O.J.A. MONTHLY REVIEW OF CASES

ON

CIVIL, CRIMINAL & OTHER LAWS, 2015

(*APRIL*)

Odisha Judicial Academy, Cuttack, Odisha

ODISHA JUDICIAL ACADEMY
MONTHLY REVIEW OF CASES ON CIVIL, CRIMINAL & OTHER LAWS, 2015 (APRIL)

I N D E X

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2. Section 9A (Maharashtra Amend.)
Foreshore Co-Operative Housing Society Limited Vs. Praveen D.Desai (dead) thr. Lrs. And Others
M.Y. Eqbal & Kurian Joseph ,JJ.
Date of Judgment: 8-4-2015
In The Supreme Court of India
Issue

Jurisdictional Issue is to be decided as Preliminary Issue – Civil Procedure – Jurisdictional Issue – Preliminary Issue

Section 9A (as inserted by Maharashtra Amendment Act, 1977) – Jurisdictional Issue – Preliminary Issue – Held that the provision of Section 9A as introduced by (Maharashtra Amendment) Act is mandatory in nature - It provides a self-contained scheme with a non-obstante clause which mandates the court to follow the provision – It is a complete departure from the provisions contained in Order XIV Rule 2 CPC – In other words, the non-obstante clause inserted by Maharashtra Amendment Act of 1977 in Section 9A and the express mandate of the Section, the intention of the law is to decide the issue relating to jurisdiction of the court as a preliminary issue notwithstanding the provision contained in Order XIV Rule 2 CPC – Made clear that in other cases where the suits are governed by the provisions of Order XIV Rule 2 CPC, it is the discretion of the court to decide the issue based on law as preliminary issue.

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3. Section 100
RAJ KUMARI & ANR. Vs. KRISHNA & ORS.
ANIL R. DAVE, R. K. AGRWAL & R. BANUMATHI, JJ.
Date of Judgment: 26-2-2015
In The Supreme Court of India
Issue

First legally wedded wife alive - No pension to second wife - Will – Pensionary benefits – Second Wife

Section 100 – Second Appeal – Substantial Question of Law – Will – In favour of Second Wife – Pensionary benefits – Held that pension is given to the legally wedded wife of a deceased employee –Plaintiff-first respondent cannot be said to be the legally wedded wife of late 'A', especially when he had a wife, who was alive when he married to first respondent – High Court should not have modified the findings arrived at and the decree passed by the trial court in relation to the pensionary benefits – Pensionary benefits directed to be given by the employer of late 'A' to the present appellants in accordance with the rules and regulations governing service conditions of late 'A'.

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Criminal Procedure Code

4. Sections 24(8) and 301(1)
K. ANBAZHAGAN Vs. STATE OF KARNATAKA AND ORS.
MADAN B. LOKUR & R. BANUMATHI, JJ.
Date of Judgment: 15-4-2015
In The Supreme Court of India
Issue

Dissenting Judgment - Public Prosecutor – Special Public Prosecutor – Authority to Appear

Sections 24(8) and 301(1) – Public Prosecutor – Special Public Prosecutor – Authority to Appear – At appellate stage before High Court – Whether the fifth respondent- Mr. 'GBS' appointed as Special Public Prosecutor for conducting the disproportionate assets case in Special C. C.

No. 208/2004 (in the case of Kumari 'J' and others) can continue to appear in the criminal appeals filed by the accused against the verdict of conviction and whether appearance of fifth respondent in the appeals is without authority and illegal? – Held that Mr. 'GBS' appointed as Special Public Prosecutor (SPP) under Section 24(8) Cr.P.C., by virtue of Section 301(1) Cr. P.C., has authority to continue to appear as Public Prosecutor in the criminal appeals filed by the accused in the High Court of Karnataka and the order of the High Court in Writ Appeal confirmed and the appeal is dismissed.

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5. Section 300
RAVINDER KAUR Vs. ANIL KUMAR
JAGDISH SINGH KHEHAR & S.A.BOBDE, JJ.
Date of Judgment: 9-4-2015
In The Supreme Court of India
Issue

Discharge – Second Complaint Maintainable.

Section 300 – Discharge – Second Complaint – In first complaint for offence u/s 376 IPC respondent was discharged – Second complaint on the same facts and incident – Held that in view of explanation to Section 300 Cr.P.C. proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint – Having so concluded, it emerges that it is open to the appellant, to press the accusations levelled by her, through her second complaint.

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6. Section 357-C
LAXMI Vs UNION OF INDIA & ORS.
MADAN B. LOKUR & UDAY UMESH LALIT, JJ.
Date of Judgment: 10-4-2015
In The Supreme Court of India
Issue

Acid Attack

Section 357-C – Acid Attack – Victim Compensation Scheme – Schemes Framed by all States and Union Territories – In some State minimum compensation of Rs. 3,00,000 has not been incorporated and lesser compensation provided – Directed that earlier direction issued for minimum compensation of Rs. 3,00,000/- should be complied with – Member Secretary of the State Legal Services Authority directed to give it wide and adequate publicity in the State/Union Territory so that each acid attack victim in the States/Union Territories can take the benefit of the Victim Compensation Scheme – Direction given for proper treatment, aftercare and rehabilitation of the victims of acid attack.

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7. Section 125
SHAMIMA FAROOQUI Vs. SHAHID KHAN.
DIPAK MISRA & PRAFULLA C. PANT, JJ.
Date of Judgment: 6-4-2015
In The Supreme Court of India
Issue

Maintenance – Divorced Muslim Woman

Section 125 Cr. P.C is applicable to a Muslim woman - Criminal Procedure Code, 1973, Section 125 – Maintenance – Divorced Muslim Woman – Held that Section 125 Cr. P.C is applicable to a Muslim woman.

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8. Sections 452/34, 302/34 and 307/34
Tipu @ Saroja Kanta Behera Vs. State of Orissa
VINOD PRASAD & S.K. SAHOO ,JJ.
IN THE HIGH COURT OF ORISSA, CUTTACK.
Date of Judgment-06.04.2015
Issue

Punishment for Murder-Attempt to Murder- House –trespass after preparation for hurt ,assault or wrongful restraint.

