JAGTAR SINGH A

v.

STATE OF HARYANA

(Criminal Appeal No.86 of 2013)

JUNE 19, 2015 B

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860 – s. 304 Part II read with s.34 – Land dispute between parties – On the fateful day, appellant and his brother caught hold of PW3 and when PW 3's uncle tried C *to intervene, appellant inflicted injuries to uncle, who later succumbed to it – Conviction and sentence of both appellant and his brother u/s.304 Part II rw s.34 – However, High Court upheld conviction of the appellant, while acquitted his brother – On appeal, held: Evidence proved the appellant guilty for* D *committing the offence – He was aggressor and had hit the deceased – Both ocular and documentary evidence proved that motive did exist prior to commission of the crime – Material evidence duly proved by the eyewitnesses could* E *not be ignored – However, such was not the case of co-accused and thus, he was given the benefit of doubt – Having regard to the nature of injury caused by the appellant to the deceased and the manner in which it was caused and taking into account the cause of death-shock and hemorrhage, the* F *courts below justified in bringing the case u/s. 304 Part II – Also the punishment of five years appears to be just and proper – Thus, conviction and sentence awarded to the appellant by the courts below upheld.*

Dismissing the appeal, the Court G

HELD: 1.1 The evidence proved that it was the appellant who took the lead, caught hold of deceased

A by his hand, pulled him down to the ground and hit him on his head. Due to the head injury, the deceased first became unconscious and later succumbed to it. The ocular evidence on this issue was properly appreciated by the trial court and the High Court for holding the B appellant guilty for committing the offence. No inconsistency or exaggeration was noticed in the evidence adduced by the prosecution on the said issue so as to disbelieve the evidence of eyewitnesses account and thus, the finding of the High Court is accepted. [Paras C 17, 18] [1020-H; 1021-A-C]

1.2 There was no case to differ with the finding of the two courts below on the issue of motive. There was enough evidence both ocular and documentary to prove D that the motive did exist prior to commission of the crime. Thus, in the light of the facts, duly proved by the prosecution with the aid of their eyewitnesses, there was no good ground to differ with the finding of the High Court. [Paras 20, 21, 22] [1022-C-G] E

1.3 The evidence on record in no uncertain terms proved that it was the appellant who was the aggressor and hit the deceased. This evidence was rightly made basis by the two courts to hold the appellant guilty for F committing the offence. When the evidence directly attributes the appellant for commission of the act, it cannot be appreciated as to how and on what basis the material evidence duly proved by the eyewitnesses could be ignored. Such was not the case so far as co- G accused is concerned. The prosecution witnesses too did not speak against the co-accused and hence, was given the benefit of doubt. Also the State did not file any appeal against his acquittal and hence, that part of the order has attained finality. [Para 24] [1023-B-D] H

1.4 The submission for conversion of the conviction of the appellant to s.323/325 IPC or in the alternative to reduce the quantum of sentence to the extent of appellant already undergone i.e. three years, cannot be accepted. Having regard to the nature of injury caused by the appellant to the deceased and the manner in which it was caused and taking into account the cause of death-shock and hemorrhage, the courts below were justified in bringing the case under Section 304 Part II instead of bringing the same either under Section 302 or/and Section 304 Part I. It is apart from the fact that the State has not filed any appeal against the impugned order seeking conviction of the appellant under Section 302 or under Section 304 Part I or even for enhancement of punishment awarded to the appellant under Section 304 Part II. [Paras 25, 26] [1023-E-H; 1024-A]

1.5 The punishment of five years appears to be just and proper. It could have been even more because eventually the incident resulted in death of a person though the appellant did not intend to cause death of deceased. In the absence of any cross appeal by the State on the issue of quantum of sentence, it is not proper to go into the question of adequacy of sentence. As a result, the conviction and sentence awarded to the appellant by the courts below is upheld. [Paras 27, 28] [1024-B-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 86 of 2013.

From the Judgment and Order dated 22.12.2009 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 910-SB/1998.

Akshat Goel, Shree Pal Singh for the Appellant.

