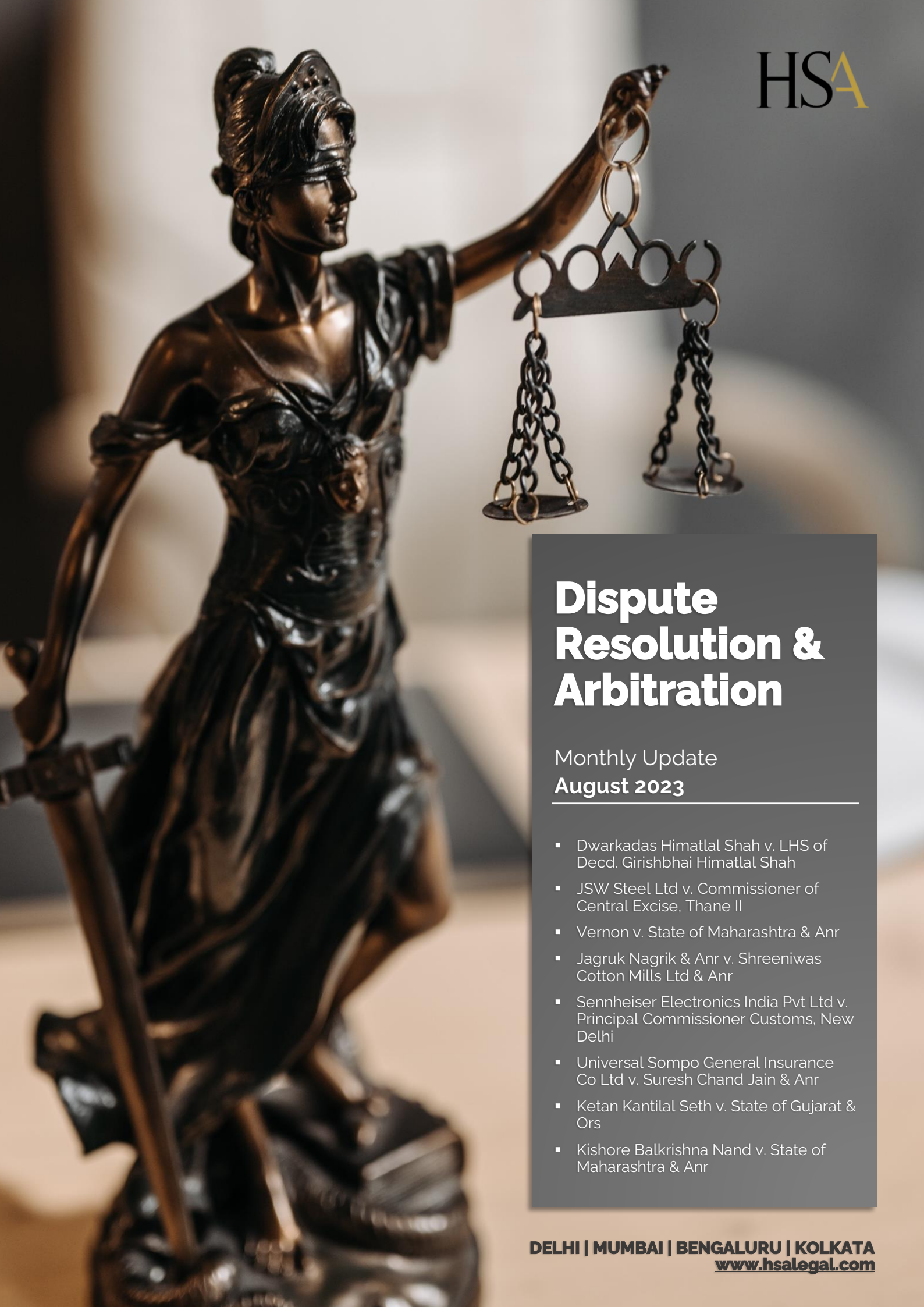

HSA

Dispute Resolution & Arbitration

Monthly Update

August 2023

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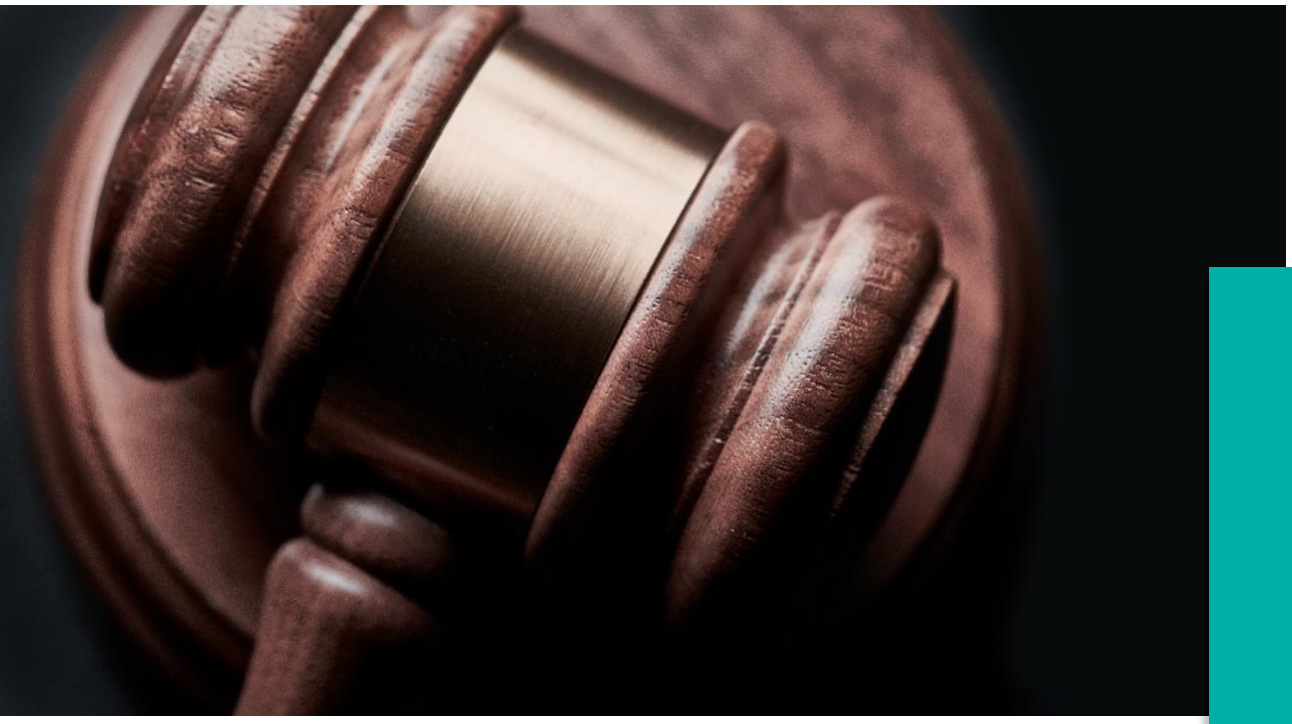
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Dwarkadas Himatlal Shah v. LHS of Decd. Girishbhai Himatlal Shah

