sh. Kishori Lal. He has proved copy of sale deed Ex.P-3 and Jamabandi Ex.P-4.

13. PW-4 Prem Chand son of Jagat Ram has also led his evidence by way of affidavit. According to the averments contained in the affidavit, on 15.9.2000 he has sold two biswas of land for Rs.1,00,000/- to Sher Singh. The copy of sale deed is Ex.P-5 and copy of Jamabandi is Ex.P-7.

14. The claimants have also tendered in evidence copy of award No.124/2003 passed by the Additional District Judge, Fast Track Court Ex.P-7, copy of award No.84/2003 passed by District Judge, Kullu Ex.P-9 and copy of award passed by Land Acquisition Collector Ex.P-11.

15. RW-1 Prabhat Singh has proved sale deeds dated 29,12,1999, 12.11.1999, 22.2.2000, 2.6.2000, 26.9.2000, 1.2.2000, 24.8.2000, 23.3.2000, 12.1.2000, 30.9.2000 and 23.10.2000 vide Ex.R-1 to Ex.R-11.

16. RW-2 Mohinder Pal Gupta, Junior Engineer has deposed that there was no water supply in the year 2000-2002 in village Dhaugi.

17. RW-3 Mehar Chand has proved Ex.R-13 to Ex.R-16. In his cross-examination, he has admitted that Ex.R-13 to Ex.R-16 are not in his handwriting.

18. RW-4 Kanshi Ram in his cross-examination has admitted that the acquired land was situated over and below the Sainj-Aut road and on the Northern side is Sainj Bazaar. He has also admitted that there were 100 shops in the Sainj Bazaar.

19. RW-5 Devender Singh has deposed that the acquired land was at a distance of half KM from Sainj Bazaar.

20. The appellant has tendered in evidence copy of award Ex.R-18.

21. PW-2 Padam Singh has categorically deposed that he has purchased the land measuring two biswas on 14.9.2000 for a sum of Rs. 90,000/- from Yongender Pal. Sale deed was also registered to this effect. The land is situated in Phati Dhaugi. PW-3 Prem Chand has deposed that he has sold land measuring 0-1-10 bighas on 14.9.2000 for a sum of Rs. 45,000/- to Kishori Lal. It was duly registered. He has denied the suggestion that the sale deed was prepared to get the maximum compensation. PW-4 Prem Chand son of Jagat Ram has deposed that he has sold land measuring 2 biswas on 15.9.2000 for a consideration of Rs. one lakh to Sh. Sher Singh. The sale deed was duly registered. This land is also situated in Phati Dhaugi. He has denied that the sale deed was executed by him in a fictitious manner.

22. According to the revenue record, i.e. copy of Jamabandi Ex.P-2, Ex.P-4 and Ex.P-6, the nature of the land is Bathal Som, Banzar Kadim and Ropa abal. The appellant has placed strong reliance upon Ex.R-1 to Ex.R-11. These were produced by RW-1 Prabhat Singh, Registration Clerk, Sub-Tehsil, Sainj. However, the appellant has not led any tangible evidence to establish that the sale deeds Ex.R-1 to Ex.R-11 were having same potentiality, utility, similarity and advantages as of acquired land. There is no evidence on record to suggest even remotely that nature and potentiality of the land was similar to the land having been sold vide Ex.R-1 to Ex.R-11. The nature of the land has not been recorded as per sale deeds Ex.R-1 to Ex.R-11. Thus, the learned Additional District Judge, Fast Track Court has rightly discarded the sale deeds Ex.R-1 to Ex.R-11. Some of the Reference Petitions arising out of the award passed by the Collector stood already decided by the District Judge, Kullu and Additional District Judge, Kullu vide Ex.P-9 and Ex.P-7, respectively. According to awards Ex.P-7 and Ex.P-9, the market value of the acquired land in village Phati Dhaugi was assessed at Rs. 20,000/- per bigha. The land sold as per sale deeds Ex.P-1, Ex.P-3 and Ex.P-5 relates to 0-2-0, 0-1-10 and 0-2-0 bigha, respectively. The land acquired for the construction of project in village Dhaugi was 68-19-00 bighas. Thus, the land acquired was larger chunk vis-à-vis sale deeds Ex.P-1, Ex.P-3 and Ex.P-5. Sale deeds Ex.P-1, Ex.P-3 and Ex.P-5 are bona fide sale deeds. The land acquired is in the proximity of the headquarters of Sub-Tehsil, Sainj. The distance between Aut-Dhaugi is about 20 KMs. Aut is situated on a National Highway. There are 100 shops in the Sainj Bazaar. There is great potentiality for the land to be used for the purpose of commercial activities. Learned Additional District Judge on the basis of sale deeds Ex. P-1, Ex.P-3 and Ex.P-5 has assessed the average value of the acquired land at Rs. 41,666/- per biswa, i.e. Rs. 20,000/- per biswa. However, the Additional District Judge, after taking into consideration all the facts, has made necessary deductions to the extent of 50%. The Additional District Judge has rightly maintained the parity while determining the market price of the land by relying upon Ex.P-9 and Ex.P-7. The land acquired, vide Ex.P-7 and Ex.P-9 was from the same award made by the Land Acquisition Collector.

23. Mr. K.D. Shreedhar, learned Senior Advocate has also argued that example by way of Ex.P-1, Ex.P-3 and Ex.P-5 could not be taken into consideration by the learned Additional District Judge while determining the market price of the land. The notification under section 4 of the Land Acquisition Act was issued on 5.12.2000. Sale deeds Ex.P-1, Ex.P-3 and Ex.P-5 are dated 14.9.2000, 14.9.2000 and 15.9.2000, respectively. These are in close proximity with the date of issuance of notification under section 4 of the Land Acquisition Act.

24. Their lordships of the Hon'ble Supreme Court in the case of ***Periyar and Pareekanni Rubbers Ltd. vrs. State of Kerala,*** reported in

(1991) 4 SCC 195, have held that the compensation should be fair and reasonable and not arbitrary and unreasonable. Their lordships have held that when the courts are called upon to fix the market value of the land the best evidence of the value of the property is the sale of acquired land to which claimant himself is a party, in its absence the sales of the neighbouring lands. The underlying principle to fix a fair market value with reference to comparable sale is to reduce the element of speculation. In a comparable sale the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bonafide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired and (4) it should possess similar advantages. Their lordships have held as under:

> "10. Therefore, the transaction relating to the acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. When the Courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sale are to be looked into. These features would be established by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original sale deed or certified copy thereof should be tendered as evidence. The underlying principles to fix a fair market value with reference to comparable sales is to reduce the element of speculation. In a comparable sales the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired; and (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and bona fide transactions. As held by this Court in Collector, Rajgarh v. Hari Singh Thakur, (1979) 2 SCR 183 : (AIR 1979 SC 472) that fictitious and unreal transactions of speculative nature brought into existence in quick succession should be rejected. In that case it was found by majority that these sale deeds are brought up sales. In Administrator General of West Bengal v. Collector. Varanasi (1988) 2 SCR 1025, that the price at which the property fetches would be by a willing seller to a willing purchaser but not too anxious a buyer, dealing at arm's length. The prices fetched for similar lands with similar advantages and potentialities and the bona fide transactions of the sale at time of preliminary notification are the usual, and indeed the best, evidence of the market value. Other methods of valuation are resorted to if the evidence of sale of similar land is not available. The prices fetched for smaller plots cannot form basis for valuation of large tracts of land as the two are not comparable properties. Smaller plots always would have special features like the urgent need of the buyer, the advantageous situation, the like of the buyer etc.
>
> 17. In Narasingh Rao's case, I have dealt with in paragraph 8 thus: "The object of the inquiry is to bring on record the price fetched or capable of fetching, the relative situation of the land acquired and the subject of the sale transaction, their fertility, suitability, nature of the

use to which they are put to, income derived or other special distinctive features possessed of by the respective lands either single or some or all relevant to the facts in issue. In this process the courts are not mere umpires but to take intelligent participation and to see whether the counsel on either side are directing towards this goal or the court itself to intervene in this regard. "Therefore, it is the paramount duty of the courts of facts to subject the evidence to close scrutiny, objectively assess the evidence tendered by the parties on proper considerations thereof in correct perspective to arrive at reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. The neighbourhood lands possessed of similar potentialities or same advantageous features or any advantageous special circumstances available in each case also are to be taken into account. Thus, the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometime trench on the border of the guesswork but mechanical assessment has to be eschewed. The Judges are to draw from their experience and the normal human conduct of parties in bona fide and genuine sale transactions is the guiding star in evaluating evidence. Misplaced sympathies or undue emphasises solely on the claimants' right to compensation would place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes.

18. In V. R. Katarki v. State of Karnataka, C. A. No. 4392 of 1986, D/- 22-3-1990, decided by Bench of this Court to which one of us (K. Ramaswamy, J.) is a member, the appellant apart from other charges, was imputed with misconduct of fixing in his capacity as Civil Judge at Bagalkot, "higher valuation than was legitimate of the lands." After conducting enquiry he was dismissed from service and when he challenged it, the High Court upheld it on the judicial side. On further appeal., since the appeals against higher valuation were pending in the High Court, without going into that question, while confirming the dismissal laid the rule thus: "We would like to make a special mention of the position that even if that assessment of valuation is modified or affirmed in an appeal as a part of the judicial process, the conduct of the judicial officer drawable from an overall picture of the matter would yet be available to be looked into. In appropriate. cases it may be opened to draw inferences even from judicial acts" of the misconduct. The rule of conduct spurned by this Court squarely put the nail on the official act as a refuge to fix arbitrary and unreasonable market value and the person concerned shall not camouflage the official act to a hidden conduct in the function of fixing arbitrary or unreasonable compensation to the acquired land. Equally it is salutary to note that the claimant has legal and legitimate right to a fair and reasonable compensation to the land he is deprived of by legal process. The claimant has to be recompensated for rehabilitation or to purchase similar lands else where. In some cases for lack of comparable sales it may not be possible to adduce evidence of sale transactions of the neighbouring lands possessed of same or similar quality. So insistence of adduction of precise or scientific evidence would cause disadvantage to the claimants in not getting the reasonable and proper market value prevailing on the date of' notification under Section 4(l). Therefore it is the paramount duty of the Land Acquisition Judge authority to keep before him always the even scales to adopt pragmatic approach without indulging in facts of imagination" and assess the market value which is reasonably capable to fetch reasonable market

value. What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case, The guiding star would be the conduct of a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market condition as on the date of the notification under Sec. 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value."

25. Their lordships of the Hon'ble Supreme Court in the case of ***Rishi Pal Singh and others vrs. Meerut Development Authority and another,*** reported in ***(2006) 3 SCC 205,*** have held that exemplars of small plots can be taken into consideration specially when other relevant or material evidence not available, provided adequate discount given in that behalf. Their lordships have held as under:

"5. On merits the learned counsel submits with reference to the impugned judgment of the High Court that only two reasons have been given by the High Court for setting aside the order of the Reference Court and remanding the case back to it. First reason is that exemplars relied upon by the Reference Court are of small plots of land whereas the acquisition is of a large tracts of land i.e. about 180 acres. The second reason given in the impugned judgment for remand is that exemplars filed by the acquiring authority i.e. appellants before us, were not considered by the Reference Court. The learned counsel for the appellants has taken us through the judgment of the Reference Court to show that both the reasons given by the High Court in its impugned order are factually incorrect. With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount for taking the exemplars of smaller plots into consideration. It appears that the attention of the High Court was not drawn to this part of the judgment of the Reference Court which has resulted in the High court completely overlooking the relevant discussion in the judgment of the Reference Court."

26. Their lordships of the Hon'ble Supreme Court in the case of ***Trishala Jain and another vrs. State of Uttaranchal and another,*** reported in ***(2011) 6 SCC 47,*** have held that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. Their lordships have held as under:

"44. It is thus evident from the above enunciated principle that the acquired land has to be more or less developed land as its developed surrounding areas, with all amenities and facilities and is fit to be used

for the purpose for which it is acquired without any further expenditure, before such land could be considered for no deduction. Similarly the sale instances even of smaller plots could be considered for determining the market value of a larger chunk of land with some deduction unless, there was comparability in potential, utilisation, amenities and infrastructure with hardly any distinction. On such principles each case would have to be considered on its own merits.

81. It is not in dispute before us that sale instance at serial No. 108 falls in the Revenue Estate of the same Village and as recorded by the Reference Court, in LA Case No. 121 of 1994, it is situated at a distance of 1= furlong from the acquired land. The acquired land belonging to the claimants forms part of Khasra No.39/2 while, in the same Reveue Estate, the sale instance at serial No. 108 is part of Khasra No. 410. Thus a sale deed related to a land in such proximity of time and distance cannot be said to be incomparable sale instance, i.e. it has to be taken as a comparable sale instance. Though it relates to the sale of a smaller plot of land but is certainly bigger than the land sold by the claimants between themselves. Its location and potential, if not identical in absolute terms, is certainly comparable for the purposes of determining market value of the land in question.

82. It is a well established principle that the value of sale of small pieces of land can be taken into consideration for determining even the value of a large tract of land but with a rider that the Court while taking such instances into consideration has to make some deduction keeping in view other attendant circumstances and facts of that particular case. We have already held that keeping in view the surrounding developed areas and location and potential of the land it will meet the ends of justice if 10% deduction is made from the estimated market value of the acquired land."

27. Their lordships of the Hon'ble Supreme Court in the case of ***Bilkis and others vrs. State of Maharashtra and others,*** reported in ***(2011) 12 SCC 646,*** have held that the following factors are required to be considered for determining compensation:

(i) Conversion of acquired land into non-agricultural land;

(ii) Potential for which land was reasonably capable of being used;

(iii) Existence of some structures;

(iv) Proximity to highway.

28. Their lordships of the Hon'ble Supreme Court in the case of ***R. Sarangapani vrs. Special Tahsildar Karur Dindigul Broadguage Line,*** reported in ***(2011) 14 SCC 177,*** have held that in absence of any other exemplars, small pieces of land can be taken into consideration after applying appropriate deduction. Their lordships have held as under:

"19. Equally erroneous is the approach adopted by the High Court in fixing market value of the remaining land. Although, the appellants' argument that the Reference Court should not have segregated land covered by the trees for the purpose of fixing market value of the remaining land may not be acceptable because once market value of the trees was separately fixed, there could be no justification for clubbing the two types of land for the purpose of fixing market value, the High Court

committed serious error by ignoring the two sale instances - Ext. A4 and A5 and, at the same time, applying 1/3 rd cut. It is true that the two sale instances related to a small parcel of land but, in the absence of any other exemplar, such sale instance could be relied upon for the purpose of fixing market value of the acquired land, on which trees had not been planted, after applying an appropriate cut. By Ext.A4 dated 8.9.1982, 21 cents land was sold for a sum of Rs.41,500/-. The same piece of land was sold vide Ext. A5 dated 6.7.1983 at the same price, i.e. Rs.41,500/-. The notification under Section 4(1) was published on 30.5.1984. If the rule of escalation in the land price evolved by this Court is applied, then a minimum increase of 10% is to be added to the price specified in Ext. A5. Thus, as on the date of Section 4(1) notification, the approximate value of 21 cents land would be Rs.45,550/-. This would be equivalent to approximately Rs.2,169/- per cent and Rs.2,27,750/- per acre. Though, the respondent did not produce any evidence to show the amount, which was likely to be spent on making the land useful for the purpose of laying Broad Gauge Line, if 1/3rd cut applied by the High Court is considered reasonable in view of the principles laid down by this Court in Kasturi v. State of Haryana (2003) 1 SCC 354, which were reiterated in Tejumal Bhojwani v. State of U.P. (2003) 10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer & Mandal Revenue Officer (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority (2004) 10 SCC 745, market value of the acquired land will be about Rs.1,50,000/- per acre.

20. We also agree with Shri Nageswara Rao that the appellants should be given the benefit of the principles laid down by the Constitution Bench in Sunder v. Union of India (supra). It appears that attention of the High Court was not drawn to that judgment else it would have, in all probability, extended the benefit of that judgment to the appellants.

21. In the result, the appeals are allowed. The impugned judgments are set aside and the award passed by the Reference Court is restored with modification that the appellants shall be entitled to interest on the enhanced amount with effect from 11.3.1985, i.e. the date on which possession of land was taken by the Railway Department. They shall also be entitled to interest on solatium and additional amount in terms of the judgment in Sunder v. Union of India (supra). The respondent is directed to pay the balance amount of compensation and interest to the legal representatives of the landowners within a period of 3 months from the date of receipt/production of copy of this judgment."

29. Their lordships of the Hon'ble Supreme Court in the case of ***Digamber and others vrs. State of Maharashtra and others,*** reported in ***(2013) 14 SCC 406,*** have reiterated that the Land Acquisition Collector is required to keep in mind the following factors:

(i) Existing geographical situation of the land.

(ii) Existing use of the land.

(iii) Already available advantages, like proximity to National or State Highway or road and/or developed area.

(iv) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

30. The Additional District Judge has correctly assessed the market value @ 20,000/- per biswa and awarded the statutory benefits by applying the correct principles.

31. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the appeals and the same are dismissed. Pending application(s), if any, also stands disposed of. No costs.

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

Krishna Devi ....Petitioner
Versus
Amar Jeet Ahuja and others ....Respondents

Civil Revision No. 61/2014
Reserved on 25.11.2014
Decided on 26.11.2014

Himachal Pradesh Urban Rent Control Act, 1984- Section 14- Landlord sought eviction of the tenant of the ground of personal bona-fide requirement of the shop- landlord had also instituted a case before Rent Controller-1 on the ground of subletting and personal bona fide requirement for the purposes of building and rebuilding- tenant filed an application for staying the proceedings- application was rejected by Rent Controller- held, that the subject matter in the two proceedings was not same and, therefore, there was no need to stay the proceedings- petition dismissed. (Para- 6 to 8)

Case referred:
ASPI Jal and another vs. Khushroo Rustom Dadyburjor, (2013)4 SCC 333

For the Petitioner	:	Mr. Ajay Kumar, Senior Advocate with Mr. Dheeraj K. Vashishta, Advocate.
For the Respondents	:	Mr. Janesh Gupta, Advocate, for respondent No. 1. Respondents No. 2 and 3 ex parte.

The following judgment of the Court was delivered:

Rajiv Sharma, Judge

This petition is instituted against order dated 15.3.2014 rendered by learned Rent Controller, Shimla in case No. 8/2 of 2013.

2. "Key facts" necessary for the adjudication of the present petition are that respondent No. 1 has filed an eviction petition against petitioner and proforma respondents No. 2 and 3, bearing case No. 8/2 of 2013, on the grounds of personal bona fide requirement of the shop in question. Respondent has already instituted a case bearing No. 37/2 of 2008 before the learned Rent Controller (1) Shimla on the ground of subletting and personal bona fide requirement for the purposes of building and rebuilding. Petitioner has challenged the relationship of landlord-tenant.

3. Petitioner filed an application under order 14 Rules 1 and 2 read with Section 10 of the Civil Procedure Code for determining and trying the issue for staying the petition under Section 10 of the Civil Procedure Code, 1908, as a preliminary issue in case No. 8/2 of 2013 vide annexure PA. Reply was filed vide annexure PB. Application has been rejected by the learned Rent Controller on 15.3.2014.

4. I have heard the learned counsel for the parties and also gone through the order dated 15.3.2014 carefully.

5. In the instant case, case No. 37/2 of 2008 has been filed by the respondent seeking eviction of the petitioner and proforma respondents No. 2 and 3 on the grounds of subletting and personal bona fide requirement for the purposes of building and rebuilding. Subsequent case bearing No. 8/2 of 2013 has been filed on the grounds of personal bona fide requirement of the shop in question. Issues were framed by the learned Rent Controller on 23.5.2014 inter alia following issues:

> "3. Whether there is no relationship and tenant between the parties as alleged? OPR
>
> 5. Whether the petition is liable to be stayed under Section 10 of C.P.C. as alleged? OPR"

6. Though the question of relationship of landlord-tenant may be common, however, fact of the matter is that entire subject matter of the proceedings is not the same in the previous case and subsequent case i.e. case No. 37/2 of 2008 and 8/2 of 2013. There was no need to decide issue No. 5 as a preliminary issue or to stay proceedings.

7. Their Lordships of the Hon'ble Apex Court in (2013)4 SCC 333 in **ASPI Jal and another vs. Khushroo Rustom Dadyburjor**, have held as under:

> 9. Section 10 of the Code which is relevant for the purpose reads as follows:
>
> > " 10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.
> >
> > Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.
>
> From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit makes the provision mandatory and the Court in which

the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.

10. The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences vrs. C.Parameshwara, (2005) 2 SCC 256 in which it has been held as follows:

> " 8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are the matter in issue is directly and substantially in issue in the previous instituted suit. The words directly and substantially in issue are used in contradistinction to the words incidentally or collaterally in issue. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical

11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether the matter in issue is also directly and substantially in issue in previously instituted suits. The key words in Section 10 are the matter in issue is directly and substantially in issue in the previously instituted suit. The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

> 12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what the matter in issue exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case.

8. Accordingly, there is no merit in the present petition and the same is dismissed, so also the pending applications, if any.

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

D.K.Tandon ……Petitioner.
Versus
State of H.P. & ors. …….Respondents.

CWP No. 7186 of 2014.
Decided on: 27.11.2014.

Constitution of India, 1950- Article 226- State Government amended rule 56 of fundamental rule providing an option to the Government servant to continue in service beyond the age of 58 years till 59 years, subject to fulfillment of certain conditions- matter was placed before the Board of Directors of HIMUDA who declined to give benefit to its employees in accordance with amendment made by the State Government- petitioner, an employee of HIMUDA gave option for extension of service – Board did not give any extension to the petitioner but gave extension to another employee-the petitioner was looking after the projects as Executive Engineer- anther employee was given extension on the ground that he was looking after the construction work of many projects- held, that the petitioner was treated in an unfair manner- petitioner had right to be considered for extension of service- he was discriminated against by denying him the benefit of extension and granting the extension to another employee – Writ Petition allowed and the Board directed to consider the case of the petitioner and extend the service of the petitioner by one year. (Para-6 and 7)

For the petitioner: Mr. P.S. Goverdhan, Advocate.

For the respondents: Mr. Shrawan Dogra, AG, with Mr. M.A.Khan, Addl. AG and Mr. P.M.Negi, Dy. AG for respondents No. 1, 2 & 4.
Mr. C.N.Singh, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J. (oral)

The State Government amended Rule 56 of the Fundamental Rules vide Notification dated 28th May, 2014, whereby the following sub clause (dd) was inserted after clause (d):

> **"56 (dd).** A Government servant shall have an option to continue in Govt. service beyond the age of superannuation i.e. 58 years till the attainment of age of 59 years subject to the conditions as mentioned below:-
>
> (i) The extension in service shall be allowed only to those Government servants who exercise an option on prescribed 'Proforma' annexed to this Notification. The requisite option shall be submitted to the Head of Office or Head of Department, well before six months of attaining the age of superannuation I.e. 58 years. The option once exercised will be treated as final and shall not be allowed to be withdrawn/ changed in any circumstance.
>
> Provided that the Government servants, in whose cases the date of superannuation is before the expiry of six month from the date of commencement of this notification, they may exercise option at any time before the date of their superannuation and after the issue of this Notification.
>
> (ii) During the extension, the Government servant shall continue to draw the same pay which was being drawn by him at the time of attaining the age of superannuation i.e. 58 years.
>
> Provided that increases in the dearness allowance as may be sanctioned by the Government from time to time shall be admissible during the extension.
>
> Provided, further that the Government servant will be considered for promotion in case of availability of promotional post during the extended service. In case of such promotion, pay will be fixed from the date of promotion.
>
> (iii) The Government servant will be entitled to receive pensionary benefits on completion of his extended service.
>
> (iv) The extension in service will be subject to satisfaction of the State Government and the State Government may withdraw the extension given at any stage."

2. The matter was placed before the Board of Directors of respondent No. 3 in its meeting held on 27.7.2014. The Board took the following decision on item No. 32 (33) as under:

> "The Board did not agree for the implementation of the scheme of the State Govt. for its employees of extension in service on attaining the age

> of 58 years in pursuance to FR-56(dd) of the Fundamental (Amendment) Rules, 2014 to the employees of HIMUDA. The Board, however, felt that individual cases of the employees for extension in service where there is dire necessity & urgency can be considered by the Board."

3. The petitioner also gave his option for extension of service on 29.5.2014. The petitioner retired on 30.6.2014. The fact of the matter is that the respondent-Board has given extension to one Sh. Desh Raj Gandhi, Asstt. Engineer, vide office order dated 30.8.2014. The respondent-Board has not decided to give extension to the petitioner as per letter dated 14.10.2014. The petitioner also made a representation for extension in service vide Annexure P-6. The case of the petitioner, in a nut shell, is that the Board has not treated him fairly while rejecting his case for extension of service.

4. Mr. P.S.Goverdhan, Advocate, for the petitioner has vehemently argued that Annexure R-3/A is illegal and arbitrary, thus, violative of Articles 14 and 16 of the Constitution of India. He then contended that the respondent-Board has indulged in practice of pick and choose. He lastly contended that the petitioner was more suitable for extension vis-à-vis Mr. Desh Raj Gandhi. On the other hand, Mr. C.N.Singh, Advocate for the Board has supported the issuance of Annexure R-3/A.

5. We have heard the learned Advocates for the parties and gone through the pleadings very carefully.

6. It is true that amendment carried out in Rule 56 of the Fundamental Rules whereby sub clause (dd) was inserted after clause (d) was not binding on the Board dated 28.5.2014. However, the fact of the matter is that the Board of Directors of the respondent-Board has taken a conscious decision that the individual cases of the employees for extension in service where there is dire necessity and urgency can be considered. The petitioner was working at the time of exercising option as Executive Engineer. We have also gone through Annexure R-3/B whereby the extension in service has been given to Mr. Desh Raj Gandhi for one year after attaining the age of superannuation on 31.8.2014. The decision has been taken by the Board by way of circulation. The reasons assigned for giving extension to Mr. Desh Raj Gandhi is that he was holding additional charge of the Executive Engineer and was looking after construction work of Indoor Stadium at Rohroo, Construction work of Mushroom Unit at Dutt Nagar, Rampur and Construction work of Commercial Complex near Vikas Nagar at Shimla. According to Annexure R-3/B, his case was also recommended by the Superintending Engineer (South). It is also stated in Annexure R-3/B that Sh. Desh Raj Gandhi was very sincere, experienced, hard working and conversant with the prestigious projects being looked after by him. Sh. Desh Raj Gandhi was holding additional charge of Executive Engineer when his case was considered for extension of service.

7. It is amply proved that before the superannuation of the petitioner, he was looking after these projects as Executive Engineer. There is no complaint, whatsoever against the petitioner, as per the reply filed. Sh. Desh Raj Gandhi has been given extension in service as per Annexure P-5, on 30.8.2014 and the case of the petitioner has been rejected on 14.10.2014. The Board has taken the decision though on 27.7.2014, but should have taken into consideration the option exercised by the petitioner on 29.5.2014. The petitioner has not been treated in a just and fair manner by the respondent No. 3. All the parameters were required to be taken into consideration while considering the case of the petitioner for extension of one year service up to the age of 59 years. The discretion is required to be exercised in a judicious manner

and not arbitrarily. The Board is a State within the meaning of Article 12 of the Constitution of India. The petitioner has a right to be considered for extension of service as per Articles 14 & 16 of the Constitution of India. The petitioner has been discriminated against by the respondent-Board by denying him the benefit of extension and granting the extension to Mr. Desh Raj Gandhi, who was merely officiating Executive Engineer.

8. Accordingly, the Writ Petition is allowed. Annexure R-3/A dated 14.10.2014 is quashed and set aside. The respondent-Board is directed to consider the case of the petitioner and extend the period by one year w.e.f. 30.6.2014, with all consequential benefits, within three weeks from today.

9. Pending application(s), if any, shall stand disposed of.

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

State of Himachal Pradesh & another ...Appellants
Versus
Smt. Suresh Sharma & others ...Respondents

FAO No. 478 of 2007
Decided on : 28.11.2014

Motor Vehicle Act, 1988- Section 166- FIR lodged against the driver of the vehicle – investigation was conducted and challan was filed before the Court- Investigating Officer specifically stated that accident was the result of rashness and negligence of the driver- this, statement could not be demolished by the State or the Driver- therefore, it was duly proved that accident was the result of rashness and negligence of the driver- driver had also not challenged the findings recorded by the Tribunal- hence, plea that accident had taken place due to contributory negligence could not accepted- appeal dismissed. (Para- 9 to 11)

For the appellant : Mr. V.S. Chauhan, Additional Advocate General.
For the respondents : Mr. Neel Kamal Sharma, Advocate, for respondents No. 1 to 4.
Mr. Janesh Mahajan, Advocate, for respondent No. 5.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(oral)*

By the medium of this appeal, the appellant-State has questioned the award, dated 31st August, 2007, passed by the Motor Accidents Claims Tribunal (II), Kangra at Dharamshala, H.P. (hereinafter referred to as "the Tribunal") in MAC Petition No. 22-K/05, whereby compensation to the tune of ` 6,82,500/- with interest at the rate of 7½% per annum from the date of filing of the claim petition till its realization, came to be awarded in favour of the claimants-respondents 1 to 4, herein and against the State, being the owner of the offending vehicle, i.e. Gypsy bearing registration No. HP-47-0022 (for short, the "impugned award").

2. The claimants and the driver have not questioned the impugned award, on any count, thus it has attained finality, so far as it relates to them.

3. Only the insured-owner-the State, has questioned the impugned award on the grounds taken in the memo of appeal.

Brief Facts:

4. The claimants being victims of the vehicular accident filed claim petition before the Tribunal, for grant of compensation to the tune of Rs.12,00,000/-, on the ground that driver Badri Narayan, was driving Gypsy bearing registration No. HP-47-0022, rashly and negligently, on 05.01.2005, at about 3.25 p.m., near Chowk Rasood, P.W.D. Road, Ranital, Tehsil and District Kangra, struck against Scooty (Kinetic Nova) bearing registration No. HP-40A-1800 driven by deceased Joginder Pal Sharma; sustained injuries and succumbed to the injuries; FIR No. 3/2005, dated 05.01.2005, was registered in Police Station, Haripur.

5. Mr. V.S. Chauhan, learned Additional Advocate General argued that the accident was the outcome of the contributory negligence of the drivers of the gypsy and the scooty and the Tribunal has fallen in error.

6. Admittedly, the claimants have specifically pleaded in para-24 of the claim petition that the said accident was outcome of the rash and negligent driving of respondent No. 3, i.e. driver of the offending vehicle.

7. The State in para 24 of the reply to the claim petition denied the same, but has stated that the accident was the outcome of the negligence of the drivers of the scooty and the bus.

8. The parties led evidence. The Tribunal, after examining the pleadings and scanning the evidence, held that driver, namely, Badri Narayan, has driven the offending vehicle, rashly and negligently, on the date of accident; the deceased sustained injuries and succumbed to the injuries.

9. It is apt to mention herein that FIR No. 3/2005 was lodged against the driver of the offending vehicle; investigation was conducted; challan was presented against him in the Court of competent jurisdiction and the Tribunal called CW-1 ASI Negi Ram as Court witness, who has stated before the Tribunal that he had conducted the investigation and came to the conclusion that driver Badri Narayan, has driven the offending vehicle, rashly and negligently, as is recorded in para-10 of the impugned judgment. The State or the driver has not been able to demolish his statement. Thus, the Tribunal has rightly recorded the findings in para-10 of the impugned judgment.

10. Having said so, the Tribunal has rightly held that the driver of the offending vehicle was driving the said vehicle, rashly and negligently, on the date of the accident.

11. It is pertinent to mention here that the driver has not questioned the said findings and how the employer can question the same, when there is a relationship of master and servant between them.

12. The learned Counsel for the appellant argued that the compensation is on higher side. I have gone through the impugned award. The amount awarded is meager, but the claimants have not questioned it. Thus, the findings returned by the Tribunal are upheld.

13. Having said so, the appeal merits dismissal. The same is accordingly dismissed and the impugned award is upheld.

14. 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 payees account cheque.

15. Send down the records after placing copy of the judgment on record.

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

Khub Chand Verma …Appellant.
Versus
The State of Himachal Pradesh & others …Respondents.

LPA No. 177 of 2014
Decided on: 02.12.2014

Constitution of India, 1950- Article 226- Settled seniority cannot be unsettled- when the petitioner had remained in deep slumber and had not taken any action, he is not entitled for any relief. (Para-3 and 4)

Case referred:
H.S. Vankani and others versus State of Gujarat and others, reported in (2010) 4 SCC 301

For the appellant: Mr. Aman Sood, Advocate.
For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 and 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

This Letters Patent Appeal is directed against the judgment and order, dated 4th July, 2014, passed by the Writ Court in CWP No. 1105 of 2011, whereby the writ petition filed by the appellant-writ petitioner came to be dismissed (hereinafter referred to as "the impugned judgment").

2. The appellant-writ petitioner had invoked the jurisdiction of the Writ Court and had sought unsettling of the seniority position which was settled in the year 1968.

3. It is beaten law of land that settled seniority position cannot be unsettled in view of the Apex Court judgment in the case titled as **H.S. Vankani and others versus State of Gujarat and others,** reported in **(2010) 4 SCC 301.** The Apex Court, while determining the said issue, has taken note of all the judgments right from the year 1950 till the time the judgment was delivered.

4. We have gone through the pleadings and are of the considered view that the appellant-writ petitioner has remained in deep slumber. The Writ Court has rightly dismissed the writ petition in view of the pleadings and the law

applicable. The impugned judgment is well reasoned, needs no interference. Thus, the appeal merits to be dismissed.

5. Accordingly, the impugned judgment is upheld and the appeal is dismissed alongwith all pending applications, if any.

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BEFORE HON'BLE MR. JUSTICE SURESHWAR THAKUR, J

Naveen Sood & Others .....Petitioners
Versus
State of Himachal Pradesh & another ......Respondents.

Cr.MMO No. 145 of 2014
Reserved on : 24.11.2014
Decided on: 2nd December, 2014.

Code of Criminal Procedure, 1973- Section 482- Petitioners sought quashing of FIR registered against them for the commission of offences punishable under Sections 498-A and 406 read with Section 34 of IPC- held, that FIR can only be quashed if the allegations made in the same do not constitute an offence – where the allegations satisfy the ingredients of an offence, such power cannot be exercised- it was asserted in the FIR that the accused had harassed deceased physically and mentally compelling her to commit suicide- she was turned out of home and she started living with her husband who threatened her- she went to her maternal home and she asked her husband to take her to his home but he refused to do so- she was residing separately from 2009 to 2011- complaint was made on 10.4.2014- there was no explanation for delay and magnitude and enormity of the physical and mental cruelty were not specified – therefore, it could not be said that the accused intended to cause injury and the danger to her life limb or health- hence, ingredients of Section 498-A were not satisfied- she stated that she had entrusted her jewellery to the petitioner and when she demanded it back, jewellery was not returned, however, the day on which jewellery was entrusted was not mentioned- allegations were vague and unambiguous- hence, FIR ordered to be quashed. (Para- 2 to 7)

For the Appellants: Mr. Ajay Sharma, Advocate.
For the Respondent: Mr. Vivek Singh Attri, Deputy Advocate General for respondent No.1.

The following judgment of the Court was delivered:

Sureshwar Thakur, J (oral)

In the instant petition instituted under the provisions of Section 482 Cr.P.C, a prayer is made by the petitioners to quash and set aside FIR No. 75 of 2014, registered in Police Station, Kangra, H.P., for theirs having allegedly committed offences under Sections 498-A/406/34 IPC. Before proceeding to record findings and arrive at conclusions in the instant petition, it is deemed apt and imperative to extract the provisions of 498-A IPC:-

(a) *any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life limb or health (whether mental or physical) of the woman; or*

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. "

2. The import of the term 'cruelty' existing in the Section 498-A IPC, whose provisions, are extracted hereinabove, and which 'cruelty' is alleged to have been perpetrated upon the complainant by the petitioners herein is of its being constituted by any willful conduct of such a nature as is likely to drive a woman to commit suicide or its likely to cause grave injury and danger to her life, limb or health, besides harassment of a woman where such harassment is with a view to coerce her to comply with any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

3. Besides, the guiding principles encapsulated in a judgment of the Hon'ble apex Court for while construing the factum of the allegations set forth in the FIR lodged against the petitioner while being bereft of the ingredients constituting the offence alleged, in which event this Court being actuated to exercise the plenary jurisdiction vested in it under Section 482 Cr.P.C, is also required to be extracted. The decision of the Hon'ble Apex Court is reported in 1986 Cr.L.J 817, the relevant portion enshrining the guiding principles to be borne in mind by this Court while exercising jurisdiction in a petition under Section 482 Cr.P.C is extracted hereinbelow:-

"7. Insofar as Section 498-A, IPC is concerned, the relative of the husband of a woman, if he subjects the woman to harassment with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or the. harassment is on account of failure by her or any person related to her to meet such demand, could it be said that the woman had been subjected to cruelty and thereby an offence under Section 498-A, IPC have been committed. The harassment alleged in the present charge-sheet is not on account of any unlawful demand of properly or valuable security nor is it on account of failure by the second respondent or any person related to her to such a demand. There is no allegation in the charge-sheet that the petitioner herein demanded property or valuable security from the second respondent. On the other hand, it is the second respondent, who is seeking return of her "Stridhan" and her share in her husband's property from the petitioner herein. The ingredients of Section 498-A, IPC is clearly not attracted and the proceedings to the extent the petitioner is charged of an offence under Section 498-A, IPC is quashed.

8. Insofar as the petitioner is alleged to have been committed an offence under Section 406, IPC the Supreme Court in Pratibha Rani (1985 Cri LJ 817, Paras 20, 27 & 57) (supra), held thus:

...We are clearly of the opinion that the mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he/she will be liable for all the Consequences of such breach, Criminal law and matrimonial home are not strangers. Crimes committed in matrimonial home are as much punishable as anywhere else, in the case of Stridhan property also, the

title of which always remains with the wife though possession of the same may sometimes be with the husband or other members of his family, if the husband or any other member of his family commits such an offence, they, will be liable to punishment for the offence of criminal breach of trust under Sections 405 and 406, IPC....

...To sum up, the position seems to be that a pure and simple entrustment of Stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the same articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of Stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the Stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property....

...We now come to the question as to whether or not a clear allegation of entrustment and misappropriation of properties was made by the appellant in her complaint and, if so, was the High Court Justified in quashing the complaint at that stage, It is well settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482, Cr. P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegation. In case no offence is committed on the allegation and the ingredients of Sections 405 and 406, IPC are not made out, the High Court would be justified in quashing the proceedings. In the present case, we shall show that the allegations are both clear, specific and unambiguous and, therefore, the complainant should have been given a chance to prove her case. It is, of course, open to the accused at the trial to take whatever defences that were open to him but that stage had not yet come and therefore, the High Court was totally ill-advised to speculate on the merits of the case at that stage and quash the proceedings."

4. Bearing in mind the hereinabove extracted provisions of Section 498-A IPC, whose ingredients have to be prima-facie at this stage established to have been accomplished as also bearing in mind the effulgence of light shed by the relevant paragraph of the apt decision of Hon'ble Apex Court qua the exercise of jurisdiction by this Court in a petition under Section 482 Cr.P.C, in as much , as its contemplating therein that only when the allegations comprised in the FIR taken in their entirety constitute an offence, as also when the allegations are specific and unambiguous allegations and theirs constitute an offence within the parameters of the penal provisions of law would the jurisdiction vested in this Court under Section 482 Cr.P.C be not available to be exercised by this Court. Contrarily in case the allegations elucidated in the FIR which purportedly constitute an offence under the relevant and apt provisions of penal laws do not satisfy the ingredients of the provisions of the penal laws under which the allegations purportedly constitute an offence or when the allegations are unspecific and ambiguous, in that event this court would be

actuated to exercise jurisdiction vested in it under Section 482 Cr.P.C. Now with this Court having unraveled the ingredients which are to be accomplished or satiated for an offence being constituted under Section 498 IPC, as, also it having held that in case such allegations do not satisfy or accomplish the ingredients for constituting such allegations to be an offence under Section 498-A IPC, as, also when the allegations are unspecific and ambiguous, in that event this Court would proceed to quash the FIR. It is now imperative to incisively with circumspection traverse through the allegations comprised in the FIR. It is elucidated in the FIR that the complainant had entered into a wedlock in the year 2009. In the FIR she avers that after marriage the accused/petitioners herein behaved well with her for sometime and thereafter their attitude towards her started changing. Despite the intervention of the mediator, the accused/petitioners herein continued to harass her. Besides she alleges that the accused–petitioners herein physically and mentally harassed her, compelling her to commit suicide. She proceeds to allege that in September, 2011 she was thrown out from her matrimonial home and thereafter she started living separately with her husband in a quarter at Ghukari. She further alleges that at that place her husband threatened her with dire consequences. She continues to spell out in the FIR that at the instance of her husband she shifted to another quarter at some other place. She narrates that During November, 2013, she had gone to her parents and from there she called her husband to retrieve her to her matrimonial home. However he refused to bring her back on the score that he has no need for her. He further told her that he had no money to bear her expenses. She further narrates in the FIR that she had gone to her in-laws and asked for her jewellary, however her demand was not acceded to. Prima-facie on a reading of allegations made by the complainant against the petitioners herein unfold the factum of hers living separately with her husband since 2009 to 2011, hers having been subjected to mental and physical cruelty. However, the acts constituting mental and physical cruelty remained un-complained, since 2011 till the institution of an FIR qua the acts purportedly constituting an offence under the provisions of Section 498-A IPC having been complained by the complainant on 10.4.2014. As such prima-facie the un-explained delay itself has a sequelling effect in rendering the allegations leveled by the complainant against the petitioners herein and theirs purportedly constituting an offence under Section 498 A IPC to be perse smeared with concoction as well as prevarication. Even otherwise dehors the unexplained delay in the lodging of the complaint by the complainant and its sequelling an adverse inference qua the truthfulness of the allegations comprised in it, a bare reading of the allegations comprised in the FIR unearth the factum of the allegations therein omitting to convey the magnitude and enormity of the physical and mental cruelty perpetrated on her person by the accused nor also hence when the enormity of the physical and mental cruelty has remained un-displayed in the FIR, it can not be hence concluded that it was of such a nature so as to drive her to commit suicide. Besides, in the absence of the enormity and magnitude of the cruelty having been spelt out in the FIR, it cannot be concluded that the physical and mental cruelty as purportedly meted to the complainant by the accused/ petitioners herein was intended to cause injury and danger to her life, limb or health. Consequently, with the allegations leveled against the accused/petitioners herein having not satiated or accomplished the ingredients for constituting an offence under Section 498 A IPC nor as such obviously the attraction of the ingredients of the offence alleged against the petitioners herein in the FIR have been begotten or theirs having remained un-satiated for abysmal want of narration in the FIR qua the fact that the petitioners herein subjected the complainant to harassment with a view to coerce her to meet their unlawful

demand, constrains this Court to aptly conclude that the ingredients enshrined in Section 498-B IPC remain unaccomplished or un-satiated.

5. At this stage, It is also imperative to advert to the factum of Naveen Sood petitioner/accused having in September, 2011 endorsed an application to the SHO with a narration therein of his having segregated both his son and daughter-in-law, the complainant, from his house and property. The said fact finds reflection in Annexure P-2, an affidavit sworn by Naveen Sood, the petitioner/accused, of his having disowned his son, on account of his unheeding to his guidance and advice. In pursuance thereto, a notice proclaiming the fact of the petitioner herein having disowned his son was published and printed in "Dainik Jagran" as reflected in Annexure P-3. It hence appears that at the time contemporaneous to the complainant having left her matrimonial home in the company of her husband in September, 2008, the petitioner herein namely Naveen Kumar Sood had disowned his son. Concomitantly, then the un-explained belated institution of an FIR at the instance of the complainant against the petitioner herein appears to have been triggered by a backlash on the part of the complainant to the act of the petitioner herein namely Naveen Sood having disowned his son as also hence his having deprived him from his share in the personal property of the petitioner herein namely Naveen Sood. Consequently, the FIR lodged as a backlash to Annexure P-3, when as such, it being borne out of vendetta or reprisal to Annexure P-3, renders it to perse smack of malafides as well as untruthfulness in addition to the fact that on its reading it omits to unfold allegations which satiate the ingredients of Section 498 IPC.

6. The complainant has averred in the FIR that she entrusted her jewellary to her in-laws/petitioners herein, which was demanded by her to be retrieved to her which demand was un-acceded to. As such, an offence under Section 406 IPC is alleged tobe made out. However, the allegations which constitute an offence against the accused under Section 406 IPC ought to have also precisely and unambiguously spelt out the fact of the day on which she entrusted her jewellary to her in laws as also the date on which her in-laws refused to comply with her demand. However, it is apparent on a reading of the FIR that she in the company of her husband left her matrimonial home in September, 2011. She omitted to disclose in the FIR of her then handing over her satridhan or her jewellery to her in-laws. The said omission is material as it impinges upon the veracity of hers having belatedly as narrated in the concluding part of the FIR having demanded from her in-laws the jewellery as purportedly entrusted to them. Moreover, when at the time prior to her departure from her matrimonial home, the petitioner had under Annexure P-3 disowned the husband of the complainant from his house as well as from his property, as such debarred him from claiming a right in his home as well as in his property, the reprisal on the part of the complainant appears to have been in the shape of hers belatedly in the year 2014 having nebulously, ambiguously and imprecisely in the FIR lodged at her instance, spelt therein the bare nebulous factum of hers having entrusted her jewelry to her in-laws/petitioners herein, and hers demand of it being retrieved to her having remained un complied with, hence an offence under Section 482 IPC having come to be constituted. However, for reiteration when neither there is a specific date of entrustment of her jewellery by her to her in-laws/petitioners herein, rather when the demand for its retrieval to her too is enigmatic hence renders the allegations to be ridden with the vice of inveracity. The imprecise date of its purported entrustment rather preponderantly conveys that she was driven by reprisal or vendetta to allege that she had entrusted her jewellery to her in laws who on its being demanded by her from them refused to accede to it.

7. The upshot of the above discussion is that the allegations comprised in the FIR against the complainant qua both offences under Section 498-A and 406 IPC are ambiguous. Consequently when in the relevant paragraph of the decision of the Hon'ble Apex Court it is mandated that where the allegations purportedly constituting an offence under the apt provisions of the penal laws do not satiate the ingredients thereof nor also when the allegations are not clear, precise or unambiguous, in that event the continuation of criminal proceedings against the petitioners would tantamount to abuse of process of law. In aftermath when the discussion aforesaid communicates the factum of the ingredients of Section 498-A IPC, prima-facie having remained not satiated, besides when the allegations against the accused/petitioners herein and theirs purportedly constituting an offence under Section 498 A IPC against the petitioners herein are nebulous and imprecise. Moreover the allegations are also imprecise and ambiguous qua the commission of the offence under Section 406 IPC. Therefore, this Court is constrained to exercise its jurisdiction vested under Section 482 Cr.P.C., as the continuation of criminal proceedings would tantamount to both abuse of process of law as also would sequel the harassment and humiliation of the petitioners**.** Accordingly the petition is allowed and the FIR No. 75 of 10.04.2014 registered at Police Station Kangra, under Sections 498A/406/34, IPC against the accused/petitioners herein is quashed and set aside. All pending applications, if any, are also disposed of.

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

Samuel Masih & another .....Petitioners.

Versus

State of Himachal Pradesh & others .....Respondents.

Cr.MMO No. 13 of 2013.

Date of Decision : 2nd December, 2014.

Code of Criminal Procedure, 1973- Section 482 - An FIR was registered for the commission of offences punishable under Sections 363, 366 A and 120-B of IPC at the instance of Respondent No.4 who was proceeded ex-parte- petitioner No. 1/accused and petitioner No. 2/victim solemnized marriage subsequent to the registration of FIR – a child was born out of wedlock- parties approached the High court for quashing of the FIR- the fact that respondent No. 4 allowed himself to be proceeded ex-parte shows that he has no objection for quashing of the FIR- held, that since the parties had entered in to a compromise – therefore, proceeding with the case would be an exercise in futility – further, in order to preserve the institution of marriage and for maintaining peace between the parties who constitute one family, FIR ordered to be quashed. (Para-1 to 3)

Cases referred:

B.S. Joshi v. State of Haryana, (2003)4 SCC 675

Gian Singh versus State of Punjab and another, (2012)10 SCC 303

For the Petitioners: Mr. Ajay Sharma, Advocate.

For the Respondents: Mr. Vivek Singh Attri and Mr. Tarun Pathak, Deputy Advocate Generals.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

An FIR bearing No.141 of 2010 of 16.04.2010, under Sections 363, 366 A and 120-B of the Indian Penal Code was lodged in Police Station, Nurpur, District Kangra, H.P. by respondent No.4, Ravinder Kumar, who was proceeded against ex-parte. On registration of the FIR by Ravinder Kumar against petitioner No.1, investigation into the offences alleged against the accused therein commenced. A perusal of the record reveals that contemporaneous to the commencement of investigation, petitioner No.1/accused and petitioner No.2/victim of the crime solemnized marriage on 28.04.2011. Copy of the marriage certificate of 16.05.2012 has been placed on record as Annexure P-1. Out of the said wedlock the petitioners have one issue. The factual matrix aforesaid does communicate the fact that both the petitioner No.1/accused and petitioner No.2/victim of the crime have solemnized marriage and now are living connubial bliss. It ought to be the endeavour of the Court to ensure that the matrimonial life of married partners is both peaceful and amiable besides, endeavour should be made to ensure that the married partners live in peace and harmony. The husband and wife have demonstrated their willingness to live in peace and harmony as divulged by the aforesaid material. Theirs concerted attempt to abort turbulences in their family ought to be revered. The fact that the complainant/respondent NO.4 allowed himself to be proceeded against ex-parte, hence, omitted to contest the petition portrays that he projects no remonstrance to the aspiration and desire of both the accused/petitioner No.1 and petitioner No.2/victim of the crime for quashing of the FIR.

2. Even though, the marriage as has been solemnized inter se the victim of the crime/petitioner No.2 and petitioner No.1/accused has sequelled the institution of the instant joint petition on their behalf for according the relief of quashing of the FIR against the accused yet reliefs as prayed for in the petition would come to be afforded in favour of the petitioners only in the face of this Court being vested with apposite powers under Section 482 of the Cr.P.C. The beacon of light in guiding this Court to exercise its jurisdiction vested under Section 482 of the Cr.P.C., inasmuch as to what considerations ought to be borne in mind while exercising powers vested in this Court under Section 482 of the Cr.P.C., are encapsulated in the judgment of the Apex Court reported in ***B.S. Joshi v. State of Haryana, (2003)4 SCC 675*** wherein it has been held that in so far as disputes, both civil and criminal arising out of the matrimonial strife are concerned, they stand on a footing/pedestal and distinct from other crimes which are committed against the society, inasmuch, as, when the marriage inter se the bickering parties is both sacrosanct and sacramental, as such, endeavour ought to be made to preserve it rather, than to unsettle. Further more, in the face of the verdict of the Hon'ble Apex Court in ***Gian Singh versus State of Punjab and another***, (2012)10 SCC 303 the relevant paragraph whereof is extracted hereinafter mandating that where the victim of the offence and the accused come to record a settlement/strike a compromise even qua the offence which are not compoundable, hence would rather not pave way for the success of the complaint/prosecution, rather the prosecution of the offender for his having committed the alleged non-compoundable, would be an exercise in futility is a preponderant and preeminent factory to be borne in mind

by this Court while exercising the plenary jurisdiction vested in it under Section 482, Cr.P.C. Relevant paragraph No.58 of the judgment supra reads as under:

> "58. Whether the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put on an end and peace is resorted; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threats the well being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the Court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by the public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions of the offences arising out of matrimony, particularly relating to dowry, etc., or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

3. For preserving the institution of marriage and for maintaining peace, inter se the parties, who now constitute one family and who have jointly moved this Court for quashing of the FIR, this Court to maintain equilibrium in the family, who have chosen or shown their desire to live in unison, peace and harmony, hence, when the exercise of inherent powers vested in this Court under Section 482 of the Cr.P.C. for quashing of FIR qua disputes which are purely matrimonial in nature is neither trammeled nor restricted, rather is a plenary power to be exercised in matrimonial disputes for halting bickerings and for facilitating peace and harmony in the family, as such, this Court is constrained to exercise it. More so, even if, assuming that the some of the offences constituted in the FIR may not be compoundable, nonetheless in the face of the verdict of the Hon'ble Apex Court rendered in Gian Singh versus State of Punjab and another (supra) investing a jurisdiction in this Court for restoring peace and amity inter se the parties as also for putting at rest their disputes, besides when given the fact that the victim of the crime and the accused having entered into a wedlock imminently conveying striking of or arrival of compromise inter se them, would frustrate the prosecution case, as such, this Court is constrained to even in the face of non-compoundability of the some of the offences constituted in the FIR to accept the concerted striving

of the victim and the accused/petitioner portrayed by theirs having entered into a wedlock to live hereafter in peace and harmony. Obviously, then the pendency of the FIR would frustrate such an endeavour. It ought to be quashed. Consequently, the petition is allowed and the FIR bearing No.141 of 2010 of 16.04.2010, under Sections 363, 366 A and 120-B of the Indian Penal Code lodged in Police Station, Nurpur, District Kangra, H.P. is quashed. All the pending applications also stand disposed of.

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

State of Himachal Pradesh .....Appellant.

Vs.

Susheel Kumar son of Shri Gurbachan and others ...Respondents.

Cr. Appeal No. 322 of 2008
Judgment reserved on: 9th September,2014
Date of Decision: 19th November, 2014.

Indian Penal Code, 1860- Sections 306 and 498-A read with Section 34 of IPC- As per prosecution case, accused had treated the deceased with cruelty due to which she had committed suicide- father of the deceased deposed that deceased had told him that her husband was demanding Rs. 50,000/- and motorcycle- brother of the deceased also deposed that deceased had disclosed that her in-laws harassed her and had called her handicapped and Paharan- medical evidence proved that death was due to suicide- deceased had written a suicide note - her husband had abused her on the day of commission of suicide- held, that in these circumstances, husband is guilty of the commission of offence punishable under Section 498-A of IPC.

Cases referred:

Arun Vyas and another vs. Anita Vyas AIR 1999 SC 2071
Virbhan Singh and another vs. State of U.P. AIR 1983 SC 1002
Pawan Kumar and others vs. State of Haryana, 1998 (3) SCC 309
Mookkiah and another vs. State, (2013)2 SCC 89
State of Rajasthan vs. Talevar 2011(11) SCC 666
Surendra vs. State of Rajasthan AIR 2012 SC (Supp) 78
State of Rajasthan vs. Shera Ram @ Vishnu Dutta 2012(1) SCC 602.
Jose vs. The State of Kerala AIR 1973 SC 944
Vadivelu Thevar vs. The State of Madras AIR 1957 SC 614
Masalti and others vs. State of Uttar Pradesh AIR 1965 SC 202
Dalbir Singh vs. State, AIR 1987 SC 1328
Bhee Ram vs. State of Haryana AIR 1980 SC 957
Rai singh vs. State of Haryana AIR 1971 SC 2505
Lallu Manjhi and another vs. State of Jharkhand AIR 2003 SC 854
State of U.P. vs. Kishanpal and others JT 2008(8) SC 650

For the Appellant: Mr. B.S. Parmar, Additional Advocate

	General with Mr. Vikram Thakur, Deputy Advocate General and Mr. J.S. Guleria, Assistant Advocate General.
For the Respondents:	Mr. Ramakant Sharma Advocate with Ms. Soma Thakur, Advocate.

The following judgment of the Court was delivered:

P.S.Rana, J.

Present appeal is filed against the judgment of acquittal passed by learned Sessions Judge Solan in Sessions trial No. 16-NL/7 of 2006 titled State of H.P. vs. Susheel Kumar and others.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by prosecution are that on dated 4.7.2005 at 5.30/6 AM at village Channal Majra P.S. Barotiwala District Solan deceased Kamla Devi aged 23 years daughter of Neeta Ram committed suicide in the bed room of her matrimonial house when she was pregnant. It is alleged by prosecution that accused persons abetted the deceased to commit suicide and also subjected the deceased to mental cruelty in her matrimonial house. It is alleged by prosecution that deceased committed suicide by way of hanging herself and left her suicide note Ext.PW2/A. It is alleged by prosecution that on dated 4.7.2005 ASI Tajinder Singh Incharge P.S. Baddi received secret information that a lady had committed suicide in village Channal Majra. It is further alleged by prosecution that thereafter information was entered into daily dairy vide report Ext.PW8/A and thereafter police officials proceeded to the place of incident and reached within 15-20 minutes. It is alleged by prosecution that deceased was found hanging from the roof of the bed room in her matrimonial house and deceased was already died. It is further alleged by prosecution that thereafter parents of deceased were called who reached at the spot within 1-1½ hours and statement of father of deceased was recorded. It is further alleged by prosecution that in the meantime Dy.S.P. Nalagarh and SHO Barotiwala on receiving information came to the spot and doctor was also called to spot who examined the dead body of deceased. It is further alleged by prosecution that photographs of hanged dead body Ext.P3 to Ext.P8 and negatives of which Ext.P9 obtained and thereafter inquest report Ext.PW8/B and spot map of the room Ext.PW8/C were prepared. It is alleged by prosecution that in room of matrimonial house a writing pad Ext.PW2/A was found which was took into possession vide memo Ext.PW2/B. It is further alleged by prosecution that thereafter dead body of deceased was brought to CHC Nalagarh for post mortem and it was found that cause of death was due to ante mortem hanging/asphyxia. It is also alleged by prosecution that post mortem report is Ext.PW3/A and dead body of deceased handed over to PW1 vide memo Ext.PW8/C. It is further alleged by prosecution that brother of deceased during investigation had handed over the admitted writing of deceased Ext.PW2/D-1 and Ext.PW2/D-2 to PW8 which were took into possession by him vide memo Ext.PW2/E. It is further alleged by prosecution that suicide note and admitted hand writing were sent to the Examiner of Question Documents FSL Junga and report is Ext.PW6/A. It is alleged by prosecution that admitted hand writing and suicide note as per expert report belong to the same person. It is alleged by prosecution that deceased had told to PW2 when he came to her matrimonial house that accused persons were harassing the deceased in her matrimonial house. It is further alleged by prosecution that deceased told PW2 that deceased was pregnant and accused persons did not want the child and thereafter they

had administered some medicine to the deceased. It is alleged by prosecution that PW3 preserved viscera of deceased which was handed over to Investigating Agency and same was sent to FSL Junga for chemical examination.

3 Accused persons were charged by learned Sessions Judge Solan on dated 18.10.2006 under Sections 306, 498-A read with Section 34 of Indian Penal Code. Accused persons did not plead guilty and claimed trial.

4. The prosecution examined the following witnesses in support of its case:-

Sr.No.	Name of Witness
PW1	Shri Neeta Ram
PW2	Sunder Dass
PW3	Bhupesh Gupta
PW4	H.C.Inder Lal
PW5	H.C. Sohan Lal
PW6	SHO Bhisham Thakur
PW7	C. Hakam Ram
PW8	ASI T.S. Thakur
DW1	Dalip Singh

4.1 Prosecution also produced following piece of documentary evidence in support of its case:-

Sr.No.	*Description:*
Ex.PW2/A.	*Note Book*
Ex.PW2/B.	*Recovery memo*
Ex.P1	*Stool*
Ex.PW2/D-1 & Ext.PW2/D2	*Writing of deceased*
Ex.PW2/E	*Recovery memo*
Ex.PW3/A	*Post mortem report*
Ex.PW3/B	*Application*
Ex.PW4/B	*Ruka*
Ex.P2	*Scarf*
Ext.P3 to Ext.P8 and Ext.P9	*Photographs and negatives*
Ext.PW6/A	*Chemical report*
Ext.PW6/B	*Chemical Report*

Ex.PW8/A	*Nakal Rapat No. 30*
Ext.PW8/B	*Inquest report*
Ext.PW8/C	*Receipt of dead body*
Ext.PW8/D	*Spot map*
Ext.DA	*Statement of Shri Dalip Singh under Section 161 Cr.P.C. for contradiction purpose.*

5. Statements of the accused persons were also recorded under Section 313 Cr.P.C. They have stated that deceased wanted to do job and did not want to live with them in village and also wanted to reside with her parents at Pinjore and did not want to have a child also. They further stated that they did not harass the deceased and deceased committed suicide of her own at her matrimonial house. They have produced one witness in defence. Learned trial Court acquitted all the accused of the charges framed against them.

6. Feeling aggrieved against the judgment passed by learned Trial Court State of H.P. filed present appeal under Section 378 of Code of Criminal Procedure.

7. We have heard learned Additional Advocate General appearing on behalf of the State of H.P. and learned Advocate appearing on behalf of the respondents and also perused the entire record carefully.

8. Question that arises in present appeal is whether learned trial Court did not properly appreciate oral as well as documentary evidence placed on record and whether learned trial Court had committed miscarriage of justice as mentioned in memorandum of grounds of appeal.

ORAL EVIDENCE ADDUCED BY PROSECUTION:

9.1. PW1 Neeta Ram has stated that deceased was his daughter and she was married to accused Susheel about 1½ years back in the month of May. He has stated that marriage was solemnized as per Hindu customs and ceremonies. He has stated that in the month of July he came to know from his son-in-law accused Susheel Kumar that deceased had hanged herself in her matrimonial house. He has stated that thereafter he along with his brother Karam Chand and son Sunder Dass came to matrimonial house of deceased and found that his daughter was hanging from the ceiling fan with scarf tied around her neck. He has stated that when his daughter came to her parental house she told that her husband namely co-accused Susheel Kumar was demanding a motor cycle and Rs. 50,000/- (Rupees Fifty thousand only). He has stated that he told his daughter that his wife was ill and he would come to matrimonial house of deceased with 4/5 persons and would inquire from the co-accused Susheel Kumar as for what purpose the money was required. He has stated that his daughter was killed and she was hanged after killing because feet of deceased were touching the ground. He has stated that police also took photographs in his presence. He has stated that accused were harassing and torturing his deceased daughter for dowry and further stated that suicide was abetted by accused persons. He has denied suggestion that deceased was married against her will. He has denied suggestion that his daughter informed that she was pregnant and she intended to terminate the pregnancy. He has denied suggestion that accused persons did not demand any dowry from the

deceased and also denied suggestion that accused persons did not harass and torture the deceased in her matrimonial house.

9.2 PW2 Sunder Dass has stated that his sister was married to accused Susheel Kumar on dated 11.5.2005. He has stated that on dated 2.7.2005 he had gone to the house of his sister to attend the function. He has stated that his sister told him that accused persons have harassed her and called her handicapped. He has stated that his sister was pregnant but her in-laws did not want the child and they administered wrong medicine to the deceased. He has stated that he visited the house of deceased on 4th July 2005 and found that deceased was hanging from the fan and her feet were touching the ground. He has stated that police officials found a suicide note which was written on a writing pad and suicide note is Ext.PW2/A which was took into possession by police vide memo Ext.PW2/B. He has stated that suicide note Ext.PW2/A was written by his deceased sister and he has stated that he is conversant with hand writing of his deceased sister. He has stated that accused used to harass his sister. He has denied suggestion that deceased told him that deceased did not want child. He has denied suggestion that suicide note Ext.PW2/A and writing Ext.PW2/D-1 and Ext.PW2/D-2 are written by him. He has denied suggestion that accused persons did not harass the deceased.

9.3 PW3 Dr. Bhupesh Gupta has stated that he is posted as Medical Officer in CHC Nalagarh since 2002 and on dated 4.7.2005 he visited the spot and found that deceased was hanging from the ceiling hook with red coloured scarf. He has stated that there were no struggle marks in the room and dress of the deceased was in order. He has stated that there was no blood on the floor and further stated that on dated 4.7.2005 dead body of deceased was brought by him to CHC Nalagarh for post mortem. He has stated that scarf is Ext.P2 and on post mortem he observed that deceased was well build and found ligature marks of red scarf around the neck of deceased and found that deceased was wearing pinkish red suit. He has stated that he did not observe any external injury on the body of deceased except the ligature mark on the neck. He has stated that it was found that ligature mark was of 2 cm wide above thyroid cartilage and base of jaw obliquely placed at the mastoied bone bilaterally ligature mark was absent posteriorily and hyoid bone fracture was present. He has further stated that on dissection of ligature mark perchament wide (glistening) area found beneath sub cutaneous tissue. He has stated that no bruising of muscles and carotied artery intima injury found and found that left side face of the patient was pale and found bluish tinged eyes had petechial hemorrhage and hands were clichéd. He has stated that on removing the uterus pregnancy of about six to eight weeks was observed and uterus was sent for chemical and histeopathological examination and he opined that deceased was pregnant at the time of post mortem to the gestational age of around six to eight weeks and died due to ante mortem hanging. He has stated that viscera was sent to FSL Junga and after receipt of FSL report he did not find any evidence of poisoning or alcohol in the viscera. He has stated that he issued post mortem report Ext.PW3/A which bears his signatures.

9.4 PW4 HC Inder Lal has stated that he remained post as MHC P.S. Barotiwala and on dated 4.7.2005 statement Ext.PW4/A through HC Yashpal was received in police station and FIR Ext.PW4/B was registered. He has stated that case file was sent to the spot through HC Yash Pal and on dated 5.7.2005 C. Narinder Singh vide RC No. 3 of 2005 deposited with him viscera of deceased, four jars each sealed with three seals of CHC Nalagarh and one sealed envelope along with sample seal which were deposited by him in the Malkhana and entries were made by him in the register. He has stated that on dated 14.7.2005

vide RC No. 22 of 2005 he sent four jars of viscera of deceased sealed with three seals of CHC Nalagarh to FSL Junga along with sample of seal and one more envelope containing letter pad and admitted handwriting of deceased along with relevant papers through C. Hakkam Ram and case property was handed over by Hakkam Singh at FSL Junga on the same day and further stated that receipt was handed over to him by C. Hakkam Singh. He has stated that one stool and scarf were also deposited. He has further stated that case property remained intact in his custody. He has denied suggestion that proceedings regarding FIR Ext.PW4/B recorded subsequently. He has denied suggestion that no ruka was received by him in police station through H.C. Yash Pal.

9.5 PW5 HC Sohan Lal has stated that he is posted as I.O. P.P. Baddi since 2003 and on dated 9.7.2005 he remained associated in the investigation of the present case. He has stated that on dated 9.7.2005 Sunder Dass produced Ext.PW2/D-1 and Ext.PW2/D-2 to the Investigating Officer ASI Tapinder Singh vide seizure memo Ext.PW2/E which bears his signatures. He has further stated that Ext.PW2/D-1 to Ext.PW2/D-2 were written by deceased. He has admitted that about 100-150 villagers were gathered outside the house of deceased.

9.6 PW6 SHO Bisham Thakur has stated that in the year 2005 he was posted as SHO P.S. Barotiwala and after completion of investigation ASI Tajinder Singh presented the case file to him and after receipt of FSL reports Ext.PW6/A and Ext.PW6/B he prepared challan and presented the same in Court.

9.7 PW7 C. Hakam Ram has stated that on dated 14.7.2005 MHC Inder Lal P.S. Barotiwala handed over to him two parcels sealed with seal CHC Nalagarh along with two envelopes also sealed with same seal and sample seal vide RC No. 22 of 2005 for taking the same to FSL Junga. He has stated that samples were took by him and deposited in the office of FSL Junga. He has stated that receipt was handed over to MHC and parcels remained intact in his custody. He has denied suggestion that parcels were handed over to him on dated 13.7.2005 in the evening.

9.8 PW8 ASI T.S. Thakur I.O. has stated that in the year 2005 he was posted as Incharge of P.P. Baddi and on dated 4.7.2005 an information was received from an unknown person of village Channal Majra that some lady had committed suicide. He has stated that information was recorded in daily dairy vide report Ext.PW8/A and he along with HC Sohan Lal, H.C. Yahspal, C. Harwinder and Lady C. Gurmeet Kaur proceeded in official vehicle to the spot and reached the spot within 15-20 minutes. He has stated that they found that one lady was hanging from the roof in her bed room and lady was already dead and they waited for parents of deceased. He has stated that parents of deceased came within 1-1½ hours and further stated that father of deceased had given statement Ext.PW4/A. He has stated that father of deceased told that deceased was harassed by accused persons. He has stated that thereafter Dy.S.P. Nalagarh, SHO Barotiwala came at the spot and medical officer was also called at the spot who examined the hanging dead body. He has stated that thereafter he took photographs with his own camera. He has further stated that thereafter he prepared inquest report Ext.PW8/B and inspected the room and prepared map Ext.PW8/C. He has stated that during the inspection of room writing pad Ext.PW2/A was found. He has stated that there was one stool on the bed. He has stated that thereafter he filed application for post mortem of deceased and thereafter obtained post mortem report. He has stated that dead body of deceased was handed over to parents of deceased vide memo Ext.PW8/O. He has stated that he also recorded statements of witnesses and viscera presented

by medical officer was sent for examination to FSL Junga. He has stated that admitting hand writing of deceased Ext.PW2/D-1 to Ext.PW2/D-2 took from the brother of deceased vide memo Ext.PW8/E and they were sent to the expert of question document FSL Junga for comparison with hand writing of suicide note Ext.PW2/A. He has stated that report Ext.PW6/A was obtained and as per report of Handwriting Expert both writings was of same person. He has stated that after investigation file was handed over to SHO P.S. Barotiwala for preparation of challan. He has denied suggestion that deceased wanted to terminate her pregnancy. He has stated that he does not know that deceased was not interested for living in the village. He has denied suggestion that deceased wanted to terminate her pregnancy. He has stated that he does not know that deceased was reprimanded by her parents for termination of her pregnancy. He has denied suggestion that suicide note Ext.PW2/A and hand writings Ext.PW2/D-1 to Ext.PW2/D-2 are hand writing of Sunder Dass. He has denied suggestion that deceased committed suicide of her own. He has denied suggestion that deceased was not harassed by accused persons.

10. Statements of accused persons recorded under Section 313 Cr.P.C. Accused persons have stated that deceased did not want the child and wanted to perform job. Accused persons have further stated that deceased did not want to live with accused persons in village and wanted to reside with her parents at Pinjore. Accused persons stated that they did not harass the deceased in her matrimonial house. Accused persons have further stated that deceased had committed suicide of her own.

11. Accused persons also examined Shri Dalip Singh as DW1 who has stated that he is familiar with the family of accused persons residing in village Chanar Majra. He has stated that he remained President of Panchayat Kishanpur from 2001 to 2006 and further stated that village Chanar falls under his Panchayat. He has stated that police officials recorded his statement in present case which is Ext.DA placed on record. He has admitted that he is running a clinic at village Manpura and further stated that he was called by accused Susheel Kumar and also stated that house of accused persons is situated at a distance of about 3-4 K.m. from his clinic. He has stated that his house is also situated at the same distance from the house of accused persons. He has stated that he did not give any treatment to the deceased as deceased was pregnant. He has further stated that he also did not conduct any test. He has denied suggestion that he was having knowledge that deceased was murdered by accused persons. He has denied suggestion that deceased had died on account of maltreatment by accused persons. He has admitted that accused persons are voters of his Panchayat.

Testimony of PW1 Shri Neeta Ram father of deceased is fatal to co-accused Susheel Kumar qua criminal offence punishable under Section 498-A IPC

12. PW1 Neeta Ram father of deceased has stated in positive manner that when deceased used to come to her parental house she told him personally that her husband i.e. co-accused Susheel Kumar was demanding a motor cycle and Rs.50,000/- and he told his daughter that his wife was ill and he would come to her matrimonial house with 4/5 persons and he would ask co-accused Susheel Kumar purpose of demanding the money. Above stated testimony of PW1 against co-accused Susheel Kumar is trustworthy reliable and inspires confidence of Court and is fatal to co-accused Susheel Kumar. There is no reason to disbelieve the above stated testimony of PW1.

Testimony of PW2 Sunder Dass brother of deceased is also fatal to co-accused Susheel Kumar qua criminal offence punishable under Section 498-A IPC

13. PW2 Sunder Dass has stated in positive manner that deceased was married to co-accused Susheel Kumar on dated 11.5.2005. He has stated that on dated 2.7.2005 he personally went to the house of his deceased sister to attend the function where on the next day of the function she told him that her in-laws harassed her and called her handicapped and also called her as Paharan. He has stated in positive manner that his deceased sister did not feel happy in her matrimonial home and further stated that his sister was pregnant. Above stated testimony of PW2 Sunder Dass is also trustworthy reliable and inspires confidence of Court and fatal to co-accused Susheel Kumar. There is no reason to disbelieve the above stated testimony of PW2.

Testimony of PW3 Dr. Bhupesh Gupta is also fatal to co-accused Susheel Kumar qua criminal offence punishable under Section 498-A IPC

14. PW3 Dr. Bhupesh Gupta has stated in positive manner that he visited the spot and found that deceased was hanging from the ceiling hook in the bed room of her matrimonial house. He has stated that on dated 4.7.2005 dead body of deceased was brought to CHC Nalagarh for post mortem. He has stated that ligature marks were present over the neck of 2 cm wide above thyroid cartilage. He has stated that hyoid bone fracture was also present. He has stated that deceased was pregnant at the time of post mortem and further stated that pregnancy was of 6 to 8 weeks. He has stated that deceased had died due to ante mortem hanging. Above stated testimony of PW3 is also trustworthy reliable and inspires confidence of Court and is fatal to co-accused Susheel Kumar.

Corroborative testimonies of witnesses namely PW4 HC Inder Lal, PW5 HC Sohan Lal, PW6 HC Bisham Thakur, PW7 C. Hakam Ram, PW8 ASI T.S. Thakur are fatal to co-accused Susheel Kumar qua criminal offence punishable under Section 498-A IPC

15. PW4 has stated in positive manner that viscera of deceased four jars each sealed with three seals of CHC Nalagarh and one sealed envelope along with sample of seal deposited with him. He has stated in positive manner that on dated 14.7.2005 vide RC No. 22 of 2005 he sent four jars of viscera of deceased each sealed with three seals of CHC Nalagarh to FSL Junga along with sample of seal and one envelope containing letter pad and admitted hand writing along with relevant papers through C. Hakam Ram. Testimony of PW4 HC Inder Lal is trustworthy reliable and inspires confidence of Court and there is no reason to disbelieve the testimony of PW4 HC Inder Lal. Another corroborative witness PW5 HC Sohan Lal has stated that documents Ext.PW2/D-1 and Ext.PW1/D-2 were produced and same were took into possession vide seizure memo Ext.PW2/E which bears his signatures. Testimony of PW5 HC Sohan Lal is trustworthy reliable and inspires confidence of Court and there is no reason to disbelieve the testimony of PW5 HC Sohan Lal. Another corroborative witness namely PW6 SHO Bisham Thakur has stated in positive manner that on receipt of FSL reports Ext.PW6/A and Ext.PW6/B he prepared challan. Testimony of PW7 C. Hakam Ram also inspires confidence of Court. He has specifically stated that two parcels sealed with seal CHC Nalagarh along with two envelopes were handed over to him vide RC No. 22/2005 and he deposited the same in FSL Junga. Testimony of corroborative witness PW8 ASI T.S. Thakur is also trustworthy reliable and inspire confidence of Court. PW8 T.S. Thakur has stated in positive manner that he visited the spot and further stated in positive manner that father of deceased had given a statement to him Ext.PW4/A which

was reduced into writing. He has stated that deceased was harassed by accused persons in her matrimonial house.

