A OM PRAKASH & ANR.

v.

UNION OF INDIA & ANR.

(Writ Petition (Crl.) No. 66 of 2011)

B SEPTEMBER 30, 2011

[ALTAMAS KABIR, CYRIAC JOSEPH AND SURINDER SINGH NIJJAR, JJ.]

Central Excise Act, 1944/Customs Act, 1962 – ss. 9A/
C *104(3) – Duty evasion and other offences under – Held: Are non-cognizable and bailable – Provisions of s. 104(3) of the 1962 Act and s. 13 of the 1944 Act, vest customs officers and excise officers with the same powers as that of a police officer in charge of a police station, which include the power to*
D *release on bail upon arrest in respect of offences committed under the two enactments which are uniformly non-cognizable – If person arrested offers bail, he should be released on bail.*

The question which arose for consideration in these
E **matters is that whether all offences under the Central Excise Act, 1944 and the Customs Act, 1962 are non-cognizable and, if so, whether such offences are bailable.**

Allowing the Writ Petitions and disposing of the Criminal Misc. Petition, the Court

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HELD: 1.1 Sub-section (1) of Section 9A of the Central Excise Act, 1944, states in completely unambiguous terms that notwithstanding anything contained in the Code of Criminal Procedure, offences
G **under Section 9 shall be deemed to be non-cognizable within the meaning of that Code. There is, therefore, no scope to hold otherwise. The expression "bailable offence" has been defined in Section 2(a) of the Code to mean an offence which is either shown to be bailable in**

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the First Schedule to the Code or which is made bailable by any other law for the time being in force. The First Schedule to the Code consists of Part 1 and Part 2. While Part 1 deals with offences under the Penal Code, Part 2 deals with offences under other laws. Accordingly, if the provisions of Part 2 of the First Schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than three years or with fine only, being the third item under the category of offences indicated in the said Part. An offence punishable with imprisonment for three years and upwards, but not more than seven years, has been shown to be cognizable and non-bailable. If, however, all offences under Section 9 of the 1944 Act are deemed to be non-cognizable, then, in such event, even the second item of offences in Part 2 could be attracted for the purpose of granting bail since all offences under Section 9 of the 1944 Act are deemed to be non-cognizable. [Para 24] [259-F-H; 260-A-E]

1.2 Section 2(i) Cr.P.C. defines a "non-cognizable offence", in respect whereof a police officer has no authority to arrest without warrant. The said definition defines the general rule since even under the Code some offences, though "non-cognizable" have been included in Part I of the First Schedule to the Code as being non-bailable. In the instant case, the concern is with the offences under a specific Statute which falls in Part 2 of the First Schedule to the Code. However, the language of the Scheme of 1944 Act seem to suggest that the main object of the enactment of the said Act was the recovery of excise duties and not really to punish for infringement of its provisions. The introduction of Section 9A into the 1944 Act by way of amendment reveals the thinking of the legislature that offences under the 1944 Act should be non-cognizable and, therefore, bailable. From Part 1 of the First Schedule to the Code, it will be clear that as a

A general rule all non-cognizable offences are bailable, except those indicated above. The said provisions, which are excluded from the normal rule, relate to grave offences which are likely to affect the safety and security of the nation or lead to a consequence which cannot be B revoked. [Para 26] [260-G-H; 261-A-D]

1.3 The definition of "non-cognizable offence" in Section 2(l) of the Code makes it clear that a non-cognizable offence is an offence for which a police officer has no authority to arrest without warrant. The C expression "cognizable offence" in Section 2(c) of the Code means an offence for which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. In other words, on a construction of the definitions of the D different expressions used in the Code and also in connected enactments in respect of a non-cognizable offence, a police officer, and, in the instant case an excise officer, would have no authority to make an arrest without obtaining a warrant for the said purpose. The same E provision is contained in Section 41 of the Code which specifies when a police officer may arrest without order from a Magistrate or without warrant. [Para 27] [261-E-G]

1.4 The offences under the 1944 Act cannot be F equated with offences under the Penal Code which have been made non-cognizable and non-bailable. In fact, in the Code itself exceptions have been carved out in respect of serious offences directed against the security of the country, which though non-cognizable have been made non-bailable. However, sub-section (2) of Section G 9A makes provision for compounding of all offences under Chapter II. Significantly, Chapter II of the 1944 Act deals with levy and collection of duty and offense under the said Act have been specified in Section 9, which provides that whoever commits any of the offense set out H

in Section 9, would be punishable in the manner indicated under Sub-section (1) itself. What is even more significant is that Section 20 of the 1944 Act, provides that the Officer in-Charge of a police station to whom any person is forwarded under Section 19, shall either admit him to bail to appear before the Magistrate having jurisdiction, or on his failure to provide bail, forward him in custody to such Magistrate. The said provision clearly indicates that offences under the Central Excise Act, as set out in Section 9 of the Act, are bailable, since the Officer in-Charge of a police station has been mandated to grant bail to the person arrested and brought before him in terms of Section 19 of the Act. [Paras 28 and 29] [261-H; 262-A-F]

1.5 In view of the provisions of Sections 9 and 9A read with Section 20 of the 1944 Act, offences under the Central Excise Act, 1944, besides being non-cognizable, are also bailable, though not on the logic that all non-cognizable offences are bailable, but in view of the said provisions of the 1944 Act, which indicate that offences under the said Act are bailable in nature. [Para 30] [263-B]

1.6 The provisions of the Customs Act, 1962 and Central Excise Act, 1944 on the issue whether offences under both the said Acts are bailable, are not only similar, but the provisions of the two enactments are also in *pari materia* in respect thereof. [Para 42] [268-E]

1.7 The provisions of Section 104(3) of the Customs Act, 1962, and Section 13 of the Central Excise Act, 1944, vest Customs Officers and Excise Officers with the same powers as that of a Police Officer in charge of a Police Station, which include the power to release on bail upon arrest in respect of offences committed under the two enactments which are uniformly non-cognizable. Both Section 9A of the 1944 Act and Section 104(4) of the Customs Act, 1962, provide that notwithstanding

A **anything in the Code of Criminal Procedure, offences under both the Acts would be non-cognizable. [Para 43] [268-F-H]**

1.8. The offences under the Customs Act, 1962 must also be held to be bailable. Consequently, as in the case B **of offences under the Central Excise Act, 1944, the offences under Section 135 of the Customs Act, 1962, are bailable and if the person arrested offers bail, he should be released on bail in accordance with the provisions of sub-Section (3) of Section 104 of the Customs Act, 1962,** C **if not wanted in connection with any other offence. [Para 44] [269-B-D]**

Ramesh Chandra Mehta v. State of West Bengal **AIR 1970 SC 940**; *Directorate of Enforcement v. Deepak Mahajan* **(1994) 3 SCC 440: 1994 (1) SCR 445** ; *Union of* D *India v. Padam Narian* Aggarwal **2008 (231) ELT 397(SC)**; *Sunil Gupta v. Union of India* **2000 (118) ELT 8 P&H**; *Bhavin Impex Pvt. Ltd. v. State of Gujarat* **2010 (260) ELT 526 (Guj)**; *Superintendent of Police, CBI & Ors. v. Tapan Kumar Singh* **(2003) 6 SCC 175: 2003 (3) SCR 485**; *Bhupinder Singh v.* E *Jarnail Singh* **(2006) 6 SCC 207**; *Commissioner of Customs v. Kanhaiya Exports (P) Ltd.* **Civil Appeal No.81 of 2002**; *Union of India v. Padam Narain Aggarwal* **(2008) 13 SCC 305: 2008 (14) SCR 179**; *N.H. Dave, Inspector of Customs v. Mohd. Akhtar Hussain Ibrahim Iqbal Kadar Amad Wagher* F *(Bhatt) & Ors.* **1984 (15) ELT 353 (Guj.) – Referred to.**

Case Law Reference:

AIR 1970 SC 940	**Referred to**	**Para 18**
1994 (1) SCR 445	**Referred to**	**Para 19**
G **2008 (231) ELT 397(SC)**	**Referred to**	**Para 20**
2000 (118) ELT 8 P&H	**Referred to**	**Para 20**
2010 (260) ELT 526 (Guj)	**Referred to**	**Para 20**
H **2003 (3) SCR 485**	**Referred to**	**Para 23**

(2006) 6 SCC 207	**Referred to**	**Para 23**	A
2008 (14) SCR 179	**Referred to**	**Para 38**	
1984 (15) ELT 353 (Guj.)	**Referred to**	**Para 39**	

CRIMINAL ORIGINAL JURISDICTION : Under Article 32 of the Constitution of India. B

Writ Petition (Criminal) No. 66 of 2011.

WITH

C

W.P. (Crl.) No. 85 of 2010

W.P. (Crl.) No. 74 of 2011

W.P. (Crl.) No. 87 of 2011

D

W.P. (Crl.) No. 101 of 2011

W.P. (Crl.) No. 102 of 2011

W.P. (Crl.) No. 74 of 2010

E

W.P. (Crl.) No. 36 of 2011

W.P. (Crl.) No. 37 of 2011

W.P. (Crl.) No. 51 of 2011

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W.P. (Crl.) No. 84 of 2011

Crl. MP No. 10673 of 2011 in W.P. (Crl.) No. 76 of 2011.

P.P. Malhotra and Mohan Prasaran, AAG, Mukul Rohatgi, Atul Nanda and U.U. Lalit, Sujay N. Kantawala, Vikram G Chaudhary, Saurabh Kirpal, Sanjay Agarwal, Dilip Kumar Sharma, Jyoti Taneja, R.K. Adsure, Rakesh Dahiya, Nikhil Jain, Vikram Choudhary, Gauram Awasthi (AOR), Satish Pandey, Ranjeeta Rohatgi, Dikhsa Rai, Ravindra Keshavrao Adsure, Rajiv Nanda, Naresh Kaushik, Chetan Chawla, D.L. Chidanand, H

A B.K. Prasad, T.A. Khan, Ch. Shamunddin Khan, Arvind Kumar Sharma, B. Krishna Prasad, Satish Aggarwala, Sushil Kaushik, Anirudha Sharma, Anando Mukherjee, Harsh N. Parekh, Arvind Kumar Sharma, Rajiv Nanda, D.L. Chidaranda, R. Balasubramanium, A.K. Sharma, Anirudh Sharma, Anando
B Mukherjee, Asha Gopalan Nair and Shankar Chillarge for the appearing parties.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Two sets of matters have been
C heard together, one relating to the provisions of the Customs Act, 1962, and the other involving the provisions of the Central Excise Act, 1944, since the issue in both sets of matters is the same. The common question in these two sets of matters is that since all offences under the Central Excise Act, 1944 and
D the Customs Act, 1962, are non-cognizable, are such offences bailable? Although, the provisions of both the two Acts in this regard are pari materia to each other, we shall first take up the matters relating to the Central Excise Act, 1944, hereinafter referred to as "the 1944 Act", namely, (1) Writ Petition (Crl)
E No.66 of 2011, Om Prakash & Anr. Vs. Union of India & Anr., which has been heard as the lead case, (2) Writ Petition No.85 of 2010 and (3) Writ Petition (Crl.) Nos.74, 87, 101 and 102 of 2011.

2. Section 9A of the 1944 Act, which was introduced in
F the Act with effect from 1st September, 1972, provides that certain offences are to be non-cognizable. Since we shall be dealing with this provision in some detail, the same is extracted hereinbelow :-

G **"9A. Certain offences to be non-cognizable. –** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code.

H (2) Any offence under this Chapter may, either before

or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding, as may be prescribed.

Provided that nothing contained in this sub-section shall apply to –

(a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of sub-section (1) of Section 9;

(b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(c) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005."