Gujarat High Court | Special Civil Application No. 4313 of 2023

Background facts

- Dwarkadas Himatlal Shah (**Petitioner**) initiated legal proceedings against Respondent No. 1 and 2 i.e., LHS of Deceased Girishbhai Himatlal Shah, seeking partition of the property located at Ahmedabad. Respondent No. 1, who was the original Defendant No. 1.1 and 1.2, appeared in the said suit proceedings and filed their written statement along with an Injunction Application.
- Respondent No. 1 then filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 seeking dismissal of the suit in light of the arbitration clause mentioned in the Memorandum of Understanding (**MOU**) dated August 25, 2016, executed between the father of the Petitioner, father of Respondent No. 1 and Respondent No. 2 himself. The Petitioner did not submit a reply to the said application under Order 7 Rule 11. However, the Petitioner orally argued that the MOU was only meant for the superstructure and its division, and it did not pertain to the undivided share in the land on which the superstructure is constructed.
- On the same day of filing the Order 7 Rule 11 application, Respondent No. 1 filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (Act), urging the City Civil Court, Ahmedabad to refer the suit to an Arbitrator. During the arguments, the Petitioner argued that Respondent No. 1 had submitted to the jurisdiction of the City Civil Court by filing the written statement, thereby making the application under Section 8 of the Act non-maintainable.
- Vide Order dated December 16, 2022 (**Impugned Order**), the City Civil Court passed an Order while considering the application filed by Respondent - original defendants under Section 8 of the Act.
- Being aggrieved, the Petitioner approached the High Court of Gujarat (**HC**) seeking to quash and set aside the Impugned Order.

Issue at hand?

- Whether the application under Section 8 of the Act filed after the written statement can be referred to arbitration?

Decision of the Court

- The HC examined the MOUs dated November 03, 1986, and August 25, 2016, which contained arbitration clauses (Clause 14 and Clause 17), and noted that the ancestors of the parties had agreed to resolve any difference, impasse, or misunderstanding between them through arbitration. The Court then observed that the dispute concerned the alleged illegal construction over the open space of the suit property, which fell within the scope of arbitration as per the terms of the MOUs.
- The HC placed reliance on the Supreme Court's decision in ***Asian Avenues Pvt Ltd v. Syed Shoukat Hussain***[1] and the Delhi High Court's decision in ***SPML Infra Ltd v. Trisquare Switchgears Pvt Ltd***[2], which supported the view that a written statement could be considered as the first statement on the substance of the dispute for invoking the arbitration clause under Section 8.
- Based on the above analysis, the HC arrived at the conclusion that the Respondents had properly invoked the arbitration clause by raising the arbitration issue in their written statement, making the application under Section 8 maintainable.
- The HC upheld the order of the City Civil Court and allowed the application under Section 8 of the Arbitration and Conciliation Act. The HC clarified that the application was maintainable as it was filed within the time limit specified in Section 8, which requires parties to intimate the judicial authority about the arbitration clause before submitting their first statement on the substance of the dispute.
- In view of the above, the HC found no grounds for interference, thereby holding that the matter had been rightly referred to arbitration and dismissed the Petitioner's application seeking quashing of the Impugned Order.

HSA
Viewpoint

The provisions of Section 8 of the Arbitration and Conciliation Act, 1996 provide that a party merely needs to indicate the judicial authority about the arbitration clause at the time of filing the first statement on the substance of the disputes, and thereafter the judicial authority is compelled to refer disputes to arbitration. The Court has rightly dismissed the application and clarified that once the objection regarding the existence of arbitration and the disputes being governed by the same were raised in the written statement, which was the first statement on the substance of the dispute, it cannot be concluded that there was a failure to request reference of disputes to arbitration in time.

JSW Steel Ltd v. Commissioner of Central Excise, Thane II

Customs, Excise and Service Tax Appellate Tribunal, Mumbai | Excise Appeal No. 1975 of 2012

Background facts

- The Appellant is engaged in the business of manufacturing steel articles. In order to remove impurities and rust during the manufacture of steel, a 'pickling process' is carried out and Waste Pickle Liquor (**WPL**) is generated as a result of the pickling process.
- The Appellant entered into an agreement with Indrox Global Pvt Ltd (**IGPL**) for re-generation of Hydrochloric Acid (**HCL**) from the WPL. Under the agreement, the Appellant supplied WPL to IGPL at a nominal price of INR 1 per metric ton. Thereafter IGPL used chemical reactors to generate HCL and ferric oxide from the WPL and supplied HCL back to the appellant at a nominal price as agreed under the agreement.
- IGPL sold ferric oxide that was generated and retained 50% of the proceeds, while the remaining 50 percent was paid to the Appellants by issuing credit notes.
- According to the Excise Department (**Department**), during an investigation covering the period from July, 2004 to March, 2008 it was discovered that IGPL had issued credit notes totaling to INR 44,11,132 to the Appellant. The Department considered this amount as an additional consideration received by the Appellant as per Rule 6 of the Valuation Rules, 2000 and hence contended that the same needed to be included in their transaction value.
- In view thereof, the Department issued a show cause cum demand notice dated May 29, 2009 to the Appellant, demanding the differential central excise duty amounting to INR 7,02,413 as well as Education Cess (**EC**) of INR 14,048, Higher Education Cess (**HEC**) of INR 3,332 along with interest and penalty amounting to INR 1,20,750.
- Vide the Adjudication Order i.e. Order-in-Original dated January 29, 2010 the demands raised in the show cause notice were confirmed along with interest and penalty and the appropriation of amount deposited during investigation also stood confirmed. Being aggrieved by this, the Appellant filed the present Appeal before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (**Tribunal**).