The prosecution case, as per the First Information Report lodged by P.W.9 Udhaba @ Pabitra Das on 10.08.2002 before Officer-in-charge of Baramba Police Station is that the informant was a worker in the tiffin stall of one Prafulla Sahu of village Nuapatna which is situated under Tigiria Police Station. Out of the four sons of the informant, the eldest and the second son were working outside. The deceased who was the wife of the informant and their two minor sons namely, Jiban @ Jaguni @ Srikanta Das (P.W.8) and Susanta Das were staying with the deceased. The informant used to come to his house in every ten to fifteen days. On 10.08.2002 morning at about 5.00 a.m., the brother-in-law of the informant namely Raj Sahu (P.W.4) and nephew Chhabi Sahu reached near the informant and informed him that the appellant had committed murder of the deceased last night at about 11.00 p.m. They further informed him that two other persons were there with the appellant and that the accused persons forcibly entered inside the house of the informant and assaulted on the back of the deceased by means of bhujali and that while two co-accused persons were catching hold of the deceased, the appellant assaulted the deceased by bhujali. When the minor son Jagan (P.W.8) prevented the accused persons at the time of assault, he was also assaulted by means of bhujali on his abdomen and hands for which he had also received serious injuries. Another minor son of the deceased namely, Susanta Das escaped from the spot and informed the co-villagers. When the co-villagers arrived at the house of the informant, the accused persons had already left the spot.

Law is well settled that an order of conviction can also be sustained on the basis of the evidence of a solitary witness if his evidence is found to be

truthful, reliable, cogent, trustworthy and above board. The evidence of P.W.8 is corroborated by his injury report so also the post-mortem report. There is absolutely no motive on the part of the P.W.8 to falsely implicate the appellant in the crime. Therefore, we find that the learned trial Court has rightly relied upon the evidence of P.W.8. The learned counsel for the appellant submitted that P.W.8 is a child witness and a child witness is always prone to tutoring and therefore his evidence can only be accepted after close scrutiny.

Law is well settled that in view of Section 118 of Evidence Act, there is no disqualification for a child to be witness in a case but it is the requirement that the Court must conduct some preliminary inquiry to be satisfied about the mental capability of a child before allowing him to be examined. The question whether a child witness has intelligence enough to understand the import or significance of questions or to give rational answers is not the same as the question of his competency to testify. The Court has discretion to form its own opinion whether a child witness has sufficient understanding to be qualified to be a witness. The possibility of a bias or the child being tutored should be taken care of while analyzing his evidence. The Court should look for corroboration to the evidence of a child witness, the surrounding circumstances as well as the probabilities particularly when the evidence betrays traces of tutoring. If the Court is of opinion that by reason of tender years and immaturity of intellect, a child is not competent to understand the questions put or to give rational answers, he should not be allowed to be examined. If on careful scanning, no flaws or infirmity are found in his evidence, there is no impediment in accepting his evidence. We on close scrutiny found that the evidence of P.W.8, the child witness who was aged about 14 years and reading in Class-V at the time of deposition is credible and there is no exaggeration in his evidence and he has stuck to his statement made during investigation in all material particulars. The manner in which he withstood the long gruelling cross examination and gave minute details of the incident clearly indicates that he had attended a measure of mature understanding and there is no infirmity in his understanding of the facts perceived and his ability to narrate the same correctly.

Now the question that falls for consideration in this appeal is whether under the facts and circumstances of the case, the offence disclosed against the appellant is murder or culpable homicide not amounting to murder.

Keeping in view of the ratio laid down by the Hon'ble Supreme Court and looking at the facts and circumstances of the case particularly post mortem report and the evidence of the doctor who conducted the post-mortem examination, we found that though the act of the appellant amounts to "culpable homicide" as defined under Section 299 IPC, but while analyzing the applicability of any of the four clauses of the definition of the murder as contained in Section 300 IPC, we found that the facts proved by the prosecution do not bring the case within the ambit of any of such four clauses. The intention is the state of mind which has to be inferred in the facts and circumstances of each case particularly from the nature of weapon and how it was used and the injuries inflicted.

Even if the act of the appellant does not come within any of the exceptions enumerated in Section 300 IPC but since it does not come within the ambit of any of the four clauses of definition of murder as enumerated in Section 300 IPC, therefore in our considered opinion, the offence would be culpable homicide not amounting to murder punishable under first part of Section 304 IPC. Thus the impugned judgment and order of conviction of the appellant under Section 302 IPC is set aside and he is convicted under Section 304 Part-I IPC.

So far as the conviction under Section 452 IPC is concerned, we found from the evidence on record that the appellant has committed house trespass having made preparation for causing hurt to the deceased and therefore he has been rightly been held guilty by the learned trial Court for offence under Section 452 IPC.

It appears from the evidence on record that two other co-accused persons had also participated in the crime but they absconded for which charge-sheet was also submitted against them showing them as absconders.

In the net result, the appeal succeeds in part. Conviction of the appellant under section 302/34 IPC is set aside and instead the appellant is convicted under section 304 Part-I/34 IPC and sentenced to undergo R.I. for ten years. Similarly the conviction of the appellant under section 307/34 IPC is set aside and the said conviction is altered to under section 324/34 IPC and for the said conviction, the appellant is sentenced to undergo R.I. for two years. The order of conviction of the appellant under section 452/34 IPC and the sentence of R.I. for three years as passed for such offence by the learned trial Court remains unaltered. All the sentences imposed under sections 304 Part-I/34, 324/34 and 452/34 Indian Penal Code shall run concurrently. The appellant is in jail custody since 12.08.2002. Thus he has already undergone sentence imposed by us and therefore he should be set at liberty forthwith if he is not required to be detained in any other case. Accordingly, the Criminal Appeal is allowed in part.

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9. Sections 498A, 306 and 304B
MONJU ROY & ORS. Vs. STATE OF WEST BENGAL
T.S. THAKUR & ADARSH KUMAR GOEL, JJ.
Date of Judgment: 17-4-2015
In The Supreme Court of India
Issue

Dowry Death – Omnibus allegation against all family members - Acquittal of Sisters/Brothers in laws.