Suicide note Ext.PW2/A is also fatal to co-accused Susheel Kumar qua criminal offence punishable under Section 498-A IPC

16. Deceased has specifically stated in her suicide note that she used to remain confine in a room and there is recital in suicide note written by deceased that she did not like comments about her works in her in-laws house. There is recital in suicide note written by deceased that deceased had tolerated everything on account of new marriage. There is recital in suicide note written by deceased that in breakfast co-accused Susheel Kumar told the deceased on oath that he was very aggrieved after marrying the deceased with him because his freedom was snatched after marriage. There is recital in suicide note written by deceased that at 12 Noon electricity light went out of order and co-accused Susheel Kumar went to sleep outside and told the deceased to awaken him when electricity light would come. There is further recital in suicide note written by deceased that electricity light came after ½ hours and she awaken her husband namely co-accused Susheel Kumar and told him to come inside the room. There is further recital in suicide note written by deceased that at 3 AM co-accused Susheel Kumar came in room and abused the deceased. There is further recital in suicide note written by deceased that co-accused Susheel Kumar told the deceased that deceased should tell her mother not to visit matrimonial house of deceased.

17. After perusal of testimony of prosecution witnesses carefully and after perusal of suicide note Ext.PW2/A placed on record it is proved beyond reasonable doubt that deceased had committed suicide in her matrimonial house in the stage of pregnancy due to mental cruelty given by co-accused Susheel Kumar. Provision of Section 498 has been enacted to meet social challenge to save married woman from being ill-treated and forced to commit suicide by husband or relatives. It is well settled law that if married woman is treated with cruelty within four walls of her matrimonial house then no independent witness of locality would be available. It is well settled law that any form of cruelty to married woman in her matrimonial house will attract the provisions of Section 498-A IPC. It is well settled law that cruelty is not only physical cruelty but also mental cruelty. It is well settled law that basic difference between Section 498-A and 306 IPC is that of intention only. It is well settled law that under Section 498-A IPC cruelty committed by husband or his relatives drag the woman to commit suicide and under Section 306 IPC suicide is abetted and intended by accused person. It was held in case reported in ***AIR 1999 SC 2071 titled Arun Vyas and another vs. Anita Vyas*** that cruelty as defined in Section 498-A IPC is a continuing offence and on each occasion on which wife is subjected to cruelty new starting point of limitation would start on last act of cruelty. ***(Also see AIR 1983 SC 1002 titled Virbhan Singh and another vs. State of U.P.).*** It is well settled law that cruelty or harassment need not be physical but even mental cruelty would be a cruelty under Section 498-A IPC (Also See ***1998 (3) SCC 309 Pawan Kumar and others vs. State of Haryana***.)

Report of State Forensic Science Laboratory Junga is fatal to co-accused Susheel Kumar.

18. Even Scientific Officer State Forensic Science Laboratory Junga has specifically mentioned in positive manner in report Ext.PW6/A that admitted hand writing A1 to A4 and question hand writing Q1 to Q4 have been written by one and same person. Hence it is held that hand writing expert's

report is fatal to co-accused Susheel Kumar qua suicide note and qua criminal offence punishable under Section 498-A IPC.

19. Submission of learned Additional Advocate General appearing on behalf of the State that offence under Section 498-A IPC is also proved beyond reasonable doubt against other co-accused persons namely Gurbachan, Smt. Ramla Devi and Kumari Narinder Kaur is rejected being devoid of any force for the reasons hereinafter mentioned. There is no positive cogent and reliable evidence as well as oral and documentary evidence on record against other accused persons namely Gurbachan, Smt. Ramla Devi and Kumari Narinder Kaur.

20. Another submission of learned Additional Advocate General appearing on behalf of the State that offence under Section 306 IPC is also proved beyond reasonable doubt against all accused persons is also rejected being devoid of any force for the reasons hereinafter mentioned. There is no positive cogent and reliable evidence on record in order to prove that all accused persons have abetted the deceased to commit suicide immediately prior to the commission of suicide. There is no direct nexus between abetment and suicide. Hence all accused persons are acquitted qua offence punishable under Section 306 IPC read with Section 34 IPC by way of giving them benefit of doubt. It is well settled principle of law that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the learned trial Court. ***(See (2013)2 SCC 89 titled Mookkiah and another vs. State See 2011(11) SCC 666 titled State of Rajasthan vs. Talevar***, ***See AIR 2012 SC (Supp) 78 titled Surendra vs. State of Rajasthan*** , ***See 2012(1) SCC 602 State of Rajasthan vs. Shera Ram @ Vishnu Dutta.)*** I

21. Submission of learned defence Advocate appearing on behalf of co-accused Susheel Kumar that testimonies of PW1 and PW2 and statement of deceased recorded in suicide note Ext.PW2/A are not sufficient to convict co-accused Susheel Kumar qua criminal offence punishable under Section 498-A IPC is rejected being devoid of any force for the reasons hereinafter. It is well settled law that in matrimonial cases relatives are the best witnesses. It is also well settled law that married women generally used to narrate the facts of cruelty to her close relatives. There is no positive cogent and reliable evidence to disbelieve the testimonies of PW1 father of deceased and PW2 brother of deceased. It is well settled law that that conviction can be based on honest and trustworthy evidence even of a single witness in criminal case. ***(See AIR 1973 SC 944 titled Jose vs. The State of Kerala See AIR 1957 SC 614 titled Vadivelu Thevar vs. The State of Madras . See AIR 1965 SC 202 titled Masalti and others vs. State of Uttar Pradesh).*** It was held in case reported in ***AIR 1987 SC 1328 titled Dalbir Singh vs. State*** that there is no hard and fast rule for appreciation of evidence and each case has to be decided on facts as they proved in particular case.

22. Another submission of learned defence Advocate appearing on behalf of co-accused Susheel Kumar that there are material contradictions in the testimonies of PWs 1 and 2 and therefore co-accused Susheel Kumar be acquitted qua offence punishable under Section 498-A IPC is rejected being devoid of any force for the reasons hereinafter mentioned. Court has carefully perused the testimonies of PWs 1 and 2 and there is no material contradiction between testimonies of PWs 1 and 2 and it is well settled law that minor contradictions are bound to come in criminal cases. Deceased had committed suicide on dated 4.7.2005 in her matrimonial house within about two

months after her marriage due to mental cruelty given to deceased by co-accused Susheel Kumar and statements of prosecution witnesses were recorded on dated 14.12.2006, 15.12.2006, 14.5.2007, 15.5.2007 and minor contradictions are bound to come in testimonies of prosecution witnesses when statements of prosecution witnesses were recorded after a lapse of time. It is also well settled law that concept of *falsus in uno falsus in omnibus* is not applicable in criminal cases. ***(See AIR 1980 SC 957 titled Bhee Ram vs. State of Haryana. See AIR 1971 SC 2505 titled Rai singh vs. State of Haryana.)***

23. Another submission of learned defence Advocate appearing on behalf of co-accused Susheel Kumar that deceased did not want the child and she has voluntarily committed suicide in her matrimonial house is rejected being devoid of any force for the reasons hereinafter mentioned. The plea of learned defence Advocate that deceased has voluntarily committed suicide in her matrimonial house is rejected on the concept of *ipse dixit* (An assertion made without proof).

24. Another submission of learned defence Advocate appearing on behalf of co-accused Susheel Kumar that deceased wanted to perform job and she did not want to reside in village and she has voluntarily committed suicide in her matrimonial house when she was at the stage of pregnancy is rejected being devoid of any force for the reasons hereinafter mentioned. There is no evidence on record in order to prove that deceased had voluntarily committed suicide in her matrimonial house. On the contrary it is proved by way of oral as well as documentary evidence placed on record that deceased had committed suicide in her matrimonial house due to mental cruelty given to deceased by her husband namely co-accused Susheel Kumar and mental cruelty to the deceased is proved qua co-accused Susheel Kumar when he told the deceased personally that he was very aggrieved after marriage with deceased because his freedom was snatched after marriage. Above stated words have caused mental cruelty to deceased in her matrimonial house in positive manner.

25. Another submission of learned defence Advocate appearing on behalf of co-accused Susheel Kumar that in view of testimony of DW1 Dalip Singh it is proved on record that deceased had voluntarily committed suicide in her matrimonial house is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that mental cruelty to woman is committed within four walls of matrimonial house and DW1 Dalip Singh has stated in positive manner when he appeared in witness box that his house is situated at a distance of 3-4 K.m. from the house of accused persons. DW1 was not present when mental cruelty was committed upon the deceased within four walls of matrimonial house during night time. Hence we are of the opinion that testimony of DW1 Dalip Singh is not sufficient to discard the testimonies of PWs 1 and 2 with whom the deceased had personally narrated that she had sustained mental cruelty in her matrimonial house. It is well settled law that none would commit suicide without any reason in the matrimonial house. In present case it is proved on record that deceased had committed suicide in her matrimonial house within about two months of her marriage when she was in the stage of pregnancy. Even as per Section 134 of Indian Evidence Act 1872 no particular number of witnesses is required for the proof of any fact. It was held in case reported in ***AIR 2003 SC 854 titled Lallu Manjhi and another vs. State of Jharkhand*** that law of evidence does not require any particular number of witnesses to be examined and it was held that Court may classify the oral testimony into three categories (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. It was held that in first two categories there would be no difficulty in accepting or discarding the testimony

of a single witness. It was also held in case reported in ***JT 2008(8) SC 650 titled State of U.P. vs. Kishanpal and others*** that it is the quality of evidence and not quantity of evidence which requires to be judged by the Court to place credence to the testimony of witness.

26. Another submission of learned defence Advocate appearing on behalf of co-accused Susheel Kumar that suicide note Ext.PW2/A is not admitted writing pertaining to deceased and on this ground co-accused Susheel Kumar be acquitted is also rejected being devoid of any force for the reasons hereinafter mentioned. There is positive cogent and reliable evidence on record that suicide note was found from the drawer of bed room of deceased in her matrimonial house which was written on a writing pad. The suicide note was found from the room in which dead body of deceased was found hanging. Age of deceased at the time of her death was 23 years. The deceased had committed suicide due to mental cruelty suffered by deceased in her matrimonial house when she was in prime age of youth i.e. 23 years. In view of positive fact that suicide note Ext.PW2/A written by deceased was found from the same room in which dead body of deceased was found it is held that suicide note Ext.PW2/A is relevant fact in present case. Even State Forensic Science Laboratory Junga in report Ext.PW6/A has specifically mentioned that admitted hand writing A1 to A4 and questioned hand writing Q1 to Q4 have been written by one and same person. Accused did not adduce any evidence on record in order to rebut the report of Scientific Officer State Forensic Science Laboratory report Ext.PW6/A placed on record. It is also admitted by co-accused Susheel Kumar when his statement was recorded under Section 313 Cr.P.C. that deceased had committed suicide in her matrimonial house when she was under pregnancy of six to eight weeks. Accused have also admitted when their statements under Section 313 Cr.P.C. recorded that brother of deceased PW2 Sunder Dass came to matrimonial house of deceased on dated 2.7.2005 two days prior to death of deceased and it is proved on record that deceased had directly narrated the facts about mental cruelty to her brother when he came to her matrimonial house on dated 2.7.2005.

27. In view of above stated facts appeal is partly allowed. We set aside the acquittal of co-accused Susheel Kumar under Section 498-A IPC and we convict co-accused Susheel Kumar under Section 498-A IPC. We hold that co-accused Susheel Kumar had committed mental cruelty upon deceased in her matrimonial house. We hold that due to mental cruelty given by co-accused Susheel Kumar in matrimonial house of deceased the deceased had committed suicide when she was under pregnancy of six to eight weeks. We affirm the acquittal of other co-accused persons under Sections 498 and 306 read with Section 34 IPC granted by learned trial Court. We also affirm acquittal of co-accused Susheel Kumar under Section 306 IPC. Judgment of learned trial Court is modified to this extent only. Now convict Susheel Kumar be heard on quantum of sentence qua offence punishable under Section 498-A IPC. Non-bailable warrants be issued against convict Susheel Kumar and he be produced before us on 2.12.2014.

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Cr. Appeal No. 322 of 2008
QUANTUM OF SENTENCE

02.12.2014

Present:- Mr. B.S. Parmar and Mr. Ashok Chaudhary, Additional Advocate Generals with Mr.Vikram Thakur, Deputy Advocate General, and Mr. J.S. Guleria, Assistant Advocate General, for the appellant.

Mr. Ramakant Sharma, Advocate, for the convicted person.

Convicted person namely Susheel Kumar is in custody of C. Gaurav Jaswal No. 507 and ASI Dharam Pal Singh of P.S. Baddi.

28. We have heard learned Additional Advocate General appearing on behalf of the State and learned defence counsel appearing on behalf of the convicted person upon quantum of sentence.

29. Learned Additional Advocate General appearing on behalf of the State submitted before us that convicted person had committed mental cruelty upon deceased namely Kamla Devi aged 23 years in her matrimonial house and due to mental cruelty deceased had committed suicide in her matrimonial house within two months after her marriage when she was pregnant and therefore deterrent punishment be awarded to the convicted person in order to maintain majesty of law. On the contrary learned defence counsel appearing on behalf of convicted person submitted before us that convicted person is first offender and further submitted that he has large family to support and lenient view be adopted in present case and convicted be released on Probation of Offenders Act.

30. We have considered the submissions of learned Additional Advocate General appearing for the State and learned defence counsel appearing on behalf of convicted person carefully upon quantum of sentence. We are of the opinion that it is not expedient in the ends of justice to give the benefit of Probation of Offenders Act to the convicted person keeping in view the commission of criminal offence punishable under Section 498-A IPC. In view of the fact that deceased Kamla Devi aged 23 years had committed suicide in her matrimonial house within two months of her marriage due to mental cruelty given by convicted person and in view of the fact that deceased Kamla Devi aged 23 years was having pregnancy of six to eight weeks when she committed suicide in her matrimonial house due to mental cruelty given by convicted person and in view of the fact that mental cruelty upon married woman in her matrimonial house is a stigma upon the society and in view of the fact that every married woman has legal right to live in her matrimonial house without any mental cruelty and in order to curb the criminal offence punishable under Section 498-A IPC in the society we sentence the convicted person as follow:-

Sr. No.	Nature of Offence	Sentence imposed
1.	Offence under Section 498-A IPC.	Convicted person is sentenced to undergo simple imprisonment for one year. Convicted person is also sentenced to pay fine of Rs. 25,000/-(Rs. Twenty Five thousand only). In default of payment of fine convicted person shall further undergo simple imprisonment for two months.

31. Period of custody during investigation, inquiry and trial will be set off. Certified copy of this judgment and sentence be also supplied to convicted person forthwith free of cost by learned Registrar (Judicial). Case property will be confiscated to State of H.P. after the expiry of prescribed period of filing further legal proceedings before the competent Court of law. Warrant of

Commitment of sentence of imprisonment be issued to the Superintendent Jail Kanda District Shimla (HP) forthwith for compliance by learned Registrar (Judicial) in accordance with law. File of learned trial Court be transmitted back forthwith along with certified copy of judgment and sentence. Appeal stands disposed of. All pending miscellaneous application(s) if any also stands disposed of.

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

CWP No.7249 of 2010 a/w CWP No.8480 of 2014
Reserved on: 2.12.2014
Pronounced on : 3.12.2014

1. <u>CWP No.7249 of 2010</u>
Devinder Chauhan Jaita .....Petitioner
Versus
State of Himachal Pradesh and others. ..... Respondents

2. <u>CWP No.8480 of 2014</u>
Narender Bragta. .....Petitioner
Versus
State of Himachal Pradesh and others. ..... Respondents

1. CWP No.7249 of 2010

For the Petitioner:	Petitioner in person.
For the respondents:	Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Addl. Advocates General and Mr. J.K. Verma, Deputy Advocate General, for the respondents-State. Mr. Shakya Negi, Proxy Counsel, for respondent No.4.

2. CWP No.8480 of 2014

For the Petitioner:	Mr. R.K. Sharma, Senior Advocate with Mr. Rajinder Dogra, Advocate.
For the respondents:	Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Addl. Advocates General and Mr. J.K. Verma, Deputy Advocate General, for respondents No.1 and 2.

Constitution of India, 1950- Article 226- Writ Petition was disposed of on 6.9.2013 on the assurance made by State with liberty to the petitioner or any other affected person to take recourse to appropriate proceedings, including the revival of the writ petition – petitioner filed a public interest litigation for issuing the direction to the state to complete the construction of Theog-Rohru road and to submit the status report periodically- State contended that the Writ Petition is not maintainable and the petitioner was a minister in the previous government who was opposing the petition- Writ petition was politically motivated- held, that

the remedy of public interest litigation should not be misused - the Courts should, prima facie, be satisfied that writ petition is not the outcome of political or extraneous considerations or motivated one- petitioner was an ex-minister and, therefore, Writ petition cannot be treated as public interest litigation on his behalf- however, keeping in view the fact that the projected issue is of great importance and relates to public at large- hence, cognizance take suo motu by High Court by appointing an Amicus Curiae to assist the Court - a Committee constituted to monitor the progress of the work and to submit report periodically. (Para- 1 to 21)

Cases referred:

State of Uttaranchal vs. Balwant Singh Chaufal & Ors., 2010 AIR SCW 1029

M/s Holicow Pictures Pvt. Ltd. vs. Prem Chandra Mishra & Ors., 2008 AIR SCW 343

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice

A batch of writ petitions, the lead petition of which was CWP No.7249 of 2010, came to be disposed of vide order dated 6th September, 2013, passed by a Division Bench of this Court, in terms of the affidavit filed by the respondents-State containing assurance made by the State Authorities, with liberty to the writ petitioners or any affected person having any grievance to take recourse to appropriate proceedings, including to revive the concerned writ petition.

2. The petitioner Devender Chauhan Jaita moved an application, being CMP No.18403 of 2014, for revival of the writ petition No.7249 of 2010, on the grounds taken in the application, which was granted and the writ petition was posted for 2.12.2014.

3. CWP No.8480 of 2014 has been moved by Shri Narender Bragta in the nature of public interest for issuing directions to the respondents to complete the construction of Theog-Rohru Road, efficiently and properly within the stipulated time frame i.e. by or before 1st June, 2016, and to submit status reports periodically, on the grounds taken in the writ petition.

4. At the very outset, we may place on record that three writ petitions came to be filed in the year 2010, in public interest, and similar reliefs were prayed for. After the Authorities concerned filed affidavits, containing details and status of the works in question, and the assurance made by the concerned Authorities to complete the said work within the time frame, came to be disposed of vide order supra.

5. The question is whether the writ petition i.e. CWP No.8480 of 2014 is maintainable, in view of the above facts, read with the objection raised by the learned Advocate General on the last date of hearing vis. a vis. maintainability of the writ petition.

6. We have heard the learned Senior Advocate for the writ petitioner in CWP No.8480 of 2014 and the learned Advocate General.

7. The learned Advocate General argued that the petitioner, namely, Shri Narender Bragta, was a Minister in the previous Government, which was

contesting the batch of writ petitions, the lead of which was CWP No.7249 of 2010, came to be disposed of in terms of the order passed by this Court on 6th September, 2013, referred to hereinabove. Thus, it is contended that the petitioner cannot file writ petition and seek same relief. The learned Advocate General further argued that the present writ petition is politically motivated, which fact is evident from the averments contained in paragraph 1 of the writ petition, wherein it has been admitted by the petitioner that he was a Minister and has every right to take care of the interests of the public and development of the area, and has filed the writ petition as such.

8. The learned Senior Advocate appearing for the writ petitioner argued that the writ petitioner has filed the writ petition in two capacities – one in his personal capacity being the permanent resident of the said area, an agriculturist and also having orchards situated in the said area; and secondly, being an ex-Minister, is also concerned with the welfare of the poor public of the area. The learned Senior Advocate further argued that in the present writ petition, the petitioner has arrayed the Contractor, to whom the contract of the work is allotted, as party respondent, who was not a party in the earlier writ petitions. Thus, it was submitted that the writ petition is maintainable in its present form. He also submitted that the petitioner be permitted to delete last four lines from paragraph 1 of the writ petition.

9. The learned Advocate General argued that the writ petitioner had publicly proclaimed/declared that the Bhartiya Janta Party would not sit idle and take the issue/subject matter of the writ petition to the Court, which was published in the Dailies having wide circulation in the entire Himachal Pradesh, such as, The Tribune etc., in their issues, dated 27th November, 2014. Therefore, the writ petition is outcome of political considerations.

10. We deem it proper to record herein that the Registry has received letters/communications, wherein grievance has been projected that Rohru-Shimla road is in bad condition and is not being properly maintained, made part of the file. It is also stated in the said letters/communications that the work of the contractor is not satisfactory.

11. We cannot be oblivious to the fact that the road, subject matter of the writ petition, is really an important one and is the lifeline for large public residing in the area concerned, therefore, it becomes the duty of the State and the said Contractor to complete the construction of the road and bridges as early as possible and not later than the cut off date provided in the contract, read with the order made by this Court on 6th September, 2013, referred to supra. It is also the duty of the Courts to ensure that public interests are protected and grievances are redressed.

12. However, while determining the issue of maintainability of the present writ petition, both aspects, as discussed hereinabove, have to be kept in mind, and including the law expounded by the Apex Court in public interest litigations.

13. The concept of public interest litigation was evolved by the Apex Court and, in order to preserve the sanctity of the public interest litigation, the Apex Court has also held in so many unequivocal words that the remedy of public interest litigation should not be misused and the Courts should, prima facie, be satisfied that it is not the outcome of political or extraneous considerations or motivated one.

14. A reference may be made to the decision of the Apex Court in **State of Uttaranchal vs. Balwant Singh Chaufal & Ors., 2010 AIR SCW 1029,** in which, in paragraph 198, it has been held as under:

> "198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-
>
> (1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
>
> (2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.
>
> (3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.
>
> (4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
>
> (5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.
>
> (6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
>
> (7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
>
> (8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

15. The Apex Court in **M/s Holicow Pictures Pvt. Ltd. vs. Prem Chandra Mishra & Ors., 2008 AIR SCW 343,** has held that, while dealing with the public interest litigations, it is desirable for the Courts to filter out the frivolous writ petitions and ensure that the writ petitions are not the outcome of political motivation or other oblique considerations. It is apt to reproduce paragraphs 18 and 23 of the said decision hereunder:

> "18. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and /or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body

of persons or member of public, who approaches the Court is acting bonafide and not for personal gain or private motive or political motivation or other oblique considerations, the Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

23. In S. P. Gupta v. Union of India (J981 Supp. SCC 87), it was emphatically pointed out that the relaxation of the rule of locusstandi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution . (SCC p. 219, para 24) :

> "But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.""

16. Applying the above tests to the facts of the present case and while keeping in view paragraph 1 of the writ petition that the petitioner was an ex-Minister, the writ petition cannot be retained as public interest litigation on behalf of the petitioner.

17. However, at the same time, since we feel that the issue projected through the present writ petition, is of great importance and relates to public at large, question which emerges for consideration is whether this Court should dismiss the writ petition or keep the same on the docket of this Court, by keeping the writ petitioner out of picture, in order to redress the grievance of the public in general, and treat the said writ petition as Public Interest Litigation by appointing an Amicus Curiae to assist the Court. The answer is in the affirmative in view of the dictum of the Apex Court in **M/s Holicow Pictures Pvt. Ltd. (supra).** It is apt to reproduce paragraph 26 of the said decision hereunder:

> "26. It is true that in certain cases even though the Court comes to the conclusion that the writ petition was not in a public interest, yet if it finds that there is scope for dealing with the matter further in greater public interest, it can be done. This can be done by keeping the writ petitioner out of picture and appointing an amicus curiae. This can only be done in exceptional cases and not in a routine manner."

18. In the given circumstances, we deem it proper to take suo motu cognizance and treat the writ petition i.e. CWP No.8480 of 2014 as public interest litigation by keeping the writ petitioner out of picture. The Registry is directed to correct the memo of parties accordingly.

19. Ms.Jyotsna Rewal Dua, Advocate, is appointed as Amicus Curiae. The Registry is directed to supply a complete copy of the paper book to the learned Amicus Curiae. The learned counsel appearing for the petitioner and

the petitioner in CWP No.7249 of 2010, who is also an Advocate by profession, are also requested to assist the Court.

20. In order to ensure that the construction of the work, subject matter of the writ petition, is properly and efficiently executed, we deem it proper to constitute a Committee of the following officers to monitor the progress of the work:

1. Chief Secretary , State of H.P. – Chairman
2. Principle Secretary (PW), to the Govt. of H.P. – Member
3. Engineer-in-Chief (PWD) – Member

21. The above Committee shall monitor the progress of the work and shall submit their separate status reports on each and every hearing.

22. Issue notice to the respondents. Mr.Romesh Verma, learned Additional Advocate General, waives notice for respondents No.1 and 2, on whose instructions Mr.Shrawan Dogra, learned Advocate General, appears for the said respondents. Notice to respondent No.3 through learned Advocate General. Dasti notice also permitted.

23. The respondents are directed to file present status reports and the affidavits/replies within two weeks.

24. In the given circumstances, CWP No.7249 of 2010 be consigned to records in view of the orders passed. A copy of this order be placed on record of said petition.

25. List CWP No.8480 of 2014 on 17th December, 2014. Copy dasti.

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

Cr. Appeal Nos. 203, 206 & 383 of 2009.
Reserved on: November 26, 2014.
Decided on: December 03, 2014.

1. Cr. Appeal No. 203 of 2009.
Sant Ram alias Nikku ……Appellant.
Versus
State of H.P. …….Respondent.
2. Cr. Appeal No. 206 of 2009.
Bhagi Rath alias Sanju ……Appellant.
Versus
State of H.P. …….Respondent.
3. Cr. Appeal No. 383 of 2009.
Surender Kaur alias Pinki ……Appellant.
Versus
State of H.P. …….Respondent.

Indian Penal Code, 1860- Sections 302, 201 and 120-B, read with Section 34 IPC- Dead body of the deceased was found tied from the neck with one side of rope and the other portion of the rope was tied with the branch of tree - dead body was found in a sitting posture- on

examination, wounds were found on the person of the deceased- as per prosecution, deceased was killed by his wife with the help of other person- wife made a disclosure statement under Section 27 of Indian Evidence Act-as per medical evidence, cause of the death was asphyxia leading to cardio-respiratory failure- no fractures of thyroid cartilages and hyoid bone were detected- the ligature was also high on the neck- the shirt did not bear any cut marks- disclosure statement was also not proved satisfactorily- house was already open prior to the arrival of the witnesses- held, that in these circumstances, prosecution version is not proved- accused acquitted. (Para- 27 to 29)

For the appellants: Mr. Manoj Pathak, Advocate, for the appellants in Cr. Appeal Nos. 203 & 206 of 2009.
Mr. Y.P. S. Dhaulta, Advocate, Legal Aid Counsel for the appellant in Cr. Appeal No. 383 of 2009.

For the respondent: Mr. M.A.Khan, Addl. Advocate General.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

Since common questions of law and facts are involved in these appeals, the same were taken up together for hearing and are being disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 29.6.2009 of the learned Presiding Officer, Fast Track Court, Mandi, H.P., rendered in Sessions Trial No. 31 of 2008, whereby the appellants-accused Surender Kaur and Bhagi Rath alias Sanju, who were charged with and tried for offences under Sections 302, 201 and 120-B, read with Section 34 IPC, were convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each under Sections 302 and 120-B IPC and in default of payment of fine, these accused were sentenced to undergo rigorous imprisonment for one year. All the accused were also sentenced to undergo simple imprisonment for a period of three years for the commission of offence punishable under Section 201 IPC read with Section 34 IPC and a fine of Rs. 1000/- was imposed upon each of the accused and in default of payment of fine, they were directed to undergo simple imprisonment for a period of three months. All the sentences were ordered to run concurrently against convicts Surender Kaur and Bhagi Rath alias Sanju.

3. The case of the prosecution, in a nut shell, is that on 12.4.2008, SI Swaroop Kumar alongwith other police personnel was present at *'Puja-ka-Rida'* in Village Bahnu for verification/investigation regarding *rapat* No. 5, dated 12.4.2008 of Police Station, Sarkaghat. The statement of Devi Singh, complainant was recorded under Section 154 Cr.P.C. vide Ext. PW-3/A. According to him, his nephew told him on telephone that his brother Jai Singh alias Chaman Lal was dead. He alongwith his brother Sunder Ram reached Bahnu and found that at *'Puja-ka-Rida'* many people had gathered. The dead body of Jai Singh alias Chaman was tied from neck with one side of rope and the other portion of the rope was tied/hanged with the branch of *Chuin* tree and dead body was in a sitting posture. On the spot, Jai Singh's wife (accused Surender Kaur) was also present alongwith the police personnel. When the police was removing the clothes from the dead body of deceased Jai Singh for

the purpose of examination, his wife Surender Kaur who was weeping earlier, ran away from the spot. She was apprehended. The dead body was examined in his presence by the police. The wounds were noticed on scrotum, umbilicus and there were bruises on the body of the deceased. According to his statement, Jai Singh had been killed by his wife Surender Kaur and with the help of other persons, she had tied the neck of deceased with rope and thereafter hanged at *Chuin* tree at *'Puja-ka-Rida'*. The photographs were taken on the spot. The rope was taken into possession. The dead body was sent for post mortem to Civil Hospital, Sarkaghat. Accused Surender Kaur gave a disclosure statement under Section 27 of the Indian Evidence Act that on the night of 11.4.2008, she alongwith Bhagi Rath accused after killing Jai Singh in the house, with the help of Sant Ram alias Nikku had taken the dead body of deceased to *'Puja-ka-Rida'*. Thereafter, a rope was put around the neck of the body and the dead body was tied with the branch of *Chuin* tree. The accused Surender Kaur identified and demarcated her residential house in the presence of the witnesses. Photographs of the spot were taken. From her room, *baniyan*, broken bangles, knife and ear ring were recovered and these were taken into possession by the police vide separate memos. The accused Bhagi Rath has also handed over his shirt which was taken into possession by the police. Accused Sant ram alias Sanju and Bhagi Rath have given their statements under Section 27 of the Indian Evidence Act. They have identified the places at Village Bahnu and *'Puja-ka-Rida'*. The statement of eye witness Virender Kumar was also recorded under Section 164 Cr.P.C. by the learned ACJM, Sarkaghat.

4. According to the prosecution case, accused Bhagi Rath and Surender Kaur were having illicit relations. Deceased Jai Singh had also come to know regarding their illicit relationship. There had been regular quarrel between accused Surender Kaur and deceased Jai Singh. On 11.4.2008, Jai Singh had gone to *Talmerh* with the 'Band Party'. He came back to his house in the evening and at that time accused Surender Kaur and Bhagi Rath were present in the house of deceased Jai Singh. When Jai Singh saw and heard Surender Kaur and Bhagi Rath talking to each other then accused Surender Kaur told accused Bhagi Rath to go to his house. Bhagi Rath went outside and Jai Singh entered in the room. Jai Singh asked accused Surender Kaur as to why accused Bhagi Rath had come there. On this, quarrel took place between accused Surender Kaur and deceased Jai Singh. Accused Bhagi Rath entered the room and gave a kick blow on scrotum of deceased and he became unconscious. Accused Surender Kaur and Bhagi Rath made Jai Singh to sit in a corner of the room. Accused Surender Kaur gagged the mouth of Jai Singh with her *dupatta* and accused Bhagi Rath gave knife blow on umbilicus of Jai Singh. Thereafter, accused Surender Kaur and Bhagi Rath tied a rope around the neck of Jai Singh and later on the dead body of Jai Singh was laid beneath the cot. At that time, son of Jai Singh Virender Kumar was present in the room. Accused Surender Kaur and Bhagi Rath lateron left the room and after half an hour they alongwith Sant Ram alias Nikku came on the spot and all the three accused persons carried the dead body of Jai Singh to the place *'Puja-ka-Rida'*. According to the post mortem report, the death occurred on account of asphyxia due to ligature around the neck. The police investigated the matter and challan was put up after completing all the codal formalities.

5. The prosecution has examined as many as 22 witnesses. The statements of accused persons under Section 313 Cr.P.C. were recorded. According to the accused, they are innocent and falsely implicated in the present case. The learned Trial Court convicted and sentenced the accused, as stated hereinabove.

6. Mr. Manoj Pathak and Mr. Y.P.S. Dhaulta, Advocates appearing for the respective accused have vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. M.A.Khan, Addl. Advocate General, has supported the judgment of the learned P.O. Fast Track Court, Mandi, H.P., dated 29.6.2009.

7. We have heard learned counsel for both the sides and gone through the impugned judgment and material available on record very carefully.

8. PW-1, Dr. V.K. Sharma, has conducted post mortem on the dead body of deceased Jai Singh. According to him, ligature mark was present all around neck and not oblique. Cyanosis was present over face and petechial hemorrhages on conjunctiva was also present. He has noticed the following injuries on the dead body:

> "1. 2x5 mm oblique abrasion over right hypochondrium with central graze over it and brownish in colour.
>
> 2. 2 x 2 cm. rounded abrasion over umbilicus and brownish coloured.
>
> 3. 2 x 1 cm. oval bruise over left arm lateral aspect and 6" above wrist joint.
>
> 4. x 2" x 1' oval bruise below scrotum brownish coloured and perineum soiled with clotted blood and blood oozing out of urethra."

He has issued post mortem report Ext. PW-1/C. According to him, the deceased died due to strangulation which resulted in asphyxia and thereby cardio-respiratory failure. In his cross-examination, he admitted that before conducting the post mortem the photographs taken by the police, were not shown to him. The shoe, with which the injury was stated to have been inflicted, was also not shown to him before conducting the post mortem. He admitted that as per the photograph mark D-1, the ligature was high up in the neck. He also admitted that as per photograph Mark D-2, the ligature was touching the occipital region. The injury No. 2 in Ext. PW-1/C in red circle 'A' was over umbilicus. No blood had oozed from injury No. 2, as per Ext. PW-1/C. There was no patterned injury over the dead body. He also admitted that neither thyroid cartridges nor hyoid bone was broken. In the case of strangulation, the hyoid bone generally does not break and may also break. In case the ligature mark is high up in the neck, thyroid cartilage does not break. In case it is not high up in neck, the thyroid cartilages may break or may not break. According to him, it was not necessary that death would occur only if thyroid cartilages are broken.

9. PW-2 Mahant Ram deposed that he saw the dead body of Jai Singh alias Chaman Lal. The dead body was lying at *'Puja-ka-Rida'* in a position shown in Marks D-1, D-2 and Ext. PX. Upon removing the clothes of the deceased, a steel clip belonging to accused Surender Kaur, was recovered vide memo Ext. PW-2/A. He signed the recovery memo. In his cross-examination, he deposed that the steel clip which was shown to him in the Court was easily available in the vicinity. The deceased was son of his sister. He also admitted that he has never seen Ext. P-1/A, shown to him in the Court, ever been worn by the accused Surender Kaur. The dead body was naked. According to him, he has seen the clotted blood on the umbilicus and the wound was also present. He also admitted that Surender Kaur was weeping on the spot.

10. PW-3 Devi Singh deposed that he received a telephonic message from the house of Hari Singh at Village Bahanu about the death of Jai Singh alias Chaman Lal. He reached *'Puja-ka-Rida'*. The dead body of Jai Singh was tied with a tree of *Chuin*. The neck of the deceased was tied with plastic and jute rope. The dead body was in a sitting posture. There were bruises on the scrotum and umbilicus. He has stated to the police in his statement Ext. PW-3/A that Ext. P-1/A was recovered in his presence from the dead body at the time of removing the clothes. He was confronted with Ext. PW-3/A, where this fact is not mentioned. He has also stated to the police that he had brought a piece of cloth for cremation. He was confronted with Ext. PW-3/A where this fact is not mentioned. He has stated to the police that ligature was half that of plastic and half that of jute. He was confronted with Ext. PW-3/A wherein it is not so recorded. According to him, accused Surender Kaur was arrested on 12.4.2008. He also admitted that the son of the deceased was in the custody of his Uncle and Aunt at Sarkaghat.

11. PW-4 Gyano Devi deposed that the accused persons namely Bhagi Rath and Sant Ram were known to her. She has not seen accused Bhagi Rath and Sant Ram in the house of accused Surender Kaur in the evening of 11.4.2008. She was declared hostile and cross-examined by the learned Public Prosecutor. She denied the suggestion that the accused persons had murdered the deceased on the intervening night of 11/12.4.2008 in his house. She admitted that they came in the house of deceased and accused Surender Kaur on 11.4.2008. The accused Bhagi Rath and Sant Ram used to visit the house of the deceased in the absence of deceased Jai Singh. She admitted that on 11.4.2008, in the evening at about 7:00 PM, deceased and accused Surender Kaur had exchanged hot words. There was no light in their house. She did not know that the deceased was suspecting the character of accused Surender Kaur regarding illicit relationship between Bhagi Rath and Surender Kaur. She was also cross-examined by the learned defence Counsel. She stated to the police that both accused Bhagi Rath and Sant Ram were seen by her in the evening on 11.4.2008 in the house of deceased Jai Singh. She was confronted with Mark D-3, wherein it is not so recorded. According to her, the deceased Jai Singh had come around about 3-4:00 PM to his house on 11.4.2008 and thereafter a minor duel took place between accused Surender Kaur and deceased. Thereafter, animals were tethered by the accused Surender Kaur inside the cowshed. The father-in-law of the accused was present in the house on 11.4.2008. He used to live with them. She also admitted that deceased and accused Bhagi Rath were members of the same Band Party. She denied that she had a land dispute and boundary dispute with the father of the accused Bhagi Rath. She also admitted that they were not on visiting and talking terms with the family of accused Bhagi Rath and his father due to land dispute.

12. PW-5 HHC Dharam Chand deposed that the disclosure statement Ext. PW-5/A was made by accused Surender Kaur. Knife and broken pieces of bangles and a stick were concealed beneath the cot in a room where the dead body of Jai Singh was also kept. The accused Surender Kaur led the police party to *'Puja-ka-Rida'* where the dead body was kept by her and accused Bhagi Rath in a sitting posture. He admitted in his cross-examination that the items mentioned in Ext. PW-5/A were not concealed in any manner by the accused Surender Kaur. The house, from where the articles were recovered, was already open before their arrival. Volunteered that the accused Surender Kaur was already arrested by the police on 12.4.2008 and at that time the room was already open but he was not aware by whom this door was opened.

13. PW-6 Partap Singh deposed that on 12.4.2008 at about 7:00 AM, he was going to *Chajwali* for feeding his cattle. Near the *Pipal* tree, accused Surender Kaur met him and asked to see at *'Puja-ka-Rida'* what her husband has done. He did not go there. He rang up Dinu Ram and told him about the incident. He admitted in his cross-examination that accused Surender Kaur was leading a peaceful and happy married life with the deceased.

14. PW-7 Jagdish Chand, deposed that accused Surender Kaur told the police in their presence that the deceased Jai Singh was killed with the aid of accused Sanju alias Bhagi Rath. The dead body was taken by both of them from the house of the deceased to *'Puja-ka-Rida'* and his neck was tied with plastic and jute rope and hanged with a tree of *Chuin*. The identification memo Ext. PW-7/A was prepared and signed by him. According to him also, the deceased and Surender Kaur had very cordial relations. There was no occasion/cause for accused Surender Kaur to commit murder of her husband Jai Singh.

15. PW-8 Paro Devi deposed that accused Surender Kaur made a disclosure statement before him and Bhuvneshwar to the effect that on 11.4.2008, in the evening, the deceased Jai Singh was quarreling with her and at that time the accused Bhagi Rath alias Sanju came there and gave a kick blow on the scrotum of the deceased because of which the deceased fell down on the floor of the room. He was removed by her under the cot and his mouth was gagged with *Dupatta* and thereafter the dead body was removed to *'Puja-ka-Rida'* with the help of accused Bhagi Rath and Sant Ram alias Niku, where his neck was tied with jute and plastic rope and hanged with *Chuin* tree. She also deposed that her bangles were broken and the pieces were scattered in the room. She got recovered the bangle pieces, under-shirt (*baniyan*), silver ear ring and a knife vide memo Ext. PW-8/A. She also signed the recovery memo. In her cross-examination, she deposed that the papers which were signed by her were neither read over to her nor has she herself gone through the contents of all the memos. The police had already written these papers and she was asked to sign the same lateron. She also admitted that the accused Surender Kaur had cordial relations with her husband so long he was alive.

16. PW-9 Const. Om Chand deposed that the accused Bhagi Rath made a disclosure statement Ext. PW-9/A that on 11.4.2008 at about 8-8:30 PM, he came to the house of deceased Jai Singh. Jai Singh was quarrelling with accused Surender Kaur and abusing her. Upon witnessing Bhagi Rath in his house, Jai Singh abused him also and Bhagi Rath gave a kick blow on the scrotum of deceased Jai Singh. Jai Singh fell down. Accused Surender Kaur brought a plastic and jute rope and tied the neck of Jai Singh. Before this, she gagged the mouth of the deceased Jai Singh with her *dupatta*. They both removed the dead body to *'Puja-ka-Rida'* with the aid of accused Sant Ram alias Niku. Similarly, accused Sant Ram also made a disclosure statement Ext. PW-9/B that he came to the house of accused on 11.4.2008 and removed the dead body of Jai Singh from his house to *'Puja-ka-Rida'* and placed him in a sitting posture. In his cross-examination, he could not tell the time at which these statements Ext. PW-9/A and PW-9/B were recorded. These statements were recorded when the accused were in police custody.

17. PW-10 Sarwan Kumar deposed that the accused Bhagi Rath and Sant Ram were in police custody and led the police party to the house of Jai Singh and then got identified the place *'Puja-ka-Rida'*. The identification memo Ext. PW-10/A was prepared.

18. Statements of PW-11 Const. Pawan Kumar, PW-12, HC Prakaram Singh, PW-13 Const. Khem Chand, PW-14 Const. Yashwant Singh, PW-15 Chhaju Ram, PW-16 Balwant Kumar, PW-17 HC Balak Ram, PW-18 HC Raj Kumar and PW-19 ASI Tulsi Ram are formal in nature.

19. PW-20 Bhupinder Singh Negi, Dy. S.P. has recorded the supplementary statement of witnesses Virender Singh and Jaya Devi vide memos Ext. PW-20/A and PW-20/B, respectively.

20. PW-21 Virender Kumar is the son of accused Surender Kaur. According to him, on 11.4.2008 at about 7:00 PM, in their house accused Sanjay and Surender Kaur were inside the room. His father Jai Singh came to the house. His mother told Sanjay to go out of the house to avoid quarrel. His father Jai Singh was hearing the conversation of the accused persons. Accused Sanju went outside the house and his father came inside the room. Accused Sanju again came inside the room and gave a kick blow on the side of the penis and his father fell down unconscious. His mother gagged the mouth of his father with *dupatta.* Accused Sanju hit his father with knife on umbilicus (*Nabhi*) and tied the neck of his father with rope. His father was put under the cot. He told this fact to his *Tai* (Aunt) after two days of the occurrence. His statement Ext. PW-21/A was recorded by ACJM, Sarkaghat. In his cross-examination, he deposed that his mother was arrested by the police on 11.4.2008 at about 5:00 PM. He also admitted that the whole of the incident, whatsoever he has seen, was narrated by him to his *Tai* Jaya Devi on 13.4.2008. He was taken to the Magistrate, Sarkaghat by his *Tai* Jaya Devi and her husband. He was tutored by his *Taya* (Uncle) and *Tai* (Aunt) Jaya Devi, to make a statement before the police and also before the Magistrate. He also admitted that he was not in speaking terms with his mother. He also admitted that after the death of his father, the whole of the property was in the possession of his *Tai* and her husband. He also admitted that the relations between his mother and father were cordial.

21. PW-22 SI Swaroop Kumar deposed the manner in which the report was received on 12.4.2008. He proceeded to the spot alongwith the photographer at 8:30 AM. He inspected the spot. Inquest reports Ext. PW-22/A and PW-22/B were prepared. The post mortem was got conducted. The accused Surinder Kaur was weeping and tried to flee away from the spot. She was apprehended with the help of local people. The statement of Devi Singh was recorded under Section 154 Cr.P.C. Pieces of bangles Ext. P-3 and knife Ext. P-4, *Baniyan* and silver ear ring Ext. P-2/A, were taken into possession vide memo Ext. PW-8/A. The sketch map of knife Ext. PW-8/D was separately prepared. In his cross-examination, he admitted that as per photographs, the ligature and its mark were high up on the neck as per Ext. PA, earlier mark D-1 and as per Ext. PB, earlier mark as D-2, the ligature on the back side of the neck was touching the hair below the occipital region. He also admitted that when he inspected the dead body and spot, no inside injury or any apparent injury was seen by him on umbilicus. The shirt which was worn by the deceased was having no cut mark on it. He recorded statement of Virender Kumar (minor) on 24.4.2008. The witness Virender Kumar has not disclosed to him in his statement that his father deceased Jai Singh was hit with knife. He was not aware. He brought minor Virender Kumar to the Court of ACJM, Sarkaghat. He also admitted that father-in-law of the accused Surinder Kaur was present on 11.4.2008 and 12.4.2008 in his house alongwith other family members.

22. According to the prosecution case, the relations between the deceased and accused Surinder Kaur were not cordial. However, it has come in

the statements of PW-6 Partap Singh and PW-7 Jagdish Chand that the relations between the deceased Jai Singh and accused Surinder Kaur were very cordial. PW-7 Jagdish Chand who has signed identification memo Ext. PW-7/A, has also deposed that there was no occasion for accused Surinder Kaur to commit murder of her husband. He has also deposed that the spot demarcation which was signed by him was Ext. PW-7/A. It was already in their knowledge on 12.4.2008 in the morning. PW-8 Paro Devi has also admitted that the relations between the deceased and accused Surinder Kaur were cordial. PW-8 Paro Devi in her cross-examination has categorically admitted that the papers which were signed by her were neither read over to her nor has she gone through the same. The police had already written those papers and she was asked to put her signatures on them lateron. PW-21 Virender Kumar son of the accused has also deposed that the relations between his father and mother were cordial.

23. PW-21 Virender Kumar is the sole eye witness of the incident. He was minor. His statement under Section 161 Cr.P.C. was recorded on 24.4.2008. According to his statement, accused Sanju has given kick blow on the private part of the deceased. His mother gagged the mouth of his father with *dupatta*. Accused Sanju went inside the room and gave knife blow on the stomach (belly) of his father. His father became unconscious. Accused Sanju tied the rope around the neck of his father. His father was placed below the bed. His statement was also recorded under Section 164 Cr.P.C. In his statement recorded under Section 164 Cr.P.C., he deposed that accused Sanju went inside the room and gave blow on the private part of his father. His father became unconscious. His father was made to sit in the corner. His mother gagged the mouth of his father with *duptta*. Accused Sanju gave knife blow on the umbilicus of his father. Thereafter, they tied the rope around the neck of his father and pulled him. The body was placed below the bed. In his statement recorded before the Court as PW-21, he has deposed that accused Sanju came inside the room and gave kick blow on the side of the penis of his father. His father became unconscious. His mother gagged the mouth of his father with *dupatta*. Accused Sanju hit his father with knife on umbilicus (*Nabhi*) and tied the neck of his father with rope. His father was put under the cot. In his statement recorded before the Court as PW-21, he does not say that his mother has tied the rope on the neck of his father and pushed him. He only deposed that his mother gagged the mouth with *dupatta* and accused Sanju hit his father with knife. Accused Sanju tied the neck of his father with rope.

24. The incident has taken place on 11.4.2008 and FIR was recorded on the statement of PW-3 Devi Singh. The accused Surinder Kaur was arrested on 12.4.2008. However, PW-21 Virender Kumar, in his cross-examination, has specifically deposed that his mother was arrested by the police on 11.4.2008 at about 5:00 PM. He is a child witness. He has specifically deposed that the whole of the property of his father was in the possession of his Aunt and her husband (Uncle). He was taken to the Court of Magistrate by his Aunt and Uncle. He has also admitted that he was tutored by his Aunt and Uncle to make the statement before the Police as well as the Magistrate. If the accused Surinder Kaur, according to PW-21 Virender Kumar was already arrested by the police on 11.4.2008, how she could be arrested again on 12.4.2008. PW-9 Const. Om Chand did not know by whom Ext. PW-9/A and Ext. PW-9/B were written. PW-10 Sarwan Kumar admitted in his cross-examination that when identification memo Ext. PW-10/A was prepared, the accused were already in the police custody.

25. PW-4 Gyano Devi is the neighbour of accused Surinder Kaur. According to this witness, she has not seen accused Bhagi Rath and Sant Ram in the house of accused Surinder Kaur in the evening of 11.4.2008. However, in her cross-examination, she admitted that accused Bhagi Rath and Sant Ram had come in the house of deceased and accused Surinder Kaur on 11.4.2008. According to her, minor verbal quarrel had taken place between accused Surinder Kaur and Jai Singh deceased, when Jai Singh had come to his house. According to her, the father-in-law of the accused Surinder Kaur was present in the house on 11.4.2008. He used to live with them. PW-22 Swaroop Kumar has also admitted in his cross-examination that father-in-law of the accused Surinder Kaur was present on 11.4.2008 and 12.4.2008 in the house during the intervening night alongwith other family members. The father-in-law of the accused Surinder Kaur has not been examined by the prosecution. He was a material witness. According to PW-21 Virender Kumar Sanjay Kumar accused has given a knife blow on the umbilicus of his father. Thereafter, his father became unconscious. According to PW-1 Dr. V.K.Sharma, there was only 2 x 2 cm rounded abrasion over umbilicus and brownish coloured. No blood had oozed from injury No. 2 as per Ext. PW-1/C. There was no patterned injury over the dead body. The knife recovered was oxidized. No blood was found on knife as per Ext. P-7 knife.

26. According to the prosecution witnesses, plastic and jute rope was used to tie the neck of the deceased. However, the police has only sent two pieces of jute rope for chemical examination, as per FSL report Ext. PW-22/J. No human blood was found on Ext.-6 (rope), as per Ext. PW-22/H, report of the FSL.

27. The most material witness in the present case is PW-1 Dr. V.K. Sharma. He has issued post mortem report Ext. PW-1/C. According to this witness, the cause of death of the deceased was due to strangulation which resulted in asphyxia leading to cardio-respiratory failure. He has admitted in his cross-examination that the photographs were not shown to him at the time of conducting the post mortem. The shoe, with which the injury was stated to have been inflicted, was also not shown to him before conducting the post mortem. He admitted further in his cross-examination that as per photograph Mark D-1, the ligature was high up in the neck. In photograph Mark D-2, the ligature was touching the hair on the back side of the neck. The ligature was touching the occipital region. He further admitted specifically that thyroid cartilage may or may not break in the case of hanging and strangulation. PW-16 Balwant Kumar, has admitted in his cross-examination that ligature mark in Ext. PA, Ext. PB, Ext. PX and Ext. PC, PD was high up in the neck and no ligature mark was seen by him around the neck. In the case of strangulation, the ligature mark should be around the neck and lower down in the neck below thyroid. According to PW-16 Balwant Kumar, he has not seen ligature mark around neck. According to PW-1 Dr. V.K.Sharma, ligature mark was all around the neck but not oblique.

28. PW-22 SI Swaroop Kumar has also admitted that as per the photographs, the ligature and its marks were high up in neck as per Ext. PA. The ligature on the back side of neck was touching hair below the occipital region. In case, accused Sanju had given knife blow, there was bound to be cut in the shirt of the deceased. According to this witness, the shirt which was worn by the deceased was having no cut mark on it. He also admitted that no inside injury or apparent injury was seen by him on umbilicus chord. PW-1 Dr. V.K. Sharma, has not noticed any blood oozing from the nose, mouth and ears of the deceased while conducting the post mortem. In case there had been

strangulation, as per the case of the prosecution, there was bound to be fracture of larynx trachea and hyoid bone. According to PW-1, Dr. V.K. Sharma, he has not noticed any fracture of thyroid cartilages and hyoid bone. The ligature was also high on the neck as per Ext. PW-1/C and statements of PW-1 Dr. V.K. Sharma and PW-22 Swaroop Kumar. Thus, the prosecution case that the deceased was strangulated is not free from doubt.

29. The disclosure statements, the manner in which the steel clip, broken bangles and knife were recovered from the spot and spot identified, do not inspire confidence. PW-2 Mahant Ram has admitted that he has never seen the accused Surinder Kaur wearing the steel clip Ext. P-1. PW-5 Dharam Chand has also admitted in his cross-examination that the house from where the articles were recovered was already open before their arrival. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubt.

30. Accordingly, the appeals are allowed. The judgment of conviction and sentence dated 29.6.2009 rendered by learned Presiding Officer, Fast Track Court, Mandi, H.P. in Sessions Trial No. 31 of 2008 is set aside. The accused are acquitted of the charges framed under Sections 302, 201, 120B IPC read with Section 34 IPC by giving them benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to them. Since the accused are in jail, they be released forthwith, if not required in any other case.

31. The Registry is directed to prepare the release warrants of the accused and send the same to the Superintendent of Jail concerned, in conformity with this judgment forthwith.

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

Ses Ram. …Petitioner.
Versus
Reeta Bhardwaj. …Respondent.

Cr.A. No. 266/2014
Reserved on: 1.12.2014
Decided on: 3.12. 2014

Negotiable Instruments Act, 1881- Section 138- Complainant had advanced an amount of Rs. 2 lacs to the accused- accused issued a cheque which was dishonoured due to insufficient fund on presentation- it has come in evidence that agreement was entered between the complainant and the husband of the accused- agreement was subsequently cancelled- cross-examination of the complainant showed that he did not know the accused- therefore, he had no occasion to advance the loan of Rs. 2 lacs to unknown person- held, that complainant had failed to prove that cheque was issued in discharge of any lawful authority- accused acquitted. (Para- 6 to 7)

For the Petitioner: Mr. Sunil Mohan Goel, Advocate.
For the Respondent: Mr. C.N. Singh, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This appeal is directed against the judgment dated 27.3.2014 rendered by the Special Judicial Magistrate, Kullu in Criminal Complaint No. 166-1/2011/33-1/2013.

2. "Key facts" necessary for the disposal of this appeal are that appellant filed a complaint against the respondent under section 138 of the Negotiable Instruments Act, 1881. According to the appellant, respondent has borrowed a sum of Rs. two lakhs from him. Respondent issued a cheque on 28.2.2011 bearing No.083767 amounting to Rs.two lakhs drawn on Dhalpur Branch of the State Bank of India. The cheque was presented to the bank for encashment on 3.3.2011. It was dishonoured by the bank on account of "insufficient funds". A legal notice was issued to the respondent on 4.3.2011. The trial court took cognizance of the matter vide order dated 13.7.2011. The substance of accusation was served upon the respondent on 30.4.2012. She pleaded not guilty and claimed trial.

3. The appellant has appeared as CW-1. He has tendered his evidence by way of Ex.CA. He has reiterated the stand taken in the complaint in Ex.CA. The appellant has placed on record Ex.C-1 to Ex.C-4. He was cross-examined. He did not know that the respondent was resident of Gandhi Nagar. He did not know from where she has obtained education. He did not know about the native place of respondent. He did not know about the house of respondent. He did not know about the occupation of the respondent. According to him, husband of the respondent may be employed as Junior Engineer in I.P.H. He did not know about the children of the respondent. He did not know whether the parents of Parveen Bhardwaj were alive or not. He has entered into agreement with Parveen Bhardwaj to sell the land. The agreement was cancelled subsequently. He did not know about the consideration of sale. Volunteered that the agreement was entered for consideration of Rs. twelve lakhs on 28.1.2011. He did not remember that he has taken advance of Rs.one lakh on 28.1.2011 and he has also accepted cheque from the wife of Parveen Kumar on 28.2.2011. The balance amount was to be received on 30.3.2011 after the registration. He has issued notice to Parveen Kumar. Thereafter, the agreement was cancelled.

4. CW-2 Shiv Chand has deposed that cheque Ex. C-1 had come to his bank for encashment.

5. Respondent has produced copy of agreement dated 28.1.2011 marked as DA.

6. Case of the appellant, in a nutshell, is that he had advanced a sum of Rs.two lakhs to the respondent by way of loan. However, it has come on record that an agreement was entered into between the appellant and husband of the respondent. A sum of Rs. one lakh was received by the appellant. The agreement was cancelled. The appellant has not led any evidence that he has advanced loan to the respondent. It is evident from the tone and tenor of the cross-examination of the appellant that he did not know respondent. Thus, there was no occasion for him to advance loan of Rs. two lakhs to a unknown person. Rather, the appellant has admitted that an agreement was entered into between the parties to sell the land vide agreement dated 28.1.2011. The appellant has failed to make out a case against the respondent that the cheque in question was issued by her in discharge of any lawful liability. The sale deed

was to be executed on 30.3.2011. However, before that an agreement was cancelled.

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

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BEFORE HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J.

Smt. Sudha Bhargava .....Petitioner.
Versus
Smt.Manju Sharma .....Respondent.

Civil Revision No.36 of 2014.
Reserved on: 27.11.2014.
Date of decision: 03.12.2014.

H.P. Urban Rent Control Act, 1987- Section 14- Landlady filed an Eviction petition on the ground of arrears of rent- respondent denied that she was inducted as tenant or was in occupation of the premises- Rent Controller allowed the Petition- the Appellate Authority held in appeal that respondent was not tenant but was a lessee- held, that once respondent had disputed the jural relationship of landlord and tenant, the Appellate Authority could not have conferred the status of lessee upon the respondent- respondent being in possession could not have denied the title of the landlady- Rent Controller should have simply recorded the statement of the respondent on oath and should have passed conditional order of eviction that in case respondent is found to be in possession, she would be evicted forthwith- when the Court had found respondent to be in possession, she is liable to be evicted and to pay the use and occupation charges. (Para-8, 10 and 12)

Case referred:
Kamaljit Singh versus Sarabjit Singh JT 2014 (10) SC 134

For the Petitioner : Mr.Bhupender Gupta, Senior Advocate with Mr.Janesh Gupta, Advocate.
For the Respondent : None

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge.

The petitioner has filed this revision under Section 24(5) of the H.P. Urban Rent Control Act, 1987, (for short 'Act') against the order dated 21.12.2013 passed by learned District Judge, Shimla, in Rent Appeal RBT No. 103-S/14 of 2013/10 for setting aside the same, whereby he reversed the order of eviction dated 19.12.2009 passed by learned Rent Controller-II, Shimla, in Rent Application No.63-2 of 2008.

The facts, in brief, may be noticed.

2. Petitioner Sudha Bhargava had filed eviction petition under Section 14 of the H.P. Urban Rent Control Act, 1987 pleading therein that the premises was let out to the respondent on 10.03.2002 on rent at the rate of Rs.1750/- per month. It is averred that the premises in question is non-residential in nature situate in G-7 G.L.Bhargava Shopping Complex, Bhargava Estate, Tutikandi, Shimla and electricity facility has been provided in the premises in question. It is further averred that the respondent has not paid the rent with effect from 01.05.2005 and is liable to pay 10% increase in rent to the tune of Rs.1750/- with effect from 01.04.2007. Eviction of the respondent was sought on the ground of arrears of rent.

3. The respondent resisted the application by filing reply and averred that she was neither inducted as tenant nor was in occupation of the premises and, therefore, the question of arrears of rent does not arise and prayer for dismissal of eviction petition was made.

4. On the pleadings of the parties, the following issues were framed by the learned Rent Controller on 25.02.2009:-

1. Whether the respondent is in arrears of rent since 1.5.2005, as prayed for ?OPA.
2. Whether the respondent is not the tenant of the applicant? OPR.
3. Relief.

5. The learned Rent Controller answered both the issues in favour of the landlord-petitioner vide his order dated 19.12.2009. The respondent approached the learned appellate Authority by filing an appeal under Section 24 of the Act, who while reversing the aforesaid order passed by the learned Rent Controller, held that the respondent was not a tenant, but was infact a lessee and, therefore, the Transfer of Property Act, 1882, would over-ride the provisions of H.P. Urban Rent Control Act, 1987.

6. It is argued by the learned counsel for the petitioner that the findings recorded by the learned appellate Authority are not at all sustainable as the same carve out an entirely different case in favour of the respondent. He further claimed that the concept of lessor and lessee and landlord and petitioner have been misunderstood by the learned appellate Authority and, therefore, the order passed by the learned appellate Authority is not sustainable in the eyes of law.

I have heard the learned counsel for the petitioner and gone through the records.

7. The landlord has sought eviction of the respondent on the ground of arrears of rent along with interest. In reply to the petition, it was claimed by the respondent that she does not know the petitioner and she was never inducted as a tenant by the petitioner. Not only this, she even denied being in possession of the premises.

8. Once the respondent disputed the jural relationship of landlord and tenant between the parties then where was the question of the learned appellate Authority conferring the status of lessee upon the respondent. If the respondent was in possession of the premises, was she not estopped from denying the title of the petitioner during the continuance of the benefit that she had been drawing under the transaction.

9. It is a trite that the doctrine of estoppel is steeped in the principles of equity and good conscience and equity will not allow a person to say one thing at one time and the opposite of it another time. A similar question came up for consideration before the Hon'ble Supreme Court in ***Kamaljit Singh*** *versus* ***Sarabjit Singh JT 2014 (10) SC 134*** wherein it was held as under;

> ***"11........The respondent would then be estopped from denying the title of the appellant during the continuance of the benefit that he is drawing under the transaction, between him and the appellant. It is trite that the doctrine of estoppel is steeped in the principles of equity and good conscience. Equity will not allow a person to say one thing at one time and the opposite of it another time. It would estop him from denying his previous assertion, act, conduct or representation to say something contrary to what was implied in the transaction under which he obtained the benefit of being let in possession of the property to be enjoyed by him as a tenant.***
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> ***12. Lord Edward Coke, Chief Justice of the Kings Bench and 17th Century English Jurist explains estoppel thus:***
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>> ***" Cometh of the French Word 'estoupe', from where the English word stopped; and it is called an estoppels or conclusion, because a man's own act or acceptance stoppeth or closet up his mouth to allege or plead the truth." [Co. Litt. 352a]***
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> ***13. Law Lexicon (Second Edition, Page 656) defines estoppel in the following words:***
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>> ***"An Estoppel is an admission, or something which the law treats as an equivalent to an admission, of so high and conclusive a nature that any one who is affected by it is not permitted to contradict it." [11th Edn p. 744 in the note to the Dutchess of Kingston's case]***
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>> ***"An admission or determination under circumstances of such solemnity that the law will not allow the fact so admitted to be questioned by the parties or their privies."***
>>
>> ***"The preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, on his own part, or on the part of those under whom he claims."***
>
> ***14. Black's Law Dictionary (9th Edn., page 629) describes Estoppel as :***
>
>> ***"A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true."***
>
> ***15. Section 116 of the Evidence Act deals with estoppel against tenants and of licensees or persons in possession. Estoppel under this provision falls in the category of estoppel by contract and is relatively a recent development. The rule embodied in Section 116 simply prevents the tenant in occupation of the premises from denying the title of the landlord who let him into possession, just as it applies to a mortgagor or a mortgagee, vendor or a vendee, bailer or a bailee and licensor or a licensee. The rationale underlying the doctrine of estoppel against the tenant's denial of***

title of his landlord was stated by Jessel. M.R. in Re: Stringer's Estate, [LR Ch 9] as under:

> ***"Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title. This is perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract."***

16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

> ***"116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."***

17.A three-Judge of this Court in Sri Ram Pasricha v. Jagannath and Ors. [1976 (4) SCC 184] reiterated the principle that a tenant in a suit for possession was estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The title of the landlord, declared this Court, even otherwise irrelevant in a suit for eviction of the tenant. The only exception to the rule of estoppel as stated in Section 116 (supra) may be where the tenant is validly attorned to the paramount title holder of the property or where that the plaintiff-landlord had, during the intervening period, lost his title to the property......"

10. Taking into consideration the nature of defence set up by the respondent, the learned Rent Controller, to my mind, should have simply recorded her statement on oath and then proceeded to have passed a conditional order of eviction that in case the respondent is found in possession of the disputed premises, she be evicted forthwith. There was no question of having put the parties to undergo the agony of protracted trial.

11. Now, the further question which arises for determination is as to whether the learned Rent Controller could have conferred upon respondent the status of a tenant under the Act in view of the specific defence of the respondent. I am afraid that since this was not the case set up even by the respondent herself, the status of either tenant or lessee could not have been conferred upon the respondent. Tenant and lessee are not just mere words, but

have definite meanings and connotations under the law. This status could not have been conferred by the Court of its own when the specific plea of the respondent was to the effect that :-

i) she is not a tenant;

ii) petitioner is not the landlord;

iii) she is not in occupation of the premises in dispute.

12. Though the learned Courts below have found the respondent to be in possession of the premises, but taking into consideration the nature of defence set up by the respondent, she could neither be termed to be a tenant nor lessee and therefore her possession cannot be protected. But nonetheless, she is liable to pay user and occupation charges and, therefore, no fault can be found with the order passed by the learned Rent Controller. On the other hand, the order passed by the learned appellate Authority is liable to be set aside as it has dismissed the petition solely on the ground that the respondent is a lessee over the premises in dispute and, therefore, governed under the provisions of the Transfer of Property Act, 1882 and not under the provisions of H.P. Urban Rent Control Act, 1987. Once the respondent herself claims to be not the tenant of the petitioner nor she recognizes the petitioner as her landlord and lastly claims herself to be not in possession of the disputed premises, then, the appellate Authority of its own could not have conferred the status of lessee upon the respondent.

13. In view of the foregoing discussion, the order passed by the learned appellate Authority is set aside, as a result whereof, the order passed by the learned Rent Controller is upheld, though for a different reason.

14. Accordingly, the petition is allowed in the aforesaid terms.

****

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

Hari Ram ……Appellant.
Versus
Tarlok Chand …….Respondent.

RSA No. 160 of 2003.
Reserved on: 25.11.2014.
Decided on: 4.12.2014.

Transfer of Property Act, 1882-Section 122- Plaintiff claimed that she was an illiterate lady with rural background- defendant being the son of her brother residing with her persuaded her to execute a 'Will' in his favour- instead the defendant got executed a gift deed in his favour- defendant never intended to execute a gift deed- hence, she prayed that gift deed be set aside- the gift deed was executed on 18.7.1994- an Ikrarnama was also executed vide which defendant agreed to pay maintenance @ Rs. 100/- per month- no explanation was given for executing Ikrarnama- no receipt was produced to show that defendant was paying Rs. 100/- per month- defendant failed to prove that gift deed was a result of fraud, mis-representation and undue influence- when the deed was executed by illiterate lady, the burden of proving that

transaction was free and fair would be upon the beneficiaries.
(Para-11 to 21)

Cases referred:
Vithal vrs. Narayan, reported in AIR 1931 Nagpur 69
Sayed Zawar Hussain Shah and another vrs. Mian Saleh Mohammad Shah, reported in AIR 1940 Lahore 515
Mt. Sunder Kuer vrs. Shah Udey Ram and others, reported in AIR (31) 1944 Allahabad 42
Bhola Ram Lieri and ors. vrs. Peari Devi and ors. reported in AIR 1962 Patna 168
Afsar Shaikh and another vrs. Soleman Bibi and ors., reported in AIR 1976 SC 163
Ajmer Singh and ors. vrs. Atma Singh, reported in AIR 1985 Punjab and Haryana 315

For the appellant: Mr. Rajnish K. Lall, Advocate vice counsel.
For the respondent: Mr. Bhupinder Gupta, Sr. Advocate, with Mr. Neeraj Gupta, Advocate.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This regular second appeal is directed against the judgment and decree of the learned District Judge, Hamirpur, dated 6.1.2003, passed in Civil Appeal No. 54 of 1995.

2. Key facts, necessary for the adjudication of this regular second appeal are that the predecessor-in-interest of the respondent-plaintiff (hereinafter referred to as the plaintiff, for the convenience sake), Jayanti Devi instituted a suit for possession and declaration against the appellant-defendant (hereinafter referred to as the defendant). According to the plaintiff, she was owner to the extent of 8/27 share of land comprised in Khasra Nos. 28, 39, 41, 157, 169, 170 & 174 measuring 7 kanals 15 marlas. She was also co-owner to the extent of half share of land comprised in Khasra No. 4, as per entries of the *Jamabandi* for the year 1981-82. She was an illiterate lady with rural background. The defendant was son of her brother. He started living with her and after some time, he persuaded her to execute a 'Will' of the suit land in his favour. Since she was very much influenced by the defendant, she agreed to execute a 'Will' in his favour. She never intended to execute the *gift deed* of the suit land in his favour. The defendant instead of getting the 'Will' executed, fraudulently, by misrepresenting the facts, exercised undue influence upon her and got the *gift deed* Ext. DW-1/A dated 18.7.1984, executed in his favour. The defendant has never rendered any services as mentioned in the alleged *gift deed*. She also alternatively prayed for maintenance @ Rs. 200/- per month from 18.7.1984 till her death.

3. The suit was contested by the defendant. The defendant has denied the averments contained in the plaint. According to him, the gift deed was genuine document and no fraud, undue influence or mis-representation has been exercised upon the executrix, as alleged. The replication was filed by the plaintiff. The learned Sub Judge Ist Class, Hamirpur, framed the issues on 8.6.1989. The learned Sub Judge Ist Class, Hamirpur, decreed the suit on

20.1.1995 in favour of the plaintiff. The defendant preferred an appeal before the learned District Judge, Hamirpur. The learned District Judge, Hamirpur dismissed the same on 6.1.2003. Hence, this regular second appeal.

4. This regular second appeal was admitted on the following substantial question of law on 28.4.2003:

> "1. Whether both the Courts below have misread and mis-appreciated the oral and documentary evidence on record, more specifically, Exts. DW-1/A, endorsement DW-1/B and the agreement DW-1/C to come to the conclusion that gift was the result of undue influence, misrepresentation and fraud in order to reject the same?"

5. Mr. Rajnish K. Lall, Advocate, on the basis of substantial question of law framed, has vehemently argued that both the Courts below have misread and misconstrued Ext. DW-1/A *gift deed*, endorsement Ext. DW-1/B and agreement Ext. DW-1/C. According to him, the gift was genuine. His client has not exercised any undue influence upon the plaintiff. On the other hand, Mr. Bhupinder Gupta, Sr. Advocate, has supported the judgments and decrees passed by both the Courts below.

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

7. The gift deed is Ext. DW-1/A dated 18.7.1984. *Ikrarnama*/Agreement is Ext. DW-1/C dated 18.7.1984. The endorsement is Ext. DW-1/B on Ext. DW-1/A. The copy of the *Jamabandi* is for the year 1981-82. According to the plaintiff *gift deed* Ext. DW-1/A was the result of fraud, mis-representation and undue influence and thus not binding upon the plaintiff.

8. The plaintiff has appeared as PW-1. According to the plaintiff, the defendant was her nephew. He stayed with her for six months. He asked and persuaded her to execute a 'Will' in his favour. He managed the execution of the 'Will' at Nadaun and treated her nicely for three months. Thereafter, he started taking the produce of the suit land to his house and on seeing all this, she objected to it. On this, the wife of the defendant quarreled with her and even broke her forearm. Not only this, the defendant also proclaimed that she had already transferred the land in his favour and as such, she had nothing to do with it.

9. PW-2 Punnu Ram deposed that defendant and his wife started living with the plaintiff rendering all kind of services to her. After six months, she was taken by him to Nadaun and asked her to execute the 'Will' of the suit land. She executed the 'Will' and the defendant is now cultivating the land in question. Later on, the dispute arose in between the parties and the plaintiff came to him and represented that the defendant was now threatening her. She was now maintaining herself by begging. PW-3 Roshan Lal deposed that the plaintiff used to reside in her own house and maintaining herself because the defendant used to render services to her about two years back.

10. The defendant has appeared as DW-1. According to him, the plaintiff executed *gift deed* on 18.7.1984 in his favour which was scribed by DW-2 Deep Kumar, Petition Writer. It was signed by the marginal witnesses Sh. R.D.Kaundal and Ishwar Dass. He proved copy of the *gift deed* vide Ext. DW-1/A. The *gift deed* was presented before the Tehsildar for registration. The Tehsildar/Sub-Registrar, read over the contents of the *gift deed* to the plaintiff, who after admitting its contents to be correct put her thumb impression on the same. Thereafter, *Ikrarnama* Ext. DW-1/C was also executed, vide which, he

agreed to pay maintenance at the rate of Rs. 100/- per month to the plaintiff. DW-2 Deep Kumar Petition Writer deposed that he scribed *gift deed* Ext. DW-1/A. Jayanti Devi put her thumb impression on the same after admitting the contents of the same to be correct and marginal witnesses also signed the *gift deed*. DW-3 Ishwar Dass was the marginal witness of the *gift deed* Ext. DW-1/A. He also signed *Ikrarnama* Ext. DW-1/C. DW-4 Mahender Singh deposed that he has scribed DW-1/C. DW-5 Rup Lal testified that on the date of execution of the *gift deed*, he was also taken to Tehsil Office because plaintiff was his sister and when he reached the Tehsil Office, the Petition Writer had already scribed the *gift deed* Ext. DW-1/A. He was reading its contents to the executrix-plaintiff. He intervened and asked as to what has been thought about the future of the plaintiff. He suggested to execute *Ikrarnama* to pay maintenance @ Rs. 100/- per month to the plaintiff by the defendant. Thereafter *Ikrarnama* Ext. DW-1/C was executed. DW-6 Pirthi Chand testified that plaintiff never made any complaint with him as to whether the defendant was not rendering any services to her. DW-7 Ram Dass Kaundal is also one of the marginal witnesses of the *gift deed*. He testified that plaintiff put her thumb impression in *gift deed* after admitting its contents to be correct.

11. The plaintiff was illiterate widow lady. The precise case of the plaintiff, is that the defendant persuaded her to execute 'Will' in his favour. However, the defendant cleverly got the *gift deed* executed from her vide Ext. DW-1/A. The *gift deed* is dated 18.7.1984 and the *Ikrarnama* Ext. DW-1/C was executed vide which defendant agreed to pay maintenance to the plaintiff @ Rs. 100/- per month. Once the gift deed was executed as per the defendant, there was no occasion for him to execute *Ikrarnama* Ext. DW-1/C, whereby he agreed to pay Rs. 100/- per month to the plaintiff. He could not explain the circumstances under which *Ikrarnama* Ext. DW-1/C was executed. He could not produce the receipt to the effect that he was regularly paying the amount of maintenance to plaintiff @ Rs. 100/- per month. DW-2 Deep Kumar, Petition Writer has admitted that plaintiff was an illiterate lady. DW-3 Ishwar Dass has signed Ext. DW-1/A and Ext. DW-1/C. He also admitted that the plaintiff was under the influence of defendant. He also admitted that defendant remained a '*Ward Panch'* with him in his Panchayat. He also admitted that the plaintiff had taken him for executing the 'Will'. However, afterwards, he changed his version and stated that he was brought by the plaintiff for the execution of *gift deed*. DW-4 Mahender Singh has scribed *Ikrarnama* Ext. DW-1/C. He could not explain as to what was the necessity to execute *Ikrarnama* by defendant. DW-5 Rup Lal testified, as noticed above, that he had gone to Tehsil. *Gift deed* was being written. He intervened and suggested to execute *Ikrarnama* in favour of the plaintiff to pay maintenance @ 100/- per month by the defendant. DW-6 Prithi Chand has admitted that defendant remained Vice President of the Panchayat. DW-3 Ishwar Dass was the President. PW-7 Ram Dass is not resident of the village of the plaintiff. His village is at a distance of 6 km. from the village of the plaintiff. He remained counsel of the defendant.