Issue at hand?

- Whether the additional consideration received by the Appellant in the form of credit notes from IGPL for sale of ferric oxide by IGPL, which emerged through chemical reaction of WPL, admittedly

[1] AIR 2023 SC 2185
[2] (2022) SCC Online Del 1914

supplied by the Appellant to the said IGPL, is required to be added to the transaction value as per Rule 6 of Excise Valuation Rules, 2000?

Decision of the Tribunal

- At the outset, the Tribunal referred to the decision in the matter of ***Rajasthan Prime Steel Processing Centre Pvt Ltd v. CCE & CGST***[3] which dealt with the issue of whether the value received from the sale of auto parts in scrap should be included in the transaction value and the same is not applicable to the present case, since the auto parts by itself are not a waste product like WPL.
- The Tribunal also placed reliance on its decision in the case of ***TATA Steel Ltd v. CCE***[4] whereby it was held that WPL is not an excisable good and, therefore, Rule 6 of Valuation Rules, 2000 has no application and the question of undervaluation does not arise.
- The Tribunal held that the receipts from sale proceeds of ferric oxide which originated from WPL cannot be considered as consideration for WPL. The Tribunal stated that WPL is nothing but waste that emerges during the manufacture of steel and that waste that is thrown up during manufacture, cannot be said to be a produce of manufacture; hence is not liable to any duty.
- The Tribunal further held that Appellant is not at all involved in generating HCL or ferric oxide out of the said WPL and hence no demand can be sustained against the Appellant on this ground alone.
- In view of the above, the Tribunal set aside the Adjudication Order dated January 29, 2010 and allowed the Appeal filed by the Appellant with consequential relief.

HSA
Viewpoint

This decision clarifies that the receipts from sale of HCL or ferric oxide generated from waste product like WPL are not required to be added in transactional value as per Rule 6 of Excise Valuation Rules, 2000. The significance of the judgment is that it makes it clear waste that is thrown up during manufacture is not liable to any duty. This judgment removes all ambiguities and makes it clear that no duty is applicable on sale proceeds from WPL.

Vernon v. State of Maharashtra & Anr

Supreme Court of India | 2023 SCC OnLine Bom 1008

Background facts

- The said appeals impugned two judgments of the Bombay High Court rejecting bail applications. Both the applications were filed on October 27, 2018 after the Special Judge, Pune under the Unlawful Activities (Prevention) Act, 1967 (UAPA) had dismissed their bail plea. The decisions of the High Court were delivered on October 15, 2019.
- The Appellants were detained on the basis of the same FIR and the chargesheet also contains the same sections in respect of which offences are alleged to have been committed by them. These are Sections 121, 121A, 124A, 153A, 505(1)(b), 117, 120B read with Section 34 of the Indian Penal Code, 1860 (IPC) and Sections 13, 16, 17, 18, 18B, 20, 38, 39 and 40 of the UAPA .
- The Central Government, in exercise of their power under Section 6(5) read with Section 8 of the National Investigation Agency Act, 2008 (NIA Act) directed the National Investigation Agency (NIA) to take up investigation of the case vide order dated January 24, 2020. The case was re-registered at the NIA Police Station, Mumbai as RC No.01/2020/NIA/MUM.
- The proceedings against the Appellants have their origin in an FIR, bearing CR No.4/2018 dated January 08, 2018 registered with Vishrambaug Police Station, Pune, Maharashtra. The incident which prompted filing of the FIR was in relation to a program at Shaniwar Wada, Pune held on December 31, 2017. The organizers for this event were activists of Kabir Kala Manch, a cultural organization. There were various events in connection with the said program, which according to the Respondent, were provocative in nature and had the effect of creating enmity between caste groups leading to violence and loss of life, as also state vide agitation. There were books kept at the venue, which, according to the complainant in the FIR were also provocative. There were incidents of violence, arson, and stone pelting near Bhima-Koregaon.
- The Appellants did not feature in the FIR. The scope of the investigation was subsequently expanded, as evident in the judgment giving rise to Criminal Appeal No. 639 of 2023 on April 17, 2018. The Pune Police conducted searches at the residences of eight individuals. Searches were conducted at the residences/workplaces of the Appellants, and they were arrested on the same day, i.e., on August 28, 2018. They were initially put under house arrest and subsequently sent to judicial custody. Case of the NIA is that various letters and other materials recovered from the arrested co-accused persons showed Appellants involvement with the Communist Party of India (Maoist). This organization has been placed in the First Schedule to the UAPA as a terrorist organization vide notification dated June 22, 2009 issued in terms of Section 2(m) of the UAPA.
- After the arrest of the Appellants, a writ petition was filed before the Supreme Court. As the charges against the Appellants include commission of offences under different sections of the

[3] 2021-TIOL714-CESTAT-DEL
[4] 2019-TIOL-3946- CESTAT-MUM

UAPA, including those coming within Chapters IV and VI thereof, the restriction on grant of bail as contained in Section 43D (5) of the said Act would apply in their cases.

- **Submissions on behalf of the Appellants:**
  - That the accusations against the Appellants under the Sections which fall within Chapters IV and VI of the UAPA cannot lead to a prima facie satisfaction of the Court that such accusations are true and the available evidence at this stage do not fit the ingredients of these restrictive provisions.
- **Submissions on behalf of the Respondents:**
  - The Respondent had referred to some letters alleged to have been recovered from the computers or other devices of the co-accused persons in which activities of the two Appellants have been referred to.
  - The Respondent has also referred to a set of letters which are alleged to have been recovered from electronic devices of the co-accused persons in course of searches. The other set of documents on which the NIA has placed reliance, are literatures, pamphlets etc. some of which are meant to have been recovered from the residences of the Appellants themselves.