3. What is important is the non-obstante clause with which the Section begins and in very categorical terms makes it clear that notwithstanding anything contained in the Code of Criminal Procedure, offences under Section 9 of the 1944 Act would be deemed to be non-cognizable within the meaning of the Code. In fact, Sub-section (2) of Section 9A also provides for compounding of offences upon payment of the compounding amount with the exceptions as mentioned in the proviso thereto.

4. Mr. Mukul Rohatgi, learned senior counsel appearing for the Petitioners in both sets of matters, submitted that since the expressions "cognizable" or "non-cognizable" or even "bailable

A offences" had not been defined in either the 1944 Act or the Customs Act, 1962, one would have to refer to the provisions of the Code of Criminal Procedure, 1973 (Cr.P.C.) to understand the meaning of the said expressions in relation to criminal offences. Section 2(a) Cr.P.C. defines "bailable
B offence" as follows :-

> "2(a). "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;"

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Section 2(c) defines "cognizable offence" as follows :-

> "2(c). "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer
D may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;"

Section 2(l) defines "non-cognizable offence" as follows :-

> "2(l). "non-cognizable offence" means an offence for which,
E and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;"

5. Mr. Rohatgi then submitted that offences which are punishable under the 1944 Act have been indicated in Section
F 9 of the said Act and these sets of cases relate to the offences indicated in Section 9(1)(d) of the said Act. Section 9(1)(d) is again divided into two sub-clauses and reads as follows:-

> "**9. Offences and penalties.** (1) Whoever commits any of the following offences, namely:-

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> (a) to (c)
> .....
>
> (d) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and

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(b) of this section;

shall be punishable,-

(i) in the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both."

6. What is of significance is that offences covered by clauses (a) and (b) and the subsequent amendments thereto relating to any excisable goods, where the duty leviable thereon under the Act exceeds one lakh of rupees, would be punishable with imprisonment for a term which may extend to seven years and with fine, whereas under Section 9(1)(d)(ii), in any other case, the offence would be punishable with imprisonment for a term which may extend to three years or with fine or with both.

7. Since the question of arrest is in issue in these sets of cases, Mr. Rohatgi then referred to the provisions of Section 13 of the 1944 Act, which deals with the power to arrest in the following terms:-

"13. Power to arrest: - Any Central Excise Officer not below the rank of Inspector of Central Excise may, with the prior approval of the Commissioner of Central Excise, arrest any person whom he has reason to believe to be liable to punishment under this Act or the rules made thereunder."

A 8. Mr. Rohatgi submitted that the said power would have to be read along with Sections 18, 19, 20 and 21 of the 1944 Act along with Section 155 Cr.P.C. Section 18 of the 1944 Act provides for searches and how arrests are to be made under the Act and rules framed thereunder and reads as follows :-

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> **"18. Searches and arrests how to be made.-** All searches made under this Act or any rules made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating
> C respectively to searches and arrests made under that Code."

9. Sections 19, 20 and 21 deal with how a person arrested is to be dealt with after his arrest and the procedure to be
D followed by the Officer in-Charge of the police station concerned to whom any person is forwarded under Section 19. For the sake of understanding the Scheme, the provisions of Sections 19, 20 and 21 of the 1944 Act are extracted hereinbelow ad seriatim :-

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> **"19. Disposal of persons arrested.-** Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance, to the
> F officer-in-charge of the nearest police station.
>
> **20. Procedure to be followed by officer-in-charge of police station.-** The officer-in-charge of a police station to whom any person is forwarded under section 19 shall
> G either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.
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> **21. Inquiry how to be made by Central Excise Officers**
> H **against arrested persons forwarded to them under**

Section 19.-(1) When any person is forwarded under section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to enquire into the charge against him.

(2) For this purpose, the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise, and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case:

Provided that –

(a) if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the Central Excise Officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior."

10. As indicated in Section 18, all steps taken under Sections 19, 20 and 21 would have to be taken in accordance with the provisions of the Code of Criminal Procedure and the relevant provision thereof is Section 155 which deals with information as to non-cognizable cases and investigation of such cases, since under Section 9A of the 1944 Act all offences under the Act are non-cognizable. For the sake of reference Section 155 Cr.P.C. is extracted hereinbelow :-

A **"155. Information as to non-cognizable cases and investigation of such cases.-** (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered
B the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

C (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except
D the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to
E be a cognizable case, notwithstanding that the other offences are non-cognizable."

11. As will be evident from the aforesaid provisions of Section 155 Cr.P.C., no police officer in charge of a police station is entitled to investigate a non-cognizable case without
F the order of a Magistrate having the power to try such case or to commit the case for trial. Furthermore, no such police officer is entitled to effect arrest in a non-cognizable case without a warrant to effect such arrest. According to Mr. Rohatgi, since all offences under the 1944 Act, irrespective of the length of
G punishment are deemed to be non-cognizable, the aforesaid provisions would fully apply to all such cases. This now brings us to the question as to whether all offences under the 1944 Act are bailable or not. As has been indicated hereinbefore in this judgment, Section 2(a) of the Code defines "bailable
H offence" to be an offence shown as bailable in the First

Schedule to the Code or which is made bailable by any other law for the time being in force. The First Schedule to the Code which deals with classification of offences is in two parts. The first part deals with offences under the Indian Penal Code, while the second part deals with classification of offences in respect of other laws. Inasmuch as, the offences relate to the offences under the 1944 Act, it is the second part of the First Schedule which will have application to the cases in hand. The last item in the list of offences provides that if the offence is punishable with imprisonment for less than three years or with fine only, the offence will be non-cognizable and bailable. Accordingly, if the offences come under the said category, they would be both non-cognizable as well as bailable offences. However, in the case of the 1944 Act, in view of Section 9A, all offences under the Act have been made non-cognizable and having regard to the provisions of Section 155, neither could any investigation be commenced in such cases, nor could a person be arrested in respect of such offence, without a warrant for such arrest.

12. Mr. Rohatgi submitted that Section 20 of the 1944 Act would also make it clear that the Officer in-Charge of a police station to whom any person arrested is forwarded under Section 19, shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate. In other words, unless the offence was bailable, the Officer in-Charge of the police station would not have been vested with the power to admit him to bail and to direct him to appear before the Magistrate having jurisdiction. Mr. Rohatgi pointed out that Section 21 which deals with the manner in which the enquiry is to be made by the Central Excise Officer against the arrested person forwarded to him under Section 19, is similar to the procedure prescribed under Section 20.

13. The submissions made by Mr. Rohatgi will have to be considered in the context of the provisions of Sections 9A, 13 and 18 to 21 of the 1944 Act and Section 155 Cr.P.C.

A 14. Section 41 of the Code provides the circumstances in which a police officer may, without an order from a Magistrate and without a warrant, arrest any person. What is relevant for our purpose are Sub-section (1)(a) and Sub-section (2) of Section 41 which are extracted hereinbelow:-

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> **"41. When police may arrest without warrant.-** (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-
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> (a) Who has been concerned in any cognizable offence,
C or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
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> D (b) to (h).....
>
> (2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any, person, belonging to one or more of the categories of persons specified in section 109 or section 110."

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15. An exception to the provisions of Section 41 has been made in Section 42 of the Code which enables a police officer to arrest a person who has committed in the presence of such officer or has been accused of committing a non-cognizable
F offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false.

16. One other provision of the Code referred to is Section 46 which deals with how arrests are to be made. The same
G merely provides the procedure for effecting the arrest for which purpose the officer or other person making the same shall actually touch or confine the body of the person to be arrested. The said provision is not really material for a determination of the issues in this case and need not detain us.

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17. In this connection, Section 436 Cr.P.C. which provides in what cases bail could be taken, may be taken note of. The said Section provides as under:-

> **"436. In what cases bail to be taken.**-(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such court to give bail, such person shall be released on bail:
>
> Provided that such officer or court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:
>
> Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 [or section 446A].
>
> (2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the court or is brought in custody and any such refusal shall be without prejudice to the powers of the court to call upon any person bound by such bond to pay the penalty thereof under section 446."

As will be evident from the above, when any person, other than a person accused of a non-bailable offence, is arrested or detained without warrant by an Officer in-Charge of a police station, or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before a Court to give bail, he shall be released

A on bail. In other words, in respect of a non-cognizable case, a person who is arrested without warrant shall be released on bail if he is prepared to give bail. The scheme of the Section is that without a warrant, if a person is arrested by the Officer in-Charge of a police station or if such person is brought before
B the Court, he is entitled to be released on bail, either by the police officer, or the Court concerned.

18. The legal contentions indicated hereinabove were opposed on behalf of the Union of India and the stand taken by Mr. Mohan Parasaran, learned Additional Solicitor General,
C was that what was required to be considered in the Writ Petitions was whether there is a power to arrest vested in the officers exercising powers under Section 13 of the 1944 Act without issuance of a warrant and whether such power could be exercised only after an FIR/complaint had been lodged
D under Section 13 of the aforesaid Act. It was also contended that it was necessary to consider further whether criminal prosecution or investigation could be initiated, which could lead to arrest, without final adjudication of a dual liability. The last contention raised was whether offences referred to in Section
E 9(1)(d)(i) of the 1944 Act were bailable or not on account of the fact that in the said Act by a deeming fiction all offences under the respective Sections are deemed to be non-cognizable. Mr. Parasaran pointed out that the Preamble to the 1944 Act states that it is expedient to consolidate and amend
F the law relating to central excise duty on goods manufactured or produced in certain parts of India. Under the Act it is the duty of the officers to ensure that duty is not evaded and persons who attempt to evade duty are proceeded against. The learned Additional Solicitor General submitted that wide powers have
G been conferred on the Officers under the Act to enable them to discharge their duties in an effective manner, though not for the purpose of prevention and detection of crime, but to prevent smuggling of goods or clandestine removal thereof and for due realization of excise duties. It was also urged that the Officers
H under the said Act are not police officers and that the said

question is no longer res integra. Consequently, in *Ramesh Chandra Mehta Vs. State of West Bengal* [AIR 1970 SC 940], a Constitution Bench of this Court held that since a customs officer is not a police officer, as would also be the case in respect of an officer under the Excise Act, submissions made before him would not be covered under Section 25 of the Evidence Act.

19. Mr. Prasaran submitted that the High Court had also made a distinction on the basis that while Section 13 of the 1944 Act refers to a "person" and not to an "accused" or "accused person", the power under the Central Excise Act is for arrest of any person who is suspected of having committed an offence and is not an accused, but is a person who would become an accused after the filing of a complaint or lodging of an FIR, as was held by this Court in the case of *Directorate of Enforcement Vs. Deepak Mahajan* [(1994) 3 SCC 440]. The learned ASG submitted that although under the powers reserved under the Customs Act and the Excise Act to a Customs Officer or a Central Excise Officer, as the case may be, the said Officer would be entitled to exercise powers akin to that of a police officer, but that did not mean that such officers are police officers in the eyes of law. The said officers had no authority or power to file an investigation report under Section 173 Cr.P.C. and in all cases the officer concerned has to produce the suspect before the Magistrate after investigation for the purpose of remand. The learned ASG submitted that only on the filing of a complaint, can the criminal law be set in motion.

20. Mr. Prasaran also urged that the power to arrest must necessarily be vested in the Officer concerned under the 1944 Act for the efficient discharge of his functions and duties, inter alia, in order to prevent and tackle the menace of black money and money laundering. Mr. Prasaran submitted that in *Union of India Vs. Padam Narian Aggarwal* [2008 (231) ELT 397(SC)], this Court had held that even though personal liberty

A is taken away, there are norms and guidelines providing safeguards so that such a power is not abused, but is exercised on objective facts with regard to commission of any offence. Reference was also made to the decision of the Punjab & Haryana High Court in *Sunil Gupta Vs. Union of India* [2000 B (118) ELT 8 P&H] and *Bhavin Impex Pvt. Ltd. Vs. State of Gujarat*[2010 (260) ELT 526 (Guj)], in which the issue, which is exactly in issue in the present case, was considered and, as submitted by the learned ASG, it has been held that the FIR or complaint or warrant is not a necessary pre-condition for an C Officer under the Act to exercise powers of arrest. It was also submitted that the Petitioners had nowhere questioned the vires of the Section granting power to investigate to the Officer under the Act as being unconstitutional and ultra vires and as such in case of any mistake or illegality in the exercise of such statutory D powers, the affected persons would always have recourse to the Courts.