Sections 498A, 306 and 304B – Dowry Death – Appeal against Conviction – Allegation is that all the five family members i.e. husband of the deceased, mother-in-law, two sisters-in-law and one brother in law of the deceased raised a demand of Rs.5000/- – Further stated that all the family members harassed her but no individual role in harassment specified –View taken by the courts below that the deceased was subjected to harassment on

account of non-fulfillment of dowry demand upheld – However merit found in the submission that possibility of naming all the family members by way of exaggeration is not ruled out – Omnibus allegation against all family members particularly against brothers and sisters and other relatives do not stand on same footing as husband and parents – Appellants' being two sister-in-law and brother-in-law of the deceased their having been named by way of exaggeration cannot be ruled out – Appellants given benefit of doubt and their conviction and sentence under Section 304B IPC liable to be set aside without interfering with conviction and sentence under other heads.

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10. Sections 364/302/307 read with Section 120B
ASHWANI KUMAR @ ASHU & ANR. Vs. STATE OF PUNJAB
MADAN B. LOKUR & UDAY UMESH LALIT, JJ.
Date of Judgment: 16-4-2015
In The Supreme Court of India
Issue

Murder – Kidnapping - Acquittal/Conviction

Sections 364/302/307 read with Section 120B – Kidnapping – Murder – As regards appellant 'D' all that the prosecution has produced is the record of telephonic conversations – No doubt that there have been communications with other three accused and the number from Canada but such communications are from a landline number which stands in the name of the brother of 'D' – There is no evidence on record that the said landline number was under the exclusive control of 'D' – Given the fact that his daughter is married with the son of 'S' from Canada, the conversations with the number in Canada are explainable – It is true that suspicion against 'D' was expressly stated in the first statement of PW-15 itself – However, apart from telephonic conversations nothing has been placed on record by the prosecution – Benefit of doubt liable to be given to 'D' he is liable to be acquitted of the charges leveled against him.

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11. Sections 147, 302/ 149
STATE OF RAJASTHAN Vs. SAMPAT RAM AND OTHERS
PINAKI CHANDRA GHOSE & UDAY UMESH LALIT, JJ.
Date of Judgment: 10-4-2015
In The Supreme Court of India
Issue

Murder - Acquittal upheld

Sections 147, 302/ 149 – Murder – Appeal against acquittal – Identity of accused – Appreciation of evidence – PW3 having turned hostile, the matter completely hinges on the testimony of PW4 – His behaviour in leaving the place of occurrence and not reporting the matter to any one held to be extremely unnatural – Incident having occurred in the darkness and as accepted by PW4 it was not in front of the tractor, the chance and opportunity for him to have sufficiently identified the assailants is also doubtful – There is nothing on record as to how "one child" who was on the tractor, has after investigation been found to be none other than PW5 aged about 22 years and a stout person – View that has weighed with the High Court in reversing the order of conviction and acquitting the respondents-accused is definitely a possible view – Do not see any justification to upset such view taken by the High Court in acquitting the respondent.

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12. Section 302, 201/ 34
STATE OF RAJASTHAN Vs. SURJA RAM
PINAKI CHANDRA GHOSE AND UDAY UMESH LALIT, JJ
Date of Judgment: 10-4-2015
In The Supreme Court of India
Issue

Conviction - Murder – Appeal against acquittal.

Section 302, 201/ 34 – Murder – Appeal against acquittal – Testimony of PW 1 is consistent and not in any way shaken in cross-examination as regards 'S' and he was an equal participant in the crime – His role in bringing

'J' forcibly and making him sit in the vehicle, thereafter making him sit in the front, and finally in making him get down near the well and strangulating him, was rightly relied upon by the Trial Court – High Court committed gross error in granting him benefit of doubt – Given the status of record, such view is not a possible view at all – Judgment and order of the High Court acquitting 'S' liable to be set aside – Conviction as ordered by the Trial Court restored – 'S' convicted under Sections 302 and 201 IPC read with Section 34 IPC and sentenced to life imprisonment and to pay fine of Rs. 5,000/- on the first count and for 3 years and fine of Rs. 1.000/- on the second count – Sentences shall run concurrently.

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13. Section 376(1)
SATWANTIN BAI VS. SUNIL KUMAR & ANR.
PINAKI CHANDRA GHOSE & UDAY UMESH LALIT, JJ.
Date of Judgment: 10-4-2015
In The Supreme Court of India
Issue

Conviction - Rape – Test Identification Parade – Non-holding of.

Section 376(1) – Rape – Testimony of prosecutrix – Test Identification Parade – Non-holding of – Appellant was subjected to sexual intercourse during broad day light – Fact that she was so subjected at the time and in the manner stated by her, stands proved – Three witnesses had immediately come on the scene of occurrence and found that she was raped – Immediate reporting and the consequential medical examination further support her testimony – By very nature of the offence, the close proximity with the offender would have certainly afforded sufficient time to imprint upon her mind the identity of the offender – Appellant had gone to the extent of stating in her first reporting that she would be in a position to identify the offender and had given particulars regarding his identity – Clothes worn by the

offender were identified by her when called upon to do so – There was nothing wrong or exceptional in identification by her of the accused in court – Her testimony found to be completely trustworthy and reliable – Held that the case against Respondent No.1 stands proved – Since the trial court had found the age of the Appellant to be 10-13 years of age, the age taken to be on the maximum scale i.e. 13 year – High Court was not justified in dismissing the revision – No other view was possible -Appeal allowed and t Respondent No.1 convicting for having committed the offence under Section 376(1) IPC and sentence him to undergo imprisonment for seven years and a fine of Rs.5,000/- also imposed which in its entirety shall be made over to the Appellant.

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Evidence Act

14. Sec.118
Sunil @ Jai Singh Rautia Vs. State of Orissa.
S.K. SAHOO, J.
Date of Judgment-06.04.2015
IN THE HIGH COURT OF ORISSA, CUTTACK.
Issue

Evidentiary Value of a child witness.