12. The defendant has failed to produce tangible evidence to establish that *gift deed* Ext. DW-1/A dated 18.7.1984 was not the outcome of undue influence, fraud or mis-representation. Mr. Bhupinder Gupta, Sr. Advocate, has also drawn the attention of the Court to Ext. P-1 *Jamabandi* for the year 1981-82. It is not discernable from the entry in Ext. P-1 that it was attested and signed in the presence of plaintiff. The defendant has not even placed on record mutation order or certified copy thereof. The defendant was living with plaintiff. He was in a position to dominate her will. It is in these circumstances, he has

got the *gift deed* dated 18.7.1984, executed from her in his favour. The plaintiff was looking after herself.

13. In the case of ***Vithal vrs. Narayan,*** reported in ***AIR 1931 Nagpur 69,*** the Hon'ble Court held that even where it is not proved that the lady donor is not a strict pardanashin woman in the sense necessary to attract the application of the rule that protects pardanashin women, still when it is established that a transferee is in the active confidence of the transferor, Section 111, applies.

14. In the case of ***Sayed Zawar Hussain Shah and another vrs. Mian Saleh Mohammad Shah,*** reported in ***AIR 1940 Lahore 515,*** the Division Bench has held that when a gift is made by pardanashin lady, the donee must prove that donor had independent advice and that she understood the deed.

15. In the case of ***Mt. Sunder Kuer vrs. Shah Udey Ram and others,*** reported in ***AIR (31) 1944 Allahabad 42,*** the Division Bench has held that when the pardanashin lady is to transaction, onus is on person relying on transaction to prove that it was free and intelligent act of the lady.

16. In the case of ***Bhola Ram Lieri and ors. vrs. Peari Devi and ors.*** reported in ***AIR 1962 Patna 168,*** the Division Bench has explained the undue influence to mean that the party is in dominating position. It is further held that where a party challenges a deed of gift as bad on the grounds of its having been executed under undue influence, he must prove firstly, that there was a special relationship between the donor and the donees on account of which the former relied upon the latter for advice and the latter were in a position to dominate the will of the former in giving the advice; and secondly, that the donees used that position to obtain an unfair advantage for themselves. Their lordships have held as under:

> "7. The first contention of Mr. Das was that the deed of gift was bad inasmuch as it was executed by Sheodutt under undue influence. He referred to the following observations of Lindley, L. J. (see Allcard v. Skinner, (1887) 36 Ch. D. 145 at p. 181) and submitted that the present case was covered by the second proposition laid down by the learned Lord Justice;
>
> "First, there are the cases in which there has been some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by a donee placed in some close and confidential relation to the donor..................
>
> The second group consists of cases in which the position of the donor to the donee has been such that it has been the duty of the donee to advise the donor, or even to manage his property for him. In such cases the court throws upon the donee the burden of proving that he has not abused his position, and of proving that the gift made to him has not been brought about by any undue influence on his part. In this class of cases it has been considered necessary to show that the donor had independent advice, and was removed from the influence of the donee when the gift to him was made".
>
> But our law on the subject is slightly different as will appear from the definition of "undue influence" in Section 16 of the Indian Contract Act, which reads thus:

"16 (1) A contract is said to be induced by 'Undue Influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, On the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act (I of 1872)".

It will be noticed that the ingredient of using the dominant position contained in Sub-section (1) is absent from the proposition laid down by Lindley, L. J. In Poosathurai v. Kannappa Chettiar, 47 Ind App 1: (AIR 1920 PC 65) the Privy Council explained the provisions o Section 16 of the Indian Contract Act thus:

"When a party to a contract seeks to set it aside on the ground of undue influence, it is not sufficient for him under Section 16 of the Indian Contract Act, 1872, to establish that the other party was in a position to dominate his will. He must also prove that the other party has used that position to obtain an unfair advantage over him. It is only if the transaction appears to be unconscionable that, by Sub-section (3), the burden of proving that the contract was not induced by undue influence is thrown upon the person who was in a dominating position. He, in that case must prove affirmatively that no domination was practised, but that the person seeking to set aside the contract was scrupulously kept separately advised in the independence of a free agent".

The appellants in the present case must, therefore, prove, firstly, that there was a special relationship between Sheodutt and the donees on account of which the former naturally relied upon the latter for advice and the latter were in a position to dominate the will of the former in giving the advice; and, secondly, that the donees used that position to obtain an unfair advantage for "themselves. But if the appellants prove that the donees were in a position to dominate the will of Sheodutt and that the transaction appeared to be unconscionable the onus will be shifted on the donees to show that Sheodutt was not induced to make the gift by undue influence and he had the opportunity to obtain independent advice before making the gift. Mr. Das also relied in Section 111 of the Indian Evidence Act which reads thus:

"Where there is a question as to the good faith, of a transaction between parties, one of whom stands to the other in a position of active confidence the burden of proving good faith of the transaction is on the party who is in a position of active confidence".

In other words, if the appellants prove in the present case that the donees were in a position of advantage over Sheodutt, who put trust in them, the onus is shifted on the donees to prove that they did not abuse that trust.

8. Mr. Das has referred to certain admitted facts to show that the donees were in a position to dominate the will of Sheodutt. As stated earlier, the donees are Peary Devi (plaintiff No. 1), wife of Harihar Prasad, (plaintiff No. 3), son of the sala of Sheodutt, and Janki Devi (plaintiff No. 2), wife of Durga Prasad (plaintiff No. 4), who is the son of Peary Devi, daughter's daughter of Sheodutt. Harihar (P. W. 5) has stated that he was brought up by Sheodutt at his house and Durga was brought up by Sheodutt after the death of his mother in his infancy. He has explained this fact further in cross-examination, where he says that each of them was brought at the age of one year by Sheodutt to his house. Both of them were married by Sheodutt. He has, of course, stated that Durga's father took Durga to Asansol when he was ten years old and since 1948 or thereabout Durga has been living in Calcutta in connection with a business. But he has admitted that the wife of Durga lived with Sheodutt and she still lives in a portion of the gifted house.

Prahlad Modi (P.W. 1), Chairman of Madhupur Municipality, stated that Harihar and Durga were living with 'Sheodult since their boyhood and they were living with Sheodutt with their wives. Even in the deed of gift (Ext. A) dated the 5th June 1948, the executant, Sheodutt, has said that he brought Harihar and Durga in their infancy and since then he and his wife had been maintaining them as their sons. Then he states that he got them married and since the marriage the wives of both of them, that is, the donees, had been serving and taking care of Sheodutt and his wife; and out of boundless love and affection for them he was making this gift. None of the contents of the deed of gift were disputed. Harihar has further said that Sheodutt had a business of potatoes which was looked after by him (Harihar), as Sheodutt had grown old. According to Harihar, Sheodutt died at the age of 80 years, three years after the deed of gift and, according to the deed of gift, the executant, Sheodutt was about 75 years old in 1948 and he had grown very old and felt helpless in walking.

The other plaintiffs have not been examined. Dwarka Prasad Sahu (D. W. 2), a neighbour, said that Sheodult died at a very old age and during his illness he used to lose the balance of his mind and to talk incoherently. The deposing defendant, Ramsaran Prasad, has stated that Sheodutt had become blind about eight years before his death and had lost the balance of life mind. But Ramautar Sah (P. W. 2), another neighbour, and Harihar have denied the fact that Sheodutt had lost his eye-sight or his power of understanding. The recitals in the deed of gift and the statements of Harihar and Prahlad prove, however, that (1) Sheodutt was so old at the time he executed the deed of gift that he felt helpless in walking, (2) he brought Harihar and Durga since their childhood, married them and maintained them as well as their wives, (3) Sheodutt had boundless affection for all of them, and (4) his business was being looked after by Harihar. Thus, they were in a position to dominate the will of Sheodutt.

10. The other admitted facts in support of Mr. Das's contention are: (1) the gift was made in favour of Peary Devi, who could never inherit the property of Sheodutt even though her husband Harihar, and Janki Devi who was a distant heir, (2) the deed of gift was unnatural inasmuch as Sheodutt excluded his natural heirs, namely, his wife and thereafter the defendants-appellants and (3) by executing the deed of gift Sheodutt

placed himself and his wife at the mercy of the donees inasmuch as he did not keep any property for himself. Incidentally, it may be mentioned that in 1936 Sheodutt had executed a will in which he made some provision for his wife as well. This will was in favour of Harihar, Durga, Harikishun (Harihar's brother), Musammat Rukmini Kumar (mother of Harihar), Srimati Gujari (mother of Durga) and Musamat Rabutari (wife of Sheodutt). The two holdings were given by this will to the first four persons; but it was further stated that Musammat Kabutari and Srimati Gujari would be entitled to live in one of the houses during their life-time and that Harihar and Durga woufd be bound to maintain them.

Further, these two ladies were amongst the executrix of the will and were required to look after the properties so long Murikishun, Harihar and Durga did not attain majority. The will would, however, have no effect, if the gift were a valid and effective transaction and there would be no provision for Sheodutt's wife or Musammat Gujari. It follows therefore that the plaintiffs were in a position to dominate the will of Sheodutt and, inasmuch as the transaction was unconscionable, the plaintiffs have to satisfy the court that they did not abuse their position and that the deed of gift was not brought about by any undue influence on their part. In such a case, the donee must show that the donor had independent advice and was removed from the influence of the donee when the gift was made. But the plaintiffs did not adduce, any evidence to show that Sheodutt received any independent advice before executing the deed of gift; and even Harihar, the only plaintiff, who gave evidence, did not state that no undue influence was exerted on Sheodutt at the time.

The donor's wife, namely Musammat Kabutari, was not examined in court, though she filed a written statement in support of the case of the plaintiff; but any statement, in the absence of her statement on oath, is of no use to the plaintiffs in the eye of law. The scribe of the deed of gift, namely Sailjanand Prasad and two of the three attesting witnesses namely, Amvar Alt and Murli-dhar Sah both of Madunpur were not examined. The third attesting witness, Ramaular Sah (P. W. 2) in cross-examination did not say that Sheodutt received any independent advice or that he was for the time being removed from the influence of the, plaintiffs. His statement that the contents of the deed of gift were read over and explained to Sheodutt before be signed the same does not mean that he received independent advice. It is also remarkable that the deed was registered at the house of Sheodutt. Plaintiff Harihar has said that he had left the house after the arrival of the sub-registrar to call Ramantar Sah from the bazar and after calling him he had again left for bazar on some business. There is no evidence however, to show that the donees were not inside the house at the time or that Sheodutt received any independent advice.

Mr. Kaushai Kishore Sinha, learned advocate for the plaintiffs-respondents contended that there is no evidence to show that the donees or even Durga, husband of one of the donees, dominated the will of Sheodutt; and a distinction must be made between the donees and their husbands. But on account of the fact that the donees were living with Sheodutta since their marriage and that Sheodutt had boundless affection and love for them and their husbands, it was very easy for them to dominate the will of Sheodutt in his old age when he was even helpless in his walking and he was not in a position to exercise his independent judgment due to his dotage for them. It appears that Durga was not at

Madupur at the time the deed o[gift was executed, but his wife was there. Of course, Harihar and Durga were themselves legatees under the will executed in February 1936 and they were not donees under the deed of gift, which came into existence about twelve years later; but under the wilt Durga and Harihar got only one house and Harikishun and Rukmini Kumari got the other home, subject to certain rights given to Musammat Kabutari and Gujari Kumari, while under the gift only the wives of Durga and Harihar were the sole beneficiaries without any reservation for any body else.

Thus Harihar and Durga got better benefit under the gift, and Harihar, who wag managing the affairs of Sheodutt must have played an important part in the creation of the deed of gift, Harihar could not obviously get the deed of gift executed in favour of his wife only, because in that case Sheodutt would have been suspicious of his intentions. The next argument was that, as Sheodutt wanted to give his properties to Harihar and Durga in 1936, the gift was a natural act of Sheodutt; but, as stated earlier, they could not have got the houses under the will exclusively even after the death of Sheodutt."

17. In the case of ***Afsar Shaikh and another vrs. Soleman Bibi and ors.,*** reported in ***AIR 1976 SC 163,*** their lordships of the Hon'ble Supreme Court have explained the term undue influence. Their lordships have further held that whether a person is in a position to dominate the will of another and procure certain deed by undue influence is a question of fact which cannot be reopened in second appeal if decided in accordance with prescribed procedure. Their lordships have held as under:

"15. While it is true that `undue influence', `fraud', `misrepresentation' are cognate vices and may, in part, overlap in some cases, they are in law distinct categories, and are in view of Order 6, Rule 4, read with Order 6, r.2, of the Code of Civil Procedure, required to be separtely pleaded, with specificity, particularity and precision. A general allegation in the plaint, that the plaintiff was a simple old man of ninety who had reposed great confidence in the defendant, was much too insufficient to amount to an averment of undue influence of which the High Court could take notice, particularly when no issue was claimed and no contention was raised on that point at any stage in the trial court, or, in the first round, even before the first appellate court.

19. It is well settled that a question whether a person was in a position to dominate the will of another and procured a certain deed by undue influence, is a question of fact, and a finding thereon is a finding of fact and if arrived at fairly, in accordance with the procedure prescribed, is not liable to be reopened in second appeal (Satgur Prasad v. Har Narain Das;(2) Ladli Prashad Jaiswal v. The Karnal Distillery Co. Ltd.(3)."

18. In the case of ***Ajmer Singh and ors. vrs. Atma Singh,*** reported in ***AIR 1985 Punjab and Haryana 315,*** the learned Single Judge has held that when an old man alleges gift deed was executed by him was not a voluntary act, the onus shifts on donee to prove that the gift was made voluntarily. It was held as under:

"4. I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record. In paragraphs 4 and 6 of the plaint (which appear to have been anomalously numbered therein), it is inter alia averred that the plaintiff being an old man, with feble health

and weak eyesight, the father of the defendants-Charan Singh, taking advantage of his weaknesses, fraudulently got executed the gift deeds dated Jan. 12, 1977, in the names of his sons. The father of the defendants misrepresented the factum of the gift deeds and told the plaintiff that the papers related to the special power of attorney in his favour about the property of the plaintiff. Thus, the plaintiff signed the documents under the impression that he was signing the papers in regard to the special power of attorney in favour of Charan Singh, the father of the defendants, about his property. By doing so, the father of the defendants committed a fraud upon the plaintiff and played a ruse on his innocence taking advantage of his weakness and simplicity. In the gift deeds, it was stated that Charan Singh, the father of the defendants-donees, was his pota (grandson) and had been serving him since long. it has been concurrently found by both the Courts below that Charan Singh, the father of the defendants, was not in any manner related to the plaintiff. Apart from that, there is no cogent and independent evidence to prove that Charan Singh had been serving the plaintiff in any manner. The defendants did not produce any witness from the village to depose about this fact. They were satisfied by only producing the attesting witnesses of the gift deeds. The learned Additional District Judge discussed the entire evidence on the record and gave a firm finding that the plaintiff was an old man having feeble and bad health and therefore could not resposed confidence in Charan Singh, the father of the defendants and that is why he asked him for the execution of the power of attorney in his favour. Charan Singh taking advantage of the ill-health of the plaintiff got the three gift deeds executed from him in favour of his three sons. Regarding the production of the witnesses on behalf of the defendants, the lower appellate Court observed that though the witnesses produced by them were from the village, but in such a case where the donor is issueless having no other family member, there is no dearth in the village to get evidence in favour of the donees. Surprisingly enough, as observed earlier, no independent witness was produced from the village to testify as to whether Charan Singh, the father of the defendants, was serving the plaintiff in any manner. Once these two facts are found to militate against the defendants, i.e. Charan Singh was not related to the plaintiff and that he was not rendering any services to him, then it was for the defendants to prove that the gift deeds were voluntarily executed by the plaintiff. S. 122 of the Act, reads--

"Gift' defined--'Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made--Such acceptance must be made during the lifetime of the donor and while he is capable of giving.

If the donee dies before acceptance, the gift is void".

From a perusal of the above provisions, it is quite clear that the gift, in order to be valid, must have been made voluntarily. In the present case, the evidence in this behalf is missing. It was for the defendants to prove that the plaintiff executed the gift deeds voluntarily after understanding the nature of the documents. This, the defendants have failed to prove by any cogent evidence as found by the lower appellate Court. The judgments relied upon by the learned counsel for the appellants have no applicability to the facts of the present case. The case of a gift deed is on

> a different footing than a sale deed or any other document which is executed for consideration. A gift is made by the donor ordinarily without consideration and, therefore, it must be executed voluntarily by the donor. The circumstances of the present case clearly go to prove that the plaintiff was an old man with feeble health and weak eyesight and was unlettered. Charan Singh, the father of the defendants, was in a position to dominate his will as he had faith in him and that is why he wanted to execute the special power of attorney in his favour in regard to his property. The mere fact that the plaintiff has many litigations pending is of no consequence unless there was evidence to prove as to what type of litigation if at all relevant to the matter, he was having. In this view of the matter, I do not find any infirmity or illegality in the findings of the lower appellate Court as to be interfered with in second appeal."

19. In the instant case, the defendant was in a position to dominate the will of the old widow. She was illiterate lady with rural background. She was made to understand that she has to execute the 'Will' but infact 'Gift' was got executed from her. The family of the defendant has also stayed with the plaintiff. They have exercised undue influence upon the plaintiff. The execution of 'gift' in favour of the plaintiff was not voluntary act and it was obtained by way of fraud and mis-representation and undue influence. The substantial question of law is answered accordingly.

20. Consequently, the learned Courts below have correctly appreciated the oral as well as documentary evidence on record. There is no merit in this appeal, the same is dismissed.

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BEFORE HON'BLE MR. JUSTICE MANSOOR AHMAD MIR, C.J. AND HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, J.

Om Parkash Murarka .....Petitioner
Versus
Controller and Auditor General of India and others. ....Respondents

CWP No. 7432/2010-H.
Judgment reserved on 27.11.2014.
Pronounced on: 4th December, 2014

Constitution of India, 1950- Article 226- Petitioner was working as Senior Accountant in the office of the Accountant General – he applied for voluntary retirement on 30.9.2004 by giving three months notice- he was informed that his request for voluntary retirement had been accepted and the process of preparation of pension paper had been initiated- petitioner withdrew the notice for voluntary retirement but he was informed that his request for withdrawal was rejected and he would be treated as voluntarily retired- petitioner filed an application before Central Administrative Tribunal which allowed the application and directed the petitioner to return the retiral benefits received by him - the respondent was directed to treat the petitioner on service- however, the back-wages were not granted to the petitioner- held, that the benefit of back-wages was wrongly denied- when the order of retirement was held to be illegal, employee is entitled to the benefit of back-wages- Petition

allowed with the direction to the respondent to pay the back-wages and other benefits to the petitioner. (Para- 3 to 12)

Cases referred:

Srikantha S.M. versus Bharath Earth Movers Ltd. (2005) 8 SCC 314

Chairman-cum-M.D., Coal India Ltd. & Ors. vs. Ananta Saha & Ors., 2011 AIR SCW 3240

Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others 2013 AIR SCW 5330

Bhuvnesh Kumar Dwivedi vs. M/s. Hindalco Industries Ltd., 2014 AIR SCW 3157

For the petitioner: Mr. Lovneesh Kanwar, Advocate.
For the respondents: Mr.Ashok Sharma, Assistant Solicitor General of India.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

Petitioner, by the medium of this writ petition, has questioned the order made by the Central Administrative Tribunal, Chandigarh Bench (Circuit Bench at Shimla) dated 5th November, 2009 (Annexure P-9) read with the order dated 13th June, 2008, (Annexure P-6) made by respondent No. 2, on the grounds taken in the memo of the writ petition.

2. The respondents have filed the reply and the petitioner has also filed the rejoinder.

3. It appears that the petitioner was working as Senior Accountant in the office of the Accountant General, H.P. He applied for voluntary retirement on 30.9.2004, by giving three months notice for such retirement, w.e.f. 1.1.2005, due to his family circumstances. Vide letter dated 1.10.2004, he was informed that his request for voluntary retirement w.e.f. 1.1.2005, has been accepted and necessary steps for preparation of pension papers had been initiated. The petitioner, however, due to changed circumstances and settlement in the family, withdrew the said notice for voluntary retirement vide letter dated 22.12.2004, but vide letter dated 27.12.2004, he was informed that his request has been rejected and it was made clear that the petitioner would be treated as voluntary retired with effect from 1.1.2005, constraining the petitioner to file a representation to reconsider the decision made by the respondents and allow him to withdraw his notice for voluntary retirement. The said request of the petitioner for withdrawing the notice of voluntary retirement and the representation was not considered by the respondents and vide order dated 30.12.2004, the petitioner was retired from service, constraining him to approach the Central Administrative Tribunal.

4. The Tribunal declared the order of retirement as illegal and held the petitioner in continuous service right from 1.1.2005 and also directed the petitioner to return/deposit all the retiral benefits received by him with the respondents, within three months and competent Authority-respondents were directed to consider his regularization in service, pay and allowances etc. vide order dated 28.9.2006 (Annexure P1). It is apt to reproduce para 6 of the said order herein:

> *"6.In view of the aforesaid position under the law, we declare the orders, dated 27.12.2004 (A-2) and 30.12.2004 (A-3) as illegal. We declare that the applicant has a right to continue in service w.e.f. 1.1.2005 from which he was ordered to be voluntarily retired. In case, the applicant deposits back all the retiral benefits, received by him, with the respondents within three months from the date of presentation of a copy of this order to the respondents, his continuation in service shall be given to him, ignoring the fact that he was ordered to retire w.e.f. 1.1.2005. The competent authority to take a decision for the period w.e.f. 1.1.2005 onwards till his resuming duties, for grant of regularization in service, pay and allowances etc. etc."*

5. The petitioner complied with the said mandate by depositing entire service benefits, which he had received and requested to pay him the salary and other allowances for the period 1.1.2005 to 28.12.2006, but respondent No. 2, vide letter dated 13.6.2008, rejected the claim of the petitioner for pay, allowances and back-wages w.e.f. 1.1.2005 to 28.12.2006, stating that the period 1.1.2005 to 28.12.2006, has been treated as leave of the kind due, constraining him to again approach the Central Administrative Tribunal, Chandigarh Bench.

6. The Central Administrative Tribunal dismissed the Original Application of the petitioner vide its judgment and order dated 5.11.2009 (Annexure P9). It is apt to reproduce para 5 of the said judgment herein:

> *"5.After hearing the learned counsel for the respondents and perusal of the record, particularly directions earlier issued by this Court, we find that the Court had directed the competent authority to take a decision for the period w.e.f. 1.1.2005 onward till his resuming duties for grant of regularization in service, pay and allowances etc. etc. There was no direction to treat this period in a particular manner. Even otherwise also it is within the domain of the competent authority to decide as to how the period during which applicant remained out of employment is to be regulated as provided under the rules and after perusal of the chart with the written statement, we find no error in the orders passed by the respondents as most of the period has been regulated as EOI with pay and allowances and HPL with pay and allowances, therefore, in our considered view nothing survives in the O.A. as the respondents have fully implemented the orders passed by this Court in letter and spirit."*

7. Admittedly, the order of retirement of the petitioner w.e.f. 1.1.2005 was held by the Tribunal as illegal vide order dated 28.9.2006, the relevant portion stands quoted supra and he was treated to be in service w.e.f. 1.1.2005. Thus, the petitioner was entitled to back-wages also.

8. The respondents have not averred that the petitioner was gainfully employed, during the period 1.1.2005 to 28.12.2006. The authorities have wrongly denied the relief of back-wages to the petitioner and the order made by the Tribunal dated 5.11.2009, thus is illegal.

9. The apex Court in case titled ***Srikantha S.M.*** *versus* ***Bharath Earth Movers Ltd.*** reported in ***(2005) 8 SCC 314,*** held that when the order of termination/ retirement is illegal and the employee has been kept out of job illegally, is entitled to back-wages. It is apt to reproduce paras 20 and 30 of the judgment herein:

> *"20. The Court added in Balram Gupta v. Union of India AIR 1987 SC 2354 para 13.*
>
> *in the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways 'to ease out' uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees.*
>
> 21-29... ....
>
> *"30.For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4.1.1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the Division Bench upholding the action of the Company are also set aside. The respondent Company is directed to treat the appellant in continuous service up to the age of superannuation i.e. 31.12.1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15.1.1993 or thereafter. The appeal is accordingly allowed with costs."*

10. The apex Court in case titled ***Chairman-cum-M.D., Coal India Ltd. & Ors. v. Ananta Saha & Ors.,*** reported in ***2011 AIR SCW 3240*** has discussed the issue when the relief of back-wages can be granted. It is apt to reproduce paras 47 and 48 of the said judgment herein:

> "*47.The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-*

instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide: U.P.SRTC v. Mitthu Singh, AIR 2006 SCC 3018; Secy., Akola Taluka Education Society & Anr. v. Shivaji & Ors., (2007) 9 SCC 564; and Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale, (2009) 2 SCC 288).

48. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh inquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled for subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs"

11. The apex Court also in case titled ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others*** reported in ***2013 AIR SCW 5330*** has discussed that in which circumstances an employee is entitled to back-wages. it is apt to reproduce para 33 of the said judgment herein:

"33.The propositions which can be culled out from the aforementioned judgments are:

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

(iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence.

It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

(iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

(v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

(vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford

the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

(vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

12. Applying the test, the petitioner was entitled to back-wages.

13. The apex Court in a recent judgment titled ***Bhuvnesh Kumar Dwivedi v M/s. Hindalco Industries Ltd.,*** reported in ***2014 AIR SCW 3157,*** the facts of which are similar to the facts of the case in hand, held that how and in which circumstances an employee is entitled to back wages. It is apt to reproduce paras 18, 33 and 35 of the said judgment herein:

"18.A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant.

19-32..... ....

33. In the present case, the respondent has made a vague submission to the extent that:

> *"the conduct of the workman throughout the proceedings before the High Court during 2002 to 2011 shows that he is continuously gainfully employed somewhere. Admittedly even in the counter affidavit in the said Writ Petition, it has not been stated that the workman was not employed"*

Therefore, on the basis of the legal principle laid down by this Court in the Deepali Gundu Surwase case (supra), the submission of the respondent that the appellant did not aver in his plaint of not being employed, does not hold since the burden of proof that the appellant is gainfully employed post termination of his service is on the respondent. The claim of the respondent that the appellant is gainfully employed somewhere is vague and cannot be considered and accepted. Therefore, we hold that the appellant is entitled to full back wages from the date

of termination of his service till the date of his reinstatement.

34….. ……. …..

35. We therefore conclude and hold that the Labour Court was correct on legal and factual principles in reinstating the appellant along with full back wages after setting aside the order of termination. The High Court on the other hand, has erred by exceeding its jurisdiction under Article 227 of the Constitution of India in holding that the appellant has in fact, resigned by not joining his duty as a Badly worker and also awarding that retrenchment compensation to the tune of Rs.1,00,000/- will do justice to the appellant without assigning reasons which is wholly unsustainable in law.

14. Having said so, the order dated 13.6.2008, (Annexure P-6), made by the respondents is quashed and consequently, the order made by the Central Administrative Tribunal dated 5.11.2009, (Annexure P-9) is also quashed with direction to the respondents to pay salary, i.e., back-wages and other allowances, to the petitioner, w.e.f., 1.1.2005 to 28.12.2006, the date of his joining, with 6% interest per annum.

15. With the aforesaid observations, the writ petition is disposed of alongwith pending applications, if any.

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

Prahalad Mishra. …Petitioner.
Versus
State of Himachal Pradesh and another. …Respondents

CWP No. 5451 of 2014
Decided on: 4.12.2014

Constitution of India, 1950- Article 226- Father of the petitioner died in harness on 25.4.2006- he filed an application for considering his case for appointment on compassionate basis – same was rejected on the ground that case of the petitioner does not meet the financial/income criteria fixed by the Government – held, that while computing income of the petitioner pensionery/retiral benefits should not be taken into consideration and State had wrongly included pensionery/retiral benefits while computing annual income- petition allowed and the respondent directed to consider the case of the applicant by ignoring the family pension/retiral benefits. (Para-2 to 7)

Cases referred:

Govind Prakash Verma vs. Life Insurance Corporation of India and others, (2005) 10 SCC 289

Kumari Savita Sharma vs. State of H.P. and others, latest HLJ 2011 (HP) 739

For the Petitioner: Mr. V.D. Khidta, Advocate.
For the Respondents: Mr. M.A. Khan, Addl. A.Gs. with Mr. P.M. Negi, Dy. A.G.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge (oral).

Petitioner's father died in harness on 25.4.2006. Petitioner submitted an application for considering his case for appointment on compassionate basis on 8.2.2007. The same has been rejected by the respondent-Department on 28.9.2013 on the ground that case of the petitioner does not meet the financial/income criteria fixed by the Government in Finance Department.

2. Mr. V.D. Khidta, learned counsel for the petitioner, has vehemently argued that the case of the petitioner has been rejected by the competent authority by including pensionary benefits while computing the annual income of the family of the petitioner. Income of the petitioner's family as per the reply is Rs.1,07,078/-.

3. It is settled law by now that while computing the income of family for the purpose of compassionate appointment, the pensionery/retiral benefits should not be taken into consideration.

4. Their Lordships of the Hon'ble Supreme Court in ***Govind Prakash Verma*** vs. ***Life Insurance Corporation of India and others***, (2005) 10 SCC 289, while dealing with almost similar situation has held as under:

> **"6…….The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules……"**

5. This Court in ***Kumari Savita Sharma*** vs. ***State of H.P. and others***, latest HLJ 2011 (HP) 739 has taken a view that while considering the applications for giving appointment on compassionate grounds, pension received by the family is not to be computed for the purpose of determining the income of the family.

6. Similar view has been taken by this Court in CWP No. 9965 of 2011 titled as ***Vikas Kumar vs. State of H.P***., decided on 28.8.2012, CWP No. 4852 of 2013, titled as ***Ashwani Kumar*** vs. ***State of H.P. and others***, decided on 29.7.2013 and CWP No. 9637 of 2013, titled as ***Parvinder Kumar*** vs. ***State of H.P. and others***, decided on 2.1.2014.

7. Accordingly, in view of the analysis and discussion made hereinabove, the writ petition is allowed. Annexure P-7 dated 28.9.2013 is set aside. Respondents are directed to consider the case of the petitioner for compassionate appointment in view of the law laid down in the judgments cited hereinabove, within a period of 10 weeks from today by ignoring family pension/retiral benefits. Pending application(s), if any, also stands disposed of. No costs.

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

Tek Ram. ...Appellant.
Versus
Smt. Bali and others. ...Respondents.

RSA No. 341/2000
Reserved on: 24.11.2014
Decided on: 4.12. 2014

Indian Succession Act, 1925- Section 63- Plaintiff claimed that she being daughter of the deceased is entitled to succeed to his share along with defendants 1 a, b and 2- defendant No. 2 had forged a fictitious document stated to be a "will" of the deceased – defendant No. 2 claimed that Will was executed by the deceased in his favour in the presence of respectable persons- held, that as per evidence, will was duly executed by the deceased – plaintiff was born in the house of her maternal grand-mother and had no inimical relations with the witnesses– defendant No. 2 was looking after the deceased and had performed his last rites – the mere fact that mutation was attested after few years will not render the Will suspicious. (Para- 22 and 23)

For the Appellant: Mr. Bhupender Gupta, Sr. Advocate with Mr. Ajeet Jaswal, Advocate.
For the Respondents: Mr. Rajender Kumar, Advocate for respondent No.1.
Mr. Rahul Verma, Advocate vice Mr. Ramesh Sharma, Advocate for respondents No.3 (a) to 3 (d) and 4 (b) and 4 (c).

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This appeal is directed against the judgment and decree dated 30.6.2000 rendered by the District Judge, Kullu in Civil Appeal No. 58/99.

2. "Key facts" necessary for the adjudication of this appeal are that respondent-plaintiff (herein after referred to as 'plaintiff ' for convenience sake) has filed a suit for declaration with consequential relief of injunction and in the alternative for possession of the suit land against the appellant-defendant (herein after referred to as 'defendant No.2 ' for convenience sake) and against Sh Sawaru, predecessor-in-interest of defendant 1-a and 1-b, Tulsi and Bimla as per the original memo of parties of Civil Appeal No.58 of 1999 and against respondents No.3 to 5, namely, Ram Bhagat, Beli Ram and Tulsi. According to the averments contained in the plaint, one Sefu had three sons, namely, Phagnu, Bhogi and Sawaru. Plaintiff is the daughter of Phagnu whereas defendants No.1-a, 1-b and 2 are the legal heirs of Sawaru. Bhogi died on 25.4.1983. He was owner in possession of the land as per detailed given in the plaint. Plaintiff claimed that she being the only daughter of Phagnu is entitled to succeed to the share of Bhogi in the suit land alongwith defendants No.1-a, 1-b and 2 in equal shares. According to her, Bhogi died intestate. Defendant No.2 Tek Ram in connivance with deceased defendant No.1, i.e. Swaru forged a

fictitious document claimed to be a "will" dated 24.4.1983 whereby the testator is alleged to have bequeathed his entire estate in favour of defendant No.2. She was not bound by the "will". She had raised objection before the Assistant Collector IInd Grade at the time of attestation of mutation. However, he did not record her objections. She has also challenged the sale deed dated 3.10.1991 effected by defendant No.2 Tek Ram in favour of Saje Ram, Beli Ram and Ram Bhagat.

3. The suit was contested by the defendants. Defendants No.1-a and 1-b, namely, Tulsi and Bimla have denied that Bhogi died intestate. Bhogi executed a "will" in favour of defendant No.2. The same was perfectly valid and legal.

4. Defendant No.2 has also filed written statement. According to him, Bhogi required his services. He rendered services to him. Bhogi executed a "will" in his favour out of love and affection on 24.4.1983. It was executed in presence of respective marginal witnesses whereby he bequeathed his entire moveable and immovable property in his favour. The testator was in his sound state of mind. The dispute arose between him and father of plaintiff after the death of Bhogi. It was resolved vide compromise dated 6.6.1983 in the presence of witnesses.

5. Defendants No.3 to 5 have also filed written statement. They have supported the sale deed dated 3.10.1991.

6. Name of Tulsi widow of Sawaru was ordered to be deleted from the array of respondent vide order dated 26.7.2010. Smt. Bimla daughter of Sawaru was ordered to be proceeded *ex parte* vide order dated 21.3.2014. The legal representatives of Ram Bhagat were permitted to be brought on record vide order dated 8.7.2013, namely, 3-a Sheela Devi, 3-b Anita Devi, 3-c Rameshwari and 3-d Anil Sharma. Respondents 3-a to 3-d were ordered to be proceeded *ex parte*. The legal representatives of deceased respondent No.4 Beli Ram were also permitted to be brought on record vide order dated 8.7.2013 whereby defendant No. 4-a Bhag Singh and 4-b Raghubir Singh were brought on record.

7. Trial court framed the issues. The suit was dismissed by the trial court on 7.1.1999. Plaintiff preferred an appeal against the judgment and decree dated 7.1.1999 before the District Judge, Kullu. He partly allowed the same on 30.6.2000. Hence, the present appeal. It was admitted on the following substantial questions of law:

1. **"Whether the learned District Judge has misapplied law pronounced by the Apex Court as well as by this Hon'ble Court for considering the due execution and attestation of the Will? Are not the findings of the learned District Judge vitiated by holding such circumstances to be suspicious ignoring such principles of law?**

2. **Whether the learned District Judge has wrongly rejected the application for additional evidence filed by the Defendant-Appellant?**

3. **Whether the findings rendered by the Lower Appellate Court are vitiated on account of misreading the relevant evidence and wrong application of correction principles of law?**

4. **Whether the learned District Judge has exceeded its jurisdiction in granting a decree of injunction in favour of the**

plaintiff-respondent without even deciding the question as to who is in possession of the suit property, whether the Judgment and Decree of Injunction is bad in law as there was no jurisdiction vested in the learned District Judge to grant an injunction against the co-sharer?

8. Mr. Bhupender Gupta, learned Senior Advocate, on the basis of substantial questions of law, has vehemently argued that learned first appellate court has misconstrued and misread the evidence pertaining to "will" Ex.DW-2/A dated 24.4.1983. According to him, the plaintiff was never in possession of the suit land and thus, the decree of injunction in favour of plaintiff could not be granted. Mr. Bhupender Gupta has supported the judgment and decree dated 7.1.1999 passed by the trial court.

9. Mr. Rajender Kumar has supported the judgment and decree passed by the first appellate court.

10. Mr. Rahul Verma has supported the judgment and decree of the trial court.

11. I have heard the learned counsel for the parties and have gone through the records carefully.

12. One Sefu had three sons, namely, Phagnu, Bhogi and Sawaru. Plaintiff is the daughter of Phagnu. Defendants No.1-a and 1-b and 2, i.e. Tek Ram are the legal representatives of Sawaru. It is not disputed that Bhogi died on 25.4.1983. According to the plaintiff, she being the only daughter of Phagnu was entitled to succeed to the share of Bhogi in the suit land alongwith defendants No.1-a, 1-b and 2 in equal shares. According to her, "will" dated 24.4.1983 Ex.DW-2/A was not genuine. She had raised objections at the time of attestation of mutation. The objections raised by her were not accepted by the Assistant Collector 2nd Grade.

13. Plaintiff has appeared as PW-1, Phagnu was her father. Bhogi was her uncle. Bhogi died in the year 1983. She has proved death certificate Ex.PW-1/A. Her father died in the year 1989. Death certificate is Ex.PW-1/B. Bhogi died issueless. Bhogi never got married. Sawaru has also died. She inherited the property after the death of her father and her uncle. Bhogi's estate was inherited by her father and her uncle Sawaru. Bhogi has never executed any "will' during his life time. He was looked after by her father. The last rites were performed by her father. Defendants Saje Ram, Beli Ram and Ram Bhagat knew about the dispute and despite that they bought the property vide mark 'A'. In her cross-examination, she has deposed that her marriage was solemnized about 15 years ago. She used to live with her in-laws and also used to reside in the maternal house. She has further deposed that her father and Bhogi used to live together. Their ration card was one. Bhogi was suffering from Asthma. Her mother was divorced by her father when she was in the womb. She was born in the house of her maternal grand-father. Her father has got treated Bhogi at Patli Kuhal and Duare. She did not know the names of doctors. She knew Mahant, Shyam Lal and Lal Chand. They were man of repute. These three persons had no enmity with her father. She had appeared before the Tehsildar at the time of attestation of mutation. No counsel had accompanied her. Tehsildar had made certain inquiries. She has denied the suggestion that Bhogi was occupying the house. Volunteered that she was also in possession. She has also admitted that key of the house was with Tek Ram.

14. According to DW-1 Tek Ram, Bhogi was his uncle. Phagnu was also his uncle. Name of first wife of Phagnu was Gulabi. Plaintiff is the

daughter of Gulabi. Phagnu and Gulabi divorced. Plaintiff was born in Seobagh. Plaintiff has never looked after Bhogi. He used to look after Bhogi. He has performed his last rites. He has executed the "will" mark X' in his favour. Shyam Lal, Tulsi Ram and Shyamu were the marginal witnesses. Bhogi was in his senses. A dispute has taken place between plaintiff's father and him. A compromise has taken place between him and father of plaintiff. It was scribed by Tulsi. The mutation was attested on the basis of "will". Plaintiff was present at the time of attestation of mutation. In his cross-examination, he has deposed that Bhogi had desired to execute "will" 3-4 days before executing the "will". All the members of the family were present at that time. The marginal witnesses were summoned scribe was also summoned. The "will" was executed in the courtyard. Bhogi was in a position to walk. It took one hour to scribe the "will". He has denied the suggestion that Bhogi and Phagnu used to live together. He has also denied the suggestion that Bhogi became unconscious 3-4 days before executing the "will". He has denied the suggestion that Bhogi was not in a position to speak. He has sold 14 biswas of land due to adverse circumstances.

15. DW-2 Shyam Lal is the marginal witness. He remained Pradhan of Gram Panchayat Duara between 1978 to 1982. Bhogi has executed "will" Ex.DW-2/A. It was scribed by Lal Chand Kapoor. The contents of the "will" were read over to Bhogi by Lal Chand Kapoor. He admitted the same to be correct. He put his thumb impression in the presence of marginal witnesses. He signed in his presence and Shyamu put his thumb impression. Bhogi was in senses at the time of execution of "will" Ex.DW-2/A. Lal Chand Kapoor has died. Bhogi was looked after by Tek Ram. The "will" was scribed in the courtyard. It took about 15-20 minutes to scribe the "will". Firstly, Bhogi put his thumb impression on "will" Ex. DW-2/A and thereafter he put his signatures on the same. Thereafter, Tulsi signed the same and Shyamu put his thumb impression.

16. DW-3 Nand Lal has deposed that a compromise took place between Tek Ram and Phagnu vide Ex.DW-3/A. It was scribed by Tulsi Ram Mahant at the instance of Tek Ram and Phagnu. He has admitted that he was Vaid. Tek Ram has never come to get the medicine, but Sawaru used to take the medicine.

17. DW-4 Ram Nath has deposed that his father was Stamp Vendor. He was conversant with his handwriting. Ex.DW-2/A was scribed by his father. His father died in the year 1995.

18. DW-5 Gaje Ram has deposed that Tek Ram was the owner of the suit land. The area was about 14 biswas. They have inquired about the status of the land before purchasing it. The ownership was in the name of Tek Ram as per revenue papers. The sale consideration was Rs.35,000/-. The sale deed was registered on 3.10.1991.

19. DW-6 Maghu Ram has deposed that the land measuring 14 biswas was sold for Rs. 35,000/- on 3.10.1991. The copy of sale deed is Ex. DW-6/A.

20. DW-7 Anil Mahant has deposed that Charan Dass was his father. He was conversant with his handwriting. Ex.DW-6/A was scribed by his father.

21. Plaintiff has also appeared in rebuttal. According to her, she had gone to the office of Tehsildar at the time of attestation of mutation. She has not taken any action against the Tehsildar.

22. What emerges from the statements of the witnesses discussed hereinabove is that the "will" Ex.DW-2/A was executed on 24.4.1983. Bhogi died on 25.4.1983. The "will" was scribed by father of DW-4 Ram Nath. According to DW-4 Ram Nath, the "will" Ex.DW-2/A was scribed by his father. DW-2 Shyam Lal was the marginal witness. According to him, the contents of "will" were read over to Bhogi. Bhogi put his thumb impression on the "will". Thereafter, he alongwith marginal witnesses signed and put thumb impression on Ex.DW-2/A. It is evident from the statement of PW-1 Bali that she was born in the house of her maternal grand-father. She was married 15 years back. She has categorically deposed that she had no inimical relations with Tulsi Mahant, Shyam Lal and Lal Chand. It has come in the statement of DW-1 Tek Ram that he was looking after Bhogi. He has performed his last rites. Sh. Bhogi was in his senses at the time of execution of "will".

23. Learned first appellate court has misconstrued compromise Ex.DW-3/A dated 6.6.1983. It was not required to be signed by Tek Ram. It is evident from compromise Ex.DW-3/A that father of the plaintiff had admitted that his brother Bhogi has executed a "will" in favour of Tak Ram. The other circumstance considered by the first appellate court against the defendants is that the "will" was executed on 24.4.1983, but the mutation was attested on 28.8.1991. Merely that the mutation was attested after few years would not render the "will" invalid. The mutation is Ex.PW-1/E, name of the plaintiff is mentioned in the proceedings dated 28.8.1991. Merely that defendants did not know at what time Bhogi died would not render the "will" Ex.DW-2/A suspicious. It is not at all necessary to mention in the "will" why the legal heirs have been excluded. The first appellate court has come to a wrong conclusion that it was necessary for the defendants to prove that father of the plaintiff was not looking after deceased Bhogi. What was to be seen is whether the principles for execution of the "will" have been followed or not. In the instant case, the "will" has been proved in accordance with law. It was not necessary for the defendants to prove the minor details, more particularly, when it has come in the statement of DW-3 Nand Lal that Sawaru Ram used to take medicine for Bhogi. All the substantial questions of law are answered accordingly.

24. In view of the analysis and discussion made hereinabove, the appeal is allowed. The judgment and decree dated 30.6.2000 passed by the District Judge, Kullu in Civil Appeal No. 58/99 is set aside and the judgment and decree dated 7.1.1999 passed by the Sub Judge 1st Class, Manali in Civil Suit No. 324/98/92 is restored. 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 SANJAY KAROL, J.

Deep Raj @ Baddu. …Appellant.

Versus

State of Himachal Pradesh. …. Respondent.

Cr. Appeal No.4009 of 2013
Date of decision: December 5, 2014

Indian Penal Code, 1860 – Section 376- Prosecutrix went to the house of one 'A' for getting her clothes stitched – she was not present but her brother was present who raped the prosecutrix- prosecutrix was proved to be below 18 years but above 16 years and of feeble mind- testimony of

prosecutrix was duly supported by independent witness- testimony of the prosecutrix is sufficient to convict the accused- mere absence of DNA profiling is not sufficient to acquit the accused. (Para-10 to 21)

Cases referred:

Krishan Kumar Malik vs. State of Haryana, (2011) 7 SCC 130

Halappa vs. State of Karnataka, 2010 Cri.L.J. 4341

For the Appellant: Mr. Lovneesh Kanwar, Advocate.

For the Respondent: Mr. R.S. Verma and Mr. H.K.S. Thakur, Addl. Advocate Generals.

The following judgment of the Court was delivered:

Sanjay Karol, Judge (Oral)

In this appeal filed under Section 374 Cr.P.C. convict Deep Raj has assailed the judgment dated 29.4.2013, passed by Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P., in Sessions Trial No.1/7 of 2013, titled as State of Himachal Pradesh versus Deep Raj @ Baddu, whereby he stands convicted of having committed an offence punishable under the provisions of Section 376 of the Indian Penal Code and sentenced to serve rigorous imprisonment for a period of seven years and pay fine of `20,000/- and in default thereof, further undergo rigorous imprisonment for a period of three months.

2. It is the case of prosecution that on 27th August, 2012, prosecutrix (PW.2) went to the house of Achla Devi (not examined) for getting her clothes stitched. Though Achla Devi was not home but her real brother i.e. the accused was present alone in the house. At that time he forcibly raped the prosecutrix. In the neighbourhood, Fullan Devi (PW.4) had called ladies of the village for collecting fuel wood. Her daughter was to get married. From courtyard of house of Fullan Devi, Parkasho Devi (PW.3), saw the prosecutrix hiding under the cot covered with a bed-sheet. Since room was bolted from inside she knocked the door. After opening the door accused ran away from the spot. Prosecutrix then narrated the incident to her. When prosecutrix was taken home, she also narrated the incident to her mother Viasan Devi (PW.1). Matter was reported to the police and FIR No.62/2012, dated 28.8.2012 (Ext.PW.1/A) registered at Police Station, Bharari, against the accused under the provisions of Section 376A of the Indian Penal Code. Investigating Officer, Dhan Raj Singh (PW.17) got the prosecutrix medically examined from Dr. Kavita Kumari (PW.10), who issued MLC (Ext.PW-10/C). For establishing age of the prosecutrix, her birth certificate (Ext.PW.11/B) was taken on record. Investigation revealed the accused to have subjected the prosecutrix to sexual assault and as such challan was presented in the court for trial.

3. Accused was charged for having committed an offence punishable under the provisions of Section 376 of the Indian Penal Code, to which he did not plead guilty and claimed trial.

4. In order to establish its case, in all, prosecution examined as many as twenty one witnesses. Statement of the accused under Section 313 of the Code of Criminal Procedure was also recorded, in which he took plea of innocence and false implication. Both Fullan Devi and Parkasho Devi

harboured animosity against Achla Devi, hence stands falsely implicated but no evidence in defence was led to probablise this defence.

5. Trial Court, after appreciating the testimony of prosecution witnesses, convicted the accused of the charged offence and sentenced him as aforesaid. Hence, the present appeal.

6. Having heard Mr. Lovneesh Kanwar, learned counsel for the appellant and Mr. R.S. Verma, learned Addl. Advocate General, on behalf of the State and minutely examined the testimonies of witnesses and other documentary evidence so placed on record by the parties, one is of the considered view that no case for interference is made out at all. Judgment rendered by the trial court is based on complete, correct and proper appreciation of evidence (documentary and ocular) as placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting in miscarriage of justice. Prosecution has been able to fully establish and prove its case, beyond reasonable doubt.

7. In Court, Dr. Kavita Kumari (PW-10) proved MLC (Ext.PW-10/C) and opined that possibility of rape could not be ruled out. Her opinion is based on report of the Forensic Science Laboratory, analysis of clothes; vaginal swab; pubic hair of the victim as also the assailant.

8. It is vehemently argued that the victim consented for the act and as such accused stands wrongly convicted by the trial court. Significantly, no such suggestion was ever put to any one of the prosecution witnesses. Hence, contention only merits rejection.

9. Nonetheless, notwithstanding medical evidence on record, Court is duty bound, in the first appeal, to fully appreciate the testimonies of prosecution witnesses, for ascertaining the truth and finding out as to whether prosecution has been able to prove the guilt of the accused, beyond reasonable doubt or not.

10. On the question of age of the prosecutrix, which in any event is not disputed, Rekha Kumari (PW.11) has proved certificate (Ext.PW.11/B) recording date of birth in the school record to be 6th October, 1994. As such, as on the date of incident of crime i.e. 27.8.2012, prosecutrix was below eighteen years, but above sixteen years.

11. Perusal of testimonies of prosecution witnesses further reveals that prosecutrix was mentally not fully developed. She was of feeble mind. Testimonies of Viasan Devi (PW.1) and Bimla Devi (PW.5) on this count go unrebutted. Furthermore, Yoginder Lal (PW.18), Managing Director of Asha Kiran Viklang Shiksha institution has proved certificate (Ext.PW.18/A) to the effect that prosecutrix, who was mentally retarded remained admitted with them for some time.

12. In Court prosecutrix was found competent to depose and as such was examined. She categorically states that after bolting the door from inside, accused removed her clothes and committed “bad act” with her in the house of Rikhu Ram (husband of Achla Devi). She identifies the accused as Baddu. Noticeably there is no dispute about such identity. She further states that Fullan and Parkasho got opened the door of the room and Baddu ran away. She clarifies that she had gone to the house of Rikhu for getting her clothes stitched. Significantly, it stands suggested to the witness that women had gone for collecting wood required for the marriage ceremony of daughter of Fullan Devi. She denies having deposed falsely on account of any tutoring done by her

mother. In fact she has no reason to depose falsely. Her testimony fully inspiring in confidence, is narration of true events which transpired on the spot and nothing else. She is candid, clear and truthful.

13. Fullan Devi (PW.4), who corroborates such version, further clarifies that at the time when she was cleaning the courtyard, sound was coming from the adjoining house belonging of Achla Devi. Parkasho Devi (PW.3) peeped from the window and saw the prosecutrix lying under the cot covered with a bed sheet. Room was bolted from inside. When Parkasho Devi knocked at the door, accused opened and ran away. Prosecutrix disclosed that accused committed "Bura Kam" (rape). Then she took the prosecutrix home. Though witness admits of having dispute with Achla Devi pertaining to construction of house but clarifies it was over long ago. Suggestion put to the witness that house of Achla Devi did not have window panes, does not advance the case of convict in any manner. He ran away from the spot after ravishing a helpless person who was frightened and overawed.

14. Though initially Parkasho Devi (PW.3) did not support the prosecution, but on being cross examined by the Public Prosecutor, corroborated the testimony of both the prosecutrix and Fullan Devi. She admits her presence on the spot. She admits that prosecutrix was under the cot on which accused was sitting. Thus she proves presence of both the accused and the prosecutrix inside the room. She also proves that at the time door was opened by the accused only he and prosecutrix were inside. Achla Devi and her husband were not home at that time.

15. Viasan Devi (PW.1) clarifies that prosecutrix, who had gone to the house of Achla Devi for getting the suit stitched, on return, disclosed the incident to her. She clarifies that accused is also known as Baddu, which fact, in any case is not in dispute. She clarifies that the following morning she went to the police station and reported the matter. She satisfactorily explains the reasons for not visiting the police station same day. She has studied only up to 8th standard; her husband was not home and it had become dark. She denies having falsely deposed on the asking of Fullan Devi. In any event, why would she do so. No mother would defame her daughter on the asking of a third person, especially when she was under no obligation from her. In any event, Pradhan Bimla Devi (PW.5) was informed of the incident. Also it becomes duty of the spot witnesses to report the matter to the police. Delay cannot be said to be fatal.

16. Sh. Sanjeev Kumar (PW.7), aged fourteen years, brother of the prosecutrix further corroborates the prosecution story.

17. Prem Lal (PW.6), one of the persons present on the spot, who though resiled from his previous statement (Ext.PW.17/J) but when confronted by the Public Prosecutor, admits of having learnt that prosecutrix stood raped by the accused.

18. It is rather unfortunate that Amar Singh (PW.12), father of the prosecutrix, after being declared hostile, had to be cross examined by the Public Prosecutor. Nonetheless he also admits that prosecutrix, who is of feeble mind, was raped by the accused.

19. Remaining witnesses are either police officials or witnesses to recovery of incriminating articles. In view of inspiring testimony of the prosecutrix and the spot witnesses one need not elaborately deal with their testimonies save and except that testimony of the Investigating Officer, S.I. Dhan Raj Singh (PW.17) of having conducted the investigation, which cannot be

faulted on any count, is fully inspiring in confidence. He has proved on record previous statements of the witnesses, who did not support the prosecution on material facts.

20. Submission that hymen was intact and no injury or tenderness was found on the vaginal part of the prosecutrix and as such, the charged offence is not proved, only merits rejection. It is a settled principle of law that statement of the prosecutrix by itself is sufficient enough to convict the accused, if it otherwise inspires confidence even if it is not supported by contemporaneous corroborative material in the shape of medical evidence. One cannot lose sight of the fact that prosecutrix was of feeble mind and as such under these circumstances could not resist the overt acts of the accused. She was found hidden under the cot. Presence of hymen itself does not disprove an act of penetration.

21. It is further argued that absence of non-compliance of provisions of Section 53A of the Code of Criminal Procedure would render the prosecution case to be fatal. Dr. Bhanu Kanwar (PW.9) has proved that the accused was medically examined on 29th August, 2012 and certificate (Ext.PW.9/B) is placed on record to this effect. The contention, misconceived in law, to say the least, only merits rejection.

22. Mere non-compliance of Section 53A of the Code of Criminal Procedure, more so with respect to DNA profiling, would not render the investigation to be faulty in any manner, particularly when there is overwhelming evidence on record to establish guilt of the accused, beyond reasonable doubt.

23. Thus, from the material placed on record, it stands established by the prosecution, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence, that accused committed an act of rape.

24. For all the aforesaid reasons, no case for interfere with the judgment passed by the trial Court is made out. The Court has fully appreciated the evidence placed on record by the parties. There is neither any illegality nor any irregularity/ perversity in correct and complete appreciation of the material so placed on record by the parties. Findings of conviction cannot be said to be erroneous or perverse. Hence, the appeal is dismissed.

25. Section 53A of the Code of Criminal Procedure reads as under:

> **"53A. Examination of person accused of rape by medical practitioner.**
>
> (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:—

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section."

26. In view of the dicta laid down by the Hon'ble Supreme Court of India, in ***Krishan Kumar Malik v. State of Haryana,*** **(2011) 7 SCC 130**, it was absolutely necessary for the prosecution to have got the DNA test conducted, for the purpose of facilitating the prosecution to establish its case against the accused.

27. Single Judge of High Court of Karnataka in ***Halappa v. State of Karnataka,*** **2010 Cri.L.J. 4341**, had the occasion to deal with the Constitutional validity of provisions of Section 53A of the Code of Criminal Procedure. The Court framed the following points, for consideration and answered Points No.1 & 2 in the negative and Point No.3 in the affirmative:

"(i) Whether the consent of the petitioner-Accused No.1 is required to draw blood sample from him and for subjecting the same to DNA test?

(ii) Whether the consent of the petitioner-Accused No.1 is necessary for taking samples of his pubic hairs and also for obtaining his voice samples and photographs?

(iii) Whether the order passed by the trial Court is sustainable in law or not?"

28. The Legislative intent is evidently clear. It appears that the Investigating Agencies are either not aware of the statutory provisions and the duty cast upon them or are obliviously continuing to follow old means and methods of investigation. As such, in the interest of justice, direction is issued to the Director General of Police, State of Himachal Pradesh to issue appropriate directions, asking the Investigating Officers to comply with the statutory provisions in accordance with law. Affidavit of compliance shall be filed by the

Director General of Police, State of Himachal Pradesh, within a period of four weeks from today. Records of the Court below be immediately sent back.

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

Inder Singh ......Appellant.
Versus
State of H.P. ....Respondent.

Cr. Appeal No. 27 of 2011.
Reserved on: December 03, 2014.
Decided on: December 05, 2014.

N.P.P.S. Act, 1985- Section 20- Accused was found in possession of 7 kg 100 grams of charas- prosecution version regarding sending of rukka was contradictory- testimony of the independent witness also contradicted the prosecution version-No seal impression was put on the NCB form making it difficult for the laboratory to compare the sample seal- held, that in these circumstances, prosecution had not proved its case beyond reasonable doubt. (Para- 17 to 20)

For the appellant: Mr. Vivek Sharma, Advocate, vice Mr. Ajay Kochhar, Advocate.
For the respondent: Mr. P.M.Negi, Dy. Advocate General.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 21.12.2010, rendered by the learned Sessions Judge (Special Judge), Shimla, H.P., in N.D.P.S. Case No. 32-S-7 of 2009, 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.

2. The case of the prosecution, in a nut shell, is that on 1.11.2009, PW-10 Inspector Ram Kumar, SV & ACB (SIU), Shimla in connection with patrol duty had left for *Habban,* Sirmour via *Theog-Chaila* in official vehicle No. HP-07A-0680. PW-7 Inspector Virender Chauhan, PW-8 HHC Mahinder Singh and PW-9 HC Man Singh, were accompanying PW-10 Inspector Ram Kumar. When PW-7 to PW-10 crossed Village Naina and had been at some distance from Naripul, at about 11:30 AM, one person was noticed coming on foot from opposite direction. That person was carrying one airbag of blue colour on his right shoulder. He was also carrying one empty cement bag containing something in his left hand. PW-10 Inspector Ram Kumar directed PW-6 Yog Raj to stop the vehicle. PW-10 Inspector Ram Kumar wanted to know the area from the pedestrian. The person got perplexed and took U turn. PW-10 Inspector Ram Kumar suspected said person to be in possession of charas. He was apprehended. PW-1 Rajesh Verma in his Santro Vehicle had been on his way

from Chaila to Solan via Neripul. PW-10 Inspector Ram Kumar and his team signaled him to stop the Car. PW-10 Inspector Ram Kumar stepped out of the vehicle. In the presence of PW-1 and PW-7 to PW-9, PW-10 Ram Kumar had given option of search before the Magistrate or Gazetted Officer to the accused vide memo Ext. PW-1/A. The accused consented for search before the local police party vide consent memo Ext. PW-1/A. The bag was checked. It contained charas Ext. P-3 in the shape of billets and balls. There was another bag Ext. P-6 in bag Ext. P-2. Bag Ext. P-6 contained one scale Ext. P-7, two weights of 50 gms each Ext. P-8 and Ext. P-9, one weight of 10 gms, Ext. P-10, one weight of 20 gms, Ext. P-11 one weight of 5 gms Ext. P-12 and one weight of 100 gms Ext. P-13. The empty cement bag Ext. P-14 was containing one scale with steel pot Ext. P-15, one weight of 1 kg Ext. P-16 and one weight of 2 kg Ext. P-17. PW-10 Inspector Ram Kumar weighed the charas. It weighed 7 kg. 100 gms. PW-10 Inspector Ram Kumar had drawn two samples of 50 gms each from the charas recovered from the accused. The sample packets of charas Ext. P-4 and Ext. P-5 and the rest of the charas Ext. P-3 was separately sealed in three packets with seal 'H' and were taken into possession vide recovery memo Ext. PW-1/B. Bag Ext. P-2 was sealed with bulk charas, scale and weights. The accused was arrested. PW-10 Inspector Ram Kumar prepared report Ext. PW-2/A and routed the same to the Police Station through PW-8 HHC Mahinder Singh. The contraband was produced before Inspector Narata Ram. PW-2 Insp. Narata Ram registered FIR Ext. PW-2/B. PW- 2 Insp. Narata Ram resealed the sample packets and the rest of the charas in original packing with seal T and had prepared memo Ext. PW-2/C. He deposited the case property with PW-3 MHC Ashok Kumar. PW-3 MHC Ashok Kumar carried out the entries of the case property in the relevant register vide Ext. PW-3/A. The samples were sent to chemical examiner alongwith specimen impression of seal and copy of NCB form. The report of the FSL is Ext. PX. The investigation was completed and challan was put up against the accused 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. His case is of simpliciter denial. The learned Trial Court convicted and sentenced the accused, as stated hereinabove. Hence, the present appeal.

4. Mr. Vivek Sharma, Advocate, appearing vice Mr. Ajay Kochhar, Advocate, for the accused has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. P.M.Negi, learned Dy. Advocate General, has supported the judgment of the learned Sessions Judge (Special Judge), Shimla, H.P. dated 21.12.2010.

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

6. PW-1, Rajesh Verma deposed that he received a call on his mobile No. 98168 17918 of Virender Chauhan, inspector Vigilance, posted at Shimla. He asked him to accompany him to the farm house at Pulvahal. He met Insp. Virender Chauhan near his residence at 6:30 AM. Inspector Virender Chauhan was accompanied by Ram Kumar. They were only two persons. They took him towards Pulvahal. When they were proceeding near Naura Khad, 5- 6 kilometers behind Pulvahal, 6-7 persons were standing there at one spot by keeping 2-3 bags on the ground near them. It was about 10:00 AM. Insp. Virender Chauhan and Ram Kumar had a conversation regarding charas with those 6-7 persons. They remained in conversation for about 15-20 minutes. He

remained at some distance by the side of a vehicle. The vehicle belonged to Insp. Virender Chauhan bearing registration No. HP-14-1020. Those persons suspected Insp. Virender Chauhan and Ram Kumar as police officials. They all fled away. In the meantime, Inder Singh accused alongwith Baldev Singh came from the side of Pulvahal proceeding towards Naura Khad. After some time, a Bolero vehicle occupied by the police officials in civil dress also came from the Pulvahal side towards Naura Khad. There were 5-6 police officials in the vehicle. When accused Inder Singh was apprehended, he was not having anything with him. He was not carrying any bag with him. Thereafter, they were brought to Neripul. He was declared hostile and cross-examined by the learned Public Prosecutor. In his cross-examination, he deposed that he did not state to the police that on 1.11.2009 at about 11:30 AM, he was coming in his own Santro Car from Chaila via Neripul to Solan. (Confronted with portion A to A of his statement Mark A under Section 161 of the Code of Criminal Procedure, in which it is so recorded). He denied that at about 11:30 AM when he was proceeding in the said car about 200 meters behind a curve, the police had parked their jeep and they were also standing there. (Confronted with portion B to B of his statement Mark A under Section 161 of the Code of Criminal Procedure, in which it is so recorded). He also denied that one person was standing there who on the asking of the police disclosed his name as Inder Singh son of Het Ram resident of Village *Gatadi*, Tehsil and Police Station Sirmaur, H.P. nor he stated so to the police. (Confronted with portion C to C of his statement Mark A under Section 161 of the Code of Criminal Procedure, in which it is so recorded). He also denied that the said person, Inder Singh was carrying one blue coloured Airbag on his right shoulder and was carrying an empty cement bag of white and green colour which was giving smell of charas not he stated so to the police. (Confronted with portion D to D of his statement Mark A under Section 161 of the Code of Criminal Procedure, in which it is so recorded). He also denied that the police asked Inder Singh in his presence in writing that the said bags were giving smell of charas, hence, as to whether, he wanted to give the search of the said bags to a Magistrate or a Gazetted Officer or to the police, upon which, the accused opted to give the search to the police nor he stated so. (Confronted with portion E to E of his statement Mark A under Section 161 of the Code of Criminal Procedure, in which it is so recorded). He also denied that the police in his presence and in the presence of Insp. Virender Chauhan searched the blue coloured Air bag being carried by Inder Singh upon which charas in the shape of balls and sticks was found nor he stated so to the police. (Confronted with portion F to F of his statement Mark A under Section 161 of the Code of Criminal Procedure, in which it is so recorded). A suggestion was put to him by the Public Prosecutor to which he deposed that the charas was weighed and found to be 1.100 Kgs. He also admitted that two samples of 50 grams each were taken out from the recovered charas. He has admitted his signatures on memo Ext. PW-1/A. He signed the memo after reading its contents. However, according to him, he refused to sign the memo but was forced by the police to sign the same. He has admitted his signatures on Ext. PW-1/C. According to him, except two bags Ext. P-2 and P-6, there was no bag on the spot. He had not seen the gunny bag Ext. P-4 on the spot and saw the same for the first time in the Court. He was cross-examined by the learned defence counsel. In his cross-examination, he admitted that accused Inder Singh was not among those 6-7 persons who were present at Naura Khad. The accused alongwith Baldev were apprehended by the police on the basis of suspicion that they might be the associates of those 6-7 persons. The police officials asked him to sign the papers as they wanted to make out a false case against the accused because those 6-7 persons had ran away from the spot. He was also told that in case he did not sign the papers, it will be difficult for them

to explain their position. There was habitation by the side of Naura Khad and Neripul. He never owned any car nor does he know driving. According to him, 6-7 persons had left the charas and other articles on the spot which were taken into possession by the police. He also admitted that accused was falsely implicated by Insp. Virender Chauhan in this case. He also admitted that he has nothing to do with the contraband in question. He also admitted that once he had appeared as a witness in case titled State Versus Satish Kumar in the Court at Solan.

7. PW-2 Insp. Narata Ram, was posted as Inspector/Investigating Officer, SV & ACB, Shimla. On 1.11.2009, he was working as Station House Officer of the Police Station. At about 6:00 PM, HHC Mohinder Singh brought *rukka* Ext. PW-2/A and handed over the same to him on the basis of which he got the FIR Ext. PW-2/B registered in the Police Station. At 9:00 PM, Insp. Ram Kumar handed over to him two sample parcels having marks S-1 and S-2 and third parcel containing charas. One bag having scale and weights and a gunny bag containing scale and weights, alongwith NCB Forms in triplicate and samples of seal. He resealed the five parcels by putting two seal impressions of seal 'T' on each. He filled in column No. 9 of the NCB forms Ext. PW-2/D and signed the same. He also issued separate certificate regarding resealing of the case property vide Ext. PW-2/E. After resealing the case property, he directly handed over the same to MHC Ashok Kumar Police SV & ACB, Shimla and not to Inspector Ram Kumar. When he resealed the case property, FIR number had not been written on the said parcels. He handed over the case property to MHC at 9:05 PM. The certificate Ext. PW-2/E was not in his hand writing. Similarly, entry in the NCB forms in column No. 9 regarding resealing of the case property was not in his hand. All the columns of NCB forms Ext. PW-2/D are in the hand writing of Insp. Ram Kumar. He did not emboss the seal of seal 'T' on NCB forms. NCB form only bears his signature and address. He did not deposit the NCB forms Ext.PW-2/D with MHC of Police Station but handed over the same to Inspector Ram Kumar.

8. PW-3 HC Ashok Kumar deposed that on 1.11.2009, HHC Mahinder Singh brought *rukka* Ext. PW-2/A in the Police Station on the basis of which FIR Ext. PW-2/B was registered. He was sent back with the case file at 6:50 PM to the spot. At 9:00 PM, Insp. Ram Kumar came and handed over the case property to Narata Ram. PW-2 Narata Ram resealed the case property and handed over to him one sealed parcel marked as P-1 allegedly containing 7 kg. of charas, two sample parcels allegedly containing 50 gms. of charas in each marked as S-I and S-II, a parcel marked as P-2 allegedly containing scale and weights, 5th parcel marked as P-3 allegedly containing scale and weights alongwith samples of seals 'T' and 'H' and NCB forms in triplicate. On 4.11.2009, he handed over three parcels mark P-1, S-I and S-II to LHC Balvinder vide RC No. 47/09, to hand over the same in FSL, Junga. NCB forms were deposited with him. Seals 'T' and 'H' were not deposited with him. Volunteered that samples of seals 'T' and 'H' were deposited with him. However, he has admitted that no entries regarding NCB forms in triplicate have been made in the Malkhana Register against Sr. No. 10/2009. No entry regarding resealing of parcel marked as P-1 at Sr. No. 1 has been made. The entries of the parcels having been resealed have not been made by him in the Malkhana Register.

9. Statements of PW-4 HHC Babu Ram and PW-5 HC Ramesh Chand are formal in nature.

10. PW-6 Const. Yog Raj was the driver of the vehicle No. HP-07A-0680. According to him, when they reached near place called Naina, just near Neripul, one person carrying bag was walking by the side of the road. He was holding gunny bag in his hand. He was stopped. The police started talking with that person. He attempted to run away from the spot. Thereafter, he was asked to park the vehicle on the side of the road and he parked the vehicle. He kept sitting in the vehicle and the police officials carried out the proceedings. In his cross-examination, he has categorically deposed that nothing was recovered from the bag in his presence from the accused. He could not narrate the name of the person who was carrying the bag. According to him, all the police officials left for Shimla in his vehicle. They reached Shimla at about 8:30/9:00 PM. HHC Mahinder Singh was with them at the time of departure. He came back with them in the same vehicle alongwith other police officials.

11. PW-7 Insp. Virender Chauhan, deposed the manner in which the accused was apprehended, searched, seizure and sampling process was completed. In his cross-examination, he admitted that he was acquainted with Sunil Dutt, husband of the sister of accused Inder.

12. PW-8 HHC Mahinder Singh, was also member of the team. He deposed the manner in which the accused was apprehended, searched, seizure and sampling process was completed. He proceeded from the spot and handed over the *rukka* at Police Station at 6:00 PM to MHC Ashok Kumar, on the basis of which FIR was registered. He intimated about the registration of FIR and its number to Inspector Ram Kumar telephonically. He did not go back to the spot. He telephoned from the Police Station at about 6:30 AM. He also admitted that Const. Yog Raj, driver remained present on the spot. He remained present when the proceedings were being conducted. He did not know how many persons have come back to the Police Station in the government vehicle.

13. PW-9, HC Man Singh was also member of the team. He deposed the manner in which the accused was apprehended, searched, seizure and sampling process was completed.

14. PW-10 Insp. Ram Kumar is the Investigating Officer. He also deposed the manner in which the accused was apprehended, searched, seizure and sampling process was completed. According to him, he prepared *rukka* on the spot. He handed over the same to HHC Mahinder Singh for registration of the FIR. NCB forms Ext. PW-2/D in triplicate were filled on the spot. He signed the same. He prepared the spot map. He came to the Police Station. He handed over the case property and custody of the accused to SHO Narata Ram. SHO Narata Ram resealed the three parcels containing charas by putting two seal impressions of seal 'T' on each of the parcels. Narata Ram got filled in column No. 9 from him and put his own signatures on the NCB form Ext. PW-2/D. He was made to fill in columns since he was busy in sealing the case property. He also handed over to him resealing certificate Ext. PW-2/E. Thereafter, the case property was deposited with MHC of PS vide *rapat* No. 10 Ext. P-10/D. In his cross-examination, he reiterated that no column of NCB forms was in the handwriting of Narata Ram. No seal had been embossed on the NCB forms by Insp. Narata Ram, however, he has embossed his own seal 'H' on the same. NCB forms Ext. PW-2/D was deposited in the Malkhana. The entry of deposit of NCB forms was not made in the Malkhana register. Volunteered that the entries were not made of the documents. Sample of seal 'T' was not deposited by Insp. Narata Ram in the Malkhana in his presence. He also admitted that FIR number was scribed on the parcels when the case property was handed over to Insp. Narata Ram. The FIR number was written by

him on the parcels in the Police Station at Shimla though the FIR number had been disclosed to him by HHC Mohinder Singh on telephone. He could not explain as to why inspite of receipt of telephone on the spot, he did not write the same on the case property.

15. PW-11 HHC Balwinder Singh has carried out the contraband to FSL, Junga.

16. PW-12 Kapil Sharma, has proved Ext. PX, FSL report.

17. According to the case of the prosecution, the accused was apprehended with the contraband on 1.11.2009 at about 11:30 AM. The *rukka* Ext. PW-2/A was prepared on the spot. PW-10 Insp. Ram Kumar has handed over the *rukka* to PW-8 HHC Mahinder Singh to be carried to the Police Station Shimla at 2:00 PM. PW-8 HHC Mahinder Singh deposed that he handed over the *rukka* at Police Station SV & ACB, Shimla at 6:00 PM to MHC Ashok Kumar, on the basis of which FIR was registered. PW-3 HC Ashok Kumar also deposed that on 1.11.2009 HHC Mahinder Singh brought *rukka* Ext. PW-2/A in the Police Station, on the basis of which FIR was registered. He was sent back with the case file at 6:50 PM to the spot. PW-2 Narata Ram deposed that HC Mahinder Singh has brought the *rukka* at 6:00 PM i.e. PW-2/A. He got the FIR Ext. PW-2/B registered. PW-6 Const. Yog Raj who was the official driver of vehicle No. HP-07A-0680, deposed categorically that HHC Mahinder Singh was with them at the time of departure from the spot. PW-8 HHC Mahinder Singh also came back with them in the same vehicle alongwith other police officials. In his examination-in-chief, he has admitted that all of them had remained on the spot since 11:30 AM till evening. They had reached Shimla at 8:30 PM. According to PW-3 HC Ashok Kumar, *rukka* was received and HHC Mahinder Singh was sent back with the case file at 6:00 PM to the spot. PW-8 HHC Mahinder Singh has categorically deposed in his examination-in-chief that he did not go back to the spot as there was no arrangement of conveyance. It casts serious doubt whether PW-8 HHC Mahinder Singh had carried *rukka* Ext. PW-2/A to Police Station at Shimla or not. According to PW-6 Const. Yog Raj, all of them came back at 8:30 PM, thus, the version of the prosecution that *rukka* was brought by PW-8 HHC Mahinder Singh at 6:00 PM is belied.