21. Coming to the question of the provisions of Section 9A of the 1944 Act wherein in Sub-section (1) it has been clearly mentioned that notwithstanding anything contained in the E Code of Criminal Procedure, offences under Section 9 shall be deemed to be non-cognizable within the meaning of the Code, the learned ASG submitted that the aforesaid Section does not state anything as to whether such offences are also bailable or not. It was contended that if the submissions made by Mr. F Rohatgi on this point were to be accepted, it would mean that all offences under Section 9, including offences punishable with imprisonment upto seven years, would also be bailable, which could not have been the intention of the legislators enacting the 1944 Act. Mr. Prasaran submitted that the provisions of G Section 9A of the 1944 Act merely import the provisions of Section 2(i) Cr.P.C., thereby debarring a "police officer" from arresting a person without warrant for an offence under the Act. It was submitted that Section 9A does not refer to a Central Excise Officer and as such there is no embargo on an Officer H under the 1944 Act from arresting a person.

22. Mr. Prasaran's next submission was with regard to the provisions of part 2 of the First Schedule to the Code of Criminal Procedure and it was submitted that the same has to be given a meaningful interpretation. It was urged that merely because a discretion had been given to the Magistrate to award punishment of less than three years, it must fall under the third head of the said Schedule and, therefore, be non-cognizable and bailable. On the other hand, as long as the Magistrate had the power to sentence a person for imprisonment of three years or more, notwithstanding the fact that he has discretion to provide a sentence of less than three year, the same will make the offence fall under the second head thereby making such offence non-bailable. It was submitted that in essence it is the maximum punishment which has to determine the head under which the offence falls in Part 2 of the First Schedule to the Code and not the use of discretion by the Magistrate to award a lesser sentence.

23. In support of his submissions, Mr. Prasaran referred to the decisions of this Court in *Superintendent of Police, CBI & Ors. Vs. Tapan Kumar Singh* [(2003) 6 SCC 175] and *Bhupinder Singh Vs. Jarnail Singh* [(2006) 6 SCC 207], to which reference will be made, if necessary.

24. As we have indicated in the first paragraph of this judgment, the question which we are required to answer in this batch of matters relating to the Central Excise Act, 1944, is whether all offences under the said Act are non-cognizable and, if so, whether such offences are bailable? In order to answer the said question, it would be necessary to first of all look into the provisions of the said Act on the said question. Sub-section (1) of Section 9A, which has been extracted hereinbefore, states in completely unambiguous terms that notwithstanding anything contained in the Code of Criminal Procedure, offences under Section 9 shall be deemed to be non-cognizable within the meaning of that Code. There is, therefore, no scope to hold otherwise. It is in the said context that we will have to consider

A the submissions made by Mr. Rohatgi that since all offences under Section 9 are to be deemed to be non-cognizable within the meaning of the Code of Criminal Procedure, such offences must also be held to be bailable. The expression "bailable offence" has been defined in Section 2(a) of the Code and set
B out hereinabove in paragraph 3 of the judgment, to mean an offence which is either shown to be bailable in the First Schedule to the Code or which is made bailable by any other law for the time being in force. As noticed earlier, the First Schedule to the Code consists of Part 1 and Part 2. While Part
C 1 deals with offences under the Indian Penal Code, Part 2 deals with offences under other laws. Accordingly, if the provisions of Part 2 of the First Schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less
D than three years or with fine only, being the third item under the category of offences indicated in the said Part. An offence punishable with imprisonment for three years and upwards, but not more than seven years, has been shown to be cognizable and non-bailable. If, however, all offences under Section 9 of the 1944 Act are deemed to be non-cognizable, then, in such
E event, even the second item of offences in Part 2 could be attracted for the purpose of granting bail since, as indicated above, all offences under Section 9 of the 1944 Act are deemed to be non-cognizable.

F 25. This leads us to the next question as to meaning of the expression "non-cognizable".

26. Section 2(i) Cr.P.C. defines a "non-cognizable offence", in respect whereof a police officer has no authority to
G arrest without warrant. The said definition defines the general rule since even under the Code some offences, though "non-cognizable" have been included in Part I of the First Schedule to the Code as being non-bailable. For example, Sections 194, 195, 466, 467, 476, 477 and 505 deal with non-cognizable offences which are yet non-bailable. Of course, here we are
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concerned with offences under a specific Statute which falls in Part 2 of the First Schedule to the Code. However, the language of the Scheme of 1944 Act seem to suggest that the main object of the enactment of the said Act was the recovery of excise duties and not really to punish for infringement of its provisions. The introduction of Section 9A into the 1944 Act by way of amendment reveals the thinking of the legislature that offences under the 1944 Act should be non-cognizable and, therefore, bailable. From Part 1 of the First Schedule to the Code, it will be clear that as a general rule all non-cognizable offences are bailable, except those indicated hereinabove. The said provisions, which are excluded from the normal rule, relate to grave offences which are likely to affect the safety and security of the nation or lead to a consequence which cannot be revoked. One example of such a case would be the evidence of a witness on whose false evidence a person may be sent to the gallows.

27. In our view, the definition of "non-cognizable offence" in Section 2(l) of the Code makes it clear that a non-cognizable offence is an offence for which a police officer has no authority to arrest without warrant. As we have also noticed hereinbefore, the expression "cognizable offence" in Section 2(c) of the Code means an offence for which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. In other words, on a construction of the definitions of the different expressions used in the Code and also in connected enactments in respect of a non-cognizable offence, a police officer, and, in the instant case an excise officer, will have no authority to make an arrest without obtaining a warrant for the said purpose. The same provision is contained in Section 41 of the Code which specifies when a police officer may arrest without order from a Magistrate or without warrant.

28. Having considered the various provisions of the Central Excise Act, 1944, and the Code of Criminal Procedure, which

A have been made applicable to the 1944 Act, we are of the view that the offences under the 1944 Act cannot be equated with offences under the Indian Penal Code which have been made non-cognizable and non-bailable. In fact, in the Code itself exceptions have been carved out in respect of serious offences
B directed against the security of the country, which though non-cognizable have been made non-bailable.

29. However, Sub-section (2) of Section 9A makes provision for compounding of all offences under Chapter II.
C Significantly, Chapter II of the 1944 Act deals with levy and collection of duty and offences under the said Act have been specified in Section 9, which provides that whoever commits any of the offences set out in Section 9, would be punishable in the manner indicated under Sub-section (1) itself. What is even more significant is that Section 20 of the 1944 Act, which
D has been extracted hereinabove, provides that the Officer in-Charge of a police station to whom any person is forwarded under Section 19, **shall** (emphasis supplied) either admit him to bail to appear before the Magistrate having jurisdiction, or on his failure to provide bail, forward him in custody to such
E Magistrate. The said provision clearly indicates that offences under the Central Excise Act, as set out in Section 9 of the Act, are bailable, since the Officer in-Charge of a police station has been mandated to grant bail to the person arrested and brought before him in terms of Section 19 of the Act. The decisions
F which have been cited by Mr. Parasaran deal mainly with powers of arrest under the Customs Act. The only cited decision which deals with the provisions of the Central Excise Act is the decision of the Division Bench of the Punjab & Haryana High Court in the case of Sunil Gupta Vs. Union of India. In the said
G case also, the emphasis is on search and arrest and the learned Judges in paragraph 22 of the judgment specifically indicated that the basic issue before the Bench was whether arrest without warrant was barred under the provisions of the 1944 Act and the Courts had no occasion to look into the

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aspect as to whether the offences under the said Act were bailable or not. A

30. In the circumstances, we are inclined to agree with Mr. Rohatgi that in view of the provisions of Sections 9 and 9A read with Section 20 of the 1944 Act, offences under the Central Excise Act, 1944, besides being non-cognizable, are also bailable, though not on the logic that all non-cognizable offences are bailable, but in view of the aforesaid provisions of the 1944 Act, which indicate that offences under the said Act are bailable in nature. B C

31. Consequently, this batch of Writ Petitions in regard to the Central Excise Act, 1944, must succeed and are, accordingly, allowed in terms of the determination hereinabove, and we hold that the offences under the Central Excise Act, 1944, are bailable. D

32. The remaining writ petitions which deal with offences under the Customs Act, 1962, namely, Writ Petition (Crl.) No.74 of 2010, Choith Nanikram Harchandani Vs. Union of India & others, which has been heard as the lead case, and Writ Petition (Crl.) Nos.36, 37, 51, 76 and 84 of 2011 and Crl. M.P. No.10673 of 2011 in W.P. (Crl.) No.76 of 2011, all deal with offences under the Customs Act, though the issues are exactly the same as those canvassed in the cases relating to the provisions of the Central Excise Act, 1944. Mr. Mukul Rohatgi, learned Senior Advocate, appearing for the Writ Petitioners in these matters submitted that the provisions of the Customs Act, 1962, are in pari materia with the provisions of the Central Excise Act, 1944, which are relevant to the facts of these cases. The same submissions as were made by Mr. Rohtagi in relation to Writ Petitions filed in respect of offences under the Central Excise Act, 1944, were also advanced by him with regard to offences under the Customs Act. In addition, certain decisions were also referred to and relied upon by him in support of the contention that offences under the Customs Act were also intended to be bailable and they aimed at recovery of unpaid E F G H

A and/or avoided custom duties. Mr. Rohatgi submitted that, as in the case of the provisions of the 1944 Act, the ultimate object of the Customs Act is to recover revenue which the State was being wrongly deprived of.

B 33. Mr. Rohatgi submitted that the provisions of Section 104(4) of the Customs Act are the same as the provisions of Section 9A of the Central Excise Act, 1944. Section 104 of the Customs Act empowers an officer of Customs to arrest a person in case of offences alleged to have been committed and punishable under Sections 132, 133, 135, 135A or Section C 136 of the Act. In addition, Sub-section (4) of Section 104, which is similar to Section 9A(i) of the Central Excise Act, 1944, provides as follows :-

"104. Power to arrest. –

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(1) to (3) .....

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall not be cognizable."

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34. It was further pointed out that as in the case of Section 20 of the Central Excise Act, 1944, under Sub-section (3) of Section 104 of the Customs Act, an Officer of Customs has been vested with the same power and is subject to the same F provisions as an Officer in-Charge of a police station has under the Code of Criminal Procedure, for the purpose of releasing the arrested person on bail or otherwise. Mr. Rohatgi submitted that as in the case of Section 20 of the 1944 Act, the provisions of Sub-section (3) of Section 104 of the Customs Act, 1962, indicate that offences under the Customs Act would not only be G non-cognizable, but would also be bailable.

35. Reverting to his submissions in relation to the Writ Petitions under the Central Excise Act, 1944, Mr. Rohatgi submitted that if it is assumed that the bailability in respect of

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an offence was to be determined by the length of punishment in relation to Part 2 of the First Schedule to Cr.P.C., it would be necessary that the duty leviable under the provisions of the Customs Act would first have to be adjudicated upon and determined. It was further submitted that there has to be a process of adjudication to determine the amount of levy before any punitive action by way of arrest could be taken. Reference was also made to the decision of this Court in *Commissioner of Customs Vs. Kanhaiya Exports (P) Ltd.* (Civil Appeal No.81 of 2002), in which it had been held that a show cause notice is mandatory before initiation of any action under the Customs Act. Mr. Rohatgi contended that arrest by prosecution could follow only thereafter.

