O.J.A. MONTHLY REVIEW OF CASES

ON

CIVIL, CRIMINAL & OTHER LAWS, 2014

(NOVEMBER)

Odisha Judicial Academy, Cuttack, Odisha

ODISHA JUDICIAL ACADEMY
MONTHLY REVIEW OF CASES ON
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I N D E X

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2. Sec.11 & O.35 - R.5 , C.P.C.

Purshottam Das Tandon Dead By LRs. Vs. Military Estate Officer & Ors. **AIR 2014 SC 3555**

Ranjan Gogoi & M.Y. Eqbal , JJ.

Date of Judgment- 03 -08-2014

Issue

Res-judicata –Appellant owner of building over cantonment land –Petitioner against resumption dismissed as title cannot be decided in writ petition.

Relevant Extracts

The challenge in this appeal is against the common order dated 27.05.2005 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 13353 of 1992 and Civil Misc. Writ Petition No. 28558 of 2002. The High Court, by the impugned order, has dismissed both the writ petitions filed by the appellant and has further held that the entitlement of the appellant to the reliefs claimed therein will have to be adjudicated in a suit for declaration of title.

The suit property is Bungalow No. 29, Chaitham Lines, Allahabad covered by Survey No. 143, Old Cantonment, Allahabad. There is no dispute that late Lala Manohar Lal grandfather of the present appellant had purchased the said property for a sum of Rs. 2900/- in a Court auction held on 25.11.1848. The auction sale was confirmed by the Court on 27.12.1848. The possession of the property of the predecessors-in-interest of the appellant and thereafter of the appellant is not in dispute. The Union of India issued a resumption notice dated 26.12.1968 in respect of the property in question. The appellant instituted Civil Misc. Writ Petition No. 175 of 1969 before the Allahabad High Court contending that the property was purchased by his predecessors-in-interest and had fallen to his share in a family settlement. The Union of India sought to resist the claim of the appellant by asserting that the land on which the property stood was the subject of old grant dated 12.09.1836 issued by the Governor General in Council under which a right of resumption was vested in the Union. It was further contended on behalf of the Union of India that under the clauses of the aforesaid grant it was only the building which was conveyed to the predecessors of the appellant and the same could always be resumed subject to payment of compensation to be assessed on the cost of the building. It appears that the Union of India had also asserted that, in any event, under the terms of the old grant title to the land had remained with the Union and was not and in fact could not have been transferred to the predecessors-in-interest of the appellant.

The writ petition was disposed of by the Allahabad High Court on 06.07.1970 by holding that as highly disputed questions of fact relating to title had arisen such issues would not be appropriate for adjudication in the exercise of the writ jurisdiction. The parties, therefore, were relegated to the remedy of a civil suit. However, in the said proceeding an undertaking was made on behalf of the Union of India that the appellant would not be evicted from the property except in accordance with law. Around this time the appellant instituted Civil Suit No. 147 of 1971 in the Court of the Additional District Judge, Allahabad seeking

eviction of Allahabad Polytechnic and Harijan Sewak Sangh who were the tenants and sub-tenants in the property. The Union of India served notice upon the aforesaid two occupants of the property demanding rent claiming to be the owner thereof. Allahabad Polytechnic, therefore, filed an inter-pleader suit No. 161 of 1973 in the Court of the Civil Judge, Allahabad impleading the appellant and the Union of India as Defendants 1 and 2 in the suit. In the said suit it was prayed that the defendants may inter-plead so that the right to collect rent of the property in dispute could be determined. In Second Appeal No.2866 arising out of the aforesaid suit, the decree of the learned trial court that the appellant and not the Union of India was entitled to receive rent was affirmed. The said decree was, in turn, affirmed by this Court on 22.02.1984 by dismissal of the special leave petition filed by the Union of India. It appears that on the strength of the aforesaid order passed by this Court the appellant moved an application before the Executive Officer of the Cantonment Board, Allahabad, for mutation of his name in respect of the property in question and for permission to deposit the property tax etc. The aforesaid application was filed on the claim that the appellant is the owner of the property. It also appears that the appellant had filed an application dated 08.04.1977 seeking exemption of excess land under the provisions of the U.P. Urban Land Holding Ceiling Act, 1932 on the ground that he intended to raise accommodation thereon for economically weaker sections. What happened thereafter is not very relevant except that on 21.04.1992 Civil Misc. Writ Petition No. 13353 of 1992 was filed by the appellant for issue a writ of mandamus directing the respondents to mutate the name of the petitioners as owners of Bungalow No. 29 Chaitham Lines, Allahabad and also to accept the property tax. The aforesaid writ petition was dismissed on 07.01.2000 by holding that in view of the judgment dated 6.7.1970 passed in Civil Misc. Writ Petition No. 175 of 1969 which was binding on the parties the dispute required resolution in a regular civil suit which could be filed by either of the parties in terms of the judgment of the High Court dated 06.07.1970. The issue as to whether the judgment of the High Court in Second Appeal No. 2866 of 1978 arising out of the inter-pleader suit would operate as a res judicata on the question of title to the property was not decided by the High Court. The aforesaid judgment and order of the High Court dated 07.01.2000 was the subject matter of challenge before this Court in Civil Appeal No. 7284 of 2001 at the instance of the appellant. It appears that the appellant had also filed an application before the competent authority under Section 181 of the Cantonment Act, 1924 for sanction of plans for raising further additional construction on the land. The said application was rejected on 14.03.2002. The order of rejection available in the original records of the case indicates that the rejection was made in view of the resumption order dated 26.12.1968 and also on account of objections of the cantonment authority with regard to the ownership of the appellant to the land. Aggrieved, the appellant filed Civil Misc. Writ Petition No. 28558 of 2002. In the said writ petition while the appellant asserted his ownership of the property i.e. Bungalow as well as the appurtenant land the Union of India denied such ownership. The High Court of Allahabad by its order dated 05.03.2003 disposed of the writ petition by requiring the appeal filed by the appellant under Section 274 of the Cantonment Act against the order of rejection dated 14.03.2002 which was pending, to be disposed of. However, the High Court in its aforesaid

order dated 05.03.2003 recorded findings/observations to the effect that in Second Appeal No. 2866 of 1978, arising out of the inter- pleader suit, the property in dispute has already been held by the High Court to be belonging to the appellant and that the said decision was upheld by this Court on 22.02.1984. On the said basis the High Court recorded its conclusion that the question of title to the property had become res-judicata and cannot be raked up again. The aforesaid judgment dated 05.03.2003 was challenged before this Court by the Cantonment Board in Civil Appeal No. 6637 of 2003. Both the appeals were disposed of by this Court on 19.12.2003 by remanding the matter to the High court in view of the apparent inconsistency in the two orders of the High Court on the issue of res-judicata. The present impugned order dated 27.05.2005 of the High Court has been passed pursuant to the aforesaid remand made by this court by its order dated 19.12.2003. We have heard Shri S.R. Singh, learned senior counsel for the appellant and Shri R.S. Suri, learned senior counsel for the respondents. Having regard to the nature of the dispute and the highly contentious issue raised, if in view of the earlier order dated 06.07.1970 passed in Civil Misc. Writ Petition No.175 of 1969, the High Court had dismissed the Writ Petitions leaving it open for the appellant to avail the remedy of civil suit to get the title to the property adjudicated by a competent civil court, no fault, muchless any infirmity, can be found so as to warrant our interference. Accordingly, the civil appeal will have to be dismissed which we hereby do.

Before parting, we deem it necessary to mention that though the litigation between the parties in the present case has been going on for nearly five decades there is some lack of clarity whether it is title to Bungalow No.29, Chaitham Lines, Allahabad or is it title to the land over which the said property is located that has been the bone of contention between the parties over this great expanse of time. Though the resumption notice dated 26.12.1968 leading to Civil Misc. Writ Petition No. 175 of 1969 was in respect of the bungalow, the subsequent claim of the appellants seem to be to the land itself in view of the reliefs sought in the Civil Misc. Writ Petition No. 13353 of 1992 and Civil Misc. Writ Petition No.28558 of 2002. The same, as noticed, were instituted after rejection of the appellant's claims made in the application/representations filed before the cantonment authority for reliefs that were based on claims of ownership of the land. The stand of the cantonment authority in the Civil Misc. Writ Petition No.175 of 1969, noted by us, is based on the terms of the old grant issued by the Governor General in Council on 12.09.1836. The legal effect of the terms of the said grant has been dealt with by this Court in Chief Executive Officer Vs. Surendra Kumar Vakil & Ors.and Union of India & Ors. Vs. Kamla Verma and have been understood to be conveying a lease of the building standing on the cantonment land with the power of resumption in the cantonment authority subject to payment of compensation for the cost of the building and not as a lease of the land itself. The above position has been emphasized for being kept in mind while dealing with all possible future litigations concerning the property in question without, of course, expressing any opinion on the merits of the claims/contention of any of the parties.