Issues at hand?

- Whether mere membership of a banned organization constitutes an offence or not?
- What are the parameters for grant of bail under restrictive provisions of the draconian acts such as the UAPA?

Decision of the Court

- An accused being in mere possession of literature, even if it inspires or propagates violence by itself, would neither amount to a 'terrorist act' within the meaning of Section 15 of the UAPA nor any other offences under Chapters IV and VI of the UAPA. Furthermore, participation in seminars by itself cannot constitute an offence under the bail-restricting provisions of UAPA.
- It was reiterated that under Section 43D of UAPA, a bail restricting clause cannot strip the jurisdiction of a Constitutional Court in testing if continued detention in a given case would breach the concept of liberty that's enshrined in Article 21 of the Constitution of India, however such a clause would apply in a case where such a bail-restricting clause is being invoked on the basis of materials with prima facie low-probative value or quality.
- The expression 'prima facie true' would mean that the evidence collated by the investigating agency in reference to the accusation against the accused concerned in the chargesheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. However, it would not satisfy the prima facie 'test' unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth.
- In the case of the Appellants, contents of the letters through which the Appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused. Under ordinary circumstances in a petition for bail, this exercise of analysis of evidence would not have been necessary. But in view of the restrictive provisions of Section 43D of the UAPA, some element of evidence-analysis becomes inevitable.
- Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment and the nature and seriousness of the offences, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of evidence and witnesses being tempered with; the larger interest of the public or the State would be relevant factors for granting or rejecting bail. Juxtaposing the Appellants' case founded on Articles 14 and 21 of the Constitution of India with the aforesaid allegations and considering the fact that almost five years have lapsed since they were taken into custody, the Appellants have made out a case for granting bail.
- Allegations against them no doubt are serious, but for that reason alone bail cannot be denied to them. While dealing with the offences under Chapters IV and VI of the UAPA, reference has been made to the materials available against them at this stage. These materials cannot justify continued detention of the Appellants, pending final outcome of the case under the others provisions of the IPC and the UAPA.
- Conditional Bail granted to the Applicants and held that on any breach of the imposed conditions, the Respondent can seek for cancellation of the said bail.

HSA
Viewpoint

With this judgement the Supreme Court has provided safeguards from unjust imprisonment as mere association does not qualify as an active participation and possession of literature that inspires or propagates violence by itself would neither amount to a 'terrorist act'. National securities laws all around the global have been used by powerful entity like the State to suppress descent or opposition. The Apex Court also clarified on the test of evidence and examination of such evidence under the restrictive provisions of the acts such as the UAPA.

Jagruk Nagrik & Anr v. Shreeniwas Cotton Mills Ltd & Anr

National Consumer Disputes Redressal Commission | Consumer Case no.527 of 2019

Background facts

- In the present case, Jagruk Nagrik a registered voluntary consumer association (**Complainant No. 1**), registered under Societies Registration Act, 1960 which offered legal services to consumers and Damodardas Jewellers, a consumer (**Complainant No. 2**) as defined under Consumer Protection Act, 1986. Shreeniwas Cotton Mills Ltd (**Opposite Party No. 1**) which is now merged and incorporated as Macrotech Developers Ltd and the Lodha Group (**Opposite Party No. 2**) are the companies registered under the provisions of the Companies Act, 2013 who are engaged in the business of development and construction of group housing projects.
- In the year 2010, the Opposite Party No. 1 launched a luxury project which was widely presented and advertised as 'The World's Tallest Residential Tower' (**Project**). A colored lucrative brochure reflected that 'World One' at Mumbai shall be the tallest residential building along with several levels of parking. The agent of the Opposite Party No. 1 presented the skyscraper before Complainant No. 2 as the most prestigious project of Mumbai. It was also represented that the building shall include parking of several levels along with 117 upper floors.
- Relying on such representations, Complainant No. 2 booked the flat on December 1, 2014 on 38th floor of the said project for a total consideration of INR 14,57,28,360. Accordingly, the Complainants paid an earnest amount of INR 18,00,000 on December 7, 2014. As per the booking application, payment plan was initially termed as 'construction linked payment plan' and total amount was payable in 19 installments, however, in Agreement to Sale, the Opposite Party No. 1 had unilaterally changed the payment plan to 'timely linked payment plan'.
- As per the demands of the Opposite Party No. 1, the Complainant No. 2 deposited the amount in four monthly installments pursuant to which an Agreement to Sale dated June 3, 2015, was executed wherein date of possession of the flat was mentioned as September 30, 2016.
- However, the construction of the project ceased after the construction of 89th floor owing to which the Complainants stopped making payments of installments. On further enquires and requests made by the Complainant No. 2 for proof of permission to construct 117 floors, the Opposite Party No. 1 informed that application for permission to raise the building above 89th floor was pending before the Civil Aviation Department.
- The Complainant No. 2 agreed to pay the balance amount only if Opposite Party No. 2 paid the pre-EMI interest till the date of receiving the permission from Civil Aviation Department. In July, 2017 the Opposite Party No. 2 apprised the Complainant No. 2 that the Delhi High Court had directed for a survey report regarding permission from Civil Aviation Department and portrayed a positive array of hope for the Opposite Party No. 2. Therefore, in November 2018, the Opposite Party No. 2 offered possession and demanded balance amount of INR 4,51,29,902.
- Aggrieved with such misleading representations of the Opposite Party No. 2, Complainant No. 2 in December 2018 sought legal assistance from the Complainant No. 1 and filed a complaint (**Complaint**) in National Consumer Disputes Redressal Commission, New Delhi (**NCDRC**) for deficiency in service owing to failure in construction of 117 floors as represented by the Opposite Party No. 1.
- On February 1, 2019 the case was adjourned for the Complainants to delete Complainant No. 1 from the said Complaint and file for authority letter of Complainant No. 2. However, the Complainants without removing the defects, filed a fresh complaint altogether. The Opposite Party No. 1 contended that there was a misjoinder of parties in the said Complaint since Complainant No. 1 and Opposite Party No. 2 are neither required nor appropriate parties.
- It was submitted by the Opposite Party No. 1 before NCDRC that the said Project had obtained the necessary approvals from Urban Planning and Development Department, however, the project faced height restrictions imposed by Airport Authority of India (**AAI**). The restrictions levied by AAI were limited upto the height of 180.89 meters, which was increased by AAI up to 284.29 meter. Further, Opposite Party No. 1 also pointed out that the information about the height restrictions was widely reported in media and reports. In a meeting dated March 26, 2015, the Appellate Committee, Ministry of Civil Aviation, Government of India, (**Appellate Committee**) directed the AAI to conduct an aeronautical survey of the said project on the basis of which the AAI issued a fresh NOC in September, 2015 with an approved height of 285.06 meters. Aggrieved by the decision of AAI, the Opposite Party No. 1 filed an application before the Appellate Committee with a request to grant an independent aeronautical survey which was rejected by the Appellate Committee.
- The Opposite Party approached the Delhi High Court and filed a writ petition bearing no. 2274 of 2017 wherein, the Delhi High Court by virtue of an order dated April 12, 2017 directed AAI to refer