Devender Kr. Saini, AAG, Dr. Monika Gusain, Vikram Saini

A for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the accused against the final judgment and order dated B 22.12.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 910-SB of 1998 which arose from the order of conviction and sentence dated 06.10.1998 and 07.10.1998 respectively passed by the C Sessions Judge, Karnal in Sessions Case No. 37 of 1996/ Session Trial No. 9 of 1997 convicting the accused persons under Section 304 Part II read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentencing them to undergo imprisonment for five years and D to pay a fine of Rs.1000/- each. By impugned judgment, the High Court dismissed the appeal in respect of the present appellant–accused by upholding his conviction and sentence and allowed the appeal in respect of the co-accused by acquitting him of the charge.

E 2. Facts of the case need mention in brief to appreciate the issue involved in this appeal.

3. Harwant Singh/Harbans Singh, (PW-3)-first informant and the accused persons are related to each other. Kapoor F Singh (since deceased), father of PW-3 was having three brothers, namely, Amar Singh, Gurnam Singh and Surinder Singh. The accused persons–Ajaib Singh and Jagtar Singh - the appellant herein are sons of Gurnam Singh. Amar Singh and Gurnam Singh have expired. The family of these persons G owned extensive agricultural land. The forefathers of the parties had, therefore, partitioned the agricultural land verbally amongst the family members and accordingly all sharers were cultivating their respective share.

H 4. In the year 1991, the appellant-accused and his brother

raised a grievance to PW-3 that the land which was allotted to them was not of good quality. PW-3, acceded to their request and exchanged his land with the accused persons. The parties accordingly executed the exchange deed on a written document before the Panchayat in relation to exchange of lands. However, the girdawari in respect of the exchanged land remained unaltered and both the parties continued to cultivate their exchanged land. PW-3 then made improvements in the land which was in his possession by investing his money and labour. On finding that the land had been improved by PW-3, the appellant and his brother raised a demand to reverse the exchange. On noticing that this might lead to a dispute, PW-3 applied for correction of the girdawari entries in revenue records. The Tehsildar, Nilokheri on 31.07.1996, visited the spot to enable him to pass appropriate orders on adjudication of the application.

5. On 20.09.1996, when PW-3 went to the Court to attend the proceedings, his uncle Surinder Singh and Gurmeet Singh, son of Amar Singh also accompanied him. The Tehsildar passed the order in favour of PW-3. At about 5.15 p.m., when they were coming out of the office of the Tehsildar, the appellant and his brother came there and caught hold of PW-3 and said that the verdict of the revenue officer is wrong and, therefore, they would not allow him to enter the land in question. When Surinder Singh tried to intervene, Jagtar Singh, the appellant-accused herein caught hold of the beard of Surinder Singh and pulled him down on the ground and hit him on his head 2-3 times by hand. Due to injuries received, Surinder Singh became unconscious. PW-3 and his cousin-Gurmeet Singh then tried to catch hold of the accused persons but they managed to run away from the spot. Both of them then took Surinder Singh to the nearest hospital at Nilokheri but in midway, he died. Thereafter, PW-3 lodged an FIR bearing No.404 dated 20.09.1996 at P.S. Butana Dist. Karnal under

A Section 302/341/34 IPC of the incident.

6. After investigation, on 07.10.1996, charge sheet against the accused persons, namely, Jagtar Singh-appellant (accused) herein and Ajaib Singh, was filed under Section 302/
B 341/34 IPC.

7. By order dated 16.11.1996, the Judicial Magistrate-1st Class, Karnal committed the case for trial to the Sessions Judge, Karnal which was numbered as Session Case No. 37
C of 1996 (Session Trial No.9 of 1997). The prosecution examined six witnesses to prove their case whereas defence examined one witness and filed certain documents.

8. By order dated 06.10.1998 in Sessions Case No. 37
D of 1996 and Sessions Trial No. 9 of 1997 convicted both the accused under Section 304 Part-II read with Section 34 of IPC and vide order dated 07.10.1998 sentenced them to undergo imprisonment for five years and to pay a fine of Rs.1000/- each, in default of payment of fine to further undergo imprisonment
E for six months under Section 304 Part II read with Section 34 of IPC.

9. Aggrieved by the said order, the accused persons filed appeal bearing Appeal No. 910-SB of 1998 before the High
F Court. The High Court, by judgment dated 22.12.2009 dismissed the appeal of Jagtar Singh-the appellant (accused) herein and in consequence upheld his conviction whereas while allowing the appeal filed by Ajaib Singh, co-accused, set side his conviction and acquitted him of the charges.