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3. Sec.31, Cr.P.C.

Duryodhan Rout Vs. State of Orissa. **AIR 2014 SC 3345**

Sudhansu Jyoti Mukhopadhaya & Dipak Misra ,JJ.

Date of Judgment- 01-07-2014

Issue

Sentences for several offences in one trial –Person was sentenced of conviction of several offences , including one that of life imprisonment –Proviso to S.31(2) shall come into play –No consecutive sentence can be imposed in such case –Therefore order imposing the sentence under Section 376 (f)/302/201 ,IPC to run consecutively –Illegal.

General Clauses Act (10 of 1897), Sec.3 (27)

Term "imprisonment" includes "imprisonment of life".

Section 45 of the Indian Penal Code defines life as the word life denotes the life of a human being, unless the contrary appears from the context. The word imprisonment has not been defined either in the Code of Criminal Procedure or in the Indian Penal Code. As per the General Clauses Act, 1897 under Section 3(27) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code. The definition of imprisonment under the General Clauses Act would, therefore, in case of life imprisonment mean imprisonment for life/imprisonment for the remainder of the convict's life. From the aforesaid decisions rendered by this Court, it is clear that a sentence of imprisonment for life means a sentence for entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under the provisions of the Criminal Procedure Code. Section 31 of Cr.P.C. relates to sentence in cases of conviction of several offences at one trial. Proviso to Sub Section (2) to Section 31 lays down the embargo whether the aggregate punishment of prisoner is for a period of longer than 14 years. In view of the fact that life imprisonment means imprisonment for full and complete span of life, the question of consecutive sentences in case of conviction for several offences at one trial does not arise. Therefore, in case a person is sentenced of conviction of several offences, including one that of life imprisonment, the proviso to Section 31(2) shall come into play and no consecutive sentence can be imposed.

In view of the proviso appended to Section 31 of the Criminal Procedure Code, we are of the opinion that the High Court committed a manifest error in sentencing the appellant for 20 years rigorous imprisonment. The maximum sentence imposable being 14 years and having regard to the fact that the appellant is in custody for more than 12 years. Now, we are of the opinion that interest of justice would be subserved if the appellant is directed to be sentenced to the period already undergone. In the recent judgment in Ramesh Chilwal alias Bambayya vs. State of Uttarakhand, (2012) 11 SCC 629, this Court held:

"4. Since this Court issued notice only to clarify the sentence awarded by the trial Judge, there is no need to go into all the factual details. We are not inclined to modify the sentence. However, considering the fact that the trial Judge has awarded life sentence for an offence

under Section 302, in view of Section 31 of the Code of Criminal Procedure, 1973, we make it clear that all the sentences imposed under IPC, the Gangsters Act and the Arms Act are to run concurrently."

In view of the aforesaid discussions and decisions rendered by this Court, we hold that the Trial Court was not justified in imposing the sentence under Section 376(f)/302/201 IPC to run consecutively. The High court failed to address the said issue. For the reasons stated above, while we are not inclined to interfere with the order of conviction and the sentence, considering the fact that the accused has been awarded life imprisonment for the offence under Section 302, we direct that all the sentences imposed under Indian Penal Code are to run concurrently. The judgment passed by the Session Judge as affirmed by the High Court stands modified to the extent above. The appeals are allowed in part with the aforesaid observations.

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4. Sec.125 , Cr.P.C.

Jaiminiben Hirenbhai Vyas Vs. Hirenbhai Rameshchandra Vyas. **MANU/SC/1046/2014, 2014(13)SCALE 104**

Jasti Chelameswar & Sharad Arvind Bobde, JJ.

Date of Judgment: 19.11.2014

Issue

Criminal Matters - Matters Relating To Maintenance Under Section 125 of Cr.P.C. Family - Grant of maintenance - Date of payment - Determination thereof - Section 125of Criminal Procedure Code, 1973 and Section 24 of Hindu Marriage Act, 1955 – High Court reversed Family Court's order and granted maintenance to Appellant-Wife - However, maintenance was granted from date of order - Hence, present appeal - Whether High Court ought to have granted maintenance from date of application for maintenance instead of date of order - Held, maintenance could be awarded from date of order, or, if so ordered, from date of application for maintenance, as case might be - For awarding maintenance from date of application, express order was necessary - High Court had not given any reason for not granting maintenance from date of application - Circumstances eminently justified grant of maintenance with effect from date of application in view of finding that Appellant had worked before marriage and had not done so during her marriage - There was no evidence of her income during period parties lived as man and wife - Respondent had been directed to pay maintenance from date of application for maintenance - Impugned order reversed - Appeal allowed.

Relevant Extract

This appeal has been preferred by a wife and a minor daughter. The Family Court directed payment of interim maintenance to wife and minor daughter @ Rs. 6,000/- per month Under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code of Criminal Procedure'). Interim maintenance was also ordered Under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'H.M. Act') @ 3,000/- per month payable to both. Eventually, the Family Court disposed the maintenance proceedings finally by the Order dated 31.01.2009. By this Order the Family Court granted maintenance in favour of daughter @ Rs. 5,000/- per month from the date of judgment. The Family Court, however, took

the view that the Appellant-wife would not be entitled to receive any amount more than the interim maintenance which she is receiving under the H.M. Act.

On the Appellant's application for maintenance made for herself and her children, the Family Court granted maintenance in the sum of Rs. 5,000/- only to her daughter Under Section 125 Code of Criminal Procedure The son was living with the father who was maintaining him and was therefore not granted maintenance. The main ground for denying maintenance to the Appellant was that she was found to have been working before her marriage and the Family Court was of the view that she could earn her living even now after the separation and therefore she was denied maintenance. This view did not find favour with the High Court, which noted that the Appellant had stopped working after her marriage and had given birth to two children. She had been only looking after the family and had therefore stopped working. The High Court thus reversed the Order of the Family Court and granted maintenance in the sum of Rs. 5,000/-. This was however granted from the date of the order.

We have given our anxious consideration to the Order of the High Court but find it difficult to uphold the direction that the maintenance should be paid only from the date of the Order. The High Court has not given any reason why it has not directed maintenance from the date of the application for maintenance.

The relevant part of Section 125 reads as follows: 125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be

disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.-For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

The provision expressly enables the Court to grant maintenance from the date of the order or from the date of the application. However, Section 125 of the Code of Criminal Procedure must be construed with Sub-section (6) of Section 354 of the Code of Criminal Procedure which reads thus: 354 (6) Language and contents of judgment-Every order Under Section 117 or Sub-section (2) of Section 138 and every final order made Under Section 125, Section 145 or Section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision. Therefore, every final order Under Section 125 of the Code of Criminal Procedure [and other sections referred to in Sub-section (c) of Section 354] must contain points for determination, the decision thereon and the reasons for such decision. In other words, Section 125 and Section 354(6) must be read together.

Section 125 of the Code of Criminal Procedure, therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the Code of Criminal Procedure, the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.

In Shail Kumari Devi v. Krishan Bhagwan Pathak MANU/SC/3353/2008: (2008) 9 SCC 632; Para's 39-41 this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In Shail Kumar Devi, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.

In the case before us, the High Court has not given any reason for not granting maintenance from the date of the application. We are of the view that the
circumstances eminently justified grant of maintenance with effect from the date of the application in view of the finding that the Appellant had worked before marriage and had not done so during her marriage. There was no evidence of her income during the period the parties lived as man and wife. We, therefore reverse the Order of the High Court in this regard and direct that the Respondent shall pay the amount of maintenance found payable from the date of the application for maintenance. As far as maintenance granted Under Section 24 of the H.M. Act by the Courts below is concerned, it shall remain unaltered. Accordingly, the appeal is allowed.

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5. Sections-195(1)(b)(ii),200,340 & 482 , Cr.P.C.
George Bhaktan Vs. Rabindra Lele & Ors. **(2014) 59 OCR (SC) -807.**
DIPAK MISRA & VIKRAMAJIT SEN, JJ.
Date of Judgment- 24- 09-2014
Issues

Quashing Order of taking cognizance—Justifiability.