the matter for study of International Civil Aviation Organization (**ICAO**). However, the AAI never referred the issue before ICAO owing to which the Opposite Party could not obtain NOC for construction of 117 floors and the construction of the said Project ceased after 89th floor.

- Complainant No. 2 had purchased a flat in the said Project because the agent of the Opposite Party No. 1 had represented that it would be the tallest residential building in the world. However, the construction was stopped at 89th floor because the AAI did not approve the construction of the building beyond that.
- The Opposite Parties argued that the Complainant should have conducted due diligence as the information about the AAI's sanction which was widely circulated in media and was also available in public domain since 2013. Further, the Opposite Parties stated that the construction of the building was completed on September 30, 2016 owing to which partial Occupancy Certificate was issued in July, 2017 which should have been considered as the date of offer of possession. The Opposite Parties furthermore submitted that no relief should be granted to the Complainants since Complainant No. 2 had stopped making payments in December, 2016.

Issues at hand?

- Whether there is misjoinder of parties in the Complaint in as much as Complainant No. 1 and the Opposite Party No. 2 are concerned?
- Whether there is misrepresentation in respect of height of the building on the part of the Opposite Parties?

Decision of the Commission

- The NCDRC observed that since Complainant No. 2 was represented as the developer in the brochure and had further made communications with Complainant No. 2, there is no misjoinder of parties.
- NCDRC also held that the brochure and other promotional material reflected a misrepresentation of the project as the world's tallest building. However, the Opposite Parties failed to prove the statements made by them that the restrictions levied by AAI pertaining to the height of the building in that area were already in public domain in 2013.
- There was clear misrepresentation by the Opposite Parties with respect to the height of the building. Such misrepresentation of being 'the tallest building of the world' was the basis on which the Complainants paid huge sums towards purchasing the flat. The Opposite Parties have also failed to obtain the sanction of AAI for increasing the height of the building beyond 285.06 meters which proves that the Complainants are entitled to the refund of the amount paid by them.
- In view of the above contentions, NCDRC ordered the refund of the full amount to the Complainants, along with an interest of 9% per year from the date of their respective deposits until the date of refund within a period of 2 months from the date of judgement.

HSA
Viewpoint

Of late, there have been several complaints have been filed pertaining to misrepresentation of advertisement by the promoters and developers and RERA has played a proactive role to prevent the same. Reliance can be placed on one of the renowned project located at Mahalaxmi known as 'Shapoorji Pallonji Mahalaxmi Minerva' wherein Maharashtra Real Estate Regulatory Authority (MahaRERA) has issued two show cause notices under Section 7 of the MahaRERA Act, to revoke the registration of the project to Lokhandwala Kataria Constructions owing to the breach of conditions which included one of the claims in promotional material that it will be a 90 storey project and the tallest residential tower in India, however in realty, the promoter were entitled to constructions approvals only to an extend of 77 floors. The promoters of the project have been required to submit the replies against the said two notices before August 28, 2023.to arbitration proceedings.

Sennheiser Electronics India Pvt Ltd v. Principal Commissioner Customs, New Delhi

Customs Excise & Service Tax Appellate Tribunal, New Delhi I Customs Appeal No. 50983 and 51056 of 2020

Background facts

- Sennheiser Electronic India Pvt Ltd (**Appellant**) imported 2 models of earphones, namely CX275s which had microphone and CX180 which did not have microphone. The Appellant classified these products under custom tariff heading 8518300, which attracted basic custom duty of 15%.
- The Appellant claimed benefit under the amended Exemption Notification No. 22/2018-Cus (**Exemption Notification**) dated February 2, 2018, which provided that all goods falling under tariff heading 8518 shall attract duty of 10%, except the following parts of cellular/mobile phones i.e., microphone, wired headset and receiver.
- During the post audit clearance, the Customs Department (**Department**) felt that Appellant is not entitled to the benefit under the Exemption Notification since the imported goods were wired headset and a part of the cellular or mobile phone. As such, show cause notices were issued to the Appellant to recover the differential duty along with interest and penalty on the differential duty.
- The Principal Commissioner vide order dated February 12, 2020 dropped the demand for differential duty pertaining to CX180 earphones, however he upheld the demands pertaining to CX275s earphone which have microphone, on the ground that it is a wired headset and not eligible for benefit under the Exemption Notification, though he did not impose any penalty on the same. The said order pertained to examination of imported goods for the period between June, 2018 to December, 2018.

- Yet again the Principal Commissioner vide order dated March 1, 2020 dropped the demand for differential duty pertaining to CX180 earphones, however he upheld the demands pertaining to CX275s earphone which have microphone, on the ground that it is a wired headset and not eligible for benefit under the Exemption Notification. In addition, he also imposed penalty of INR 4,53,744 as per Section 112 of the Customs Act. The said order pertained to examination of imported goods for the period between February, 2019 to March, 2019.
- Being aggrieved by the said orders dated February 12, 2020 and March 1, 2020 the Appellant filed the present appeal.

Issue at hand?

- Whether CX 275s earphones so imported are a part of cellular, mobile phones and headset forming part of cellular or mobile phone and thereby excluded from the benefit of the Exemption Notification?