The prosecution case as per the First Information Report lodged by one Lalu Kerketta (P.W.1) on 20.1.2006 before Inspector-in-charge, Mahila Police Station, Rourkela is that the informant along with his family members were residing near Jalda in Block 'C'. The informant had three daughters and two sons who were also staying with him. On 14.1.2006 during the morning hours, P.W.1 had been to his duty and at about 11.00 a.m., the appellant who was his neighbour came to his house and took away the victim who is one of the daughters of the informant as well as one of his sons Ramesh who was aged about three and half years in a cycle to watch Makar Festival. In between

12.00 to 12.30 p.m., the children returned back home. On 17.1.2006 the victim stated before her mother regarding feeling pain at the time of passing urine. When the mother of the victim asked her as to why she was limping since last two days, the victim disclosed that on the day when she had been to watch Makar Festival along with the appellant and her brother Ramesh, she was taken near a canal where Ramesh was asked to sit and the appellant took her towards the canal and after opening her pant, she was raped by the appellant. The informant returned from his duties and his wife narrated about the incident at about 10.30 p.m. in the night. The victim got up in the morning and the informant also asked her about the incident. The victim confirmed that she had been raped by the appellant. The informant called his brother-in-law who was staying at Biramitrapur but as he did not come, the informant himself went there to Biramitrapur and narrated everything before his brother-in-law and thereafter the report was lodged at the Police Station.

The oral report which was given by the informant was reduced to writing and ultimately Rourkela Mahila P.S. Case No. 5 of 2006 was registered on 20.1.2006 under Section 376 (2) (f) Indian Penal Code against the appellant. P.W.13 Nalita Modi who was the Sub-Inspector of Police, Mahila Police Station took up investigation of the case. She examined the victim, the informant and other persons and recorded their statements, seized the wearing apparels of the victim under seizure list Ext.2. She visited the spot and prepared the spot map Ext.7. The victim was sent for medical examination to Rourkela Government Hospital. The Investigating Officer searched for the appellant and apprehended him on 20.1.2006. The appellant was also sent for medical examination and his wearing apparels were seized under seizure list Ext.6. The I.O. received the medical examination report of the victim. The Station Diary of Jalda Police Outpost was seized. The I.O.

received the medical examination report of the appellant. The biological samples of the victim as well as the appellant which were collected by the Medical Officer were also seized under seizure list Ext.5. The seized materials were sent for chemical examination to R.F.S.L., Sambalpur through learned S.D.J.M., Panposh and after completion of investigation, charge-sheet was submitted.

The evidence of a child witness can be considered in view of the provisions under Section 118 of Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The Court has to take precaution while assessing the evidence of a child witness that he/she is a reliable witness and his/her demeanour reveals like any other competent witness and there was no likelihood of being tutored.

The evidence of a child witness cannot be discarded merely because it is not corroborated by other evidence though as a matter of prudence the Court requires such corroboration. Where the statement of the child witness inspires confidence of the Court and there is no embellishment or improvement in her statement, the evidence of the child witness even though uncorroborated can be acted upon.

No doubt the wearing apparels of the appellant as well as the victim and sealed packet containing semen and pubic hair of the appellant as well as virginal swab of the victim were sent for chemical examination on 15.2.2006 to the Deputy Director, R.F.S.L., Ainthapali, Sambalpur through the learned S.D.J.M., Panposh, Rourkela but the chemical examination report was not furnished by the Deputy Director till the conclusion of the trial. It appears from the order sheet of the learned trial Court that neither the prosecution

took any step to obtain the chemical examination report nor the learned trial Court suo motu called for such a report even though there were materials available on record that seized articles had been dispatched for chemical examination which was an important piece of uneschewable evidence.

It is the duty of the Magistrate to supply the chemical examination report to the accused along with police papers at the time of commitment of the case to the Court of Sessions in view of section 207 Cr.P.C. and Rule 50 of the G.R.C.O. (Criminal) of High Court of Judicature, Orissa if the same is available on record. If the same is not available on record and not supplied to the accused before commitment, it is the duty of the prosecutor as well as the trial Court to see that the chemical examination report is made available even before the charges are framed and copy of such report is furnished to the accused. The trial Court has also a duty and responsibility to send reminder to the Director/Dy. Director of the Forensic Science Laboratory to send the chemical examination report and in spite of such reminder, if no report is furnished, the Court should take concrete steps against the erring officials for non-production of such report in the interest of justice. The Director/Deputy Director of the Forensic Science Laboratories should send the chemical examination report to the concerned Court within a reasonable period preferably in two months of the receipt of seized exhibits for analysis. Forensic Science plays a vital role in criminal justice delivery system providing the investigators with scientific based information through analysis of physical evidence. Unfortunately the police and the prosecutors often fail to obtain results from laboratories quickly enough to determine the accusations against a person. Instances are not unknown where the doctors conducting post mortem reserve their final opinion regarding cause of death of the deceased awaiting viscera report. In such situations, non-receipt of the report

or delayed receipt of report creates obstacles in arriving at truth and hamper the course of justice. Nobody has a right to play with the lives of the persons who are facing trial for a serious charge and also to deprive the victims from getting proper justice. The reports of the Government scientific experts can be used as evidence in view of the provisions under section 294 Cr.P.C. Non-availability of a chemical examination report before the trial Court can have a far reaching consequence in a criminal trial and can cause serious judgmental errors. It is submitted by the learned counsel for the State that due to shortage of Scientific Officers/ Analysts in the Forensic Science Laboratories and huge number of pendency of cases for analysis, there use to be delay in giving the chemical examination report. It is the duty of the State Government to provide sufficient staff and competent officers for examination of the seized exhibits in the Forensic Science Laboratories for speedy and effective analysis and to furnish accurate forensic reports for the proper dispensation of justice delivery system.

In this case even though non-availability of chemical examination report was not raised during trial and it was raised for the first time before this Court in appeal but since in the meantime more than nine years have already passed since the date of dispatch of the articles for chemical examination, I do not think it proper to call for such report from the concerned Forensic Science Laboratory.