Relevant Extracts

The broad essential facts which are required to be adumbrated for the adjudication of the appeal are that the appellant-complainant filed a complaint under Section-200 of the Code of Criminal Procedure, 1860 (for short ' the Code') against the accused-respondents alleging commission of offences under Section-425,468 and 471 of the Indian Penal Code, 1860 (for the 'the IPC') on the foundation that the complainant, the Managing Director of Ores India (P) Ltd. had approached the accused persons for supply of machines and equipments for establishing an Iron Ore Crusher Unit at village-Regalveda in the district of Sundargarh with the financial assistance from Orissa State Financial Corporation (OSFC). The accused persons being desirous of supplying the machinery and equipments persuaded the complainant to place the purchase order in their favour and on the basis of their past performance; the appellant placed the purchase order on 23.10.1997. As stipulated in the said purchase order, the accused persons, apart from other things, had agreed to provide designing and drawing for complete plant with 15 months guarantee from the date of dispatch. On the basis of the purchase order, the complainant sent cheques for Rs.15 lakhs and, as alleged, after receipt of the said money the accused persons sent their written confirmation to OSFC acknowledging the receipt of the money. The OSFC, in turn, paid Rs. 25 lakhs to the accused persons as an advance keeping in view the commitment made by the complainant.

As the complaint would further uncertain, in spite of substantial amount of money being paid by way of advance, no steps were taken by the accused persons to ensure supply of machineries and equipments with an ulterior motive, as a consequence of which the complainant suffered huge loss. It is asserted in the complaint petition that with the intention to cause wrongful loss and damage to the complainant, accused persons procured a letter pad

of the complainant from a staff of the company and typed a letter with the signature of George Bakhtan on that letter so that they would get an extension from the OSFC regarding the date of purchase. It is further alleged that the accused persons orchestrated a conspiracy and contrived to manipulate the transaction but eventually the machineries were not supplied. In this backdrop, the complaint was lodged for the offences which have been mentioned hereinbefore. On the basis of the complaint, initial statement of the complainant was recorded under Section-200 of the Code and thereafter an enquiry was conducted under Section-202 of the Code and ultimately cognizance was taken. Be it stated, for some reason, the order of cognizance initially taken was set aside by the High Court and the matter was remitted to the Trial Court to deal with the aspect of cognizance in accordance with law. Thereafter, vide order dated 18.10.2000, the learned Magistrate took cognizance in respect of the offences. Being aggrieved by the aforesaid order, the respondents preferred a petition under Section-482 of the Code.

In the case at hand, as we find, the allegation in the complaint as that the respondents had forged the signature of the complainant and submitted to the Corporation seeking extension of the period of supply. Thereafter, seeking certain relief a suit was filed and in the suit the document was filed. There is no allegation that this document was forged when the matter was subjudice before the Civil Court. Thus, the dicta of the Constitution Bench is squarely applicable. The High Court has clearly erred in relying on the principle stated in *Gopalakrishna Menon's* case which makes the impugned order wholly indefensible.

Be it stated, the Constitution Bench repelled the argument of strict construction and distinguishing many a decision, came to hold that Section-195 is not a penal provision but is a part of procedural law, namely, Cr.PC, which elaborately gives a procedure for trial of criminal cases. Proceeding further, their Lordships held that the provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by Court and a penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. Eventually, taking note of the facts in that case, the Court held the Will in question had been produced in the Court subsequently and there was no allegation that the offence as enumerated in Section-195(1)(b)(ii) was committed in respect of the said Will after it had been produced or filed in the Court, the bar created by the said provision would not come into play and hence, there was no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the complainants therein.

We have already taken note of the submission of Mr. Rao that the High Court has not adverted to the factual score whether a case has been made out on the basis of the material brought on record. In the absence of any findings in that regard by the High Court, we do not intend to take up the burden on ourselves. That makes it obligatory on our part to set aside the order passed by the High Court and remand the matter to it for fresh consideration whether in the obtaining factual matrix the order of cognizance deserves to be lancinated. We

would request the High Court to dispose of the petition within a period of three months as the matter has been continuing for long. We may hasten to clarify that we have not expressed any opinion on the merits of the case. Consequently, the appeal is allowed, the order passed by the High Court is set aside and the matter is remanded to the High Court for fresh disposal in accordance with law.

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6. Sec. 313 ,Cr.P.C.

Nar Singh Vs. State of Haryana. **MANU/SC/1004/2014, 2014(12) SCALE622**

T.S. Thakur & R. Banumathi, JJ.

Date of Judgment: 11.11.2014

Issue

Conviction - Examination of Accused - Power thereto - Section 25(1B) of Arms Act, 1959, Section 313 of Criminal Procedure Code, 1973 and Section 302 of Indian Penal Code, 1860 - Present appeal filed against order of High Court dismissing appeal of Accused-Appellant thereby confirming conviction of Appellant for offences of murder and imitation of firearm - Whether non-compliance of mandatory provisions of Section 313 of Code, 1973 had vitiated trial and conviction of Accused - Held, when Trial Court was required to act in accordance with mandatory provisions of Section 313 of Code, 1973, failure on part of Trial Court to comply with mandate of law, could not automatically ensure to benefit of Accused - Appellate court might examine Accused to show what explanation Accused had as regards circumstances established against him but not put to him under Section 313 of Code, 1973 - Forensic Science Laboratory Report was relied upon both by Trial court as well as by High Court - Objection as to defective Section 313 of Code, 1973 statement had not been raised in Trial court or in High Court - Omission to put question under Section 313 of Code, 1973, and prejudice caused to Accused was raised before present Court for first time - Accused was prejudiced on account of omission to put question as to opinion of Ballistic Expert which was relied upon by Trial Court as well as by High Court - Trial court should have been more careful in framing questions and in ensuring that all material evidence and incriminating circumstances were put to Accused - However, omission on part of Court to put questions under Section 313 of Code, 1973 could not ensure to benefit of Accused - Hence, matter was remitted back to Trial Court for proceeding with matter a fresh from stage of recording statement of Accused under Section 313 of Code, 1973 - Impugned order set aside - Appeal disposed of.

Relevant Extracts

This appeal is directed against the judgment dated 30.08.2012 passed in Crl. Appeal D-960- DB/2006 by the High Court of Punjab and Haryana dismissing the appeal of accused-Appellant thereby confirming the conviction of the Appellant Under Section 302, Indian Penal Code and sentence of rigorous imprisonment for life and a fine of Rs. 20,000/- with default clause and conviction Under Section 25(1B) of the Arms Act, 1959 and sentence of rigorous imprisonment for three years and a fine of Rs. 10,000/- with default clause as imposed by the trial court.

Briefly stated, case of the prosecution is that on 6.03.2005, Rajbir went to sleep in the street on a cot at about 7.30 p.m. and Daya Nand (PW-7) also went to sleep in his house at about 9.00 p.m. At 11.00 P.M., Daya Nand heard the sound of vomiting of his brother and he

came out and found his brother Rajbir crying in pain. PW-7 called his father Chander Bhan and both of them noticed injuries on the forehead of Rajbir with profuse bleeding. PW-7 went to call the doctor but the doctor refused to accompany him. When Daya Nand returned back, Rajbir had already succumbed to injuries. Law was set in motion by PW-7 and FIR was registered Under Section 302, Indian Penal Code. PW-14 had taken up the investigation and inquest was conducted on the body of the deceased Rajbir. Dr. J.K. Bhalla (PW-10) conducted autopsy on the body of deceased Rajbir and a country-made bullet was seized from the occipital area of the brain of deceased Rajbir. Dr. Bhalla opined that the death was due to injury to the brain and he issued Ex P-13- post mortem certificate. Site plan of the scene of occurrence was prepared and material objects were seized. The Appellant-accused was arrested on 14.03.2005 and based on his confession statement, a pistol was recovered behind a water tank in the house of the Appellant-accused. The bullet (chambered for .315" & .303" caliber firearms) and country-made pistol (chambered for .315" & .303" cartridges) were sent for the Ballistic Expert opinion. The Ballistic Expert opined that the country-made bullet (chambered for .315" & .303" caliber firearms) had been fired from the above-said country-made pistol and not from any other firearm. On receipt of the Ballistic Expert opinion and on completion of the investigation, charge sheet was filed against the Appellant Under Section 302 Indian Penal Code, and Section 25(1B) of the Arms Act. Trial court as well as the High Court held that the above circumstances are proved by the prosecution and that they form a complete chain establishing guilt of the accused resulting in conviction of the Appellant. While doing so, trial court relied upon the Forensic Science Laboratory Report (FSL) (Ex P-12) as a vital piece of evidence against the Appellant. The High Court also relied upon FSL report as a material evidence to sustain the conviction of the Appellant.