18. According to PW-10 Insp. Ram Kumar, he had handed over the case file and custody of the accused to the SHO Narata Ram. SHO Narata Ram resealed the three parcels containing charas by putting two impressions of seal 'T' on each of the parcels. SHO Narata Ram, got filled in column No. 9 of the NCB forms and put his signatures on it. The reason assigned for not filling column No.9 is that he was busy in resealing the case property. In his examination-in-chief, he admitted that column No. 9 of NCB forms Ext. PW-2/D was not in his hand writing. He also admitted that no seal was embossed on NCB forms by him. He also admitted that all the NCB forms had been handed over to Insp. Ram Kumar and not deposited with MHC. He did not deposit seal 'T' with MHC or any other police officials. He remained in the Police Station till 9:05 PM. Inspector Ram Kumar came to him at 9:00 PM only. We have gone through the Malkhana Register Ext. PW-3/A. There is no entry of NCB forms in the same at Sr. No. 10. We have also gone through NCB forms Ext. PW-2/D. According to PW-2 Narata Ram, he has put two seal impressions of seal 'T' on the samples. There is no impression of seal 'T' in NCB forms. The NCB forms Ext. PW-2/D are filled in the handwriting of one person.

19. We have also gone through FSL report Ext. PX. According to the report Ext. PX, three sealed cloth parcels marked as P-1, S-I and S-II, each parcel bearing nine seals of 'H' and resealed with two seals of 'T' were received.

The seals were found intact and tallied with specimen seals sent by the forwarding authority on the form NCB-1. Since there is no specimen seal put on NCB forms, how the same could be tallied by the FSL. The impression of seal 'T' could be tallied if it was embossed on NCB forms. It, however, dents the case of the prosecution. Rather, PW-2 Narata Ram in his cross-examination has admitted that he has not embossed the seal of seal impression 'T' on NCB forms. NCB forms were only signed by him. PW-3 HC Ashok Kumar has admitted in his cross-examination that there was no entry regarding NCB forms in triplicate in the Malkhana Register against Sr. No. 10/2009. No entry regarding resealing of parcel marked as P-1 at Sr. No. 1 has been made. The entries of the parcels having been resealed have not been made by him in the Malkhana Register. The prosecution has also not explained who has made endorsement Mark-A in Ext. PW-3/A, Malkhana Register. We have also gone through the Road Certificate Ext. PW-3/B in which there is no mentioning of NCB forms.

20. According to PW-8 HHC Mahinder Singh, he had informed PW-10 Insp. Ram Kumar of the FIR number on telephone and despite that FIR number was not written in the parcel. PW-2 Narata Ram in his cross-examination has admitted that when he resealed the case property, the FIR number was not written on the parcels. PW-10 Insp. Ram Kumar also admitted that FIR number was scribed on the parcels when the case property was handed over to Insp. Narata Ram. FIR number was written by him at Police Station at Shimla. He admitted that the FIR number was disclosed to MHC Mahinder Singh on telephone. He could not explain in his cross-examination as to why FIR number disclosed to him on telephone was not embossed on the case property.

21. The case of the prosecution has not been supported by PW-1 Rajesh Verma. According to him, he was requested by PW-7 Insp. Virender Chauhan to accompany him to farmhouse at Pulvahal. He accompanied him. The car belonged to PW-7 Insp. Virender Chauhan. The registration number of the Car was HP-14-1020. He was declared hostile. Surprisingly, a suggestion was put to him that charas recovered was 1.100 kgms though according to the prosecution, it weighed 7.100 kgms. The case of the prosecution is that all the official witnesses went to the spot in an official vehicle. However, PW-1 Rajesh Verma has deposed that he was called by PW-7 Insp. Virender Chauhan and he alongwith Insp. Virender Chauhan and PW-10 Raj Kumar travelled in Santro Car owned by PW-7 Insp. Virender Chauhan.

22. PW-6 Const. Yog Raj, was driver of the official vehicle. He was present on the spot. In his cross-examination, he has admitted that nothing was recovered from the bags in his presence from the accused. He could not tell even the name of the accused. PW-8 HHC Mahinder Singh has also admitted in his cross-examination that PW-6 Const. Yog Raj driver of the vehicle remained present on the spot. He remained present when the proceedings were conducted. The official witness of the prosecution has not supported the case of the prosecution. PW-1 Rajesh Verma, appears to be a stock witness. He also appeared in NDPS case for prosecution titled as State versus Satish Kumar. It also pertained to NDPS.

23. Thus, the prosecution has failed to prove that the contraband was recovered from the exclusive and conscious possession of the accused. There are major contradictions, improvements, discrepancies and infirmities in the statements of the witnesses, as noticed by us hereinabove.

24. Accordingly, the appeal is allowed. The judgment of conviction and sentence dated 21.12.2010 rendered by the learned Sessions Judge (Special Judge), Shimla, H.P., in NDPS case No. 32-S-7 of 2009 is set aside. The accused

is acquitted of the charges framed under Section 20 of the ND & PS Act, 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.

25. 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 MANSOOR AHMAD MIR, C. J.

Kamla Sharma ...Appellant.
Vs.
M/s Bharat Tour & Travels Pvt. Ltd. and others. ...Respondents.

FAO No.389 of 2007
Reserved on : 28.11.2014.
Pronounced on: December 5, 2014.

Motor Vehicle Act, 1988- Section 166- Deceased, riding a motorcycle, was hit by a bus due to which he died on the spot- Tribunal considered the income of the deceased as Rs. 4,000/- per month and determined the loss of dependency as Rs. 2,200/- per month- held, that claimant had specifically pleaded that deceased was pursuing agriculture/horticulture vocation and this evidence was not rebutted- therefore, income of the deceased could not have been less than Rs. 6,000/- per month – 50% of the income was deducted towards the personal expenses- thus, loss of the dependency would be Rs. 3,000/- per month- age of the claimant was to be taken into consideration to determine the multiplier- therefore, multiplier of 12 was proper- Tribunal had held that deceased had contributed to the negligence and had deducted 30% amount, which was not correct- therefore, amount of Rs. 4,32,000/- was awarded along with interest at the rate of 7.5% per annum. (Para-12 to 22)

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

Saraladevi & Ors. vs. Divisional Manager, M/s. Royal Sundaram Alliance Ins. Co. Ltd. & Anr., 2014 AIR SCW 4993

For the appellant : Mr.Suneet Goel, Advocate.
For the respondents: Mr.Jeevesh Sharma, Advocate, for respondent No.1.
Mr.J.S. Bagga, Advovcate, for respondent No.3.
Nemo for respondent No.2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice:

Appellant-claimant has invoked the jurisdiction of this Court in terms of mandate of Section 173 of the Motor Vehicles Act, 1988, (for short, the

Act), by the medium of this appeal, and sought enhancement of compensation awarded by the Motor Accident Claims Tribunal (II), Shimla, (for short, the Tribunal), in MAC Petition No.14-S/2 of 2004, titled Kamla Sharma vs. M/s Bhart Tour & Travels Pvt. Ltd. and others, vide award, dated 26th June, 2006, whereby compensation to the tune of Rs.2,28,760/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till its realization, stands awarded in favour of the appellant-claimant and against insurer, (for short, the impugned award).

2. Facts of the case, in brief, are that the claimant, being mother of deceased Joginder Sharma, filed Claim Petition before the Tribunal, for grant of compensation on the ground that on 3.12.2003, said Joginder Sharma, while riding on a motorcycle, a bus bearing registration No.DL-IPA-7798, being driven by its driver, namely, Mohd. Salim, rashly and negligently, came from opposite side, hit the motorcycle and crushed the said Joginder Sharma resulting into his death on the spot, hence the Claim Petition for grant of compensation to the tune of Rs.20.00 lacs, as per the break-ups given in the Claim Petition.

3. Respondents filed replies and resisted the Claim Petition on various grounds.

4. On the pleadings of the parties, the following issues were settled by the Tribunal:

> *"1. Whether Joginder Sharma died in a motor accident caused by rash and negligent driving of a bus (No.DL-IPA) by respondent 2, Mohd. Salim near IGMC, Shimla on December, 3, 2003?OPP*
>
> *2. Whether the petitioner is entitled to compensation. If so, to what amount? OPP*
>
> *3. Whether the driver of the bus in question was not having a valid and effective driving licence at the time of accident? OPR-3*
>
> *4. Whether the bus in question was being driven in violation of the terms and conditions of the insurance policy? OPR-3*
>
> *5. Whether the deceased also contributed to the accident. If so, to what extent?*
>
> *6. Relief."*

5. The Claimant, in order to prove her case, examined four witnesses, while the driver of the offending bus also stepped into the witness box as RW-1.

6. The Claimant while appearing as PW-1 stated that the deceased Joginder was growing vegetables and had also owned an apple orchard. PW-2 Vidya Sagar stated that the deceased was cultivating cabbage and was also having an orchard of 400 to 500 apple plants and was earning about Rs.2.00 lacs to 2.5 lacs per annum from the apple produce and about Rs.1.5 lacs to 2.00 lacs per annum by selling vegetables.

7. The Tribunal, after scanning the entire evidence, assessed the income of the deceased as Rs.4,000/- per month and after making deduction, it was held that the claimant lost source of dependency to the tune of Rs.2,200/- per month. The Tribunal, while keeping in view of the age of the deceased and the age of the claimant-mother, applied the multiplier of 12. Thus, the Tribunal held the claimant entitled to Rs.3,26,800/-, including Rs.10,000/- awarded under the head 'loss of expectation of life, pains and sufferings'. However, it was held that since the deceased was also responsible for the accident to the extent

of 30%, therefore, the claimant was entitled to 70% of the total assessed compensation, i.e. Rs.2,28,760/-. Feeling aggrieved and dissatisfied, the claimant has filed the present appeal.

8. The insurer, the insured/owner and the driver have not questioned the impugned award on any ground, thus, the same has attained finality so far as it relates to them.

9. The core question involved in the present appeal is – Whether the amount of compensation is adequate or otherwise?

10. I have heard the learned counsel for the parties and have gone through the record of the case.

11. During the course of hearing, Mr.Suneet Goel, learned counsel for the appellant, argued that the Tribunal has fallen in error in assessing the income of the deceased as Rs.4,000/- per month. It was further submitted that the deceased was earning Rs.15,000/- per month, as pleaded in the Claim Petition, at the time of his death, from agriculture and horticulture vocations. The learned counsel further submitted that the Tribunal has applied the multiplier keeping in view the age of the deceased and the claimant-mother, while the multiplier was to be applied keeping in view the age of the deceased. Thus, the impugned award suffers from grave illegality and is liable to be set aside and the compensation deserves to be enhanced accordingly.

12. Admittedly, the deceased was a young boy of the age of 20 years at the time of accident and was a student. He would have got married after 2-3 years and would have his own family. The claimant has specifically pleaded in the Claim Petition that the deceased was also pursuing agriculture/horticulture vocation simultaneously and has also led evidence to that effect, as discussed hereinabove, which evidence of the claimant has remained un-rebutted. Therefore, it can safely be concluded that the deceased would have been earning not less than Rs.6,000/- per month.

13. The Apex Court dilated on the issue of granting compensation, in cases where the deceased is survived by parents and held that 50% of the total income would be treated as personal and living expenses of the bachelor and the remaining 50% has to be treated as contribution towards family, 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.** It is apt to reproduce paragraph 32 of the said decision hereunder:

> *"32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

14. In view of the dictum of the Apex Court in Sarla Verma's case (supra), it can safely be held that the claimant-mother has lost source of dependency to the tune of 50% of the total income, which the deceased would have been earning at the time of his death. Accordingly, it is held that the claimant-mother lost source of dependency to the tune of Rs.3,000/- per month.

15. The second argument of the learned counsel for the appellant that only the age of the deceased was to be taken into consideration while applying multiplier is devoid of any force for the simple reason that it is well settled that while assessing compensation, the age of the deceased and that of the victim has to be taken into consideration, in view of the decision of the Apex Court in Sarla Verma's case (supra), which position was restated by the Apex Court in its latest decision in **Civil Appeal Nos.8131-8132 of 2014, titled Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr., decided on 25th September, 2014.** Following observations are relevant and are being reproduced hereunder:

> *"……………Therefore, we have no doubt in ascertaining the future income of the deceased at Rs.25,000/- p.m. i.e. Rs.3,00,000/- p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co.Ltd. v. Deo Patodi and Ors., and applying the appropriate multiplier of 13, keeping in mind the age of the parent of the deceased, as per the guidelines laid down in Sarla Verma case (supra), we arrive at a total loss of dependency at Rs.26,00,000/- [(Rs.3,00,000/- minus 1/3 X Rs.3,00,000) X 13]."* Emphasis supplied.

16. Thus, the Tribunal has rightly applied the multiplier of 12 keeping in view the age of the deceased and of the claimant-appellant.

17. The learned counsel for the appellant has also argued that the Tribunal has awarded Rs.10,000/- under the head 'loss of expectation of life, pains and sufferings', which is quite meager and needs to be enhanced keeping in view the age of the deceased. It is also submitted that the claimant is also entitled for compensation to the tune of Rs.1.00 lac under the heads 'loss of estate' and 'loss of love and affection' and since the Tribunal has not awarded any amount under these heads, the impugned award deserves to be modified accordingly.

18. While dealing with the above argument of the learned counsel for the appellant, a reference may be made to the latest decision of the Apex Court in **Saraladevi & Ors. vs. Divisional Manager, M/s. Royal Sundaram Alliance Ins. Co. Ltd. & Anr., 2014 AIR SCW 4993.** Paragraph 14 is relevant and is being reproduced below:

"*14. In the result, the impugned judgment and order of the High Court is liable to be set aside and accordingly set aside and the Award of the Tribunal is affirmed. Therefore, the appellants shall be entitled to compensation under the following heads:*

Loss of Dependency	*Rs.36,58,248/-*
Funeral Expenses	*Rs. 5,000/-*
Loss of love and affection	*Rs. 50,000/-*
Loss of estate	*Rs. 10,000/-*
Loss of consortium	*Rs. 10,000/-*
Total:	*Rs.37,33,248/-*

Thus, the total compensation payable to the appellants/claimants will be Rs.37,33,248/- with interest @7.5% per annum from the date of filing of the application till the date of payment. The apportionment of the compensation in favour of the appellants is as per the Award of the Tribunal."

19. Accordingly, I deem it proper to award Rs.10,000/- each under both the heads i.e. 'loss of estate' and 'loss of love and affection'.

20. A perusal of the impugned award shows that the Tribunal has held that the deceased also contributed to the accident to the extent of 30% and, therefore, deducted 30% amount from the amount of compensation assessed under the head 'loss of source of dependency', which findings of the Tribunal are not sustainable. The driver of the offending bus appeared in the witness box as RW-1 and stated that on the fateful day, he was driving the offending bus and was proceeding towards Sanjauli side. He further deposed that all of a sudden, the deceased came on the motorcycle at a very high speed and struck with the bus, which was stationery at the relevant point of time. No independent evidence has been led by the respondents in support of the statement of the driver of the bus. In the absence of any independent evidence, it is not understandable from where the Tribunal came to the conclusion that the accident was the outcome of contributory negligence on the part of the deceased and the driver of the offending bus. The findings of the Tribunal are based on the contents contained in the FIR, which have not been properly appreciated by the Tribunal. I have gone through the FIR, wherein it has been clearly recorded that the accident had occurred due to the negligence of the driver of the offending bus. Therefore, it is held that the accident was the outcome of rash and negligent driving of the driver of the offending bus. Accordingly, the findings recorded by the Tribunal on Issue No.1 are set aside and the said Issue is answered in favour of the claimant-appellant and against the respondents.

21. In view of the above discussion, the impugned award is modified and the appellant-claimant is held entitled to compensation as under:

Loss of source of dependency: Rs.3000x 12x12 =	Rs.4,32,000/-
Loss of estate:	Rs.10,000/-
Loss of love and affection:	Rs.10,000/-
Total:	Rs.4,52,000/-.

22. The compensation amount shall carry interest at the rate of 7.5% per annum from the date of the Claim Petition till realization. The insurer is directed to deposit the enhanced amount within a period of six weeks from today and on deposit, the Registry is directed to release the same in favour of the appellant-claimant, strictly in terms of the impugned award.

23. The impugned award is modified, as indicated above and the appeal is disposed of accordingly.

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

National Insurance Company Ltd. ...Appellant.
VERSUS
Nirmala Devi and Ors. ...Respondents.

FAO No.485 of 2007
Decided on: December 5, 2014.

Motor Vehicle Act, 1988- Section 149- MACT held that respondent No. 2 was driving the vehicle- Insurance Company had failed to prove that driver did not possess a valid and effective driving license- copy of driving license showed that driver possessed the licence to drive the vehicle –

therefore, insured had not committed any breach- Insurer was rightly held liable. (Para-13)

Motor Vehicle Act, 1988- Section 166- Age of the deceased was 50 years at the time of accident- Tribunal had applied the multiplier of 11- held, that multiplier of 9 should have been applied. (Para-14)

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.Ashwani K. Sharma, Advocate.
For the respondents:	Mr. Ajay Chandel, Advocate, for respondents No.1 to 4. Nemo for respondents No.5 and 6.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral):

Challenge in this appeal is to the award, dated 18th August, 2007, passed by the Motor Accident Claims Tribunal, Fast Track Court, Kangra at Dharamshala, H.P. (for short, the Tribunal), in MAC Petition No.80-J/II/05/01, titled Nirmala Devi and and others vs. Suresh Kumar and others, whereby compensation to the tune of Rs.4,73,000/- alongwith interest at the rate of 9.5% per annum from the date of filing of the petition till its realization, stands awarded in favour of claimant No.1 and against the insurer, (for short, the impugned award).

2. On the last date of hearing, the parties were directed to seek instructions for settling the matter. The learned counsel for the appellant-insurer, on instructions, stated that the insurer is ready to settle the matter in case the claimants are ready to accept Rs.4.00 lacs, in lump sum, as compensation. The learned counsel for the claimant stated that he is under instruction to contest the appeal.

3. Heard learned counsel for the parties.

Brief facts:

4. Claimants have sought compensation to the tune of Rs.6.00 lacs, as per the break-ups given in the Claim Petition, on the grounds which may be enumerated as under.

5. On 12th October, 2000, driver, namely, Sanjay Kumar, had driven Maruti Van bearing registration No.HP-54-3663 rashly and negligently and caused the accident at Dina Nagar (Parmanand), District Gurdaspur, Punjab, as a result of which deceased Ghungar Ram, who was traveling in the said Van, sustained injuries, was taken to Hospital and succumbed to the injuries. The claimants have claimed that the deceased was 50 years of age at the time of accident and was earning Rs.5,000/- by working as mason and Rs.1,000/- from agriculture vocation, hence the Claim Petition.

6. Respondents resisted the claim petition and filed replies. It was pleaded that the age of the deceased was 65 years at the time of accident.

7 On the pleadings of the parties, the following issues were framed by the Tribunal:

1. Whether the deceased Ghungar Ram died in an accident which took place on 12.10.2000 at about 1.15 P.M. near Parmanand Distt. Gurdaspur (Punjab) while he was traveling in Maruti Van No.HP-54-3663 from Amritsar to his village Kardyal as a member of the marriage party which was owned by respondent No.1 and driven in rash and negligent manner by respondent No.2, as alleged? OPP.
2. If issue No.1 is proved in the affirmative, whether the petitioners being the L.Rs. of the deceased are entitled to claim compensation, if so, to what extent and from whom? OPP.
3. Whether the petition is bad for non-joinder of necessary parties, as alleged? OPR-1.
4. Whether the petition is not maintainable against the respondent? OPR-1.
5. Whether the respondent No.2 was not driving a Maruti Van involved in the accident, as alleged? OPR-2.
6. Whether the respondent No.2 was not holding a valid and effective driving licence and the vehicle was driven in violation of the terms and condition of the insurance policy? OPR-1.
7. Whether the petitioners are not the L.Rs. of deceased? OPR.
8. Relief.

8. Parties led their evidence in support of their respective claim.

9. The Claimants have proved by leading evidence that the driver, namely, Sanjay Kumar had driven the offending Van rashly and negligently on the fateful day and has caused the accident, in which the deceased sustained injuries and later on succumbed to the same. Therefore, the findings on issue No.1, recorded by the Tribunal, are upheld, which otherwise also are not disputed.

10. Before I deal with issue No.2, I deem it proper to deal with issues No.3 to 7.

11. Respondents have not led any evidence to prove issues No.3, 4 and 7. Accordingly, the findings returned on these issues are upheld. Moreover, the learned counsel for the appellant has also not questioned the findings recorded on the said issues.

12 Coming to issue No.5, the learned counsel for the appellant argued that the driver was not having a valid and effective driving licence to drive the offending vehicle. Thus, it was submitted that the Tribunal has committed an error in saddling the insurer with the liability. The vehicle was driven by Sanjay Kumar, as per the record and the evidence led by the parties. Respondent No.2 i.e. the driver of the offending vehicle, namely, Sanjay Kumar, has failed to prove that he was not driving the vehicle at the relevant point of time. The Tribunal, after discussing all the evidence, held that respondent No.2

Sanjay Kumar had driven the offending vehicle at the time of accident and caused the accident. Thus, findings returned on issue No.5 are also upheld.

13 As far as issue No.6 is concerned, it was for the insurer to plead and prove that the driver was not having the valid and effecting driving licence, has not led any evidence to that effect. Ext.R-1, copy of the driving licence, is on the record, which does disclose that the driver was having licence to drive the vehicle. Onus to prove this issue was on the insurer, which has not been discharged by it. The Tribunal has rightly come to the conclusion that respondent No.2, driver, was having the licence and thus, the owner/insured has not committed any breach. Therefore, the findings returned on this issue are liable to be upheld and are upheld accordingly.

Issue No.2:

14 The claimants pleaded that the income of the deceased was Rs.6,000/- per month and was 50 years of age at the time of accident. The learned counsel for the claimants argued that the age of the deceased was less than 50 years, while the learned counsel for the insurer argued that there is material on the record to show that the age of the deceased was 65 years at the time of accident. Even if, I take the age of the deceased as 50 years, as given in the Claim Petition, the multiplier applicable was 9 and the Tribunal has fallen in error in applying the multiplier of 11, while keeping in view Schedule 2 appended with the Motor Vehicles Act read with the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,** which decision was also upheld by the larger Bench of the Apex Court in **Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 3120.** Therefore, it is held that multiplier of 9 is applicable in the present case.

15 The claimants before the Tribunal were four in number, but the Tribunal after scanning the evidence held that only Claimant No.1 i.e. the widow of the deceased was the dependant and held entitled her to compensation. The compensation was not awarded in favour of the daughters and son. The daughters and the son, i.e. Claimants No.2 to 4 have not questioned the impugned award by the medium of any appeal or cross objections.

16 Thus, the only question is what is the loss of dependency to the widow. The Tribunal has wrongly assessed the income of the deceased as Rs.5,000/- per month. The claimants have specifically pleaded in the Claim Petition that the deceased was earning Rs.6,000/- per month by working as mason and from agriculture vocation and has also led evidence to that effect. Applying the ratio laid down in **Sarla Verma's case supra**, it can safely be held that the deceased would have spent at least $1/3^{rd}$ towards his personal expenses, meaning thereby that the claimant has lost source of dependency to the tune of Rs.4,000/- per month. Thus, the claimant is entitled to Rs.4,000 x 12 x 9 = Rs.4,32,000/-.

17 The rate of interest awarded by the Tribunal is 9.5% per annum, which is on the higher side. Therefore, the same is reduced to 7.5% per annum.

18 Having said so, compensation to the tune of Rs.4,32,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization stands awarded in favour of the widow i.e. Claimant No.1 Nirmala Devi.

19 The impugned award stands modified, as indicated above. The Registry is directed to release the compensation amount in favour of the claimant, strictly in terms of the conditions contained in the impugned award and the excess amount, if any, alongwith up-to-date interest, be released in favour of the insurer through payees account cheque.

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

Oriental Insurance Company Ltd. ...Appellant.
VERSUS
Asha Devi Gosain and Ors. ...Respondents.

FAO No.480 of 2007
Decided on: December 5, 2014.

Motor Vehicle Act, 1988- Section 149- Driver possessed a license to drive the light motor vehicle – he was driving a Taxi at the time of accident- held, that driver having a valid light motor vehicle licence is not required to have endorsement of PSV i.e. public service vehicle- therefore, it cannot be said that driver did not possess a valid driving licence at the time of accident. (Para- 9 to 12)

Motor Vehicle Act, 1988- Section 166- Age of the deceased was 42 years at the time of accident- Tribunal had multiplied 15- held, that multiplier of 13 would be applicable. (Para-14)

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.Ashwani K. Sharma, Advocate.

For the respondents: Mr.Sanjay Bhardwaj, Advocate, vice Mr.J.L. Bhardwaj, Advocate, for respondents No.1 to 5.
Mr.Romesh Verma, Advocate, for respondents No.6 and 7.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice (Oral):

Insurer-appellant has questioned the award, dated 29th August, 2007, passed by the Motor Accident Claims Tribunal, Fast Track Court, Solan, H.P. (for short, the Tribunal), in MAC Petition No.33FTC/2 of 2005/06, titled Asha Devi Gosain and others vs. Deepa and others, whereby compensation to the tune of Rs.9,60,000/- alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till its realization, was awarded in favour of the claimants (respondents No.1 to 5 herein) and against the insurer, (for short, the impugned award).

2. The claimants, five in number, filed a Claim Petition for grant of compensation to the tune of Rs.30.00 lacs, as per the break-ups given in the Claim Petition.

3. Respondents i.e. the insurer, the insured/owner and the driver appeared and resisted the Claim Petition and have filed replies. On the pleadings of the parties, the following issues came to be framed:

1. Whether the deceased had died in the accident caused by the taxi No.HP-01-S-0250 on account of rash/negligent driving by respondent No.2? OPP.
2. If issued No.1 is proved in affirmative, to what amount of compensation, the petitioners are entitled and from whom? OPP
3. Relief.

4. Claimants have examined Padam Dev, Padam Singh, Vinod Rana and Ishwar Dutt, as PW-1, PW-3, PW-4 and PW-5, respectively, while claimant Asha Devi appeared in the witness box as PW-2, in support of the assertions made in the Claim Petition.

5. On the other hand, respondents No.1 and 2 i.e. the owner and the driver examined Kamal Kishore as RW-1, while the insurer examined Bal Krishan Thakur, Junior Assistant, RLA, Solan as RW-2.

6. The claimants, the insured/owner and the driver have not questioned the impugned award, thus, the same has attained finality so far as it relates to them.

7. The insurer has questioned the impugned award on the ground that the compensation awarded by the Tribunal is on the higher side; and that the insured has committed breach.

8. The insurer has not questioned the findings recorded by the Tribunal on issue No.1. However, I have gone through the record and am of the considered view that the claimants have proved, by leading evidence, that the driver had driven the vehicle i.e. taxi No.HP-01-S-0250 rashly and negligently on 5th June, 2005 near Mangoti Mor, Dharampur and has caused the accident in which the deceased, namely, Jagjit Singh sustained injuries and succumbed to the same. Thus, the findings recorded on Issue No.1 are upheld.

9. Admittedly, the driver was having the driving licence to drive Light Motor Vehicles and the offending vehicle was a taxi. The documents i.e. route permit, registration certificate and the statement of RW-2 Bal Krishan Thakur, Junior Assistant, from the office of Registering and Licencing Authority, Solan, do disclose that the taxi/offending vehicle is a Light Motor Vehicle.

10. The learned counsel for the insurer argued that since the driving licence of the driver does not bear endorsement, therefore, the driver was not competent to drive the offending vehicle, is devoid of any force for the following reasons.

11. This Court in series of cases i.e. FAO No.320 of 2008, titled Dalip Kumar and another vs. New India Assurance Company Ltd. & another, decided on 6th June, 2014, FAO No.306 of 2012, titled Prem Singh and others vs. Dev Raj and others, decided on 18th July, 2014 and FAO No.54 of 2012, titled Mahesh Kumar and antoher vs. Smt.Priaro Devi and Others, decided on 25th July, 2014, has discussed the issue and held that the driver having driving

licence to drive Light Motor Vehicle is not required to have endorsement of "PSV" i.e. public service vehicle.

12. The Apex Court in latest decision in Civil Appeal Nos.9929-30 of 2014, titled Kulwant Singh & Ors. vs. Oriental Insurance Company Ltd., decided on 28th October, 2014, has held that the driver of Light Motor Vehicle is not required to have endorsement to drive Commercial Vehicle. It is apt to reproduce paragraphs No.10 and 11 hereunder:

> *"10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed :*
>
> *"18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No.1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside."*
>
> *No contrary view has been brought to our notice.*
>
> *11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights."*

13. Having said so, the argument of the learned counsel for the appellant is turned down and the findings returned by the Tribunal are upheld.

14. Admittedly, the age of the deceased is given as 42 years in the Claim Petition. As per schedule 2 appended with the Motor Vehicles Act, 1988 and as also as per the ratio laid down by the Apex Court in **Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,** which decision was also upheld by the larger Bench of the Apex Court in **Reshma Kumari and others vs. Madan Mohan and another, 2013 AIR (SCW) 3120,** multiplier 13 was applicable. Thus, the Tribunal has fallen in error in applying the multiplier 15.

15. The claimants have pleaded that the deceased was running a Canteen and was earning Rs.20,000/- per month. The Tribunal, after scanning the evidence and the documents Exts.PW4/A to PW-4/C, held that the net income of the deceased was not less than Rs.7,600/- per month and after making deductions towards his personal expenses, held that the claimants lost source of dependency to the tune of Rs.4,800/- per month, which appears to be just and appropriate, thus is upheld.

16. Accordingly, it is held that the Claimants are entitled to compensation to Rs.4800 x 12 x 13 = Rs.7,48,800/-. In addition to it, the Claimants are also held entitled to Rs.10,000/- each under the heads 'loss of estate', 'loss of love and affection' and 'loss of consortium'. The above amount of compensation i.e. Rs.7,78,000/-, (Rs.7,48,000 + Rs.30,000/-), shall carry

interest at the rate of 7.5% per annum from the date of the Claim Petition till realization.

17. Appeal is allowed and the impugned award stands modified, as indicated above. The Registry is directed to release the compensation amount in favour of the claimants, strictly in terms of the conditions contained in the impugned award and the excess amount, if any, alongwith up-to-date interest, be released in favour of the insurer through payees account cheque.

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

Ms. Pooja Pathania ……Petitioner.
Versus
State of H.P. & ors. …….Respondents.

CWP No. 7055 of 2014.
Decided on: 5.12.2014.

Constitution of India, 1950- Article 226- Brother of the petitioner was missing since 30.1.2013- FIR was registered for the commission of offences punishable under Sections 364 and 365 IPC at Police Station Sarkaghat, Distt. Mandi- I.O recorded the statements of 56 witnesses but could not find the brother of the complainant- held, that police had failed to trace out the brother of the petitioner- investigation should be conducted promptly – therefore, in these circumstances, CBI was directed to carry out the investigation within a period of three months and thereafter to put up the challan before the Court in accordance with law. (Para- 3 to 12)

Cases referred:

Central Bureau of Investigation though S.P. Jaipur versus State of Rajasthan and another, (2001) 3 SCC 333

Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others versus Sahngoo Ram Arya and another, (2002) 5 SCC 521

Sakiri Vasu versus State of Uttar Pradesh and others, (2008) 2 SCC 409

Bhavesh Jayanti Lakhani versus State of Maharashtra and others (2009) 9 SCC 551

Central Bureau of Investigation and another versus Rajesh Gandhi and another, AIR 1997 SC 93

Seethalakshmi versus State of Tamil Nadu and others, 1991 Cri. L.J. 1037

Nirmal Singh Kahlon versus State of Punjab and others, (2009) 1 SCC 441

Rubabbuddin Sheikh versus State of Gujarat and others, (2010) 2 SCC 200

State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal and others, (2010) 3 SCC 571

For the petitioner: Mr. Parshotam Chaudhary, Advocate.

For the respondents: Mr. Shrawan Dogra, AG with Mr. M.A. Khan, Addl. AG, Mr. Anup Rattan, Addl. AG and Mr. Ramesh Thakur, Asstt. AG for respondents-State.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J. (oral)

The petitioner's brother is missing since 30.1.2013. FIR No. 41 of 2013 dated 7.2.2013 under Sections 364 and 365 IPC was registered at Police Station Sarkaghat, Distt. Mandi, H.P. against unknown persons. The Investigating Officer has recorded the statements of 5 witnesses, interrogated 56 persons and searched the missing/kidnapped person in several States. The investigation of the case has been entrusted to the State Criminal Investigation Department by the order of Director General of Police, Himachal Pradesh. The investigation was carried out by Sh. Manohar Lal (HPS), Dy. Superintendent of Police, CID Unit, Mandi.

2. The FIR was registered on 7.2.2013 and by now, all out efforts should have been made to trace out the brother of the petitioner. The investigation must be carried out promptly in order to nab the culprits. The valuable evidence is lost if the investigation is not prompt. Mr. Parshotam Chaudhary, Advocate, submits that the investigation being tardy, may be handed over to the Central Bureau of Investigation. Mr. Ashok Sharma, learned Asstt. Solicitor General of India, has no objection to the same.

3. Their Lordships of the Hon'ble Supreme Court in ***Central Bureau of Investigation though S.P. Jaipur versus State of Rajasthan and another***, (2001) 3 SCC 333 have held that the powers of the High Court under Article 226 of the Constitution of India or the Supreme Court under Article 32 or Article 142 (1) of the Constitution can be invoked, though sparingly, for giving such direction to Central Bureau of Investigation in certain cases. Their Lordships have held as under:

> **"14. True, powers of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to the CBI to investigate in certain cases, [vide Kashmeri Devi vs. Delhi Administration and anr. {1988 (Supple.) SCC 482} and Maniyeri Madhavan vs. Sub-Inspector of Police and ors. {1994 (1) SCC 536}]. A two Judge Bench of this Court has by an order dated 10.3.1989, referred the question whether the High Court can order the CBI to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf under Section 6 of the Delhi Act.**
>
> **15. In Mohammed Anis vs. Union of India and ors. {1994 Supple (1) SCC 145} Ahmadi, J. (as his Lordship then was) has observed thus (SCC pp. 148-49, para 6):**
>
> **"6. True it is, that a Division Bench of this Court made an order on March 10, 1989 referring the question whether a court can order the CBI, an establishment under the Delhi Special Police Establishment Act, to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf. In our view, merely because the issue is referred to a larger Bench everything does not grind to a halt. The reference to the expression court in that order cannot in the context mean the Apex Court for the reason that the Apex Court has been conferred extraordinary powers by**

Article 142(1) of the Constitution so that it can do complete justice in any cause or matter pending before it.

16. As the present discussion is restricted to the question whether a magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation."

4. Their Lordships of the Hon'ble Supreme Court in ***Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others versus Sahngoo Ram Arya and another***, (2002) 5 SCC 521 have held that the High Court under Article 226 of the Constitution of India can direct an inquiry by the Central Bureau of Investigation against a person only if the High Court after considering the material on record comes to a conclusion that such material does discloses a prima facie calling for an investigation by Central Bureau of Investigation or any other similar agency. Their Lordships have held as under:

"5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (supra). This Court in the said judgment at paragraph 174 of the report has held thus : (SCC p.750, para 174)

"The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

6.It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law- abiding citizen. Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case

established to direct an inquiry has proceeded on the basis of 'ifs' and 'buts' and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause."

5. The same principles have been reiterated by their Lordships of the Hon'ble Supreme Court in ***Sakiri Vasu versus State of Uttar Pradesh and others***, (2008) 2 SCC 409. Their Lordships have held as under:

"33. In Secretary, Minor Irrigation & Rural Engineering Services U.P. and others vs. Sahngoo Ram Arya and another 2002 (5) SCC 521 (vide para 6) , this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation."

6. Their Lordships of the Hon'ble Supreme Court in ***Bhavesh Jayanti Lakhani versus State of Maharashtra and others*** (2009) 9 SCC 551 have reiterated that superior courts have power to issue direction to Central Bureau of Investigation to investigate a matter. Their Lordships have held as under:

"99. We are not concerned, as it is not necessary for us to determine, whether a direction for making investigation by CBI by the superior courts of the country is permissible. As the law stands, we place on record such directions by the superior courts are permissible."

7. Their Lordships of the Hon'ble Supreme Court in ***Central Bureau of Investigation and another versus Rajesh Gandhi and another***, AIR 1997 SC 93 have held that if the investigation of the local police is not satisfactory, further investigation is not precluded. Their Lordships have held as under:

"8. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. The notification dated 2.6.1994 is issued by the Government of Bihar (Police Department) by which in exercise of powers under Section 6 of the Delhi Special Police Establishment Act, 1946, Governor of Bihar was pleased to consent and extend the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar in connection with investigation of the concerned Police Station, on case No.159 of 9.3.1993 in the District of Dhanbad, under Sections 457, 436, 427, 201 and 120-B, Indian Penal Code and conspiracy arising out of the same and any other offence committed in course of the same. The notification of 26.10.1994 is issued by the Government of India, Ministry of Personnel in exercise of the powers conferred by sub-section (l) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 whereby the Central Government with the consent of the State

Government of Bihar in their notification dated 2.6.1994 extended the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of offences under Section 457, 436, 427/120-8 and 201 I.P.C. and Section 4 of the Prevention Of Damages to Public Property Act, 1984 registered at Dhanbad Police Station, Dhansar, Bihar in their case No.159 dated 9.3.1933 and any other offences, attempts, abetment and conspiracy in relation to or in connection with the said offence committed in the course of the same transactions or arising out of the same fact or facts in relation to the said case. There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police had not been satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, the C.B.I. has been directed to further investigate the offences registered under the said F.I.R. with the consent of the State Government and in accordance with law. Under Section 173 (8) of the Cr.P.C. 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate."

8. The investigation should be fair, cautious and effective. The learned Single Judge of Madras High Court in ***Seethalakshmi versus State of Tamil Nadu and others***, 1991 Cri. L.J. 1037 has succinctly explained the manner in which the investigation is required to be carried out as under:

"(i) proceedings to the spot; (ii) ascertainment of facts and the circumstances of the case, (iii) discovery and arrest of the suspected offender; (iv) collection of evidence relating to the commission of the offence which may consist of (a) examination of various persons including the accused and the reduction of their statements in writing, if the officer thinks fit, (b) search of places and seizure of things considered necessary for investigation and to be produced at the trial, and (v) formation of opinion as to whether on the material collected there is a case to place the accused before a Magistrate for a trial and if so taking the necessary steps for the same by filing charge sheet under S. 173(1) of the Code. The object of the investigation being to collect evidence, the investigating officer has to do all things necessary which he considers relevant and material without committing breach of the mandatory provisions of the Code of Civil Procedure. The investigating police are primarily the guardians of the liberty of innocent persons and a heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication. It is of the utmost importance that people entrusted with the investigation must be scrupulously honest and efficient, otherwise cases both of innocent persons being wrongly convicted and of really guilty

persons being wrongly let off are likely to occur. It is the duty of the investigation officer to discover the truth and make a relentless pursuit for the truth. Investigation cannot be merely mechanical, and it must be an intelligent one. The police in conducting the investigation must act in such a way as to inspire fully confidence in everybody concerned. If upon the completion of the investigation it appears to the police officer that there is no sufficient evidence or reasonable ground , if he may decide to release the suspected accused, if in custody. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he shall take necessary steps therefore u/S. 170 of the Code. In either case, on the completion of the investigation, he has to submit a report to the Magistrate u/S. 173 of the Code in the prescribed form furnishing such details. Thus, the procedure prescribed by the Code enjoins the Police Officer to file a report before the concerned Magistrate and also inform the complainant even if the police officer comes to the conclusion that no case has been made out on the materials collected by him."

9. Their Lordships of the Hon'ble Supreme Court in ***Nirmal Singh Kahlon versus State of Punjab and others***, (2009) 1 SCC 441 have held that fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India, but the State has a larger obligation, i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. Their Lordships have held as under:

"28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a central agency which has acquired specialization in such cases."

10. Their Lordships of the Hon'ble Supreme Court in ***Rubabbuddin Sheikh versus State of Gujarat and others***, (2010) 2 SCC 200 have held that the case can be transferred to C.B.I. for investigation even if the State Police had completed the investigation and charge-sheet had been submitted. Their Lordships have further held that in an appropriate case, the court is empowered to hand over investigation to an independent agency like CBI. Their Lordships have held as under:

"53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which High Police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced

and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility, however, faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI authorities would be an appropriate authority to investigate the case.

56. In Kashmeri Devi vs. Delhi Administration, (supra), this court held that in a case where the police had not acted fairly and in fact acted in partisan manner to shield real culprits, it would be proper and interest of justice will be served if such investigation is handed over to the CBI authorities or an independent agency for proper investigation of the case. In this case, taking into consideration the grave allegations made against the high police officials of the State in respect of which some of them have already been in custody, we feel it proper and appropriate and in the interest of justice even at this stage, that is, when the charge sheet has already been submitted, the investigation shall be transferred to the CBI Authorities for proper and thorough investigation of the case.

57. In Kashmeri Devi (supra), this Court also observed as follows: -

"Since according to the respondent charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers under Section 173(8) Cr. P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge sheet, if any, in accordance with law."

60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr.Rohatgi learned senior counsel appearing for the state of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the

> **charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.”**

11. Their Lordships of the Hon'ble Supreme Court in ***State of West Bengal and others versus Committee for Protection of Democratic Rights, West Bengal and others***, (2010) 3 SCC 571 have held that in so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. Their Lordships have further held that this extraordinary power must be exercised sparingly, cautiously and in exception situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Their Lordships have held as under:

> **“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.**
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> **71. In Secretary, Minor Irrigation & Rural Engineering Services, U.P. & Ors. Vs. Sahngoo Ram Arya & Anr.31, this Court had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency. We respectfully concur with these observations.”**

12. Accordingly, the Writ Petition is disposed of and the investigation of FIR No. 41 of 2013 dated 7.2.2013 is directed to be carried out by the Central Bureau of Investigation. Sh. Manohar Lal (HPS), Dy. Superintendent of Police, CID Unit, Mandi, is directed to hand over the entire case file to the Superintendent of Police, Central Bureau of Investigation, Shimla, within a week. The investigation in the matter shall be carried out by the Central Bureau

of Investigation, within a period of three months and thereafter challan shall be put up in accordance with law.

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

Raju. …Appellant.
Vs.
State of Himachal Pradesh …Respondent.

Cr.A. No. 247/2011
Reserved on: 4.12.2014
Decided on: 5.12. 2014

N.D.P.S. Act, 1985- Section 20- Petitioner was occupying seat no. 36 in a bus- search of bus was conducted on which the accused was found in possession of 5.5 k.g of charas - there were contradictions in the testimonies of the prosecution witnesses regarding the location of the bag and the number of police officials who had boarded the bus- police officials had straight away gone to Seat No. 36 which showed that they had prior knowledge that the person occupying seat No. 36 had contraband- held, that in these circumstances, the compliance of Section 42 of N.D.P.S. Act was mandatory- since, there was non-compliance of Section 42, hence, accused acquitted. (Para-20 and 21)

Cases referred:
Karnail Singh vs. State of Haryana, (2009) 8 SCC 539
Sukhdev Singh vs. State of Haryana, (2013) 2 SCC 212

For the appellant: Ms. Charu Gupta, Advocate.
For the Respondent: Mr. M.A. Khan, Addl. A.G. with Mr. P.M. Negi, Dy. A.G. and Mr. Ramesh Thakur, Asstt. A.G.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, Judge.

This appeal is instituted against the judgment dated 21.5.2011 rendered by the Special Judge, Mandi in Sessions Trial No. 16 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 section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been convicted and sentenced to undergo rigorous imprisonment for a period of 15 years and to pay a fine of Rs. 1,50,000/- and in default of payment of fine, he was further ordered to undergo simple imprisonment for a period of two years.

2. Case of the prosecution, in a nutshell, is that PW-10 Girdhari Lal, Inspector Madan Lal, HHC Ram Lal and HHC Ranvir were present at Naresh Chowk Sundernagar on 23.12.2009 in official vehicle. The vehicle was being driven by Constable Rakesh Kumar. Punjab Roadways bus bearing registration No. PB-12K-4306 came from Manali side. It was going towards Chandigarh. It

was signalled to stop. There were 20 passengers in the bus. The person occupying seat No.36 became perplex on seeing the police. He revealed his name as Raju. He was holding a black colour bag in his lap. Witnesses Subhash Chand and Hoshiar Singh were associated. Police party gave its search to the accused. Inspector Madan Lal told the accused that he has a legal right to be searched before Magistrate or gazetted officer. Accused consented to be searched by the police. Memo Ex.PW-1/A was prepared. Search of the accused was undertaken. Cannabis was found kept in two packets inside the bag. Ticket Ex.PW-10/A was also recovered from the accused. It was attested by the conductor. Constable Rakesh Kumar was sent to bring weight and scales. He brought the same. On weighing the contraband was found to be 5 kg 500 grams. The bag was sealed in a parcel with ten impressions of seal 'N. NCB-1 from Ex.PW-12/C was filled in triplicate. Sample seal was taken on separate pieces of cloths and one such seal is Ex.PW-11/B. Seal impression was also taken on NCB-1 form. The Seal was handed over to Subhash after use. Seizure memo Ex.PW-1/C was prepared. Rukka Ex.PW-12/A was prepared. It was sent to Police Station through Constable Rakesh Kumar for registration of case. It was handed over to Durga Dass. He recorded FIR Ex.PW-5/A. The contraband was sent to F.S.L., Junga. The report of F.S.L. Ex.PW-11/A was received. 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 14 witnesses in all to prove its case against the accused. Statement of accused under Section 313 Cr.P.C. was recorded. He has denied the case of the prosecution in entirety. Learned trial Court convicted and sentenced the accused, as noticed hereinabove.

4. Ms. Charu Gupta, learned counsel for the accused has vehemently argued that the prosecution has 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 meticulously.

7. PW-1 Subhash Sharma has deposed that on 23.12.2009, he was travelling in the Punjab Roadways bus bearing registration No.PB-12-4306 from Manali to Sundernagar. He was occupying the last seat of the bus. When the bus reached at Naresh Chowk at about 12 noon, police boarded the bus. The person, who was occupying seat No.36, got frightened on seeing the police. He could not identify him in the court. Police made inquiry from him. He revealed his identity. A bag of black colour was lying beneath the seat of that person. Police inquired from him whether he wanted to be searched by the police or by some higher officer. He consented to be searched by the police vide memo Ex.PW-1/A. Police and witnesses gave their search to the accused. Search of accused was conducted. Two packets were recovered from the bag which was lying beneath his seat. Passengers stated that they were in hurry. Packets were checked before sending the bus. The packets were found to be containing black colour substance. The accused and bag were taken out of the bus. The substance was weighed. On weighing it was found to be 5 kg 500 grams. It was put in the bag from which it was recovered. Bag was sealed in a parcel with seal 'N'. The bus ticket was recovered from the accused. Memo was prepared. It was signed by him, Hoshiar Singh, Girdhari Lal and accused. Sample seal Ex.PW-1/D was prepared. The seal was handed over to him after its use. He identified his signatures on Ex.PW-1/E and Ex.PW-1/F. He has reiterated in his

examination-in-chief that accused was sitting alone on seat No.36. In his cross-examination, he has deposed that he alone got down at Sundernagar. Three police officials boarded the bus from the front door and three from the rear door. Hoshiar Singh was sitting in his shop. Police had not made inquiry from any person prior to arrival at seat No.36. The bag was kept in the aisle adjacent to seat No.36. Police had not made any inquiry about the ownership of the bag. Other luggage was also lying in the aisle. The search was conducted inside the bus by the S.H.O. Other police officials were also inside the bus.

8. PW-2 Hoshiar Singh has deposed that he was associated by the police on 23.12.2009 as a witness. He was called inside the bus. He went inside the bus. Accused was occupying seat No. 36. He was perplexed. He was holding a black colour bag in his lap. Police made inquiry from him. He revealed his identity. Bag was checked. It was found to be containing two yellow colour packets. Packets were opened. These were found to be containing charas Ex.P-5. Accused was also found in possession of ticket. Charas was weighed. It was 5 kg 500 grams. The bag was put in a cloth and the parcel was sealed with 10 seal of seal 'N'. Sample seal was taken separately on a piece of cloth and one such impression was Ex.PW-1/D. In his cross-examination, he has deposed that 5-6 police officials were on the spot. Two police officials remained outside and four went inside the bus. He was not aware about the name of the persons from whom inquiry was made by the police inside the bus. He was not aware whether an inquiry was made from the passengers or not. He was present in his shop outside the bus. Police called him. Police had already seized the bag by that time and had discovered what was lying inside the bag. The investigation was conducted outside his shop. Police had not read over and explained his statement to him. He put his signatures on the asking of the police at the places mentioned.

9. PW-3 Rakesh Kumar has deposed that constable Rakesh Kumar came to him and demanded weights and scale on 23.12.2009 at about 12-12.30 P.M.

10. Statement of PW-4 Constable Hari Singh is formal in nature.

11. PW-5 HC Durga Dass has deposed that rukka mark 'C' was written by SI/SHO Madan Lal. It was sent to Police Station through Constable Rakesh Kumar. He recorded FIR Ex.PW-5/A. One parcel sealed with ten impressions of seal 'N', sample seal, NCB-1 form were deposited with him by SI/SHO Madan Lal on the same day. He made entry in the register of Malkhana at Sr. No. 113. He handed over the articles to constable Beas Dev on 24.12.2009 vide RC No.166/09 with a direction to carry the same to F.S.L. Junga. RC is Ex.PW-5/C.

12. Statements of PW-6 Raj Kumar and PW-7 HC Ram Lal are formal in nature.

13. PW-8 Constable Beas Dev has deposed that on 24.12.2009 MHC Durga Dass handed over to him one parcel sealed with ten impressions of seal 'N', NCB-1 form, sample seal 'N' and other documents with a direction to carry the same to F.S.L. Junga vide RC No. 116/09. He deposited the articles at F.S.L. Junga in safe condition.

14. Statement of PW-9 Meera is formal in nature.

15. PW-10 Girdhari Lal has deposed the manner in which police party boarded the bus and the accused was apprehended, sampling and seizure process was completed on the spot and the rukka was prepared. It was sent to

Police Station through Constable Rakesh Kumar. In his cross-examination, he has deposed that he and SHO Madan boarded the bus. He did not remember whether seat No.36 was in row of two seats or three seats. They went directly to the accused as he got frightened. SHO Madan made inquiry from the accused.

16. Statement of PW-11 SHO Trilok Chand is formal in nature.

17. PW-12 Inspector Madan Lal has deposed the manner in which accused was apprehended from the bus, his consent was obtained, sampling and seizure process was completed on the spot, charas was weighed, rukka Ex.PW-12/E was prepared and handed over to constable Rakesh Kumar with a direction to carry it to the Police Station for registration of FIR. Rakesh Kumar brought the case file to the spot. The case property was handed over to MHC. He prepared the special report. In his cross-examination, he has deposed that he checked many vehicles prior to the checking of bus, but he did not remember the details. All the police officials were checking the passengers. He did not remember which police official had checked which passenger. He checked the accused. When he was checking the accused, other police officials were checking other passengers. He did not remember which seat was occupied by Subhash. He did not remember whether he was occupying seat in the row of two seats or three seats.

18. PW-13 Constable Rakesh Kumar has taken the rukka to Police Station and brought the file back. In his cross-examination, he has deposed that all the police officials boarded the bus. SHO and HC Girdhari boarded the bus from the front door and other police officials boarded the bus from the rear door. He was in the middle. He checked 2-3 passengers. The accused was occupying the row of three seats. He was alone. He did not remember the number of seats occupied by witnesses Subhash and Hoshiar Singh.

19. PW-14 Mohan Singh was the conductor of the bus. He has deposed that accused was occupying seat No.36. He had kept a bag in his lap. The bag was checked. It contained two yellow colour polythene bags. In his cross-examination, he has deposed that he was occupying seat No.1 when police stopped the bus. 2-3 police officials entered inside the bus. Two persons boarded the bus from front door and one boarded the bus from rear door. No other persons boarded the bus. All the passengers were checked. All the police officials were checking the passengers together.

20. According to PW-1 Subhash Sharma, accused was occupying seat No.36. A hand bag of black colour was lying under the seat of that person. He has denied the suggestion that accused was holding the bag in his lap. In his cross-examination by the defence counsel, he has deposed that the bag was kept in the aisle adjacent to seat No.36. Police has not made any inquiry about the ownership of the bag. PW-2 Hoshiar Singh has deposed that accused was holding a black colour bag in his lap. PW-10 Girdhari Lal has deposed that accused was occupying seat No. 36. He was holding a black colour bag in his lap. PW-13 Rakesh Kumar has deposed that accused had kept the bag in his lap. PW-14 has deposed that accused was occupying seat No.36. He had kept a bag in his lap. There is variance in the statements of PW-1 Subhash Sharma vis-à-vis official witnesses. According to PW-1 Subhash Sharma, the bag was lying under the seat. He has also deposed that the bag was kept in the aisle adjacent to seat No.36 and the police had not made any inquiry about the ownership of the bag. Other luggage was also lying in the aisle and the police had not made inquiry about the ownership of the luggage. PW-2 Hoshiar Singh was not aware about the names of the persons from whom the inquiry was made by the police inside the bus. He was not aware whether any inquiry was made

from the passengers or not. According to PW-12 Madan Lal all the police officials were checking other passengers. However, he did not remember, which police official has checked which passenger. When he was checking the accused, other police officials were checking other passengers. He did not remember which seat was occupied by PW-1 Subhash Sharma. PW-13 Rakesh Kumar has deposed that he has not made inquiry about the names and addresses checked by him. They were not having any luggage. He did not remember the number of seat occupied by PW-1 Subhash Sharma. According to PW-1 Subhash Sharma, six officials had boarded the bus. Three police officials boarded the bus from the front door and three boarded the bus from the rear door. PW-2 Hoshiar Singh has deposed that two police officials remained outside and four went inside the bus. PW-12 Madan Lal has deposed that all the police officials boarded the bus. PW-10 Girdhari Lal has deposed that he and SHO Madan boarded the bus. PW-13 Rakesh Kumar has admitted that SHO and HC Girdhari boarded the bus from the front door and the others police personnel boarded the bus from the rear door. There is contradiction in the statements of these witnesses how many police personnel had boarded the bus. Police has not examined any other passenger sitting in the bus near seat No.36. PW-1 Subhash Sharma was occupying the last seat. In his cross-examination, PW-1 Subhash Sharma, as noticed above, has deposed that the bag was lying under the seat and in his cross-examination; he has deposed that the bag was in the aisle adjacent to seat No.36. It was necessary for the police to make inquiry from other passengers with regard to bag lying in the aisle or under the seat. Contraband lying under the seat or in the aisle could belong to other passengers also.

21. There is overwhelming evidence on record to point out that all the police personnel had straightway gone to seat No.36. The explanation given by the prosecution is that the moment they entered the bus, person occupying seat No.36 got perplexed. There were 20 passengers sitting in the bus. The police could only reach seat No.36 straightway if it had a prior knowledge that person occupying seat No.36 was carrying contraband. If the police had the prior information that a person occupying seat No.36 was carrying contraband, compliance of section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was mandatory. Admittedly, section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has not been complied with. [*See:* ***Karnail Singh*** vs. ***State of Haryana**,* (2009) 8 SCC 539 *and* **Sukhdev Singh** vs. ***State of Haryana**,* (2013) 2 SCC 212]. Thus, the prosecution has failed to prove the recovery of contraband from the exclusive and conscious possession of the accused.

22. Consequently, in view of analysis and discussion made hereinabove, the prosecution has failed to prove the case for offence under section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 beyond reasonable doubt against the accused.

23. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 21.5.2011 rendered in Sessions Trial No. 16 of 2010 is set aside. Accused is acquitted of the charge framed against him by giving him benefit of doubt. Fine amount, if already deposited, be refunded to the accused. Since the accused is in jail, he be released forthwith, if not required in any other case.

23. 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 MANSOOR AHMAD MIR, C.J.

Ramesh Chand Khurana ...Appellant.
Versus
Oriental Insurance Company & another ...Respondents.

FAO No. 328 of 2007
Decided on: 05.12.2014

Motor Vehicle Act, 1988- Section 149- Injured was travelling in the vehicle at the time of accident – Insured contended that injured was travelling in the capacity of conductor/cleaner- he was covered under insurance policy- Insurer argued that deceased was travelling as a gratuitous passenger – copy of the application filed by injured before Commissioner under Workmen Compensation Act and copy of the judgment of the Workman Compensation Commissioner showed that the injured had contended that he was a workman which plea was turned down by Commissioner- an application was preferred which was disposed of with liberty to approach the Motor Accident Claimant Tribunal- the findings recorded by Workmen Compensation Commissioner had attained finality- therefore, it was not permissible for the claimant to say that he was travelling as cleaner/conductor- MACT had also held that no goods were found near the place of the accident- therefore, insured was rightly held liable. (Para-17 to 20)

For the appellant:	Mr. Dalip K. Sharma, Advocate.
For the respondents:	Mr. G.C. Gupta, Senior Advocate, with Ms. Meera Devi, Advocate, for respondent No. 1. Mr. Karan Singh Kanwar, Advocate, for respondent No. 2.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Challenge in this appeal is to the award, dated 1st May, 2007, made by the Motor Accident Claims Tribunal, Solan, H.P.(hereinafter referred to as "the Tribunal") in MAC Petition No. 168-S/2 of 2005, titled as Shri Rajinder Kumar versus Ramesh Chand Khurana and another, whereby compensation to the tune of 4,19,000/- with interest 7.5% per annum from the date of petition till deposit of the amount came to be awarded in favour of the claimant-injured (hereinafter referred to as "the impugned award").

2. The insurer and the claimant-injured have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The owner-insured-appellant has questioned the impugned award only on the ground that the Tribunal has fallen in error in fastening the liability upon him, on the grounds taken in the memo of appeal.

4. Learned counsel for the appellant argued that the offending vehicle was insured at the relevant point of time and risk of the claimant-injured, namely Shri Rajinder Kumar, who was travelling in the truck, bearing

registration No. HP-11-0442, as a conductor/ cleaner, was covered and he has not committed any breach.

5. Learned counsel for the insurer argued that the claimant-injured was not travelling in the vehicle as a conductor/cleaner or the owner of the goods and the Tribunal has rightly exonerated the insurer and directed the owner-insured to satisfy the award.

6. In order to determine the issue involved, the brief facts of the case are to be noticed.

Brief facts:

7. The claimant-injured, Shri Rajinder Kumar, has averred in the claim petition that he was travelling in the truck, bearing registration No. HP-11-0442, on 4th May, 1996, which met with an accident near Village Manjyat, Tehsil Arki at about 3.35 p.m. FIR No. 23 of 1996 was registered at Police Station Arki under Sections 279, 337 and 304-A of the Indian Penal Code (hereinafter referred to as "the IPC"). He has pleaded that he was 29 years of age at the time of accident and was agriculturist by occupation. In para 10 of the claim petition, it has been averred that he was travelling in the said vehicle as owner of goods and he was also entrusted the job of conductor on the said date because the regular conductor was not available.

8. The driver of the offending vehicle also lost life in the said accident.

9. The owner-insured has filed reply and in reply to para 10 of the claim petition, stated that the offending vehicle was being managed and controlled by him and his brother. The vehicle was being plied day and night for carrying goods of Ambuja Cement Limited from one place to another. Further that Shri Rajinder Kumar and Shri Babu Ram were engaged as conductors by his brother and the claimant was travelling in the offending vehicle as a conductor at the relevant point of time. In reply to para 21 of the claim petition, it has been averred that the claim petition is not maintainable against him and has denied his liability to pay compensation.

10. The insurer has filed reply and contested the claim petition on the ground that the claimant was not engaged as a conducor and he was also not travelling in the said vehicle as owner of the goods, but as a gratuitous passenger.

11. Following issues came to be framed by the Tribunal:

> *"1. Whether the petitioner has suffered injuries on account of rash/negligent driving of the truck driver in which he was one of the occupants?...OPP*
>
> *2. If issue No. 1 is proved in affirmative, what amount of compensation the petitioner is entitled to and from whom?...OPP*
>
> *3. Whether the petitioner was travelling as gratuitous passenger in the vehicle? ...OPR-2*
>
> *4. Whether the truck was not validly registered at the time of accident?...OPR-2*

5. Whether the driver was not holding driving licence to drive the offending vehicle at the time of accident? ...OPR-2

6. Relief."

12. The claimant has examined MHC Ramesh Chand as PW-2, Shri Amar Singh as PW-3, Dr. Anil Bansal as PW-4 and has also appeared himself in the witness box as PW-1. He has also placed on record affidavit as Ext. PW-1/A; discharge slips as Ext. PW-1/B, Ext. PW-1/C & Ext. PW-1/D, copy of jamabandi as Ext. PW-1/E, copy of order of the High Court as Ext. PW-1/F, disability certificate as Mark A and prescription slips as Mark B to Mark F.

13. The owner-insured has himself appeared in the witness box as RW-2 and has placed on record affidavit as Ext. RW-2/A, copy of certificate of validity of driving licence as RW-2/B, copy of insurance policy as Ext. RW-2/C, copy of registration & fitness certificates as Mark R-1 and copy of insurance cover note as Ext. RW-2/D. The insurer has examined Shri Ram Lal, Junior Assistant from the office of SDM Arki as RW-1.

Issue No. 1:

14. The Tribunal, after scanning the evidence, oral as well as documentary, held that the driver of the offending truck had driven the vehicle rashly and negligently, caused the accident and the claimant sustained injuries. The owner-insured has also admitted the factum of accident. Accordingly, the findings returned by the Tribunal on issue No. 1 are upheld.

15. Before I deal with issues No. 2 and 3, I deem it proper to determine issues No. 4 and 5.

Issues No. 4 and 5:

16. It was for the insurer to prove that the offending vehicle was not registered and the driver was not holding valid and effective driving licence at the time of accident. Neither it has led any evidence nor there is anything on record to prove the said issues. The Tribunal, after examining the record, has rightly held that the offending vehicle was validly registered at the relevant point of time in terms of the Registration and Fitness Certificates, Mark R-1, and the driver was having the valid and effective driving licence in terms of Ext. RW-2/B. Accordingly, the findings returned on issues No. 4 and 5 are upheld.

Issue No. 3:

17. The insurer has placed on record copy of the application filed by the claimant-injured before the Commissioner under Workmen's Compensation Act, Arki, District Solan, copy of judgment of this Court in FAO No. 111 of 2001, titled as Rajinder Kumar versus Oriental Insurance Co. & anr. It appears that the claimant has first invoked the jurisdiction of the Authority under Workmen's Compensation Act and sought compensation on the ground that he was workman, which was turned down by the Commissioner under Workmen's Compensation Act at Arki vide order, dated 31st March, 2001.

18. Feeling aggrieved, the claimant filed FAO No. 111 of 2001, which was also disposed of by providing liberty to the claimant to approach the Motor Accident Claims Tribunal concerned. The findings returned by the Commissioner under Workmen's Compensation Act have attained finality, thus, how can the claimant now plead and press into service that he was a workman i.e. cleaner/conductor. The claimant had not taken the plea before the

Commissioner under Workmen's Compensation Act that he was travelling in the offending vehicle as owner of the goods, is an afterthought, just to seek compensation.

19. It is also worthwhile to mention herein that in para 4 of the claim petition, the claimant has stated that he is an agriculturist by occupation. The Tribunal, after discussing the evidence, held that no goods were found near the place of accident or in the offending vehicle. The description as to which kind of goods/articles he was carrying in the offending vehicle has not been given, not to speak of proof.

20. The Tribunal has rightly held that the claimant was not travelling in the vehicle as conductor/cleaner or owner of the goods. The record do disclose that he was travelling in the offending vehicle as a gratuitous passenger. The insurer has been able to prove and establish that the claimant was travelling in the offending vehicle as a gratuitous passenger.

21. Having said so, findings returned by the Tribunal on issue No. 3 are upheld.

Issue No. 2:

22. The quantum of compensation is not in dispute. Accordingly, the amount of compensation awarded is upheld. The risk of gratuitous passenger is not covered in terms of the insurance policy, Ext. RW-2/C, read with the mandate of Section 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act"). The Tribunal has rightly discharged the insurer and saddled the owner-insured with liability. Thus, the findings returned by the Tribunal on issue No. 2 are upheld.

23. Having glance of the above discussions, no case for interference is made out and the appeal merits to be dismissed. Accordingly, the impugned award is upheld and the appeal is dismissed.

24. The owner-insured is directed to deposit the awarded amount before the Registry within twelve weeks, if not already deposited. On deposition of the same, the Registry is directed to release the awarded amount in favour of the claimant after proper identification.

25. Send down the record after placing copy of the judgment on Tribunal's file.

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

Smt. Tejwanti ...Appellant.
Versus
Shri Ibrahim Bharti & others ...Respondents.

FAO No. 142 of 2007
Decided on: 05.12.2014

Motor Vehicle Act, 1988- Section 166- Deceased sustained injuries when he was debarking from the bus, which was started by the driver suddenly- claimant claimed that the income of the deceased was Rs. 12,000/- per month- however, no evidence was led to prove this fact- hence, by guess-work income of the deceased can be taken as

Rs.6,000/- per month- claimant had lost source of dependency to the extent of 50%, thus, loss of dependency was Rs.3,000/- per month- the multiplier of '6' is applicable- claimant is entitled to the compensation of Rs. 2,16,000/- with interest at the rate of 7.5% per annum.

(Para-11 and 12)

Cases referred:

Sarla Verma (Smt) and others versus Delhi Transport Corporation and another, (2009) 6 Supreme Court Cases 121

Reshma Kumari & Ors. versus Madan Mohan & Anr., 2013 AIR SCW 3120

For the appellant: Mr. Ravinder Thakur, Advocate.

For the respondents: Mr. Ajay Sharma with Mr. Vinod Chauhan, Advocate, for respondent No. 1.
Nemo for respondent No. 2.
Mr. Praneet Gupta, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Appellant, victim of a motor vehicular accident, by the medium of this appeal, has invoked the jurisdiction of this Court in terms of Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") and has questioned the award, dated 23rd March, 2007, made by the Motor Accident Claims Tribunal, Kullu, H.P. (hereinafter referred to as "the Tribunal") in Cl. Pet. No. 39/06, titled as Smt. Tejwanti versus Shri Ibrahim Bharti and others, whereby her claim petition came to be dismissed (hereinafter referred to as "the impugned award").

Brief facts:

2. Appellant-claimant, widow of deceased-Keshav Ram, filed a claim petition before the Tribunal for grant of compensation to the tune of Rs. 5,00,000/-, as per the break-ups given in the claim petition. It is pleaded that on 22nd December, 2005, deceased, namely Shri Keshav Ram, was travelling in the offending bus, bearing registration No. HP-34-5546, was stopped by the driver at Village Khakhnal enabling him to debark. In the process of debarking, the driver suddenly drove the vehicle. Resultantly, the deceased lost control and fell down, sustained injuries, was taken to Lady Willingdon Hospital, Manali, where he breathed last. MLC was issued. The claimant-widow had asked the police not to conduct postmortem and also asked not to conduct investigation.

3. Appellant-claimant filed claim petition for grant of compensation, was resisted by the respondents on the grounds taken in the respective memo of objections.

4. Following issues came to be framed by the Tribunal:

> *"1. Whether petitioner has received injuries on her person in the accident of bus No. HP-34-5546 due to rash and negligent driving of the said bus by respondent-2? OPP*
>
> *2. If issue-1 is held in affirmative, to what amount of compensation, the petitioner is entitled and from whom? OPP*

3. Whether respondent-2 was not holding valid and effective driving licence at the time of accident of the vehicle in question and the same was being plied without documents? OPR-3

4. Relief."

5. The claimant has examined Dr. Alka Waltar as PW-1, HC Hari Singh as PW-2, Shri Tara Chand as PW-4 and the claimant, Smt. Tejwanti, herself has appeared in the witness box as PW-3. The owner-insured and the driver have examined Shri Praveen Kumar, Clerk-cum-Typist from the office of SDJM, Chachiot at Gohar as RW-1, Shri Chetan as RW-2, the owner insured, Shri Ibrahim Bharti, himself has stepped into the witness box as RW-3 and the driver, namely Shri Mohinder Singh, has also appeared in the witness box as RW-4. The insurer has not examined any witness in support of its case.

Issue No. 1:

6. The Tribunal has held that the claimant has failed to prove the rash and negligent driving of the driver of the offending vehicle, which is factually incorrect.

7. I have gone through the record and minutely perused the evidence. PW-4, Shri Tara Chand, and the claimant have deposed that the deceased was travelling in the offending vehicle and sustained injuries due to the rash and negligent driving of the driver. They have specifically stated that the deceased sustained injuries when he was debarking from the bus, which was driven by the driver suddenly.

8. Having said so, it is held that the claimant has proved that the driver of the offending vehicle had driven the vehicle rashly and negligently resulting in the death of the deceased. Accordingly, issue No. 1 is decided in favour of the claimant and against the respondents.

9. Before I deal with issue No. 2, I deem it proper to determine issue No. 3.

Issue No. 3:

10. The insurer has not led any evidence to the effect that the driver of the offending vehicle was not having the valid and effective driving licence and the vehicle was being plied without documents. Shri Praveen Kumar, Clerk-cum-Typist from the office of SDJM Chachiot at Gohar, while appearing in the witness box as RW-1 stated that he has brought the original driving licence of the driver, namely Shri Mahinder Singh, was seized property in a case titled as State versus Mahinder Singh and after perusing the photocopy, which is on the record, stated that the said copy is true and correct, is exhibited as Ext. RW-1/A. The insurer has also failed to prove that the vehicle was being plied without documents. The Tribunal has rightly decided issue No. 3 against the insurer. Accordingly, the findings returned by the Tribunal on issue No. 3 are upheld.

Issue No. 2:

11. The claimant has pleaded that deceased was earning Rs.12,000/- per month, though, there is no such evidence on the file. It can be held, by guess work, that the deceased was earning not less than Rs.6,000/- per month as a labourer. It can be safely held that the claimant has lost source of

dependency to the extent of 50%, thus, has lost source of dependency to the tune of Rs.3,000/- per month.

12. Admittedly, the age of the deceased was 58 years at the time of accident. The multiplier of '6' is applicable in view of the ratio laid down by the Apex Court in the case titled as **Sarla Verma (Smt) and others versus Delhi Transport Corporation and another,** reported in **(2009) 6 Supreme Court Cases 121,** which was upheld by a larger Bench of the Apex Court in **Reshma Kumari & Ors. versus Madan Mohan & Anr.,** reported in **2013 AIR SCW 3120.**

13. Viewed thus, the claimant is held entitled to compensation to the tune of Rs.3,000/- x 12 x 6 = Rs. 2,16,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. The factum of insurance is not in dispute. Accordingly, the insurer is saddled with liability.

14. Having glance of the above discussion, the appeal is allowed, the impugned award is set aside, the claim petition is granted and compensation to the tune of Rs. 2,16,000/- with interest @ 7.5% per annum from the date of filing of the claim petition till its realization is awarded in favour of the claimant.

15. The insurer is directed to deposit the awarded amount before the Registry within twelve weeks. On deposition of the same, the Registry is directed to release the awarded amount in favour of the claimant after proper identification.

16. Send down the record after placing copy of the judgment on Tribunal's file. Copy dasti.

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

Dr. N.K.Joolka …. Petitioner.

Vs.

Dr. Y.S.Parmar University of Horticulture and Forestry, Nauni,

…. Respondent.

CWP No. 8262 of 2013
Date of Decision: 8.12.2014.

Constitution of India, 1950- Article 226- Petitioner was serving as Professor in the faculty of Pomolgy, now known as "the Department of Fruit Sciences"- he was selected and appointed as Director of Extension Education for a tenure of five years- he made representation for providing increment to him which was rejected- held, that post of Director of Extension Education carried higher responsibilities- the words "other than a tenure basis" in FR 22(1)(a) will not be applicable when the person is appointed to a post involving assumption of duties and responsibilities of greater importance- therefore, petition allowed and the university directed to grant benefit of the increment in accordance with FR 22(1)(a).

(Para-2)

For the petitioner: Mr. Ankush Dass Sood, Advocate.
For the respondent: Ms. Ranjana Parmar, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur, J.*(Oral):*

The petitioner was serving as Professor in the faculty of Pomolgy, now known as "the Department of Fruit Sciences". The petitioner, in pursuance to the advertisement issued by the University comprised in Annexure P-4 calling upon desirous candidates/aspirants to within the period prescribed in it apply for the post of Director of Extension Education, applied for the same. His having fulfilled all the necessary qualifications he came to be selected and consequently appointed as Director of Extension Education for a tenure of five years as evident from Annexure P-6. The petitioner made a representation to the University/respondent for an increment being provided to him. The respondent considered the representations of the petitioner and under Annexures P-10, P-13 and P-15 rejected it on the score that even if assuming that the appointment of the petitioner to the post of Director of Extension Education admittedly involved assumption of duties and responsibilities of greater importance yet uncontrovertedly and admittedly further when the pay scale as drawn by the petitioner while serving as Professor/HOD in the University/respondent and the pay scale to which he was entitled to on his being appointed as Director of Extension Education on tenure basis was at par, as such given the parity of pay scales drawn by him when serving as Professor/HOD in the University/respondent and while being subsequently under Annexure P-6 having come to be appointed as Director of Extension Education the bar envisaged in FRSR sub rule (III) of Rule 22 against the applicability of the provisions of FR 22(1)(a) inasmuch, as, where even if the aggrieved prior to his being appointed to a post involving higher duties and responsibilities has been drawing a pay scale at par or equivalent to the one afforded to him on assumption of duties and responsibilities of greater importance, stood attracted, hence the representation of the petitioner herein came to be rejected. The provisions of F.R 22(1)(a) and F.R. 22(III), are extracted here-in-after:-

> *"22(a)(1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than these attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or(rupees one hundred only), whichever is more."*
>
> *"22(III). For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of apy identical therewith."*

2. From a reading of the reply of the respondent-University it is manifestly admitted that the post of Director of Extension Education involves higher duties and responsibilities than the one which were performed by the petitioner while serving as Professor/HOD. It is also uncontroverted that the

appointment of the petitioner to the post of Director of Extension Education is on a tenure basis. Consequently, the fact of the petitioner having been appointed to the post of Director of Extension Education for a specific duration of time or on a tenure basis assumes significance in construing the impact of or applying the embargo created by the provisions of Sub Rule III of Rule 22 of FRSR against the applicability of sub rule 1(a) of Rule 22 of FRSR. The fulcrum for applying the embargo to the applicability of sub rule 1(a) of Rule 22 of FRSR as envisaged in Sub Rule III of Rule 22 of FRSR is encapsulated in the phrase "other than on a tenure basis" occurring after the contemplation therein of inapplicability of the provisions of FR22(1)(a) where the post to which a person is appointed involves assumption of duties and responsibilities of greater importance. The import of the phrase or of the words "other than a tenure basis" occurring subsequent to the phrase, for the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post is that it consequently, creates an exception to the applicability of the embargo envisaged in sub rule (III) of FR 22 to the inapplicability of FR 22(1)(a). In other words, where a person is appointed to a post carrying or involving assumption of duties and responsibilities of greater importance yet when the pay scale attached to the said post is equivalent to the pay scale drawn by the incumbent while previously serving in a capacity not involving assumption of duties and responsibilities of greater importance the embargo contemplated and created by sub rule (III) of FR 22 against the applicability of FR 22 1(a) would apply only in the event of the incumbent having not come to be appointed on a tenure basis to a post involving assumption of duties and responsibilities of greater importance. Moreover, for reiteration the rigor of the embargo engrafted in sub rule (III) of FR 22 is relieved in the event of the incumbent donning the post or assuming the post involving assumption of duties and responsibilities of greater importance on a tenure basis. Since the petitioner came to be appointed on a tenure basis to the post of Director of Extension Education besides even when both the post of Professor previously occupied by the petitioner and the post of Director of Extension Education to which he was subsequently appointed carry parity of pay scales besides even when the latter appointment/post involves assumption of duties and responsibilities of greater importance yet in the face of subsequent appointment/posting donned/assumed by the petitioner being on a tenure basis the rejection of the representation of the petitioner for reasons comprised in Annexures P-10, P-13 and P-15 is not in consonance with a correct interpretation of the provisions of sub rule (III) of Rule 22 of the FRSR to the facts of the present case. Consequently, it is ordered that respondent-university shall while applying the provisions of sub rule (1)(a) of FR 22 afford to him in accordance with it the increment as sought. No costs.