36. Appearing for the Union of India in the matters relating to the Customs Act, 1962, the learned Additional Solicitor General, Mr. P.P. Malhotra, urged that the submissions made by Mr. Rohatgi that since offences under the Customs Act are non-cognizable, they are, therefore, bailable, was wholly incorrect, as all non-cognizable offences are not bailable. The learned ASG submitted that from the First Schedule to the Cr.P.C., it would be clear that offences under Sections 194, 195, 274, 466, 467, 476, 493 and 505 IPC, though non-cognizable are yet non-bailable. It was submitted that Section 505 IPC is punishable with imprisonment upto 3 years or with fine or both. The said offence being both non-cognizable and non-bailable is in consonance with the last entry of Part 2 of Schedule I to the Code, dealing with offences under other laws. The learned ASG submitted that the bailability or non-bailability of an offence is not dependent upon the offence being cognizable or non-cognizable. It was submitted that the bailable offences are those which are made bailable in terms of Section 2(a) Cr.P.C. which are defined as such under the First Schedule itself. The learned ASG contended that whether an offence was bailable or not, was to be determined with reference to the First Schedule to the Code of Criminal Procedure, 1973.

A 37. Referring to Part 2 of Schedule I to the Code, the learned ASG submitted that in terms of the third entry if the offence was punishable with imprisonment which was less than three years or with fine only, in that event, the offence would be bailable. If, however, the punishment was for three years and B upwards, it would be non-bailable. It was further submitted that the offences under Section 135 of the Customs Act, 1962, being punishable upto three years and seven years depending on the facts, would be non-bailable.

C 38. In response to Mr. Rohatgi's submissions that since offences under Section 9A of the Excise Act were non-cognizable and the Excise Officer, therefore, had no power to arrest such a person, the learned ASG submitted that such an argument was fallacious since it was only for the purposes of the Code of Criminal Procedure that the offences would be non-D cognizable, but it did not mean that the concerned officer, who had been authorized to investigate into the evasion of excise duty, would have no power to investigate or arrest a person involved in such offences. In support of his submissions, Mr. Malhotra referred to the decision of this Court in *Union of India* E *Vs. Padam Narain Aggarwal* [(2008) 13 SCC 305], wherein this Court had considered powers of arrest under other provisions such as the Customs Act. While deciding the matter, this Court had held that the power to arrest a person by a Customs Officer is statutory in character and cannot be F interfered with. However, such power of arrest can be exercised only in such cases where the Customs Officer has reasons to believe that a person has committed an offence punishable under Sections 132, 133, 135, 135-A or 136 of the Customs Act. It was further observed that the power of arrest was G circumscribed by objective considerations and could not be exercised on whims, caprice or fancies of the officer.

39. The learned ASG submitted that in *N.H. Dave, Inspector of Customs Vs. Mohd. Akhtar Hussain Ibrahim Iqbal Kadar Amad Wagher (Bhatt) & Ors.* [1984 (15) ELT 353

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(Guj.)], the Division Bench of the Gujarat High Court, inter alia, observed that since offences under Section 135 of the Customs Act, 1962, are punishable with imprisonment exceeding three years, the offences would be non-bailable. The learned ASG submitted that the aforesaid view had been confirmed by this Court in *Deepak Mahajan's* case (supra), wherein it was held that although the powers of the Customs Officer and Enforcement Officer are not identical to those of Police Officers in relation to investigation under Chapter XII of the Code, yet Officers under the Foreign Exchange Regulation Act and the Customs Act are vested with powers which are similar to the powers of a police officer. The learned ASG submitted further that such officers, who have the power to arrest, do not derive their power from the Code, but under the special statutes, such as the Central Excise Act, 1944, and the Customs Act, 1962.

40. The learned ASG submitted further that the powers of the Customs Officer to release an arrested person on bail is limited and when an accused is to be produced before the Court, it is the Court which would grant bail and not the Customs Officer. He only ensures that the person is produced before the Magistrate. According to the learned ASG, what is of paramount importance is the nature of the offence which would determine whether a person is to be released by the Court on bail. The learned ASG submitted that while in a cognizable case a police officer could arrest without warrant and in non-cognizable cases he could not, the offences under the Excise Act, Customs Act or Foreign Exchange Regulation Act, 1973, are offences under special Acts which deal in the evasion of excise, custom and foreign exchange. According to the learned ASG, in such matters, police officers have been restrained from investigating into the offences and arresting without warrant, but the concerned Customs, Excise, Foreign Exchange, Food Authorities, were not police officers within the meaning of the Code, and, they could, accordingly arrest such persons for the purposes of the investigation, their interrogation and for finding out the manner and extent of evasion of the excise duty, customs

A duty and foreign exchange etc. The learned ASG submitted that cognizability of an offence did not mean that the person could not be arrested by the officials of the Department for the purpose of the investigation and interrogation. It was further submitted that Section 104(4) of the Customs Act, 1962, B indicates that the offences thereunder would be non-cognizable within the meaning of the Code and would prevent police officers under the Code from exercising powers of arrest, but such restriction do not apply to the special officers under various special statutes.

C 41. Mr. Malhotra submitted that the offences which were non-cognizable were not always bailable and special officers under special Statutes would continue to have the power to arrest offenders, even if under the Code police officers were prevented from doing so.

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42. The submissions advanced by Mr. Rohatgi and the learned ASG, Mr. Malhotra, with regard to the question of bailability of offences under the Customs Act, 1962, are identical to those involving the provisions of the Central Excise E Act, 1944. The provisions of the two above-mentioned enactments on the issue whether offences under both the said Acts are bailable, are not only similar, but the provisions of the two enactments are also in pari materia in respect thereof.

43. The provisions of Section 104(3) of the Customs Act, F 1962, and Section 13 of the Central Excise Act, 1944, vest Customs Officers and Excise Officers with the same powers as that of a Police Officer in charge of a Police Station, which include the power to release on bail upon arrest in respect of offences committed under the two enactments which are G uniformly non-cognizable. Both Section 9A of the 1944 Act and Section 104(4) of the Customs Act, 1962, provide that notwithstanding anything in the Code of Criminal Procedure, offences under both the Acts would be non-cognizable. The arguments advanced on behalf of respective parties in Om H Prakash & Anr. Vs. Union of India & Anr. (Writ Petition (Crl)

No.66 of 2011) and other similar cases under the Central Excise Act, 1944, are equally applicable in the case of Choith Nanikram Harchandani Vs. Union of India & Ors. (Writ Petition (Crl) No.74 of 2010 and the other connected Writ Petitions in respect of the Customs Act, 1962. A

44. Accordingly, on the same reasoning, the offences under the Customs Act, 1962 must also be held to be bailable and the Writ Petitions must, therefore, succeed. The same are, accordingly, allowed. Crl. M.P. No.10673 of 2011 in WP (Crl.) No.76 of 2011 is also disposed of accordingly. Consequently, as in the case of offences under the Central Excise Act, 1944, it is held that offences under Section 135 of the Customs Act, 1962, are bailable and if the person arrested offers bail, he shall be released on bail in accordance with the provisions of sub-Section (3) of Section 104 of the Customs Act, 1962, if not wanted in connection with any other offence. B C D

N.J. Matters disposed of.

A DEEPAK VERMA

v.

STATE OF HIMACHAL PRADESH

(CRIMINAL APPEAL NO.2423 OF 2009)

B OCTOBER 11, 2011

[R.M. LODHA AND JAGDISH SINGH KHEHAR, JJ.]

Penal Code, 1860:

C *ss.302 and 323 r/w s.27 of Arms Act – Conviction of two accused under, for causing death of two persons by gun shot injuries – Allegation that offence was committed on account of retaliation and vengeance – Accused no.1 fired shots at the first victim from his double barrel gun – Thereafter,* D *accused no.2 handed over cartridges to accused no.1 who reloaded his gun – When second victim came to save the first victim, accused no.1 shot at him – Conviction by courts below – On appeal, held: Prosecution established that it was only on account of the rejection of marriage proposal of accused* E *no.1 by the first victim's father that the accused nos.1 and 2, as an act of retaliation and vengeance, jointly committed the offence – Discrepancies in recording time, as well as the overwriting in the dying declaration were too trivial to brush aside the overwhelming oral evidence produced by the prosecution – Dying declaration of the victim and the* F *statements of her relations, who had appeared as prosecution witness, duly established the commission of the offence, as well as, the common motive for the two accused to have joined hands in committing the crime – Conviction upheld.*

G *ss.302 and 323 r/w s.27 of Arms Act – Conviction of two accused under, for causing death of two persons – Plea of accused no.2 that no role whatsoever was attributed to him – Held: Evidence on record showed that the two accused had come together on a scooter to commit the offence – Accused*

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no.1 fired first two shots at the victim from his double barrel gun – Thereafter, there were no live cartridges in the gun and it was accused no.2 who provided two live cartridges to the accused no.1 – After commission of the crime, both accused jointly made escape on a scooter – Therefore, it cannot be held that accused no.2 was merely a bystander and was incidentally present at the place of occurrence – He was rightly convicted.

Evidence:

Delay in lodging FIR – Effect on prosecution case – Plea that all the family members of deceased did not make any statement to police until the eventual disclosure of the names of the two accused by deceased herself in her dying declaration – Held: It is not expected that the close family members would proceed to police station to lodge a report when the injured are in critical condition – Full attention for the welfare of the two close family members is the expected behaviour of all family members – Therefore, delay in lodging complaint could not be considered fatal to the prosecution case.

Motive – Held: Proof of motive is not a sine qua non before a person can be held guilty of the commission of a crime – Motive being a matter of the mind, is more often than not, difficult to establish through evidence.

The prosecution case was that the father of the appellants-accused no.1 and 2 was tenant in the house of PW-2. Accused no.2 was giving home tuitions to the children of PW-2. One and half years prior to the incident, the appellant-accused no.2 had approached PW-2 with the marriage proposal of daughter of PW-2 'KV' with his brother the appellant-accused no.1. PW-2 did not accept the proposal. Thereafter 'KV' was married and staying in a different city. On the day of incident, 'KV' had come to her father's house to stay. At 10.30, the appellants-

A accused no.1 and 2 went to the house of PW-2 on a scooter. Appellant-accused no.1 had in his possession a double barrel gun. When 'KV' came in the courtyard, appellant-accused no.1 fired two shot at 'KV' from his double barrel gun which hit her on her abdomen and B shoulder. PW-4, grandmother of 'KV' came to the courtyard and tried to catch the two accused. Appellant-accused no.1 hit PW-4 in her abdomen, chest and on her wrist with the butt of the gun. After the two shots were fired by appellant-accused no.1, appellant-accused no.2 C handed over two cartridges to appellant-accused no.1 who reloaded his gun and shot at 'RK' maternal uncle of 'KV' who had come to the courtyard and trying to lift 'KV'. Thereafter the two accused fled away. PW-3, wife of 'RK' on hearing the first shot had also rushed to the courtyard. D Both the injured were taken to hospital. 'RK' was declared dead on the same day. The doctor, PW-11 gave a report at 12.20 that 'KV' was not fit to make her statement since her pulse rate and blood pressure, at that time was not recordable and also she had no control over her speech. E Subsequently at 13.00, PW-11 declared her medically fit. Thereafter, the statement of 'KV' was recorded by ASI PW-26. The similar statement was made by her to PW-2 on way when she was shifted to another hospital. She died after 4 days.

F On the day of occurrence, the two accused were apprehended at the police naka. A double barrel gun with one live cartridge and one spent cartridge were recovered from their possession. Based on disclosure statement of appellant-accused no.1, 13 more live G cartridges besides four empty cartridge were recovered from his house.