As main thrust of argument of the Appellant is on the question of non-compliance of Section 313 Code of Criminal Procedure, we do not propose to consider the appeal on merits, except on the important question viz. whether non-compliance of the mandatory provisions of Section 313 Code of Criminal Procedure vitiates the trial and conviction of the Appellant. The power to examine the accused is provided in Section 313 Code of Criminal Procedure which reads as under:

313. Power to examine the accused.-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under Clause (b).

(2). No oath shall be administered to the accused when he is examined Under Subsection (1).

(3). The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4). The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5). The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.

There are two kinds of examination Under Section 313 Code of Criminal Procedure. The first Under Section 313(1) (a) Code of Criminal Procedure relates to any stage of the inquiry or trial; while the second Under Section 313(1) (b) Code of Criminal Procedure takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory. The object of Section 313(1) (b) Code of Criminal Procedure is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of this section are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every Circumstance and incriminating evidence against him. The examination of accused Under Section 313(1) (b) Code of Criminal Procedure is not a mere formality. Section 313 Code of Criminal Procedure prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and circumstances appearing against him in the evidence and this opportunity is valuable from the standpoint of the accused. The real importance of Section 313 Code of Criminal Procedure lies in that, it imposes a duty on the Court to question the accused properly and fairly so as to bring home to him the exact case he will have to meet and thereby, an opportunity is given to him to explain any such point. Section 313 Code of Criminal Procedure is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination Under Section 313 Code of Criminal Procedure cannot be used against him and have to be excluded from consideration. The ultimate test in determining whether or not the accused has been fairly examined Under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity.

Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with

the most salutary principle of natural justice enshrined in the maxim *audi alteram partem*. The word "may" in Clause (a) of Sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under Clause (b) of the Sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him. The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of Section 313 Code of Criminal Procedure has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning Under Section 313 Code of Criminal Procedure, it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or detriment in relation to the safeguard given to him Under Section 313 Code of Criminal Procedure Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine whether actually any prejudice has been caused to the Appellant due to omission of some incriminating circumstances being put to the accused. This Court has thus widened the scope of the provisions concerning the examination of the accused after closing prosecution evidence and the explanation offered by the counsel of the accused at the appeal stage was held to be a sufficient substitute for the answers given by the accused himself. The point then arising for our consideration is, if all relevant questions were not put to accused by the trial court as mandated Under Section 313 Code of Criminal Procedure and where the accused has also shown that prejudice has been caused to him or where prejudice is implicit, whether the appellate court is having the power to remand the case for re-decision from the stage of recording of statement Under Section 313 Code of Criminal Procedure Section 386 Code of Criminal Procedure deals with power of the appellate court. As per Sub-clause (b)(i) of Section 386 Code of Criminal Procedure, the appellate court is having power to order retrial of the case by a court of competent jurisdiction subordinate to such appellate court. Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again Under Section 313 Code of Criminal Procedure and may direct remanding the case again for re-trial of the case from that stage of recording of statement Under Section 313 Code of Criminal Procedure and the same cannot be said to be amounting to filling up lacuna in the prosecution case.

Coming to the facts of this case, FSL Report (Ex-P12) was relied upon both by the trial court as well as by the High Court. The objection as to the defective 313 Code of Criminal Procedure statement has not been raised in the trial court or in the High Court and the

omission to put the question Under Section 313 Code of Criminal Procedure, and prejudice caused to the accused is raised before this Court for the first time. It was brought to our notice that the Appellant is in custody for about eight years. While the right of the accused to speedy trial is a valuable one, Court has to sub-serve the interest of justice keeping in view the right of the victim's family and the society at large.

In our view, accused is not entitled for acquittal on the ground of non-compliance of mandatory provisions of Section 313 Code of Criminal Procedure We agree to some extent that the Appellant is prejudiced on account of omission to put the question as to the opinion of Ballistic Expert (Ex-P12) which was relied upon by the trial court as well as by the High Court. Trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions Under Section 313 Code of Criminal Procedure cannot ensure to the benefit of the accused. The conviction of the Appellant Under Section 302 Indian Penal Code and Section 25(IB) of the Arms Act by the trial court in Sessions Case No. 40/2005 and the sentence imposed on him as affirmed by the High Court is set aside. The matter is remitted back to the trial court for proceeding with the matter afresh from the stage of recording statement of the accused Under Section 313 Code of Criminal Procedure The trial court shall examine the accused afresh Under Section 313 Code of Criminal Procedure in the light of the above observations and in accordance with law. The trial Judge is directed to marshal the evidence on record and put specific and separate questions to the accused with regard to incriminating evidence and circumstance and shall also afford an opportunity to the accused to examine the defence witnesses, if any, and proceed with the matter. Since the occurrence is of the year 2005, we direct the trial court to expedite the matter and dispose of the same in accordance with law preferably within a period of six months from the date of receipt of this judgment. Since we are setting aside the conviction imposed upon the Appellant-accused, the Appellant-accused is at liberty to move for bail, if he is so advised. On such bail application being moved by the Appellant-accused, the trial court shall consider the same in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter. The appeal is disposed of as above.

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7. Secs. 378 and 386 ,Cr.P.C.

Krishna @ Krishnappa Vs. State of Karnataka **. 2014 SCC OnLine SC 902**

DIPAK MISRA & UDAY UMESH LALIT, JJ.

Date of Judgment- 14 -11-2014

ISSUE

Criminal Trial — Appeal against acquittal — Re-appreciation and re evaluation of evidence — Powers of appellate court — Exercise of — Scope — Offences of wrongful restraint and rape — Acquittal — Appreciation of evidence — Allegation that appellant wrongfully restrained victim, gagged her mouth and had forcible sexual intercourse — Trial Court acquitted appellant, having regard to discrepancy in testimony of victim vis-à-vis medical

evidence and also circumstances indicating possibility of false implication — The reasons given by the trial court while acquitting the appellant, were quite sound — The view taken by trial court was definitely a possible view — The conclusions reached by the trial court cannot be said to be palpably wrong or based on erroneous view of the law — Held, the High Court was not justified in converting the case to that of attempt to commit rape and recording order of conviction — Accused is entitled to be acquitted.

Relevant Extracts

Crime No. 48 of 1991 was registered with Devanahalli Police Station pursuant to FIR (Ext.P-9) lodged by PW-1 victim alleging that on 06.03.1991 at about 4.00 PM while she was returning from the bus stop of their village after having sent her husband and son to sell silk cocoons at Vijayapura, the present appellant wrongfully restrained her near eucalyptus grove, gagged her mouth and despite her protest had forcible sexual intercourse with her. It was alleged that her screams attracted Muniyappa (PW-2) and Venkateshappa (PW-3) and on seeing them the appellant had run away from the spot. Upon registration of such crime PW-1 victim was sent for medical examination by Dr. Manjunath (PW-4) who however, found no signs of any sexual intercourse but found two abrasions on the forearms of PW-1 victim. The appellant was arrested and also medically examined.

After due investigation the charge-sheet was filed and the appellant was tried for having committed the offences punishable under Sections 376 and 341 IPC vide Sessions Case No. 62 of 1994. PW-1 victim in her testimony admitted her age to be 60 years. She reiterated that she was subjected to forcible intercourse by the appellant. Muniyappa (PW-2) supported her version, but Venkateshappa (PW-3) turned hostile. It was suggested to these witnesses in their cross-examination that the appellant was related to PW-1 victim, that there were civil and criminal cases pending between the parties in support of which contention certified copies of the civil suit and criminal cases Ext. D-1 and D-2 were also filed. Dr. Manjunath (PW-4) who had medically examined PW-1 victim specifically stated that nothing was found to show that the victim was subjected to sexual intercourse. Dr. S.B Patil (PW-5) who had examined the appellant stated the age of the appellant to be 17-18 years. The learned trial court found that though PW-1 victim had stated that her sari was torn in the incident, said sari was not produced before the court, that as per PW-2 there were no eucalyptus trees in between the bus stop and the village, that though as per the version of PW-1 victim the incident lasted for about half an hour during which time she was trying to escape and had bitten the right hand of the appellant, the medical evidence did not support such assertions and that because of civil and criminal cases pending between the parties the possibility of false implication could not be ruled out. Considering the entire evidence on record learned trial court found that the prosecution had failed to establish that the appellant was guilty of the offences as alleged. The learned trial court, therefore, by its judgment and order dated 06.08.2001 acquitted the appellant of the charges leveled against him. The appellant being aggrieved preferred special leave to appeal and this Court after grant of special leave to appeal also directed vide order dated 13.04.2009 that the appellant be released on bail pending this appeal.