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

Dr. Rakesh Kapoor ……Petitioner.
Versus
State of H.P. & others. …….Respondents.

CWP No. 6686 of 2014.
Reserved on: 04.12.2014.
Decided on: 08.12.2014.

Constitution of India, 1950- Article 226- An FIR was registered against the petitioner for the commission of offences punishable under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988- Department initiated departmental proceedings against the petitioner- the petitioner approached the Administrative Tribunal which granted the interim stay- subsequently, petitioner was convicted by Special Judge, Kangra at Dharamshala- petitioner was removed from the service after his conviction and departmental enquiry was dropped due to severance of the relations of master and servant- conviction was set aside by Hon'ble Supreme Court of India- petitioner was reinstated and the disciplinary authority was directed to proceed further with departmental inquiry- petitioner contended that departmental inquiry had been closed and, therefore, it was not permissible to continue with the inquiry- held, that department had taken a decision on technical ground after the removal of the petitioner- Departmental inquiry will not continue since the master-servant relationship was severed after the removal of the petitioner- once petitioner has been reinstated, the employer has right to continue the departmental proceedings and it cannot be said that mere acquittal in a criminal case is a ground to drop the departmental proceedings- hence, petition dismissed. (Para- 3 to 15)

Cases referred:

South Bengal State Transport Corpn. Vrs. Sapan Kumar Mitra and ors., (2006) 2 SCC 584
Commissioner of Police, New Delhi Vrs. Narender Singh, (2006) 4 SCC 265
Suresh Pathrella Vrs. Oriental Bank of Commerce, (2006) 10 SCC 572
Union of India and others Vrs. Naman Singh Shekhawat, (2008) 4 SCC 1
State Bank of Hyderabad and another Vrs. P. Kata Rao, (2008) 15 SCC 657
Samar Bahadur Singh Vrs. State of Uttar Pradesh and others, (2011) 9 SCC 94
K. Venkateshwarlu Vrs. State of Andhra Pradesh, (2012) 8 SCC 73
Avinash Sadashiv Bhosale Vrs. Union of India and others, (2012) 13 SCC 142
Commissioner of Police, New Delhi & anr. Vrs. Mehar Singh, (2013) 7 SCC 685

For the petitioner: Mr. Dilip Sharma, Sr. Advocate, with Mr. Umesh Kanwar, Advocate.
For the respondents: Mr. M.A.Khan, Addl. Advocate General with Mr. P.M.Negi, Dy. AG and Mr. Ramesh Thakur, Asstt. AG.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

FIR No. 1 of 2003 dated 5.5.2003 was registered against the petitioner under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988 at Police Station, Anti Corruption Zone, Dharamshala. The petitioner was served with memorandums dated 24.12.2004 and 5.4.2005 vide Annexures P-1 and P-2, respectively. The petitioner filed OA(D) No. 126 of 2005 before the erstwhile H.P. Administrative Tribunal assailing the initiation of departmental proceedings against him pending criminal trial. The learned Tribunal granted interim stay on 19.5.2005. The petitioner was convicted and sentenced under Sections 7 & 13(2) of the Prevention of Corruption Act, 1988 on 16.10.2008 by the learned

Special Judge, Kangra at Dharamshala. He was sentenced to undergo two years rigorous imprisonment and to pay fine of Rs. 10,000/- and in default of payment of fine, he was ordered to undergo further simple imprisonment for six months. The petitioner was removed from service on 2.3.2010. A decision was taken vide Annexures P-5 and P-6, respectively that since master-servant relationship was severed after the removal of the petitioner, departmental proceedings were ordered to be closed. The fact of the matter is that the petitioner was acquitted by the Hon'ble Supreme Court vide judgment dated 22.11.2012. Thereafter, the petitioner was re-instated on 16.5.2013 and the order dated 2.3.2010 whereby the petitioner was removed from service was set aside and the disciplinary authority was directed to proceed further with two departmental inquiries pending before the Commissioner Departmental Enquiries against the petitioner under the provisions of the Central Civil Services (CCA) Rules, 1965. The petitioner made appeals to withdraw the departmental inquiries initiated against him. The appeals were dismissed by the competent authority vide order (Annexure R-2) dated 14.10.2013 and order dated 12.7.2014, respectively.

2. Mr. Dilip Sharma, Sr. Advocate, appearing for the petitioner has vehemently argued that once the decision has been taken vide Annexures P-5 and P-6, the departmental proceedings could not be continued on the basis of Annexure P-7 dated 16.5.2013. On the other hand, Mr. M.A.Khan, learned Addl. Advocate General, appearing on behalf of the State has strenuously argued that the departmental proceedings were closed only on a technical ground that the master-servant relationship has come to an end, after the removal of the petitioner vide order dated 2.3.2010. According to him, the departmental proceedings could continue even though the petitioner has been acquitted as per the judgment dated 22.11.2012 and there is no specific bar not to continue with the departmental proceedings. He lastly contended that the petitioner has not been acquitted honourably, but given benefit of doubt, as per the operative portion of the judgment dated 22.11.2012.

3. The petitioner, as noticed hereinabove, was convicted and sentenced by the trial Court on 16.10.2008. He was removed on 2.3.2010. He has been reinstated vide order dated 16.5.2013 after his acquittal. Now, as far as Annexures P-5 and P-6 are concerned, it is evident from the language employed therein that a technical decision was taken not to continue with the departmental proceedings since the petitioner stood removed from the service. Though the petitioner has been reinstated but the employer has absolute right to continue with the departmental proceedings which were kept in abeyance or closed only technically.

4. We have also gone through the operative portion of the judgment dated 16.10.2008. The cogent reasons have been given in Annexure P-7 dated 16.5.2013 as well as Annexure R-2 dated 14.10.2013 and Annexure P-9 dated 12.7.2014 to continue with the departmental proceedings initiated against the petitioner on 24.12.2004 and 5.4.2005.

5. Their lordships of the Hon'ble Supreme Court in the case of ***South Bengal State Transport Corpn. Vrs. Sapan Kumar Mitra and ors.,*** reported in ***(2006) 2 SCC 584,*** have rejected the contention of the petitioner that after the acquittal, the departmental proceedings could not be continued and punishment could not be inflicted. Their lordships have held as under:

> "9. We have heard the learned counsel for the parties and also examined the relevant records of this case. Although the Division Bench had not categorically said that the departmental proceeding could not be continued and punishment could not be imposed on the delinquent

employee when the criminal case ended in acquittal, even then the learned counsel for the , respondents sought to argue this ground before us. In our view, this ground is no longer res integra. In Nelson Mods v. Union of India' *[(1992) 4 SCC 711 : 1993 SCC (L&S) 13 : (1993) 23 ATC 382]* a three-Judge Bench of this Court observed at SCC p. 714, para 5, as follows:

> "5. So far the first point is concerned, namely, whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance 1 whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the (subject-matter of the criminal case." (emphasis supplied)

10. Similarly in Senior Supdt. of Post Offices v. .4. Gopalan *[(1997) 11 SCC 239 : 1998 SCC (L&S) 124]* the view expressed in Nelson Motis v. Union of India1 was fully endorsed by this Court and similarly it was held that the nature and scope of proof in a criminal case is very different from that of a departmental disciplinary proceeding and the order of acquittal in the former cannot conclude the departmental proceedings. This Court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding the standard of proof for proving the charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued. That being the position, an order of removal from service emanating from a departmental proceeding can very well be passed even after acquittal of the delinquent employee in a criminal case. In any case, the learned Single Judge as well as the Division Bench did not base their decisions relying on the proposition that after acquittal in the criminal case, departmental proceedings could not be continued and the order of removal could not be passed."

6. Their lordships of the Hon'ble Supreme Court in the case of ***Commissioner of Police, New Delhi Vrs. Narender Singh,*** reported in ***(2006) 4 SCC 265,*** have held that acquittal in criminal trial is not by itself a ground not to initiate or drop departmental proceedings. Their lordships have held as under:

> "13. It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed."

7. Their lordships of the Hon'ble Supreme Court in the case of ***Suresh Pathrella Vrs. Oriental Bank of Commerce,*** reported in ***(2006) 10 SCC 572,*** have held that acquittal in criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. The yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. Their lordships have held as under:

"11. In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

8. Their lordships of the Hon'ble Supreme Court in the case of ***Union of India and others Vrs. Naman Singh Shekhawat,*** reported in ***(2008) 4 SCC 1,*** have held that departmental proceedings could be initiated even if the acquittal is recorded by the criminal court. It could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. However, such a proceeding must be initiated bonafide and the action must be reasonable and fair. Their lordships have held as under:

"29. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair."

9. In the instant case, the petitioner has been given benefit of doubt.

10. Their lordships of the Hon'ble Supreme Court in the case of ***State Bank of Hyderabad and another Vrs. P. Kata Rao,*** reported in ***(2008) 15 SCC 657,*** have again reiterated that acquittal by itself would not debar the disciplinary authority in initiating a fresh departmental proceedings and/or where the departmental proceedings had already been initiated, to continue therewith. Their lordships have held as under:

"18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the Enquiry Officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment. There cannot, furthermore, be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/ or where the departmental proceedings had already been initiated or to continue therewith.

20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another [(1999) 3 SCC 679], however, remains unshaken although the applicability thereof had been found to be dependant on the fact situation obtaining in each case."

11. Their lordships of the Hon'ble Supreme Court in the case of ***Samar Bahadur Singh Vrs. State of Uttar Pradesh and others,*** reported in

(2011) 9 SCC 94, have held that acquittal in criminal case has no bearing or relevance to departmental proceedings as standard of proof in both cases is totally different. Their lordships have held as under:

> “2. The appellant herein was employed as a Constable in the Provincial Armed Constabulary (hereinafter referred to as 'P.A.C.') on 15.11.1978. He was posted in IV Bn. P.A.C., Allahabad. On 27.10.1991, he was unauthorisedly absent from the Battalion Headquarter and on that day in the evening he along with one of his friends grabbed one bottle of liquor from the wine shop forcibly and also threatened them. With regard to the aforesaid incident, a criminal case was also registered on the basis of a complaint filed by the salesman of the wine shop, Sh. Rajan Lal. The appellant was also medically examined during the course of which he was found to be under the influence of liquor. The Doctor has opined that he had consumed alcohol, but was not intoxicated.
>
> 6. We have considered all the aforesaid submissions in the light of the records that are available with us. The medical report which is placed on record indicates that the appellant had consumed alcohol, but he was not intoxicated. The appellant was missing from the headquarters on 27.10.1991 from the morning and he was caught in the case registered under Section 392 I.P.C. in the evening. The appellant wishes to make a defence that he was advised to take medicine but the prescription which is placed in the departmental proceedings does not indicate that any medicine was prescribed in that prescription. The appellant was arrested in the criminal case in connection with stealing of a bottle of foreign liquor and even during that time he had consumed alcohol prior to the incident. These facts have been brought out in the inquiry proceedings initiated against him in which the appellant did not participate. Therefore, whatever allegations have been brought against him, have been proved by placing cogent materials on record, which go unrebutted due to his absence in the proceedings. We also find that the appellant has been charged on the ground of negligence, deriliction of duty and consuming liquor. The aforesaid facts are found proved in the departmental proceedings.
>
> 7. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.
>
> 8. Now, the issue is whether punishment awarded to the appellant is disproportionate to the offence alleged. The appellant belongs to a disciplinary force and the members of such a force is required to maintain discipline and to act in a befitting manner in public. Instead of that, he was found under the influence of liquor and then indulged himself in an offence. Be that as it may, we are not inclined to interfere with the satisfaction arrived at by the disciplinary authority that in the present case punishment of dismissal from service is called for. The punishment awarded, in our considered opinion, cannot be said to be

shocking to our conscience and, therefore, the aforesaid punishment awarded does not call for any interference."

12. Their lordships of the Hon'ble Supreme Court in the case of ***K. Venkateshwarlu Vrs. State of Andhra Pradesh,*** reported in ***(2012) 8 SCC 73,*** have held that even in case of acquittal, when acquittal is other than honourable, departmental proceedings may follow. Their lordships have also issued directions as under:

> "13. In R.P. Kapur v. Union of India the Constitution Bench of this Court has held that if the trial of a criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, but even in case of acquittal departmental proceedings may follow, when the acquittal is other than honourable. We are not aware whether any disciplinary proceedings are pending against the appellant. But, if they are, the concerned authority shall proceed with them independently, uninfluenced by this judgment and in accordance with law."

13. Their lordships of the Hon'ble Supreme Court in the case of ***Avinash Sadashiv Bhosale Vrs. Union of India and others,*** reported in ***(2012) 13 SCC 142,*** while discussing the scope of acquittal and its effect on departmental proceedings have held that conduct of criminal trial was in hands of prosecuting agency and once FIR was registered, Bank had little or no role to play. Failure of prosecution in producing necessary evidence before trial Court can have no adverse impact on evidentiary value of material produced by Bank before enquiry officer in departmental proceedings. Their lordships have held as under:

> "57. Mr. Dwivedi, in our opinion, has rightly pointed out that the conduct of the criminal trial was in the hands of the prosecuting agency. Having registered the First Information Report, the Bank had little or no role to play, apart from rendering assistance to the prosecuting agencies. In our opinion, the failure of the prosecution in producing the necessary evidence before the trial court can not have any adverse impact on the evidentiary value of the material produced by the Bank before the Inquiry Officer in the departmental proceedings. Before the Inquiry Officer, the Bank had placed on the record all the relevant documents which clearly establish that the appellant had exceeded his discretionary powers in purchasing the cheques and issuing demand drafts to show undue favour to the three construction companies named in the charge sheet. In view of the above, the findings recorded by the Inquiry Officer can not be said to be based on no evidence.
>
> 58. It is a settled proposition of law that the findings of Inquiry Officer cannot be nullified so long as there is some relevant evidence in support of the conclusions recorded by the Inquiry Officer. In the present case, all the relevant documents were produced in the Inquiry to establish the charges levelled against the appellant. It is a matter of record that the appellant did not doubt the authenticity of the documents produced by the Bank. He merely stated that the signature on the documents were not his. The aforesaid statement of the appellant was nullified by Mr. S.M. Mahadik, who appeared as a witness for the Bank. He clearly stated that he recognized the signature of the appellant as he had been working as his subordinate.

> 59. The findings recorded by the Enquiry Officer cannot be said to be based on no evidence. In such circumstances, the appellant cannot take any advantage of the findings of innocence recorded by the criminal court. The 'clean chit' given by the learned Magistrate was influenced by the failure of the prosecution to lead the necessary evidence. No advantage of the same can be taken by the appellant in the departmental proceedings."

14. Their lordships of the Hon'ble Supreme Court in the case of ***Commissioner of Police, New Delhi & anr. Vrs. Mehar Singh,*** reported in ***(2013) 7 SCC 685,*** have held that even if the person was acquitted or discharged in a criminal case that acquittal or discharge will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to life of crime poses a threat to the society. Their lordships have explained the terms "honourable acquittal", "acquitted of blame" and "fully exonerated" and the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of government service, if found necessary, because they pollute the department. Their lordships have held as under:

> "24. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. In R.P. Kapur v. Union of India[AIR 1964 SC 787] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.
>
> 25. The expression 'honourable acquittal' was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal[(1994) 1 SCC 541], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Criminal Procedure Code or the Penal

Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted.

26. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

15. Accordingly, in view of the facts enumerated hereinabove and the definitive law laid down by the Hon'ble Supreme Court, there is no merit in this petition and the same is dismissed.

16. Pending application(s), if any, shall also stand disposed of.

****

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

Smt. Minakshi …. Petitioner.
Vs.
State of H.P and others …. Respondents.

CWP No. 9533 of 2013
Date of Decision: 8.12.2014.

Limitation Act, 1965- Section 5 – An appeal was filed before the Deputy Commissioner, Kangra which was accompanied by an application under Section 5 of Limitation Act for condonation of delay- application was allowed and the delay was condoned- held, that the period of 15 days has been prescribed for the filing of an appeal before the trial Court against the selection and appointment of a person from the date of issuance of appointment letter- an appeal preferred beyond the prescribed period is not maintainable- Section 5 empowers only the Court and not the administrative authority to condone delay- order passed by the Deputy Commissioner, Kangra condoning delay set aside.

For the petitioner: Mr. Devinder K. Sharma vice Mr. C. N. Singh, Advocate.

For the respondents: Mr. Vivek Singh Attri, Dy. A.G. for respondents No. 1 to 5.

The following judgment of the Court was delivered:

Sureshwar Thakur, J.*(Oral):*

An appeal was preferred before the learned Deputy Commissioner, by respondent No.6 herein assailing the selection and appointment of the petitioner herein as Anganwari helper. The appeal preferred by respondent No.6 herein before the Deputy Commissioner, Kangra at Dharamshala, was time barred, hence, it was accompanied by an application under Section 5 of the Limitation Act for condoning the delay in the preferment of appeal at the instance of respondent No.6. The learned Deputy Commissioner, Kangra at Dharamshala, while adjudicating the application filed by respondent No.6 herein for condoning the delay in the preferment of an appeal at her instance against the selection and appointment of the petitioner as Anganwari worker had on consideration of the material laid before him condoned the delay of two months. Obviously it enlarged the time prescribed by the apt guidelines for the filing of an appeal. The Appellate Authority is not bestowed or conferred any power under the apt guidelines to condone the delay in the event an appeal is filed beyond the period prescribed in the apt guidelines. Hence, it is contended by the learned counsel for the petitioner that the order rendered in Annexure P-5 is beyond the jurisdictional competence of the learned Deputy Commissioner. The said contention has leverage and force in view of the apt guidelines prescribing a period of 15 days for the filing of an appeal which period is to be reckoned from the date of issuance of letter of appointment to the appointee. The relevant/apt guidelines as formulated by respondent No.1 do not in them contemplate or vest jurisdiction, power or authority in the appellate authority to extend, condone or enlarge the period of time prescribed in them for the filing of an appeal. In other words, the period of 15 days prescribed in the apt guidelines for the filing of an appeal before the appellate authority against the selection and appointment of a person as an Anganwari helper reckonable from the date of issuance of appointment letter is an inflexible period or in case an appeal is filed beyond the prescribed period the same is jurisdictionally not maintainable, it entails dismissal, besides rendering the act of the appellate authority while taking to rely upon the provisions of Section 5 of the Limitation Act which empowers courts of law alone to condone delay which the appellate authority who rendered annexure P-5 is not in condoning the delay to be wholly untenable. Consequently, the learned Deputy Commissioner, Kangra, while having adjudicated an application under Section 5 of the Limitation Act preferred before him for condoning the delay in the institution of an appeal before him challenging/assailing the selection/appointment of the petitioner herein as Anganwari helper and having recorded findings therein in favour of respondent No.6 has committed a jurisdictional error. Consequently, the impugned order is set-aside. The above conclusion is supported by a judgement rendered by a Division Bench of this Court comprised in Annexure P-4, relevant portion of which is extracted hereinafter:-

> "Another legal contention is as to whether the Appellate Authority has power to condone delay in filing appeal. The guidelines provide a period of 15 days for filing an appeal. Being a statutory authority, in terms of the police guidelines, the Appellate Authority does not have the power under Section 5 of the Limitation Act. No power is conferred also in the guidelines for condonation delay. Therefore, he cannot enlarge the time, by condoning delay in filing the appeal. In other words, if an appeal is not filed within the prescribed time, it has only to be dismissed,

since the appellate authority has no power to condone the delay in filing the appeal."

Even otherwise, considering the fact as evident from a perusal of annexure P-5, of the petitioner having come to be appointed on 22.02.2013 obviously, then the period of 15 days envisaged in the apt guidelines for filing of appeal commenced/arose therefrom. However, respondent No.6 filed an RTI application beyond the period of 15 days, inasmuch as on 18.3.2013. In face thereof and when even the copy of the appointment letter was sought by respondent No.6 herein beyond the period of limitation prescribed in the apt guidelines for filing of an appeal and when the said delay remains unexplained, it was wholly insagacious for the learned Deputy Commissioner, Kangra, to condone the delay.

Accordingly, I find merit in the writ petition and the impugned order is set-aside. No costs.

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

Rikhi Ram son of Shri Kedar Dutt .....Appellant.
Vs.
State of Himachal Pradesh ...Respondent.

Cr. Appeal No. 98 of 2009
Judgment reserved on: 17th September,2014
Date of Decision: December 08.2014

Indian Penal Code, 1860- Section 302- Accused caused death of 'K' in the sawmill of 'V' by hitting him with the shovel on the head – testimony of eye-witnesses clearly proved that accused gave beating with the shovel on the head of the deceased and thereafter dragged the deceased towards his house- medical evidence proved that the deceased had died due to head injury which was possible with the sharp edged shovel- the testimony of the eye- witness was corroborated by other prosecution witnesses- accused made a disclosure statement leading to the recovery of blood clotted stones, shirt and hair- body of deceased was also found in the house of the accused- all these circumstances clearly established the prosecution version – hence, conviction of the accused was justified. (Para- 11 to 17)

Indian Evidence Act, 1872- Section 3- Appreciation of evidence- it was contended that testimony of PW-1 was not acceptable and he had reported the matter to the police after some days-PW-1 specifically stated that he was under extreme fear that he would also be killed by accused- held, that accused can be convicted on the sole testimony of an eye-witness. (Para-22)

Cases referred:

Mohmed Inayatullah vs. State of Maharashtra AIR 1976 SC 483
Selvi and others vs. State of Karnataka AIR 2010 SC 1974

Kamal Kishore vs. State (Delhi Administration) 1997(2) Crimes 169 (Delhi High Court)
Jose Vs. The State of Kerla (Full Bench) AIR 1973 SC 944
Vadivelu Thevar Vs. The State of Madras AIR 1957 S.C. 614
Masalti and others Vs. The State of Uttar Pradesh AIR 1965 S.C. 202
Dalbir Singh Vs. State of Punjab AIR 1987 S.C. 1328
Anil Phukan vs. State of Assam 1993(1) Crimes 1180
State of U.P. vs. Kishanpal and others JT 2008(8) SC 650
Lallu Manjhi and another vs. State of Jharkhand AIR 2003 SC 854
Chacko vs. State of Kerala (DB) AIR 2004 SC 2688
Bhe Ram Vs. State of Haryana AIR 1980 S.C.957
Rai Singh Vs. The State of Haryana AIR 1971 S.C. 2505
Triloki Nath and others vs. State of U.P. AIR 2006 SC 321
Nashik vs. State of Maharashtra 1993(1)Crimes 1197 SC
Sangaraboina Sreenu vs State Of Andhra Pradesh 1997 (4)Supreme 214
Mandhari vs. State of Chattisgarh 2002 Criminal Law Journal 2630 (SC)
Chacko vs. State of Kerala AIR 2004 SC 2688

For the Appellant: Mr.N.K. Tomar, Advocate.
For the respondent: Mr.B.S.Parmar, Additional Advocate General with Mr.Ashok Chaudhary, Additional Advocate General with Mr.Vikram Thakur, Deputy Advocate General and Mr. J.S. Guleria, Assistant Advocate General.

The following judgment of the Court was delivered:

P.S.Rana, J.

Present appeal filed against the judgment and sentence passed by learned Additional Sessions Judge Sirmaur District at Nahan in Sessions Trial No. 8-N/7 of 2006 titled State of H.P. Vs. Rikhi Ram decided on 16.2.2008.

BRIEF FACTS OF THE PROSECUTION CASE:

2. Brief facts of the case as alleged by the prosecution are that on dated 10.8.2005 at about 10 PM at Dadahu appellant committed murder voluntarily and intentionally by causing death of Kedar Dutt in the sawmill of Vijay Sood by hitting him with shovel sharp edged weapon on his head. It is alleged by prosecution that deceased Kedar Dutt who was father of appellant and father of Ram Kishan was employed as a watchman by PW2 Vijay Sood in his sawmill at Dadahu where PW1 Devender Singh also used to work as a carpenter. It is alleged by prosecution that PW2 Vijay Sood had made an arrangement for food of Kedar Dutt in the restaurant of PW5 Jang Bahadur Thapa and on dated 10.8.2005 Kedar Dutt after taking his meal left his restaurant at about 9 PM to the sawmill of Vijay Sood. It is further alleged by prosecution that on dated 10.8.2005 at about 8.45 PM appellant went to the restaurant of PW4 Pardeep Kumar to consume wine and thereafter went away. It is also alleged by prosecution that on dated 10.8.2005 at 10 PM when Kedar Dutt along with PW1 Devender Singh were present in the sawmill then appellant came there and gave beatings with the shovel sharp edged weapon to Kedar Dutt due to which Kedar Dutt sustained injuries on his head and arms. It is further alleged by prosecution that appellant dragged Kedar Dutt towards his house and PW1 Devender Singh became frightened due to the incident and he ran away

and in the morning he informed Pardhan of Gram Pacnahayt and also informed PW2 Vijay Sood about the incident. It is also alleged by prosecution that on dated 12.8.2005 when PW3 Ram Kishan came to house of appellant then he saw the dead body of deceased Kedar Dutt which was kept on the bed in house of appellant. It is further alleged by prosecution that thereafter information was given to the police at which rapat in the daily diary Ext.PW7/A was recorded in police station and on receipt of information Inspector Madan Kant Sharma PW14 the then SHO P.S. Nahan went to village Tirmuli where he recorded statement of PW1 Devender Singh under Section 154 Cr.P.C. Ext.PW1/A and thereafter sent the same to police station for registration of FIR. It is further alleged by prosecution that on receipt of such statement FIR Ext.PW12/A was recorded in police station by Inspector Purshottam Dass PW12 the then SHO P.S. Renukaji who made endorsement Ext.PW12/B. It is also alleged by prosecution that spot map Ext.PW14/A was prepared and body of deceased was took into possession and was sent for post mortem examination. It is alleged by prosecution that post mortem of dead body of deceased Kedar Dutt was conducted by PW13 Dr. Vijay Kishan and as per opinion of medical officer cause of death was due to head injury and shock and post mortem report Ext.PW13/A was issued. It is alleged by prosecution that clothes, blood, hair of beard of deceased were preserved by PW13 Dr. Vijay Kishan and were handed over for chemical examination. It is also alleged by prosecution that Inspector Purshottam Dass PW12 also visited the spot i.e. sawmill of Vijay Sood and prepared spot map Ext.PW12/C and during spot inspection near the machine there were black and grey hairs of beard which were put in separate match boxes and those match boxes were wrapped in a cloth and sealed with seal impression 'H' and same were took into possession vide memo Ext.PW6/A in presence of Satya Nand PW6. It is also alleged by prosecution that near the stairs there were blood stains which were lifted with help of a wet cotton and said cotton was also put in a match box and wrapped in a cloth and same was sealed with seal impression 'H' and took into possession vide memo Ext.PW6/B. It is also alleged by prosecution that on dated 17.8.2005 medical examination of appellant was conducted by PW13 Dr. Vijay Kishan and no external injury was found on body of appellant and MLC Ext.PW13/B was obtained. It is further alleged by prosecution that Dr. Vijay Kishan PW13 took sample of hair of head of appellant pursuant to application Ext.PW13/C and on dated 17.8.2005 appellant gave a disclosure statement and as per his disclosure statement shovel sharp edged weapon Ext.P1 was got recovered from the bushes near Jalal river in presence of PW2 Vijay Sood which was took into possession vide recovery memo Ext.PW2/B. It is alleged by prosecution that spot map of recovery Ext.PW12/D was also prepared and appellant had given identification of spot. It is also alleged by prosecution that near the rivulet blood stained stones were found which were took into possession vide memo Ext.PW2/C and spot map of recovery of stones Ext.PW12/E was prepared. It is further alleged by prosecution that sample of seal was took separately and spot map Ext.PW8/A was prepared. It is further alleged by prosecution that photographs of dead body Ext.PW10/A-1 to Ext.PW10/A-19 and negatives Ext.PW10/A-20 were obtained and thereafter on dated 22.8.2005 HC Ashok Kumar sent all parcels except shovel to FSL Junga for chemical examination through HHC Karun Kumar PW9 who deposited the same in FSL Junga. It is also alleged by prosecution that said parcels were cut opened and examined by PW15 Dr. Arun Sharma Scientific Officer FSL Junga who has issued his report Ext.PX. It is alleged by prosecution that as per opinion of medical officer Dr. Vijay Kishan PW13 injuries sustained by deceased were possible with blow of shovel sharp edged weapon Ext.P1.

3 Learned Additional Sessions Judge Sirmaur District at Nahan framed the charge against the appellant under Section 302 of Indian Penal Code on dated 16.6.2006. Appellant did not plead guilty and claimed trial.

4. The prosecution examined as many as fifteen witnesses in support of its case and appellant also examined one defence witness:-

Sr.No.	Name of Witness
PW1	Devender Singh
PW2	Vijay Sood
PW3	Ram Kishan
PW4	Pardeep Kumar
PW5	Jang Bahadur
PW6	Satya Nand
PW7	Tikka Ram
PW8	Ramesh Chand
PW9	HHC Karun Kumar
PW10	HC Choli Ram
PW11	HC Ashok Kumar
PW12	Inspector Purshotam Dass
PW13	Dr. Vikay Krishan
PW14	Inspector Madan Kant
PW15	Dr. Arun Sharma
DW1	Depinder Singh Patwari

4.1 Prosecution also produced following piece of documentary evidence in support of its case:-

Sr.No.	*Description:*
Ex.PW.1/A.	*Statement under Section 154 Cr.P.C. of Devinder Singh.*
Ex.PW2/A.	*Disclosure statement.*
Ex.PW2/B.	*Recovery memo of Shovel sharp edged weapon*
Ex.PW2/C.	*Recovery memo of blood stained stone*
Ex.PW2/D.	*Recovery memo of blood stained shirt*
Ex.PW6/A	*Recovery memo of white shirt and hair*
Ex.PW6/B	*Recovery memo of blood*
Ex.PW7/A.	*Rapat Roznamcha No. 12 dt.12.8.2006*

Ex.PW8/A.	*Spot Map*
Ex.PW8/B	*Jamabandi for 2001-2002*
Ex.PW.10/A-1 to Ext.PW10/A-19.	*Photographs*
Ex.PW10/A-20	*Negatives.*
Ex.PW12/A	*FIR*
Ext.PW12/B	*Endorsement on statement Ext.PW1/A*
Ext.PW12/C	*Spot map*
Ext.PW12/D	*Spot map*
Ext.PW12/E	*Spot map*
Ext.PW12/F to Ext.PW12/J	*Sample of seals*
Ext.PW13/A	*Post mortem report*
Ext.PW13/B	*MLC of Rikhi Ram*
Ext.PW13/C	*Letter of police*
Ext.PW13/D	*Opinion regarding cause of death in FIR No. 64/05 in police station Renukaji*
Ext.PW14/A	*Spot map*
Ext.PX	*FSL report*
Ext.DW1/A	*Copy of Mutation 2001-2002*
Ext.P1	*Shovel sharp edged weapon*

5. Learned Additional Sessions Judge Sirmaur District at Nahan convicted the appellant under Section 302 IPC and sentenced the appellant to undergo rigorous imprisonment for life and to pay fine of Rs. 10,000/- (Rupees ten thousand only). Learned trial Court further directed that in default of payment of fine the appellant would undergo further imprisonment for a period of one year. Feeling aggrieved against the judgment and sentence passed by learned Trial Court the appellant has filed present appeal under Section 374 (2) of the Code of Criminal Procedure and a prayer for acceptance of appeal sought.

6. We have heard learned Advocate appearing on behalf of the appellant and learned Additional Advocate General appearing on behalf of the State and also perused the entire record carefully.

7. Question that arises for determination before us in this appeal is whether learned trial Court did not properly appreciate oral as well as documentary evidence placed on record and whether learned trial Court had committed miscarriage of justice by convicting the appellant.

ORAL EVIDENCE ADDUCED BY PROSECUTION:

8.1. PW1 Devinder Singh has stated that he is working as a labourer/carpenter in sawmill of Vijay Sood at Dadahu and Vijay Sood has also

engaged one person namely Kedar Dutt in his sawmill as a night watchman. He has stated that on dated 8.8.2005 Vijay Sood informed him that he would go for religious trip and further stated that deceased Kedar Dutt used to take his meal in the restaurant of Thapa. He has stated that he and deceased Kedar Dutt were present in the sawmill and appellant Rikhi Ram came in the sawmill and gave beatings to the deceased with the sharp edged weapon namely shovel on his head due to which deceased Kedar Dutt sustained injuries on his head and arms. He has further stated that thereafter appellant dragged Kedar Dutt towards his house. He has stated that he became frightened and ran way. He has stated that in the morning Investigating Agency came at the spot and he handed over the beard hair to Investigating Agency. He has also stated that Investigating Agency also took into possession the blood stains from the spot. He has stated that thereafter in the morning he informed Pardhan and Vijay Sood and on the next day he went to his house. He has stated that he came to know that deceased Kedar Dutt had died. He has stated that dead body of deceased was wrapped and kept upon the bed. He has stated that police officials also recorded his statement Ext.PW1/A which bears his signatures. He has denied suggestion that when deceased Kedar Dutt was pulling the log of wood on one side of sawmill the hacksaw got broken and hit the head of deceased who fell down on the waste material and on grinder and roller. He has denied suggestion that deceased had sustained injuries in the accident and he and mill owner did not report the matter to police to save themselves from criminal cases and compensation. He has denied suggestion that he and Vijay Kumar placed the dead body of deceased in the open place in the house of Rikhi Ram. He has denied suggestion that in order to save himself and sawmill owner he has deposed falsely.

8.2 PW2 Vijay Sood has stated that he is running a sawmill at Dadahu and on dated 8.8.2005 he went on religious trip and further stated that he employed deceased Kedar Dutt as a watchman in the sawmill. He has stated that he had made the arrangement in the restaurant of Thapa for the food of deceased. He has further stated that on dated 12.8.2005 he came back to Dadahu and he came to know that deceased Kedar Dutt was murdered. He has further stated that Investigating Agency inspected the spot and recovered shovel Ext.P1 vide memo Ext.PW2/B. He has stated that blood stained stones were also took into possession and memo Ext.PW2/C was prepared. He has stated that stones Ext.P2 to Ext.P5 are the same which were took into possession by police officials and appellant Rikhi Ram handed over to the police his shirt which was also took into possession vide recovery memo Ext.PW2/D. He has stated that shirt Ext.P6 is the same. He has denied suggestion that all documents were prepared in police station. He has denied suggestion that no shovel was recovered at the instance of appellant. He has denied suggestion that deceased had sustained injuries in the accident in his sawmill. He has denied suggestion that he along with Devinder Singh lifted the dead body of deceased and kept in the house of appellant in order to save themselves. He has denied suggestion that deceased had died due to starvation. He has denied suggestion that he had deposed wrongly in order to implicate the appellant in present case.

8.3 PW3 Ram Kishan has stated that deceased Kedar Dutt is his father and appellant Rikhi Ram is his brother. He has stated that house of Devinder is near to his house and Devinder also met him between 12.8.2005 to 20.8.2005 but he did not disclose the incident to him. He has further stated that Rikhi Ram was living alone in the house. He has further stated that before the death of his father his father executed a Will in favour of his brother Rikhi Ram, his sisters which he proceeded before the revenue officer for attesting the mutation.

8.4 PW4 Pardeep Kumar has stated that he is running a restaurant at Dadahu and on dated 10.8.2005 at 8.45 PM appellant Rikhi Ram came to his restaurant to consume wine in the restaurant and thereafter he went away. He has admitted that appellant was performing the work of mules for his livelihood. He has denied suggestion that appellant did not visit restaurant. He has denied suggestion that he was deposing falsely against the appellant in order to help the Investigating Agency.

8.5 PW5 Jang Bahadur has stated that he is running the restaurant at Dadahu and Vijay Sood had made an arrangement for the food of Kedar Dutt in his restaurant. He has stated that on dated 10.8.2005 Kedar Dutt after consuming his meal left his restaurant at about 9 PM to the sawmill of Vijay Sood.

8.6 PW6 Satya Nand has stated that on dated 12.8.2005 at about 1.30 PM Mohan Singh called him and told that somebody had murdered the deceased. He has stated that he along with Mohan Singh and Kishan went to the sawmill of Vijay Sood. He has stated that police recovered black and grey hairs and put the same in small match boxes. He has stated that memo Ext.PW6/A was prepared and police also took photographs of dead body. He has stated that match box is Ext.P7 in which grey hairs were sealed by the police. He has denied suggestion that Investigating Agency did not take hairs from the spot. He has denied suggestion that police did not collect the blood sample.

8.7 PW7 C. Tikka Ram has stated that during the year 2005 he was posted as MC at P.S. Nahan and on dated 12.8.2005 at 10 AM some unknown person informed the police that dead body of Kedar Dutt was lying in the room. He has stated that in this regard report in daily diary Ext.PW7/A was entered which is true as per original record.

8.8 PW8 Ramesh Chand has stated that he is posted as Patwari in Patwar Circle Thana Kashoga and on dated 29.9.2005 on the request of police he prepared the map of place where dead body of Kedar Dutt was kept in the house of appellant Rikhi Ram. He has further stated that map is Ext.PW8/A and jamabandi of said house is Ext.PW8/B and land in which house was situated is bearing Khasra No. 418/178 which is in the ownership of Neetan Kumar. He has stated that he could not state without examining the record that inheritance of property of deceased is mutated in the name of appellant Rikhi Ram, his brother Kishan Singh and two sisters.

8.9 PW9 HHC Karun Kumar has stated that during the year 2005 he was posted as HHC at P.S. Ranukaji and on dated 22.8.2005 MHC Ashok Kumar handed over to him total eight packets and two envelops along with sample seals out of which three samples were sealed with seal of Food Inspector Renuka, two were sealed with impression 'X' and three packets were sealed with seal bearing impression 'H' and two envelopes bearing impression Food Inspector Renuka for depositing with FSL Junga which he deposited on the same day with FSL Junga. He has stated that as long as parcels remained in his custody they remained intact. He has stated that on dated 22.8.2005 he deposited eight parcels in the office of FSL Junga.

8.10 PW10 HC Choli Ram has stated that he is posted as photographer in police department and on dated 12.8.2005 at the instance of police he photographed the dead body at village Tirmuli. He has stated that he also took photographs near the river where blood stains stones were found. He has stated that photographs Ext.PW10/A-1 to Ext.PW10/A-19 were not developed by him. He has stated that aforesaid photographs were developed at Chandigarh.

8.11 PW11 HC Ashok Kumar has stated that during the year 2005 he was posted at P.S. Renukaji at MHC and on dated 12.8.2005 Pushottam Dass deposited with him one packet which was sealed with seal impression 'H' another packet which was also sealed with seal impression 'H' and another packet which was also sealed with seal impression 'H' along with sample seals. He has further stated that on dated 13.8.2005 he also deposited with him one packet sealed with seal bearing impression Food Inspector Renuka and on dated 22.8.2005 he sent all articles except shovel sharp edged weapon through HHC Karun Kumar to be deposited with FSL Junga along with sample seals vide RC No. 45/2005 dated 22.8.2005. He has further stated that as long as samples remained in his custody neither he nor anyone tampered with it. He has denied suggestion that no property was deposited with him and he has denied suggestion that no property was sent by him to Chemical Laboratory.

8.12 PW12 Inspector Purshottam Dass has stated that during the year 2005 he was posted at P.S. Renukaji as SHO and on dated 12.8.2005 he received statement under Section 154 Cr.P.C. Ext.PW1/A through C. Khazan Singh in Police Station. He has stated that on this he recorded FIR Ext.PW12/A which bears his signatures. He has stated that he also made endorsement Ext.PW12/B. He has stated that on same day he proceeded to the spot i.e. sawmill of Vijay Sood which is situated as Dadahu. He has stated that during the spot inspection near the machine there were black and grey hairs of beard which were put in separate matchboxes and wrapped in cloth and sealed with seal impression 'H'. He has stated that match boxes were took into possession vide memo Ext.PW6/A. He has further stated that blood was lifted with the help of wet cotton and said cotton was also placed in matchbox. He has stated that thereafter matchbox was wrapped in cloth and sealed with seal impression 'H'. He has stated that seal after taking specimen was handed over to Satya Nand and match boxes were took into possession vide memo Ext.PW6/A. He has stated that match boxes are Ext.P7 and Ext.P8. He has further stated that near the stairs there were blood stains and blood stains were lifted with the help of wet cotton and said cotton was also placed in match box. He has stated that matchbox was wrapped in cloth after taking specimen seal and took the seal impression 'H' on the matchbox and same was handed over to Satya Nand. He has stated that on dated 17.8.2005 Rikhi Ram had given disclosure statement to the police that he could recover the shovel and in this regard memo Ext.PW2/A was prepared. He has stated that as per disclosure statement shovel Ext.P1 was recovered from the bushes near the Jalal river and memo Ext.PW2/B was prepared. He has stated that stones are Ext.P2 to Ext.P5 and spot map of recovery of stones Ext.PW12/E was prepared. He has stated that spot map Ext.PW8/A was got prepared from Halqua Patwari and statements of witnesses were recorded by him. He has stated that after receiving the FSL report Ext.PX he prepared challan. He has denied suggestion that no recovery of shovel was effected at the instance of appellant. He has denied suggestion that Ext.PW2/B was prepared in P.S. Renukaji. He has denied suggestion that deceased Kedar Dutt had sustained injuries in the accident as the hacksaw was broken and he fell down on the grinder and wooden material. He has denied suggestion that in order to avoid the payment of compensation sawmill owner lifted the dead body of deceased and placed it in the open house. He has denied suggestion that witness did not give any statement and he has denied suggestion that he recorded the statements at his own. He has denied suggestion that appellant has been falsely implicated in present case.

8.13 PW13 Dr. Vijay Kishan has stated that during the year 2005 he was posted at R.H. Dadahu as medical officer and on dated 12.8.2005 at the instance of police he conducted the post mortem of dead body of Kedar Dutt and

observed as under. He has further stated that deceased was average built wearing pant shirt (dark brown) his mouth was open, left eye was damaged, right hand was amputated and rigor mortis were present. He has stated that contused lacerated wound was present over front parietal region 4x3x2 inch. He has stated that no fresh blood CLW was found over lateral side of right eye near outer canthus 3x3x1 inch. He has further stated that no fresh blood CLW was present over left forearm 4 inches above wrist joint side 5x3x2 inch. He has stated that both bones were fractured and further stated that multiple abrasions were present over entire buttock and no ligature was present. He has also stated that there was fracture of right frontal parietal bone and membrane was ruptured and brain was also ruptured. He has stated that fracture of third and fourth rib and other organs were normal. He has stated that he issued post mortem report Ext.PW13/A and as per opinion cause of death was due to head injury and shock. He has stated that probable duration between injury and death was less than 36 hours and between death and post mortem was 12 to 24 hours. He has stated that he handed over the clothes, blood, hair of beard and letter to chemical examiner to the police. He has stated that injuries sustained by deceased are possible with blows of shovel Ext.P1. He has denied suggestion that deceased had sustained injuries as a result of fall on wooden material and instruments like grinder and roller. He has stated that there was digested food in the stomach of deceased. He has denied suggestion that deceased died due to non-availability of medical facility and starvation.

8.14 PW14 Inspector Madan Kant Sharma has stated that he remained as SHO P.S. Nahan from October 2003 to January 2005 and on dated 12.8.2005 on receipt of information at Police Station vide D.D. No. 12 he along with other staff members reached village Tirmuli. He has stated that he recorded statement of Devinder Singh under Section 154 Cr.P.C. Ext.PW1/A and further stated that he inspected the spot and prepared spot map Ext.PW14/A. He has stated that dead body of Kedar Dutt was took into possession and body was sent for post mortem through C. Hari Singh. He has stated that he recorded statements of witnesses namely Satya Nand and Ram Kishan and got the spot and dead body photographed through photographer HC Choli Ram. He has stated that thereafter he handed over the investigation to I.O. of P.S. Renukaji for further investigation. He has stated that dead body was recovered from the house which was situated at the outskirt of village Tirmuli at a lonely place. He has denied suggestion that he did not record statement Ext.PW1/A as per version of witness Devinder Singh. He has denied suggestion that he recorded statements of his own. He has denied suggestion that appellant has been falsely implicated in present case.

8.15 PW15 Dr. Arun Sharma has stated that he is posted as Scientific Officer in FSL Junga since 1991 and he had passed MSc Forensic Science from Punjab University Patiala and PhD from Punjab University Chandigarh and National Institute of Criminology and Forensic Science Ministry of Home Affairs Government of India Delhi. He has further stated that he examined cases in biology and serology division since 1991 and further stated that in this case vide FIR No. 64 of 2005 P.S. Renukaji District Sirmaur eight sealed parcels were received on dated 22.8.2005 through C. Karan Kumar. He has denied suggestion that samples mentioned in Ext.PX were not worthy or analyzed.

9. Statement of appellant was recorded under Section 313 Cr.P.C. He has stated that he has been falsely implicated in present case at the instance of sawmill owner who is responsible for the death of deceased Kedar Dutt due to accidental injuries while he was working in the sawmill. He has stated that he is innocent. He has stated that his father Kedar Dutt had executed the Will of his

property in favour of him and brother Kishan Singh and two sisters in equal shares and mutation has been sanctioned in the revenue record.

10. DW1 Depinder Singh Patwari has stated that he is posted as Patwari in Patwar circle Thana Kishoga since September 2007. He has stated that he has brought the summoned record. He has stated that property of late Kedar Dutt is inherited in equal shares by his legal representatives including appellant by way of Will No. 463 dated 8.5.2006 and further stated that copy of mutation is Ext.DW1/A.

Testimony of eye witness namely Devinder Singh is fatal to the appellant

11. In present case eye witness namely Devinder Singh PW1 has specifically stated in positive manner that appellant came to sawmill and thereafter gave beatings with shovel sharp edged weapon to deceased Kedar Dutt in his presence. PW1 has specifically stated in positive manner that thereafter appellant dragged the deceased towards his house. Testimony of PW1 Devinder Singh is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of eye witness namely Devinder Singh. There is no evidence on record in order to prove that PW1 has hostile animus against the appellant at any point of time.

Testimony of PW13 Dr. Vijay Kishan Medical Officer is fatal to appellant

12. PW13 Dr. Vijay Kishan medical officer has specifically stated in positive manner that deceased had died due to head injury and shock and PW13 Dr. Vijay Kishan has specifically stated in positive manner that injuries mentioned in post mortem report are possible with sharp edged weapon i.e. shovel Ext.P1. PW13 Dr. Vijay Kishan has denied suggestion that deceased had sustained injuries as a result of fall on wooden material and instruments like grinder and roller. Testimony of PW13 Dr. Vijay Kishan is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of PW13 Dr. Vijay Kishan and there is no evidence on record in order to prove that PW13 Dr. Vijay Kishan has hostile animus against the appellant at any point of time.

Testimonies of corroborative witnesses are fatal to appellant

13. PW2 namely Vijay Sood corroborative witness has specifically stated that he employed deceased Kedar Dutt as watchman in his sawmill and he has specifically stated that appellant had given a disclosure statement that he had concealed the shovel sharp edged weapon in the bushes. He has specifically stated in positive manner that thereafter sharp edged weapon was recovered from the bushes. Another corroborative witness PW3 Ram Kishan has stated in positive manner that dead body of deceased was kept on bed and he has further stated that appellant was living alone in the house where dead body of the deceased was kept. PW4 Pardeep another corroborative witness has stated in positive manner that on dated 10.8.2005 at 8.45 PM appellant Rikhi Ram came to his restaurant to consume wine and thereafter went away. PW5 Jang Bahadur has stated in positive manner that deceased came to his restaurant and consumed the food and thereafter left his restaurant at about 9 PM after taking his meal to sawmill of Vijay Sood. Another corroborative witness PW6 Satya Nand has proved seizure memos Ext.PW6/A and Ext.PW6/B. PW7 another corroborative witness C. Tikka Ram No. 457 has proved the fact that information was received that dead body of deceased was lying in the room which was in possession of appellant Rikhi Ram. PW8 another corroborative witness namely Ramesh Chand has stated in positive manner that he has prepared spot map Ext.PW8/A and jamabandi of house Ext.PW8/B. PW9 HHC

Karun Kumar proved the facts that total eight packets and two envelopes along with specimen seal were deposited. PW10 another corroborative witness has proved the photographs Ext.PW10/A-1 to Ext.PW10/A-19 and also proved the negatives of photographs Ext.PW10/A-20. Testimonies of above stated corroborative witnesses are trustworthy reliable and inspire confidence of Court. There is no reason to disbelieve the testimonies of corroborative witnesses.

Disclosure statement given under Section 27 of Indian Evidence Act is fatal to appellant

14. Appellant has given disclosure statement Ext.PW2/A in presence of prosecution witness Vijay Sood and as per disclosure statement weapon of offence i.e. shovel was recovered. Disclosure statement Ext.PW2/A given by appellant is also fatal to appellant. Seizure memo of four blood clotted stones and seizure memo of blood clotted shirt Ext.PW2/D and hair of appellant took into possession vide seizure memo Ext.PW6/A from the place of incident are also fatal to appellant. Stones and one white shirt were also took into possession vide seizure memos Ext.PW2/C and Ext.PW2/D which are also fatal to appellant. It was held in case reported in ***AIR 1976 SC 483 titled Mohmed Inayatullah vs. State of Maharashtra*** that as per Section 27 of Indian Evidence Act the statement must be split into its components and to separate the admissible from the inadmissible portion or portions. Only those components or portions which were immediate cause of the discovery would be legal evidence. It was held in case reported in ***AIR 2010 SC 1974 titled Selvi and others vs. State of Karnataka*** that there is no automatic presumption that custodial statement was extracted through compulsion. It was held in case reported in ***1997(2) Crimes 169 (Delhi High Court) titled Kamal Kishore vs. State (Delhi Administration)*** that fact discovered under Section 27 of Indian Evidence Act 1872 is an information supplied by the appellant in his disclosure statement and same is relevant fact.

Hair of appellant found at the place of incident is also fatal to appellant as per Chemical Analyst report Ext.PX placed on record

15. It is proved beyond reasonable doubt by the prosecution that hair of appellant were found at the place of incident i.e. sawmill where incident took place and original specimen of hair of appellant were sent for chemical examination along with hairs found at the place of incident and as per chemical analyst report Ext.PX hair of appellant found at the place of incident and original specimen hair of appellant tallied with each other. Hence it is held that report of Chemical Analyst report is also fatal to the appellant.

Post mortem report of deceased is also fatal to the appellant.

16. Post mortem report Ext.PW13/A placed on record is also fatal to appellant. As per post mortem report Ext.PW13/A Kedar Dutt aged 70 years died due to head injury and shock and probable duration between injury and death was less than 36 hours and between death and post mortem was 12 to 24 hours. As per post mortem report deceased had sustained contused lacerated wound over parietal region 4x3x2 inches and there was fracture of right parietal bone and membrane was ruptured and brain was also ruptured and there was fracture of third and fourth rib of deceased.

Availability of dead body of deceased Kedar Dutt in the house of appellant is fatal to the appellant.

17. In present case it is proved on record that dead body of deceased was found in room which was in possession of appellant. No reason has been

assigned by appellant that how dead body of deceased came inside the residential house of appellant which was in possession of appellant. There is no reason on record in order to prove that there was possibility of access of some other person in the residential house of appellant where dead body of deceased was found. Availability of dead body of deceased in the room which was in possession of appellant is also fatal to the appellant.

18. Submission of learned Advocate appearing on behalf of the appellant that there is no evidence on record in order to prove that appellant and deceased were lastly seen together and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. In present case PW1 Devinder Singh is eye witness of incident and he has further stated in positive manner that appellant came to the sawmill and gave beatings with shovel sharp edged weapon to deceased Kedar Dutt and he has further stated in positive manner that thereafter Kedar Dutt sustained injuries on his head and arms and thereafter appellant Rikhi Ram dragged the deceased towards his house. Testimony of single eye witness in present case is trustworthy reliable and inspires confidence of Court. Present case is not a case of circumstantial evidence.

19. Another submission of learned Advocate appearing on behalf of the appellant that deceased was father of appellant and there was no possibility of appellant to commit criminal offence against his father without any strong motive and on this ground appeal be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. It is held that in presence of eye witness prosecution is not under legal obligation to prove any motive. In present case PW1 Devinder Singh single eye witness of incident has specifically stated in positive manner that appellant had inflicted injuries upon the deceased in his presence with shovel upon his head and arms and testimony of PW1 to this fact is trustworthy reliable and inspires confidence of Court. There is no reason to disbelieve the testimony of eye witness PW1 Devinder Singh.

20. Another submission of learned Advocate appearing on behalf of the appellant that deceased had died because he fell on the roller of sawmill and owner of sawmill has falsely implicated the appellant in present case in order to avoid the payment of compensation under Workmen's Compensation Act is rejected being devoid of any force for the reasons hereinafter mentioned. There is no positive cogent and reliable evidence on record in order to prove that deceased had died due to accidental injuries sustained by deceased while he was working in sawmill. On the contrary there is positive cogent and reliable evidence of eye witness PW1 Devinder Singh who has stated in positive manner that appellant had inflicted injuries upon the deceased with shovel in his presence upon his head and arms. Hence plea of appellant that deceased had died due to accidental injuries when he was working in sawmill is defeated on the concept of *ipse dixit* (An assertion made without proof).

21. Another submission of learned Advocate appearing on behalf of the appellant that prosecution has not explained the unreasonable delay in lodging the FIR and on this ground appeal filed by appellant be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Incident took place on dated 10.8.2005 at 10 PM and FIR was registered on dated 12.8.2005 at the instance of complainant Devinder Singh PW1. Devinder Singh has specifically stated that due to fear he concealed himself because he was only eye witness of incident and he was under the fear that being sole eye witness of incident appellant would also kill him. Hence it is held that complainant has satisfactorily explained the delay in lodging the FIR because

complainant was under the grave fear that he would also be killed by appellant being sole eye witness of incident.

22. Another submission of learned Advocate appearing on behalf of the appellant that conviction cannot be sustained on the sole testimony of eye witness Devinder Singh keeping in view his conduct as he reported the matter to the police on dated 12.8.2005 and on this ground appeal be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. In present case Devinder Singh PW1 has specifically explained his subsequent conduct because PW1 Devinder Singh was under the extreme fear that he would also be killed by appellant being sole eye witness of criminal offence committed by appellant. It was held in ***AIR 1973 SC 944 Jose Vs. The State of Kerla (Full Bench)*** that the conviction can be based on the testimony of solitary witness in criminal case if testimony of solitary witness is trustworthy and reliable. ***(See: AIR 1957 S.C. 614 Vadivelu Thevar Vs. The State of Madras and See: AIR 1965 S.C. 202 Masalti and others Vs. The State of Uttar Pradesh.)*** It was held in case reported in ***AIR 1987 S.C. 1328 Dalbir Singh Vs. State of Punjab*** that there is no hard and fast rule which could be laid down for appreciation of evidence and it is a question of fact and each case has to be decided on the fact as they proved in a particular case. Even as per Section 134 of Indian Evidence Act 1872 no particular number of witnesses is required for the proof of any fact. ***(Also see 1993(1) Crimes 1180 titled Anil Phukan vs. State of Assam).*** It was also held in case reported in ***JT 2008(8) SC 650 titled State of U.P. vs. Kishanpal and others*** that it is the quality of evidence and not quantity of evidence which requires to be judged by the Court to place credence to the testimony of witness. It was held in case reported in ***AIR 2003 SC 854 titled Lallu Manjhi and another vs. State of Jharkhand*** that law of evidence does not require any particular number of witnesses to be examined and it was held that Court may classify the oral testimony into three categories (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. It was held that in first two categories there would be no difficulty in accepting or discarding the testimony of a single witness. It was held in case reported in ***AIR 2004 SC 2688 titled Chacko vs. State of Kerala (DB)*** that conviction could be based on testimony of single witness if testimony of single witness inspires confidence of Court. In the present case also testimony of single eye witness inspires confidence of Court.

23. Another submission of learned Advocate appearing on behalf of the appellant that prosecution did not examine Pardhan of Gram Panchayat to whom PW1 Devinder Singh narrated the incident and non-examination of Pardhan of Gram Panchayat is fatal to prosecution is rejected being devoid of any force for the reasons hereinafter mentioned. It is held that Pardhan of Gram Panchayat is not the eye witness of incident. Hence it is held that non-examination of Pardhan of Gram Panchayat is not fatal to prosecution case.

24. Another submission of learned Advocate appearing on behalf of the appellant that recovery of shovel sharp edged weapon is made from the open place which was accessible to the general public and hence same could not be reliable is also rejected being devoid of any force for the reasons hereinafter mentioned. As per disclosure statement recorded under Section 27 of Indian Evidence Act Ext.PW2/A sharp edged weapon was concealed in bushes. Hence it is held that sharp edged weapon was not kept in open place but was concealed in bushes. Hence it is held that recovery under Section 27 of Indian Evidence Act is not fatal to prosecution in present case qua weapon of attack i.e. shovel.

25. Another submission of learned Advocate appearing on behalf of the appellant that learned trial Court has not proved the chain of circumstances and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. Present case is not the case of circumstantial evidence but present case is based upon eye witness of incident namely PW1 Devinder Singh.

26. Another submission of learned Advocate appearing on behalf of appellant that medical report as well as post mortem report are totally doubtful and statement of concerned doctor is also doubtful and do not connect the injury with alleged weapon of offence is also rejected being devoid of any force for the reasons hereinafter mentioned. Medical officer has specifically stated in positive manner that right frontal parietal bone of deceased was fractured and brain of deceased was also fractured and third and fourth ribs of deceased were also ruptured and there was fracture of left forearm and also stated that death occurred due to head injury and shock. Hence it is held that medical report and post mortem report are trustworthy reliable and inspire confidence of Court. Medical Officer has also connected the weapon of offence with injury in present case. Hence it is held that medical report and post mortem report are not doubtful in present case.

27. Another submission of learned Advocate appearing on behalf of the appellant that report submitted by PW15 Assistant Director State Forensic Science Laboratory Junga is not helpful to the prosecution in any manner is rejected being devoid of any force for the reasons hereinafter mentioned. As per State Forensic Science Laboratory Junga hairs of appellant found at the place of incident and original specimen hair of appellant have tallied with each other. Hence presence of appellant in sawmill is proved as per testimony of eye witness PW1 Devinder Singh and as per availability of hairs of appellant at the place of incident.

28. Another submission of learned Advocate appearing on behalf of the appellant that prosecution had effected the recovery by associating interested and bias witnesses is also rejected being devoid of any force for the reasons hereinafter mentioned. As per prosecution story recovery of weapon of offence was effected in presence of PW2 Vijay Sood and Chaman Lal. Prosecution has proved the recovery of weapon of attack through testimony of PW2 Vijay Sood and appellant did not examine another independent witness Chaman Lal in order to rebut the testimony of PW2 Vijay Sood. There is no reason to disbelieve the testimony of PW2 Vijay Sood and even appellant did not file any application before learned trial Court to examine Chaman Lal another eye witness of recovery memo in order to disprove the testimony of PW2 Vijay Sood.

29. Another submission of learned Advocate appearing on behalf of the appellant that appellant is legally entitled for benefit of doubt is also rejected being devoid of any force for the reasons hereinafter mentioned. In present case no two views emerged. On the contrary it is proved beyond reasonable doubt by prosecution that appellant had inflicted injuries upon the head of deceased with sharp edged weapon. At that time deceased was 70 years old and he was senior citizen of India and was father of appellant.

30. Another submission of learned Advocate appearing on behalf of the appellant that there are material contradictions and improvements in prosecution case and on this ground present appeal be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. Appellant did not point out any material contradiction which goes to the root of the case. It is

well settled law that maxim of *falsus in uno falsus in omnibus* is not applicable in criminal law. ***(See: AIR 1980 S.C.957 Bhe Ram Vs. State of Haryana, See: AIR 1971 S.C. 2505 Rai Singh Vs. The State of Haryana. See:AIR 2006 SC 321 titled Triloki Nath and others vs. State of U.P.)*** Minor contradictions are bound to come in prosecution case when testimonies of witnesses are recorded after a gap of sufficient time. In the present case testimonies of prosecution witnesses were recorded after a gap of about two years.

31. Submission of learned Advocate appearing on behalf of the appellant that owner of sawmill himself placed the dead body nearby the open place of residential house of appellant and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. In present case appellant did not file any counter FIR in order to prove that dead body of deceased was kept by sawmill owner in outer portion of residential portion of appellant in open place. Plea of appellant that owner of sawmill himself placed the dead body of deceased in the courtyard of residential house of appellant is defeated on the concept of *ipse dixit* (An assertion made without proof).

32. Another submission of learned Advocate appearing on behalf of appellant that father of deceased namely Kedar Dutt during his lifetime had executed a Will of his property in favour of appellant and his brother and two sisters in equal shares and there was no enmity between the deceased and appellant at any point of time and on this ground appeal be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. In view of testimony of PW1 Devinder Singh who is eye witness of incident that appellant came in sawmill and had given beatings to deceased with shovel sharp edged weapon in his presence upon the head and arms of deceased. In present case it is proved on record that deceased father of appellant aged 70 years was unarmed at the time of incident and it is proved on record that appellant had inflicted head injuries upon the deceased with sharp edged weapon without any provocation on the part of deceased. ***(See 1993(1)Crimes 1197 SC Nashik vs. State of Maharashtra)*** It is well settled law that basic constituent of an offence under Section 302 IPC is the homicidal death. ***(See: 1997 (4)Supreme 214 titled Sangaraboina Sreenu vs State Of Andhra Pradesh Also see: 2002 Criminal Law Journal 2630 (SC) Mandhari vs. State of Chattisgarh).*** It was held in case reported in ***AIR 2004 SC 2688 titled Chacko vs. State of Kerala*** that Indian Penal Code 1860 recognizes three degrees of culpable homicide. Culpable homicide define under Section 300 IPC and culpable homicide define under Sections 304 Part I and 304 Part II of Indian Penal Code 1860. It was held that culpable homicide define under Section 300 IPC is gravest form of culpable homicide and culpable homicide define under Sections 304 Part I IPC and 304 Part II IPC are of second degree and third degree.

33. In view of above stated facts it is held that learned trial Court has properly appreciated the oral as well as documentary evidence placed on record in present case. It is also held that learned trial Court did not commit any miscarriage of justice to appellant as appellant has caused death of deceased Kedar Dutt intentionally and knowingly with sharp edged weapon i.e. shovel and it is further held that there is no infirmity in judgment and sentence passed by learned trial Court. No ground for interference is established on record in present case. Hence we affirm the judgment and sentence passed by learned trial Court in present case and we dismiss the present appeal filed by appellant being devoid of any force. Appeal stands disposed of. Pending miscellaneous application(s) if any also stands disposed of.

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

Smt. Seema Luthra .....Petitioner.
Versus
State of Himachal Pradesh .....Respondent.

Cr.MMO No. 169 of 2014.
Reserved on: 03.12.2014.
Date of Decision : 8th December, 2014.

Code of Criminal Procedure, 1973- Section 482 - An FIR was registered for the commission of offences punishable under Sections 420 and 120B, IPC and 13(2) of the Prevention of Corruption Act – it was alleged that petitioner is not an agriculturist and had obtained an agriculturist certificate fraudulently- petitioner claimed to be a legatee under the Will of one Shri Surjeet Singh- however, mutation was attested in favour of legal heirs- petitioner filed a civil suit which was decreed- decree is stated to be collusive and not conferring any right upon the petitioner- held, that FIR can only be quashed if it does not disclose any offence or is perverse, fictitious or oppressive- on the death of the testator estate vested in the petitioner- H.P. Land Tenancy and Reforms (Amendment) Act, 1995 will not be retrospective and will not affect the completed transactions- decree merely confirmed the recital of the Will and did not confer any fresh title in favour of the petitioner- consequently, it cannot be said that agriculturist certificate issued in favour of the petitioner was fraudulent- hence, petition allowed and FIR quashed. (Para-3 to 6)

For the Petitioner: Mr. G.C. Gupta, Senior Advocate with Ms. Meera Devi and Mr. Vinod Kumar Sharma, Advocates.
For the Respondents: Mr. Vivek Singh Attri and Mr. Tarun Pathak, Deputy Advocate Generals.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge.

The petitioner herein seeks quashing of FIR No.148 of 2013 of 12.12.2013 registered at Police Station, Dharampur, District Solan, H.P., under Sections 420 and 120B, IPC and 13(2) of the Prevention of Corruption Act.

2. The allegations against the petitioner as comprised in the FIR is of hers despite not being an agriculturist in the State of Himachal Pradesh, having fraudulently obtained an agriculturist certificate from the revenue agency concerned. The agriculturist certificate is comprised in Annexure P-4. She in sequel thereof purchased property under sale deed comprised in Annexure P-5. In the FIR, it is alleged that though the petitioner herein claims herself to be a legatee under the Will of one late Shri Surjeet Singh alias Jatinder Kumar, her brother-in-law which was executed in the year 1987, yet on attestation of mutation No.178 sanctioned in the year 1999, the entire land of deceased testator Surjeet Singh alias Jatinder Kumar came to be mutated in the name of his legal heirs. Hence, the petitioner herein was driven to institute a civil suit for declaration for setting aside mutation No.178 sanctioned in the year 1999, whereby in derogation to the conferment upon the petitioner herein of ¼ share

in the property of the deceased testator, the entire property of the deceased testator was mutated in favour of his legal heirs. Even though, the suit was decreed, however, the FIR records that the decree is collusive and does not have the effect of rendering the petitioner herein to be construable to be an agriculturist, besides with the factum of the petitioner herein having purportedly acquired a right in the land/estate of deceased testator Surjeet Singh alias Jatinder Kumar under the testamentary disposition of the latter, yet the decree of the Civil Court of competent jurisdiction having been rendered in the year 2008, as such then investing a right in the petitioner herein to claim in consonance with the testamentary disposition of her brother-in-law since deceased, in sequel, with the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, the relevant portion whereof stand extracted hereinafter, creating a bar/embargo in the year 1995 against the transfer of land by a decree of a Civil Court of competent jurisdiction or by way of Will in favour of a person, who is not an agriculturist as the respondent contend the petitioner herein to be so, the acquisition of title by the petitioner herein under a purported collusive decree of the Civil Court of competent jurisdiction rendered in the year, 2008 would lead to no other conclusion than that of the decree of the Civil Court of competent jurisdiction creating or investing no right in the petitioner herein to claim herself to be an agriculturist. On anvil thereof, it is contended that the petitioner herein was not entitled to obtain an agriculturist certificate comprised in Annexure P-4 issued in the year, 2012, as such, it is contended that the same is fraudulently obtained by the petitioner. The relevant portion of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act reads as under:

> "118. Transfer of land to non agriculturists barred.- (1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including transfer by a decree of a civil Court or for recovery of arrears of land revenue) by way of sale, gift, will, exchange, lease, mortgage with possession creation of a tenancy or in any other manner shall be valid in favour of a person who is not an agriculturist……………………………………"

3. Before the proceeding to adjudicate upon the factum of the validity of the decree of a Civil Court of competent jurisdiction and whether it on its rendition or pronouncement created a right then in favour of the petitioner herein so as to attract the bar of the afore extracted relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act or whether when it merely pronounced on its rendition the factum of the petitioner herein being entitled to, in consonance with the testamentary disposition of her brother-in-law a 1/4th share in the latter's estate which right accrued on the deceased testator's demise in the year 1989, as to whether then a right accrued or ensued to the petitioner herein to claim title to his estate and concomitantly, whether then in the face of a right in the estate of the deceased testator having occurred prior to coming into force of an amendment in the relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act, the obtaining or issuance of an agriculturist certificate in favour of the petitioner herein by the Revenue Agency concerned even subsequent to the coming into force an amendment in the relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act, constituted it to be or not to be fraudulently obtained, it is hence, imperative to gauge the scope and amplitude of the powers conferred upon this Court under the Section 482 of the Code of Criminal Procedure. The relevant decision which encapsulates the scope of the jurisdiction vested in this Court under Section 482, Cr.P.C. is reported in State of Haryana v. Bhajan Lal,

1992 Suppl(1) SCC 335, the relevant portion whereof reads as under: (SCC pp.378-379, para 102)

> "(1) Whether the allegations made in the First Information Report or the complaint, even if they are taken at their face valued and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacio0us redress for the grievance of the aggrieved party.
>
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grude."

4. The gravamen and import of the decision whose relevant portion has been extracted hereinabove is that this Court would be competent to quash an FIR only in the event where the FIR does not disclose any offence or is frivolous, fictitious and oppressive. The determinant fact for reaching a conclusion whether any offence is constituted by the allegations leveled against the petitioner herein in the FIR lodged against her, is whether the agriculturist certificate obtained by the petitioner herein comprised in Annexure P-4, was fraudulently or dishonestly obtained. It would be sufficient for this Court to construe that it was dishonestly and fraudulently obtained in the event of the petitioner herein not having demonstrated before this Court by cogent material that she on the demise of her brother-in-law, namely, Surjeet Singh alias Jatinder Kumar in the year 1989, who had under his testamentary disposition executed in the year 1987 bestowed upon her a ¼ share in his estate had then no right to seek its alienation or transfer in her favour. The legatees under the Will or the legal representatives of the deceased testator, namely, Surjeet Singh alias Jatinder Kumar have not contested the factum of the validity of the testamentary disposition of the latter. Therefore, an apt conclusion is that the

testamentary disposition of the deceased testator Surjit Singh alias Jatinder Kumar is to be concluded to be duly and validly executed. The anvil of the prosecution case, at this stage, against the petitioner herein is that with the coming into force of the amendment to the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act in the year 1995 the decree of a civil Court of competent jurisdiction rendered in the year 2008 whereby the petitioner herein was declared to be in consonance with the testamentary disposition of brother-in-law of the petitioner herein, namely, Surjeet Singh alis Jatinder Kumar entitled to a ¼ share in his estate, attracts the bar envisaged under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, inasmuch as with the transfer of land to the petitioner herein having occurred or taken place, hence, by a decree of a Civil court of competent jurisdiction subsequent to the year, 1995, when the amendment in the relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act came into force and the acquisition of title to the estate of the legator under a decree of the Civil Court of competent jurisdiction, as such, then constituting transfer of the land of the brother-in-law of the petitioner/deceased testator Surjeet Singh alias Jatinder Kumar in favour of the petitioner herein under a decree of a Civil Court of competent jurisdiction constitutes an infraction by the relevant provisions of the Himachal Pradesh inTenancy and Land Reforms Act with the concomitant effect of rendering invalid the issuance of an agriculturist certificate in her favour by the revenue agency concerned.

5. At this stage, the acid or acerbic determinant to put to at rest the controversy qua the attraction or applicability of the bar envisaged under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 to the acquisition of title by the petitioner herein by a decree of a Civil Court subsequent to 1995 in consonance with the Will of her brother-in-law whereby she was held entitled to 1/4th share in his estate is encapsulated in the fact whether the acquisition of title to the estate of the deceased testator/brother-in-law by the petitioner here was under a decree of a Civil Court or the right of the petitioner herein to inherit the property of her brother-in-law/the deceased testator/legator, namely, Surjeet Singh alias Jatinder Kumar arose on demise of the latter in the year 1989, hence prior to the creation of a bar or embargo in the year 1995 in the relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act against the acquisition of title either by a Will or a decree of the Civil Court of competent jurisdiction. In case this Court concludes that then the embargo or legal bar contemplated under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, is attracted to the decree of a Civil Court of competent jurisdiction rendered subsequently to the year 1995 when the amendment engrafting the bar came into force, then the petition as laid before this Court would suffer dismissal. However, in case this Court concludes on a interpretation of the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act in consonance with the material as laid before this Court, more especially the testamentary disposition of the brother-in-law of the petitioner herein, namely, Surjeet Singh alias Jatinder Kumar, who executed a testamentary disposition vesting in his estate on his demise a 1/4th share in the petitioner herein, hence, in the face of his demise having occurred in the year 1989, therefore, prior to the year 1995 when the amendment in the relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act creating an embargo against the acquisition of title in agricultural land by a non-agriculturist by way of a Will or a decree of a Civil Court of competent jurisdiction came into force, as such, then a concomitant conclusion may be arriveable that the transfer of alienation or vestment of a right in the estate of the deceased testator Surjeet Singh alias Jatinder Kumar occurred on his

demise in the year 1989, then the agriculturist certificate obtained by the petitioner even after coming into force of the amended relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act in the year 1995, would be stripped off its fraudulence.

6. Before determining whether on the demise of the brother-in-law of the petitioner herein in the year 1989, the petitioner herein acquired title or was entitled then to succeed to his estate, a finding also ought to be rendered that the amendment in the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act in the year 1995 creating and constituting an embargo or a bar against the transfer of agricultural land in favour of a non-agriculturist by a decree of a Civil Court of competent jurisdiction and by way of a will has been given a prospective effect, hence, is not retrospective. Consequently, when the amendment in the relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act has been omitted to be given retrospective effect, consequently, the testamentary disposition of the brother-in-law of the petitioner herein, namely, Surjeet Singh alias Jatinder Kumar, executed in the year 1987 and who died in the year 1989 did immediately on his demise in the year 1989, hence, preceding to coming into force of the amendment constitute a right or entitlement of the petitioner herein to succeed to his estate. In other words, immediately on his demise the transfer of the estate of the deceased testator was effectuated in her favour. Even though, the decree of the Civil Court was rendered in the year 2008, hence, it is urged by the learned Deputy Advocate General that the acquisition of title or entitlement or transfer of agricultural land of deceased testator Surjeet Singh alias Jatinder Kumar occurred only on its rendition, nonetheless the said argument is fallacious besides staggers in the face of the aforesaid finding that the acquisition of title or entitlement or transfer of the land of the deceased testator having accrued on the demise of deceased testator in the year, 1989 whereas the decree of a Civil Court was rendered in the year 2008 decree of a Civil Court is anvilled on the Will of Surjeet Singh alias Jatinder Kumar and merely confirms the recitals in it of the petitioner herein being entitled to a $1/4^{th}$ share in his estate. The decree of a Civil Court did not create or transfer on its rendition rights in the petitioner in the estate of deceased testator Surjeet Singh alias Jatinder Kumar, rather the transfer or creation of rights in the estate of deceased testator Surjeet Singh alias Jatinder Kumar occurred under the testamentary disposition of the latter to the extent of $1/4^{th}$ share in his estate immediately on his demise in the year 1989, hence, prior to the amendment in the relevant provisions of the Himachal Pradesh Tenancy and Land Reforms Act carried out in the year 1995. As such, it cannot be concluded that the agriculturist certificate Annexure P-4 issued in favour of the petitioner herein by the Revenue Agency, is fraudulently obtained by her. In aftermath, it ought to be concluded that since ingredients of the offence constituted in the FIR lodged against the petitioner herein are not sustainable, as such, the prosecution of the petitioner would be oppressive as also humiliate or harass her besides would be an abuse of the process of law.