The trial court convicted the appellants-accused no.1 and 2 under Sections 302 and 323 r/w Section 34, IPC and Section 27 of Arms Act. The High Court affirmed the order H

of conviction. A

In the instant appeal, it was contended for the appellants that the case set up by the prosecution was false and fabricated; that even though the two accused were well known to the family of the deceased, yet all the family of members of the deceased remained quiet till the statement made by 'KV' involving them in the incident; that the incident occurred at 10.30 a.m. and yet none of the eye-witnesses disclosed the names of the offenders. B

The appellant-accused no.2 pleaded that no role whatsoever was attributed to him and that even as per the prosecution, all the shots were fired by appellant-accused no.1 and the double barrel gun remained in his possession and, therefore, appellant-accused no.2 was a mere by-stander and had no role in the crime; that there was no motive whatsoever for appellant-accused no.2 to have committed the offence in question. C D

Dismissing the appeal, the Court

HELD: 1. The occurrence took place at 10:30 hrs. on 28.7.2003. Both the victim-deceased 'KV' and the paternal uncle of the deceased 'RK' were taken to the hospital immediately after the occurrence. The uncle was declared dead at 12:30 hrs. on the date of occurrence itself. The condition of 'KV' was critical at that juncture. This is evident from the fact that the doctor PW11 gave a report at 12:20 hrs., (on 28.7.2003) to the effect, that 'KV' was not fit to record her statement. The attending doctor had recorded, that her pulse rate and blood pressure were not recordable. In the peculiar facts, it is evident that the first endeavour of all close family members would have been to have the two injured treated. None of the close family members could have been expected to proceed to the police station to lodge a report when both the injured were critical. Full attention for the welfare of the two close E F G H

A family members would have been the expected behaviour of all family members. The action to be taken against the assailants would have been a matter of secondary concern. The contention of their not having made any statements at that juncture to the police, cannot therefore, B be considered unnatural. 'KV' was declared medically fit at 13:00 hrs., on 28.7.2003 by PW11. She specifically identified the two accused appellant no.1 and 2 as the perpetrators of the occurrence. There is no reason whatsoever to doubt the dying declaration made by 'KV'. C Besides, the dying declaration of 'KV' the prosecution endeavoured to establish the guilt of the accused, by producing three eye-witnesses. PW1, (aged 14 years at the time of occurrence), who was in the courtyard itself at the time of occurrence was the younger brother of the D deceased 'KV'. In his deposition, he reiterated the factual position recorded by 'KV' in her dying declaration. The grand-mother of the deceased PW4, aged 61 years, was a stamped witness. At the time of occurrence she was hit by appellant-accused no.1, in her abdomen, chest and on her right wrist with the butt of his double barrel gun. She E also identified the accused in her statement. On medical examination, she was found to have suffered multiple bruises, which could have been caused by the butt of a double barrel gun. Additionally, PW3 was also an eye-witness whose statement was recorded. She was the F wife of the deceased 'RK'. She had come into the courtyard on hearing the first shot fired at 'KV. The dying declaration of 'KV' was supplemented by PW3 as well. The said three witnesses, a young boy, the wife of the deceased and an old grandmother were natural witness, G whose presence at the place of occurrence, did not cast any shadow of doubt. The prosecution was able to establish the motive of the appellants-accused in having committed the crime. In so far as the instant aspect of the matter is concerned, the alleged motive of declining the H marriage proposal of the appellant-accused no.1, at the

hands of his elder brother, appellant-accused no.2 was reiterated by PW1, PW2, PW3 as also PW4, as well as, by 'KV' in her statement recorded by ASI PW-26. It is only on account of the rejection of the said marriage proposal that and appellants-accused nos.1 and 2, as an act of retaliation and vengeance, jointly committed the offence in question. No reason whatsoever emerges from the evidence produced before the trial court why the family of the deceased 'KV' and/or 'RK' would falsely implicate the accused-appellants nos.1 and 2. The cumulative effect of all the factors clearly negate the first contention raised on behalf of the appellants. [Para 17] [286-G-H; 287-A-H; 288-A-F]

2. It is not possible to accept the contention that the appellant-accused no.2 was not an active participant in the crime in question. The evidence produced by the prosecution clearly established that the two accused-appellants nos.1 and 2 had come to the house of PW2 on a scooter to commit the crime in question. It is also apparent that at one juncture only two cartridges can be loaded in a double barrel gun. With the cartridges loaded in the gun, the appellant-accused no.1 had fired the first two shots at 'KV'. Thereafter, there were no live cartridges in the gun. PW4 pointed out, that after the appellant-accused no.1 had fired two shots at 'KV', the appellant-accused no.2 provided two live cartridges to the appellant-accused no.1. Accused no.1 then reloaded his double barrel gun with the two live cartridges furnished by appellant-accused no.2 and fired one further shot at the deceased 'RK'. After the commission of the crime, the two accused jointly made good their escape on a scooter. When the two accused were apprehended at police 'naka" the appellant-accused no.2 was driving the scooter, whereas, appellant-accused no.1 was pillion riding with him. It, accordingly emerged that after having committed the crime, the appellant-accused no.2 also

A helped his brother appellant-accused no.1 to make good his escape from the place of occurrence. It is, therefore, not possible to conclude that appellant-accused no.2 was merely a by-stander, who was incidentally present at the place of occurrence. Both the accused jointly
B planned and committed the crime. Various eye-witnesses had identified the two accused who had committed the offence. The dying declaration of 'KV' and the statements of her relations, who had appeared as prosecution witness, duly established the commission of the crime,
C as well as, the common motive for the two accused to had joined hands in committing the crime. The handing over of two live cartridges by the appellant-accused no.2 to his brother accused no.1, after he had fired two shots from the double barrel gun with which the crime in question was committed, completely demolished the
D contention, in so far as the participation of the appellant-accused no.2 in the crime was concerned. [Para 19] [292-G-H; 293-A-H; 294-A-B]

State of Uttar Pradesh vs. Sahrunnisa & Anr. (2009) 15
E SCC 452: 2009 (10) SCR 237; *Aizaz & Others vs. State of Uttar Pradesh* (2008) 12 SCC 198: 2008 (12) SCR 13 – held inapplicable.

3. Proof of motive is not a *sine qua non* before a
F person can be held guilty of the commission of a crime. Motive being a matter of the mind, is more often than not, difficult to establish through evidence. In the instant case, there was extensive oral evidence in the nature of the statements of three eye-witnesses out of which one was
G a stamped witness, that appellant-accused no.2 was an active participant in the crime in question. There is also the dying declaration of 'KV' implicating both the accused. The oral evidence against the appellant-accused no.2 was clear and unambiguous. Besides, motive of appellant-accused no.2 was also fully
H established. [Para 21] [297-B-F]

State of Uttar Pradesh v. Rajvir **(2007) 15 SCC 545 – held inapplicable.** A

4. There can be no doubt that there were certain discrepancies in the time recorded in the dying declaration. Additionally, there can also be no doubt that certain words which are not in common use have found place in the dying declaration made by 'KV'. Despite that it is not possible to accept that 'KV' was not fit to make her statement when she actually recorded the same in the presence of ASI PW26 and the doctor PW11. The very medical report, relied upon by the appellants, which depicted that the pulse rate and blood pressure of 'KV' was not recordable, also revealed, that on having been given treatment her blood pressure improved to 140/70 and her pulse rate improved to 120 per minute. This aspect of the medical report was not subject matter of challenge. The fact that the incident occurred on 28.7.2003 and 'KV' eventually died on 1.8.2003, i.e., 4 days after the recording of the dying declaration also showed that she could certainly have been fit to make her dying declaration on 28.7.2003. Her fitness was actually recorded on the dying declaration by PW11. A number of prosecution witnesses revealed that she was conscious and was able to speak. 'KV' after having recorded her statement before ASI PW26, also repeated the same version of the incident (as she had narrated while recording her dying declaration) to her father PW2, when she was being shifted from Chamba to Amritsar for medical treatment. Moreover, the doctor PW11 appeared as a prosecution witness, and affirmed the veracity of her being in a fit condition to make the statement. There is no reason whatsoever to doubt the statement of PW11. The question of doubting the dying declaration made by 'KV' could have arisen if there had been other cogent evidence to establish any material discrepancy therein. Three eye witnesses PW1, PW3 and PW4 supported the B C D E F G H

A **version of the factual position depicted in the statement of 'KV'. It is, therefore, not possible to accept, that the statement of 'KV' was either false or fabricated, or that, the statement was manipulated at the hands of the prosecution to establish the guilt of the appellants-**
B **accused nos.1 and 2 or that she was not medically fit to make a statement. The discrepancies in recording time, as well as, the overwriting pointed out were too trivial to brush aside the overwhelming oral evidence produced by the prosecution. The order passed by the trial court and**
C **also, the order passed by the High Court are affirmed. [Paras 23, 24] [299-C-H; 300-A-E]**

Case Law Reference:

2009 (10) SCR 237	**held inapplicable**	**Para 18**
D **2008 (12) SCR 13**	**held inapplicable**	**Para 18**
(2007) 15 SCC 545	**held inapplicable**	**Para 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
E No. 2423 of 2009.

From the Judgment and Order dated 02.09.2009 of the Division Bench of the High Court of Himanchal Pradesh at Shimla in Criminal Appeal No. 27 of 2006.

F WITH

Criminal Appeal No. 157 of 2010.

R.N. Mittal, Arvind Kumar Gupta, Rahul Mangla and Mohit Garg for the Appellant.

G Naresh K. Sharma for the Respondent.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. These appeals have been preferred by Dheeraj Verma (original accused no.1) and
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Deepak Verma (original accused no.2) so as to assail the order of conviction and sentence dated 30.12.2005 rendered in Sessions Trial no.55 of 2003 by the Sessions Judge, Chamba, as also, the decision rendered by the Himachal Pradesh High Court in Criminal Appeal No.27 of 2006, whereby, the conviction and sentence awarded by the Sessions Judge, Chamba, on 30.12.2005, came to be upheld on 2.9.2009. A B

2. The prosecution, in order to bring home the case against the appellants-accused examined as many as 27 witnesses. The prosecution story, as is emerged from the statements of the witnesses, produced by the prosecution, reveals that Kamini Verma alias Doli resided with her father Arun Kumar PW2 in Mohalla Sultanpur, Chamba, in the State of Himachal Pradesh. Kamini Verma was married to Anmol Verma alias Munna on 6.2.2003. Thereafter, she had been residing along with her husband at Mukerian in the State of Punjab. On 28.7.2003, Kamini Verma came to her father's house in Chamba from Pathankot. She had arrived at 05:30 hrs. She had been escorted to her father's house by Rakesh Verma (her paternal uncle, i.e., younger brother of her father Arun Kumar, PW2), and his wife Veera. C D E

3. About a year before the marriage of Kamini Verma with Anmol Verma, Deepak Verma, appellant-accused no.2 had approached Arun Kumar PW2 (father of Kamini Verma) with a marriage proposal for Kamini Verma, with his younger brother Dheeraj Verma appellant-accused no.1. Kamini Verma's father, Arun Kumar did not accept the proposal. Thereafter, Kamini Verma was married to Anmol Verma on 6.2.2003. Earlier, Dheeraj Verma and Deepak Verma, were tenants in the house of Arun Kumar (PW2, father of Kamini Verma). The two accused were originally residents of Gurdaspur in the State of Punjab. The father of the accused, namely, Shyam Lal, a goldsmith, had moved to Chamba in the State of Himachal Pradesh, and had started to reside in the F G H

A house of Arun Kumar PW2. Shyam Lal has reportedly now gone back to the State of Punjab. The affinity between the family of Arun Kumar (PW2, father of Kamini Verma) and Shyam Lal (father of appellants-accused Dheeraj Verma and Deepak Verma) was also based on the fact, that Deepak Verma, B appellant-accused no.2, had been giving home tuitions to Kamini Verma and her brother Deepak Kumar (PW1).