We have gone through the judgment of the trial court and the High Court and carefully perused the evidence on record. It may be mentioned that as found by both the courts below the offence under Section 376 was not established at all. The reasons given by the trial court while acquitting the appellant, in our view, are quite sound and in any case, such view is definitely a possible view. The conclusions reached by the trial court cannot be said to be palpably wrong or based on erroneous view of the law, so as to call for interference by the High Court. In our considered view the High Court was not justified in converting the case to that of attempt to commit rape and recording order of conviction. We, therefore, set aside the judgment and order of conviction passed by the High Court and restore that of the trial court acquitting the accused-appellant of the offences with which he was charged. The appeal is allowed and the appellant is discharged of his bail bonds.

Case referred-

***Muralidhar @ Gidda* v. *State of Karnataka* reported in (2014) 5 SCC 730**

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Constitution of India

8. Art.141 Constitution of India &

Order XLVII C.P.C.

Collector, Cuttack and others. Vs. Bharat Chandra Bhuyan. **RVWPET No.324 of 2012, HIGH COURT OF ORISSA: CUTTACK**

AMITAVA ROY, C.J. & DR. JUSTICE A.K.RATH, J.

Date of Judgement-11-12-2014

Issue

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

It is obvious that review can be made on the following grounds:-

(i) discovery of new and important matter or evidence which despite due diligence was not within the knowledge or could not be produced ;

(ii) mistake or error apparent on the face of the record; and

(iii) any other sufficient reason.

The words "any other sufficient reason" has to be read ejusdem generis. It has to be something analogous to the first two conditions.

The seminal point that arises for our consideration is as to whether the Court pronouncing a judgment has, for whatever reason, missed to take into consideration a decision of the Supreme Court taking a contrary view on a point covered by the said judgment, constitute a ground for review of the judgment.

This petition has been filed by the Collector, Cuttack and others seeking review of the order dated 09.10.2012 passed by a Division Bench of this Court in W.P.(C) No.11271 of 2012.

Relevant Extract

The short facts of the case are that the Tahasildar, Cuttack issued a notice on 7.4.2012 for settlement of sand sairat source in respect of six sand sources under Cuttack Tahasil. The opposite party submitted his bid in respect of Baulakuda sand sairat source corresponding to Sairat Case No.72/12/2013 for an area of Ac.2.00. The upset price was Rs.2 lakhs. Three bidders participated in the auction. The opposite party was the second highest bidder. Since

the first bidder failed to deposit the offered price, the EMD of the said bidder was forfeited. Thereafter, the sairat was settled in favour of opposite party for an amount of Rs.2,03,500/-. Accordingly, the opposite party deposited an amount of Rs.80,000/- with the Tahasildar, Cuttack on 9.5.2012. He gave an undertaking to deposit the balance amount within seven days. The opposite party has also deposited an amount of Rs.4070/- towards income tax and Rs.20,000/- which are 10% of the upset price as security value. After deposit, he requested the Tahasildar, Cuttack to execute the agreement and accept the balance amount. But then the Additional District Magistrate, Cuttack issued a letter on 14.5.2012 to the Sub-Collector, Cuttack directing him to suspend the order in terms of the order dated 26.3.2012 passed in W.P.(C) No.14574 of 2010. Being aggrieved, he filed a writ petition, i.e., W.P.(C) No.11271 of 2012 praying, inter alia, to quash the said letter. By order dated 9.10.2012, a Division Bench of this Court disposed of the said writ petition directing the competent authority to execute necessary lease agreement as per Rule 36 of the Orissa Minor Mineral Concession Rules, 2004 (hereinafter referred to as "the Rules") within a period of two weeks from the date of receipt of a certified copy of the order. In view of the analysis made in the preceding paragraphs we hold that failure of the Court to take into consideration an existing decision of the Supreme Court taking a contrary view on a point covered by its judgment would amount to an error apparent on the face of the record. In Deepak Kumar , the apex Court directed to all the States, Union Territories, Ministry of Environment and Forests and Ministry of Mines to give effect to the recommendations made by the Ministry of Environment and Forests, which was quoted in extenso in the judgment. The apex Court further directed that lease of minor mineral including their renewal for an area of less than five hectares be granted by the States/ Union Territories only after getting environmental clearance.

Thus, the environmental clearance is *sine qua non* for executing the lease deed by the State. No direction could be given by this Court contrary to the decision of the apex Court. The decision in the case of Deepak Kumar (supra) had not been brought to the notice of the Bench as has been stated above. The same is an error apparent on the face of the record. In the result, we allow this review petition and set aside the order dated 09.10.2012 passed in W.P.(C) No.11271 of 2012. The Registry is directed to place the matter before the assigned Bench for admission and final disposal.

Case referred

Deepak Kumar etc. v. State of Haryana and Ors. etc., AIR 2012 SC 1386,
M. Murari Rao and others v. Balavanth Dixit and another,AIR 1924 Mad 98,
Natesa Naicker v. Sambanda Chettiar, AIR 1941 Madras 918.
SriKarutha Kritya Rameswaraswami Varu v. R. Ramalinga Raju and others,AIR 1960 Andh. Pra. 17
Tinkari Sen and others v. Dulal Chandra Das and others, AIR 1967 Cal518.
The Selection Committee forAdmission to the Medical and Dental College, Bangalore v. M.P. Nagaraj, AIR 1972 Mys. 44.
M/s. Thungabhadra Industries Ltd. v. The Govt. of Andhra Pradesh, AIR 1964 SC 1372

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9. Article 141 Constitution of India

Richhpal Singh Meena Vs. Ghasi alias Ghisa and Ors. **AIR 2014 SC 3595**

Ranjana Prakash Desai & Madan B. Lokur , JJ.

Date of Judgment-04-07-2014

Issue

Precedents-Excessive reporting of judgments (including Orders and Record of Proceedings) – Deprecated.

Penal Code (45 of 1860) Secs. 299

Culpable homicide –Act or omission of accused causing death of any person –He or She is either guilty of culpable homicide or guilty of not –culpable homicide –It is for court to determine on evidence.

Relevant Extracts

A five-step inquiry is necessary to determine whether the act or omission of accused causing death, a culpable homicide or not:

(i) Is there a homicide?

(ii) If yes, is it a culpable homicide or a 'not-culpable homicide?

(iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder (Section 300 of the Indian Penal Code) or is it a culpable homicide not amounting to murder (Section 304 of the Indian Penal Code)?

(iv) If it is a 'not-culpable homicide' then a case Under Section 304-A of the Indian Penal Code is made out.

(v) If it is not possible to identify the person who has committed the homicide, the provisions of Section 72 of the Indian Penal Code may be invoked.

The plea that since this five-pronged exercise has apparently been missed out in the earlier decisions require re-consideration would not be tenable as in most cases the person who has committed homicide (culpable or not-culpable) can be identified. But it is quite possible in some cases, such conclusive or specific evidence is lacking to actually pin down the person who has committed homicide (culpable or not culpable). In such cases, the accused would have to be given the benefit of Section 72 of the Indian Penal Code. Such cases arise if the investigation is defective or if the evidence is insufficient. But where it is possible to ascertain who is responsible for the homicide, the five-step inquiry can easily be carried out.

On 14th December, 1996 the Appellant (Richhpal Singh Meena) and a few others were sitting beside a well near the agricultural fields. Richhpal's father Sunderlal Meena (deceased) had gone to inspect the fields. While he was there, Sunderlal met Kailash, Ghasi, Lala and their respective wives and their mother. Soon thereafter, there was a hot exchange of words between them regarding damage to the embankment in the agricultural fields. Kailash, Ghasi and Lala told Sunderlal that they were looking for him and he had now walked into the trap. Saying this, Kailash caught hold of Sunderlal while Ghasi gave him a blow with a shovel and Lala gave him a blow with a lathi on his back. On receiving the blows Sunderlal fell down and on hearing noises, Richhpaland others ran towards the spot and found that Sunderlal was being beaten up by the ladies. With the assistance of those who were with him, Richhpal managed to take Sunderlal to a hospital in

Alwar but he succumbed to the injuries. A post-mortem examination was carried out by Dr. Amar Singh Rathore and he gave a report that the two injuries given to Sunderlal were sufficient to cause death in the normal course. The injuries were:

External injuries-

1. Contusion abrasion measuring 8 x 10 cm reddish, located on left side of the rear side of the back.
2. Contusion abrasion measuring 8 x 8 cm located on right side of chest.

Internal injuries-

Fracture on the 4th and 5th ribs located on right side of the chest. Right lung crushed measuring 4 x 3 x 1 cm. Blood clotting in lung. Fracture in 7th and 8th rib on left side. Lung crushed. Plurae and sic(?) of either side of the lungs torn.Dr. Rathore deposed that shock, haemorrhage and lung injuries resulted in his death. The injuries were sufficient to cause death in the normal course.