Even in absence of chemical examination report, I find that the statement of the victim is reliable and truthful and the same is corroborated by the evidence of her parents as well as by the medical evidence and accordingly I am of the view that the prosecution has successfully established the case against the appellant beyond all reasonable doubt and there is no infirmity in the impugned judgment and order of conviction passed by the

learned trial Court. The learned trial Court has imposed the minimum sentence prescribed for such heinous offence. The measure of punishment in a case of rape depends upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. The learned trial Court considered all the relevant facts and circumstance bearing on the question of sentence and proceeded to impose the minimum sentence commensurate with the gravity of the offence. Though the section provided for imposition of lesser sentence than ten years for any adequate and special reasons but the learned trial Court found no extenuating or mitigating circumstances available on the record to justify imposition of any sentence less than the prescribed minimum to the appellant. To show mercy in a case of a heinous crime like this would be travesty of justice and the plea for leniency would be wholly misplaced.

In the result, the impugned judgment and order of conviction of the appellant for offence under Section 376 (2) (f) Indian Penal Code and the sentence of R.I. for a period of ten years and payment of fine of Rs.30,000/-, in default of payment of fine to undergo further R.I. for a period of one year more as was imposed by the learned trial Court is hereby confirmed.

Accordingly, the appeal stands dismissed. Let a copy of the judgment be sent to the learned Registrar General of this Court for onward communication to all the learned District and Sessions Judges for their information and necessary action at their end with reference to the observations made in paragraph 8 above who in turn are expected to communicate to all the trial Courts under their respective jurisdiction about the same. A copy of the judgment be also sent to the Chief Secretary of State of Odisha for taking immediate remedial steps for appointing sufficient staff and competent analysts in the Forensic Science Laboratories for speedy and effective examination of seized exhibits and furnishing accurate forensic reports within a reasonable period of time to facilitate dispensation of justice.

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15. Article 243- ZG & 226 of the Constitution.
Madhaba Chandra Pradhan Vs. State of Orissa and others.
DR. A. K. RATH, J.
Date of Judgment: 15.4.2015
IN THE HIGH COURT OF ORISSA, CUTTACK
Issue

Bar to interference by courts in electoral matters.

Bereft of unnecessary details, the short facts of the case of the petitioner are that the Additional District Magistrate, Nayagarh in exercise of power under Section 12(3-A) of Odisha Municipal Act, 1950 read with Rule 2-A(1) of Odisha Municipal (D.W.R.S. & C.E.) Rules, 1994 (hereinafter referred to as "the Act and Rules) invited objections and suggestions on the proposed delimitation of wards and reservation of seats by enclosing therein the draft notification dated 26.8.2014 for conducting election of NAC, Ranpur. A copy of the said notification was affixed on the notice board of NAC. Simultaneously, a copy of the same was also submitted to the Director of Municipal Administration. In the said draft notification, reservation of seats for different categories of citizens had been mentioned. Since no objection was filed to the said draft notification, final notification was made. Thereafter some persons filed appeal challenging the said final notification issued by the Additional District Magistrate, Nayagarh. The petitioner was not a party to the said appeal. The appellate authority by order dated 24.10.2014 modified the final notification and the same was communicated on 27.10.2014 to the District Magistrate, Nayagarh. Thereafter, the District Magistrate, Nayagarh divided the area of Ranapur NAC into fifteen wards. Ward No.9 was reserved for B.C.C. (Women). In the earlier notification, this ward was reserved for B.C.C. candidates. Thereafter, the Election Officer, Ranpur notified the election programme on 10.3.2015 as per the notification dated 3.3.2015 of the

State Election Commission. The petitioner filed nomination by depositing the required fees. He was allotted a symbol of ladder (Nishuni). The date of election was fixed to 7.4.2015. While the matter stood thus, on 31.3.2015, the District Magistrate, Nayagarh reported that the Election Officer of Ranpur NAC has published the reservation statement of wards wrongly to the State Election Commission, whereafter the State Election Commission cancelled the notification dated 3.3.2015 in respect of Ranpur NAC and fixed a date and time afresh for holding election for the Ranpur NAC, vide Annexure-7. The grievance of the petitioner is that earlier the ward was reserved for B.C.C. candidates, but subsequently the same is reserved for B.C.C. (Women) for which he has been debarred from contesting the election.

Heard Mr.S.K.Samantaray-2, learned counsel for the petitioner and Mr.B.P.Pradhan, learned Additional Government Advocate for the State-opposite party.

Learned counsel for the petitioner submits that there is no reason or rhyme to cancel the notification no.1024/SEC dated 3.3.2015 issued by the State Election Commission. Pursuant to the earlier notification, the petitioner filed his nomination paper with requisite fees. Thereafter, a symbol was allotted to him. At this juncture, the State Election Commission by notification dated 31.3.2015, vide Annexure-7, cancelled the earlier notification basing on the letter of the District Magistrate, Nayagarh. By letter dated 31.3.2015, the District Magistrate reported that the Election Officer of Ranpur NAC has published the reservation status of wards wrongly in notice issued by him on 10.3.2015 for which the election process has been vitiated. He further submits that in the latter notification, the ward has been reserved for B.C.C. (Women). The petitioner has been debarred from contesting the election for all time.

Learned counsel for the State submits that since the process of election has been set into motion, the writ petition is not maintainable. The seminal point that hinges for consideration of this Court is as to whether this Court in exercise of its power under Article 226 of the Constitution can intervene to stop election in the midway when the process of as the process of election has been set into motion.

Before proceeding further, it is apposite to quote Article 243- ZG of the Constitution.

"243ZG. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

The Constitution Bench of the Supreme Court in *N.P.Ponnuswami Vrs. Returning Officer, Namakkal Constituency, Namakkal,* A.I.R.1952 SC 64 held that the right to vote or stand as a candidate for election is not a civil right, but is a creature of statute or special law and must be subject to the limitations imposed by it. It was further held that the law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special Tribunal and should not be brought up at an intermediate stage before any Court.