G 10. Feeling aggrieved, Jagtar Singh (accused) has filed this appeal by way of special leave.

11. Heard Mr. Akshat Goel, learned counsel for the appellant-accused and Dr. Monika Gusain, learned counsel
H for the State.

12. Challenging the conviction and sentence, learned counsel for the appellant-accused has submitted that:

(i) there was neither any motive on the part of accused to commit the offence in question and nor there was any incident of any type in the past during the course of proceedings.

(ii) in any case, since there was only one simple injury found on the body of the deceased and no weapon was used to inflict such injury, the courts below erred in convicting the appellant for an offences punishable under Section 304 Part II of IPC.

(iii) even if the case against the appellant-accused is held proved yet at best it is punishable under Section 323/325 of IPC.

(iv) the statement of the eyewitnesses are not trustworthy and hence the Court below erred in placing reliance on their testimony.

(v) In any event, the High Court having rightly acquitted the co-accused, the same benefit should have been extended to the appellant and he too should have been acquitted on the same reasoning

(vi) and lastly since the appellant has already undergone sentence for a period around 3 years or so out of total sentence awarded to him and hence the appellant be now left with the sentence already undergone by appropriately reducing the quantum of sentence.

13. In contra, learned counsel for the respondent-State contended that no case is made out for any interference in the concurrent conviction recorded by the two Courts below. He urged that none of the submissions of the appellant-accused has any substance.

A 14. Having heard learned counsel for the parties and on perusal of the record of the case, we find no merit in any of the submissions of the appellant-accused.

15. The High Court dealt with the case of appellant herein
B for holding him guilty as under:

> **"The same is, however, not true in case of appellant Jagtar Singh. There is clear, clinching and unambiguous evidence on the record, in the**
C **statements of PW-3-Harbans Singh and PW-4 Gurmeet Singh to the effect that it was he who caught hold of Surinder Singh, deceased by latter's beard and hair, felled him upon ground and hit his head twice or thrice against ground. It was on**
D **account of that hit that Surinder Singh became unconscious on the spot. Though appellant Jagtar Singh did make an attempt, abortive though, to raise above indicated plea (in the statement under Section 313 Cr.P.C.) but that plea does not stand proved on**
E **record. If there was an iota of truth in the above noticed plea of appellant Jagtar Singh (to the effect that matter was under discussion in the presence of certain common relations), there is no reason why he could not have named them or examined at least**
F **one or two out of them at the trial. Their testimony could be supportive of the plea raised by Jagtar Singh appellant at the trial."**

16. We have also on our part perused the ocular evidence
G and having so perused are inclined to concur with the aforementioned view of the High Court calling no interference.

17. The evidence, in our opinion, does prove that it was the appellant who took the lead, caught hold of deceased by
H his hand, pulled him down to the ground and hit him on his

head. The injury in the head resulted the deceased first becoming unconscious and later succumbed to it. The ocular evidence on this issue was properly appreciated by the trial Court and the High Court for holding the appellant guilty for committing the offence in question and hence it deserves to be upheld.

18. We have not been able to notice any kind of inconsistency or exaggeration in the evidence adduced by the prosecution on this material issue so as to disbelieve the evidence of eyewitnesses account and hence we concur with the finding of the High Court quoted above and reject the submission of the learned counsel for the appellant.

19. Now so far as the issue relating to existence of motive is concerned, we consider it apposite to reproduce the finding of the High Court on this issue.

> **"There also, Jagtar Singh appellant is not on firmer footing. There is plethora of evidence available on record to prove that the first informant had filed an application for correction of Girdawari entries and the adjudication announced on the relevant date by the revenue officer was favourable to him. There is also material available on record that first informant had improved the land which he exchanged with the appellant to redress the grievance of the latter that the quality of the land which fell to their share in a partition was inferior. It was after the further exchange, as between the appellants on the one hand and PW-3 Harbans Singh on the other hand, that the latter had improved the quality of that land. It was obvious that the appellants entertained a feeling of envy towards the first informant and they had an eye upon the improved land under the cultivation of first informant. The favourable**

announcement of the Girdwari correction provided the proverbial combustible material to the appellants who have been proved on record to have announced thereafter that announcement of the verdict of the revenue officer notwithstanding, they would not allow the first informant to enter upon the land qua which Khasra girdwaries entries had been ordered to be corrected. It cannot, thus be said with any justification that the appellant had no motive to commit the impugned crime."