7. For the foregoing reasons the petition is allowed and the FIR No.148 of 2013 of 12.12.2013 registered at Police Station, Dharampur, District Solan, H.P., under Sections 420 and 120-B, IPC and Section 13(2) of the Prevention of Corruption Act is quashed. All the pending applications, if any, also stand disposed of. No costs.

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

State of Himachal Pradesh ...Appellant.
Versus
Jeet Singh ...Respondent.

Cr. Appeal No. 4101 of 2013
Reserved on: 2.12.2014
Date of decision : 8.12.2014

Indian Penal Code, 1860- Sections 354 and 323 IPC – As per the prosecution case accused caught hold of the prosecutrix- she cried on which her parents came to the spot and rescued her from the accused- the testimony of the prosecutrix was contradictory to the version narrated by her in the FIR- the other eye-witnesses also made contradictory statements- held, that in these circumstances, prosecution version was not proved- hence, accused acquitted. (Para- 6 to 12)

For the appellant: Mr. Vivek Singh Attri, Deputy Advocate General with Mr. Tarun Pathak, Deputy Advocate General.
For the respondent: Ms. Mahika Verma, Advocate.

The following judgment of the Court was delivered:

Sureshwar Thakur, J.

The instant appeal is directed by the state against the impugned judgment, rendered on 20.2.2013, by the learned Sessions Judge, Sirmaur, District at Nahan, Himachal Pradesh, in Criminal Appeal No. 90-Cr.A/10 of 2011 whereby, the learned Sessions Judge while reversing the judgment of conviction recorded against the accused/respondent by the learned Judicial Magistrate, 1st Class, Rajgarh, District Sirmuar, H.P., acquitted the accused for his having allegedly committed offences punishable under Sections 354 and 323 IPC.

2. The brief facts of the case are that on 8.9.2009 the complainant alongwith his father Sunder Singh came to report the matter at police Station pachhad. She revealed that on 7.9.2009 she was studying in her room. At about 12.45 a.m., when she proceeded to the toilet, then someone caught hold of her from behind and pressed her breast and kissed her. When she turned back, the person was found to be Jeet Singh, who was wearing a ladies suit. On hers raising an alarm, her parents have attempted to evacuate her from the clutches of the accused by entering into the scuffle with the latter, who however successful in fleeing from the spot. In this incident her shirt was torn off and she also suffered injuries on her head and back. Prior to this incident the accused had thrice done such obscene acts with her. On the basis of her statement an FIR came to be registered and the investigation was taken up. On conclusion of the investigation, into the offence, allegedly committed by the accused, final report under Section 173 of the Code of Criminal Procedure was prepared and filed in the Court.

3. The accused was charged, for, his having committed offences punishable under Section 354 & 323 IPC, to, which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 9 witnesses. On closure of prosecution evidence, the statement of accused, under Section 313 of the Code of Criminal Procedure, was recorded, in, which he pleaded innocence and claimed false implication. He chose to lead evidence in defence.

5. On appraisal of the evidence on record, the learned trial Court, returned findings of conviction against the accused. On an appeal, preferred by the accused, before the learned Sessions Judge, the Learned Sessions Judge, while reversing the judgment of conviction recorded by the learned trial Court, acquitted the accused.

6. The State is aggrieved by the judgment of acquittal, recorded by the learned Appellate Court. The learned Deputy Advocate General has concertedly and vigorously contended that the findings of acquittal, recorded by the learned Appellate Court, are, not based on a proper appreciation of evidence on record, rather, 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 exercise of its appellate jurisdiction and be replaced by findings of conviction.

7. On the other hand, the learned counsel for the respondent has with considerable force and vigour contended that the findings of acquittal recorded by the Appellate Court 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 learned first appellate Court had on incisive discernment of the testimonies of the prosecutrix as well as of her parents, who deposed as PW-2 and 3, while theirs unfolding material embellishments and improvements over the version qua the incident comprised in the FIR, concluded hence that the truth of the version recorded in the FIR is eroded. The findings and conclusions arrived at by the Appellate Court would not entail reversal unless a circumspect reading and an analysis of the testimonies of prosecutrix as well as of PWs 2 and 3, her parents, portrays perse absurdity or perversity in their appreciation by the learned first appellate Court.

10. This Court while proceeding to examine the fact of the prosecutrix having indulged in a bout of embellishments and improvements over the version qua the incident recited by her in the FIR, the imminent noticeable fact which grips the attention of the Court is of hers having mentioned in the FIR, that when she proceeded to the toilet, then someone caught her from behind. However, while she came to be examined on oath, she deposes that the narration in the FIR of hers having been grabbed from behind is inadvertently mentioned in the FIR. Consequently, then the genesis of the prosecution version qua the commencement of incident comprised in the recitals recorded in the FIR of the incident having occurred when the prosecutrix had gone to the toilet and then someone having caught her from behind has obviously come to be reneged or resiled by the prosecutrix while hers come to be examined on oath, it hence, perse constitutes a dire and material contradiction over the version qua the commencement of the incident as narrated by her in the FIR. In sequel, the genesis of the prosecution version, is eroded of its veracity. She had also proceeded to mention in the FIR that after hers having been grabbed by the accused, the latter had pressed her breast and kissed her. However while

stepping into the witness box, she omits to attribute the said role to the accused, though ascribed to him in the FIR. Obviously then, too the version as spelt out qua the incident in the FIR has come to be contradicted by her while deposing as a witness on oath. Naturally then the contradiction qua the aforesaid facet belittles her credibility. Moreover other dire improvements in her deposition over the version qua the incident as spelt out in the FIR, have also occurred, inasmuch, as, she while being examined on oath has deposed that the accused tried to gag her to preclude her from shouting and asking for help. The aforesaid fact as espoused by her on oath when not recorded by her in the FIR lodged at her instance is obviously an improvement and an embellishment casting a spell of doubt qua her credibility besides rendering prevaricated the version qua the incident as initially recorded in the FIR. The aforesaid contradictions and embellishments existing in the deposition of the complainant/prosecutrix are brazen, sharp and dire. Concomitantly, then, as aptly recorded by the learned first appellate Court, they render open an inference that the version as spelt out qua the incident by the complainant is unbelievable being wholly concocted.

11. Besides, the parents of the prosecutrix who deposed as PWs 2 and 3, too, have resorted to material contradictions, improvements and embellishments which hence render their testimonies to be imbued with the vice of falsity or prevarication. The contradictions resorted to by PW-2 and PW-3 are unraveled by the fact of the FIR recording that on the arrival of the parents at the site of occurrence on theirs hearing the cries of the complainant theirs having attempted to evacuate her from the clutches of the accused by entering into a scuffle with the latter, who however was successful in fleeing from the spot. The reticence of both the PWs 2 and 3 as well as of the prosecutrix qua the arrival of the PW-2 and PW-3 at the site of occurrence surges forth an inference that the prosecution version of PW-2 and PW-3 having arrived at the site of occurrence suffers from falsity. Consequently, their depositions qua the incident are rendered incredible. Moreover both PW-2 and PW-3 have rendered contradictory versions qua the spot where the prosecutrix was found lying. PW-2 deposes that the prosecutrix was found lying 25-30 feet away from the toilet yet PW-3 deposes that she was found lying 4-5 feet away from the toilet. The contradictory versions spelt out by them qua the distance from the toilet where the prosecutrix was found lying too engenders a conclusion that as a matter of fact they never arrived at the site of occurrence rather they were apprised of it subsequently by the prosecutrix. Consequently, the version as espoused by them, qua the fact of theirs having found the prosecutrix lying near the toilet is imbued with falsity.

12. The summom bonum of the above discussion is that the contradictions, improvements and embellishments as unraveled hereinbefore erode the veracity of the prosecution version. Consequently, when the prosecution version is stripped off its truth, the benefit of doubt as afforded to the accused by the learned first appellate Court does not suffer from any perversity or absurdity comprised in its not appreciating the evidence on record in a wholesome, unbiased or impartisan manner.

13. In view of above discussion, I find no merit in this appeal, which is accordingly dismissed and the judgment of the learned first appellate Court is affirmed. Record of the learned trial Court be sent back forthwith.

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

CWP No. 6916 of 2011 a/w LPAs No. 504, 507, 512 of 2012, 203 of 2014, CWPs No. 7728 and 8412 of 2013
Reserved on: 18.11.2014
Decided on: 9.12.2014

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1. CWP No. 6916 of 2011
Pankaj Kumar …Petitioner.
Versus
State of Himachal Pradesh & others …Respondents.
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2. LPA No. 504 of 2012
Kamla Devi …Appellant.
Versus
State of Himachal Pradesh & others …Respondents.
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3. LPA No. 507 of 2012
Himachal Pradesh Primary Assistant Teachers Association through its President …Appellant.
Versus
Chander Mohan Negi & others …Respondents.
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4. LPA No. 512 of 2012
Vijay Kumar & others …Appellants.
Versus
State of Himachal Pradesh & others …Respondents.
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5. LPA No. 203 of 2014
State of Himachal Pradesh & another …Appellants.
Versus
Chander Mohan Negi & others …Respondents.
…………………………………………………………………………………………

6. CWP No. 7728 of 2013
Shikha Mankotia & others …Petitioners.
Versus
State of H.P. & others …Respondents.
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7. CWP No. 8412 of 2013
Rajesh Thakur & others …Petitioners.
Versus
State of Himachal Pradesh & others …Respondents.

CWP No. 6916 of 2011

For the petitioner: Mr. Bipin C. Negi, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 to 4.
Nemo for respondent No. 5.

Respondent No. 6 already ex-parte.
Mr. Naveen K. Bhardwaj, Advocate, for respondent No. 7.
Mr. Surender Sharma, Advocate, for respondent No. 8.
Mr. Shyam Chauhan, Advocate, for respondent No. 9.
Mr. Ajay Mohan Goel, Advocate, for respondents No. 10 to 14.
Mr. Mohit Thakur, Advocate, for respondent No. 15.

LPA No. 504 of 2012

For the appellant: Mr. Kulbhushan Khajuria, Advocate.
For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 and 2.
Ms. Ranjana Parmar, Advocate, for respondents No. 3 to 5.
Mr. Ajay Mohan Goel, Advocate, for respondent No. 6.

LPA No. 507 of 2012

For the appellant: Mr. Ajay Mohan Goel, Advocate.
For the respondents: Ms. Ranjana Parmar, Advocate, for respondents No. 1 to 3.
Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 4 and 5.

LPA No. 512 of 2012

For the appellants: Mr. Avneesh Bhardwaj, Advocate.
For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 and 2.
Ms. Ranjana Parmar, Advocate, for respondents No. 3 to 5.
Mr. Ajay Mohan Goel, Advocate, for respondent No. 6.

LPA No. 203 of 2014

For the appellants: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General.
For the respondents: Ms. Ranjana Parmar, Advocate, for respondents No. 1 to 3.
Mr. Ajay Mohan Goel, Advocate, for respondent No. 4.

CWP No. 7728 of 2013

For the petitioners: Mr. Ashok Tyagi and Mr. Mukul Sood, Advocates.
For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 to 4.
Ms. Archana Dutt, Advocate, vice Ms. Aruna Sharma, Advocate, for respondent No. 5.
Mr. D.K. Khanna, Advocate, for respondent No. 6.

CWP No. 8412 of 2013

For the petitioner: Ms. Ranjana Parmar, Advocate.

For the respondents: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. Romesh Verma, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 1 to 3.
Ms. Archana Dutt, Advocate, for respondent No. 4.
Mr. Avneesh Bhardwaj, Advocate, for respondent No. 5.
Mr. Mohit Thakur, Advocate, for respondent No. 6.

Constitution of India, 1950- Article 226 - State appointed Gram Vidya Upasak Assistant Teacher and Para teachers- services of gram Vidya Upasak and para teachers were subsequently regularized- Writ Petition was filed by one of the Primary Assistant Teacher and the Court held that appointment of teachers was not made in accordance with rule - State was directed to phase out those teachers in a phased manner- State preferred an appeal and contended that there was deficiency of the teachers due to which it had engaged primary assistant teachers –teachers had undergone the training subsequent to their appointment- held, that teachers were not appointed as a stop-gap arrangement- State had decided to regularize them- teachers were not parties before the Writ Court- teachers were appointed in the public interest to improve Pupil Teacher Ratio- large number of vacancies are still available- therefore, in these circumstances, decision to regularize them cannot be said to be bad.
(Para- 8 to 35)

Constitution of India, 1950- Article 226- Public Interest Litigation- public interest litigation is not maintainable in service jurisprudence- Writ petitioners claimed that they have a right of consideration which showed that they had an interest- hence, public interest litigation is not maintainable at their instance.
(Para-38, 40 and 43)

Cases referred:

Secretary, State of Karnataka and others versus Umadevi (3) and others, (2006) 4 Supreme Court Cases 1

Indu Shekhar Singh & Ors. versus State of U.P. & Ors., 2006 AIR SCW 2582

University of Rajasthan & Anr. versus Prem Lata Agarwal, 2013 AIR SCW 989

Chief Executive Officer, Pondichery Khadi and Village Industries Board and Anr. versus K. Aroquia Radja and Ors., 2013 AIR SCW 1759

Nihal Singh and others versus State of Punjab and others, (2013) 14 SCC 65

Hari Nandan Prasad and Anr. versus Employer I/R to Management of FCI and Anr., 2014 AIR SCW 1383

State of Jharkhand and others vs Kamal Prasad & others, 2014 AIR SCW 2513

Vireshwar Singh and others versus Municipal Corporation of Delhi and others, 2014 AIR SCW 5480,

Girjesh Shrivastava & Ors. v. State of M.P. & Ors., 2010 AIR SCW 7001

State of Uttaranchal versus Balwant Singh Chaufal & Ors., 2010 AIR SCW 1029

Hari Bansh Lal versus Sahodar Prasad Mahto and others, (2010) 9 Supreme Court Cases 655

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice.

These Writ Petitions and the Letters Patent Appeals are the outcome of the policies, i.e. The Himachal Pradesh Gram Vidya Upasak Yojna, 2001 (Annexure P-3), Himachal Pradesh Prathmik Sahayak Adhyapak/Primary

Assistant Teacher (PAT) Scheme, 2003 and The Himachal Pradesh Para Teachers (Lecturer School Cadre), Para Teachers (T.G.T's) and Para Teachers (C&V) Policy, 2003 (Annexure P-4), which were made by the State Government in the years 2001 and 2003, respectively.

2. The State, after noticing the dire need of providing education at grass root level and particularly, in tribal and hard/difficult areas, made the policies/schemes in the years 2001 and 2003, appointed Gram Vidya Upasaks, Primary Assistant Teachers and Para Teachers. It is apt to reproduce the relevant portion of one of the policies, i.e. the Himachal Pradesh Gram Vidya Upasak Yojna-2001 herein:

> *"**2. Rationale:-***
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> *The task of universalization of Primary Education in Himachal Pradesh is a gigantic one keeping in view the tough geographical conditions of the State and the non-availability of trained teaching man power. The trained teachers available in the urban and other developed areas are reluctant to serve in the remote areas as a result of which most of our schools in these areas are without teachers. In the remote and inaccessible areas of the State, the Department of Primary Education faced many problems like teacher absenteeism, poor scholastic standards which led to irregular functioning of primary schools and increased drop-out rate. In order to counter these problems effectively and to translate the vision of the State Govt. reflected in the NINE POINT CHARTER announced by Hon'ble Chief Minister, Himachal Pradesh, Prof. Prem Kumar Dhumal, to bring REFORMS and to accelerate the pace of development, by decentralising the power to panchayats, the HP GRAM VIDYA UPASAK YOJNA has been visualised.*
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> *The Department of H.P. Primary Eduction has conceived this innovative scheme of H.P. Gram Vidya Yojna-2001 to relate it to the concept of Para Teachers keeping in view the problem of teacher absenteeism in the remote and difficult rural areas. It is difficult to find fully qualified teachers who would willingly accept posting in remote villages, far less actually take up residence there. A primary school in such a village actually tends to become dysfunctional, and parents as well as children fail to relate to such an institution, leading to high drop out rates. One of the ways to solve this problem is the concept of Para Teachers. The use of Para Teachers in formal schools began with the Himachal Pradesh Volunteer Teachers Scheme in 1984 and replicated by Vidya Upasaks Yojna in the year-2000 which was followed in Primary Education by other States."*

3. The State, after taking into consideration their work, conduct and output, decided to regularize the services of Gram Vidya Upasaks and Para Teachers in terms of Annexures P-7 and P-8.

4. Three persons filed a writ petition, being CWP No. 3303 of 2012, titled as Chander Mohan Negi & others versus State of Himachal Pradesh & others, and sought following reliefs amongst others:

"i) That the respondents may kindly be directed to fill up the available vacancies of the Junior Basic Trained teachers in accordance with Recruitment and Promotion Rules.

ii) That the respondents may further be restrained from regularizing the Primary Assistant Teachers who have been appointed in violation of Constitutional Schemes and Law established and settled by the Hon'ble Apex Court with further directions to the respondents to advertise all the available vacancies of Junior Basic Trained teachers in the Education Department to be filled in accordance with Recruitment and Promotion Rules without any further delay and all the vacancies may be filled up in accordance with Recruitment and Promotion Rules available at the time of occurrence of the vacancies."

5. The Writ Court vide judgment and order, dated 18th October, 2012 (hereinafter referred to as "the impugned judgment") held that the appointments of the teachers made under The Himachal Pradesh Prathmik Sahayak Adhyapak/Primary Assistant Teacher (PAT) Scheme, 2003, have not been made in accordance with the Rules and accordingly, directed to phase out the said teachers in a phased manner, constraining the appellants, i.e. the persons appointed as Primary Assistant Teachers, Himachal Pradesh Primary Assistant Teachers Association and the State of Himachal Pradesh to question the impugned judgment by the medium of LPAs No. 504, 512, 507 of 2012 and 203 of 2014, respectively, on the grounds taken in the respective memo of appeals.

6. Three writ petitions, being CWPs No. 6916 of 2011, 7728 and 8412 of 2013, also came to be filed in this Court, whereby the writ petitioners have sought quashment of all the appointments made by the State in terms of the said policies on the grounds that the appointments are illegal and have deprived them to participate, though, they are eligible in all respects and have a right to participate in the selection process.

7. All the Letters Patent Appeals and the Writ Petitions came to be clubbed in view of the fact that the common questions of facts and law were involved in all the appeals and the writ petitions.

8. The moot question for consideration in these appeals and the writ petitions is - whether the selection/engagement of the teachers made in terms of the policies made by the State aimed at to provide primary education to the needy and poor hailing from tribal, hard/difficult areas, who are entitled to it as a matter of right, being a fundamental right, and are poor read with the fact that the regular/contractual teachers were not interested to work in the said areas, is illegal and not entitled for regularization?

9. In order to ascertain what was the background of framing of these policies, the State has produced the relevant record and the notings, perusal of which do disclose that the policies were aimed at to achieve the purpose, the reference of which is made hereinabove.

10. The appointments/engagements were made subject to the conditions contained in the policies and one of the conditions was that the appointees will not seek regularization/absorption. However, the State, after noticing their work, conduct and the zeal they have shown in the hard areas read with the fact that huge number of vacancies were available; the appointees

were working for the last 8-10 years on these posts, had completed the Special Teacher Training Qualifying Condensed Course and had obtained the special JBT certificate after five years' continuous service in terms of the Himachal Pradesh Education Code, 1985, decided to regularize the Gram Vidya Upasaks. The respondents-State in the supplementary affidavit filed in CWP No. 7728 of 2013 has explained what were the basis for regularizing their services and how they have been able to engage teachers on a meager amount. They have also given the details as to what was the difference in the salary of regular teachers and teachers engaged in terms of the schemes and have also given details of percentage-wise benefit earned in each year. They have also given the output, mention of which has been made in paras 11 to 15 of the affidavit. It is apt to reproduce relevant portion of para 13 and para 14 of the supplementary affidavit herein:

> *"13. That is is relevant to submit that in case regular recruitments were made in the teaching sector the State Government would not have been able to increase the Pupil Teacher Ratio (PTR) as maximum part of financial resources would have been consumed in meeting the salary component of Regular Teachers. For quick perusal of the court the salary component of one Regular teacher and comparative payments made to the Para, PAT, PTA teachers, for the year 2003-04, 2006-07 and 2011-12, are reproduced as under:*
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> *......................................*
>
> *14. That with the passage of time the services of PTA under GIA, Para Teachers and PAT had to be continued as their engagement was obtaining the desired results as the number of schools had also drastically increased and the State was also facing financial constraints to engage regular teachers."*

11. Accordingly, the Gram Vidya Upasaks came to be regularized. No doubt, the posts against which they were regularized, were direct recruitment posts and were to be filled in by a selection process as per the Rules occupying the field, but, at the same time, it is to be kept in mind that the State has power to make one-time measure schemes/policies in order to achieve the goal of the Constitution, i.e. Right of Education and to provide education to the needy/poor, who hail from the tribal and difficult/hard areas.

12. The policies, in terms of which the said teachers came to be engaged, were not questioned by any person initially and the persons, who have now questioned these policies/regularization policy, perhaps, may be the students of those very teachers.

13. We have perused the record, read with the writ petitions and the appeals. The writ petitioners in the writ petitions have averred that now by subsequent developments and by efflux of time, they have acquired qualification and have a right of consideration.

14. It is apt to record herein that the writ petitioners were not eligible at the relevant point of time and no one questioned the selection of the teachers at the relevant point of time, even at the time when regularization was made.

15. In CWP No. 3303 of 2012, it has been specifically averred that the writ petitioners became eligible much after these teachers, who were appointed in the

years 2001 and 2003, i.e. in the year 2010, the writ petitions came to be filed at least after eleven years and it is not mentioned in the writ petition that the writ petitioners were eligible at the particular point of time, is suggestive of the fact that they were not eligible at the relevant time and had no locus to question the selection/appointments made in the years 2001 and 2003. It is apt to reproduce para 7 of the preliminary submissions of the reply filed by State-respondents No. 1 and 2 in CWP No. 3303 of 2012 herein:

> *"7. That PAT were engaged in the year 2003, whereas the petitioner have completed the JBT in 2010. In view of the above the petitioner have no claim against the posts occupied by the PAT whereas which were lying vacant in the year 2003."*

16. It has also been averred by the respondent-State in its reply on merits filed in CWP No. 3303 of 2012 that the appointment of these teachers has not affected the writ petitioners in any way. It is apt to reproduce para 11 of the reply on merits herein:

> *"11. That in reply to this para it is submitted that the Department was not in a position to leave the schools teachers deficient for long since it would have affected the studies of the students very badly. Therefore, teachers had been appointed under various schemes at various point of time. Such appointments had been made up to year-2007 and have no impact on the petitioners since they have completed their 2 year JBT training in the year-2010 and are required to qualify the TET as submitted in the preliminary submissions."*

17. It is apt to record herein that the writ petitioners have chosen not to file rejoinder and the stand taken by the State has remained uncontroverted.

18. The core question is - Can the person(s), who became eligible later on and had no locus at the particular point of time, question the same on the ground that the appointments are bad?

19. The Apex Court in **Secretary, State of Karnataka and others versus Umadevi (3) and others,** reported in **(2006) 4 Supreme Court Cases 1,** held that the back door appointment, i.e. illegal appointment, cannot be regularized. It further held that if irregular appointment is outcome of a conscious decision of the State, can be regularized. It is apt to reproduce relevant portion of para 49 and para 53 of the judgment herein:

> *"49. ....Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.*
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> *50. to 52. ....*
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> *53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa, (1967) 1 SCR 128 : AIR 1967 SC 1071, R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409 : (1972) 2 SCR 799, and B.N.*

Nagarajan v. State of Karnataka, (1979) 4 SCC 507, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

20. The Apex Court has taken the same view in the case titled as **Indu Shekhar Singh & Ors. versus State of U.P. & Ors.,** reported in **2006 AIR SCW 2582.** It is apt to reproduce paras 24 and 25 of the judgment herein:

"24. The State was making an offer to the Respondents not in terms of any specific power under Rules, but in exercise of its residuary power (assuming that the same was available). The State, therefore, was within its right to impose conditions. The Respondents exercised their right of election. They could have accepted the said offer or rejected the same. While making the said offer, the State categorically stated that for the purpose of fixation of seniority, they would not be obtaining the benefits of services rendered in U.P. Jal Nigam and would be placed below in the cadre till the date of absorption. The submission of Mr. Verma that for the period they were with the Authority by way of deputation, should have been considered towards seniority cannot be accepted simply for the reason that till they were absorbed, they continued to be in the employment of the Jal Nigam. Furthermore, the said condition imposed is backed by another condition that the deputed employee who is seeking for absorption shall be placed below the officers appointed in the cadre till the date of absorption. The Respondent Nos. 2 to 4 accepted the said offer without any demur on 3.9.87, 28.11.91 and 6.4.87 respectively.

25. They, therefore, exercised their right of option. Once they obtained entry on the basis of election, they cannot be allowed to turn round and contend that the conditions are

illegal. [See R.N. Gosain vs. Yashpal Dhir (1992) 4 SCC 683, Ramankutty Guptan vs. Avara (1994) 2 SCC 642 and Bank of India & Ors. vs. O.P. Swarnakar & Ors. (2003) 2 SCC 721.] Furthermore, there is no fundamental right in regard to the counting of the services rendered in an autonomous body. The past services can be taken into consideration only when the Rules permit the same or where a special situation exists, which would entitle the employee to obtain such benefit of past service."

21. Admittedly, in terms of the policies of 2001 and 2003, the teachers-appellants/writ respondents have accepted the conditions and thereafter were appointed, but it is the State which has made another policy and decided to regularize their services. Thus, it cannot be said that they are precluded from seeking regularization. The condition was accepted by the teachers, which was imposed by the State and the State thought it proper, in its wisdom, to regularize them, made a conscious decision. Thus, keeping in view the ratio, the appellants/writ respondents have carved out a case for interference.

22. The Apex Court in a case titled as **University of Rajasthan & Anr. versus Prem Lata Agarwal,** reported in **2013 AIR SCW 989,** held that an appointment by stop-gap arrangement cannot be regularized, but, at the same time, laid down the principle that if appointments are made under a particular scheme and continued for a pretty long time, are entitled to regularization in terms of the policy. It is apt to reproduce paras 22, 33 and 34 of the judgment herein:

"22. On a studied scrutiny, it is found that the High Court has placed reliance on Section 3(3) of the Act and the regulations which we have reproduced hereinabove to arrive at the conclusion that the respondents were entitled to be treated as regular teachers and, therefore, it was obligatory on the part of the University to extend the benefit of pension. The provisions of the Act, when read in a conjoint manner, make it crystal clear that the legislature had imposed restrictions on the appointment, provided for the constitution of Selection Committee and also laid down the procedure of the said committees. The intention of the legislature is, as it seems to us, to have teachers appointed on the basis of merit, regard being had to transparency, fairness, impartiality and total objectivity. Under sub- section (2), it has been clearly postulated that any appointment made barring the arrangement under sub-section (3) of Section 3 would be null and void. The language is clear and categorical. The exception that had been carved out under Section 3(3) is for an extremely limited purpose. It permits stop-gap arrangements and only covers ad hoc or part-time teachers with a small duration. It is intended to serve the purpose of meeting the situation where an emergency occurs. It was never intended to clothe any authority with the power to make any appointment beyond what is prescribed therein. The scheme of the aforesaid provisions go a long way to show that the legislature, in fact, had taken immense care to see that no one gets a back door entry and the selections are

made in a seemly manner. A proper schematic analysis of the provisions enumerated hereinabove do not envisage any kind of ad hoc appointment or part-time appointment to remain in continuance. As is demonstrable from the factual depiction in the present batch of cases, some of the respondents continued with certain breaks and also due to intervention of the court. That apart, this Court had not acceded to their prayer of regularization. The only direction that was issued in Special Leave Petition (c) No. 3238 of 1997 and other connected matters, was that they would continue in service till the regular selections were made. It is noteworthy that a distinction has to be made and we are obliged to do so because of the language employed in the provisions between a regular teacher and an ad hoc teacher or a part-time teacher who continues to work in the post sometimes due to fortuitous circumstances and sometimes due to the interdiction by the court. Their initial appointment could be regarded as legal for the limited purposes of Section 3(3) of the Act. That would only protect the period fixed therein. Thereafter, they could not have been allowed to continue, as it was only a stop gap arrangement and was bound to be so under the statutory scheme. Their continuance thereafter by operation of law has to be regarded as null and void regard being had to the language employed in Section 3(2) of the Act.

23. to 32. ....

33. We have already analysed the scheme of Section 3 and stated that there could not have been continuance of the service after the fixed duration as provided under Section 3(3) of the Act and such continuance is to be treated as null and void. That is how the Act operates in the field. That apart, regular selection was required to be made by a High Powered Committee as provided under Section 4. It is also pertinent to state that the Act lays down the procedure of the selection committee not leaving it to any authority to provide the same by rules or regulations.

34. In view of the aforesaid, the irresistible conclusion is that the continuance after the fixed duration goes to the root of the matter. That apart, the teachers were allowed to continue under certain compelling circumstances and by interdiction by courts. Quite apart from the above, this Court had categorically declined to accede to the prayer for regularization. In such a situation, we are afraid that the reliance placed by the High Court on paragraph 53 of the pronouncement in Uma Devi, (AIR 2006 SC 1806) can be said to be justified. In this regard, another aspect, though an ancillary one, may be worth noting. Prem Lata Agarwal and B.K. Joshi had retired on 31.3.2001 and 31.1.2002, and by no stretch of imagination, Uma Devi (supra) lays down that the cases of any category of appointees who had retired could be regularized. We may repeat at the cost of repetition that the protection carved out in

paragraph 53 in Uma Devi (supra) could not be extended to the respondents basically for three reasons, namely, (i) that the continuance of appointment after the fixed duration was null and void by operation of law; (ii) that the respondent continued in the post by intervention of the court; and (iii) that this Court had declined to regularize their services in 1998."

23. The teachers-appellants/writ respondents were not appointed by way of stop-gap arrangement, thus, are entitled to regularization in terms of policy made by the Government while applying the ratio of the judgment (supra).

24. The Apex Court has laid down the same principle also in **Chief Executive Officer, Pondichery Khadi and Village Industries Board and Anr. versus K. Aroquia Radja and Ors.,** reported in **2013 AIR SCW 1759.** It is apt to reproduce para 18 of the judgment herein:

"18. As stated by this Court in Umadevi (AIR 2006 SC 1806) (supra), absorption, regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment is impermissible and violative of Articles 14 and 16 of the Constitution of India. As recorded in paragraph 53 of the report in SCC (Para 44 of AIR 2006 SC 1806), this Court has allowed one time measure, regularization of services of irregularly appointed persons, provided they have worked for ten years or more in duly sanctioned posts. That is also not the case in the present matter."

25. In the case titled as **Nihal Singh and others versus State of Punjab and others,** reported in **(2013) 14 Supreme Court Cases 65,** the initial appointments of the appellants were made after going through the procedure adopted by the State in terms of the policy, the decision to resort to such a procedure was taken at the highest level of the State consciously, a selection process was designed and the State was directed to regularize their services by creating necessary posts. The facts of the cases in hand are similar. The teachers came to be appointed in terms of the said policies by the selection committees duly constituted in terms of the decision made by the highest authorities. It is apt to reproduce paras 24, 27, 28 and 31 of the judgment herein:

"24. In our opinion, the initial appointment of the appellants can never be categorised as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us.

25. ....

26. ....

27. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by

this Court in Union of India v. N. Hargopal, (1987) 3 SCC 308: 1987 SCC (L&S) 227: (1987) 4 ATC 51.

28. The abovementioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able-bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

29. ....

30. ....

31. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi (3) case, this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States."

26. The Apex Court in the latest judgment rendered in the case titled as **Hari Nandan Prasad and Anr. versus Employer I/R to Management of FCI and Anr.,** reported in **2014 AIR SCW 1383,** has laid down the same principles. It is apt to reproduce para 34 of the judgment herein:

"34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker /adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

27. It is also apt to reproduce paras 20 and 23 of the latest judgment rendered by the Apex Court in **State of Jharkhand and others versus Kamal Prasad and others,** reported in **2014 AIR SCW 2513,** herein:

> *"20. We have heard the factual and legal contentions urged by the learned senior counsel for both the parties and carefully examined the findings and reasons recorded in the impugned judgment with reference to the evidence produced on behalf of the respondent-employees. The evidence on record produced by the respondent-employees would clearly go to show that they have been rendering services in the posts as ad hoc Engineers since 1987 and have been discharging their services as permanent employees with the appellants. Additional 200 posts were created thereafter by the State Government of Bihar. However, the respondents continued in their services as ad hoc employees without any disciplinary proceedings against them which prove that they have been discharging services to their employers to their satisfaction.*
>
> *The learned senior counsel on behalf of the appellants have failed to show as to how the interim orders upon which he placed strong reliance are extended to the respondents which is not forthcoming except placing reliance upon the decision of this Court in the case of Amrit Lal Berry (AIR 1975 SC 538) (supra), without producing any record on behalf of both the State Governments of Bihar and Jharkhand to substantiate the contention that the interim orders obtained by the similarly placed employees in the writ petitions referred to supra were extended to the respondent-employees to maintain parity though they have not obtained such interim orders from the High Court. Therefore, the learned senior counsel has failed to prove that the respondents have failed to render continuous services to the appellants at least for ten years without intervention of orders of the court, the findings of fact recorded by the Division Bench of the High Court is based on record, hence the same cannot be termed as erroneous in law. In view of the categorical finding of fact on the relevant contentious issue that the respondent-employees have continued in their service for more than 10 years continuously therefore, the legal principle laid down by this Court in Uma Devi's case (AIR 2006 SC 1806) (supra) at paragraph 53 squarely applies to the present cases. The Division Bench of the High Court has rightly held that the respondent-employees are entitled for the relief, the same cannot be interfered with by this Court.*
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> *21. ....*
>
> *22. ....*
>
> *23. ....In view of the legal principles laid down in the aforesaid decisions, we are of the opinion that the decision of the High Court does not fall in either of the categories mentioned above which calls for our interference. The Division Bench of the High Court having*

regard to the glaring facts that the respondent-employees have continuously worked in their posts for more than 29 years discharging permanent nature of duties and they have been paid their salaries and other service benefits out of the budget allocation, no objection was raised by the CAG in this regard and therefore, it is not open for the appellants to contend that the law laid down in Uma Devi's case (AIR 2006 SC 1806) (supra) has no application to the fact situation. The action of the appellants in terminating the services of the respondent-employees who have rendered continuous service in their posts during pendency of the Letters Patent Appeals was quashed by the High Court after it has felt that the action is not only arbitrary but shocks its conscious and therefore it has rightly exercised its discretionary power and granted the reliefs to the respondent-employees which do not call for our interference. Therefore, we are of the opinion that this Court will not interfere with the opinion of the High Court and on the contrary, we will uphold the decision of the High Court both on factual and legal aspects as the same is legally correct and it has done justice to the respondent-employees."

28. It would be profitable to reproduce paras 15 and 16 of the judgment rendered by the Apex Court in **Vireshwar Singh and others versus Municipal Corporation of Delhi and others,** reported in **2014 AIR SCW 5480,** herein:

"15. Learned counsel for the appellants has tried to persuade us to charter the aforesaid course by placing reliance on two decisions of this Court in Narender Chadha and others v. Union of India and others, (1986) 2 SCC 157 : (AIR 1986 SC 638), and Keshav Chandra Joshi and others v. Union of India and others, 1992 Supp (1) SCC 272 : (AIR 1991 SC 284). It is contended that the denial of benefit of long years of ad hoc service, in view of the ratio of the law laid down in the aforesaid two decisions, would be contrary to Articles 14 and 16 of the Constitution.

16. It is the view expressed in Narender Chadha (AIR 1968 SC 638) (supra) which would require a close look as Keshav Chandra Joshi (AIR 1991 SC 284) (supra) is a mere reiteration of the said view. In Narender Chadha (supra) the lis between the parties was one relating to counting of ad hoc service rendered by the promotees for the purpose of computation of seniority qua the direct recruits. The basis of the decision to count long years of ad hoc service for the purpose of seniority is to be found more in the peculiar facts of the case as noted in para 20 of the report than on any principle of law of general application. However, in paragraphs 15-19 of the report a deemed relaxation of the Rules of appointment and the wide sweep of the power to relax the provisions of the Rules, as it existed at the relevant point of time, appears to be the basis for counting of the ad hoc service for the purpose of seniority."

29. While applying the tests laid down by the Apex Court in the judgments (supra) and keeping in view the aim and object of the policies of the State Government, the appointments made cannot be said to be illegal, thus, can be regularized as per the mandate of the said policies.

30. In sequel to order, dated 7th July, 2014, respondents-State has filed a supplementary affidavit in CWP No. 7728 of 2013. They have also given the background of the appointment of the teachers in various categories. It is apt to reproduce paras 2, 3 and 5 of the supplementary affidavit herein:

"2. That in the year 2003 there were 7516 posts of teachers in different categories lying vacant in the Government Schools in the State of Himachal Pradesh.

The position of the sanctioned posts, filled-up posts and vacant posts in the year 2003-04 in respect of all categories of teachers was as under:

Category	*Sanctioned Posts*	*Filled up*	*Vacant*
J B Ts	*28829*	*25971*	*3257*
T G Ts	*13298*	*12143*	*1155*
C & V	*13906*	*11547*	*2359*
Lecturer (School cadre)	*7370*	*6730*	*640*
D P E	*678*	*573*	*105*

*3. That the State Government in order to achieve the goal of free and compulsory education to all the children within the age group of 6-14 in the year 2003, the State Government came out with '**H.P. Para Teachers Policy, 2003**' for engaging Para Teachers and H.P. Prathmik Sahayak Yojna/Primary Assistant Teachers against the vacancies of Lecturers (School Cadre), T G Ts and C & V and JBT Teachers in various Government Schools of the State. The posts of such teachers remained vacant due to the unavoidable factors like transfer, retirements, deputations, secondment, promotions, deaths and up-gradation of Schools etc. The non-availability of the teachers in various Schools in the State, in-spite of best efforts by the State Government to fill up all such vacancies of teachers in the schools, adversely affected the interest of the students and has a negative impact on the quality of education. Therefore, in the interest of students and to improve the qualitative change in the education system the above policy was brought by the State Government.*

4. ....

5. That apart from the aforementioned method, the Government had also filled up the various posts of teachers through regular appointments and promotions as well."

31. In the supplementary affidavit filed during the pendency of the appeals and the writ petitions, the respondents-State have given the existing vacancy position, which do disclose that a large number of posts are vacant in the cadres of TGTs, C&Vs, PTAs and PATs. It also discloses the reasons for formulation of the policies and the reason for their regularization. It is stated that the engagements were in the interest of public at large and it was also noticed that there was tremendous improvement in Pupil Teacher Ratio (PTR), literacy rate and reduction in dropout cases in the primary and upper primary classes. It is apt to reproduce paras 6, 7 and 9 of the supplementary affidavit herein:

6. That by adopting the aforesaid policy the State Government appointed many of the teachers in the backward and remote areas where the posts of teachers had remained vacant either due to transfer of a teacher from hard area to soft area or due to the fact that normally a fresh appointee does not prefer to join in such areas.

7. That after making of the above policy and engaging teachers in above manner, there was tremendous improvement in Pupil Teacher Ratio (P.T.R.), literacy rate and reduction in

dropout cases in the primary (1st - 5th class) and upper primary (6th-8th class).

8. ....

9. That the existing position of the number of para lecturers, TGTs, C&V, PTA's and PAT's working in different schools in the State are as under:

Category	Total sanction posts	Total filled up posts	Para	PAT/ GVU	PTA	Vacant
JBTs	21778	20972	---	3552	---	806
TGTs	14822	13231	724	---	1062	1591
C&V	16019	12079	764	---	2943	4831
Lecturer School	16081 13936 functional 2145 non functional		508	---	1964	1980
DPE	1486	1264	93	---	323	222

Lecturer College	*2240*	*1570*	---	---	*80*	*670*

32. It also contains other details and statistics, which do disclose that the State has achieved the aim and object of the said policies.

33. It is apt to record herein that the supplementary affidavit has not been rebutted by any of the writ petitioners or the respondents in the appeals.

34. A bare perusal of the supplementary affidavit (supra) do disclose that even after appointing all the said persons as teachers through various policies, a large number of vacancies are still available. It is for the writ petitioners, who have challenged the appointment/selection of these teachers, to participate in the selection process when advertisement notices are issued.

35. Learned counsel for the writ petitioners before this Court as well as before the learned Single Judge were asked to show their right or cause. The argument advanced was that the appointment/selection of the teachers appointed in the years 2001 and 2003 is illegal and they have no right to seek regularization, thus, the writ petitioners have right to challenge the same.

36. As discussed hereinabove, the writ petitioners were not even eligible at the relevant point of time, what locus do they have to question the selection/appointment of the said teachers?

37. Learned counsel for the writ petitioners argued that the writ petitioners have filed the writ petitions in the nature of Public Interest Litigation.

38. It is beaten law of land that public interest litigation is not maintainable in service jurisprudence. It is apt to reproduce paras 14 to 16 of the judgment rendered by the Apex Court in **Girjesh Shrivastava & Ors. v. State of M.P. & Ors.,** reported in **2010 AIR SCW 7001,** herein:

> *"14. However, the main argument by the appellants against entertaining WP (C) 1520/2001 and WP (C) 63/2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention.*
>
> *15. It is common ground that dispute in this case is over selection and appointment which is a service matter.*
>
> *16. In the case of Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and other (1998) 7 SCC 273: (AIR 1999 SC 114: 1998 AIR SCW 3467), a three Judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interesting Litigation has been filed when the entire dispute relates to selection and appointment."*

39. The Apex Court in **State of Uttaranchal versus Balwant Singh Chaufal & Ors.,** reported in **2010 AIR SCW 1029,** has laid down tests when a Public Interest Litigation can be filed. It is apt to reproduce para 198 of the judgment herein:

> *"198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-*
>
> *(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.*
>
> *(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.*
>
> *(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.*
>
> *(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.*
>
> *(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.*
>
> *(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.*
>
> *(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.*
>
> *(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."*

40. The writ petitioners before this Court as well as before the learned Single Judge have specifically averred in all the writ petitions that they have a right of consideration. Meaning thereby, they have interest. Applying the ratio of the Apex Court judgments, writ in the nature of Public Interest Litigation is not maintainable in service matters. In the cases in hand, the writ petitioners do have interest, thus, on this count, the writ in the nature of Public Interest Litigation is not maintainable.

41. The argument of learned counsel for the writ petitioners that the writ petitioners were within their rights to question the said appointments by the medium of writ of quo-warranto is misconceived for the following reasons:

42. Quo warranto writ can be filed provided the petitioner has no interest and the appointment made is not in accordance with the Rules or the policy made by the Government. State has made the policies in terms of their conscious decision, the appointments came to be made in terms of the said policies, cannot be said to be illegal, back door or outcome of political favouritism, as discussed hereinabove.

43. The Apex Court in **Hari Bansh Lal versus Sahodar Prasad Mahto and others,** reported in **(2010) 9 Supreme Court Cases 655,** has held that PIL is not maintainable in service matters except by way of writ of quo warranto for which appointment must be shown to be contrary to statutory provisions and has also laid down some principles. It is apt to reproduce paras 16 to 19 and 34 of the judgment herein:

> *16. A writ of quo warranto lies only when appointment is contrary to a statutory provision. In High Court of Gujarat and Another vs. Gujarat Kishan Mazdoor Panchayat and Others, (2003) 4 SCC 712, (three-Judges Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held: (SCC pp. 730-31, paras 22-23)*
>
> > *"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India, (1993) 4 SCC 119, SCC para 74.)*
> >
> > *23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana, (2002) 6 SCC 269.)"*
>
> *17. In Mor Modern Coop. Transport Society Ltd. vs. Govt. of Haryana, (2002) 6 SCC 269, the following conclusion in para 11 is relevant: (SCC p. 275)*
>
> > *"11. ..... The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudicial to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could*

> *not lend validity to their appointment, if otherwise, the appointment was in breach of statutory provisions of a mandatory nature. It has, therefore, become necessary for us to consider the validity of the impugned notification said to have been issued in breach of statutory provision."*

18. In B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731 (2), this Court held: (SCC p. 754, para 49)

> *"49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules."*

19. It is clear from the above decisions that even for issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the later part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.

20. to 33. ....

34. From the discussion and analysis, the following principles emerge:-

(a) Except for a writ of quo warranto, PIL is not maintainable in service matters.

(b) For issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

(c) Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules.

44. Having glance of the above discussions, it can be safely said and held that the writ petitioners and respondents in the appeals have failed to carve out a case for interference.

45. The effect of the impugned judgment is quashment of the appointment/regularization of some of the said teachers, who were not party before the learned Single Judge and are not party before this Court. Only on this count, the writ petitions filed before this Court, i.e. CWPs No. 6916 of 2011, 7728 & 8412 of 2013, merit to be dismissed and the impugned judgment merits to be set aside.

46. It is also worthwhile to mention here that all those candidates, who have been appointed, are not party before us, though, it is stated that they

have arrayed the Association as party-respondent. It is not averred in any of the writ petitions, whether all those teachers are the members of the Association and it was for the writ petitioners to plead and to substantiate, prima facie, that all of them are party to the writ petitions or members of the so called Association.

47. The learned Single Judge has also fallen in error in passing the impugned judgment in CWP No. 3303 of 2012. It is apt to reproduce the operative part of the impugned judgment herein:

> *"35. Accordingly, the writ petition is allowed. The respondent-State is directed to phase out the teachers appointed under 'The Himachal Pradesh Prathmic Sahayak Adhyapak/Primary Assistant Teacher (PAT) Scheme 2003', notified on 27th August, 2003 in a phased manner and to commence the selection process for filling up the posts of JBTs strictly as per the Recruitment and Promotion Rules, notified on 22nd August, 2000 read with notification, dated 23rd August, 2010, notified by the National Council for Teacher Education. This process shall be completed within a period of six months from today. The respondent-State is directed not to regularize the services of those teachers, who have been appointed de hors the Recruitment and Promotion Rules framed under Article 309 of the Constitution of India read with minimum qualification prescribed under the National Council For Teacher Education notification, dated 23rd August, 2010. The pending application(s), if any, also stands disposed of. No costs."*

48. Only one writ petition was filed, that too, by three petitioners. If, at all, they had carved out a case, they could have sought their selection against three posts. The persons, who came to be appointed, are not parties and how a direction can be made to phase out them without even hearing them.

49. In view of the stand taken by the State in the reply filed in CWP No. 3303 of 2012 and the stand taken in the supplementary affidavit filed in CWP No. 7728 of 2013 that a large number of posts are vacant, at best, the writ petitioners can participate in the selection process. It is also a question mark whether they can make a grade in such selection process.

50. It pains us to record here that the State Government has utilized the services of the said teachers right from the year 2003, they have lost their youth and are performing their duties with legitimate expectations and the Government, after taking note of their work and conduct, as discussed hereinabove and at the cost of repetition, came forward and regularized their services and by now, they must have crossed the age of consideration and the impugned judgment has taken away their bread, not only the bread, but has affected their matrimonial home and their family and career of their children for no fault of theirs.

51. Having said so, the impugned judgment merits to be set aside and the writ petitions deserve dismissal. Accordingly, CWPs No. 6916 of 2011, 7728 and 8412 of 2013 are dismissed, LPAs No. 504, 507, 512 of 2012 & 203 of 2014 are allowed, the impugned judgment is set aside and CWP No. 3303 of 2012 is also dismissed. Pending applications, if any, are also disposed of. Interim direction, if any, shall stand vacated.

52. Copy of this judgment be placed on each of the connected files.

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

LPA No. 378 of 2012
a/w LPA No. 126 of 2013
Decided on: 09.12.2014

LPA No. 378 of 2012

Pardeep Kumar …Appellant.
Versus
Cipla Ltd. & others …Respondent.

…………………………………………………………………………………………

LPA No. 126 of 2013

State of Himachal Pradesh & another …Appellants.
Versus
Cipla Ltd. & others …Respondent.

Constitution of India, 1950- Article 226- Petitioner was appointed as Workman on temporary basis for a period of 6 months- his employment came to an end after expiry of 6 months- petitioner moved an application which was considered and he was directed to undergo training for a period of two years- when he was undergoing training, he was withdrawn on which he filed an application before the Labour Court- the order of the Labour Court was questioned before the Writ Court which held that the appellant is not a workman – held, that the appellant was not workman- he had not sought any remedy after his engagement came to an end - he accepted his induction as a trainee- he was not performing any job but was undergoing training as a trainee- therefore, he was rightly held not to be a workman. (Para-2 to 6)

LPA No. 378 of 2012

For the appellant: Mr. Surinder Prakash Sharma, Advocate.

For the respondents: Mr. R.L. Sood, Senior Advocate, with Mr. Arjun Lall & Mr. Sanjeev Kumar, Advocates, for respondents No. 1 and 2.
Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. M.A. Khan, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General, for respondents No. 3 and 4.

LPA No. 126 of 2013

For the appellants: Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. M.A. Khan, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General.

For the respondents: Mr. R.L. Sood, Senior Advocate, with Mr. Arjun Lall & Mr. Sanjeev Kumar, Advocates, for respondents No. 1 and 2.
Mr. Surinder Prakash Sharma, Advocate, for respondent No. 3.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

LPA No. 378 of 2012

This Letters Patent Appeal is directed against the judgment and order, dated 13th July, 2012, made by the Writ Court in CWP No. 2401 of 2009, titled as Cipla Ltd. & another versus State of Himachal Pradesh & others, whereby the writ petition filed by the writ petitioners-respondents No. 1 and 2 herein came to be allowed by quashing the Labour Reference Order No. 11-2/93 (Lab) ID/07-Baddi (Annexure PJ to the writ petition) and order, dated 16.06.2009, made by the Presiding Officer, Labour Court, Shimla (Annexure PQ to the writ petition) (hereinafter referred to as "the impugned judgment").

2. Feeling aggrieved, the appellant has questioned the impugned judgment. It appears that the writ petitioners-respondents No. 1 and 2 herein appointed the appellant as a workman on temporary basis due to temporary increase in work in terms of order, dated 6th April, 2005 (Annexure R-1 to the writ petition) for a period of six months with effect from 6th April, 2005 to 5th October, 2005. The said employment came to an end. Thereafter, the appellant moved an application, which was considered on 28th October, 2005 (Annexure PB to the writ petition) and he was directed to undergo a training for a period of two years with effect from 7th November, 2005 to 6th November, 2007. He was undergoing the training and his training period was withdrawn/ cancelled, constraining him to invoke the jurisdiction of the Labour Court. The Labour Court made the order, which was questioned before the Writ Court and the Writ Court allowed the writ petition by holding that the appellant was not a workman.

3. The appellant was not in position as a workman. He has also not sought any appropriate remedy after his engagement came to an end in terms of the engagement order (Annexure R-1) (supra) and he accepted his induction as a trainee in terms of Annexure PB (supra), but joined late, was also found absent. He was not performing any job or duty as a workman, but was undergoing training as a trainee. He does not fall within the definition of "workman" as per the Labour Laws applicable.

4. Learned counsel for the appellant failed to carve out a case and to establish the relationship of the appellant and respondents No. 1 & 2 as workman and an employer.

5. The learned Single Judge has rightly held that the appellant was not a "workman" at the relevant point of time.

6. We have gone through the impugned judgment, is well reasoned and needs no interference.

7. Accordingly, the impugned judgment is upheld and the appeal is dismissed alongwith all pending applications.

LPA No. 126 of 2013

8. In view of the dismissal of LPA No. 378 of 2012, this appeal is also disposed of alongwith all pending applications.

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

Ravender Kumar Jarhyan ……Petitioner.
Versus
State of H.P. & anr. …….Respondents.

CWP No. 4026 of 2014.
Reserved on 12.11.2014
Decided on: 09.12.2014.

Constitution of India, 1950- Article 226- Petitioner joined as Assistant Engineer on the recommendations made by the H.P. Public Service Commission - the Chief Engineer, Shah Nehar Project, Fatehpur sent a letter to the Superintending Engineer stating that there was no justification for providing any SE (Design) keeping in view the work load - IPH sent a letter to the Government of Himachal Pradesh stating that there was one post of SE Shahnehar Project and the work relating to Design in the Office of Chief Engineer, Shahnehar Project shall be attended to by the incumbent of the post of SE Shahnehar Project – petitioner was promoted to the post of SE (Civil) – Government amended recruitment and promotion rules for the post of Chief Engineer Class-I from 30.8.2008 stating that post of Chief Engineer would be filled up by promotion from amongst the SE (Civil) with minimum 25 years service including three years regular service or regular service combined with continuous ad-hoc service as Superintending Engineer (Civil), out of which 3 years essential service must be as Superintending Engineer (Design) - Petitioner was found ineligible as he had not served for 3 years as Executive/Superintending Engineer- petitioner contended that he was looking after the work of design in Shah Nehar Project, Fatehpur- held, that as per the letter, Superintending Engineer was to look after the work of SE (Design) in addition to his duty- petitioner had approved the design in his capacity as Superintending Engineer- therefore, service rendered by him should have been counted while considering his case for promotion- Writ Petition allowed – respondent No. 1 directed to convene a review DPC to consider the case of the petitioner.

(Para- 7 to 9)

For the petitioner: Mr. Dilip Sharma, Sr. Advocate, with Mr. Manish Sharma, Advocate.
For the respondents: Mr. M.A. Khan, Addl. AG, for the respondent-State.

The following judgment of the Court was delivered:

<u>Justice Rajiv Sharma, J.</u>

The petitioner joined as Assistant Engineer by way of direct recruitment on 29.6.1983 on the recommendations made by the H.P. Public Service Commission. The Chief Engineer, Shah Nehar Project, Fatehpur (SNP in short), IPH has sent a communication to the Superintending Engineer, SNP Circle Fathepur on 17.1.2000. The text reads as under:

> " The case was referred to the Govt. for posting independent Superintending Engineer (Design) alongwith other technical staff such as

> Ex. Engineer (Design) and Assistant Engineer (Design) etc. While forwarding the case to the Finance Depatt., F.C-cum- Secretary (IPH) Shimla has commented that there is no jurisdiction for providing an independent SE(Design) keeping in view the work load and Superintending Engineer, Shahnehar Project Circle, Fatehpur will perform the duties of SE(Design) also in addition to his present duties. The case for remaining technical staff is stated to have been cleared by the Finance Deptt. and the same is likely to be posted on due course of time to assist you in this regard.

2. The Secretary IPH to the Govt. of Himachal Pradesh sent a communication to the Engineer-in-Chief, H.P. IPH Department on 10.4.2000 informing him that there was one post of S.E. in Shahnehar Project and due to financial constraints, it was decided that the work relating to Design and work in the Office of Chief Engineer, Shahnehar Project shall be attended to by the incumbent of the post of SE Shahnehar Project.

3. The petitioner was promoted to the post of Superintending Engineer (Civil) vide notification dated 1.4.2008. The petitioner joined as Superintending Engineer, Shahnehar Project (SNP) on 19.8.2008. A conscious decision was taken by the State Government vide notification dated 19.11.2008 whereby post of Chief Engineer, IPH (SNP), Fatehpur alongwith the post of Personal Assistant and Driver was transferred to the IPH Head Office, Shimla with the stipulation that the same would be renamed as Chief Engineer (Design and Monitoring). The addendum was also issued on 31.12.2008.

4. The Recruitment and Promotion Rules, 1965, for the post of Chief Engineer Class-I (Gazetted), were amended vide Notification dated 30.8.2008, whereby the post of Chief Engineer was to be filled up by promotion from amongst the Superintending Engineers (Civil) with minimum 25 years service in the gazetted rank including three years regular service or regular combined with continuous ad hoc service as Superintending Engineer (Civil), out of which 2 years essential service must be as Superintending Engineer (Design) in the zones or Superintending Engineer (Planning & Investigation) (Unit I & II) or Superintending Engineer (Works) failing which, on secondment basis from amongst the incumbents working in the identical pay scale on analogous posts in other H.P. Govt. Departments/Central Govt. with similar service conditions. The rules were further amended vide notification dated 14.9.2012, whereby Superintending Engineer was required to have minimum qualifying service of 25 years service in the gazetted rank including three years regular service or regular combined with continuous adhoc service as Superintending Engineer (Civil), out of which 3 years essential service must be as Superintending Engineer (Design) in the projects. The rigours of Rules were diluted vide notification dated 28.3.2014.

5. The final seniority list of Superintending Engineer (Civil) in HP IPH Department as on 31.12.2013 was issued vide Office Memorandum dated 4.3.2014. The name of the petitioner is at Sr. No. 2 and the name of respondent No. 2 is at Sr. No. 3 in the list. The Departmental Promotion Committee was convened for filling up the post of Chief Engineer on 4.3.2014. The Departmental Promotion Committee recommended the name of respondent No. 2 pursuant to which promotion orders were issued vide notification dated 23.5.2014 Annexure P-26. The petitioner has also placed on record the memorandum for consideration of Departmental Promotion Committee for promotion to the post of Chief Engineer (IPH). According to Departmental Promotion Committee proceedings, the petitioner was not found eligible to the

post of Chief Engineer as he has not served the department for 3 years as Executive/Superintending Engineer in Store & Purchase or P & I or Works or Design which was the pre-requisite as per the provisions of R & P Rules for the post of Chief Engineer. The post of Chief Engineer is a selection post and was to be filled up on merit-cum-seniority basis.

6. Mr. Dilip Sharma, Sr. Advocate, has vehemently argued on the basis of Annexures P-1 & P-2 dated 17.1.2000 and 10.4.2000, respectively, that his client was also looking after Designs in SNP, Fatehpur. He has drawn the attention of the Court to various Annexures placed on record, more particularly, Annexure P-22, whereby the petitioner has given approval to the various projects.

7. The case of the respondent-State, precisely, is that the Office of Chief Engineer (SNP), Fatehpur was shifted on 19.11.2008 to Shimla and renamed as Chief Engineer (Design and Monitoring), Shimla. It is further averred in the reply that a work of SE (SNP) Circle, was to be looked after by Chief Engineer, Dharamshala since the Chief Engineer, Dharamshala has independent post of Superintending Engineer (Design) at Dharamshala, therefore, the experience rendered by the petitioner at SNP could not be counted towards qualifying service in Drawing and Design.

8. It is evident from letter dated 17.1.2000, quoted hereinabove, that there was no justification for providing independent charge of Superintending Engineer (Design), keeping in view the work load and Superintending Engineer (SNP) Circle was to perform the duties as Superintending Engineer (Design) also in addition to his duties. The same was reiterated vide letter dated 10.4.2000. The petitioner was posted in SNP, Fatehpur on 19.8.2008. He had been looking after Drawings and Design even after the shifting of the post of Chief Engineer and renamed as Chief Engineer (Design and Monitoring), Shimla. There is no merit in the contention of Mr. M.A.Khan, Addl. Advocate General that after the shifting of the post of Chief Engineer, the Drawings were to be approved by Superintending Engineer (Design) at Dharamshala. There is no contemporaneous material placed on record by the respondent-State that Drawings/Designs have ever been forwarded by Chief Engineer Dharamshala to Superintending Engineer (Design), Dharamshala. Though the control of SNP was vested in the Chief Engineer, Dharamshala but the fact of the matter is that the Designs were approved by the petitioner. The services rendered by the petitioner after 19.11.2008 were required to be counted as qualifying service as Superintending Engineer (Design). Annexures P-1 and P-2 dated 17.1.2000 and 10.4.2000, respectively, have never been withdrawn. All the incumbents who were posted as Superintending Engineer in SNP besides discharging the duties of Superintending Engineer (Operation) were also looking after the work relating to Designs. The petitioner has made specific averment that the incumbents who have worked as Superintending Engineer and were looking after the work of Designs were given benefits towards promotion. This averment has not been denied by the respondents in the reply. It is reiterated that the petitioner had approved the structural designs as per the material available on record. The respondent-State has also sought option of the incumbents to work as Superintending Engineer (Design). The petitioner has made several representations bringing to the notice of the authorities that since he had been approving the structural designs in addition to his own duties as Superintending Engineer (Operation) and this experience was to be counted for the purpose of promotion. There was a protracted correspondence exchanged between various functionaries of the State. However, the fact of the matter is that the grievance

of the petitioner was not redressed and he was not found eligible by the DPC which met on 4.3.2014.

9. The matter is required to be considered yet from another angle. According to the reply filed, the arrangement of doing the work of Chief Engineer SNP ceased to exist on 19.11.2008 on transfer of the post of Chief Engineer SNP to Shimla and renamed as Chief Engineer (Drawing & Monitoring), Shimla. The petitioner infact had been discharging dual duties as Superintending Engineer (Operation) as well as (Design) on the basis of notifications Annexures P-1 and P-2 dated 17.1.2000 and 10.4.2000, respectively, even after the transfer of the post of Chief Engineer SNP on 19.11.2008 as Chief Engineer (Design & Monitoring), Shimla. The Drawings and Designs have never been approved by the Superintending Engineer (Design), Dharamshala, attached with the Chief Engineer, Dharamshala. Thus, the action of the respondents of not counting the period w.e.f. 19.8.2008 to 7.6.2013 as qualifying service of the petitioner for the post of Chief Engineer is illegal, arbitrary and irrational, as it is violative of Articles 14 & 16 of the Constitution of India. The services rendered by the petitioner in dual capacity could not be rendered nugatory or otiose.

8. Accordingly, the Writ Petition is allowed. Annexure P-26 dated 23.5.2014 is quashed and set aside. Respondent No. 1 is directed to convene a review DPC meeting within a period of four weeks to consider the case of the petitioner to the post of Chief Engineer by counting the services rendered by the petitioner as Superintending Engineer (Design) in addition to his duties as Superintending Engineer (Operation) in Shan Nehar Project.

9. Pending application(s), if any, shall stand disposed of.

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

Saruchi Sharma …..Petitioner
Versus
State of H.P. and others. ….. Respondents

CWP No. 6716 of 2014.
Reserved on decision: 3.12.2014
Pronounced on: 9.12.2014

Constitution of India, 1950- Article 226- Petitioner applied for the post of Demonstrator and was appointed as such on tenure post for a period of three years –tenure period expired on 6.9.2014 – petitioner sought extension and the Head of Department recommended her case for extension for a period of six months – however, petitioner was relieved from the post vide order dated 6.9.2014- State contended that post of the Demonstrator was tenure post for a period of three years- policy has been amended and selection has to be made on the basis of walk in interview- Dr. J.S. Chahal had been appointed as Senior Resident and no post is available- held, that post is a tenure post and petitioner has no right to claim extension, which was filled up as per policy in vogue at the relevant time - new incumbent has also joined- therefore, applicant

cannot claim appointment against the post- Writ Petition dismissed. (Para-2 to 4)

For the petitioner: Ms.Ranjana Parmar, Advocate.
For the respondents: Mr.Shrawan Dogra, Advocate General with Mr.Romesh Verma & Mr.Anup Rattan, Additional Advocate Generals & Mr. J.K. Verma, Deputy Advocate General for respondents No.1 to 3.
Mr.Ashok Sharma, Assistant Solicitor General of India, for respondent No.4.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice

By the medium of present Writ Petition, the petitioner has sought writ of mandamus commanding the respondents to allow the petitioner to discharge the duties of Demonstrator in the specialty of Biochemistry in Dr.Rajender Parsad Government Medical College, Tanda (for short, Medical College, Tanda) till the said post is filled up on regular basis or for a period of six months; and also sought issuance of writ of certiorari for quashing the order, dated 6th September, 2014, whereby the petitioner has been relieved on completion of her tenure, on the grounds taken in the memo of writ petition.

2. Facts, as pleaded in the writ petition, are that the petitioner is having the degree of M.Sc.(Biochemistry) and being eligible, applied for the post of Demonstrator in the specialty of Biochemistry, was appointed as such on tenure basis for a period of three years in the Medical College, Tanda on the recommendations made by the Selection Committee. The said period of three years came to an end on 6th September, 2014. Thereafter, the petitioner sought extension and the Head of Department, on 27th August, 2014, recommended her case for extension for a period of six months. However, despite the fact that the competent Authority granted extension for six months, vide office order, dated 6th September, 2014, (Annexure P-6), the petitioner was relieved from the post of Demonstrator vide order, dated 6th September, 2014, (Annexure P-7).

3. Respondents No.1 to 3 have filed the reply and pleaded that the post of Senior Resident (Demonstrator) was a tenure post and was filled up for a period of three years and the incumbent was to be appointed/selected by the Selection Committee as per the policy framed by the Government, vide notification No.HFW-B(A)2-4/2007, dated 4.1.2012, (Annexure R-1). It is further pleaded that as per the said policy, the post in issue is not a regular post and petitioner cannot claim continuation for the reason that it is a tenure post only for a period of three years and after three years, new selection process has to be undergone and fresh recruitment is to be made. It is also pleaded that the said policy has now been amended vide notification dated 26th September, 2012, (Annexure R-2), as per which the Principal of the concerned Medical College is the Selection Authority and the selection has to be made on the basis of walk-in-interview. Further, it is contended that Dr.J.S. Chahal, in-service General Duty Officer (GDO), has been appointed as Senior Resident (Demonstrator) in the Department of Biochemistry and is in position and no post is available.

4. Thus, from the above, it is clear that the post in question is a tenure post and not a cadre post**.** The petitioner has no right to claim extension against a tenure post, which was filled up as per the policy in vogue at the

relevant time, only for a period of three years, read with the fact that the new incumbent has joined and is in position.

5. Having said so, no case is made out, hence the writ petition is dismissed, so also the pending application(s), if any.

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

The State of Himachal Pradesh & others …Appellants.
Versus
Shri Kashmir Singh …Respondent.

LPA No. 569 of 2011
Decided on: 09.12.2014

Constitution of India, 1950- Article 226- Writ Court allowed the petition of the petitioner and the respondents were directed to give the benefit of two increments- petitioner had filed a petition seeking relief that respondents be directed to give benefits of FR 22 (1) (a) (1) and to re-fix his pay with consequential benefits- held, that Writ Court had not granted the relief in accordance with relief prayed by the applicant- hence, order modified.
(Para- 2 to 4)

For the appellants:	Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan & Mr. M.A. Khan, Additional Advocate Generals, and Mr. J.K. Verma, Deputy Advocate General.
For the respondent:	Mr. Vikas Rathore, Advocate.

The following judgment of the Court was delivered:

Mansoor Ahmad Mir, Chief Justice *(Oral)*

Challenge in this Letters Patent Appeal is to the judgment and order, dated 3rd June, 2011, made by the Writ Court in CWP (T) No. 15632 of 2008, titled as Kashmir Singh versus State of H.P. and others, whereby the writ petition filed by the writ petitioner-respondent herein came to be allowed and the writ respondents were directed to give the benefit of two increments (hereinafter referred to as "the impugned judgment"), on the grounds taken in the memo of appeal.

2. The writ petitioner had sought the following reliefs amongst others on the grounds taken in the memo of writ petition:

> *"a) That the respondents may kindly be directed to give the benefit of FR 22 (1) (a) (1) to the applicant and step up his pay to a figure equal to the pay fixed for the junior after 1.1.1996.*
>
> *b) That the respondents may kindly be directed to re-fix the pay of the applicant with all consequential*

benefit including arrears in accordance with FR 22 (1) (a) (1)."

3. While going through the impugned judgment and the averments contained in the writ petition, one comes to an inescapable conclusion that the impugned judgment is not in accordance with the reliefs sought.

4. Accordingly, the impugned judgment is modified by directing the respondents to consider the case of the writ petitioner for stepping up, re-fixing his pay and releasing the benefits/arrears, in terms of the averments contained in the writ petition read with the fact that his juniors have been granted the same benefit. Consideration orders be passed within six weeks.

5. The appeal is disposed of, as indicated hereinabove, alongwith all pending applications.

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

CWP No. 7761 of 2013 along with CWP No. 7764 of 2012.
Date of Decision : 9th December, 2014.

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1. CWP No. 7761 of 2013.

Sukh Ram Chandel .....Petitioner.

Versus

State of H.P. & others .....Respondents.

2. CWP No. 7764 of 2012.

R.C. Gupta and others ...Petitioners.

Versus

Himachal Pradesh Tourism Development Corporation ....Respondent.

Constitution of India, 1950- Article 226- Petitioners were serving in H.P. T.D.C. – they were superannuated in the year 2006-2010 - H.P.T.D.C. adopted the government pattern regarding the release of retirement or gratuity to the employees- Government issued a notification revising the rate of gratuity payable to the employees- petitioners claimed the revision in the gratuity at par with Government employee- held, that even if, provisions of the of the Payment of Gratuity Act are applicable, employee can claim a higher/better benefit on the basis of the decision of the board of directors- petitioners held entitled to the revised rate of gratuity at par with the government employee.

(Para- 2 and 3)

Case referred:

Y.K. Singla versus Punjab National Bank and others, (2013)3 SCC 472

For the Petitioners: Ms. Jyotsna Rewal Dua, Advocate in CWP No. 7761 of 2013.
Ms. Ranjana Parmar, Advocate, in CWP No. 7764 of 2012.

For respondent No.1/State: Mr. R.S. Thakur, Additional Advocate General with Mr. Vivek Singh Attri, Deputy Advocate General in CWP No. 7761 of 2013.

For respondent No.2/HPTDC: Mr. Onkar Jairath, Advocate in CWP No. 7761 of 2013 and Mr. J.L. Bhardwaj, Advocate, for respondent-corporation in CWP No. 7664 of 2012.

The following judgment of the Court was delivered:

Sureshwar Thakur, Judge (Oral)

Both these petitions pertain to a common subject matter, hence, they are disposed of by a common order.

2. The petitioners in both the petitions were serving in the Himachal Pradesh Tourism Development Corporation Ltd. in different capacities. They stood superannuated between the years 2006 and 2010. Annexure P-10 (annexed to CWP No.7761 of 2013 at page 134) unveils the factum of the respondent-corporation having adopted the government pattern with regard to the release of retirement or gratuity to its employees w.e.f. 26.8.2006. The decision as comprised in Annexure P-10 (annexed with CWP No. 7761 of 2013) was in consonance with the decision taken in the meeting of the Board of Directors of the respondent-corporation held on 26.8.2006. The government of Himachal Pradesh issued notification of 14th October, 2009, Annexure P-13, (annexed with CWP No.7761 of 2013 at page 180), whereby it begot a revision of the rates of gratuity payable to its employees. The petitioners, on the strength of the revision carried out under Annexure P-13 in the rates of gratuity payable to the employees serving under the Himachal Pradesh Government, claim a rate of gratuity at par with the employees of the State Government. The fulcrum for theirs claiming parity of rates of gratuity with the employees of the State Government is Annexure P-10 which as adverted to hereinabove discloses the factum of the respondent-corporation having come to adopt the government pattern with regard to release of gratuity to its employees. However, the effect of Annexure P-10, has been canvassed to be eased by the factum of a decision of the Hon'ble Division Bench of this Court rendered on 23rd July, 2008 in CWP No. 1332 of 2002 comprised in Annexure P-9, (annexed to CWP No. 7761 of 2013) wherein it has been held that qua the employees of the respondent corporation the provisions of the Payment of Gratuity Act would be applicable and when in consonance thereto the respondent-corporation came to pass a resolution comprised in Annexure P-10 (annexed to CWP No.7761 at page 141), it is, hence, amplifyingly canvassed that the respondent-corporation is no longer obliged to carry forward and implement the mandate comprised in Annexure P-10 qua the factum of its defraying to its employees gratuity at par with the rates of gratuity assessed/fixed for its employees by the government of Himachal Pradesh. However, the effect of the verdict of this Court and of the resolution of the Board of Directors in consonance thereto comprised in Annexure R-2/C (annexed to CWP No.7761 of 2013, at page 274), to the considered mind of this Court comes to be eased as well as relaxed in the face of a pronouncement of the Hon'ble Apex Court reported in ***Y.K. Singla versus Punjab National Bank and others, (2013)3 SCC 472,*** relevant paragraph No.23 whereof stand extracted hereinafter. A reading whereof discloses that even when the provisions of the Gratuity Act are applicable to an employee/class of employees, there is an inherent right vested in an employee/class of employees to make a choice of theirs being governed by some alternative provision/instrument other than the Gratuity Act for drawing the benefit of gratuity. Relevant paragraph No.23 of the judgment supra reads as under:-

> "23. Based on the conclusion drawn hereinabove, we shall endeavour to determine the present controversy. First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act that an employee has the right to make a choice of being governed by some alternative provision/instrument other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the employee concerned would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. This protection has been provided through Section 4(5) of the Gratuity Act."

3. The notification of the Government of Himachal Pradesh, Annexure P-13, (annexed to CWP No.7761 of 2013 at page 180 of the paper book) has been espoused by the learned counsel appearing for the petitioners to be conferring upon them a benefit higher than the benefit envisaged under Section 4 of the Payment of Gratuity Act. Cumulatively, hence, even if the Gratuity Act has been held by this Court to be applicable to the employees of the respondent Corporation and when in consonance thereto, even if, a resolution of the Board of Directors of the respondent corporation opines that the higher benefit envisaged by the government of Himachal Pradesh to its employees in its notification is unavailable to be accorded, yet the effect of both in the face of the verdict of the Hon'ble Apex Court (supra) is relaxed and both cannot stand in the way of the petitioners asserting a claim of theirs being treated at par with the employees of the government of Himachal Pradesh, especially when the revised rates of gratuity conferred upon the employees of the State Government contemplate a higher benefit than as envisaged under the Gratuity Act. In sequel when in consonance with the decision of the Hon'ble Apex Court, the employees of the respondent-corporation as the writ petitioners are, have an inherent right to make a choice of theirs being governed/covered by the notification issued by the Government of Himachal Pradesh comprised in Annexure P-13, which contemplates a higher rate of gratuity payable to its employees than the one envisaged in the Gratuity Act, they cannot be either debarred or estopped from doing so. Nonetheless, the resolution passed by the respondent-corporation anvilled upon the verdict of this Court may stand in the way of rendition of efficacious directions to the respondent-corporation to comply with the mandate of the notification issued by the Government of Himachal Pradesh providing a higher rate of gratuity to its employees than one which is payable to the employees of the respondent-corporation. To facilitate the petitioners to obtain a higher rate of gratuity at par with the rates of gratuity made available to the employees of the Government of Himachal Pradesh, it is directed that the respondent-corporation shall convene a meeting of its Board of Directors to consider the case of the petitioners for modifying the rates of the gratuity payable to the petitioners in terms of the notification issued by the Government of Himachal Pradesh, Annexure P-13. The respondent-corporation shall also take into consideration observations made hereinabove while dealing with the case of the petitioners. The respondent-corporation shall take a decision in the matter within three months from today. Both the petitions stand disposed of accordingly. All the pending applications, if any, also stand disposed of.