On these broad facts, a charge sheet was filed against Ghasi and Lala for an offence punishable Under Sections 302, 302/34 and 447 of the Indian Penal Code. On the evidence adduced before him, the Additional District and Sessions Judge-III, Alwar convicted Ghasi and Lala for an offence punishable Under Section 302of the Indian Penal Code as well as for an offence punishable Under Section 447 of the Indian Penal Code. However, they were acquitted of the charge framed Under Section 302/34 of the Indian Penal Code. Feeling aggrieved, the convicts preferred D.B. Criminal Appeal No. 403/1997 in the Jaipur Bench of the Rajasthan High Court. By a judgment and order dated 16thApril, 2003 the High Court concluded that Ghasi and Lala could be convicted only Under Section 325/34 of the Indian Penal Code and not Under Section 302/34 of the Indian Penal Code. The High Court also held that they could not be convicted Under Section 447 read with Section 302 of the Indian Penal Code. The sentence awarded to them was imprisonment for the period undergone; that is, about 18 months imprisonment.

The jurisprudence

A review of the decisions in the first category of cases indicates that in spite of the death of a person, and a finding in some of them of an act of voluntarily causing grievous hurt, this Court has not considered the provisions of Section 299 read with Section 304 of the Indian Penal Code. In our opinion, such a consideration is important not only from the jurisprudential point of view but also from the sentencing point of view. From the jurisprudential point of view it is important because when an act or omission of an accused causes the death of any person, he or she is either guilty of culpable homicide or guilty of not-culpable homicide. It is for the Court to determine on the evidence whether, if it is culpable homicide, it amounts to murder as explained in Section 300 of the Indian Penal Code (along with all its clauses) or not as explained in Section 304 of the Indian Penal Code. If culpable homicide cannot be proved, then it would fall in the category of 'not-culpable homicide'. We agree with learned amicus that the sections in the Indian Penal Code relating to hurt (from Section 319 onwards) do not postulate death as the end result. In this regard, our attention was drawn to Section 320 of the Indian Penal Code which designates various kinds of hurt as grievous and particularly to 'eighthly' which relates to any hurt which endangers life, but does not extinguish it. In fact, as pointed out by learned amicus, the

arrangement of sections in the Indian Penal Code makes it clear that 'offences affecting life' are quite distinct from offences of 'hurt'. If hurt results in death, intended or unintended, the offence would fall in the category of an offence affecting life, else not. It is this distinction that has apparently been ignored or overlooked in the first category of cases, but as mentioned above, those cases were decided on their particular facts.

Sentencing

The issue of sentencing is also of utmost importance in cases such as the ones that we have referred to. The reason is the quantum of punishment to be imposed in a given situation. If an accused is guilty of murder, say Under Section 300 (thirdly) he or she would be liable for a minimum of life imprisonment; if an accused is guilty of culpable homicide not amounting to murder Under Section 304 he or she would be liable for a maximum of ten years imprisonment; if an accused is guilty of not-culpable homicide Under Section 304-A of the Indian Penal Code the punishment would not exceed two years imprisonment. On the other hand, if the court ignores or overlooks the question whether the homicide is culpable or not but merely treats the case as one of voluntarily causing grievous hurt punishable Under Section 325 or Section 326 of the Indian Penal Code for which the maximum punishment is seven years imprisonment or ten years/life imprisonment (as the case may be), then there is a real danger in a given case of an accused either getting a lighter sentence than deserved or a heavier sentence (depending on the offence made out) than warranted by law. It is for this reason that not only a precise formulation of charges by the Trial Court (if necessary multiple charges) is essential but also a correct identification by the court of the offence committed.

Conclusion

Applying the five-step inquiry, it is clear that: (i) there was a homicide, namely the death of Sunderlal; (ii) the assailants gave two lathi blows to Sunderlal which resulted in the fracture of his ribs and piercing of his lungs. The injuries were not accidental or unintentional-the assailants had a common intention of grievously injuring Sunderlal and it is not as if they intended to cause some injury to him other that the ones inflicted, (iii) the opinion of Dr. Amar Singh Rathore confirmed that the injuries caused to Sunderlal were sufficient to cause death in the normal course. Consequently, the homicide was a culpable homicide. Applying the law laid down in Virsa Singh it is clear that Ghasi and Lala are guilty of the murder of Sunderlal, the offence falling Under Section 300 (thirdly) of the Indian Penal Code and punishable Under Section 302 of the Indian Penal Code. Under the circumstances, we set aside the decision of the High Court and restore the decision of the Trial Court and convict Ghasi and Lala of the offence of murdering Sunderlal. The State will take necessary steps to apprehend the convicts so that they undergo life imprisonment as required by law.

Orders and Record of Proceedings

It may be mentioned, *en passant*, that the excessive reporting of judgments (including orders and Record of Proceedings) has been described by Mr. Fali S. Nariman, an eminent jurist, in 'India's Legal System' as "judgments factory" and "case law diarrhoea". He says that there are "just too many judgments reported which have to be cited, which have to be looked into, followed or distinguished, all of which take up a vast amount of judicial time". The

blame for this lies partially on "overweening judicial vanity", partially on the lawyers who perceive that "everything that is said in each and every judgment or order of the highest court in any particular case has to be presented as binding law" and partially on competing law reporting agencies "who want their law reports to sell as widely as possible". One of his conclusions is that the "Laws proverbial delays are not because there are too many laws but because there are just too many judgments and orders concerning them." If all of us in the fraternity of law desire to bring about some judicial reforms to ensure expeditious delivery of justice, we need to put our heads together and follow some sage advice and take remedial action before justice delivery gets timed out. Delays in our justice delivery have already been adversely commented upon and it is now time for us to find viable and realistic solutions. The appeal is allowed.

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10. Art.226 &227 of the Constitution of India &
Sec. 3(2) of the National Security Act

Prasant @ Kalia Sundray Vs. State of Orissa & Others. **WPCRL No.223 of 2014, THE HIGH COURT OF ORISSA : CUTTACK**
INDRAJIT MAHANTY & B.N. MAHAPATRA ,JJ.
Date of Judgment: 29.11.2014
Issue

Writ application in the nature of habeas corpus - Detention in jail custody under* National Security Act *-State Government has rejected the detenu's representation.

Relevant Extracts

Shorn of unnecessary detail suffice it is to note herein that, the petitioner has been detained on 1st of March, 2014 under Section-3(2) of the National Security Act, 1980 and till date, he is under jail custody at the Special Jail, Bhubaneswar. The petitioner was served with a copy of the detention order on 03.03.2014 purportedly without enclosing necessary documents basing upon which the charges had been made.

On 11.03.2014, the petitioner has submitted his representation to the State Government, Central Government as well as to the N.S.A. Advisory Board through the Superintendent of Special Jail, Bhubaneswar. The State Government on 28.03.2014 has forwarded the representation of the petitioner along with the para-wise comments to the Central Government as well as to the N.S.A. Advisory Board. The Central Government in the Ministry of Home Affairs received the representation of the detenu on 04.04.2014. Thereafter on 10.04.2014 the State Government has rejected the detenu's representation but failed to communicate the same to the petitioner and on 11.04.2014, the Central Government in the Ministry of Home Affairs has also rejected the representation and sends a copy of the same to the petitioner through post. On 20.04.2014, the petitioner has received the rejection order of the Central Government. Ultimately, the order of rejection of the petitioner's representation by the State Government was also communicated to the petitioner on 21.04.2014.

The aforesaid facts and dates are not in dispute. Although various contentions were raised in the pleadings as well as in course of hearing, learned counsel for the petitioner confined his arguments to the alleged undue delay caused by the State Government and the Central Government in dealing with the representation of the petitioner.

"Law is well settled that the representation of the detenu under the Act must be attended to promptly, as the same infringes the fundamental rights of the detenu guaranteed

under the Article 22 of the Constitution." In view of the aforesaid authoritative pronouncement as noted hereinabove, there has been unexplained and arbitrary delay of 17 days by the State Government in forwarding the detenu-petitioner's representation to the Central Government and, consequently, there has also been unexplained delay by the State Government as well as by the Central Government in dealing with the representation made by the detenu-petitioner. Therefore, since the representation of the detenu-petitioner has not been dealt with or attended to promptly, the same infringes the fundamental rights of the detenu-petitioner guaranteed under Article 22 of the Constitution.

In view of the above, this writ application is allowed and the order of detention of the petitioner dated 1st March, 2014 passed by the Commissioner of Police, Bhubaneswar-Cuttack (opposite party No.2) under Anenxure-2 is quashed and the detenu-petitioner be set at liberty forthwith, if his detention is no longer required in connection with any other case.