4. Kamini Verma reached Chamba from Pathankot on 28.7.2003 at about 05:30 hrs. Dheeraj Verma, appellant-accused no.1 and Deepak Verma, appellant-accused no.2 C came to the house of Arun Kumar (PW2, father of Kamini Verma) at Mohalla Sultanpur, Chamba at about 10:30 hrs. They had come on a scooter. Dheeraj Verma, appellant-accused no.1, had in his possession, a double barrel gun. According to the case of the prosecution, after taking breakfast, Kamini D Verma went to the kitchen to clean utensils. Having cleaned the utensils she came out into the courtyard. As she stepped into the courtyard, Dheeraj Verma, appellant-accused no.1 fired one shot at her from his double barrel gun. This shot hit her in the abdomen. Dheeraj Verma, appellant-accused no.1, then fired E another shot at Kamini Verma. The second shot hit her on the left shoulder. Sumitri Devi (PW4, grandmother of Kamini Verma) who had also come into the courtyard, tried to catch the two accused who were making good their escape. Dheeraj Verma, appellant-accused no.1 hit Sumitri Devi PW4 in her F abdomen, chest and on her right wrist, with the butt of his double barrel gun. Later, when she was medically examined (on 3.8.2003), she was found to have suffered multiple bruises, but the nature of injuries was found to be simple. Even though, Sumitri Devi PW4 had picked up a stone and had thrown it at G the appellant-accused no.1, but she had missed her mark.

5. According to the prosecution story, after two shots had been fired by Dheeraj Verma, appellant-accused no.1, Deepak Verma, appellant-accused no.2 handed over two cartridges to Dheeraj Verma, appellant-accused no.1. The appellant-

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accused no.1 then reloaded his gun and shot at Rakesh Kumar (maternal uncle of Kamini Verma) who had by then come into the courtyard, and was trying to lift Kamini Verma. The shot fired at Rakesh Kumar (maternal uncle of Kamini Verma) hit him on the left side of the lower abdomen. The two accused then fled away. At the time of occurrence, Sonia (PW3, wife of Rakesh Kumar, maternal uncle of Kamini Verma) on hearing the first shot had also rushed to the courtyard. She tried to assist her husband Rakesh Kumar and her niece Kamini Verma.

6. Both Kamini Verma and Rakesh Kumar were taken to the Zonal Hospital, Chamba immediately after the occurrence. Rakesh Kumar was declared dead at the said Hospital at 12:30 hours on the date of the occurrence itself (i.e., on 28.7.2003). He was stated to have died due to a gun shot injury causing rupture of major vessels and visceral organs leading to hemorrhagic shock and death.

7. The police post, Sultanpur was informed of the occurrence telephonically, leading to the recording of Daily Diary No.4 at 10:30 a.m. on 28.7.2003. ASI Jog Raj PW26 along with other police personnel, on receipt of aforesaid information, proceeded to Zonal Hopital, Chamba. ASI Jog Raj moved an application to the Senior Medical Officer, Zonal Hospital, Chamba for seeking medical opinion whether Kamini Verma alias Doli was fit to make a statement. In the first instance Dr. D.P. Dogra PW11 gave a report at 12:20 hrs. (on 28.7.2003) to the effect that Kamini Verma was not fit to make her statement. The said opinion was tendered as her pulse rate and blood pressure, at that time, were not recordable, and also because, she had no control over her speech. Subsequently, at 13:00 hrs. on 28.7.2003 itself, Dr. D.P. Dogra PW11 declared her medically fit. It was thereafter, that the statement of Kamini Verma came to be recorded by ASI Jog Raj in the presence of Dr. D.P. Dogra. The statement recorded was then read out to Kamini Verma, whereupon, in token of its correctness, she affixed her right thumb impression on the same. Both Dr. D.P. Dogra PW11 and ASI Jog Raj PW26

recorded their endorsements on the statement of Kamini Verma. The statement of Kamini Verma was the basis of registering FIR No.182 of 2003 at Police Station Sadar, Chamba on 28.7.2003. Kamini Verma repeated the same version of the incident to her father Arun Kumar PW2 on her way to Amritsar (from Chamba).

8. Kamini Verma, who was originally taken to Zonal Hospital, Chamba, was referred to Zonal Hospital, Dharamshala. However, on her discharge from Zonal Hospital, Chamba, she was taken for treatment to Ram Saran Dass, Kishori Lal Charitable Hospital, Amritsar (Kakkar Hospital, Amritsar) in the State of Punjab. Kamini Verma died at Kakkar Hospital, Amritsar on 1.8.2003 at 04:00 hrs. In the post-mortem report of Kamini Verma (Exh.PW13/C) it was opined, that she had died due to gun short injuries leading to injuries to her abdominal viscera and disseminated intravascular bleeding leading to shock and death.

9. The pellets, recovered from the wounds of Kamini Verma and from the dead body of Rakesh Kumar at Zonal Hospital, Chamba, were handed over to the police. Inspector Khub Ram PW27, went to the place of occurrence for inquest. From the spot, i.e., courtyard of the house of Arun Kumar (PW2, father of Kamini Verma) he collected blood samples from the floor, two plastic caps, 35 pellets lying on the floor, besides 3 pellets embedded in a door of the house. Two empty cartridges were also recovered from outside the gate of house of Arun Kumar PW2.

10. On the date of occurrence itself, i.e., on 28.7.2003, the scooter, on which the appellant-accused nos.1 and 2 had made good their escape was stopped at Bhatulun Morh at a police "nakka" while they were proceeding towards Khajjiar from Chamba. Dheeraj Verma and Deepak Verma, appellant-accused nos.1 and 2 were identified. A double barrel gun, which was in their possession, was found with one live cartridge and one spent cartridge. The gun, the live as well as spent

cartridges, and the scooter on which they were apprehended, bearing registration no.PB-58-A-0285 were taken into possession by the police. Both the accused were also taken into custody. On the personal search of both the accused, four live cartridges were recovered from the pocket of Dheeraj Verma, appellant-accused no.1. Based on a disclosure statement made on 31.7.2003 by Dheeraj Verma appellant-accused no.1, 13 more live cartridges beside four empty cartridges were recovered from a cupboard in his bedroom. The licence of the double barrel gun was also recovered from their residence.

11. The double barrel gun recovered from the appellant-accused nos.1 and 2 was sent to the Forensic Science Laboratory, Bharari, Shimla, Himachal Pradesh. In his report, the Assistant Director opined; firstly, that the double barrel gun recovered from the accused was capable of firing; secondly, that 3 empty cartridges recovered from the place of occurrence may have been fired from the recovered gun; and thirdly, that the pellets recovered may have been fired from the empty cartridges recovered from the spot.

12. On the completion of investigation, the prosecution presented a challan in the court of Chief Judicial Magistrate, against both the accused, under sections 302 and 323 read with section 34 of the Indian Penal Code, besides section 27 of the Indian Arms Act. The Chief Judicial Magistrate committed the case for trial to the Court of Sessions on 22.10.2003. On 12.1.2004 the Sessions Judge, Chamba, framed the charges, as were proposed by the prosecution. In order to bring home the charges, the prosecution examined as many as 27 witnesses. The cumulative effect of the statement of witnesses examined by the prosecution has been narrated in the foregoing paragraphs. After recording the prosecution evidence, the statements of Dheeraj Verma, appellant-accused no.1 and Deepak Verma, appellant-accused no.2 were recorded under Section 313 of the Criminal Procedure Code. The accused,

besides denying the correctness (or knowledge) of the factual position, with which they were confronted, alleged that a false case has been registered against them due to business rivalry. It is pertinent to mention, that the father of the deceased Kamini Verma, i.e., Arun Kumar PW2, as also, the father of the appellant-accused Dheeraj Verma and Deepak Verma, namely, Shyam Lal, were admittedly goldsmiths, and were engaged in the said business.

13. Sessions Trial No.55 of 2003 came to be disposed of on 30.12.2005 whereby the Sessions Judge, Chamba convicted the accused Dheeraj Verma and Deepak Verma for offences punishable under section 302 and 323 read with section 34 of the Indian Penal Code, as also, under section 27 of the Arms Act. On the date of their conviction, i.e., on 30.12.2005 itself, after affording an opportunity of hearing, the appellants-accused nos.1 and 2 were sentenced under Section 302 read with Section 34 of the Indian Penal Code, to imprisonment for life and to pay fine of Rs.25,000/- each (in default of payment of fine, they were to undergo further simple imprisonment for two years). The appellants-accused nos.1 and 2 Dheeraj Verma and Deepak Verma were also sentenced under Section 323 read with Section 34 of the Indian Penal Code, to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1000/- each (in case of default of payment of fine, they were to undergo further simple imprisonment for one month). The appellants-accused Dheeraj Verma and Deepak Verma were sentenced to undergo two years rigorous imprisonment, for the offence punishable under Section 27 of the Arms Act. The Sessions Judge, Chamba also ordered, that all the substantive punishments were to run concurrently.

14. Dissatisfied with the order rendered in Sessions Trial No.55 of 2003 by the Sessions Judge, Chamba on 30.12.2005, the appellants-accused nos.1 and 2 Dheeraj Verma and Deepak Verma preferred Criminal Appeal No.27 of 2006

before the High Court of Himachal Pradesh. Criminal Appeal No.27 of 2006 was, however, dismissed by the High Court on 2.9.2009, on merits, as well as, on the quantum of sentence imposed on the appellants-accused.

15. Dissatisfied with the order dated 30.12.2005 passed by the Sessions Judge, Chamba in Sessions Trial No.55 of 2003, as well as, the order dated 2.9.2009 passed by the High Court of Himachal Pradesh in Criminal Appeal No.27 of 2006, the appellants-accused nos.1 and 2 Dheeraj Verma and Deepak Verma have approached this Court by filing the instant appeals.

16. The first and foremost contention advanced at the hands of the learned counsel for the appellants was, that the case set up by the prosecution was false and fabricated. It was submitted, that the facts brought forth by the prosecution clearly lead to the inference, that there was no involvement whatsoever of the two accused Dheeraj Verma and Deepak Varma. In so far as the instant aspect of the matter is concerned, it was the contention of the learned counsel for the appellants that the statements of Deepak Kumar PW1, Arun Kumar PW2, Sonia PW3 and Sumitri Devi PW4 reveal, that the two accused were well-known to the members of the family of the deceased Kamini Verma. In this behalf it was sought to be asserted, that according to the prosecution version, the two accused Dheeraj Verma and Deepak Verma had come to reside in the house of Arun Kumar PW2 along with their father Shyam Lal, as tenants. According to the learned counsel, it is also the case of the prosecution, that Deepak Verma, appellant-accused no.2 had been giving home tuitions to the deceased Kamini Verma and her brother Deepak Kumar PW1. Inspite of being in an effective position to identify both the accused on account of their long past relationship, it was submitted, that the names of the two accused Dheeraj Verma and Deepak Verma came to be disclosed, for the first time at 13:00 hrs., through the statement of the deceased Kamini Verma, which was recorded by the ASI

A Jog Raj PW26. Stated in other words, it is the contention of the learned counsel for the appellants, that even though the two accused were well-known to the entire family of the deceased Kamini Verma, yet all the family members of the deceased Kamini Vemra remained tight-lipped till the eventual disclosure B of the names of the two accused by Kamini Verma herself, at the Zonal Hospital, Chamba. It is, therefore, the contention of the learned counsel for the appellant, that the statements of all the eye-witnesses (Deepak Kumar PW1, Sonia PW3 and Sumitri Devi PW4) who were close family members of the C deceased Kamini Verma and Rakesh Kumar, and had known the two accused for a long time, should not be relied upon. It is sought to be suggested, that all these close relations of the deceased Kamini Verma must be deemed to have been tutored, to make false statements against the appellants D Dheeraj Verma and Deepak Verma at the instance of the investigating officers. It is submitted that the crime in question came to be committed at 10:30 hrs., on 28.7.2003, and yet none of the aforesaid eye-witnesses disclosed the names of the offenders. It is sought to be suggested, that the names would have been disclosed only if they had actually witnessed E the occurrence. It is therefore, submitted that none of the aforesaid eye witnesses actually witnessed the occurrence. It is, accordingly, the submission of the learned counsel for the appellant, that the prosecution version deserves to be rejected outright, and the appellants-accused Dheeraj Verma and F Deepak Verma deserve to be acquitted.