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

Karamjit Singh @ Amarjit Singh ...Appellant.
Versus
State of Himachal Pradesh ...Respondent.

Criminal Appeal No.370 of 2008
Reserved on : 25.11.2014
Date of Decision: December 10, 2014

Indian Penal Code, 1860- Section 302- Accused murdered their parents- they burnt their bodies by setting the house on fire- one of the accused confessed to the murder of his parents- police was informed on which FIR was registered – Trial Court held that motive, namely disinheritance from property, extra judicial confession, disclosure statements, which led to recovery of incriminating articles, and recovery of remnants of bodies of the deceased were duly proved- held, that case is based upon circumstantial evidence -in case of circumstantial evidence, prosecution is under a legal obligation to prove the circumstances from which the conclusion of guilt is to be drawn- Court cannot substitute suspicion in place of proof- the extra judicial confession did not inspire confidence- disinheritance from the property was also not established as the accused was issueless and was residing in his own house at Derabasi- issue of inheritance of property was settled about 8 years back – testimonies of witnesses were contradictory- Investigating Officer had not associated any independent witness- Trial Court had disbelieved the prosecution case regarding the accused- testimony of one witness was accepted qua one accused and was rejected qua other which is not permissible- therefore, in these circumstances, accused cannot be held guilty- accused acquitted. (Para-11 to 34)

Cases referred:

Brathi alias Sukhdev Singh v. State of Punjab, (1991) 1 SCC 519
State of Rajasthan v. Raja Ram, (2003) 8 SCC 180
Jagroop Singh v. State of Punjab, (2012) 11 SCC 768
Pudhu Raja and another Versus State Represented by Inspector of Police, (2012) 11 SCC 196
Madhu Versus State of Kerala, (2012) 2 SCC 399
Dilip Singh Moti Singh versus State of Gujarat, (2010) 15 SCC 622
Mulakh Raj and others Versus Satish Kumar and others, (1992) 3 SCC 43
Sharad Birdhichand Sarda Versus State of Maharashtra, (1984) 4 SCC 116
Padala Veera Reddy v. State of Andhra Pradesh and others, 1989 Supp (2) SCC 706
Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172
Balwinder Singh v. State of Punjab, 1995 Supp (4) SCC 259
Harishchandra Ladaku Thange v. State of Maharashtra, (2007) 11 SCC 436
State of U.P. v. Ashok Kumar Srivastava, (1992) 2 SCC 286
Mrinal Das and others v. State of Tripura, (2011) 9 SCC 479
Prithpal Singh and others v. State of Punjab and another, (2012) 1 SCC 10

For the Appellant : Mr. Ramakant Sharma, Advocate.
For the Respondent : Mr. B.S. Parmar, Mr. Ashok Chaudhary, Mr. V.S. Chauhan, Additional Advocates General and Mr. Vikram Thakur, Deputy Advocate General.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

Appellant-convict Karamjit Singh alias Amarjit Singh (hereinafter referred to as accused-convict Amarjit Singh) has assailed judgment dated 29.3.2008/ 31.3.2008, passed by Additional Sessions Judge, Solan, Himachal Pradesh, in Sessions Trial No.4-NL/7 of 2007, titled as *State of Himachal Pradesh v. Karamjit Singh and others*, whereby he stands convicted of having committed an offence punishable under the provisions of Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and pay fine of Rs.20,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one year.

2. It is the case of prosecution that in the night intervening 12th-13th August, 2006, convict Amarjit Singh alongwith his two other brothers, namely Paramjit Singh alias Pamma and Guljit Singh, murdered their father Shri Balwant Singh with a Barchha (spear) (Ex.P-2) and danda. Separately, they also strangulated their mother Smt. Ravinder Kaur in the fields. Thereafter, they together burnt their dead bodies by setting their hutment (Chaan/ Chhappar) on fire in village Jhida. On 13.8.2006 at about 5.30 a.m., accused Amarjit Singh went to the house of Kamal Kumar (PW-1), resident of another village, i.e. village Manjauli, Tehsil Nalagarh, District Solan, Himachal Pradesh, and confessed that "he" had burnt his parents by setting the hutment on fire, for the reason that they were not giving him his share in the land for construction of a house. Kamal Kumar (PW-1) telephonically informed the police about the incident, when Som Dutt (PW-19), SHO of Police Station, Nalagarh, proceeded to the spot. On the way, he met Kamal Kumar (PW-1) in village Maganpura and recorded his statement (Ex. PA), on the basis of which Ruka (Ex.PW-19/A) was sent to Police Station, Nalagarh, which led to registration of FIR No.204 dated 13.8.2006 (Ex. PX-VIII), under the provisions of Sections 302 and 201 of the Indian Penal Code. Superior officers of the Police Department were also informed of the incident. On the request of Som Dutt, Officers of the Forensic Department reached the spot and conducted necessary investigation. Inquest reports (Ex. PK, PK-1, Ex. PL and Ex. PL-1) were prepared; spot of crime was got photographed and videographed. Photographs (Ex. PW-16/A to PW-16/O and PW-17/C to PW-17/L), and CD (video) (Ex.PW-16/A-19) of the spot were prepared. Incriminating articles in the shape of knife (Barchha) (Ex. P-2), ashes (Ex. P-4), soil (Ex.P-6), piece of cloth, metal Kara (Ex.P-12), copper ring (Ex. P-13), allegedly worn by the deceased, were recovered. Dr. Sukhwinder Singh (PW-10) also collected samples of tissues and bones. Smt. Narmal Kaur (PW-2), daughter and Shri Yadvinder Singh (PW-6), another son of the deceased were associated during investigation.

3. On 13.8.2006 itself, accused Amarjit Singh was arrested. On 16.8.2006, accused Paramjit Singh and Guljit Singh also confessed and confided their guilt with Kamal Kumar, of having murdered their parents alongwith accused Amarjit Singh. Confessional statement (Ex. PW-19/J) was recorded by the police. Also, Amarjit Singh, in custody, made statement dated 16.8.2006 (Ex.PX-II) to the effect that his brothers Paramjit Singh and Guljit Singh were also involved in the incident. As such, they were arrested. All three accused

persons made disclosure statements, which led to recovery of button (Ex. P-7) and gold ear ring (Ex. P-16) of Smt. Ravinder Kaur from the fields. They also led the police to the place where they had murdered their parents. Incriminating articles so recovered from the spot were sent for chemical analysis and reports (Ex. PW-9/A, 10/B, 10/C and 17/A) from the Director, State Forensic Science Laboratory, Junga, pertaining to weapon of offence (Ex. P-2), ashes (Ex. P-4) and soil (Ex. P-6), pieces of flesh and bones, were obtained by the police. Also, report (Ex. PW-18/A) from the Central Forensic Science Laboratory, Chandigarh, was obtained by the police, which prima facie revealed that the accused, after murdering their parents, had burnt their bodies.

4. With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

5. Accused were charged for having committed offences punishable under the provisions of Sections 302 & 201, both read with Section 34 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

6. In order to establish its case, prosecution examined as many as 19 witnesses and statements of the accused under the provisions of Section 313 of the Code of Criminal Procedure were also recorded, in which they took defence of false implication. No evidence in defence was led.

7. Based on the testimonies of witnesses and the material on record, trial Court convicted accused Amarjit Singh of having committed an offence punishable under the provisions of Section 302 of the Indian Penal Code and sentenced him as aforesaid, but acquitted him of offence punishable under Sections 201 and 34 of the Indian Penal Code. Co-accused Paramjit Singh and Guljit Singh stand acquitted on all counts. Hence, the present appeal by accused Amarjit Singh.

8. Trial Court found the prosecution case, based on the following circumstances, to have been duly proved on record: (i) motive – disinheritance from property, (ii) extra judicial confession, (iii) disclosure statements, which led to recovery of incriminating articles, and (iv) recovery of remnants of bodies of the deceased. Significantly, Court found that even though Kamal Kumar (PW-1) did not support the prosecution qua guilt of co-accused Paramjit Singh and Guljit Singh, but however, his testimony, qua accused Amarjit Singh, proving extra judicial confession, was beyond doubt, fully inspiring in confidence and stood corroborated by Jaspal Singh (PW-4).

9. Trial Court found the alleged extra judicial confession (Ex. PW-19/J) made by accused Paramjit Singh and Guljit Singh not to have been proved, in fact belied by Kamal Kumar and Nirmal Kaur (PW-2). However, extra judicial confession (Ex.PA) made by accused Amarjit Singh was found to have been duly proved, through the otherwise inspiring testimony of Kamal Kumar (PW-1), duly corroborated by Jaspal (PW-4). Also trial Court found the prosecution to have proved the remnants recovered from the spot to be that of bodies of deceased Balwant Singh and Ravinder Kaur, parents of the accused. Through the testimony of Dr. Sukhwinder Singh (PW-10) and Dr. J.R. Gaur (PW-17), prosecution story of the accused having strangulated deceased Ravinder Kaur (mother) in the fields was not found to have been established on record, beyond reasonable doubt, for the reason that articles (ear-ring and button) shown to have been recovered on 16.8.2006, stood deposited in the Malkhana on 13.8.2006 itself. The fact that copy of FIR was sent to Halqua Magistrate on 14.8.2006 was found not to be fatal. Even though disclosure statement made by

co-accused Paramjit Singh and Guljit Singh was found to be shrouded with suspicious circumstances, but however such statement with respect to accused Amarjit Singh was found to have been proved on record.

10. Since trial Court observed that "from the evaluation of the prosecution material discussed above, it is crystallized that the circumstantial evidence brought on record contains in it positive proof, credible sequence of events and factual truth linking the accused Amarjit Singh alias Karamjit Singh with the commission of the offence by means of doing to death his own parents. It is he who is found to have caused their death by murdering them and consigning them to flames in the chhaan (thatched hutment). Though, the possibility of other two accused cannot be ruled out, but for want of evidence, as the recoveries effected on 16.8.2006 have been found to be wanting, the benefit of doubt has been given to them. It is all probability, this sinister and diabolical plan could not be executed single handedly but due to the discrepant investigation and evidence produced on record by the prosecution the two other accused have been given benefit", on 9.7.2014, we directed the State to obtain appropriate instructions from the relevant authority. On 25.11.2014, learned Additional Advocate General, under instructions, made a statement that no appeal against the judgment of acquittal of co-accused Paramjit Singh and Guljit Singh stands filed or was sought to be filed by the State.

11. It is a settled principle of law that when allegedly several persons commit an offence in furtherance of common intention and all except one are acquitted, it is open to the appellate court to find out, on reappraisal of evidence whether some of the accused persons stood wrongly acquitted, although it would not interfere with such acquittal in the absence of any appeal by the State Government. The effect of such finding is not to reverse the order of acquittal into one of conviction or visit the acquitted person with criminal liability. The finding is relevant only in invoking against the convicted person his constructive criminality. (See: ***Brathi alias Sukhdev Singh v. State of Punjab,*** **(1991) 1 SCC 519**).

12. That skeletal parts and ashes recovered from the spot belonged to Shri Balwant Singh and Smt. Ravinder Kaur is not an issue before us. From the remnants of dead bodies so recovered from the spot, such fact stands established on record. Testimonies of Vijay Singh Jamwal (PW-9), Gian Thakur (PW-11), Dr. J.R. Gaur (PW-17) and Dr. Sanjeev (PW-18), who have proved reports (Ex. PW-9/A, Ex. PW-11/A, Ex.PW-17/A and Ex. PW-18/A) as also Kishore Kumar (PW-8) and Dr. Sukhwinder Singh (PW-10), who have proved death certificates (Ex.PX-X & PX-XI), evidently establish such fact. Even the accused has not assailed the findings returned by the Court below on this count.

13. We are faced with a situation where trial Court disbelieved version of Kamal Kumar (PW-1) of co-accused Paramjit Singh and Guljit Singh having made any confessional statement and accepted such version with respect to appellant Amarjit Singh. In our considered view, prosecution case primarily rests upon appreciation of testimony of this witness.

14. In the instant case, there is no eye witness to the crime. Since the prosecution case primarily rests upon the alleged confessional statement and circumstantial evidence, we shall first deal with the law on the issue.

15. Law with regard to confessional statement is now well settled. The apex Court in ***State of Rajasthan v. Raja Ram,*** **(2003) 8 SCC 180**, has held thus:

"18. Confessions may be divided into two classes, i.e. judicial and extra-judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra-judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confession, two questions arise : (i) <u>were they made voluntarily ? And (ii) are they true</u>? As the section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him. <u>It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority</u>. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he could gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. <u>Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24</u>. The law is clear that a confession cannot be used <u>against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence</u>. One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that (in) its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. [See R. v. Warwickshall; (1783) Lesh 263)]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one

which is not the result of the free will of the maker of it. So where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe Evidence, 9th Edn. Page 284). A promise is always attached to the confession, alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducment, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words `appear to him' in the last part of the section refer to the mentality of the accused.

19. An extra-judicial confession, if voluntary and true and made in fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility." (Emphasis supplied)

16. In ***Jagroop Singh v. State of Punjab*, (2012) 11 SCC 768**, the apex Court has held as under:

"29. The issue that emanates for appreciation is whether such confessional statement should be given any credence or thrown

overboard. In this context, we may refer with profit to the authority in *Gura Singh v. State of Rajasthan,* (2001) 2 SCC 205, wherein, after referring to the decisions in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh,* AIR 1954 SC 322, *Maghar Singh v. State of Punjab,* (1975) 4 SCC 234, *Narayan Singh V. State of M.P.,* (1985) 4 SCC 26, *Kishore Chand v. State of H.P.,* (1991) 1 SCC 286 and *Baldev Raj v. State of Haryana,* 1991 Supp (1) SCC 14, it has been opined that it is the settled position of law that extra judicial confession, if true and voluntary, can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and his evidence is credible. The evidence in the form of extra-judicial confession made by the accused before the witness cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. <u>If the court believes the witness before whom the confession is made and is satisfied that it was true and voluntarily made, then the conviction can be founded on such evidence alone</u>. The aspects which have to be taken care of are the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. That apart, before relying on the confession, the court has to be satisfied that it is voluntary and it is not the result of inducement, threat or promise as envisaged under Section 24 of the Act or brought about in suspicious circumstances to circumvent Sections 25 and 26.

30. Recently, in *Sahadevan v. State of Tamil Nadu,* (2012) 6 SCC 403, after referring to the rulings in *Sk. Yusuf v. State of W.B.,* (2011) 11 SCC 754 and *Pancho v. State of Haryana,* (2011) 10 SCC 165, <u>a two-Judge Bench has laid down that the extra-judicial confession is a weak evidence by itself and it has to be examined by the court with greater care and caution; that it should be made voluntarily and should be truthful; that it should inspire confidence; that an extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence; that for an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and that such statement essentially has to be proved like any other fact and in accordance with law</u>. The Court cautioned that confession would have to be proved like any other fact, which would depend upon veracity of the witness. Also, such confession can be relied upon and conviction based thereupon, if evidence comes from the mouth of the witness, who appears to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought, which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. The Court has to satisfy with regard to voluntariness of the confession, truthfulness thereof and corroboration, if so required. The Court further held that:-

> "15.6. Accepting the admissibility of the extra-judicial confession, the Court in the case of *Sansar Chand v. State of Rajasthan* [(2010) 10 SCC 604] held that:

> "29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore, Mulk Raj v. State of U.P., Sivakumar v. State (SCC paras 40 and 41 : AIR paras 41 & 42), Shiva Karam Payaswami Tewari v. State of Maharashtra and Mohd. Azad v. State of W.B.]
>
> 30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872."

15.7. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in the case of *Rameshbhai Chandubhai Rathod v. State of Gujarat* [(2009) 5 SCC 740], held as under :

> "It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true."

15.8. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. *Sk. Yusuf v. State of W.B.* [(2011) 11 SCC 754] and *Pancho v. State of Haryana* [(2011) 10 SCC 165]." [**Emphasis supplied**]

17. Law with regard to circumstantial evidence is now well settled. It is a settled proposition of law that when there is no direct evidence of crime, the guilt of the accused can be proved by circumstantial evidence, but then the circumstances from which the conclusion of guilt is to be drawn, should be fully proved and such circumstances must be conclusive in nature, to fully connect the accused with the crime. All the links in the chain of circumstances must be established beyond reasonable doubt, and the proved circumstances should be consistent, only with the hypothesis of guilt of the accused, being totally inconsistent with his innocence. While appreciating the circumstantial evidence, the Court must adopt a very cautious approach and great caution must be taken to evaluate the circumstantial evidence. [See: ***Pudhu Raja and another Versus State Represented by Inspector of Police*, (2012) 11 SCC 196**; ***Madhu Versus State of Kerala*, (2012) 2 SCC 399**; ***Dilip Singh Moti Singh versus State of Gujarat*, (2010) 15 SCC 622**, ***Mulakh Raj and others Versus***

***Satish Kumar and others*, (1992) 3 SCC 43**; and ***Sharad Birdhichand Sarda Versus State of Maharashtra*, (1984) 4 SCC 116**.].

18. Also, apex Court in ***Padala Veera Reddy v. State of Andhra Pradesh and others,* 1989 Supp (2) SCC 706**, Court held that when a case rests upon circumstantial evidence, following tests must be satisfied:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
>
> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

(Also see: ***Ramreddy Rajesh Khanna Reddy v. State of A.P.,* (2006) 10 SCC 172**; ***Balwinder Singh v. State of Punjab,* 1995 Supp (4) SCC 259**; and ***Harishchandra Ladaku Thange v. State of Maharashtra,* (2007) 11 SCC 436**).

19. Each case has to be considered on its own merit. Court cannot presume suspicion to be a legal proof. In the absence of an important link in the chain, or the chain of circumstances getting snapped, guilt of the accused cannot be assumed, based on mere conjectures.

20. The apex Court in ***State of U.P. v. Ashok Kumar Srivastava*, (1992) 2 SCC 286**, while cautioning the Courts in evaluating circumstantial evidence, held that if the evidence adduced by the prosecution is reasonable, capable of two inferences, the one in favour of the accused must be accepted. This of course must precede the factum of prosecution having proved its case, leading to the guilty of the accused.

21. Applying the aforesaid principles, we are of the considered view that testimony of Kamal Kumar (PW-1) with whom accused amarjit Singh confessed his guilt, does not inspire confidence at all. He cannot be said to be a truthful witness. His testimony is not free from blemish and contradictions, which are material, bordering falsehood.

22. Accused Amarjit Singh undisputedly was issueless and used to reside in his own house at Dera Bassi (Punjab), where he was gainfully employed and doing well in life. He was well settled. This is an admitted fact. Even as per testimony of Kamal Kumar (PW-1), Smt. Nirmal Kaur (PW-2) and Yadvinder Singh (PW-6), he would seldom visit his native place, i.e. place of occurrence of the incident. According to Nirmal Kaur (PW-2) and Yadvinder Singh (PW-6), issue of inheritance of property, the alleged motive for the accused to have murdered his parents, stood settled eight years prior to the occurrence of the incident. Thus motive stands ruled out. Version of Yadvinder Singh (PW-6) that on 12.8.2006 accused demanded his share, to say the least, is uninspiring in confidence. Why did he leave for Haridwar, remains unexplained. Also, except for uninspiring testimony of Kamal Kumar (PW-1) and Yadvinder

Singh (PW-6) presence of accused in the village, on the fateful day, cannot be found to have been sufficiently explained or proved by the prosecution. Another brother, who undisputedly was in the village has not been examined. Be that as it may, both these witnesses admit that one Fateh Singh, from Bihar, employed by their father, used to look after their parents. Presence of Fateh Singh on 12.8.2006 at 7 p.m., undisputedly stands proved by Yadvinder Singh (PW-6). In fact, Smt. Nirmal Kaur also states that when she arrived on the spot, after occurrence of incident, he was present in the house. Now, surprisingly, Fateh Singh has not been examined in Court at all. Also, police did not bother to associate him during investigation and cite him as a witness. Why so? has not been explained. Police has not tried to rule out either involvement of Fateh Singh or ascertain from him what transpired after Yadvinder Singh allegedly left the house on 12.8.2006. After all he was personal attendant of the deceased and in best position to disclose events leading to the incident in question.

23. Coming back to original issue of confessional statement, we find even Kamal Kumar (PW-1) to have materially contradicted himself on the same. As per version (Ex. PA), so disclosed by him to the police, on 13.8.2006 at 5.30 a.m., accused Amarjit Singh came to his house, fell on his feet and sought help. His brothers wanted to kill him. *Accused Amarjit Singh confessed of having burnt his parents, by setting the hutment on fire, as he was deprived of his share in the property*. Soon thereafter both Paramjit Singh and Guljit Singh came, to whom he informed that Amarjit Singh had met him. Thereafter, he left his house by taking Paramjit Singh and Guljit Singh to the village, where he saw only ashes. Accordingly, he informed the police. But significantly, in Court he has deposed that: "accused Amarjeet Singh disclosed that he had come from outside only yesterday and he had sought land from his parents to construct a house. The accused told me that his mother was willing to give land for the construction of the house but the father did not want to give the same to the accused. (him). on this account there was some altercation between the parents of the accused Amarjeet Singh. *He further disclosed that he went to sleep after having food in his own house. At about mid night he saw the 'Chhaan' (thatched hutment) on fire. He further disclosed that when I reached near the hutment on fire I saw my father standing besides the hutment. My mother was inside the hutment. She was in flames. The accused Amarjeet Singh had further disclosed that on his asking his father pushed him aside and said that I will take care of you also. The accused Amarjeet further stated that on this an altercation ensued between them and I (accused) threw my father into the burning hutment (Chaan)*. Because of the noisy altercation my brothers got up, because of their fear I have come to you. I asked the accused Amarjeet Singh to sit down and assured him to look into the matter". When confronted with his previous statement (Ex. PA) so recorded by the police, we find such fact not to have been recorded therein. We find the witness to have clarified that "*Amarjeet accused had only stated that he had thrown his father into the burning hutment (Chhaan)*".

24. We do not find testimony of this witness qua the present accused to be inspiring in confidence at all. Witness admits that he was not on visiting terms with the accused. He would seldom meet him. He was also not his neighbour, an influential person or a man of confidence. His house is situated at a distance of 2 kms from the spot of crime. There was no reason for accused Amarjit Singh to have confessed his guilt with him. Significantly, witness admits that Paramjit Singh and Guljit Singh met him during the course of investigation. Even then they did not say anything. He has retracted from his statement (Ex. PW-19/G) to the effect that the said co-accused persons also confessed their guilt of having murdered their parents alongwith accused Amarjit Singh. Thus, the witness cannot be said to be truthful and his

testimony reliable. His version cannot be said to be inspiring in confidence at all. On the question of disclosure statement (Ex.PW-19/J), he was declared hostile and cross-examined by the prosecution. In the circumstances, his testimony ought to have been believed or disbelieved in toto. He had informed the police that co-accused were looking for the convict, yet police did not associate this witness during investigation. Testimony of Jaspal Singh (PW-4) is in the nature of hearsay evidence and thus cannot be relied upon.

25. Court is conscious of the fact that evidence of a hostile witness need not be rejected in its entirety. Evidence, which is credible, even of a hostile witness, can form basis for conviction. It is the quality and not the quantity of witnesses, which would matter (See: ***Mrinal Das and others v. State of Tripura,*** **(2011) 9 SCC 479**). But then, in the instant case, we find the witness not to be worthy of credence.

26. There is no legal impediment in convicting a person on the testimony of sole witness. Evidence has to be weighed and not counted. Test is whether evidence has a ring of truth, is cogent, credible and trustworthy. If the quality of evidence is not satisfactory, Court, in discharge of its duties, would come forward to acquit the accused. (See: ***Prithpal Singh and others v. State of Punjab and another,*** **(2012) 1 SCC 10**).

27. Testimony of Yadvinder Singh to the effect that accused made disclosure statement is hearsay in nature and is thus not of much help to the prosecution. Version of this witness that there used to be quarrel and bickering in the family, does not inspire confidence, for the matter was never reported by anyone to the police or local panchayat.

28. There is yet another reason of disbelieving Kamal Kumar. It is the prosecution case that initially on 13.8.2006 and then on 15.8.2006, co-accused Paramjit Singh and Guljit Singh confessed of having murdered their parents. But we find this version to be belied by Jaspal (PW-4), an independent witness, according to whom, all the accused persons stood arrested by the police on 13.8.2006 itself. Now, if this were so, then obviously police record appears to have been fabricated, testimony of police officials of having conducted a fair investigation to be false and version of Kamal Kumar to be false.

29. There is yet another mitigating circumstance on record in favour of the accused-convict. In our considered view, prosecution has taken a contradictory stand. Through the testimony of Kamal Kumar, prosecution wants us to believe that after killing his wife, Balwant Singh set the hutment on fire whereafter Amarjit Singh pushed his father into the fire, but through the testimony of Jaspal (PW-4), Hukkamdin (PW-5) and Yadvinder Singh (PW-6), prosecution wants us to believe that accused murdered their parents in the fields; brought their bodies to the spot and then set the hut on fire. Recovery of button and earring so effected on 16.8.2006, allegedly belonging to the deceased, is the link evidence, produced to establish such circumstance. This version of the prosecution, though contradictory in nature, in fact stands belied by police official MHC Vishesh Kumar (PW-7), according to whom button and earring stood deposited with him in the Malkhana on 13.8.2006. Noticeably, there is no dispute about the correctness of date. Thus, this totally knocks down the prosecution case of accused Paramjit Singh and Guljit Singh of having made confessional statements (Ex. PW-19/J) as also disclosure statement(s) leading to recovery of these articles. Thus, prosecution case even on the question of disclosure statements made by all the accused in police custody, stands falsified.

30. When we examine the testimony of Nirmal Kaur (PW-2), we find that she has contradicted herself, rendering her version in Court to be absolutely doubtful, if not false. In her examination-in-chief, she does state that upon receiving telephonic information about death of her parents, on 13.8.2006 itself she reached the spot and got identified articles, i.e. Kara (P-2) and ring (P-13) from the ashes, which she had given to them. However, in her cross-examination, she unequivocally admits of having written letter dated 10.8.2007 (Ex. DC) to the concerned Court, admitting that in fact she had reached the spot of occurrence the following day, next day, i.e. 14th and not 13th of August, 2006. This obviously renders the prosecution case of having associated her, in carrying out search and seizure operations of incriminating articles, such as Kara (P-12), ring (P-13), spear (sketches Ex. PB & PC), vide recovery memo (Ex.PF) to be false. Importantly, this witness also admits that the alleged incident of crime was witnessed by Fateh Singh, who also disclosed that deceased were strangulated by the accused. Now, if this were so, then why is it that she did not disclose such fact to the police or that police endeavoured to search for Fateh Singh and examine him in Court, for after all he was an eye witness to the occurrence of incident.

31. We find role of Investigating Officer Som Dutt (PW-19) to be intriguing and not fair. His version of having arrested co-accused Paramjit Singh and Guljit Singh on 16.8.2006 stands belied by Nirmal Kaur (PW-2) and Jaspal (PW-4). Witness admits that village Manjholi is a big village. He feigns ignorance with regard to criminal antecedents of witness Kamal Kumar (PW-1). He admits that accused-convict Amarjit Singh is gainfully employed at Dera Bassi (Punjab), where he resides permanently and that the other two accused persons reside separately. Surprisingly, he furnishes no explanation for not sending the information of murder to the concerned Magistrate, housed just at a distance of 200 metres from the Police Station. After all accused stood arrested on 13.8.2006 itself. His version of disclosure statements made by the accused, which led to recovery of incriminating articles, is absolutely uninspiring in confidence, for the reason that he did not associate any independent witness present on the spot. He also admits that on documents (Ex. PL and PK-1) name of accused was written after using fluid. In fact, he admits that till certain point of time, even he was not sure who had set the hutment on fire. Thus, not only there is interpolation in record, but also version of Kamal Kumar (PW-1) of confessional statement stands belied and the prosecution case falsified.

32. Trial Court disbelieved the prosecution case qua co-accused Paramjit Singh and Guljit Singh, finding (i) testimonies of Kamal Kumar and Nirmal Kaur to be uninspiring in confidence, and (ii) disclosure statements made by them, leading to recovery of incriminating articles, to be hit by provisions of Section 26 of the Indian Evidence Act. We do not find the reasoning to be logical or legal. Testimonies of prosecution witnesses, in the given facts and the circumstances, had to be believed or rejected in toto, for afterall, all the accused had confessed their guilt. Also, Section 27 is an exception to Section 26. Prosecution case of recovery of incriminating articles was to be disbelieved in toto.

33. In our considered view, Court below has rendered contradictory findings. While convicting accused Amarjit Singh, it believed the testimony of Kamal Kumar, holding that there was neither any threat, inducement or promise nor did he have any motive of false implication. Very same logic and reasoning would also apply qua accused Paramjit Singh and Guljit Singh.

34. Without appreciating that accused had neither any intimacy nor any justifiable reason to confess his guilt, Court got swayed with the fact that Kamal Kumar had no reason to falsely implicate Amarjit Singh. The logic is illegal irrational and against the settled principles of law. Accused Amarjit Singh had no reason to kill his parents. He had no intimacy with the witness whom he seldom met. He was not even on visiting terms. The witness was neither influential nor powerful to have protected him. In fact, trial Court doubted the prosecution story of having recovered the incriminating articles on 19.8.2006. Under these circumstances, it seriously erred in convicting accused Amarjit Singh, causing serious prejudice to him, rendering the findings to be illegal and perverse, not borne out from the record. Finding of guilt cannot be said to be logical/legal, based on correct and complete appreciation of evidence on record.

35. Thus, in our considered view, trial Court erred in convicting Amarjit Singh of the charged offence. In the instant case, there is no motive for the accused to have committed the offence. His extra-judicial confession allegedly made to Kamal Kumar is absolutely uninspiring in confidence. Disclosure statements and recoveries pursuant thereto cannot be said to be based on cogent, clear and convincing piece of evidence. In the instant case, circumstances leading to the irresistible conclusion of guilt of the accused and to no other hypothesis, cannot be said to have been proved on record, by leading cogent, convincing and reliable piece of evidence. It is clear that the Court below erred in appreciating the testimonies of the witnesses and returning findings of guilt of accused Amarjit Singh. Material contradictions, embellishments, improvements and inconsistencies in the testimony of prosecution witnesses, namely Kamal Kumar, Nirmal Kaur, Jaspal, Yadvinder Singh and Investigating Officer Som Dutt, are apparent and glaring.

36. Thus, findings of conviction and sentence, returned by the Court below against accused Amarjit Singh, cannot be said to be on the basis of any clear, cogent, convincing, legal and material piece of evidence, leading to an irresistible conclusion of guilt of the accused.

37. Hence, for all the aforesaid reasons, appeal is allowed and the judgment of conviction and sentence, dated 29.3.2008/31.3.2008, passed by Additional Sessions Judge, Solan, Himachal Pradesh, in Sessions Trial No.4-NL/7 of 2007, titled as *State of Himachal Pradesh v. Karamjit Singh and others*, is set aside and accused Amarjit Singh is acquitted of the charged offences. He be released from jail, if not required in any other case. Amount of fine, if deposited by the accused, be refunded to him accordingly. Release warrants be immediately prepared. Appeal stands disposed of, so also pending application(s), if any.

****

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

Ranvir Singh …Appellant.

Versus

State of Himachal Pradesh …Respondent.

Criminal Appeal No.320 of 2012
Reserved on : 19.11.2014
Date of Decision: December 10, 2014.

Indian Penal Code, 1860- Section 302 read with Section 30 of Indian Arms Act- hot exchange took place between the accused and his elder son on which

accused brought his gun and shot his son at the abdomen - son died at the spot- the fact that deceased had died due to gunshot was proved by medical evidence- the fact that accused possessed gun was not disputed by him- held, that the mere fact that accused had used a deadly weapon would not prove his criminal intent of murdering his own son- there was no prior hostility- the incident had taken place at the spur of the moment- hence, accused acquitted of the commission of offence punishable under Section 302 IPC and convicted of the commission of offence punishable under Section 304 (second part) of the Indian Penal Code. (Para- 14 and 24)

Cases referred:

Moti Singh v. State of Maharashtra, (2002) 9 SCC 494

Manjeet Singh v. State of Himachal Pradesh, (2014) 5 SCC 697

Vineet Kumar Chauhan v. State of U.P., (2007) 14 SCC 660

Ajit Singh v. State of Punjab, (2011) 9 SCC 462

Mohinder Pal Jolly v. State of Punjab AIR 1979 SC 577

Virsa Singh v. State of Punjab, AIR 1958 SC 465

Rampal Singh v. State of Uttar Pradesh, (2012) 8 SCC 289

For the Appellant : Mr. Malay Kaushal, Advocate.
For the Respondent : Mr. B.S.Parmar, Mr. Ashok Chaudhary, Mr. V.S. Chauhan, Additional Advocates General and Mr. Vikram Thakur, Deputy Advocate General.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

Appellant-convict Ranvir Singh, hereinafter referred to as the accused, has assailed the judgment dated 12.7.2012, passed by Sessions Judge, Sirmaur District at Nahan, Himachal Pradesh, in Sessions Trial No.50-ST/7 of 2011, titled as *State of Himachal Pradesh v. Ranvir Singh*, whereby he stands convicted and sentenced to undergo rigorous imprisonment for life and pay fine of Rs.10,000/-, in relation to an offence punishable under Section 302 of the Indian Penal Code; and rigorous imprisonment for a period of six months and pay fine of Rs.1,000/-, in relation to an offence punishable under the provisions of Section 30 of the Indian Arms Act, 1959. In default of payment of fine on both counts, he is required to further undergo imprisonment for a period of six months and two months, respectively.

2. It is the case of prosecution that accused used to reside separately, from his sons, in village Chuli, Tehsil Renukaji, District Sirmaur, Himachal Pradesh. On 11.5.2011, marriage of his sister's son was being solemnized in the house of his son Naresh Kumar. On a particular issue, heated exchange took place between the accused and his elder son Shamsher Singh (deceased). Resultantly, accused brought a single barrel gun from his house and shot him in the abdomen. Incident was witnessed by Dhanmanti Devi (PW-1), Ram Singh (PW-2) and Mohan Singh (PW-3). On the basis of information so furnished by Mahesh Kumar, Pradhan of Gram Panchayat, Dadahu, police reached the spot and conducted necessary investigation. Gun and samples of blood were recovered by associating Mohan Singh as a witness. Dead body of Shamsher Singh, who died on the spot, was sent for postmortem, which was conducted by Dr. C.L. Sharma (PW-9). Inquest report (Ex. PW-11/C)

was prepared. Viscera and pellets were sent to the State Forensic Science Laboratory for examination, alongwith the Gun (Ex. P-17), samples of blood stained soil (Ex. P-16 and reports (Ex. PA, PB, PC & PD) obtained by the police. 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 offences punishable under the provisions of Section 302 of the Indian Penal Code and Section 30 of the Indian Arms Act, 1959 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 the following defence:

> "Except Shamsher Singh, we all were in the function of marriage and when in the morning I came to my house, I found Shamsher Singh in intoxicated condition and I asked him that he was indulging in drinking liquor whereas the marriage was being solemnized. Shamsher Singh rebuked me and entered my room and brought my muzzle loading Gun and wanted to shoot me but I grappled with Shamsher Singh and caught hold of the Gun in which process but side of the Gun came in my hands whereas barrel side was in the hands of Shamsher Singh in the process of snatching the Gun, accidental fire took place when the barrel of the Gun was just near the body of the deceased. On account of which Shamsher Singh received Gun shot injury. I had no enmity or quarrel with my son. It all happened accidentally. I had kept the Gun loaded on account of threat of wild animals. I am innocent and have not committed the offence."

5. Based on the testimonies of witnesses and the material on record, trial Court convicted the accused of the charged offences and sentenced him as aforesaid. Hence, the present appeal by the accused.

6. It is contended that accused stands wrongly convicted. Alternatively, it is submitted that trial Court erred in convicting him under the provisions of Section 302, for he had no intent to commit murder of his own son and at best, case would fall within ambit and scope of Section 304 (second part). On the quantum of sentence, he pleads leniency.

7. On the other hand, Mr. B.S. Parmar, learned Additional Advocate General, has supported the judgment of conviction and sentence rendered by the trial Court, for the reasons assigned therein.

8. We have heard learned counsel for the parties as also perused the record.

9. In the instant case, identity of the accused and deceased is not disputed. The fact that deceased died as a result of gunshot injuries is also not disputed by the accused. In any event, such fact stands established on record through the testimony of Dr. C.L. Sharma, who while proving the postmortem report (Ex.PW-9/A), has opined as under:

> "Injury Lacerated wound in the anterior aspect of femoral region right side. Underlying femoral vessels artery and vein were found ruptured. Massive bleed with haemotoma present charring of underlying tissue and muscles present.

Disease of deformity. 2"X 3" bone deep (femoral fracture present upper end of femur present.

Cause of death. In our opinion the cause of death of the deceased is hemorrhagic shock due to massive bleeding from femoral vessels (ruptured) due to gun shot injury."

10. According to the doctor, scorching/blackening was found around the injury with unburnt grains of gun powder. Also, cloth debris was found around the entry of the wound. Possibility of gunshot having been fired within one foot is not ruled out.

11. The fact that the gun (Ex.P-17) belonged to and was possessed by the accused is also not disputed by him. In any event, prosecution has proved such fact through the testimony of Devinder Saini (PW-7), Junior Assistant, posted in the Licence Branch in the Deputy Commissioner's Office at Nahan. Licence stands exhibited as Ex. PW-7/A.

12. That the gun was recovered from the spot alongwith other incriminating articles, including blood stained soil, is also not in dispute. Such fact stands established through the testimony of Investigating Officer, Laiq Ram (PW-11), whose testimony stands corroborated by Mohan Singh (PW-3).

13. The defence, in the instant case, cannot be said to have been probablized. Neither any evidence in defence was led nor did the prosecution witnesses even prima-facie disclose such facts. Why would an accused keep a fully loaded gun in his house? remains unexplained. He had no prior threat or fear of his life. Conviction under the Arms Act is thus sustainable in law.

14. The issue, which arises for consideration, is as to whether accused can be held guilty of having committed murder, so as to fall within the definition of Section 300 of the Indian Penal Code or not.

15. The words "bodily injury sufficient in the ordinary course of nature to cause death" would mean that death will be the most probable result of the injury, having regard to the ordinary course of nature. The difference is one of the degrees of probability of death resulting from intended bodily injury. Still further, the question, which would arise for consideration, is as to whether causing the fatal injury was accidental or unintentional or some other kind of injury was intended to be inflicted.

16. Relying upon its earlier decision in ***Moti Singh v. State of Maharashtra,*** **(2002) 9 SCC 494**, the Apex Court, in ***Manjeet Singh v. State of Himachal Pradesh,*** **(2014) 5 SCC 697**, in similar circumstances, converted the judgment of conviction under the provisions of Section 302 to that of Section 304 of the Indian Penal Code.

17. Also, while considering its earlier decisions rendered in ***Vineet Kumar Chauhan v. State of U.P.,*** **(2007) 14 SCC 660**; ***Ajit Singh v. State of Punjab,*** **(2011) 9 SCC 462**; ***Mohinder Pal Jolly v. State of Punjab*; and *Virsa Singh v. State of Punjab,*** **AIR 1958 SC 465**, the apex Court in ***Rampal Singh v. State of Uttar Pradesh,*** **(2012) 8 SCC 289**, has held that an act done with an intention of causing death or bodily injury, which the offender knows to be likely to cause death or causing bodily injury to any person, which is sufficient in the ordinary course of nature to cause death or the person causing injury knows that it is imminently dangerous that it must in all probability cause death, would only amount to murder.

18. In order to establish guilt of the accused, prosecution relies upon the testimonies of spot witnesses, namely wife of the deceased, Dhanmanti Devi (PW-1), Ram Singh (PW-2) and Mohan (PW-3).

19. Dhanmanti Devi states that on 11.5.2011 marriage of son of sister of the accused was being solemnized in the house of her brother-in-law (Devar) Naresh Kumar. After attending the *Baraat*, her family, including her husband, had just returned, when hot exchange of words took place between the accused and the deceased. Hearing the same, she immediately rushed out and saw the accused pull the trigger of single barrel gun, which hit her husband in the abdomen. Soon Mohan Singh and Ram Singh arrived on the spot, when her husband uttered last words "his children have been orphaned". After the incident, accused went (fled) to the Police Station. Thereafter, police came and conducted investigation on the spot. In cross-examination, she categorically states that accused did not aim the gun at the chest.

20. We find her version to have been corroborated by Ram Singh. Mohan Singh reached the spot after the incident, but saw the deceased lying on the ground, bleeding profusely.

21. Thus, from the conjoint reading of testimonies of all the witnesses, it is evidently clear that the accused did fire the gunshot on the abdomen of the deceased but not with intent of murdering him.

22. Having perused the material on record and keeping in view the nature and place of injury and the time of occurrence of incident, we are of the considered view that accused had no intention of causing death of the victim.

23. Injury caused was not on the head, but abdomen. No doubt, assailant used a deadly weapon, which is gun, but then such fact alone, in the absence of any other evidence on record, would not prove his criminal intent of murdering his own son. Had the accused intended to do so, he would have fired the gunshot on his head and not the abdomen. There was no prior proven hostility or differences inter se the parties. Incident occurred at the time when marriage celebrations were going on. Perhaps the spur of moment, heated exchange of words took place and the gun was shot.

24. In the instant case, we find that it was not a case of cold blooded murder, with a premeditated state of mind. The quarrel was sudden. Also after the incident, he straightway went to the police. In our considered view, trial Court erred in not appreciating these aspects of the matter, while convicting the accused on this count.

25. Hence, in view of the above discussion, appeal is partly accepted, conviction and sentence of the accused in relation to an offence punishable under the provisions of Section 302 of the Indian Penal Code, as ordered by the trial Court, is set aside. Instead, accused is convicted of having committed an offence punishable under the provisions of Section 304 (second part) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years and pay fine of Rs.10,000/- and in default thereof to further undergo rigorous imprisonment for a further period of one year. Conviction of the accused for the remaining offence as ordered, and sentence for the said offence so awarded by the trial Court, is upheld. The sentence of substantive imprisonment shall run concurrently. Appeal stands disposed of, so also pending application(s), if any.

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

Tarsem Lal ...Appellant.
Versus
State of Himachal Pradesh ...Respondent.

Criminal Appeal No.392 of 2010
Reserved on : 28.10.2014
Date of Decision: December 10, 2014.

Indian Evidence Act- 1872- Section 3- Interested witness would be the one who has some direct interest in having the accused somehow or the other convicted for some animus or for some other reason- merely because, witness had an interest cannot be a ground to discard his testimony. (Para-11)

Indian Evidence Act- 1872- Section 134- When the prosecution has already led credible evidence- there was no necessity to multiply number of witnesses. (Para- 26 and 27)

Indian Penal Code, 1860- Sections 302 and 452- Accused came to the house of PW-1 who was teaching her son in the verandah of her house- accused came armed with a dagger and inflicted a fist blow on the stomach of her son- PW-1 and deceased tried to intervene on which accused stabbed the deceased with dagger on her stomach – she was taken to Hospital at Hoshiarpur where she was declared brought dead – prosecution version was duly proved by the testimony of PW-1, her son and by other witnesses- accused got weapon of offence corroborated the fact that deceased had died due to bodily injury- bodily injury was proved by Medical Officer- prosecution version was duly proved beyond all reasonable doubt. (Para-13 to 22, 28, 34 and 35)

Cases referred:

Pratap Singh & another v. State of M.P., (2005) 13 SCC 624
Krishan and another v. State of Haryana, 2005 Cr.L.J. 1909
State of H.P. versus Parkash Chand and others, 1997 Cri.L.J. 1979
Sakal Deep v. U.P. State, 1993 Cri.L.J. 551.
Baitullah and another v. State of U.P., (1998) 1 SCC 509
Chittar Lal v. State of Rajasthan, (2003) 6 SCC 397
Namdeo v. State of Maharashtra, (2007) 14 SCC 150
State of Maharashtra v. Tulshiram Bhanudas Kamble and others, (2007) 14 SCC 627
Takdir Samsuddin Sheikh v. State of Gujarat and another, (2011) 10 SCC 158
Rakesh and another v. State of Madhya Pradesh, (2011) 9 SCC 698
Thoti Manohar v. State of Andhra Pradesh, (2012) 7 SCC 723
Kanhaiya Lal and others v. State of Rajasthan, (2013) 5 SCC 655
Vadivelu Thevar v. The State of Madras, AIR 1957 SC 614
Govindaraju alias Govinda v. State by Sriramapuram Police Station and another, (2012) 4 SCC 722
Gurmej Singh and others versus State of Punjab, 1991 Supp (2) SCC 75

State of Rajasthan vs. Om Parkash (2002) 5 SCC 745
Jagdish Narain and another v. State of U.P., (1996) 8 SCC 199

For the Appellant : Mr. Shivank Singh Panta, Advocate.
For the Respondent : Mr. Ashok Chaudhary, Additional Advocate General; Mr. Vikram Thakur, Mr. Puneet Rajta, Deputy Advocates General; and Mr. J.S. Guleria, Assistant Advocate General.

The following judgment of the Court was delivered:

Sanjay Karol, Judge

Appellant-convict Tarsem Lal, hereinafter referred to as the accused, has assailed the judgment dated 29.6.2010/7.6.2010, passed by Additional Sessions Judge, Fast Track Court, Una, District Una, Himachal Pradesh, in Sessions Trial No.16/2009, titled as *State v. Tarsem Lal*, whereby he stands convicted of the offence punishable under the provisions of Sections 302 and 452 of the Indian Penal Code and sentenced to undergo imprisonment for life, in relation to an offence punishable under the provisions of Section 302 of the Indian Penal Code; imprisonment for a period of one year, in relation to offence punishable under the provisions of Section 452 of the Indian Penal Code; and pay fine of Rs.5,000/- and Rs.1,000/-, and in default thereof to further undergo simple imprisonment for a period of three months and one month, respectively.

2. It is the case of prosecution that Smt. Jiwana Kumari (PW-1), daughter-in-law of Krishna Devi (deceased), was teaching her son Master Shubham (PW-2) in the verandah of her house. On 7.7.2009 at 7 p.m., accused came with a dagger and after entering the house of the deceased gave a fist blow on the stomach of Shubham. Jiwana Kumari tried to save her son. When Krishan Devi, who was closeby, tried to intervene, accused stabbed her with a dagger on vital part of her body, i.e. stomach. Jiwana Kumari, on telephone, informed her brother-in-law. Close relatives of Krishna Devi immediately rushed to the spot and took her to the Community Health Centre, Amb, where she was referred to the Zonal Hospital, Una, for treatment vide MLC (Ex.PW-12/A). However, she was taken to the hospital at Hoshiarpur (Punjab: A bordering State), where she was declared as having been brought dead. On receipt of information about the incident, ASI Mohinder Singh (PW-16), after making entry in the Daily Diary (Ex.PW-13/A), proceeded to the hospital alongwith Dev Raj. Narinder Kumar (PW-4), son of Krishan Devi, got recorded his statement (Ex. PW-4/A), under the provisions of Section 154 of the Code of Criminal Procedure, on the basis of which FIR No.89, dated 7.7.2009 (Ex. PW-11/A), under the provisions of Section 307/452 of the Indian Penal Code, was registered at Police Station, Amb, District Una, Himachal Pradesh. Necessary investigation was conducted on the spot. Lateron inquest report (Ex. PW-8/B & 8/C) was prepared and postmortem got conducted through Dr. O.P. Ram Dev (PW-8) and report (Ex.PW8/F) taken on record. Police took into possession blood stained bed sheet and clothes of the deceased vide Memo (Ex.PW-4/A). Also, weapon of offence, i.e. dagger (Ex. P-1) was recovered vide Memo (Ex. PW-1/A), on the basis of disclosure statement (Ex. PW-7/A), made by the accused, so recorded in the presence of Kamal Kishore (PW-7) and Dev Raj (not examined). Photographs of the spot were taken. Reports of the Forensic Science Laboratory (Ex.PW-8/D and 8/E), pertaining to the articles so recovered by the police, were taken on record. With the completion of investigation, which prima facie revealed

complicity of the accused in the alleged crime, challan was presented in the Court for trial.

3. Accused was charged for having committed an offence punishable under the provisions of Sections 452 and 302 of the Indian Penal Code, to which he did not plead guilty and claimed trial.

4. In order to establish its case, prosecution examined as many as 19 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 am innocent. Complainant party intended to install public tap in front of my cow-shed to which I objected. On this, the complainant quarreled with me, abused me & Jiwana Kumari, who was possessing a knife accidentally hit Krishna Devi, although she want to stab me. Krishna Devi had pushed me, I fell down & knife accidentally hit Krishna Kumari."

No evidence was led in defence.

5. Finding the testimony of prosecution witnesses to be fully inspiring in confidence, more specifically spot witnesses, trial Court convicted the accused of the charged offence and sentenced him as aforesaid. Hence, the present appeal by the accused.

6. Assailing the judgment, Mr. Shivank Singh Panta, learned counsel for the accused, made the following submissions: (i) Master Shubham (PW-2) being a tutored witness, his testimony cannot be relied upon; (ii) testimony of Jiwana Kumari (PW-1) inspires no confidence, for immediately after the incident, she never raised any hue and cry; (iii) Manju Bala (PW-3) contradicts the version so narrated by Jiwana Kumari, thus rendering her version to be uninspiring in confidence and the witness to be unreliable; (iv) non-examination of all the witnesses to the seizure memo renders the prosecution case to be fatal; (v) in view of law laid down by Hon'ble the Supreme Court of India in ***Pratap Singh & another v. State of M.P.*****, (2005) 13 SCC 624**, investigation being faulty, for the spot map did not depict exact location of eye-witnesses, accused merits acquittal; and (vi) even by way of link evidence, no case, beyond reasonable doubt, stands established to link the accused with the crime. It is urged that blood found on the weapon of offence could not be linked to the crime. In support, reliance is also sought on following decisions; (i) ***Krishan and another v. State of Haryana*****, 2005 Cr.L.J. 1909**; (ii) ***State of H.P. versus Parkash Chand and others,*** **1997 Cri.L.J. 1979** (HP); and (iii) ***Sakal Deep v. U.P. State,*** **1993 Cri.L.J. 551.**

7. Mr. J.S. Guleria, learned Assistant Advocate General, supports the judgment based on testimonies of the witnesses, fully inspiring in confidence.

8. Having heard Mr. Shivank Singh Panta, learned counsel for the appellant-accused, as also Mr. Ashok Chaudhary, learned Additional Advocate General and Mr. J.S. Guleria, Assistant Advocate General, on behalf of the State, and minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution, 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.

9. The incident in question, as per the prosecution, is witnessed by Jiwana Kumari (PW-1), her son Master Shubham (PW-2) and her sister-in-law (Devrani) Manju Bala (PW-3).

10. The fact that the aforesaid witnesses come from the same family and that relations between them and the accused were not cordial, cannot be disputed.

11. The Apex Court in ***Baitullah and another v. State of U.P.,* (1998) 1 SCC 509**, has succinctly dealt with the issue of appreciation of testimony of a victim as also an interested witness. It stands clarified that an interested witness would only be such who has some direct interest in having the accused *somehow or the other* convicted for some animus or for some other reason. The Court clarified that merely because a witness has interest, by itself, cannot be a ground to discard his testimony.

12. Apex Court also clarified the difference between an "interested witness" and a "natural witness" in ***Chittar Lal v. State of Rajasthan,* (2003) 6 SCC 397**; ***Namdeo v. State of Maharashtra,* (2007) 14 SCC 150**; ***State of Maharashtra v. Tulshiram Bhanudas Kamble and others,* (2007) 14 SCC 627**; ***Takdir Samsuddin Sheikh v. State of Gujarat and another,* (2011) 10 SCC 158**; ***Rakesh and another v. State of Madhya Pradesh,* (2011) 9 SCC 698**; ***Thoti Manohar v. State of Andhra Pradesh,* (2012) 7 SCC 723**; and ***Kanhaiya Lal and others v. State of Rajasthan,* (2013) 5 SCC 655**.

13. We find the testimonies of both PW-1 and PW-2 to be that of natural witnesses and not interested witnesses in the sense that they would ensure conviction at all cost and under any circumstances, even if they have to depose falsely.

14. Significantly, they are eye witnesses to the occurrence of the incident.

15. Jiwana Kumari states that on 7.7.2009 at about 7 p.m., she was in the verandah of her house, where her son Shubham, was studying. Accused came carrying a knife in his hand and threatened to kill all. He gave a fist blow in the abdomen of Shubham. When she tried to save him, accused caught her. At that time, her mother-in-law Krishna Devi (deceased) intervened and pushed the accused. Though the witness was rescued, but accused stabbed her mother-in-law with a knife in her stomach. Soon wife of the accused came and took him away. Then the witness went to the STD Booth and telephonically informed the incident to her husband and brother-in-law. On their arrival, Krishna Devi was taken to the Community Health Centre, Amb, where she was referred to the Zonal Hospital, Una, but was taken to the hospital at Hoshiarpur. Unfortunately, on the way, Krishna Devi died. In cross-examination, she has explained that since mobile phone was not available at home, she went to the STD Booth to make the call. She specifically denies that she was the assailant or that when deceased pushed the accused, knife blow landed on the stomach of the deceased. She denies not having raised any hue and cry. That deceased died on account of lack of proper treatment also stands denied by her. To us witness appears to be truthful. Her testimony is clear, honest, unshaky and fully inspiring in confidence. Her testimony is free from blemish or doubt.

16. To our mind, version of this witness stands corroborated by Shubham, aged 9 years. To us, witness, who appears to be intelligent, has

deposed in a truthful manner. He categorically states that accused stabbed his grandmother, at a time when both he and his mother were present. At that time, he was studying. In no unequivocal terms he states that accused gave him a fist blow. When his mother tried to save him, accused caught her from the arm. Then deceased came and pushed the accused and enquired from him as to why he was giving beatings. At that accused stabbed the deceased in the stomach. No doubt, in cross-examination, witness states that he was told by his parents to depose as such in the Court, but then on a question put by the Court, he clarifies that "I had seen the occurrence and had stated before this Court on the basis of same. My parents told me to depose the truth". Thus, this witness cannot be said to be tutored. His version is natural, truthful and free from blemish. He is categorical about the spot of crime and the events which led to the stabbing of the deceased.

17. Manju Bala states that hearing cries of Jiwana Kumari, she rushed to the spot and saw her mother-in-law lying in the verandah, bleeding profusely. Also accused, who was holding a dagger, was saying that he would kill all of them. However, In the meantime, his wife came and took him away.

18. We find testimonies of these witnesses to be absolutely inspiring in confidence. Defence taken by the accused cannot be said to have been probablized at all. Dagger (Ex. P-1) is not a kitchen knife. Accused entered the house of the deceased armed with a dagger and gave blow to the deceased without any provocation or sufficient cause. His intent was evidently clear. Occurrence is not sudden, but premeditated. No male member of the family of the victims was present in the house at that time. Finding such opportunity, accused came armed with a deadly weapon, only to cause bodily injury and kill the child and the ladies. First, he hit the child in the abdomen and then stabbed the deceased, a lady, on the vital part of her body. Testimonies of witnesses fully inspire in confidence. We do not find any contradiction therein. In one voice, they have narrated the incident, without any contradiction, variation or discrepancy. Witnesses are trustworthy and absolutely reliable.

19. We further find that Narinder Kumar (PW-4), son of the deceased, has corroborated the version of spot witnesses. It appears that decision to take the deceased to Hoshiarpur was taken by the family, after due consultation. Noticeably, Hoshiarpur is a big town, not far off from the place of incident, having all modern medical facilities.

20. Ocular version stands corroborated by way of link evidence. Weapon of offence was recovered from nearby fields, in the presence of Up Pradhan Lekh Raj (PW-5) and Prakash Chand.

21. Lekh Raj has categorically deposed that weapon of offence, identified by Jiwana Kumari, was recovered from the fields. He associated himself on the asking of police. It was the accused who got the weapon recovered vide seizure memo (Ex.PW-1/A). This version stands materially corroborated by Jiwana Devi, who further states that the accused led the police party towards the fields, where maize was sown, wherefrom dagger was recovered.

22. Investigating Officer Mohammed Arshad (PW-15) has further deposed that the accused, who was arrested on 8.7.2009, made disclosure statement (Ex. PW-7/A) in the presence of Kamal Kishore and Dev Raj, pursuant to which recovery was effected from the fields. It stands established on record, through the testimonies of these witnesses, that it was sealed with seal impression 'T'. Sample of seal stands proved on record as Ex. PW-14/D. Dagger

was kept in safe custody and sent for chemical analysis to the Forensic Science Laboratory, which fact also stands proved through the testimony of these witnesses as also MHC Jagtar Singh (PW-10).

23. Also, clothes of the deceased and the accused, i.e. bed sheet (Ex.P-2), Salwar (Ex.P-3) and shirt (Ex. P-5) were taken into possession by the police, which fact stands established by the Investigating Oficer. Report of FSL, Junga, does not establish cut marks on such clothes of the deceased to be caused by a sharp edged weapon.

24. In ***Vadivelu Thevar v. The State of Madras,*** **AIR 1957 SC 614**, the apex Court held as under:

> "11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after the consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England both before and after the passing of the Indian Evidence Act 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pages 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized on S. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted." Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:
>
> (1) Wholly reliable.
>
> (2) Wholly unreliable.
>
> (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

[See also: *Gulam Sarkar v. State of Bihar (Now Jharkhand),* (2014) 3 SCC 401; *Veer Singh and others v. State of Uttar Pradesh,* (2014) 2 SCC 455; *R. Shaji v. State of Kerala,* (2013) 14 SCC 266; *Kusti Mallaih v. State of Andhra Pradesh,* (2013) 12 SCC 680; *Jagdish Prasad and others v. State of M.P.,* (1995) SCC (Cr.) 160; *Sohrabkhan v. State of Madhya Pradesh,* 1992 Supp (2) SCC 173; and *Vahula Bhushan alias Vahuna Krishnan v. State of Tamil Nadu,* 1989 Supp (1) SCC 232].

25. The apex Court in ***Govindaraju alias Govinda v. State by Sriramapuram Police Station and another,* (2012) 4 SCC 722**, held as under:

"25. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty.

26. Reference in this regard can be made to the cases of Joseph v. State of Kerala (2003) 1 SCC 465 and Tika Ram v. State of Madhya Pradesh (2007) 15 SCC 760. Even in the case of Jhapsa Kabari and Others v. State of Bihar (2001) 10 SCC 94, this Court took the view that if the

presence of a witness is doubtful, it becomes a case of conviction based on the testimony of a solitary witness. There is, however, no bar in basing the conviction on the testimony of a solitary witness so long as the said witness is reliable and trustworthy.

27. In the case of Jhapsa Kabari (supra), this Court noted the fact that simply because one of the witnesses (a 14 years old boy) did not name the wife of the deceased in the fardbayan, it would not in any way affect the testimony of the eye-witness i.e. the wife of the deceased, who had given graphic account of the attack on her husband and her brother-in-law by the accused persons. Where the statement of an eye-witness is found to be reliable, trustworthy and consistent with the course of events, the conviction can be based on her sole testimony. There is no bar in basing the conviction of an accused on the testimony of a solitary witness as long as the said witness is reliable and trustworthy."

26. In the instant case testimony of the prosecution witnesses is found to be wholly reliable. Hence there was no need for the prosecution to have examined the other independent witness. Quality and not quantity of evidence matters. In the event of credible evidence already on record there was no need for the prosecution to have multiplied the number of witnesses. We are taking this view by relying upon the ratio of law laid down by the Apex Court in ***Gurmej Singh and others versus State of Punjab,*** **1991 Supp (2) SCC 75**.

27. In ***State of Rajasthan vs. Om Parkash*** **(2002) 5 SCC 745**, the Apex Court held as under:-

"14. In State of H.P. v Gian Chand [2000(1) SCC 71] Justice Lahoti speaking for the Bench observed that the Court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined."

28. It is true that blood found on the dagger was insufficient for further examination, but then this fact would have no bearing on the outcome of the decision. The fact that deceased died as a result of stab injury cannot be disputed. In any event, such fact stands established on record through the testimony of Dr. O.P. Ram Dev (PW-8), who conducted postmortem of the dead body. According to him, deceased died as a result of haemorrhagic shock due to "haemo peritoneum and peritonitis due to injury to small intestine and omentric and mesenteric vessels leading to haemorrhage due to stab wound by sharp weapon which led to haemorrhagic shock and cardio respiratory failure". Doctor found following injuries on the body:

Incised wound 1.75 inch in size. Pertoneal cavity was full of blood and approximately it contained 4-5 lites of blood. On opening the abdomen peritoneum showed cut 1.75 inches mesenteric artries were found to be cut through and through.

Small intestine (ileum) showed cut would 3.4 inch in cirucumfrance. Mucosa and serosa and muscle layre cut margins were found to be sharp and regular.

29. Dr. Praveen Kumar (PW-17), who first examined the deceased, has also deposed that there was incised wound measuring 4 cm in length, which was dangerous to life. He issued report (Ex.PW-17/A).

30. In *Pratap Singh (supra)*, the Hon'ble Supreme Court of India, had an occasion to deal with a case where the High Court had held that any statement made in respect of a map alleged to have been prepared on the information supplied by other persons, is inadmissible in evidence being hearsay. All the statements recorded in the map are the statements of police and are not admissible in evidence under Section 162 of the Code of Criminal Procedure. The Court did not reverse such findings, but however only observed that if during investigation, it comes to notice of the Investigating Officer that some of the witnesses neither cited nor examined, who had witnessed the occurrence, the Officer was duty bound to disclose the spot from where the witnesses had seen the occurrence. The spot map had to be prepared accordingly, apart from recording their statements, under the provisions of Section 161 of the Code of Criminal Procedure. Significantly, the Court did not hold that mere failure on the part of the Investigating Officer to do so, would ipso facto render the prosecution case to be fatal.

31. Site plan has no probative value, other than statement made by a witness, to the Police Officer, during the course of investigation. The apex Court, while dealing with the issue in hand, in ***Jagdish Narain and another v. State of U.P.*, (1996) 8 SCC 199**, has held as under:

> "9. In responding to the next criticism of the trial Court regarding the failure of the Investigating Officer to indicate in the site plan prepared by him the spot wherefrom the shots were allegedly fired by the appellants and its resultant effect upon the investigation itself, the High Court observed that such failure did not detract from the truthfulness of the eye-witnesses and only amounted to an omission on the part of Investigating Officer. In our opinion neither the criticism of the trial Court nor the reason ascribed by the High Court in its rebuttal can be legally sustained. While preparing a site plan an Investigating Police Officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but as, he was not obviously present when the incident took place, he has to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person for whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, the former's evidence would be admissible to corroborate the latter in accordance with Section 157, Cr. P. C. However such a statement made to a Police Officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162 (1), Cr. P. C. appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the Section applies. That necessarily means that if in the site plan P. W. 6 had even the place from which the shots were allegedly fired after ascertaining the same from the eye-witnesses it could not have been admitted in evidence being hit by Section 162, Cr. P. C. The law on this subject has been succinctly laid down by a three Judge Bench of this Court in *Tori Singh v. State of U. P.,* AIR 1962 SC 399. In that case it was contended on behalf of the appellant therein that if one looked at the sketch map, on which the place where the deceased was said to have been hit was marked, and compared it with the statements of the prosecution witnesses and the medical evidence, it would be extremely improbable for the injury which

was received by the deceased to have been caused on that part of the body where it had been actually caused if the deceased was at the place marked on the map. In repelling the above contention this Court observed, inter alia, (at p. 141 of AIR) :-

> "..... the mark on the sketch-map was put by the Sub-Inspector who was obviously not an eye-witness to the incident. He could only have put it there after taking the statements of the eye-witnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of S. 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S. 162 of the Code of Criminal Procedure as it will be no more than a statement made to the police during investigation."

10. While on this point, it will be pertinent to mention that if in a given case the site plan is prepared by a draftsman - and not by the Investigating Officer -entries therein regarding the place from where shots were fried or other details derived from other witnesses would be admissible as corroborative evidence as has been observed by this Court in Tori Singh's case (AIR 1962 SC 399) (supra) in the following passage (at p. 401 of AIR) :-

> "This Court had occasion to consider the admissibility of a plan drawn to scale by a draftsman in which after ascertaining from the witnesses where exactly the assailants and the victims stood at the time of the commission of offence, the draftsman put down the place in the map, in Santa Singh v. State of Punjab, AIR 1956 SC 526. It was held that such a plan drawn to scale was admissible if the witnesses corroborated the statements of the draftsman that they showed him the places and would not be hit by S. 162 of the Code of Criminal Procedure."”

[Also see: *State of Rajasthan v. Bhawani and another,* (2003) 7 SCC 291; and *Girish Yadav and others v. State of M.P.,* (1996) 8 SCC 186]

32. Decision rendered by a Division Bench of High Court of Punjab and Haryana, in *Krishan (supra)*, is based on the fact situation and is in fact inapplicable to the present case.

33. Decisions rendered in *Parkash Chand (supra)* and *Sakal Deep (supra)* were based on the fact situation, where testimony of the prosecution witnesses was found not to be inspiring in confidence. It is in this backdrop that mere recovery of weapon of offence was held not to have been proved by the prosecution, beyond reasonable doubt.

34. Hence, in our considered view, prosecution has been able to establish the guilt of the accused, in relation to the charged offence, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence, not only ocular but also corroborative in the shape of recovery of weapon of offence.

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 placed on record by the parties. There is no illegality, irregularity, perversity in correct and/or in complete appreciation of the material so placed on record by the parties. Hence, the appeal is dismissed. Appeal stands disposed of, so also pending application(s), if any.

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

Duni Chand ……Appellant.
Versus
State of H.P. …….Respondent.

Cr. Appeal No. 32 of 2012.
Reserved on: December 10, 2014.
Decided on: December 11, 2014.

N.D.P.S. Act, 1985- Section 20- Accused was found in possession of 4.5 kg. of charas- place of incident was situated on National Highway having heavy flow of traffic- police could not give the registration number of any of the vehicles, which were stopped by them for traffic checking- version of the police that police party tried to stop vehicle but no one stopped was not believable –a tea shop was located at a short distance but no one was called from the tea shop- this shows that sincere efforts were not made to associate independent witness- in these circumstances, prosecution version not reliable-accused acquitted. (Para- 13 to 16)

For the appellant: Mr. Debinder Ghosh, Advocate.
For the respondent: Mr. P.M.Negi, Dy. AG, with Mr. Ramesh Thakur and Mr. J.S.Guleria, Asstt. Advocate Generals.

The following judgment of the Court was delivered:

Justice Rajiv Sharma, J.

This appeal is instituted against the judgment dated 20.8.2011, rendered by the learned Special Judge, (Addl. Sessions Judge), Mandi, H.P., in Sessions Trial No. 59 of 2010, whereby the appellant-accused (hereinafter referred to as accused) who was charged with and tried for offence under Sections 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, has been convicted and sentenced to undergo rigorous imprisonment for a period of 14 years and to pay a fine of Rs. 1,40,000/- and in default of payment of fine to undergo simple imprisonment for a period of two years.

2. The case of the prosecution, in a nut shell, is that LHC Narpat Ram (PW-1) alongwith PW-2 Const. Roshan Lal, Const. Mahesh Kumar and PW-8 ASI Ram Lal was present at Khoti Nalla on 4.7.2010 in a private vehicle bearing registration No. HP-33B-3100. Accused came from Thalout at about 5:45 PM. He was carrying backpack Ext. P-2. He started walking briskly on seeing the police party. Accused was apprehended at a distance of about 20 meters. The place was lonely and deserted. No independent witnesses were

available on the spot. ASI Ram Lal made efforts to stop the vehicle and associate the driver and conductor but none agreed. PW-1 LHC Narpat Ram and Const. Mahesh Kumar were associated as witnesses. The police party gave its personal search to the accused. No contraband was found in their possession. Backpack Ext. P-2 was searched. It contained white coloured plastic bag. The bag was opened and it was found to be containing stick like pancake and sphere like black substance. The substance was confirmed to be cannabis. It weighed 4500 gms. The contraband was put in white coloured bag and white coloured bag was put in the backpack. Backpack was wrapped in a piece of cloth. This parcel Ext. P-1 was sealed with 12 seal impressions of seal R. NCB-1 form Ext. PW-5/C was filled in at the spot in triplicate. Seal impression was put on the NCB-1 form. Sample seal was taken on a separate piece of cloth and one such impression was Ext. PW-1/B. Rukka was prepared on the spot vide memo Ext. PW-8/A. It was handed over to Constable Roshan Lal. He took the same to Inspector Surinder Pal. He recorded FIR Ext. PW-5/A. The case file was handed over to Const. Roshan Lal with the direction to carry the same to the spot. The contraband was deposited before the Inspector Surinder Pal. He re-sealed the same with six seal impressions of seal S. He filled in relevant columns of NCB-1 form and put seal impression on it. He prepared memo of resealing vide memo Ext. PW-5/B. He handed over parcel, sample seals R & S, NCB-1 form, copy of seizure memo and FIR to PW-7 HC Anil Kumar. PW-7 HC Anil Kumar made an entry in the Malkhana register at Sr. No. 1096. He handed over the entire case property to Const. Roshan Lal, PW-2 on 6.7.2010 with the direction to carry the case property to FSL Junga vide RC No. 86/2010. The Constable Roshan Lal deposited all the articles at FSL and handed over the receipt to MHC on his return. Special report Ext. PW-4/A was prepared and it was handed over to Const. Ram Lal PW-6 to carry the same to Addl. S.P. Hira Singh Thakur. Constable Ram Lal handed over the Special Report to Addl. S.P. on 5.7.2010 through his Reader PW-4 HC Girdhari Lal. The result of chemical analysis is Ext. PW-5/E. The sample was of charas containing 32.10% W.W. resin in it. On completion of the investigation, challan was put up after completing all the codal formalities.

3. The prosecution has examined as many as 8 witnesses to prove its case. The accused was also examined under Section 313 Cr.P.C. The accused has denied having committed any offence. According to him, the police came to his village on 2.7.2010 and took him to the Police Station on the next day. Mohan Lal Master and Tej Ram, who used to supply charas, ran away and he was falsely implicated. The learned trial Court convicted the accused, as noticed hereinabove.

4. Mr. Debinder Ghosh, Advocate, appearing on behalf of the accused has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. P.M.Negi, Dy. AG, has supported the judgment of the learned trial Court dated 20.8.2011.

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

6. PW-1, LHC Narpat Ram deposed that he alongwith ASI Ram Lal, Const. Mahesh Kumar, Const. Roshan Lal and Const. Kashmir Singh was present at Khoti Nalla on 4.7.2010. The accused came from Aut side towards them at about 5:45 PM. On seeing the police party, he started walking briskly. ASI Ram Lal shouted him to stop. He did not stop. ASI Ram Lal became suspicious about the possession of some stolen articles or contraband. The accused was apprehended with their help. He revealed his identity. The place

was lonely and no passer by was present. The vehicles were stopped. The occupants were asked to become witnesses but they declined. ASI Ram Lal associated him and Cont. Mahesh Kumar as witnesses. ASI Ram Lal gave his personal search and search of accompanying police officials. The accused was having a backpack on his back. It was opened and searched. It contained charas. It weighed 4500 gms. It was put back in the same plastic bag and plastic bag was put in the same backpack from which it was recovered. The bag was sealed in a parcel with 12 impressions of seal 'R'. Form NCB-1 was filled in triplicate. Seal impression was taken on the form. Seal impression was taken separately on piece of cloth and one such impression is Ext. PW-1/B. Seal was handed over to him after use. The parcel was seized vide seizure memo Ext. PW-1/C. It was handed over to Const. Roshan Lal. The accused was arrested. The site plan was prepared. The personal search of the accused was conducted and memo Ext. PW-1/E was prepared to this effect. In his cross-examination, he deposed that at about 2:00 PM, they started in a Santro Car bearing No. HP-33B-3100. They did not have any prior information. Khoti Nala is located on National Highway and there is a heavy flow of traffic. He could not narrate the registration of vehicles or name of the occupants who were stopped and inquired by them. He admitted that there was no street light at the spot. Volunteered that they had their own light.

7. PW-2 Const. Roshan Lal, also deposed the manner in which the accused was apprehended on 4.7.2010 in a '*nakabandi'*. The arrest, seizure and sampling process was completed on the spot. He carried rukka to the Police Station. He handed over the same to SHO Surinder Pal. SHO Surinder Pal registered FIR and handed over the case file to him with the direction to carry it to the spot. HC Anil Kumar handed over one parcel sealed with 12 impressions of seal 'R', form NCB-1 in triplicate, sample seal 'R' and 'S' vide RC No. 86/10 dated 6.7.2010 with the direction to carry these to FSL Junga. He deposited them in safe condition at CTL Kandaghat. He was cross-examined. He could not tell the number of the vehicles which were stopped by them between 2:45 till 5:45 PM. He did not know the registration number of any vehicle. He could not tell the registration number of the vehicles or names of the occupants who were stopped by them and who were asked to become witnesses.

8. Statements of PW-3 Const. Jeevanand and PW-4 HC Girdhari Lal are formal in nature.

9. PW-5 Inspector Surender Pal, deposed that he recorded FIR Ext. PW-5/A after receipt of the '*rukka'*. A.S.I. Ram Lal handed over the one parcel sealed with 12 impressions of seal R alongwith sample seal R and NCB-1 form to him on the same date. He resealed the parcel with six impressions of seal 'S'. Sample seal Ext. PW-5/B was taken separately on a piece of cloth. The seal impression was also taken on NCB-1 form. He filled in the relevant columns of NCB-1 form Ext. PW-5/C. He handed over the parcel alongwith sample seals 'R' and 'S' and form NCB-1 to MHC Anil Kumar. He prepared memo of reseal Ext. PW-5/D.

10. Statement of PW-6 Const. Ram Lal is formal in nature.

11. PW-7 HC Anil Kumar deposed that Insp. SHO Surender Pal handed over one parcel sealed with 12 impressions of seal 'R' and six impressions of seal 'S' to him on 4.7.2010. He made entry in the register at Sr. No. 1096, the copy of which is Ext. PW-7/A. He handed over the case property to Const. Roshan Lal on 6.7.2010 with direction to carry it to FSL Junga vide RC No. 80/10. The copy of RC is Ext. PW-7/B.

12. PW-8 ASI Ram Lal deposed the manner in which the accused was apprehended, the contraband was recovered from the bag carried by the accused, the sampling and sealing process was completed on the spot. In his cross-examination, he deposed that he checked the vehicles after 4:00 PM till 5:45 PM. He could not tell the registration number of any vehicle. He did not remember the number of cases detected at Khoti Nala under the ND & PS Act. He denied that there was one Tea Shop at the place of occurrence. Volunteered that it was located at a distance. Many vehicles crossed during their stay on the spot. He had stopped 5-7 vehicles and had asked their occupants to be witnesses. He could not tell their registration number or name of the occupants.