Case referred

1. **Aslam, Ahmed Zahire Ahmed Shaik vs. Union of India and others, AIR 1989 SC 1403,**
2. **Smt. Khatoon Begum Vs. Union of India and others, AIR 1981 SC 1077,**
3. **Saleh Mohammed vs. Union of India and others, AIR 1981 SC 111,**
4. **Noor Salman Makani vs. Union of India & Ors. AIR 1994 SC 575 and**
5. **Smt. Pebam Ningol Mikoi Devi vs. State of Manipurand Ors., (2010) 47 OCR (SC) 684**
6. **Bijaya Parida vs. State of Orissa and others, 2006 (II) OLR 591**
7. **Shanina Begum vs. State of Orissa and others, 2000(2) Crimes 424**

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Arbitration & Conciliation Act

11. Sec.11 Arbitration & Conciliation Act

Dredging & Desiltation Co. Pvt. Ltd. Vs. Board of Trustees of Paradip Port Trust. **Legalcrystal.com/1171649**

AMITAVA ROY, C.J.

Date of Judgement-14-11-2014

Issue

Arbitration Agreement

The pleaded facts, the documents available on record and the competing arguments have been duly analysed. Admittedly, at the time of appointment of Sri Saroj Misro as the arbitrator for the Paradip Port Trust, he was functioning as the Traffic Manager, Paradip Port Trust. The text of the letter dated 30.7.2005 issued by the Chief Engineer I/c, Paradip Port Trust appointing him as such, is thus of considerable significance in the face of the present debate and is extracted hereunder:- " Where as the said firm has put forth certain claims pertaining to the aforesaid work, and dispute has been arisen between the Paradip Port Trust and the said firm. Sri Saroj Kumar Misro, Traffic Manager, PPT is appointed as Arbitrator by the competent authority to decide the dispute after hearing both the parties as per the terms and conditions of the above mentioned Agreement and pronounce the award."

Section 42 of the Act mandates that notwithstanding anything contained elsewhere in the Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under the Part had been made in a Court, that Court alone would have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings would have to be made in that Court and in no other Court.

Be that as it may, as contemplated in Section 12(3) & (4), the appointment of an arbitrator may be challenged inter alia if circumstances exist that give rise to justifiable doubts as to his independence or impartiality or if he does not possess the qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made. Section 14 dwells on the eventualities in which the mandate of an arbitrator stand terminated. Sub-section (1) of Section 14 being of considerable significance is quoted hereunder: - Sec.14 (1) The mandate of an arbitrator shall terminate if (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and (b) he withdraws from his office or the parties agree to the termination of his mandate. The statutory provision on scrutiny, thus presents the following salient features as precursors of termination of the mandate of an arbitrator. (a) the arbitrator becomes de jure unable to perform his functions (b) the arbitrator becomes de facto unable to perform his functions (c) the arbitrator for other reasons fails to act without undue delay (d) the arbitrator withdraws from his office (e) the parties agree to the termination of the mandate of the arbitrator. Section15 envisages the following two circumstances entailing the excision of the mandate of the arbitrator in addition to those set out in Section 13 and 14. (a) where he withdraws from office for any reason; or (b) by or pursuant to the agreement of the parties.

On an analysis of the overall scheme pertaining to termination of the mandate of an arbitrator outlined by Section 12,13, 14 and 15, it is not possible to lend concurrence to the plea raised on behalf of the petitioner that for such a consequence all the exigencies enumerated in Clause (a) and (b) of Section 14(1) have to essentially co-exist. Such a contention patently defies the legislative intendment to the contrary chiefly to obviate a deadlock likely to ensue from such insistence. In the attendant facts and circumstances, the PPT having appointed Sri Saroj Kumar Misro, Traffic Manager as its arbitrator in due acknowledgement of his official position, he had for his suspension from that office rendered himself de jure ineligible to discharge the said role. Further, he also has not responded expressing his willingness to continue to be the arbitrator of the PPT signifying his withdrawal from the office of the arbitrator. As it is, his successive suspension and the pendency of a case registered by the CBI are relevant considerations as well for the PPT to baulk at his

continuance as its arbitrator, independence and impartiality being non-relaxable attributes of an arbitrator as envisaged by the Statute.

Arbitration is a proceeding recognized in law and regulated by the Act and essentially is one to be conducted by mutually nominated arbitrator(s) of the parties for resolution of their disputes and differences. Not only the entire fabric of the legislation underlines consensus based initiatives wherever feasible for the unhindered progress of the proceedings, unqualified confidence about the independence, impartiality, reliability and efficacy of the arbitrator(s) constitute the substratum for their appointment and continuance. Due primacy to this statutorily enjoined imperatives for valid arbitration cannot be emasculated or enfeebled by any interpretation to the contrary. Such a legislatively ordained characteristic of an arbitrator being the sine qua non for valid arbitration, to compel a party to continue with an arbitrator not contemplated in view of the prevailing circumstances would be in derogation of the mandate of the essentiality of an arbitrator of one's choice. The Hon'ble Apex Court in Delta Mechcons (India)Ltd vs. Marubeni Corporation, (2008)15 SCC 772 did reiterate the fundamental notion of process of arbitration to be one of settlement extra cursum curiae where the parties are at liberty to choose their judge and also provide the manner of constituting the Arbitral Tribunal. Thus, the supervening paramountcy of an arbitration agreement had been acknowledged. In the comprehension of this Court in the factual setting adumbrated hereinabove, the mandate of Sri Saroj Kumar Misro as the arbitrator of the PPT stands terminated in accordance with the Act and thus in terms of Section 15(3) substituted arbitrator can be appointed according to the arbitration agreement between the parties. To reiterate, in terms of the arbitration agreement, the Arbitral Tribunal was to be comprised of two arbitrators, one to be nominated by the contractor and another by the Board. As with the enforcement of the Act enjoining as per Section 10 that the number of arbitrators shall not be even, the Presiding Arbitrator was appointed by this Court under Section 11(6) of the Act. Be that as it may, with the termination of the mandate of nominated arbitrator of the Board/Trust, it would be within the competence of PPT to appoint its substituted arbitrator.

The above view finds endorsement in the decisions of the Apex Court in National Highways Authority of India & anr. Vs. Bumihiway DDB Ltd.(JV) & ors., and NBCC Ltd. vs. J.G.Engineering Pvt. Ltd.,. True it is that in view of the intervening developments and the substitution of the arbitrator of the Board/Trust, the arbitration proceedings would get extended to some extent. But it is expected that in view of Section 15(3) & (4), efforts would be made by all concerned to minimize the delay. On a cumulative consideration of the above aspects, I am of the view that the prayer made in the instant petition cannot be acceded to. The petition thus fails and is rejected.

Case Referred

1. National Highways Authority of India & anr. Vs. Bumihiway DDB Ltd.(JV) & ors. (2006) 10 SCC 763

2. NBCC Ltd. vs. J.G. Engineering Pvt. Ltd. (2010) 2 SCC 385

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12. Sections. 34, 35& 53 ,T.P. Act.

Sutar Chemical Private Limited and another. Vs. Collector, Balasore and others. ***W.A.No.506 of 2013, HIGH COURT OF ORISSA: CUTTACK***

AMITAVA ROY, C.J. & DR. A.K.RATH, J.

Date of Judgement-10-12-2014

Issue

Prevention of fragmentation-Consequences of transfer or partition contrary to provisions of Section 34.

A transfer made in contravention of any of the provisions of this Act shall not be valid or recognized, anything contained in any other law for the time being in force notwithstanding.

In this appeal under Clause-10 of the Letters Patent, the appellants call in question the legality and propriety of the judgment and order dated 10.10.2013 passed by the learned Single Judge in W.P.(C) No.31773 of 2011, whereby and whereunder, the learned Single Judge dismissed the writ petition and confirmed the order dated 28.11.2011 passed by the Collector, Balasore in Consolidation Case No.8 of 2007.

From the pleadings and submissions advanced by the learned counsel for the parties, the following points emerge for our consideration:-

1. Whether the Collector can exercise its jurisdiction under Sec. 35(2) of the Act at any time?

2. Whether a vendee can take a plea of adverse possession where alienation is made in contravention of Sec. 34 of the Act?

3. Whether the purchaser in absence of any procedure laid down in the Act or Rules render Sec. 35(2) of the Act is unworkable and unenforceable?