The same view was echoed in *Nanhoo Mal and others Vrs. Hira Mal and others*, AIR 1975 SC 2140. It was held that after the decision of the Supreme Court in *N.P.Ponnuswami (supra),* there is hardly any room to entertain the application under Article 226 of the Constitution in matters relating to election. In both the cases, the Supreme Court had occasion to deal

with the provisions of the Representation of the People Act. In *Anugrah Narain Singh and another Vrs. State of UP and others*, (1996) 6 SCC 303, the Supreme Court on interpretation of 243-ZG of the Constitution, which pertains to stay of election to the Municipal Corporation, held that once the process of election has been set into motion, the Court should not intervene to stop election in the mid way. In the case of *Election Commission Vrs. Ashok Kumar and others*, AIR 2000 SC 2979, a detailed consideration has been made with regard to the power exercised by the Court. In paragraph-32 of the said report, the general principles have been summarized in the following manner:-

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove;

(1) If an election, (the terms election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it sub-serves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 (b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the every nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

In view of the bar contained in Article 243ZG of the Constitution and authoritative pronouncement of the Apex Court in the decisions cited supra, a conclusion is irresistible that when the election process has been set into motion, the High Court in exercise of its jurisdiction under Article 226 of the Constitution should not interfere with the process of election. As the election process has been set in motion, this Court is not inclined to entertain the writ application. Accordingly, the same is dismissed.

* * * * *

16. Section 61

Ramesh Chandra Mohapatra Vs. Revenue Divisional Commissioner, Sambalpur and others.

DR. A. K. RATH, J.

Date of Judgment: 03.4.2015

IN THE HIGH COURT OF ORISSA, CUTTACK

Issue

Revision - Meaning of entertained as in OPDR Act and settle the issue.

The facts necessary to appreciate the controversy in this writ application are as follows:- Certificate Case No.1 of 1993 was initiated by the Sub-Collector, Keonjhar, opposite party no.3, against the petitioner to recover an amount of Rs.1,18,361.79 on the ground that the petitioner, who is Ex-Nazir of Sub-Divisional Office, Anandapur misappropriated the Government money. The Certificate Officer-cum- Sub-Collector, Keonjhar directed the petitioner to pay the above amount by 5.2.1994. Against the said order, the petitioner-CDr preferred Certificate Appeal Case No.05 of 1994 before the Additional District Magistrate, Keonjhar. The said appeal having been dismissed, the petitioner challenged the same before this Court in O.J.C.No.4464 of 1990. Further, the maintainability of the certificate proceedings was also challenged before this Court in O.J.C.No.2744 of 1995. The writ applications were dismissed. While the matter stood thus, by order 19.6.2012, the Certificate Officer issued sale proclamation. Thereafter, the petitioner filed an appeal before the A.D.M., Keonjhar, which was registered as Appeal No.2 of 2012. By order dated 12.4.2013, the A.D.M., Keonjhar dismissed the said appeal. Against the said order, he filed Certificate Revision before the Revenue Divisional Commissioner, Sambalpur on 18.8.2014. The grievance of the petitioner is that till yet the revision petition filed by him has not been registered in view of the fact that the petitioner has not paid all

amounts due under the certificate to the Certificate Officer and produced a certificate from the Certificate Officer showing such payment.

Heard Mr.P.K.Kar, learned counsel for the petitioner and Mr.P.K.Muduli, learned Additional Standing Counsel for the State. Section 61 of the O.P.D.R. Act reads as follows:-

"61. Revision – An order passed in an appeal under Section 60 may be revised by-

(a) if the order was passed by an Additional District Magistrate or by a Collector, the Revenue Divisional Commissioner;

(b) if the order was passed by a Revenue Divisional Commissioner, the Board of Revenue :

Provided that where the certificate-debtor makes an application shall be entertained unless he has paid all amounts due under the certificate to the Certificate Officer, whether or not, under protest made in writing at the time of payment, and produces a certificate from the Certificate Officer showing such payment to have been made."

The question, thus, arises as to whether the Revenue Divisional Commissioner, Sambalpur can refuse to register the case for non-payment of the amounts due under certificate to the Certificate Officer taking a cue from the words "no such application shall be entertained unless he has paid all amounts due under the certificate to the Certificate Officer" appearing in proviso to Section 61 of the O.P.D.R. Act.

The subject-matter of dispute is no more *res integra*. In *Lakshmiratan Engineering Works Ltd. Vrs. Assistant Commissioner (Judicial) I, Sales Tax, Kanpur Range*, AIR 1968 SC 488, the Hon'ble Supreme Court had occasion to construe the meaning of the word 'entertained' in proviso to Section 9 of the U.P. Sales Tax Act, 1948 and the Court took the view that the word 'entertain' means "admit to consideration". The Supreme Court while interpreting the word 'entertained' contained in Section 9 of the U.P. Sales

Tax Act, 1948 and the proviso thereto made a distinction between the expressions 'appeal' and 'memorandum of appeal'. Section 9 contemplated that the appeal could not be entertained without the proof being given along with memorandum of appeal that the tax had been paid. While dealing with the meaning of the word 'entertained' Hidayatullah, J. in paragraphs 7 and 10 of the judgment observed as under:-

"(7) To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word 'entertained' in this context? Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The dictionary meaning of the word 'entertain' was brought to our notice by the parties and both sides agreed that it means either 'to deal with or admit to consideration'. We are also of the same opinion. The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso ? Is it 'entertained' when it is filed or is it 'entertained' when it is admitted and the date is fixed for hearing or is it finally 'entertained' when it is heard and disposed of ? Numerous cases exist in the law reports in which the word 'entertained' or similar cognate expressions have been interpreted by the courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present, we must say that if the legislature intended that the word 'file' or 'receive' was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expressions have in fact been used.....

* * *

(10).....When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax."

In *Hindustan Commercial Bank Ltd. Vrs. Punnu Sahu,* (1971) 3 SCC 124, the term 'entertain' as found in the proviso to Order XXI Rule 90 Code of Civil Procedure (CPC) fell for consideration of the Supreme Court. It was held that the term 'entertain' in the said provision means "to adjudicate upon" or "to proceed to consider on merits" and did not mean "initiation of proceeding". In view of the authoritative pronouncement of the apex Court in the cases cited *(supra)*, the conclusion is irresistible that the Revenue Divisional Commissioner, who is the revisional authority, under Section 61 of the OPDR Act has no option but to register the case and assign the number. Failure to deposit the amount due under the certificate to the Certificate Officer and production of certificate from the Certificate Officer evidencing payment, the consequence will ensue i.e., the revision will not be admitted to consideration. Admission of the revision is subject to the condition that the same is free from defects.