20. We have on our part perused the evidence on this issue and find no case to differ with the finding of the two courts below. Learned counsel for the appellant was also not able to show as to why the aforementioned finding of the High Court is rendered bad in law and legally unsustainable.

21. In our considered view, there is enough evidence both ocular and documentary to prove that the motive did exist prior to commission of the crime in question. Firstly, it was not in dispute that the parties were related to each other; secondly, everyone had a share in the lands which belong to their forefathers; thirdly, proceedings for mutation were going in revenue courts in relation to the lands belonging to them; fourthly, an order of mutation was passed by Tehsildar in PW-3's favour which the accused did not like being adverse to them resulting in developing some grudge against PW-3 and his family members.

22. In the light of these facts, which are duly proved by the prosecution with the aid of their eyewitnesses, we find no good ground to differ with the finding of the High Court and accordingly hold that there was a motive to commit the offence. We accordingly hold so.

23. We are not impressed by the submission of the

learned counsel for the appellant when he urged that since the co-accused was acquitted of the charges, hence the benefit of the same be also extended to the appellant.

24. As held above, the evidence on record in no uncertain terms proves that it was the appellant who was the aggressor and hit the deceased. This evidence was rightly made basis by the two courts to hold the appellant guilty for committing the offence in question. When the evidence directly attributes the appellant for commission of the act then we fail to appreciate as to how and on what basis we can ignore this material evidence duly proved by the eyewitnesses. Such was not the case so far as co-accused is concerned. The prosecution witnesses too did not speak against the co-accused and hence he was given the benefit of doubt. It is pertinent to mention that the State did not file any appeal against his acquittal and hence that part of the order has attained finality.

25. Now coming to the issue of conviction and sentence awarded under Section 304 Part II of IPC to the appellant, though arguments were advanced by the learned counsel for the appellant for its conversion under Section 323/325 of IPC or in the alternative to reduce the quantum of sentence to the extent of appellant already undergone i.e. three years, we are not inclined to accept the submission of learned counsel even on this issue.

26. In our considered opinion, having regard to the nature of injury caused by the appellant to the deceased and the manner in which it was caused and taking into account the cause of death - shock and hemorrhage, the Courts below were justified in bringing the case under Section 304 part II instead of bringing the same either under Section 302 or/and Section 304 Part I. It is apart from the fact that the State has not filed any appeal against the impugned order seeking conviction of the appellant under Section 302 or under Section

A 304 Part I or even for enhancement of punishment awarded to the appellant under Section 304 Part II.

27. In any event, we find that punishment of five years appears to be just and proper. It could have been even more
B because eventually the incident resulted in death of a person though the appellant did not intend to cause death of deceased. In the absence of any cross appeal by the State on the issue of quantum of sentence, we do not therefore consider it to be proper to go into the question of adequacy of sentence in this
C appeal filed by the accused.

28. In the light of foregoing discussion, we find no merit in this appeal which thus fails, and is accordingly dismissed. As a result, the conviction and sentence awarded to the appellant
D by the courts below is upheld.

29. The appellant is accordingly directed to undergo remaining period of sentence. If the appellant is on bail, his bail bonds are cancelled to enable him to surrender and
E undergo remaining period of sentence.

30. A copy of the order be sent to concerned court for compliance.

Nidhi Jain Appeal dismissed.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) & ANR. A

v.

SAHARA INDIA REAL ESTATE CORPN. LTD. & ORS.

I.A. NOS. 59-61/2015 & I.A. NOS. 62-64/2015 IN C P (C) Nos.412-413/2012 B

and

CP (C) No.260 of 2013 in Civil Appeal No.8643 of 2012

C

JUNE 19, 2015

[T.S. THAKUR, ANIL R. DAVE AND A.K. SIKRI, JJ.]