Decision of the Tribunal

- At the outset, the Tribunal stated that earphone with microphone can be used with laptop, i-pod, mobile phones etc. and perform the same function of providing audio output through speakers and receiving audio input through microphone from devices they are attached to. In view of the same the Tribunal held that utility of earphones is not confined to cellular or mobile phone.
- The Tribunal further stated that cellular or mobile phones are often used without earphones and the earphones are neither a part nor essential for the use of cellular or mobile phones. The Tribunal held that earphones only add additional utility to cellular or mobile phones and hence are not a part of cellular or mobile phones.
- The Tribunal stated that the Exemption Notification contained phrases or expression such as 'parts or sub-parts or accessories to cellular or mobile phone' at Entry No. 10 and 12 and phrase such as 'part of cellular or mobile phone' at Entry No. 18 and held that the two expressions should be considered distinctly and differently from one another. In view of the same it held that the submission made by Department that the word 'parts' in Entry No. 18 is used in a general sense and should be treated as including the earphones is not acceptable.
- The Tribunal further held that it is evident from Entry No. 18 of the Exemption Notification that only such microphone, wired headset and receiver which are a part of cellular or mobile phones are excluded from the benefits under the Exemption Notification.
- The Tribunal held that the judgement in the case of ***Commissioner of Customs (Import) Mumbai v. Dilip Kumar & Company***[5] is not applicable to the present case since there is no ambiguity in the expression used in the Exemption Notification. The Tribunal further held that the judgement in the case of ***Commissioner of Customs (Import) Mumbai (Supra)*** does not rule out the possibility of liberal interpretation of Exemption Notification but reaffirms the judgements in the cases of ***Collector v. Parle Exports Pvt Ltd***[6] and ***Commissioner v. Hari Chand Shri Gopal***[7] where it was held that strict and liberal interpretations of the notification should be applied at different stages.
- The Tribunal held CX 257s earphones are not part of any cellular or mobile phone but are accessories that can be used with variety of electronic gadgets and only for this reason alone the benefits of Exemption Notification cannot be denied for CX 275s earphones so imported.
- Hence, the Tribunal set aside the orders dated February 12, 2020 and March 1, 2020 and thereby allowed the Appeal filed by the Appellant with consequential relief.

HSA
Viewpoint

This decision clarifies that the external wired headset or earphone are mere detachable accessories and cannot be considered to be a part of cellular or mobile phone. The significance of the judgment is that it makes it clear that earphones/wired headset which do not form a part of cellular or mobile phone are eligible for benefits under the Exemption Notification. This judgment removes all ambiguities and makes it clear that external earphones or wired headset only attracts a basic custom duty of 10%.

Universal Sompo General Insurance Co Ltd v. Suresh Chand Jain & Anr

Supreme Court of India I Special Leave Petition (Civil) No. 5263 of 2023; 2023 INSC 649

Background facts

- Respondent No. 2 bank issued a Standard Fire and Perils Policy dated December 05, 2011 in favor of Respondent No. 1 (**Complainant**) through the Appellant. A burglary insurance policy was also issued in favor of the Complainant on December 08, 2011. Both the policies covered a sum of INR 50 lakh for the risk of fire and burglary. The policies were for the period between November 25, 2011 and November 24, 2012.
- By way of a letter dated March 28, 2012 the Complainant informed the Respondent No. 2 bank that the construction of his new premises in Bawana, Delhi, had been completed and he had

[5] 2018 (361) ELT 577 (SC)
[6] 1988 (38) E.L.T. 741 (SC)
[7] 2010 (260) E.L.T. 3 (SC)

transferred his stock to the above premises situated in Bawana from the premises situated in Rajgarh Extension, Gandhi Nagar, Delhi and Bhagirath Palace, Chandni Chowk, Delhi. In this letter the Complainant had also instructed the bank to inform the Appellant.

- Respondent No. 2 bank acknowledged the aforesaid intimation and claimed to have informed the Appellant by way of a letter dated March 31, 2012. The bank claims to have also forwarded the letter dated March 28, 2012 of the Complainant to the Appellant.
- On June 29, 2012 a theft took place at the Bawana premises and FIR No. 213/2012 was lodged at PS Bawana, Delhi on June 30, 2012. The Appellant and Respondent No. 2 bank were also duly informed about the theft and a surveyor was also appointed to inspect the premises on July 01, 2012. Thereafter, on October 18, 2012, the complainant informed that a fire broke out at the Bawana premises. Subsequently, the Complainant filed claims for both theft and fire amounting to INR 49 lakh.
- The Appellant rejected the theft claim and the fire claim was closed on account of non-submission of documents by the Complainant. Aggrieved by the inaction of the Appellant, the Complainant approached the State Consumer Disputes Resolution Commission, Delhi (**SCDRC**) under Section 17 of the Consumer Protection Act, 1986 (**Act**). He prayed for his claim of INR 49 lakh along with compensation of INR 20 lakh plus interest at the rate Respondent No. 2 bank was charging from the Complainant, with costs of the Complaint.
- By way of an Order dated March 18, 2016, the SCDRC partly allowed the claim of the Complainant holding the Appellant and Respondent No. 2 bank liable to compensate for theft of goods worth INR 41,31,180 @ 12% p.a. from the date of claim. The Appellant and Respondent No. 2 bank were also directed to pay INR 2 lakh to the Complainant towards compensation for mental agony, harassment, and deficiency in providing services. Lastly, the Appellant was also directed to finalize the fire claim of INR 4 lakh of the Complainant.
- Aggrieved by the decision of the SCDRC, the Appellant challenged the same before the National Consumer Disputes Resolution Commission (**NCDRC**) under Section 19 of the Act, by way of a First Appeal, thereby praying for the said Order dated March 18, 2016 to be aside.
- By an Order dated January 16, 2023, First Appeal filed before the NCDRC was dismissed. The Appellant approached the Supreme Court of India (SC), by way of the captioned Petition, seeking special leave to appeal under Article 136 of the Constitution of India (**Constitution**).

Issue at hand?