On taking a holistic view of the matter, this Court directs the Revenue Divisional Commissioner, Sambalpur-opposite party no.1 to register the case and assign the number. The writ application is allowed. No costs.

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17. Section 24-C
Bishnupriya Mishra *Vs.* State of Orissa and others
DR. B.R.SARANGI, J.
Date of Judgment: 07.04.2015
IN THE HIGH COURT OF ORISSA, CUTTACK
Issue

Entitlement of relief under the Act.

The short fact of the case, in hand, is that the respondent no.5 was appointed as a Classical Teacher on 07.12.1989 in Shree Jagannath Girls' High School, Barbatia in the district of Balasore and she joined the said post on 11.12.1989. Due to unauthorized absence for a long period, a show cause notice was issued calling upon her to submit explanation on 05.01.1994, to which she did not respond. Then another show cause notice was issued on 02.03.1994 to which she also did not respond and continued to remain absent unauthorizedly. Therefore, the Managing Committee of the School passed a resolution on 08.10.1994 to conduct an enquiry against respondent no.5 for her misconduct. On the basis of the inquiry report, the Managing Committee decided to terminate the services of respondent no.5 by passing a resolution on 13.01.1995. Thereafter, following a due procedure of selection, the present appellant was appointed as a Classical Teacher on 15.03.1995. Accordingly, the appointment order was issued on 03.04.1995, pursuant to which, the appellant joined on 10.04.1995. The Government of Orissa in its School and Mass Education Department on 06.06.1995 notified the School in question to receive grant-in-aid w.e.f. 01.06.1994. Therefore, the School in question became an aided educational institution within the meaning of Section 3(b) of the Act from the date of notification, i.e., 06.06.1995. The appellant along with Sri Shrihari Pradhan and Sri Parthasarati Patra filed a writ application bearing O.J.C No. 11466 of 2000 before this Court for approval of their

appointment and for release of grant-in-aid. The Inspector of Schools, Balasore Circle, in his order dated 16.02.2002 stated that the appellant has been appointed as a Classical Teacher on 10.04.1995 on removal of respondent no.5 vide Managing Committee Resolution dated 13.01.1995. The respondent no.5 approached this Court by filing a writ application seeking for release of grant-in-aid in her favour and this Court in OJC No. 5788 of 1998 directed that the respondent no.5 may approach the learned Education Tribunal under Section 24-B of the Act ventilating her grievance with regard to approval of her appointment and release of grant-in-aid as a Classical Teacher of the School in question. Subsequently, the respondent no.5 filed GIA Case No. 113 of 2007 before the State Education Tribunal seeking for a declaration that her termination is illegal and further seeking for declaration that she is deemed to continue in service and is entitled to get all service benefits. On consideration of the GIA application filed by respondent no.5, the learned Education Tribunal passed the impugned order on 28.03.2011 holding that the termination of respondent no.5 is illegal and declaring that respondent no.5 is deemed to be continuing in the service and is entitled to all service benefits. Hence this appeal.

In view of the facts pleaded above, it is to be considered

(i) Whether, the Education Tribunal has jurisdiction to entertain the GIA Case at a belated stage?

(ii) Whether the Education Tribunal is justified in action extending the benefits of the respondent no.5?

Issue No. (i)

The undisputed fact is that respondent no.5 was appointed as a Classical Teacher on 07.12.1985 in Sri Jagannath Girls' High School, Barabatia in the district of Balasore, pursuant to which she joined on 11.12.1989. She remained absent unauthorizedly for a long period.

Subsequently, a show cause notice was issued on 05.01.1994 calling upon her to submit her explanation. But she did not respond to the same. Again another notice of show cause was issued on 02.03.1994 to which also she did not respond. Therefore, the Managing Committee, being the appointing authority, passed a resolution on 08.10.1994 deciding to conduct an inquiry against respondent no.5 for her misconduct. On the basis of such inquiry report, the Managing Committee decided to terminate respondent no.5 from service by passing a resolution on 13.01.1995. Accordingly the termination order was issued on 15.01.1995. Much reliance has been placed on the documents filed in Annexure-5 at page 52 of the brief where the application for recognition of the School was filed before the Board of Secondary Education, Orissa and in page 54 of the brief, under the heading "particulars of the staff working in the school", though the name of respondent no.5 is appearing but the said document does not contain the signature of the President and Secretary of the institution. Similarly, in Annexure-6 also there is no signature of the President and Secretary of the Governing Body of the School. Therefore, these documents cannot be construed to be valid, on which no reliance can be placed with regard to continuance of the respondent no.5 in the School. Except Annexures 5 and 6 no other documents have been brought to notice of the Court by respondent no.5 with regard to her continuance of service. After termination of service of respondent no.5 w.e.f. 15.01.1995, the Government of Orissa issued notification vide Annexure-3 dated 06.06.1995 declaring the School in question to receive Grant-in-Aid w.e.f. 01.06.1994. By the time notification came into force on 06.06.1995, respondent no.5 had already been terminated from service w.e.f. 15.01.1995. Therefore, the termination of respondent no.5 was during the period the school was recognized but unaided high school. Referring to the law laid

down in Arjun Chandra Jena(supra) in paragraph-5, it is held that if termination took place during the unaided period, appeal lies before the Director in view of the Government instruction dated 27.03.1983. Since the termination of the respondent no.5 was done during unaided period then she could have preferred an appeal before the Director, Secondary Education, Orissa in terms of the Government instruction dated 27.03.1983 within a period of 30 days from the date of termination. But in the present case, respondent no.5 instead of preferring an appeal before the Director, Secondary Education, Orissa, moved an application before the Education Tribunal under Section 24-B of the Act challenging his termination and seeking for a declaration that the termination is illegal and claimed for other consequential benefits. Section 24-B of the Act reads as follows.