Contempt of Court – Sahara matters – Issuance of direction to Sahara Companies-Promoters and Director to D *refund the amount collected by them for the Optional Fully Convertible Debentures – However, failure to deposit the same within the stipulated period – Contempt Petition by SEBI – Various opportunities given to contemnors to purge the contempt by depositing the amount, as directed – However,* E *non-compliance of the directions – Three out of four contemnors taken to judicial custody and direction issued to deposit sum of Rs. 33,000/- crores – Subsequently, grant of bail to the contemnors, imposing condition on them to deposit* F *Rs 10,000 crores-Rs.5,000 crores in cash and balance of Rs.5,000 crores in the form of bank guarantee of a nationalised bank, to be furnished in favour of SEBI – However, non-compliance of the condition and three contemnors in jail for the last fifteen months – Various* G *directions given from time to time and IA's filed – Held: Total liability swelled to more than Rs.36,000 crores – Said deposit of Rs.10,000 crores was only a condition of interim bail – It is the bounden duty of this Court to ensure that balance amount*

 H

A *is also deposited by the applicants – Thus, it is, an unprecedented situation of personal liberty of three applicants on the one hand vis a vis majesty of law and ensuring larger public good, on the other hand – Therefore, orders passed may not be strictly construed as arising out of contempt*
B *jurisdiction, but in exercise of inherent jurisdiction vested in this Court to do complete justice and to ensure that the applicants render full compliance of its orders – Bank guarantee format furnished by the contemnors accepted – Contemnors granted 18 months time to deposit the balance*
C *amount from the date of their release from custody subject to the conditions stated therein – In the event of failure to do so, they would be taken into custody and committed to jail.*

Subrata Roy Sahara v. Union of India & Ors. **(2014) 8**
D **SCC 470 – referred to.**

Case Law Reference

(2014) 8 SCC 470 Referred to. Para 15

E CIVIL APPELLATE JURISDICTION: I. A. NOS. 59-61 OF 2015 AND I.A. NOS. 62-64 OF 2015

IN

F CONTEMPT PETITION (CIVIL) NOS. 412 & 413 OF 2012

IN

CIVIL APPEAL NOS. 9813 & 9833 OF 2011

G AND

CONTEMPT PETITION (CIVIL) NO. 260 OF 2013

IN

H (CIVIL APPEAL NO. 8643 OF 2012)

From the Judgment and Order dated 18.10.2011 of the Securities Appellate Tribunal in Appeal No. 131 of 2011. A

Shekhar Naphade, Arvind Datar, Kapil Sibal, Dr. Rajiv Dhawan, S. Ganesh, Guru Krishna Kumar, Shubhangi Tuli, Vikram Sobti, Pratap Venugopal, Surekha Raman, Supriya Jain, Gaurav Nair, Niharika (for K. J. John & Co.), Gautam Awasthi, Ayush Chaudhary, Abhinav Mani Tripathi, Nijam Pasha, Simranjeet Singh, Gautam Talukdar, Rahul Tripathi, R. S. YAdav, Gaurav Kejriwal, Ramesh Babu M. R., Swati Setia, D. L. Chidananda, Sadhana Sandhu, Anil Katiyar for the appearing parties. B C

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Before we advert to the reliefs claimed in these applications and announce the outcome thereof, we would like to recapitulate, very briefly, the genesis for moving these applications as we feel that such a recount of the previous events would make it easy to understand the circumstances under which these applications have been filed. It would also provide us the course of action that is to be taken on the prayers made in these applications. D E

2. The main proceedings with which we are concerned are the contempt petitions bearing Nos. 412 of 2012 and 413 of 2012 in Civil Appeal Nos. 9813 of 2011 and 9833 of 2011 as well as Contempt Petition No. 260 of 2013 in Civil Appeal No. 8643 of 2012. These contempt petitions filed by the Securities and Exchange Board of India (for short, 'SEBI') have the origin in the judgments that were pronounced in the civil appeals, numbers whereof are mentioned above. It so happened that Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL) (hereinafter referred to as the 'Saharas') invited and claimed to have collected deposits from general public who, F G H