- Whether the SC should entertain this petition seeking special leave to appeal under Article 136 of the Constitution directly against the order passed by the NCDRC in exercise of its appellate jurisdiction or relegate the Petitioner to avail the remedy of filing a writ petition under Article 226 of the Constitution or a petition invoking supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution?

Decision of the Court

- At the outset, the SC placed its reliance on its decision in the matter of ***Pritam Singh v. State***[8] in which it was held that the SC will not grant special leave unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. It was stated that the view that once an appeal has been admitted by special leave the entire case is at large and that the Appellant is free to contest all the findings of fact and raise every point which could be raised in the High Court, is wrong.
- Additionally, the SC relied upon a decision of its Constitution Bench in the matter of ***Dhakeswari Cotton Mills Ltd v. Commissioner of Income Tax, West Bengal***[9], whereby it was held that the power under Article 136 of the Constitution of India is an exceptional and overriding power, and has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule.
- In the matter of ***Ujagar Singh & Anr v. State (Delhi Administration)***[10], the SC held that special leave to appeal can be invoked in very exceptional circumstances. A question of law of general public importance or a decision which shocks the conscience of the Court are some of the prime requisites for the grant of special leave.
- Lastly, the SC relied on its recent decision in the matter of ***Ibrat Faizan v. Omaxe Buildhome Pvt Ltd***[11] wherein the SC considered the question as to whether a petition before the High Court under the Article 227 of Constitution of India against the order passed by the NCDRC in an appeal under

HSA
Viewpoint

This decision reaffirms that there are only a select few circumstances in which a party may approach the SC under a special leave petition i.e. (i) existence of exceptional and special circumstances; (ii) substantial and grave injustice has been done; and (iii) the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. Further, the power under Article 136 is an exceptional, overriding power which has to be exercised sparingly, with caution and only in extraordinary situations.

[8] 1950 SCR 453
[9] AIR 1955 SC 65
[10] (1979) 4 SCC 530
[11] 2022 INSC 573

Section 58(1)(a)(iii) of the Act, would be maintainable. In the said judgment, it was held that an appeal against the Order passed by the NCDRC to the SC would only be maintainable if the same is passed by the NCDRC in exercise of its powers conferred under Section 58(1)(a)(i) or Section 58(1)(a)(ii) of the Act and that no further appeal to the SC is provided against an order passed by the NCDRD under Section 58(1)(a)(iii) or under Section 58(1)(a)(iv) of the Act. Accordingly, it was held that the remedy available to an aggrieved party against an order of the NCDRC in an appeal under Section 58(1)(a)(iii) and Section 58(1)(a)(iv) would be to approach the concerned High Court having jurisdiction under Article 227 of the Constitution.

- In the aforesaid view of the decision in the matter of ***Ibrat Faizan (supra)***, the SC concluded that they should not adjudicate the present petition on merits and that it must ask the Appellant to first go before the jurisdictional High Court either by way of a writ application under Article 226 or 227 of the Constitution.
- Accordingly, the present petition was disposed of with liberty to the Appellant to approach the jurisdictional High Court and challenge the order passed by the NCDRC, in accordance with law.

Ketan Kantilal Seth v. State of Gujarat & Ors

Supreme Court of India | Miscellaneous Application No. of 2023 (D.NO. 33197 OF 2022) in Transfer Petition (Criminal) Nos. 333-348/2021

Background facts

- I.A. No. 156023/2022 and Miscellaneous Application No. 1935/2022 had been filed seeking modification and recall of order dated September 09, 2022 passed by the Supreme Court (**SC**) in Transfer Petition (Criminal) Nos. 333-348/2021, whereby the SC allowed the said petition filed by Petitioner Ketan Kantilal Seth and directed the transfer of pending matters as prayed by him in the petition to the Court of Principal Judge, Bombay City Civil and Sessions Court, Fort Mumbai, Maharashtra.
- In the meanwhile, pendency of the Transfer Petition ultimately led to the filing of the two applications by the intervenor and State of Maharashtra (**Respondent No. 12**) respectively.
- **Submissions on behalf of the Appellants**:
  - Opposed both the applications and submitted that the Transfer Petition was heard by consent of the parties and the submissions made before the Court are mere reiterations and purely an attempt to reopen the case for hearing on merits which is not permissible as per Order XII Rule 3 of SC Rules, 2013.
  - Submission that was made by State of Maharashtra with respect to not having been granted opportunity of hearing at the time of final hearing of Transfer Petition was not correct because all the parties were represented, and appearance has been marked in the order dated July 22, 2022 of the Court while closing hearing and reserving the case for Order.
  - The locus of intervenor Omprakash Bhauraoji Kamdi was disputed. Attention of the Court was drawn to the application submitted by intervenor before the SC in contrast to the affidavit filed by intervenor before Bombay High Court (**BHC**) Criminal Application No. 628/2021 to demonstrate the intervenor's contradictory stand.
  - The intervenor in his affidavit filed before BHC has claimed to be a member of NDCCB Ltd which is in complete contravention to his stand before the SC. In the order dated September 09, 2022 the Court made it clear that the Applicant does not have any locus to contest the Transfer Petition and hence, the intervenor at the very outset has to prove his locus and his claim, to be a poor agriculturist dependent on the NDCCB Ltd for financial aid, is misplaced.
  - The Judge in Nagpur who was trying case RCC No. 147/2002 before whom the arguments were advanced and hearing took place, has already been transferred to Pune.
- **Submissions on behalf of the Respondents:**
  - Contesting the application on the merits of the Transfer Petition, it was stated that the petition was filed by accused Ketan Kantilal Seth with an ulterior motive to derail and delay the trials which are pending against him since almost 20 years in different States.
  - Allowing of the Transfer Petition vide order dated September 09, 2022 has led to de novo trial of RCC No. 147/2002 and in fact, the Court has effectively set aside the order dated June 24, 2021 passed by BHC in Criminal Application No. 628/2021 vide which the Trial Court was directed to conclude the trial in RCC No. 147/2002 within specified time, wherein hearing stood concluded, though judgment was not pronounced by Trial Court in view of the order dated May 13, 2022 of the Court.
  - Such transfer of cases by the Court has effectually led to an adverse effect on the whole efforts of all the stakeholders involved who have been in pursuit of justice for more than 20 years.
  - Counsel appearing on behalf of State of Maharashtra, contested MA No. 1935/2022 and sought recall and modification of the order dated September 09, 2022 predominantly on the