"24-B. Adjudication by Tribunal- (1) The Tribunal shall have jurisdiction, power and authority to adjudicate all disputes and differences, between the Managing Committee or, as the case may be, the Governing body of any private educational institution and any teacher or employee of such institution or the State Government or any officer or authority of the said Government, relating to or connected with the eligibility, entitlement, payment or non-payment of grant-in-aid. (2) Any person, aggrieved by an order pertaining to any matter within jurisdiction of the Tribunal, may make an application to the Tribunal for the redressal of his grievance. (3) On receipt of an application under Sub-section (2), the Tribunal shall, if satisfied after such inquiry as it may deem necessary that the application is a fit case for adjudication by it, admit such application, but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons: Provided that no application before the Tribunal seeking a claim of grant-in-aid against State Government or any Officer or authority of the said

Government shall be admitted, unless the applicant has served a notice on the State Government or concerned officer or authority furnishing the details of the claim and a period of two months has expired from the date of receipt of the said notice by the State Government or, as the case may be, the concerned officer or authority. (4) The Tribunal shall not admit an application under Sub-section (2), unless it is made within one year from the date of expiry of the period of two months referred to in Sub-section (3). (5) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure,1908, but shall be guided by the principles of natural justice and, subject to any rules made by the Government, shall have power to regulate its own procedure. (6) All the proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860."

On perusal of the above mentioned provisions, it is seen that, the Tribunal has got jurisdiction to adjudicate the dispute relating to or connected with the eligibility, entitlement, payment or non-payment of grant-in-aid. As the termination of respondent no.5 has been done much prior to the notification issued declaring the institution as aided institution, the learned Tribunal could not have entertained the application filed by respondent no.5 as it lacked jurisdiction, more particularly, the Tribunal is to adjudicate the dispute of an existing employee not of a terminated employee. Even though the respondent no.5 was terminated from service w.e.f. 15.01.1995, but she approached the Orissa Education Tribunal by filing GIA case no. 113 of 2007, after long lapse of more than 12 years. But no valid justifiable reasons have been assigned in the impugned order by the learned Tribunal as to how he could entertain the application filed by respondent no.5 at a belated stage. In absence of any conjoint reason to entertain the

application at a belated stage, when the forum has no jurisdiction to entertain the application, this Court is of the considered view that the learned Tribunal having lacked jurisdiction, could not have entertained such GIA Case and passed the impugned order.

Issue no.(ii)

As it appears, respondent no.5 has not assailed her termination order dated 15.01.1995 at the relevant point of time, thereby she accepted the position. But subsequently, she tried to make out a different case in the G.I.A. application before the learned Tribunal stating that she was not going to School since 30.03.1998. However, on her own admission, since the respondent no.5 was not going to School w.e.f. 30.03.1998, the learned Tribunal could not have entertained the application in 2007 and ultimately, extended the benefit referring to Govinda Rout (Supra) holding that the termination of the respondent no.5 made on 15.01.1995 is illegal. But the ratio of the said case is not applicable to the present context as it relates to an aided School as the cause of action arose in that case during aided period. Therefore, the learned Tribunal without any application of mind, erroneously applying the ratio of Govinda Rout (supra) to the present case, condoned the delay of more than 12 years and passed the impugned judgment. The apex Court in Krishnadevi Malchand Kamathia & Ors. (supra) in paragraphs 17 and 21 held as follows:

"17. It is settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void.

21. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for

seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

The order of termination dated 15.01.1995 has not been challenged by respondent no.5 in due time. The learned Tribunal could not have declared the said termination as illegal. Accepting the case of the respondent no.5 that she was continuing in the School till 30.03.1995, then in that case also applying the ratio of the case of Orissa Bridge & Construction Corporation Ltd. (Supra), absence from duty in the beginning may be misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the terms of service came to an end automatically without requiring any order to be passed by any employer. Though this Court by order dated 23.11.2000 passed in O.J.C Case No. 11466 of 2000 directed the authorities to consider the approval of her appointment against the post of Classical Teacher and release of grant-in-aid, the Inspector of Schools did not approve the appointment of the appellant only on the ground that she was appointed after 01.06.1994 as per the executive instruction issued by the State Government. Since subsequently, the Government clarified the position in the circular letter dated 30.07.2008 that those who have been appointed before notification of the School and after 01.06.1994, their appointments would be approved. So, on the basis of the Government circular dated 30.07.2008 the appointment of Sri Srihari Pradhan which was also rejected by virtue of the said order dated 16.02.2002 under Annexure-4, was approved subsequently vide order dated 27.07.2012.

Applying the same to the present context, even though the appointment of the appellant has been done after 01.06.1994 in view of the Government notification dated 30.07.2008, the appellant's appointment should have been approved and he should be extended with the benefit of grant-in-aid as due and admissible to her as she had been appointed by following due procedure of selection by Managing Committee of the School in question. But the learned Tribunal, who lacks jurisdiction to entertain the application filed by respondent no.5 without considering the fact & law, passed the impugned the judgment dated 28.03.2011in Annexure-8, which cannot be sustained in the eye of law. Accordingly the same is quashed.

In view of the aforesaid facts and circumstances, the impugned judgment dated 28.03.2011 passed by the learned State Education Tribunal in G.I.A Case No.113 of 2007 in Annexure-8 having been quashed, the appeal is hereby allowed. No order as to costs.

* * * * *

18. **Section 7, 13(1) (d) r/w 13(2) and 20**
C. CHANDRASEKARAIAH Vs. STATE OF KARNATAKA
MADAN B. LOKUR & UDAY UMESH LALIT, JJ.
Date of Judgment: 13-4-2015
In The Supreme Court of India
Issue

Corruption – Presumption – Conviction.

Section 7, 13(1)(d) r/w 13(2) and 20 – Appeal against Conviction – Illegal Gratification – Presumption – Though there is variation in their version as regards the actual words uttered by the appellant, both PWs 1 and 3 are consistent that such demand was made – Both are again consistent that

money was made over by PW-3 complainant which was received in right hand by the appellant, that the money was kept by the appellant in the hip pocket of the trouser and that the right hand of the appellant upon being dipped in the solution turned pink, whereas his left hand did not -As regards other features of the matter i.e. after the raiding party had entered the Police Station, they also stand corroborated by the other witnesses – Immediate explanation offered by the appellant was that the money was thrust into his pocket but this was given up and the appellant remained silent – In the absence of any evidence offered by the appellant to explain the circumstances, the presumption under Section 20 of the Act was not in any way rebutted and the prosecution case stood completely established.

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