17. We have given our thoughtful consideration to the first and the foremost contention advanced at the hands of the learned counsel for the appellants, as has been noticed in the G foregoing paragraph. The facts, as they unfold from the prosecution story reveal, that the occurrence took place at 10:30 hrs. on 28.7.2003. Both Kamini Verma and Rakesh Kumar were taken to the Zonal Hospital, Chamba immediately after the occurrence. Rakesh Kumar was declared dead at H 12:30 hrs. on the date of occurrence, i.e., on 28.7.2003 itself.

The condition of Kamini Verma was critical at that juncture. This is evident from the fact that Dr. D.P. Dogra PW11 gave a report at 12:20 hrs., (on 28.7.2003) to the effect, that Kamini Verma was not fit to record her statement. The attending doctor had recorded, that her pulse rate and blood pressure were not recordable. In the peculiar facts, as have been noticed hereinabove, it is evident that the first endeavour of all close family members would have been, to have the two injured Kamini Verma and Rakesh Kumar treated at the Zonal Hospital, Chamba. None of the close family members could have been expected to proceed to the police station to lodge a report when both the injured were critical. Full attention for the welfare of the two close family members would have been the expected behaviour of all family members. The action to be taken against the assailants, would have been a matter of secondary concern. The contention of their not having made any statements at that juncture to the police, cannot therefore, be considered unnatural. Kamini Verma was declared medically fit at 13:00 hrs., on 28.7.2003 by Dr. D.P. Dogra PW11. She specifically identified the two accused Dheeraj Verma and Deepak Verma as the perpetrators of the occurrence. There is no reason whatsoever to doubt the dying declaration made by Kamini Verma. Besides, the dying declaration of Kamini Verma, the prosecution endeavoured to establish the guilt of the accused, by producing three eye-witnesses. Deepak Kumar PW1, (aged 14 years at the time of occurrence), who was in the courtyard itself at the time of occurrence was the younger brother of the deceased Kamini Verma. In his deposition, he reiterated the factual position recorded by Kamini Verma in her dying declaration. The grand-mother of the deceased, namely, Sumitri Devi PW4, aged 61 years, is a stamped witness. At the time of occurrence she was hit by Dheeraj Verma, appellant-accused no.1, in her abdomen, chest and on her right wrist with the butt of his double barrel gun. She also identified the accused in her statement. On medical examination she was found to have suffered multiple bruises, which could have been

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A caused by the butt of a double barrel gun. Additionally, Sonia PW3 is also an eye-witness whose statement was recorded. She was the wife of the deceased Rakesh Kumar. She had come into the courtyard on hearing the first shot fired at Kamini Verma. The dying declaration of Kamini Verma was B supplemented by Sonia PW3 as well. The aforesaid three witnesses, a young boy, the wife of the deceased and an old grandmother are natural witness, whose presence at the place of occurrence, does not cast any shadow of doubt. The prosecution was able to establish the motive of the appellants- C accused in having committed the crime. In so far as the instant aspect of the matter is concerned, the alleged motive of declining the marriage proposal of the appellant-accused no.1, at the hands of his elder brother, appellant-accused no.2 Deepak Verma was reiterated by Deepak Kumar PW1, Arun D Kumar PW2, Sonia PW3 as also Sumitri Devi PW4, as well as, by Kamini Verma in her statement recorded by ASI Jog Raj PW26. It is only on account of the rejection of the aforesaid marriage proposal that Dheeraj Verma and Deepak Verma, the appellants-accused nos.1 and 2, as an act of retaliation and vengeance, jointly committed the offence in question. It is also E necessary to notice, that no reason whatsoever emerges from the evidence produced before the Trial Court why the family of the deceased Kamini Verma and/or Rakesh Kumar would falsely implicate the accused-appellants nos.1 and 2. The cumulative effect of all the factors mentioned above, clearly F negate the suggestions/ submissions advanced by the learned counsel for the appellants as a part of his first contention. It is, therefore, apparent that there is no merit in the first contention advanced at the hands of the counsel for the appellants.

G 18. The second contention advanced at the hands of the learned counsel for the appellants was limited to the appellant-accused no.2 Deepak Verma. In so far as the second submission is concerned, it was sought to be asserted that no role whatsoever has been attributed to appellant-accused no.2 H Deepak Verma. It was pointed out, that as per the prosecution

witnesses, the double barrel gun which came to be fired at Kamini Verma and Rakesh Kumar, had remained in possession of Dheeraj Verma, appellant-accused no.1 throughout the occurrence. All the shots were fired by Dheeraj Verma, appellant-accused no.1. It was pointed out, that as per the prosecution story, it was Dheeraj Verma, appellant-accused no.1 alone, who had allegedly fired shots, in the first instance at Kamini Verma, and thereafter, at Rakesh Kumar. It was submitted, that none of the shots was fired by Deepak Verma appellant-accused no.2. It is submitted, that even if the prosecution story is examined dispassionately, it would emerge that Deepak Verma, accused-appellant no.2 was a mere by-stander, and had no role whatsoever in the commission of the crime in question. In order to buttress the aforesaid contention, learned counsel for the appellants, in the first instance, placed reliance on *State of Uttar Pradesh vs. Sahrunnisa & Anr.* (2009) 15 SCC 452, wherefrom he placed emphatic reliance on the following observations:

> "18. There can be no dispute that these two respondents were present and indeed their mere presence by itself cannot be of criminal nature in the sense that by their mere presence a common intention cannot be attributed to them. Indeed, they have not done anything. No overt act is attributed to them though it was tried to be claimed by one of the witnesses that when the police party reached there they were standing on one leg. This also appears to be a tall claim without any basis and the High Court has rightly not believed this story which was tried to be introduced."

Additionally, reliance was placed on *Aizaz & Others vs. State of Uttar Pradesh* (2008) 12 SCC 198. In so far as the instant judgment is concerned, our attention was invited to the following observations:

> "11. ...It is a well-recognised canon of criminal jurisprudence that the courts cannot distinguish between co-conspirators, nor can they inquire, even if it were

A possible, as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object, each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is B common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In a combination of this kind a mortal stroke, though given by one of the parties, is deemed in the eye of the law to have been given by every individual present and abetting. But a party not C cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act. The leading feature of this section is the element of participation in action. The essence of liability under this section is the existence of a common intention animating the offenders and the participation in D a criminal act in furtherance of the common intention. The essence is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. (*See Ramaswami Ayyangar vs. State of T.N. (1976) 3 SCC 779).* The participation need not in E all cases be by physical presence. In offences involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and F places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case. Before a man can be held liable for acts done by another, under the provisions of this section, it must be G established that: (i) there was common intention in the sense of a prearranged plan between the two, and (ii) the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this H section cannot apply.

12. 'Common intention' implies prearranged plan and acting in concert pursuant to the prearranged plan. Under this section a preconcert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of offence showing a prearranged plan and prior concert. (*See Krishna Govind Patil v. State of Maharashtra* – AIR 1963 SC 1413). In *Amrik Singh v. State of Punjab* [(1972) 4 SCC (N) 42] it has been held that common intention presupposes prior concert. Care must be taken not to confuse same or similar intention with common intention; the partition which divides their bonds is often very thin, nevertheless the distinction is real and substantial, and if overlooked will result in miscarriage of justice. To constitute common intention, it is necessary that intention of each one of them be known to the rest of them and shared by them. Undoubtedly, it is a difficult thing to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In *Maqsoodan v. State of U.P.* [(1983) 1 SCC 218] it was observed that the prosecution must lead evidence from which the common intention of the accused can be safely gathered. In most cases it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit an offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view the facts

A involved. Whether an act is in furtherance of the common intention is an incident of fact and not of law. In *Bhaba Nanda Sarma v. State of Assam* [(1977) 4 SCC 396] it was observed that the prosecution must prove facts to justify an inference that all participants of the acts had shared a common intention to commit the criminal act which was finally committed by one or more of the participants. Mere presence of a person at the time of commission of an offence by the confederates is not, in itself sufficient to bring his case within the purview of Section 34, unless community of designs is proved against him (*See Malkhan Singh v. State of U.P.* (1975) 3 SCC 311). In the Oxford English Dictionary, the word 'furtherance' is defined as 'action of helping forward'. Adopting this definition, Rusell says that: 'it indicates some kind of aid or assistance producing an effect in future' and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken, for the purpose of 'effecting that felony'. (*Russel on Crime, 12th Edn., Vol.I, pp. 487 and 488*). In *Shankarlal Kacharabhai v. State of Gujarat* [AIR 1965 SC 260] this Court has interpreted the word 'furtherance' as 'advancement or promotion."

Based on the observations recorded in the judgments relied upon it was submitted, that the appellant-accused no.2 Deepak Verma had no role in the crime, except that he was present at the place of occurrence. It is therefore submitted, that his mere presence along with Dheeraj Verma accused-appellant no.1, cannot be a valid basis for his conviction.

19. It is not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant to the effect, that the appellant-accused no.2 Deepak Verma was not an active participant in the crime in question. The evidence produced by the prosecution clearly establishes that the two accused-appellants nos.1 and 2 Dheeraj Verma and

Deepak Verma had come to the house of Arun Kumar PW2 to commit the crime in question on a scooter. It is also apparent that at one juncture only two cartridges can be loaded in a double barrel gun. With the cartridges loaded in the gun, the appellant-accused no.1 Dheeraj Verma had fired the first two shots at Kamini Verma. Thereafter, there were no live cartridges in the gun. Sumitri Devi, while appearing as PW4, pointed out, that after the appellant-accused no.1 Dheeraj Verma had fired two shots at Kamini Verma, the appellant-accused no.2 Deepak Verma provided two live cartridges to the appellant-accused no.1 Dheeraj Verma. Dheeraj Verma then reloaded his double barrel gun with the two live cartridges furnished by appellant-accused no.2 Deepak Verma, and fired one further shot at the deceased Rakesh Kumar. After the commission of the crime, Dheeraj Verma and Deepak Verma, jointly made good their escape on a scooter bearing registration no. PB-58-A-0285. When the two accused were apprehended at Bataluan Morh at a police "naka" the appellant-accused no.2 Deepak Verma was driving the scooter, whereas, appellant-accused no.1 Dheeraj Verma was pillion riding with him. It, accordingly emerges, that after having committed the crime, the appellant-accused no.2 Deepak Verma, also helped his brother appellant-accused no.1 Dheeraj Verma to make good his escape from the place of occurrence. It is, therefore, not possible for us to conclude that appellant-accused no.2 Deepak Verma was merely a by-stander, who was incidentally present at the place of occurrence. In our considered view both Dheeraj Verma and Deepak Verma jointly planned and committed the crime. The judgments relied upon by the learned counsel for appellants are inapplicable to the facts and circumstances of this case. Various eye-witnesses had identified the two accused who had committed the offence. The dying declaration of Kamini Verma and the statements of her relations, who had appeared as prosecution witness, duly establishes the commission of the crime, as well as, the common motive for the two accused to had joined hands in committing the crime. The handing over of two live cartridges

A by the appellant-accused no.2 Deepak Verma to his brother Dheeraj Verma, after he had fired two shots from the double barrel gun with which the crime in question was committed, completely demolishes the contention advanced at the hands of the learned counsel for the appellants, in so far as the B participation of the appellant-accused no.2 Deepak Verma in the crime is concerned. For the reasons recorded herein above, we find no merit even in the second contention advanced at the hands of the counsel for the appellants.