Since no period of limitation has been prescribed in Sec. 35 of the Act for exercise of power by the Collector to evict the transferee of a portion of chaka in contravention of Sec. 34 of the Act, we are of the view that power of the Collector cannot be cribbed, cabined or confined by providing a period of limitation by judicial interpretation. If any period of limitation will be prescribed by the judicial interpretation, then the legislative intention of the OCH & PFL Act would be frustrated. Again there will be innumerable fragments of the chakas.

A sale deed executed in contravention of Sec.34 of the Act is not merely void, but it is invalid from nativity. No legal relations come into being from the sale deed offending the Act.

Applicability of Limitation Act is only relation to any applications, appeals, revisions and other proceedings except sections 6 to 9, 18 and 19. Entertainment of plea of adverse possession would have a disastrous and far reaching consequence. A statutory prohibition would be again validated. The consequence: - it will give rise to innumberable fragmentation of chakas and frustrate the legislative intention.

In the absence of any procedure/mechanism laid down in Sec.35 of the Act, the Collector will adher to the principles of natural justice. But the question does arise when successive transactions have been taken place and the transferee has made some improvement of the property. The submission of Mr.Baug, learned counsel for the appellants is that status of the land has been changed to homestead land from agriculture by the Tahasildar. Further appellant no.1 has developed the land, constructed a weigh bridge in a portion thereof in 2008

and in other portion constructed a house and has also installed an electric transformer for his business purpose. The same is neither disputed nor denied. In view of the long lapse of time of seventeen years, successive transactions have been made and appellant no.1 has constructed a house, weigh bridge and installed an electric transformer over the same, it would be too iniquitous to dispossess him from the said land in question.

In view of the above, the order dated 28.11.2011 passed by the Collector, Balasore as well as the order dated 10.10.2013 passed by the learned Single Judge are hereby quashed. The writ appeal is allowed.

Case Referred -

1. ***Jogendra Jena and another Vrs. Krushna Jena and another***, 2012(I) CLR-902.
2. ***State of Orissa and others Vrs. Brundaban Sharma and another,*** 1995 Supp. (3) S.C.C.249
3. ***Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vrs. K.Suresh Reddy and others,*** (2003) 7 Supreme Court Cases 667
4. ***Uttam Namdeo Mahala Vrs.Vithal Deo and others*** (1997) 6 Supreme Court Cases 73,
5. ***Situ Sahu and others Vrs. State of Jharkhand and others***, AIR 2004 Supreme Court 4918
6. ***Santoshkumar Shivgonda Patil and others Vrs. Balasaheb Tukarm Shevale and others,*** 2009 AIR SCW 6305
7. ***Smt.Kalawati Vrs. Bisheswa***r, AIR 1968 SC 261
8. ***Nutan Kumar and others Vrs. IInd Additional District Judge, Banda and others,*** AIR 1994 Allahabad 298(FB)

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Haryana Panchayati Raj Act, 1994

13. Sec. 24 , Haryana Panchanyati Raj Act

Gram Panchayat, Village Bahmanian Vs. Jagir Singh and others. **2014 SCC OnLine SC 944**

ANIL R. DAVE & KURIAN JOSEPH, JJ.

Date of judgment-26-11-2014

Issue

Eviction proceedings

Initiation of — Damages for alleged encroachment — First respondent had allegedly encroached upon the land belonging to the appellant/Gram Panchayat, more particularly a public street — Site plan showed that the width of the passage is only 2 karams which indicated that it was not a public street commonly used by the people — Though it was contended that the pathway leads to the well of neighbour, he did not appear to have any grievance — First respondent had constructed the house on said land more than a decade back — By demolition of the house and by restoring the alleged pathway, was not going to enure to the benefit of anybody — First respondent had already deposited twice the market value of the alleged encroached land — Held, appellant/Panchayat should acknowledge the said deposit of double the market value as damages for the alleged encroachment — Held further, first respondent should bear the litigation expenses of the appellant/Panchayat.

Alleging that the first respondent had encroached upon the land belonging to thePanchayat, more particularly, a public street, the appellant-Gram Panchayat has been airing

its grievance before various forums. It succeeded in getting an order of eviction from the competent authority. That order was challenged in Civil Writ Petition No. 20116 of 2005 by the first respondent. The learned Single Judge of the High Court of Punjab and Haryana, in judgment dated 30.05.2009, passed the following order:

> "It appears that the Panchayat is unnecessarily trying to create problem for the petitioner. The petitioner apparently has constructed a house and as per the report has not encroached upon any street. His plea is that it may be a private street leading to his house constructed on a land bought by him from the private respondent. This will explain the attitude of respondent No. 4 in objecting to the proposal being accepted. The petitioner, thus, is given liberty to deposit the compensation at twice the Collector rate for the land in his possession in the accounts of the Gram Panchayat. This order is basically passed in equity considering that the petitioner has constructed a house and is ready to compensate the Gram Panchayat for any land, which is found to be encroached by him but is not part of any street."

The stand of first respondent was that the alleged encroachment is not on a public street but a pathway leading to the house of the fourth respondent from whom he had bought the land. However, in the Report dated 15.05.2009, made by the District Development and Panchayat Officer, Jalandhar, it is mentioned that the alleged encroachment is in Khasra No. 112 which is a gair mumkin street as per Revenue records.

Thus, aggrieved by the order of the learned Single Judge, the appellant-GramPanchayat approached the Division Bench. It was contended that the nature of the land being a public street, there was no provision for regularization and the first respondent requires to be evicted. In the impugned judgment, the Division Bench, among other things, took note of the fact that the whole proceedings having been originally initiated at the instance of the fourth respondent and the said respondent apparently having got an alternate passage, there was apparently no need to rake up the issue again. It was also noted that the Panchayat did not have a consistent stand with regard to the passage. The Division Bench passed the following final order:

> "Having perused the issues canvassed by the learned counsel for the appellant in the background of the controversy adjudicated upon by the learned Single Judge, we are of the view that the instant appeal preferred by the appellant is totally frivolous. The appellant could not assail the finding recorded by the learned Single Judge, either on issues of fact or on any issue of law. We have already recorded hereinabove, that the interest of the appellant - Gram Panchayat was fully protected in view of the offer made by Jagir Singh - respondent No. 1, which was given effect to by the learned Single Judge. Keeping in view the decision recorded by the Gram Panchayat to accept one of the alternatives suggested by Jagir Singh - respondent No. 1, we are surprised at the action of the appellant even in filing the instant appeal. The filing of the instant appeal is definitely not bona fide. So as to prevent persons similarly situated as the appellant from misusing the jurisdiction of this Court, we are satisfied that the instant appeal deserves to be dismissed with costs. The instant appeal is, accordingly, dismissed with costs quantified

at Rs. 10,000/-. The aforesaid costs shall be deposited by the appellant with the Legal Services Authority, Punjab, within one month from today and a receipt thereof shall be placed on the record of the instant case. In case, no such receipt is placed on the record of the instant appeal within the time stipulated hereinabove, the Registry is directed to re-list this case for motion hearing for recovery of costs."

Heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondents.

We are informed that the first respondent, pursuant to the order passed by the learned Single Judge, has already deposited twice the market value of the alleged encroached land. We have also seen the site plan. It is fairly clear that the width of the passage is only 2 karams which is indicative of the fact that it was not a public street commonly used by the people. Though it was contended that the pathway leads to the well of Beer Singh, the said Beer Singh does not appear to have any grievance. The fourth respondent, at whose instance the proceedings for eviction were initiated, does not have a grievance as of now. The first respondent constructed the house more than a decade back. By demolition of the house and by restoring the alleged pathway, is not going to enure to the benefit of anybody. Therefore, in the interest of justice and for advancing the cause of justice, we are of the view that the dispute should be given a quietus once for all. Without treating it as a precedent, the Panchayat is directed to acknowledge the deposit of double the market value already made by the first respondent, as directed by the learned Single Judge, as damages for the alleged encroachment. There shall be no further proceedings in this regard. The Revenue records shall be corrected accordingly.

We also do not find any justification in enforcing costs on the appellant. After all, theGram Panchayat has been vindicating a right cause. It is in fact the first respondent who is to bear the litigation expenses of the appellant. The appellant-Gram Panchayatcannot be said to be acting without bonafides when they take appropriate action in accordance with law. It is the encroachment made by the first respondent, which may not be deliberate, that dragged the appellant to litigation before various forums. Therefore, we vacate the order on costs imposed on the appellant-Gram Panchayat in the impugned judgment. The first respondent instead should bear the litigation expenses of the appellant-Gram Panchayat, which we quantify to Rs. 35,000/-. This amount shall be paid by the first respondent to the appellant-Gram Panchayat within a month from today. The appeal is partly allowed as above. There shall be no further order as to costs.

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