13. *Khoti Nalla* is situated on a National Highway. It is a busy National Highway. PW-1 LHC Narpat Ram has admitted that Khoti Nalla is located on National Highway and there was heavy flow of traffic. However, he could not narrate the registration number of any vehicle or name of any of the occupants stopped by the police party. Similarly, PW-2 Const. Roshan Lal did not remember the registration number of any of the vehicles or names of any of the occupants who were stopped and asked by the police to become witnesses. He admitted that there was a Tea Shop at some distance from the place of occurrence. PW-8 ASI Ram Lal testified that he checked the vehicles after 4:00 PM till 5:45 PM. He did not narrate the registration number of any vehicle. He denied the suggestion that there was Tea Shop at the place of occurrence. Volunteered that it was located at a distance. Many vehicles crossed during their stay on the spot. He has stopped 5-7 vehicles and had asked their occupants to be witnesses. He could not tell their registration number or name of the occupants. It is not believable that when police party signals the vehicles to stop, their occupants would not cooperate with the police. None of the witnesses knew about the registration number of any vehicle or the name of the occupants who were stopped. The National Highway, as noticed by us hereinabove, is very busy. The flow of traffic on this road is day and night. The police have not at all made any sincere efforts to associate independent witnesses by ordering the occupants of the vehicles plying on the National Highway.

14. In order to prove that the contraband was recovered from the conscious and exclusive possession of the accused, it was necessary for the police to associate independent witnesses. It is not one of those cases where the accused was apprehended at an isolated place. It has come in the statement of PW-2 Const. Roshan Lal that a Tea Shop was also there at a short distance. PW-8 ASI Ram Lal, though initially denied that there was no Tea Shop, but later admitted that Tea Shop was at a distance from the place of occurrence. It is not the case of the prosecution that PW-8 ASI Ram Lal has sent the Constables accompanying him to search for the independent witnesses. Since the police have not associated any independent witnesses, the recovery of the contraband from the accused becomes doubtful.

15. Though the version of the official witnesses can be relied upon in the absence of independent witnesses, but their statements must inspire confidence and should be trustworthy. In the instant case, it is not believable that sincere efforts were made by the police, as discussed hereinabove, to associate independent witnesses from the vicinity. Moreover, in case the occupants of the vehicles have not come forward to become witnesses, it was always open to the Investigating Officer to invoke Section 160 of the Code of Criminal Procedure, 1973, for securing their presence. The police cannot show helplessness.

16. The prosecution has failed to prove that the contraband was recovered from the exclusive and conscious possession of the accused. Thus, the prosecution has failed to prove the case against the accused beyond reasonable doubt for the commission of offence under Section 20(b)(ii)(c) of the N.D.P.S., Act.

17. Accordingly, in view of the analysis and discussion made hereinabove, the appeal is allowed. Judgment of conviction and sentence dated 20.8.2011, rendered by the Special Judge (Addl. Sessions Judge), Mandi, H.P., in Sessions Trial No. 59 of 2010, is set aside. Accused is acquitted of the charges framed against him by giving him benefit of doubt. Fine amount, if any, already deposited by the accused is ordered to be refunded to him. Since the accused is in jail, he be released forthwith, if not required in any other case.

18. 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 P.S. RANA, J.

Farooq Bhutto son of Shri Z.A. Bhutto ….Applicant
Versus
State of H.P. ….Non-applicant

Cr.MP(M) No. 1271 of 2014
Order Reserved on 21st November, 2014
Date of Order 11th December, 2014

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 307, 341, 323, 504 and 506 read with Section 34 of IPC- held that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State – State contended that FIR no. 47 of 2014 and FIR No. 87 of 2014 had been registered against the applicant and applicant should not be released on bail- record showed that applicant had been acquitted in FIR no. 47 of 2014 and the criminal case was pending against the applicant regarding the FIR no. 87 of 2014- further held that mere pendency of the criminal Case is not sufficient to decline the bail to the accused - considering that applicant had joined the investigation, applicant is ordered to be released on bail. (Para- 7 to 11)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179

The State Vs. Captain Jagjit Singh AIR 1962 SC 253.

Sanjay Chandra vs. Central Bureau of Investigation 2012 Cri. L.J. 702 Apex Court DB 702

Manoj Narula vs. Union of India (2014)9 SCC 1

For the Applicant: Mr. Imran Khan, Advocate
For the Non-applicant: Mr. M.L. Chauhan, Additional Advocate General with Mr.J.S.Rana, Assistant Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with case FIR No. 175 of 2014 dated 28.8.2014 registered under Sections 307, 341, 323, 504 and 506 read with Section 34 of Indian Penal Code at P.S. Sadar District Bilaspur (HP).

2. It is pleaded that investigation is complete and no recovery is to be effected from the applicant and further pleaded that applicant will join the investigation as and when required by police. It is further pleaded that bail application filed by applicant be allowed.

3. Per contra police report filed. As per police report FIR No. 175 of 2014 dated 28.8.2014 registered under Sections 307, 341, 323, 504 and 506 read with Section 34 of Indian Penal Code in Police Station Sadar District Bilaspur (H.P.) against the applicant. There is recital in police report that on dated 28.8.2014 Mohender Pal complainant along with his friend Rajesh went to Luhnu ground and at about 6.15 PM in the evening complainant and his friend thought for boating. There is further recital in police report that thereafter vehicle having registration No. HP-69A-0973 came and accused persons talked with the complainant and his friend Rajesh and enquired about name and address of complainant. There is further recital in police report that thereafter complainant demanded pen from the accused persons and told that he would write his name and address and thereafter one of co-accused caught hold the complainant and other co-accused inflicted injuries upon the head and left leg of complainant with baseball. There is further recital in police report that blood oozed out from the head of complainant and complainant also sustained incised injuries in his left leg. There is further recital in police report that after inflicting the injuries both accused persons fled from the place of incident by using the abusive and insulting language and also threatened the complainant. There is recital in police report that medical examination of injured was got conducted in Regional Hospital Bilaspur and MLC obtained. There is recital in police report that site plan was also prepared and statements of prosecution witnesses were also recorded. There is further recital in police report that injured remained as indoor patient in the hospital w.e.f. 28.8.2014 to 1.9.2014. There is further recital in police report that blood clotted T-shirt and vehicle having registration No. HP-69A-0973 were took into possession. There is further recital in police report that as per opinion of medical officer injury No. 1 sustained by the injured was grievous in nature and said injury was dangerous to life. There is further recital in police report that baseball and bat were also recovered vide seizure memo and as per opinion of medical officer injuries No. 1 and 2 could be inflicted with baseball and bat. There is further recital in police report that another FIR No. 47 of 2007 dated 24.2.2007 was registered against the applicant under Sections 279, 337, 341, 504 and 506 IPC at P.S. Ghumarwin and applicant has been acquitted by learned Judicial Magistrate 1st Class Court-3 Ghumarwin on dated 4.10.2012 and there is further recital in police report that another FIR No. 87 of 2014 dated 8.5.2014 is registered against the applicant under Sections 451, 323, 325 and 506 IPC in P.S. Ghumarwin which

is pending in the Court of learned Additional Chief Judicial Magistrate Ghumarwin. There is recital in police report that if applicant is released on bail then applicant will induce and threat the prosecution witnesses and will also destroy the evidence. Prayer for rejection of bail application is sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether the anticipatory bail application filed under Section 438 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of bail application?
2. Final Order.

Findings on Point No.1

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

7. Another submission of learned Advocate appearing on behalf of the applicant that no recovery is to be effected in present case and present case will be decided in due course of time and on this ground anticipatory bail application be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** Trial of the case will be completed in due course of time. It was held in case reported in ***2012 Cri. L.J. 702 Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an indefinite period.

8. In view of police report that applicant has joined investigation of case and in view of police report that no recovery is to be effected from the applicant Court is of the opinion that it is expedient in the ends of justice to release the applicant on anticipatory bail. Court is of the opinion that if applicant is released on anticipatory bail then interest of State and general public will not be adversely effected.

9. Submission of learned Additional Advocate General appearing on behalf of non-applicant that two FIRs i.e. FIR No. 47 of 2014 dated 24.2.2007 and FIR No. 87 of 2014 dated 8.5.2014 were registered against the applicant in P.S. Ghumarwin and on this ground bail application filed by applicant be declined is rejected being devoid of any force for the reasons hereinafter mentioned. As per police report applicant has been acquitted in FIR No. 47 of 2014 dated 24.2.2007 registered under Sections 279, 337, 341, 504 and 506 IPC and as per further police report criminal case qua FIR No. 87 of 2014 dated

8.5.2014 is pending before learned Additional Chief Judicial Magistrate Ghumarwin. It is well settled law that pendency of criminal trial is not a ground to decline the bail to accused because accused is presumed to be innocent till convicted by competent Court of law. It was held in case reported in ***(2014)9 SCC 1 titled Manoj Narula vs. Union of India*** that accused is presumed to be innocent until proven guilt. It was held that this would apply to a person accused of one or multiple offences.

10. Another submission of learned Additional Advocate General appearing on behalf of non-applicant that if bail is granted to applicant then applicant will induce, threat and influence the prosecution witnesses and on this ground bail application be declined is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that condition will be imposed in the bail order to the effect that applicant will not induce and threat the prosecution witnesses. Court is of the opinion that if applicant will flout the terms and conditions of bail order then non-applicant will be at liberty to file application for cancellation of bail strictly in accordance with law. In view of police report that no recovery is to be effected from applicant and in view of police report that applicant has joined investigation proceedings in present case it is expedient in the ends of justice to allow anticipatory bail application. In view of above stated facts, point No.1 is answered in affirmative.

Point No.2

Final Order

11. In view of findings on point No.1 bail application filed by applicant under Section 438 Cr.P.C. is allowed and applicant is ordered to be released on bail subject to furnishing personal bond to the tune of Rs. 1 lac with two sureties in the like amount to the satisfaction of Investigating Officer on following terms and conditions. (i) That the applicant will join the investigation of case in accordance with law. (ii) That applicant will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That the applicant will not leave India without the prior permission of the Court. (iv) That applicant will not commit similar offence qua which he is accused. (v) That applicant will give his residential address in written manner to the Investigating Officer and Court. Applicant be released only if not required in any other criminal case. Bail application filed under Section 438 Cr.P.C. stands disposed of. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 438 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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

Firoj Bhutto @ Happy son of Shri Z.A. Bhutto ....Applicant
Versus
State of H.P. ....Non-applicant

Cr.MP(M) No. 1270 of 2014
Order Reserved on 21st November, 2014
Date of Order 11th December, 2014

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 307, 341, 323, 504 and 506 of IPC- held, that while granting

bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State – State contended that FIR no. 57 of 2004 and FIR No. 60 of 2004 were registered against the applicant and he should not be released on bail- record showed that applicant was acquitted in both the criminal cases- considering the nature of offence, application is allowed and the applicant is ordered to be released on bail. (Para- 7 to 10)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179

The State Vs. Captain Jagjit Singh AIR 1962 SC 253

Sanjay Chandra vs. Central Bureau of Investigation 2012 Cri. L.J. 702 Apex Court DB 702,

Manoj Narula vs. Union of India (2014)9 SCC 1

For the Applicant:	Mr. Imran Khan, Advocate
For the Non-applicant:	Mr. M.L. Chauhan, Additional Advocate General with Mr.J.S.Rana, Assistant Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail in connection with case FIR No. 175 of 2014 dated 28.8.2014 registered under Sections 307, 341, 323, 504 and 506 read with Section 34 of Indian Penal Code at P.S. Sadar District Bilaspur (HP).

2. It is pleaded that investigation is complete and no recovery is to be effected from the applicant and further pleaded that applicant will join the investigation as and when required by police. It is further pleaded that bail application filed by applicant be allowed.

3. Per contra police report filed. As per police report FIR No. 175 of 2014 dated 28.8.2014 registered under Sections 307, 341, 323, 504 and 506 read with Section 34 of Indian Penal Code in Police Station Sadar District Bilaspur (H.P.) against the applicant. There is recital in police report that on dated 28.8.2014 Mohender Pal complainant along with his friend Rajesh went to Luhnu ground and at about 6.15 PM in the evening complainant and his friend thought for boating. There is further recital in police report that thereafter vehicle having registration No. HP-69A-0973 came and accused persons talked with the complainant and his friend Rajesh and enquired about name and address of complainant. There is further recital in police report that thereafter complainant demanded pen from accused persons in order to disclose name and address and thereafter one of co-accused caught hold the complainant and other co-accused inflicted injuries upon the head and left leg with baseball. There is further recital in police report that blood oozed out from the head of complainant and complainant also sustained incised injuries in his left leg. There is further recital in police report that after inflicting the injuries both accused persons fled from the place of incident by using the abusive and insulting language and also threatened the complainant. There is recital in

police report that medical examination of injured was got conducted in Regional Hospital Bilaspur and MLC obtained. There is recital in police report that site plan was also prepared and statements of prosecution witnesses were also recorded. There is further recital in police report that injured remained as indoor patient in the hospital w.e.f. 28.8.2014 to 1.9.2014. There is further recital in police report that blood clotted T-shirt and vehicle having registration No. HP-69A-0973 were took into possession. There is further recital in police report that as per opinion of medical officer injury No. 1 sustained by the injured was grievous in nature and said injury was dangerous to life. There is further recital in police report that baseball and bat were also recovered vide seizure memo and as per opinion of medical officer injuries No. 1 and 2 could be inflicted with baseball and bat. There is further recital in police report that FIR No. 57 of 2004 was registered against the applicant under Sections 341, 323 and 34 IPC at P.S. Barmana in which applicant has been acquitted on dated 22.4.2013 and there is further recital in police report that another FIR No. 60 of 2004 was registered against the applicant under Sections 279, 337 and 201 IPC in P.S. Ghumarwin in which also the applicant has been acquitted on dated 6.9.2013. There is recital in police report that if applicant is released on bail then applicant will induce and threat the prosecution witnesses and will also destroy the evidence. Prayer for rejection of bail application is sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether bail application filed under Section 439 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of bail application?
2. Final Order.

Findings on Point No.1

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

7. Another submission of learned Advocate appearing on behalf of the applicant that no recovery is to be effected in present case and present case will be decided in due course of time and on this ground bail application be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** It was held in case reported in ***2012 Cri. L.J. 702 Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an

indefinite period. Court is of the opinion that if applicant is released on bail at this stage then interest of State and general public will not be adversely effected.

8. Submission of learned Additional Advocate General appearing on behalf of non-applicant that two FIRs i.e. FIR No. 57 of 2004 and FIR No. 60 of 2004 were registered against the applicant in P.S. Ghumarwin and on this ground bail application filed by applicant be declined is rejected being devoid of any force for the reasons hereinafter mentioned. As per police report applicant has been acquitted in both the aforesaid criminal cases. It is well settled law that accused is presumed to be innocent till convicted by competent Court of law. It was held in case reported in ***(2014)9 SCC 1 titled Manoj Narula vs. Union of India*** that accused is presumed to be innocent until proven guilt. It was held that this would apply to a person accused of one or multiple offences.

9. Submission of learned Additional Advocate General appearing on behalf of non-applicant that if bail is granted to applicant then applicant will induce, threat and influence the prosecution witnesses and on this ground bail application be declined is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that condition will be imposed in the bail order to the effect that applicant will not induce and threat the prosecution witnesses. Court is of the opinion that if applicant will flout the terms and conditions of bail order then non-applicant will be at liberty to file application for cancellation of bail strictly in accordance with law. In view of above stated facts, point No.1 is answered in affirmative.

Point No.2

Final Order

10. In view of my findings on point No.1 bail application filed by applicant under Section 439 Cr.P.C. is allowed and applicant is ordered to be released on bail subject to furnishing personal bond to the tune of Rs. 1 lac with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That the applicant will join the investigation of case in accordance with law. (ii) That applicant will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That the applicant will not leave India without the prior permission of the Court. (iv) That applicant will not commit similar offence qua which he is accused. (v) That applicant will give his residential address in written manner to the Investigating Officer and Court. Applicant be released only if not required in any other criminal case. Bail application filed under Section 439 Cr.P.C. stands disposed of. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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

Kamal Singh son of Shri Rattan Singh ….Applicant
Versus
State of H.P. ….Non-applicant

Cr.MP(M) No. 1283 of 2014
Order Reserved on 19th November,2014
Date of Order : 11th December, 2014

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 302, 341 and 120 of IPC- held that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State – Applicant is facing grave criminal charges and releasing him on bail will adversely affecting the investigation- hence, bail application dismissed. (Para- 7 to 10)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179.
The State Vs. Captain Jagjit Singh AIR 1962 SC 253

For the Applicant:	Mr. Vivek Sharma, Advocate.
For the Non-applicant:	Mr. M.L. Chauhan, Additional Advocate General, Mr. Puneet Razta Deputy Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge

Present bail application is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail in connection with case FIR No. 25 of 2013 dated 14.11.2013 registered under Sections 302, 392 and 120-B IPC in Police Station Pooh District Kinnaur Himachal Pradesh.

2. It is pleaded that applicant is not having any past criminal record and further pleaded that Investigating Agency has impleaded the applicant due to ulterior purpose. It is pleaded that no recovery is to be effected from the applicant and no fruitful purpose shall be served by keeping the applicant in judicial custody. It is further pleaded that present case is based on circumstantial evidence and chain of circumstances is pre-eminently incomplete. It is pleaded that applicant will abide by all terms and conditions imposed by Court and applicant will not tamper with prosecution evidence in any manner. Prayer for acceptance of bail application sought.

3. Per contra police report filed. As per police report case under Section 302 IPC stands registered against the applicant in P.S. Pooh District Kinnaur H.P. vide FIR No. 25 of 2013 dated 14.11.2013. There is recital in police report that Gompa temple is constructed below 3 K.m. from National Highway No. 5 near Spiti river under a big rock. There is recital in police report that there is no residential locality nearby the Gompa temple. There is recital in police report that dead body of Priest Lamba was found and rope was tied in the neck of deceased Lamba. There is further recital in police report that on 13th and 14th November 2013 during night period theft was committed in the Buddhist Gompa (Temple) and culpable homicide amounting to murder of Priest was committed and idols kept in the temple were stolen. There is recital in police report that there was conversation between mobile Nos. 9805938921 and 9459679166. There is further recital in police report that accused is owner of mobile No. 9805938921 and mobile took into possession vide seizure memo by I.O. There is further recital in police report that applicant has given disclosure statement on

dated 28.01.2014 that applicant along with co-accused Balbir and Himal engaged a Scorpio vehicle on rent from Kandaghat on the pretext to bring labour and thereafter committed the criminal offence and also stolen three idols of Mahatma Buddha and also stolen silver and ` 7000/- (Rupees seven thousand only) from Gompa temple. There is recital in police report that all accused persons mixed some intoxicated substance in sweets and caused the death of deceased person by giving him wine when he became unconscious. There is further recital in police report that other co-accused Balbir is also arrested. There is further recital in police report that third co-accused Himal is still to be arrested in present case. There is further recital in police report that challan has been filed in Court of learned Sessions Judge Kinnaur at Reckongpeo on dated 26.4.2014. There is further recital in police report that applicant is resident of Nepal and if applicant is released on bail then trial of case would be adversely effected. Prayer for rejection of bail application is sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether bail application filed under Section 439 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of anticipatory bail application?
2. Final Order.

<u>Findings upon Point No.1</u>

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

7. Another submission of learned Advocate appearing on behalf of the applicant that investigation is complete in present case and challan has also been filed and no recovery is to be effected from applicant and on this ground applicant be released on bail is rejected being devoid of any force for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** In the present case applicant is facing the grave charge of culpable homicide amounting to murder which is the gravest form of criminal offence. Keeping in view the gravity of offence it is not expedient in the ends of justice to release the applicant on bail. If applicant is released on bail at this stage then interest of State and general public will be adversely effected and trial of the case will also be adversely effected.

8. Another submission of learned Advocate appearing on behalf of the applicant that there is no eye witness in present case and present case is based on circumstantial evidence and on this ground applicant be released on bail is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that criminal offence can be proved by prosecution by way

of two modes. (1) Direct eye witness (2) Circumstantial evidence. By way of proving criminal case through circumstantial evidence is permissible under criminal law. There is no provision of law that all criminal offences should be proved by prosecution by way of only direct eye evidence.

9. Submission of learned Additional Advocate General appearing on behalf of the State that keeping in view the gravity of criminal offence against the applicant bail application filed by applicant under Section 439 Cr.P.C. be rejected is accepted for the reasons hereinafter mentioned. The applicant is facing grave offence of criminal charge i.e. culpable homicide amounting to murder. Court is of the opinion that if applicant is released on bail at this stage then trial of case will be adversely effected. In view of above stated facts point No.1 is answered in negative.

Point No. 2

Final Order

10. In view of my findings upon point No. 1 bail application filed under Section 439 Cr.P.C. is rejected. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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

Mohan Singh. ...Appellant.
Versus
State of H.P. ...Respondent.

Cr.A. No. 426 of 2011
Reserved on: 10.12.2014
Decided on: 11.12. 2014

N.D.P.S. Act, 1985- Section 20- As per prosecution case, accused was found in possession of 1.930 kg. of charas- independent witness had not supported the prosecution version- it was proved that police Station Anni was surrounded by many residential houses and shops and there were houses in the vicinity- however, no person was associated from those houses- police officials stated that efforts were made to associate independent witness but no person was available- held, that it is unbelievable that no one was available in the house- ordinarily houses are occupied in the villages- therefore, testimony of the prosecution witnesses that they tried to associate independent witness cannot be relied upon- hence, accused acquitted. (Para-13 to 14)

For the Appellant: Mr. Suresh Kumar Thakur, Advocate.
For the Respondent: Mr. P.M. Negi, Dy. A.G.

The following judgment of the Court was delivered:

Per Justice Rajiv Sharma, Judge.

This appeal is directed against the judgment dated 29.10.2011 rendered by the Special Judge (II), Kinnaur at Rampur in RBT No. 60-AR/3 of

2011, whereby the appellant-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 Substances Act, 1985 has been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, he was further ordered to undergo simple imprisonment for a period of two years.

2. Case of the prosecution, in a nutshell, is that on 23.3.2011 at 12.35 P.M., police party headed by PW-5 SI Gurbachan Singh comprising of ASI Rajinder Pal, PW-2 HC Ten Singh and PW-3 HHC Kashmi Ram left Police Station, Ani in official vehicle No. HP 34-A-3830 towards Taluna side. At about 1.30 P.M., when they were present at Taluna bifurcation, vehicle No. HP-01K-6001 being driven by PW-1 Anuj Kumar came from Luhari side and stopped there. PW-1 Anuj Kumar started chatting with the police party. In the meanwhile, accused came from Taluna link road towards main Ani-Luhari road. On seeing the police party, he turned back and tried to flee. On suspicion, he was chased and over powered by the police. The place where the accused was apprehended was an isolated and secluded place. There was no habitation nearby. Therefore, SI Gurbachan Singh sent HHC Kashmi Ram in search of independent witnesses towards Haripur. He came back after ten minutes as he could not find any independent witnesses. SI Gurbachan Singh joined Anuj Kumar and HC Ten Singh as witnesses and in their presence; he informed the accused that it was intended to conduct his personal search as well as search of his bag. The accused opted to be searched by the police vide consent memo Ex.PW-2/A. Thereafter, SI Gurbachan Singh alongwith witnesses gave their personal search to the accused. No incriminating material was found from the witnesses. On checking of the accused one polythene envelope containing charas weighting 1 Kg. 930 grams was found, which was kept in the bag. The polythene envelope containing charas was put back into the same bag. It was made into parcel and sealed with seal impression 'H'. NCB form Ex.PW-5/A in triplicate was updated. Sample of seal Ex.PW-2/C was drawn and the seal was handed over to PW-1 Anuj Kumar. Rukka Ex.PW-2/D was prepared. It was sent to the Police Station, FIR Ex.PW-3/B was registered. The case property was deposited in the Malkhana by the police. The contraband was sent to F.S.L., Junga. The report of F.S.L. Ex.PW-5/D was received. 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 8 witnesses in all to prove its case against the accused. Statement of accused under Section 313 Cr.P.C. was recorded. He has denied the case of the prosecution in entirety. Learned trial Court convicted and sentenced the accused, as noticed hereinabove.

4. Mr. Suresh Kumar Thakur, learned counsel for the appellant has vehemently argued that the prosecution has failed to prove its case against the accused.

5. Mr. P.M. Negi, learned Deputy 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 meticulously.

7. PW-1 Anuj has deposed that he was employed as a Driver in Taxi No. HP-01K-6001. He was plying this vehicle between Ani and Luhari. On 23.3.2011, he was going from Luhari to Ani. The police met him at Haripur and

boarded his vehicle. They alighted from his vehicle at Ani. The police did not apprehend the accused in his presence near Taluna link road nor his search was conducted by the police in his presence. He was declared hostile. He was cross-examined by the learned Public Prosecutor. He has denied the suggestion that on 23.3.2011, police had joined him in raiding party. He has denied the suggestion that at 1.30 P.M. when the police patrolling party was present at Taluna link road, accused came from the side of Taluna road and on seeing the police party he turned back and tried to escape. He has also denied that accused was apprehended by the police by chasing him for about 30 meters. He has denied that when the accused was apprehended, he was scared and he had concealed one pink colour bag inside his jacket. He has denied that SI Gurbachan Singh sent HHC Kashmi Ram towards Haripur to bring local witnesses. However, he came back after ten minutes and told that no witness was available. He has also denied that SI Gurbachan Singh joined him and Ten Singh as witnesses and informed the accused orally as well as in writing that it was intended to conduct his personal search and search of the bag. He has also denied the suggestion that accused opted to be searched by the police on the spot. He has also denied the suggestion that he alongwith SI Gurbachan Singh and HC Ten Singh gave their personal search to the accused. He has also denied the suggestion that the bag of the accused was searched in which one polythene envelope was contained in which charas in the shape of balls was kept and it weighed 1 kg 930 grams. He has denied the sealing on the spot. He has also denied the suggestion that SI Gurbachan Singh prepared Rukka and sent the same to the Police Station through HHC Kashmi Ram. However, he has admitted consent memo mark 'A' and seizure memo mark 'C'. He has denied the suggestion that he has signed these documents admitting them to be correct. He did not go through the contents of these documents before signing the same. He has signed the documents at Police Station, Ani. When he put his signatures on mark 'C' it was half written and the remaining portion of the document was blank. In his cross-examination by the learned defence counsel, he has admitted that Police Station, Ani is surrounded by many residential houses. He has also admitted that residential houses were situated at a distance of about 50 meters from Taluna bifurcation. The House of Pradhan, Gram Panchayat, Taluna was situated below the road near Taluna bifurcation. He has admitted that he has signed all the documents in the Police Station at one time.

8. PW-2 HC Ten Singh has testified that on 23.3.2011, he alongwith ASI Rajinder Pal, HHC Kashmi Ram and SI Gurbachan Singh was present at Taluna link road in connection with routine patrol duty and traffic checking duty. At about 1.30 P.M; vehicle No.HP-01K-6001 came from Luhari side which was being driven by Anuj. The vehicle was stopped. . Anuj started talking to them. In the meanwhile, accused came from Taluna side. He tried to run away. He was chased. He disclosed his identity. SI Gurbachan Singh sent HHC Kashmi Ram in search of local witnesses as the place where the accused was apprehended was an isolated and secluded place. However, HHC Kashmi Ram came back after ten minutes and told that no witness was available. SI Gurbachan Singh joined him and Anuj as witnesses. The accused was informed about his right to be searched before Magistrate or Gazetted Officer. Accused consented to be searched by the Police Officer vide memo Ex.PW-2/A. SI Gurbachan alongwith him and Anuj Kumar gave their personal search to the accused. The bag of the accused was searched. It contained charas. It was put back in the same bag and the bag was made into a parcel which was sealed with seal impression 'H'. NCB from in triplicate was updated by SI Gurbachan Singh. Thereafter, he obtained specimen of seal Ex.PW-2/C and handed over the seal to Anuj Kumar. In his cross-examination, he has admitted that a house was

situated below Taluna bifurcation. However, he was not aware that the house belonged to Ex-Pradhan of Gram Panchayat, Taluna. The house of Shambu Ram retired police constable was situated at a distance of 250 meters from the spot. One or two houses were situated near the house of Shambu Ram on both the sides of road. Those houses were situated from Taluna bifurcation towards, Ani. He did not recollect in which direction HC Kashmi Ram had gone in search of witnesses.

9. PW-3 Kashmi Ram has deposed the manner in which accused was apprehended, search was conducted and contraband was recovered. According to him, the place where the accused was apprehended was an isolated and secluded place. SI Gurbachan Singh sent him to bring independent witnesses. He went towards Haripur side in search of independent witnesses. No witness was available and he returned after ten minutes. In his cross-examination, he has admitted that at a distance of about 250 meters from the spot there was a house of retired police constable Shambu Ram and near his house there were one or two houses on both the sides of road. He did not call any witness from those houses because nobody was available. The house of Ex-Pradhan of Taluna was situated at a distance of about 250 meters below the road at Taluna bifurcation.

10. Statement of PW-4 HHC Jia Lal is formal in nature.

11. PW-5 SI Gurbachan Singh has deposed the manner in which accused was apprehended and the contraband was recovered. It was sealed and seizure memo was prepared. According to him, the place where the accused was apprehended was an isolated and secluded place. There was no habitation, therefore, he sent HHC Kashmi Ram in search of independent witnesses towards Haripur. He came back after ten minutes and told that he could not find any independent witness. Thereafter, he joined Anuj Kumar and HC Ten Singh. In his cross-examination, he has admitted that the house of Shambu Ram retired police constable was situated on the road at a distance of about 100-150 meters from the Taluna bifurcation towards Ani. He has also admitted that one or two houses were also situated besides the house of Shambu Ram. Volunteered that the house of Shambu Ram and others were not visible from the spot. HHC Kashmi Ram had gone in search of witnesses towards Ani side.

12. Case of the prosecution has not been supported by independent witness PW-1 Anuj Kumar. His presence on the spot on 23.3.2011 is also doubtful. However, in his cross-examination by the learned counsel appearing on behalf of the accused has admitted that the Police Station, Ani was surrounded by many residential houses and shops. He has also admitted that residential houses were situated at a distance of about 50 meters from Taluna bifurcation. He has also admitted that he has signed all the documents in the Police Station at one time. PW-2 HC Ten Singh has deposed that SI Gurbachan Singh had sent HHC Kashmi Ram in search of local witnesses as the place where the accused was apprehended was an isolated and secluded. HHC Kashmi Ram came back after ten minutes and told that no witness was available. In his cross-examination, he has admitted that a house was situated below Taluna bifurcation. However, he was not aware that the house belonged to Ex-Pradhan of Gram Panchayat, Taluna. He has also admitted that the house of Shambu Ram retired police constable was situated at a distance of 250 meters from the spot. One or two houses were situated near the house of Shambu Ram on both the sides of road. Those houses were situated from Taluna bifurcation towards Ani. PW-3 Kashmi Ram has deposed that the place where the accused was apprehended was isolated and secluded. He was asked

by SI Gurbachan Singh to go in search of independent witnesses. He went towards Haripur side in search of independent witnesses, but no witness was available. He returned after ten minutes. In his cross-examination, he has admitted that at a distance of about 250 meters from the spot, there was a house of retired police constable Shambu Ram. There were one or two houses on both the sides of the road. He did not call any witness from those houses because nobody was available in those houses at that time. The house of Ex-Pradhan of Taluna was situated at a distance of about 250 meters below the road at Taluna bifurcation. PW-5 SI Gurbachan Singh has also admitted that the house of Sambhu Ram retired police constable was situated on the road at a distance of about 100 to 150 meters from the Taluna bifurcation towards Ani. He has also admitted that one or two houses were also situated besides the house of Shambu Ram. Volunteered that the house of Shambu Ram and others were not visible from the spot.

13. It is evident from the statements of PW-1 Anuj Kumar, PW-2 HC Ten Singh, PW-3 HHC Kashmi Ram and PW-5 SI Gurcharan Singh that the residential house of one retired police constable Sambhu Ram was at a short distance. The other houses were situated near the house of Sambhu Ram. According to PW-3 Kashmi Ram, he had gone towards Haripur side in search of independent witnesses, but could not find any independent witness. According to him, he had gone to the house of Sambhu Ram. However, none was available. It is not believable that no one was available in the house of Sambhu Ram and in other houses situated near the house of Sambhu. Ordinarily, in villages, the houses are always occupied and it is not believable that no one was available in those houses as per the version of PW-3 HHC Kashmi Ram. It is not one of those cases that independent witnesses were not available. The independent witnesses were available near the place of occurrence but the police has not made the efforts to associate them during the search and seizure. It is not proved that the contraband was recovered from the exclusive and conscious possession of the accused. The sincere efforts were required to be made by the police to associate independent witnesses. PW-3 Kashmi Ram has deposed that he had gone in search of witnesses, but came back after ten minutes.

14. Though the version of the official witnesses can be relied upon in the absence of independent witnesses, but their statements must inspire confidence and should be trustworthy. In the instant case, it is not believable that sincere efforts were made by the police, as discussed hereinabove, to associate independent witnesses from the nearby villages.

15. Consequently, in view of analysis and discussion made hereinabove, the prosecution has failed to prove the case for offence under section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 beyond reasonable doubt against the accused.

16. Accordingly, the appeal is allowed. Judgment of conviction and sentence dated 29.10.2011 rendered in RBT No. 60-AR/3 of 2011 is set aside. Accused is acquitted of the charge framed against him by giving him benefit of doubt. Fine amount, if already deposited, be refunded to the accused. Since the accused is in jail, he be released forthwith, if not required in any other case.

17. 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 P.S. RANA, J.

Mohit Kumar son of Shri Dalip Singh ....Applicant
Versus
State of H.P. ....Non-applicant

Cr.MP(M) No. 1242 of 2014
Order Reserved on 19th November, 2014
Date of Order 11th December, 2014

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 307, 341, 323, 504 and 506 of IPC- held, that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State – in the present case, investigation is complete- challan has been filed in the Court- therefore, it would not to be appropriate to detain the applicant in custody- hence, the applicant is ordered to be released on bail.

(Para-6 to 11)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179

The State Vs. Captain Jagjit Singh AIR 1962 SC 253

Sanjay Chandra vs. Central Bureau of Investigation 2012 Cri. L.J. 702 Apex Court DB 702,

For the Applicant: Mr. K.B. Khajuria, Advocate
For the Non-applicant: Mr. M.L. Chauhan, Additional Advocate General with Mr.Puneet Razta, Deputy Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail in connection with case FIR No. 51 of 2014 dated 12.6.2014 registered under Sections 307, 341, 323, 504 and 506 of Indian Penal Code at P.S. Talai District Bilaspur (HP).

2. It is pleaded that applicant is innocent and he did not commit any offence. It is pleaded that mother of applicant has given an affidavit that she was attacked by some unknown person in the dark and applicant tried to rescue his mother from the clutches of assailant. It is pleaded that applicant will abide by terms and conditions imposed by the Court. It is further pleaded that applicant undertakes that he would not tamper with prosecution evidence and will not threat the prosecution witnesses in any manner and will not hamper the case of prosecution if bail is granted. It is also pleaded that applicant also undertakes that he would appear before the Court as directed by the Court. Prayer for acceptance of bail application filed under Section 439 Cr.P.C. is sought.

3. Per contra police report filed. As per police report, FIR No. 51 of 2014 dated 12.6.2014 registered under Sections 307, 341, 323, 504 and 506 of Indian Penal Code in Police Station Talai District Bilaspur (H.P.) against the

applicant. There is recital in police report that Shri Dalip Singh son of Chokas Ram is resident of village Majher Tehsil Jhandula District Bilaspur H.P. There is further recital in police report that Dalip Singh is agriculturist by profession and he has two sons and both are married. There is recital in police report that Mohit Kumar is elder son of Dalip Singh and he is posted in Forest Department at Sarkaghat Circle. There is recital in police report that Mohit Kumar used to come in residential house in intoxicated condition and used to abuse the entire family members and also used to quarrel. There is also recital in police report that on dated 11.6.2014 at 11 PM night Mohit Kumar accused came in intoxicated condition and started abusing his mother Sunita Devi and also used abusive language. There is further recital in police report that Dalip Singh and Sunita Devi requested the accused not to use abusive language. There is further recital in police report that thereafter accused dragged his mother outside from the room and inflicted injuries upon head, arms and other parts of his mother with sticks. There is recital in police report that when mother of accused tried to run away from the place of incident then accused obstructed his mother and beaten his mother with sticks. There is recital in police report that blood oozed out from the head of injured i.e. mother of accused and right arm of mother of accused got fractured due to injuries given by accused. There is further recital in police report that thereafter accused stood in the sehan and threatened that if any person uttered anything against the accused then he would kill him. There is recital in police report that medical examination of injured was conducted and MLC was obtained. There is also recital in police report that injured was referred to regional hospital Hamirpur and thereafter injured was referred to Medical College Tanda. There is further recital in police report that place of incident was inspected by Investigating Officer and site plan was prepared and photographs took. There is recital in police report that shirt, salwar, scarf and bra clotted with blood of injured took into possession and sealed in parcel. There is recital in police report that report of FSL sought and as per FSL report blood Group B was found upon the clothes of injured person and human blood was also found upon the sticks used in commission of criminal offence. There is also recital in police report that blood was also found upon the bangles of injured and it is also found that wife of accused is residing in her parental house along with her children. There is recital in police report that proceedings under Sections 107 and 151 of Code of Criminal Procedure are also initiated against the applicant. There is also recital in police report that challan has been filed in the Court and if applicant is released on bail then applicant will induce and threat the prosecution witnesses. Prayer for rejection of bail application sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether the bail application filed under Section 439 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of bail application?
2. Final Order.

<u>Findings on Point No.1</u>

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

7. Another submission of learned Advocate appearing on behalf of the applicant that investigation is complete in present case and challan has already been filed in the Court and any condition imposed by Court upon the applicant will be binding upon applicant and on this ground bail application filed under Section 439 Cr.P.C. be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** Trial of the case will be completed in due course of time. It was held in case reported in ***2012 Cri. L.J. 702 Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an indefinite period.

8. It is well settled law that accused is presumed to be innocent till convicted by competent Court of law. In view of the fact that investigation has been completed in present case and in view of the fact that challan has been filed in present case and in view of the fact that trial will be concluded in due course of time it is held that it is not expedient in the ends of justice to keep the applicant in jail. Court is of the opinion that if applicant is released on bail at this stage then interest of State and general public will not be adversely affected in present case.

9. Submission of learned Additional Advocate General appearing on behalf of non-applicant that if bail is granted to applicant then applicant will induce, threat and influence the prosecution witnesses and on this ground bail application be declined is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that condition will be imposed in the bail order to the effect that applicant will not induce and threat the prosecution witnesses. Court is of the opinion that if applicant will flout the terms and conditions of bail order then non-applicant will be at liberty to file application for cancellation of bail strictly in accordance with law.

10. Another submission of learned Additional Advocate General appearing on behalf of the non-applicant that if the applicant is released on bail then applicant will commit the similar offence and on this ground bail application be declined is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that condition will be imposed in the bail order that applicant will not commit the similar offence qua which he is accused. Court is of the opinion that if applicant will commit similar offence after grant of bail then prosecution will be at liberty to file application for cancellation of bail. In view of above stated facts, point No.1 is answered in affirmative.

Point No.2

Final Order

11. In view of my findings on point No.1 bail application filed by applicant under Section 439 Cr.P.C. is allowed and applicant is ordered to be released on bail subject to furnishing personal bond to the tune of Rs. 1 lac with

two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That the applicant will attend the proceedings of learned trial Court regularly till conclusion of trial in accordance with law. (ii) That applicant will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That the applicant will not leave India without the prior permission of the Court. (iv) That applicant will not commit similar offence qua which he is accused. (v) That applicant will give his residential address in written manner to the Investigating Officer and Court. (vi) That applicant will not beat his family members in intoxicated condition in the residential house. Applicant be released only if not required in any other criminal case. Bail application filed under Section 439 Cr.P.C. stands disposed of. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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

Jaskaran Singh son of Shri Swaran Singh ....Applicant
Versus
State of H.P. ....Non-applicant

Cr.MP(M) No. 1330 of 2014
Order Reserved on 3rd December, 2014
Date of Order 12th December, 2014

Code of Criminal Procedure, 1973- Section 439 - An FIR was registered against the accused for the commission of offences punishable under Sections 279, 337, 338, 304-A, 489-B and 489-C read with Section 34 of IPC- applicant is facing trial before the Court- case is listed for recording the statement of the accused under Section 313 Cr.P.C. - held that while granting bail, Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- the applicant is facing trial for counterfeit currency notes which is an offence against the society and Nation- the fact that trial is at last stage is not sufficient to release the applicant on bail, however the court can be directed to conduct the trial expeditiously- hence, bail application rejected and trial Court directed to dispose of the case within the period of one month. (Para-6 to 9)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179
The State Vs. Captain Jagjit Singh AIR 1962 SC 253

For the Applicant:	Mr. N.K. Thakur, Sr. Advocate with Mr. Ramesh Sharma,Advocate
For the Non-applicant:	Mr. R.P. Singh, Assistant Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail in connection with case FIR No. 67 of 2013 dated 24.5.2013 registered under Sections 279, 337, 338, 304-A, 489-B and 489-C read with Section 34 of Indian Penal Code at P.S. Amb, District Una (HP).

2. It is pleaded that prosecution has concluded its evidence on dated 21.8.2014 and case was posted for recording the statement of accused under Section 313 Cr.P.C. for dated 22.9.2014. It is pleaded that case was again adjourned for recording statement of accused under Section 313 Cr.P.C. for dated 29.10.2014 and again on dated 18.11.2014. It is pleaded that thereafter case is posted for recording statement of applicant under Section 313 Cr.P.C. on dated 23.12.2014. It is also pleaded that only non-bailable offence is under Section 489-B IPC which is with respect to use the forged currency as genuine. It is pleaded that entire prosecution evidence is closed and one of co-accused Roop Lal already granted pre-arrest bail. It is pleaded that bail application of applicant was rejected by the Court. It is also pleaded that since four months statement of applicant under Section 313 Cr.P.C. not recorded prayer for acceptance of bail application is sought.

3. Per contra police report filed. As per police report FIR No. 67 of 2013 dated 24.5.2013 registered under Sections 279, 337, 338, 304-A, 489B, 489C read with Section 34 of Indian Penal Code and 196 of Motor Vehicles Act in Police Station Amb District Una (H.P.) against the applicant. There is recital in police report that on dated 24.5.2013 complainant was present in his shop and at about 8.50 PM a vehicle having registration No. PB08V-4000 Indica came in very fast speed from Una side and struck with motor cycle. There is recital in police report that person travelling upon motor cycle sustained injuries. There is further recital in police report that person travelling in vehicle No. PB08V-4000 Indica left the vehicle from the place of incident. There is further recital in police report that during investigation place of incident was inspected and site plan was prepared and photographs obtained. There is further recital in police report that during investigation vehicle having registration No. PB08V-4000 Indica and motor cycle were took into possession vide seizure memo and both vehicles were mechanically examined. There is further recital in police report that in the dash board of vehicle No. PB08V-4000 counterfeit currency notes were found and during investigation it was found that vehicle having registration No. PB08V-4000 was driven by Jaskaran and it was also observed that vehicle No. PB08V-4000 was owned by Jaskaran applicant. There is further recital in police report that counterfeit currency notes were sent for examination to RFSL Dharamshala and as per chemical report all currency notes were counterfeit and were not genuine. It is pleaded that due to absence of water marks, due to absence of ultraviolet due to absence of intaglio printing due to difference in size due to printing colour combination currency notes were not found genuine and were counterfeit. There is further recital in police report that counterfeit currency notes were obtained by Jaskaran applicant from Amarjeet Singh @ Sonu son of Nishan Singh resident of village Rasoolpur P.O. Panjgrai Tehsil Batala District Gurdaspur to the tune of Rs.6000/- (Rupees six thousand only) and Rs. 10,000/-(Rupees ten thousand only). There is further recital in police report that even as per disclosure statement Jaskaran had disclosed that he has obtained the counterfeit currency notes from Amarjeet @ Sonu. There is further recital in police report that proceedings for declaring Amarjeet as proclaimed offender

already initiated. There is also recital in police report that applicant deals in counterfeit currency notes business and commercial business of currency notes affected the economy of country. There is further recital in police report that challan against co-accused Jaskaran and Roop Lal already stood filed in the Court of learned Sessions Judge, Una and same is fixed for recording statement under Section 313 Cr.P.C. on dated 23.12.2014. There is further recital in police report that if applicant is released on bail at this stage then applicant would not appear in Court and trial of case will be adversely effected. Prayer for rejection of bail application is sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether bail application filed under Section 439 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of bail application?
2. Final Order.

<u>Findings on Point No.1</u>

6. Submission of learned Advocate appearing on behalf of applicant that prosecution has concluded its evidence on dated 21.8.2014 and thereafter criminal case was listed for recording statement of applicant under Section 313 Cr.P.C. several times but still statement of applicant was not recorded under Section 313 Cr.P.C. by learned trial Court and on this ground bail application filed by applicant be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** In present case since criminal case is in last stage and prosecution evidence already stood closed therefore direction would be issued to learned trial Court to dispose of the case expeditiously within one month in accordance with law. It is held that it is not expedient in the ends of justice to release the applicant at this state when prosecution evidence already stood closed.

7. Another submission of learned Advocate appearing on behalf of the applicant that even prosecution did not support the prosecution story and offence under Section 489-B and 489-C IPC is not proved and on this ground bail application filed by applicant be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is held that whether offence under Section 489-B and 489-C IPC is proved or not will be decided by learned trial Court when criminal case will be disposed of finally by learned trial Court after giving due opportunity to both the parties to lead evidence in support of their case. It is held that in view of the fact that criminal case is in last stage of disposal it is not expedient in the ends of justice to release the applicant on bail at this stage. It is further held that if applicant is released on bail then interest of State and general public will be adversely effected because present case is a case of counterfeit currency notes and the offence of counterfeit currency notes is the offence against the economy of Nation.

8. Submission of learned Additional Advocate General appearing on behalf of non-applicant that applicant is facing the trial of counterfeit currency notes which is an offence against the Nation and on this ground bail application filed by applicant be rejected is accepted for the reasons hereinafter mentioned. Offence under Section 489-B is relating to forged currency which is offence against the society and Nation and no one can be allowed to commit such type of offence in order to get personal commercial gain at the cost of Nation and Society. In view of above stated facts point No.1 is answered in negative.

Point No.2

Final Order

9. In view of my findings on point No.1 bail application filed by applicant under Section 439 Cr.P.C. is rejected in the ends of justice. However learned trial Court is directed to dispose of the case finally within one month after the receipt of certified copy of this order. Learned Additional Registrar (Judicial) is directed to transmit the certified copy of this order to learned trial Court for compliance. Bail application filed under Section 439 Cr.P.C. stands disposed of. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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

Rafiq Hussain son of Babu Khan ....Applicant
Versus
State of H.P. ....Non-applicant

Cr.MP(M) No. 1263 of 2014
Order Reserved on 3rd December,2014
Date of Order 12th December, 2014

Code of Criminal Procedure, 1973- Section 438- An FIR was registered against the applicant for the commission of offences punishable under Section 307 of IPC and Section 25 of Arms Act- held, that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- the allegations against the applicant are grave and heinous in nature- it is alleged that applicant attempted to murder the injured- the injured is under medical treatment- investigation is at initial stage- custodial interrogation of the applicant is necessary- hence, bail application rejected. (Para- 9 to 11)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179

The State Vs. Captain Jagjit Singh AIR 1962 SC 253

For the Applicant: Mr. Arvind Sharma, Advocate.
For the Non-applicant: Mr. R.P. Singh Assistant Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge

Present bail application is filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with case FIR No. 125 of 2014 dated 19.9.2014 registered under Section 307 IPC and 25-54-59 of Arms Act in Police Station Nadaun District Hamirpur Himachal Pradesh.

2. It is pleaded that complaint has been filed just to harass and humiliate the applicant and applicant does not own any gun and even family members of applicant also do not own any gun. It is pleaded that applicant is innocent and is not connected with any criminal offence. It is pleaded that in fact applicant is victim of enmity between the complainant and Subhash Chand. It is pleaded that applicant will join the investigation of case and further pleaded that applicant will not tamper with prosecution evidence and will abide by all terms and conditions imposed by Court. Prayer for acceptance of bail application is sought.

3. Per contra police report filed. As per police report case under Section 307 IPC and under Section 25-54-59 of Arms Act is registered against the applicant in P.S. Nadaun vide FIR No. 125 of 2014 dated 19.9.2014. There is recital in police report that Smt. Kamlesh Kumari has two sons and one daughter. There is further recital in police report that daughter of complainant Kamlesh Kumari stood married and her two sons are bachelor. There is further recital in police report that elder son of complainant namely Kamlesh Kumari is posted as Panchayat Secretary at Jolsappad and younger son of complainant namely Kamelsh Kumari is driver by profession. There is further recital in police report that on dated 18.9.2014 at 5 PM Susheel Kumar telephoned complainant Kamlesh Kumari that he would come to the house and he also requested to prepare the meal. There is further recital in police report that at 11 PM again telephone of Susheel Kumar came and complainant inquired about whereabouts of Susheel Kumar, but he could not reply properly. There is further recital in police report that thereafter complainant and her son Manoj Kumar went to a well which was situated nearby the path and thereafter complainant saw that Susheel Kumar was fell upon the path and blood was oozing out from the mouth of Susheel Kumar. There is further recital in police report that thereafter injured Susheel Kumar was brought to Hamirpur for his medical treatment and thereafter injured was referred to Medical College Tanda. There is further recital in police report that thereafter CT scan of complainant was conducted and as per CT scan report injured had sustained injury from the gun upon his mouth. There is also recital in police report that thereafter injured was referred to IGMC and case was registered under Section 307 IPC and under Sections 25-54-59 of Arms Act and matter was investigated. There is also recital in police report that during investigation site plan was prepared and blood clotted earth and sample of blood were took into possession vide seizure memo and statements of witnesses under Section 161 Cr.P.C. recorded. There is recital in police report that injured was operated and injured disclosed the name of accused persons. There is further recital in police report that injured is under treatment in PGI Chandigarh. Prayer for rejection of bail application is sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether anticipatory bail application filed under Section 438 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of anticipatory bail application?
2. Final Order.

<u>Findings upon Point No.1</u>

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

7. Another submission of learned Advocate appearing on behalf of the applicant that applicant is victim of enmity between the complainant and Subhash Chand and on this ground anticipatory bail application be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. The fact whether complaint has been filed due to enmity or not cannot be decided at this stage. Same fact will be decided when the case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

8. Another submission of learned Advocate appearing on behalf of the applicant that present complaint has been filed due to ill-will against the applicant and his family members and on this ground anticipatory bail application filed by applicant be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Fact whether the complaint has been filed due to ill-will cannot be decided at this stage. Same fact will be decided when the case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

9. Another submission of learned Advocate appearing on behalf of the applicant that applicant will not tamper with prosecution evidence and will abide by all terms and conditions imposed by Court and on this ground anticipatory bail application filed by applicant be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** In present case allegations against the applicant are very grave and heinous in nature. Allegations against the applicant are that applicant attempted to murder injured namely Susheel Kumar through gun and there is prima facie evidence on record that injured had sustained injuries by way of gun fire upon his mouth and injured is still under medical treatment. The punishment under Section 307 IPC is imprisonment for life when hurt is caused to injured person. Court is of the opinion that in view of gravity of offence punishable under Section 307 IPC it is not expedient in the ends of justice to grant anticipatory bail to applicant because investigation is at

the initial stage of case. Court is of the opinion that if anticipatory bail is granted to the applicant at this stage then investigation of the case will be adversely affected. Court is also of the opinion that if anticipatory bail is granted to the applicant during the initial stage of investigation then interest of State and general public will also be adversely affected.

10. Submission of learned Additional Advocate General appearing on behalf of the State that if applicant is released on anticipatory bail at this stage then applicant will induce and threat the prosecution witness and on this ground anticipatory bail application be rejected is accepted for the reasons hereinafter mentioned. There is apprehension in the mind of Court that if applicant is released on bail then applicant will induce and threat the prosecution witnesses.

11. In view of gravity of offence under Section 307 IPC in which the punishment is for life imprisonment and in view of the fact that injured had sustained gun shot injuries upon his mouth and in view of the fact that injured is still as indoor patient it is held that custodial interrogation is essential in present case in the ends of justice. Point No.1 is answered in negative.

Point No. 2

Final Order

12. In view of my findings upon point No. 1 anticipatory bail application filed under Section 438 Cr.P.C. is rejected. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this anticipatory bail application filed under Section 438 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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

Cr.MP(M) Nos. 1362, 1363, 1364, 1365 and 1366 of 2014
Order Reserved on 5th December, 2014
Date of Order 12th December, 2014

1. Cr.MP(M) No. 1362 of 2014
Sachin son of Partap Singh ....Applicant
Versus
State of H.P. ....Non-applicant

2. Cr.MP(M) No. 1363 of 2014
Ajeet Singh son of Shri Bihari Lal ....Applicant
Versus
State of H.P. ....Non-applicant

3. Cr.MP(M) No. 1364 of 2014
Vipin Kumar son of Shri Chet Ram ....Applicant
Versus
State of H.P. ....Non-applicant

4. Cr.MP(M) No. 1365 of 2014
Ravinder Kumar son of Shri Durga Singh Verma ....Applicant
Versus
State of H.P. ....Non-applicant

5.Cr.MP(M) No. 1366 of 2014
Biri Singh son of Shri Roop Lal ....Applicant
Versus
State of H.P. ....Non-applicant

Code of Criminal Procedure, 1973- Section 439 - An FIR was registered for the commission of offences punishable under Sections 363, 342, 376D, 323, 201 and 511 IPC and Sections 6 and 17 of the Protection of Children from Sexual Offences Act 2012- the allegations against the applicants are that they had committed gang rape upon two minor prosecutrix- such offences are increasing in the society and should be viewed strictly- mere fact that statements under Section 164 Cr.P.C are contradictory is not sufficient to discard the prosecution case at the stage of bail- considering the gravity of the offence and the impact on society, bail application rejected. (Para-6 to 12)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179
The State Vs. Captain Jagjit Singh AIR 1962 SC 253
Sanjay Chandra vs. Central Bureau of Investigation 2012 Cri. L.J. 702 Apex Court DB 702

For the Applicant(s): Mr. K.S. Thakur Advocate with Mr.Vijay Verma, Advocate.
For the Non-applicant: Mr. R.P. Singh Assistant Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

All bail applications have been filed qua FIR No. 19 of 2014 dated 21.1.2014 registered under Sections 363, 342, 376D, 323, 201 and 511 IPC and Sections 6 and 17 of the Protection of Children from Sexual Offences Act 2012. All bail applications are consolidated and disposed of by same order in order to avoid repetition.

2. It is pleaded that applicants are innocent and they have been falsely implicated in present case. It is further pleaded that investigation of the case is complete and charge sheet has been filed in the month of March 2014 and it is further pleaded that no recovery is to be effected from the applicants. It is also pleaded that both FIRs No. 23 of 2014 dated 20.01.2014 and 19 of 2014 dated 21.01.2014 are contradictory to each other. It is further pleaded that as per FIR No. 23 of 2014 occurrence took place at Hotel Monal Mandi and as per FIR No. 19 occurrence took place in the house of prosecutrix at Dharampur which is approximately at a distance of 90 Kms. and hence prosecution story did not inspire any confidence. It is further pleaded that statement of complainant was recorded on 28.1.2014 wherein complainant stated before learned Magistrate that except co-accused Ravi all four accused have committed rape upon her in the intervening night of 17.1.2014 while fifth co-accused Ravi attempted to commit rape with other prosecutrix. It is pleaded that on contrary as per statement of other prosecutrix recorded under Section 164 Cr.P.C. before learned Magistrate co-accused Beer committed rape with other prosecutrix and

she did not name any other co-accused involved in the criminal offence. It is pleaded that even other prosecutrix has not stated anything qua attempt of rape with her. It is further pleaded that in view of contradictory statements of both prosecutrix no offence under IPC and POCSO Act is made out. It is pleaded that neither identification of accused persons established nor any test identification parade was conducted. It is further pleaded that medical examination of prosecutrix was conducted on dated 21.1.2014 when first FIR was lodged at Mandi and as per medical certificate no rape or attempt to rape was committed and further pleaded that MLC of complainant did not suggest any injury on any part of the body of prosecutrix except small abrasion on right little finger. It is pleaded that deep rooted conspiracy has been hatched against accused persons. It is pleaded that applicants will join the investigation of the case as and when required and applicants will not tamper with prosecution witnesses in any manner. Prayer for acceptance of bail applications is sought.

3. Per contra police report filed. As per police report FIR No. 19 of 2014 dated 21.01.2014 registered under Sections 363, 342, 376D, 323, 201 and 511 IPC and Sections 6 and 17 of POCSO Act 2012 in Police Station Sarkaghat District Mandi (H.P.) against the applicants. There is recital in police report that all accused persons took two minor prosecutrix to Monal Hotel situated at Mandi and thereafter on the intervening night of 17.1.2014 and 18.1.2014 all five accused persons have committed gang rape with minor prosecutrix. There is further recital in police report that medical examination of prosecutrix was got conducted and MLC obtained. There is further recital in police report that on dated 21.1.2014 as per location shown by prosecutrix place of incident was inspected and site plan was prepared and videography was conducted. There is further recital in police report that bed sheet was also took into possession vide seizure memo and vehicle No. HP-28-8982 along with driving licence also took into possession. There is further recital in police report that statements of minor prosecutrix under Section 164 Cr.P.C. were recorded by Additional Chief Judicial Magistrate Sarkaghat and copies of birth certificates of minor prosecutrix and family register were also obtained. There is recital in police report that statements of prosecution witnesses under Section 161 Cr.P.C. recorded. There is recital in police report that as per birth certificates minor prosecutrix were born on dated 8.9.1999 and on dated 27.8.1997 respectively and both prosecutrix are minors. There is further recital in police report that challan under Sections 363, 342, 376D, 323, 201 and 511 IPC and Sections 6 and 17 of POCSO Act 2012 also filed against accused persons which is pending before learned Sessions Judge Mandi (H.P.).

4. Court heard learned Advocate appearing on behalf of the applicants and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether bail applications filed under Section 439 Cr.P.C. are liable to be accepted as mentioned in memorandum of grounds of bail applications?
2. Final Order.

Findings on Point No.1

6. Submission of learned Advocate appearing on behalf of applicants that statements of both prosecutrix recorded under Section 164 Cr.P.C. by learned Additional Chief Judicial Magistrate Sarkaghat on dated 28.1.2014 are contradictory to each other qua place of incident and on this ground bail

applications filed by applicants be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that fact of contradictory statements of two minor prosecutrix qua place of incident recorded under Section 164 Cr.P.C. will be considered at the time of final disposal of case and same cannot be considered in bail matter because statements recorded under Section 164 Cr.P.C. could be used only for corroboration or contradiction purpose during the trial of the case as per law.

7. Another submission of learned Advocate appearing on behalf of the applicants that applicants are innocent and they did not commit any offence cannot be decided at this stage. Same fact will be decided when the criminal case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

8. Another submission of learned Advocate appearing on behalf of the applicants that applicants are young youths and their future prospects are at stake and on this ground bail applications be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that allegations against the applicants are for commission of criminal offence of gang rape upon two minor prosecutrix. Gang rapes are increasing in the society day by day. It is well settled law that gang rape offences are stigma on the society. It is well settled law that every girl and woman has legal right to live in the society with honour and dignity. It is also well settled law that no one can be allowed to attack upon the dignity of minor girls or women in the society in order to maintain harmony in the society and in order to maintain majesty of law in the society.

9. Another submission of learned Advocate appearing on behalf of the applicants that investigation in present case is complete and charge sheet has been filed and on this ground bail applications filed by applicants be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that in view of gravity of offence against the applicants under Section 376D IPC i.e. gang rape and in view of allegations of criminal offence under Sections 6 and 17 of POCSO Act 2012 i.e. aggravated penetrative sexual assault upon minor prosecutrix it is not expedient in the ends of justice to release the applicants on bail at this stage.

10. Another submission of learned Advocate appearing on behalf of the applicants that identification of accused persons was not established and identification parade was not conducted and on this ground bail applications filed by applicants be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. As per Section 54-A of the Code of Criminal Procedure 1973 identification parade is conducted if the same is necessary for the purpose of investigation of the case. It is well settled law that identification parade is not mandatory in all criminal offences.

11. Another submission of learned Advocate appearing on behalf of the applicants that MLC of minor prosecutrix did not suggest any injury on any part of body of minor prosecutrix except small abrasions on right little finger and on this ground bail be granted to applicants is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that opinion of medical officer is only advisory in nature and even as per Section 30 of Protection of Children from Sexual Offence Act 2012 the Court shall presume culpable mental state of accused. It is well settled law that POCSO Act 2012 is a special Act and it is also well settled law that when there is conflict between the special law and general law then special law always prevails upon the general law.

12. Another submission of learned Advocate appearing on behalf of the applicants that learned trial Court has not considered the medical evidence, contents of FIR and statements of both girls under Section 164 Cr.P.C. and on this ground bail be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. It is well settled law that medical evidence is proved as per testimony of medical officer and till date statement of medical officer is not recorded in present case therefore it is not expedient in the ends of justice to release applicant on bail. Similarly contents of FIR and contents of statements recorded under Section 164 Cr.P.C. could be used only for corroboration and contradiction purpose during trial of the case. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.***

13. Submission of learned Additional Advocate General appearing on behalf of the State that in view of gravity of offence against the applicants under Sections 363, 342, 376D, 323, 201 and 511 IPC and Sections 6 and 17 of POCSO Act 2012 bail application filed by applicants be rejected is accepted for the reasons hereinafter mentioned. Keeping in view the allegations of gang rape and in view of allegations of aggravated penetrative sexual assault upon minor prosecutrix as per POCSO Act 2012 and in view of the fact that both minor prosecutrix were minor at the time of commission of alleged offence Court is of the opinion that it is not expedient in the ends of justice to release the applicants on bail at this stage till testimonies of minor prosecutrix are not recorded in trial Court. Court is also of the opinion that if applicants are released on bail at this stage then trial of case will be adversely effected and there is apprehension in the mind of Court that if applicants are released at this stage then applicants will induce and threat the prosecution witnesses. Facts of case law cited by learned Advocate appearing on behalf of the applicant i.e. ***2012(1) SCC page 40 titled Sanjay Chandra vs. Central Bureau of Investigation*** and facts of present case are entirely different and distinguishable and are not applicable in present case. Case reported in ***2012(1) SCC page 40 titled Sanjay Chandra vs. Central Bureau of Investigation*** did not relate to gang rape case upon minor prosecutrix under Section 376D IPC and also did not relate to aggravated penetrative sexual assault upon minor prosecutrix under POCSO Act 2012. In view of above stated facts point No.1 is answered in negative.

Point No.2

Final Order

14. In view of my findings on point No.1 bail applications Nos. 1362 of 2014 titled Sachin vs. State of H.P., 1363 of 2014 titled Ajeet Singh vs. State of H.P., 1364 of 2014 tilted Vipin Kumar vs. State of H.P., 1365 of 2014 titled Ravinder Kumar vs. State of H.P. and 1366 of 2014 titled Biri Singh vs. State of H.P. filed by applicants under Section 439 Cr.P.C. are rejected. Bail applications filed under Section 439 Cr.P.C. stand disposed of. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of these bail applications filed under Section 439 of Code of Criminal Procedure 1973. Certified copy of order be placed in each connected file forthwith. All pending application(s) if any also disposed of.

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

Safi Mohammed son of Babu Khan ….Applicant
Versus
State of H.P. ….Non-applicant

Cr.MP(M) No. 1264 of 2014
Order Reserved on 3rd December,2014
Date of Order 12th December, 2014

Code of Criminal Procedure, 1973- Section 438- An FIR was registered against the applicant for the commission of offences punishable under Section 307 of IPC and Section 25 of Arms Act- held, that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- the allegations against the applicant are grave and heinous in nature- it is alleged that applicant attempted to murder the injured- the injured is under medical treatment- investigation is at initial stage- custodial interrogation of the applicant is necessary- hence, bail application rejected. (Para- 9 to 11)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179.
The State Vs. Captain Jagjit Singh AIR 1962 SC 253

For the Applicant: Mr. Arvind Sharma, Advocate.
For the Non-applicant: Mr. R.P. Singh Assistant Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge

Present bail application is filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with case FIR No. 125 of 2014 dated 19.9.2014 registered under Section 307 IPC and 25-54-59 of Arms Act in Police Station Nadaun District Hamirpur Himachal Pradesh.

2. It is pleaded that complaint has been filed just to harass and humiliate the applicant and applicant does not own any gun and even family members of applicant also do not own any gun. It is pleaded that applicant is innocent and is not connected with any criminal offence. It is pleaded that in fact applicant is victim of enmity between the complainant and Subhash Chand. It is pleaded that applicant will join the investigation of case and further pleaded that applicant will not tamper with prosecution evidence and will abide by all terms and conditions imposed by Court. Prayer for acceptance of bail application is sought.

3. Per contra police report filed. As per police report case under Section 307 IPC and under Section 25-54-59 of Arms Act is registered against

the applicant in P.S. Nadaun vide FIR No. 125 of 2014 dated 19.9.2014. There is recital in police report that Smt. Kamlesh Kumari has two sons and one daughter. There is further recital in police report that daughter of complainant Kamlesh Kumari stood married and her two sons are bachelor. There is further recital in police report that elder son of complainant namely Kamlesh Kumari is posted as Panchayat Secretary at Jolsappad and younger son of complainant namely Kamelsh Kumari is driver by profession. There is further recital in police report that on dated 18.9.2014 at 5 PM Susheel Kumar telephoned complainant Kamlesh Kumari that he would come to the house and he also requested to prepare the meal. There is further recital in police report that at 11 PM again telephone of Susheel Kumar came and complainant inquired about whereabouts of Susheel Kumar, but he could not reply properly. There is further recital in police report that thereafter complainant and her son Manoj Kumar went to a well which was situated nearby the path and thereafter complainant saw that Susheel Kumar was fell upon the path and blood was oozing out from the mouth of Susheel Kumar. There is further recital in police report that thereafter injured Susheel Kumar was brought to Hamirpur for his medical treatment and thereafter injured was referred to Medical College Tanda. There is further recital in police report that thereafter CT scan of complainant was conducted and as per CT scan report injured had sustained injury from the gun upon his mouth. There is also recital in police report that thereafter injured was referred to IGMC and case was registered under Section 307 IPC and under Sections 25-54-59 of Arms Act and matter was investigated. There is also recital in police report that during investigation site plan was prepared and blood clotted earth and sample of blood were took into possession vide seizure memo and statements of witnesses under Section 161 Cr.P.C. recorded. There is recital in police report that injured was operated and injured disclosed the name of accused persons. There is further recital in police report that injured is under treatment in PGI Chandigarh. Prayer for rejection of bail application is sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether anticipatory bail application filed under Section 438 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of anticipatory bail application?
2. Final Order.

Findings upon Point No.1

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

7. Another submission of learned Advocate appearing on behalf of the applicant that applicant is victim of enmity between the complainant and Subhash Chand and on this ground anticipatory bail application be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. The fact whether complaint has been filed due to enmity or not cannot be decided at this stage. Same fact will be decided when the case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

8. Another submission of learned Advocate appearing on behalf of the applicant that present complaint has been filed due to ill-will against the applicant and his family members and on this ground anticipatory bail application filed by applicant be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. The fact whether the complaint has been filed due to ill-will cannot be decided at this stage. Same fact will be decided when the case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

9. Another submission of learned Advocate appearing on behalf of the applicant that applicant will not tamper with prosecution evidence and will abide by all terms and conditions imposed by Court and on this ground anticipatory bail application filed by applicant be allowed is rejected being devoid of any force for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** In present case allegations against the applicant are very grave and heinous in nature. Allegations against the applicant are that applicant attempted to murder injured namely Susheel Kumar through gun and there is prima facie evidence on record that injured had sustained injuries by way of gun fire upon his mouth and injured is still under medical treatment. The punishment under Section 307 IPC is imprisonment for life when hurt is caused to injured person. Court is of the opinion that in view of gravity of offence punishable under Section 307 IPC it is not expedient in the ends of justice to grant anticipatory bail to applicant because investigation is at the initial stage of case. Court is of the opinion that if anticipatory bail is granted to the applicant at this stage then investigation of the case will be adversely affected. Court is also of the opinion that if anticipatory bail is granted to the applicant during the initial stage of investigation then interest of State and general public will also be adversely affected.

10. Submission of learned Additional Advocate General appearing on behalf of the State that if applicant is released on anticipatory bail at this stage then applicant will induce and threat the prosecution witness and on this ground anticipatory bail application be rejected is accepted for the reasons hereinafter mentioned. There is apprehension in the mind of Court that if applicant is release3d on bail then applicant will induce and threat the prosecution witnesses.

11. In view of gravity of offence under Section 307 IPC in which the punishment is for life imprisonment and in view of the fact that injured had sustained gun shot injuries upon his mouth and in view of the fact that injured is still as indoor patient it is held that custodial interrogation is essential in present case in the ends of justice. Point No.1 is answered in negative.

Point No. 2

Final Order

12. In view of my findings upon point No. 1 anticipatory bail application filed under Section 438 Cr.P.C. is rejected. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this anticipatory bail application filed under Section

438 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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

Susheel Kumar son of Shri Chet Ram ….Applicant
Versus
State of H.P. ….Non-applicant

Cr.MP(M) No. 1278 of 2014
Order Reserved on 26th November, 2014
Date of Order 12th December, 2014

Code of Criminal Procedure, 1973- Section 439- An FIR was registered against the applicant for the commission of offences punishable under Sections 316, 498-A, 325 read with Section 34 of IPC - held, that while granting bail Court has to see the nature and seriousness of offence, character and behavior of the accused, circumstances peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial and investigation, reasonable apprehension of the witnesses being tampered with and larger interest of the public and State- In the present case, investigation has been completed- challan has been filed- therefore, it would not be proper to keep applicant in custody- bail granted. (Para- 7 to 9)

Cases referred:

Gurcharan Singh and others Vs. State (Delhi Administration) AIR 1978 SC 179
The State Vs. Captain Jagjit Singh AIR 1962 SC 253
Sanjay Chandra vs. Central Bureau of Investigation 2012 Cri. L.J. 702 Apex Court DB 702

For the Applicant: Mr. Ramakant Sharma, Advocate
For the Non-applicant: Mr. Puneet Razta Deputy Advocate General with Mr.J.S.Rana, Assistant Advocate General.

The following judgment of the Court was delivered:

P.S. Rana, Judge.

Present bail application is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail in connection with case FIR No. 70 of 2014 dated 16.5.2014 registered under Sections 316, 498-A, 325 read with Section 34 of Indian Penal Code at P.S. Barmana District Bilaspur (HP).

2. It is pleaded that complainant is wife of applicant and applicant has two daughters. It is pleaded that complainant and her sister have been married to real brothers at Ghagas and both of them do not want to reside there. It is pleaded that wife of applicant and her sister are compelling the family of applicant to give property so that they could settle at Chandigarh. It is pleaded that since parents of applicant refused to give property to the wife of applicant and her sister they have involved the applicant as well as his mother in false

case. It is also pleaded that applicant did not accompany the complainant to Leelavati Hospital for sex determination. It is pleaded that applicant and his mother did not commit any offence under Section 498-A IPC and under Section 325 IPC. It is pleaded that applicant will not tamper with prosecution witnesses in any manner and will not induce and threat the prosecution witnesses in any manner. Prayer for acceptance of bail application is sought.

3. Per contra police report filed. As per police report FIR No. 70 of 2014 dated 16.5.2014 registered under Sections 316, 498A, 325 read with Section 34 of Indian Penal Code in Police Station Barmana District Bilaspur (H.P.) against the applicant. There is recital in police report that complainant Priynka filed a complaint against the accused persons pleaded therein that accused persons are very cruel persons and they did not provide food to her and to her kids. There is further recital in police report that complainant Priynka was medically examined and on dated 09.05.2014 husband of complainant and mother-in-law of complainant inflicted injuries upon the complainant with fist blows and leg blows and killed the child in womb. There is further recital in police report that as per medical officer report it could not be opined whether fetus died due to beatings or died due to some other cause because at the time of medical examination there were no visible injuries seen on any part of body. There is recital in police report that dead body of fetus was in the uterus of complainant and as per medical report fetus was of three months. There is recital in police report that as per further medical report fetus was expelled due to heavy bleeding. There is further recital in police report that statements of prosecution witnesses recorded under Section 161 Cr.P.C. and version of complainant is corroborated by her elder sister. There is recital in police report that even as per statement of complainant recorded under Section 164 Cr.P.C. her sex determination test was conducted in Leelawati Hospital Ghumarwin through Dr. R.D. Sharma. There is further recital in police report that copy of compromise between the complainant and accused was also obtained. There is further recital in police report that investigation is complete and challan has been filed in competent Court of law.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record.

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

1. Whether bail application filed under Section 439 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of bail application?
2. Final Order.

Findings on Point No.1

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

7. Another submission of learned Advocate appearing on behalf of the applicant that investigation is complete and challan already stood filed in the criminal Court and case will be disposed of in due course of time and on this ground bail application be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence

of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh.*** It was held in case reported in ***2012 Cri. L.J. 702 Apex Court DB 702, titled Sanjay Chandra vs. Central Bureau of Investigation*** that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an indefinite period.

8. In view of the fact that investigation is already completed and challan already stood filed in criminal Court and in view of the fact that criminal case will be disposed of by learned trial Court in due course of time it is not expedient in the ends of justice to keep the applicant in judicial custody. Court is of the opinion that if applicant is released on bail at this stage then interest of State and general public will not be adversely effected.

9. Submission of learned Additional Advocate General appearing on behalf of non-applicant that if bail is granted to applicant then applicant will induce, threat and influence the prosecution witnesses and on this ground bail application be declined is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that condition will be imposed in the bail order to the effect that applicant will not induce and threat the prosecution witnesses. Court is of the opinion that if applicant will flout the terms and conditions of bail order then non-applicant will be at liberty to file application for cancellation of bail strictly in accordance with law. It is well settled law that accused is presumed to be innocent until convicted by competent Court of law. In view of above stated facts point No.1 is answered in affirmative.

Point No.2

Final Order

10. In view of findings on point No.1 bail application filed by applicant under Section 439 Cr.P.C. is allowed and applicant is ordered to be released on bail subject to furnishing personal bond to the tune of Rs. 1 lac with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That the applicant will attend the proceedings of trial Court regularly as and when called upon to do so. (ii) That applicant will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That the applicant will not leave India without the prior permission of the Court. (iv) That applicant will not commit similar offence qua which he is accused. (v) That applicant will give his residential address in written manner to the Court at which address the applicant would be available at short notice. (vi) Applicant will not commit any cruelty mentally or physically upon complainant namely Prinyka Kapoor. Applicant be released only if not required in any other criminal case. Bail application filed under Section 439 Cr.P.C. stands disposed of. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

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