20. The third contention advanced at the hands of the C learned counsel for the appellants was, that there was no motive whatsoever for the appellant-accused no.2 Deepak Verma to have committed the offence in question. It is the submission of the learned counsel for the appellants, that insult on account of non acceptance of the marriage proposal already referred to D above, may have been felt by appellant-accused no.1 Dheeraj Verma. There was no question of the appellant-accused no.2 Deepak Verma to have felt any insult, or to have any motive to commit the offence in question. On account of lack of motive to commit the crime on the part of appellant-accused no.2 E Deepak Verma, learned counsel emphatically submits, that the appellant-accused no.2 Deepak Verma deserves acquittal. In order to supplement his instant contention, learned counsel placed reliance on a judgment rendered by this Court in *State of Uttar Pradesh v. Rajvir,* (2007) 15 SCC 545, wherein the F State had approached this Court against the acquittal of the respondent. The High Court, while hearing the appeal against the respondent had re-appreciated the evidence by re-evaluating the statement of witnesses. While two of the accused were found to be guilty of murder, and accordingly, the sentence G passed by the Trial Court against them was upheld; the High Court was doubtful of the participation of the respondent in the murder of the deceased, according to learned counsel, solely on the ground that there was no motive for the respondent to commit the murder of the deceased. Adopting a cautious H approach, the High Court had acquitted the respondent by

giving him the benefit of doubt. This Court found merit in the determination of the High Court, and accordingly, upheld the decision of the High Court by recording the following observations:

> "8. We have carefully considered the submissions made by the learned counsel for the parties. It is the case of the prosecution that the other two accused, namely, Chander and Chhotey had motive against the deceased and the respondent had no motive whatsoever against the deceased; all the three accused were friendly among them. It is true that PWs 1 to 3 have supported the prosecution case that all the three accused went to the house of the deceased on the date of the incident and the respondent called the deceased to attend a patient immediately. PWs 1 to 3 also stated that all the three accused assaulted the deceased but the evidence of PWs 1 to 3 is specific and consistent as to the assault by the accused Chander on the deceased with a knife. As to the assault by the respondent, the statements of the witnesses are general and vague. No specific overt act is attributed to the respondent. It may also be mentioned here that there was no recovery of knife from the respondent. There was recovery of bloodstained clothes from the accused Chander. It is possible that on the accused Chander and Chhotey asking the respondent to accompany them to the house of the deceased to show a patient or the respondent himself might have taken a patient also for examination by the doctor. Mere presence of the respondent on the spot when the incident took place was not sufficient to hold that the respondent had shared the common intention to kill the deceased; particularly so when the respondent had no motive whatsoever. PW1, the brother of the deceased himself has stated that the respondent had no ill-will or motive against the deceased. It is under these circumstances, the motive aspect assumed importance. There is no dispute as to the legal position that in the

A absence of motive; or the alleged motive having not been established; an accused cannot be convicted if the prosecution is (sic not) successful in establishing the crime said to have been committed by an accused by other evidence. At any rate, a doubt definitely arose in the case in hand as to what was the reason or motive for the respondent to commit the murder of the deceased. In *State of U.P. v. Hari Prasad* [(1974) 3 SCC 673] this Court dealing with the aspect of motive has stated thus: (SCC pp. 674-75, para 2):

> "This is not to say that even if the witnesses are truthful, the prosecution must fail for the reason that the motive of the crime is difficult to find. For the matter of fact, it is never incumbent on the prosecution to prove the motive for the crime. And often times, a motive is indicated to heighten the probability that the offence was committed by the person who was impelled by the motive. But, if the crime is alleged to have been committed for a particular motive, it is relevant to inquire whether the pattern of the crime fits in with the alleged motive."

The present case is not the one where the prosecution has successfully proved the guilt of the respondent beyond reasonable doubt by other evidence on record to say motive aspect was immaterial."

Based on the aforesaid factual and legal position, it is submitted, that the appellant-accused no. 2 Deepak Verma deserved acquittal.

21. We have examined the third submission canvassed at the hands of the learned counsel for the appellants, based on the plea of motive. While dealing with the second contention, advanced at the hands of the learned counsel for the appellants, we have already concluded hereinabove, that there was sufficient motive even for the appellant-accused no.2 Deepak

Verma to commit the crime in question, in conjunction with his younger brother Dheeraj Verma, appellant-accused no.1. Be that as it may, it would be relevant to indicate, keeping in mind the observations recorded by this Court as have been brought to our notice by the learned counsel for the appellants (which we have extracted hereinabove), that proof of motive is not a sine qua non before a person can be held guilty of the commission of a crime. Motive being a matter of the mind, is more often than not, difficult to establish through evidence. In our view, the instant contention advanced by the learned counsel for the appellant is misconceived in the facts and circumstances of the case. In the present case, there is extensive oral evidence in the nature of the statements of three eye-witnesses out of which one is a stamped witness, that appellant-accused no.2 Deepak Verma was an active participant in the crime in question. There is also the dying declaration of Kamini Verma implicating both the accused. In the case relied upon by the learned counsel for the appellant, the oral evidence produced by the prosecution to implicate the respondent with the commission of the crime, was not clear. Accordingly, in the absence of the prosecution having been able to establish even the motive, the High Court (as well as, this Court) granted the respondent the benefit of doubt. That is not so, in so far as the present controversy is concerned. The oral evidence against the appellant-accused no.2 Deepak Verma is clear and unambiguous. Besides, motive of appellant-accused no.2 Deepak Verma is also fully established. We are therefore satisfied, that the judgment relied upon by the learned counsel for the appellant has no relevance to the present case. We, therefore, find no merit even in the third contention advanced at the hands of the learned counsel for the appellants.

22. The last contention advanced at the hands of the learned counsel for the appellant was, that the dying declaration of Kamini Verma which became the basis of registering the First Information Report itself, was forged and fabricated. Learned counsel for the appellants, vehemently contended that

A the very foundation of the prosecution story itself being shrouded in suspicious circumstances, must lead to the inevitable conclusion, that the appellants-accused have been falsely implicated in the crime in question. In so far as the instant aspect of the matter is concerned, it was the vehement
B contention of the learned counsel for the appellants, that Kamini Verma was declared medically unfit to make a statement by Dr. D.P. Dogra PW11 at 12:20 hrs., on 28.7.2003. Pointing out to Exhibit PW11/B, it was the submission of the learned counsel for the appellants, that the medical report, showing that Kamini
C Verma was not fit to make a statement, had been made on the ground that her pulse rate and blood pressure were not recordable. According to the learned counsel, within just 40 minutes, the same Dr. D.P. Dogra PW11 gave a report at 13:00 hrs., that Kamini Verma was fit to record her statement.
D Learned counsel for the appellants, also invited the court's attention to Exhibit PW11/C, PW23/A and PW26/A so as to point out a number of discrepancies. It was submitted, that there are a number of cuttings/overwritings, of the time at which the endorsements on dying declaration of Kamini Verma were recorded. It is submitted, that the time has been altered from
E 12:20 p.m. to 1:00 p.m. This, according to the learned counsel was done, to match with the time given by Dr. D.P. Dogra PW11. Pointing to the endorsement of Dr. D.P. Dogra, it was submitted that Dr. D.P. Dogra had endorsed the dying declaration at 13:00 hrs. It was pointed out, that the time of the
F endorsement made by ASI Jog Raj PW26 (under the dying declaration of Kamini Verma) was recorded at 1:30 p.m., which was subsequently altered to 1:00 p.m. to match with the time recorded in the endorsement made by Dr. D.P. Dogra PW11. Additonally, it was the contention of the learned counsel for the
G appellants, that the language of the dying declaration itself shows, that the same was not a voluntary statement made by Kamini Verma, but actually the handiwork of ASI Jog Raj PW26, who had recorded the aforesaid statement. In this regard learned counsel for the appellants pointed out, that
H various words and observations were used in the dying

declaration, which are in use of police personnel (and/or advocates), but not in the use of common persons. It is, therefore, sought to be submitted that the dying declaration of Kamini Verma, allegedly recorded at 13:00 hrs., on 28.7.2003 at Zonal Hospital, Chamba not being her own voluntary statement, was liable to be discarded from the prosecution version. In case the same is ignored, the entire prosecution story, according to the learned counsel for the appellants, would crumble like a house of cards.

23. We have considered the last submission advanced at the hands of the learned counsel for the appellants. There can be no doubt that there are certain discrepancies in the time recorded in the dying declaration. Additionally, there can also be no doubt that certain words which are not in common use have found place in the dying declaration made by Kamini Verma. Despite the aforesaid, we find no merit in the submission advanced at the hands of the learned counsel for the appellant. It is not possible for us to accept, that Kamini Verma was not fit to make her statement when she actually recorded the same in the presence of ASI Jog Raj PW26 and Dr.D.P. Dogra PW11. The very medical report, relied upon by the learned counsel for the appellants, which depicted that the pulse rate and blood pressure of Kamini Verma was not recordable, also reveals, that on having been given treatment her blood pressure improved to 140/70 and her pulse rate improved to 120 per minute. This aspect of the medical report is not subject matter of challenge. The fact that the incident occurred on 28.7.2003 and Kamini Verma eventually died on 1.8.2003, i.e., 4 days after the recording of the dying declaration also shows that she could certainly have been fit to make her dying declaration on 28.7.2003. Her fitness was actually recorded on the dying declaration by Dr. D.P. Dogra PW11. A number of prosecution witnesses reveal that she was conscious and was able to speak. Kamini Verma after having recorded her statement before ASI Jog Raj PW26, also repeated the same version of the incident (as she had narrated

A while recording her dying declaration) to her father Arun Kumar PW2, when she was being shifted from Chamba to Amritsar for medical treatment. Moreover, Dr. D.P. Dogra PW11 appeared as a prosecution witness, and affirmed the veracity of her being in a fit condition to make the statement. There is B no reason whatsoever to doubt the statement of Dr. D.P. Dogra PW11. The question of doubting the dying declaration made by Kamini Verma could have arisen if there had been other cogent evidence to establish any material discrepancy therein. As already noticed hereinabove, three eye witnesses, namely, C Deepak Kumar PW1, Sonia PW3 and Sumitri Devi PW4 have supported the version of the factual position depicted in the statement of Kamini Verma. It is, therefore, not possible for us to accept, that the statement of Kamini Verma was either false or fabricated, or that, the statement was manipulated at the hands of the prosecution to establish the guilt of the appellants- D accused nos.1 and 2 Dheeraj Verma and Deepak Verma, or that she was not medically fit to make a statement. The discrepancies in recording time, as well as, the overwriting pointed out are too trivial to brush aside the overwhelming oral evidence produced by the prosecution, details whereof have E been repeatedly referred to by us, while dealing with the various submissions advanced at the hands of the learned counsel for the appellants. We, therefore, find no merit even in the last contention advanced at the hands of the counsel for the appellants.

F

24. In view of the above we hereby affirm the order passed by the Trial Court dated 30.12.2005 (in Sessions Trial No.55 of 2003) and also, the order passed by the High Court dated 2.9.2009 (in Criminal Appeal No.27 of 2006). Both the appeals G preferred by appellants-accused nos.1 and 2, Dheeraj Verma and Deepak Verma are, accordingly, dismissed.

D.G. Appeal dismissed.

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Highlights of the issue

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The Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors. P-328

National Textile Corporation Ltd. being a Government Company, is not entitled to exemption u/s 3(1) of the Maharashtra Rent Control Act, 1999.

The National Textile Corpon. Ltd. v. Nareshkumar Badrikumar Jagad P-472

An upgradation involves neither appointment nor promotion. therefore, it will not attract reservation.

Bharat Sanchar Nigam Ltd. v. R. Santhakumari Velusamy & Ors. P-502

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