ground that no opportunity of hearing was given to the State on the date when the matter was finally heard and same amounts to violation of principles of natural justice.
- In the event that the State was given any opportunity of hearing, all the development of the proceedings in respective Courts would have been brought to the notice of this Court. In view of the directions issued in Paragraph 13(e), the trials are required to be started from the stage of framing of charge. As per Order dated May 13, 2022 of this Court, arguments were heard in RCC No. 147/2002 by the Additional Chief Judicial Magistrate, I Class, Nagpur and only the judgment is to be pronounced. Therefore, it was prayed that the order dated September 09, 2022 may be modified to the extent by which de novo trial of that case may be avoided.
- Further emphasis was laid on the order of this Court dated November 29, 2022 in the instant applications, by which the transfer of the RCC No. 147/2002 was kept in abeyance, and it was also directed that fresh trial shall not commence in the said case.

Issue at hand?

- Whether an application can be filed on the pretext of 'clarification and addition' while evading the recourse of review before the SC?

Decision of the Court

- Applications filed on the pretext of 'clarification and addition' while evading the recourse of review, ought not to be entertained and should be discouraged and any alternation or addition to a judgment pronounced by Court can be made only to correct a clerical or arithmetical mistake or an error arising out of an accidental slip or omission.
- The power of SC under the Order XL Rule 3 of the SC Rules is limited and can only be exercised sparingly with due caution while confining itself within the parameters as described only to correct clerical/arithmetical mistakes or otherwise to rectify the accidental slip or omission.
- The applications in the present case be treated as disposed-off modifying the order dated September 09, 2022 and ordered that pending before transferor Court at Amravati, if already transferred to transferee Court, shall be returned to the transferor Court and continue at the transferor Court from the stage as received. The transfer of RCC No. 147/2002 by order dated September 09, 2022 passed in Transfer Petition (Criminal) Nos. 333348/2021 is restrained to the transferor Court with a clarification that the trial shall proceed from the stage of final arguments by the Presiding Officer uninfluenced by the directions in Paragraph 13(e) of order dated September 09, 2022.
- The SC made it clear vide order dated September 09, 2022 never intended or meant to set-aside the order dated June 24, 2021 passed by BHC and further clarified that the concerned Trial Court at Nagpur shall make all the endeavor to comply with the timeline as given by BHC and decide the case in accordance with law.

HSA
Viewpoint

With this judgement the SC has reiterated the settled position that any application made under the guise of 'clarification/addition' in order to avoid the process of review should not be allowed and should be avoided at all costs. Such application can be made only to correct a clerical or arithmetical mistake or an error arising out of an accidental slip or omission.

Kishore Balkrishna Nand v. State of Maharashtra & Anr

Supreme Court of India I Criminal Appeal No. 2291 of 2011

Background facts

- The appeal was filed against a judgment wherein Appellant was summoned for the offence of defamation punishable under Section 500 of the Indian Penal Code, 1860 (**IPC**) and is directed against the order passed by the Bombay High Court of, Nagpur Bench, dated February 03, 2010 in Criminal Writ Petition No. 676 of 2009, by which the High Court (**HC**) rejected the writ petition filed by the Appellant and thereby declined to quash the order of issue of process by the Magistrate for the offence of defamation.
- The Appellant herein lodged a complaint in writing addressed to the Sub-Divisional Magistrate stating that Respondent No. 2 (**Original Complainant**) had put up a shop by encroaching upon some land. In the complaint the Appellant further stated that such shop put up by the Respondent was creating nuisance, as many anti-social elements and Road Romeos had started visiting the said shop and were creating all sorts of problems.
- The SDM on receiving the complaint dated January 25, 2002 filed by the Appellant issued notice to the complainant. While the proceedings before the SDM were pending, the complainant thought fit to lodge a private complaint in the Court of the Judicial Magistrate, Worora, Chandrapur, State of Maharashtra for the offence of defamation.
- The Magistrate concerned recalled the order. The complainant, being aggrieved by such order of recall passed by the Magistrate, challenged the same before the Sessions Court by filing a revision application. The revision application was allowed and the order recalling the order of issue of process was quashed. In such circumstances, the Appellant went before the HC.
- In the HC, the Appellant thought fit not to press his petition and withdrew the same. 8 years thereafter the Appellant thought fit to challenge the original order of issue of process before the

HC. The HC without entering into the merits of the matter, declined to entertain such petition only on the ground of delay.

- **Submissions on behalf of the Appellants:**
  - That the Magistrate committed a serious error in taking cognizance on a complaint, which fails to disclose commission of any offence or discloses any of the ingredients to constitute the offence of defamation as defined under Section 499 of the IPC and made punishable under Section 500 of the IPC. The Appellant, in good faith, brought to the notice of the SDM that the complainant had encroached upon some portion of the land and had put up a shop which was creating nuisance.
  - Furthermore, since the alleged defamatory words or statements are said to have been made in a complaint made in writing addressed to a public authority like SDM and not made public, the same would not attract the rigors of Section 499 of the IPC.
- **Submissions on behalf of the Respondents:**
  - As this was a case of a private complaint, the State had hardly any role to play. Still the State had assisted the Court on the question of law.

Issue at hand?

- Whether the allegations made in the complaint addressed to a public authority such as the SDM make out the offence under Section 500 IPC or not?

Decision of the Court

- It is imperative to analyze each and every element that needs to be satisfied in order to create a criminal liability by dissecting Section 499 and Section 500 of the IPC while ascertaining as to how such an act by the Applicant is protect under the Eight Exception to Section 499 of the IPC.
- As Exception 8 to Section 499 of the IPC clearly indicates that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. Hence, no case for defamation could be initiated.
- The original order passed by the Magistrate issuing summons were quashed and set aside.

HSA
Viewpoint

The Court has reiterated the elements that need to be satisfied in order to constitute an offence of defamation under the provisions of the IPC. No defamation will be said to be committed if such statement is made to an authority who has the jurisdiction over the accused with regard to the subject matter.

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