A allegedly, included cobblers, labourers, artisans, peasants etc. This invitation for deposit was in the form of 'Optional Fully Convertible Debentures' (OFCD). SEBI found that offering of such OFCD was not legally permissible and passed orders directing Saharas not to offer their equity shares/ OFCDs or
B any other securities to the public or invite subscription in any manner whatsoever either directly or indirectly. The High Court of Bombay dismissed their petitions and directed Sahara Companies, in particular the promoter Mr. Subrata Roy Sahara, and Directors Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey
C and Mr. Ashok Roy Choudhary of Saharas to jointly and severely refund the amount collected by Saharas in terms of the aforesaid issue along with interest @ 15% per annum. It is pertinent to mention that on the basis of these directions of the
D High Court, SEBI ordered that refund of the amount shall be made only through demand drafts or pay orders. Certain other directions were also issued. Aggrieved by these orders of SEBI, Saharas approached Securities Appellate Tribunal (for short, 'SAT'). SAT also declined to interfere with the view taken
E by SEBI and directed Saharas to refund the amount collected from the investors within a period of six weeks. Against these orders of SAT, Civil Appeal Nos. 9813 of 2011 and 9833 of 2011 were preferred by Saharas in this Court, which were finally disposed of by order dated 31.08.2012. While substantially
F maintaining the orders of SEBI and SAT, a modification was made in those orders with a direction to Saharas to deposit the amount collected by them along with interest @ 15% per annum with SEBI within a period of three months. The amount when deposited was directed to be invested in a nationalised
G bank to earn interest. Saharas were also directed to furnish details with supporting documents to establish whether they had refunded any amount to the investors who had subscribed through the Red Herring Prospectus (RHP) in question. SEBI was then to examine the correctness of the details so furnished.
H Failure to prove the refund of the amount by Saharas had to

give rise to an inference that Saharas had not refunded the amount to the real and genuine subscribers as directed by SEBI. A

3. Aforesaid directions were admittedly not complied with. Instead, another appeal, being Appeal No. 221 of 2012, was preferred by Saharas before SAT which was dismissed as premature. Against that order, Civil Appeal No. 8643 of 2012 was filed in this Court which was decided on 05-12-2012. The Saharas had produced before the Court, demand drafts for a total sum of 5120 crores. This Court directed them to handover the same to SEBI. Further direction was given to deposit the balance amount of 17,400 crores together with interest @ 15% per annum with SEBI in two installments. First installment of 10,000 crores was to be deposited with SEBI by first week of January, 2013 and balance amount, along with interest, was to be deposited by first week of February, 2013. However, the balance amount or the interest payable, as per the installments, was not deposited though it was to be deposited by January/ February, 2013. It resulted in filing of the contempt petitions, which are the main proceedings at hand. In these contempt petitions various opportunities were given to the contemnors to purge the contempt by depositing the amount, as directed. The record shows that at various stages the contemnors gave the proposals for compliance with the directions which were explored from time to time, but eventually all these proposals were found to be unsatisfactory, yielding no tangible results. This was perceived as stubborn attitude of the contemnors with sole intent to drag on the matter endlessly without complying with the orders. This attitude of the contemnors forced this Court to issue non-bailable warrants against Mr. Subrata Roy Sahara for his production and directing personal presence of the other three Directors in the Court on the date fixed. On 04.03.2014, when the matter was listed, and during the hearing as it transpired that no acceptable proposal was B C D E F G H

A forthcoming to comply with the directions, the Court was left with no option except to commit the three out of four contemnors to judicial custody. We would like to mention that by that time, after including the interest which had accumulated, a sum of 33,000 crores had to be deposited.

B

4. The matter came up for hearing on 26.03.2014 again and the three contemnors committed to judicial custody prayed for grant of bail on that day. The Court passed conditional order of bail on that day. The condition was that the contemnors

C deposit 10,000 crores – 5000 crores in cash and balance of 5000 crores in the form of bank guarantee of a nationalised bank, to be furnished in favour of SEBI. It was specifically directed that upon compliance with these conditions the contemnors would be released from the custody.

D

5. Till date there is no full compliance of the aforesaid condition for grant of interim bail, with the result the three contemnors are still in judicial custody and 15 months have passed thereby.

E

6. We would like to point out at this stage that by orders dated 21.11.2013 passed by this Court the assets of Sahara Group of Companies were frozen, to ensure that the contemnors do not fritter away these assets without complying

F with the directions of this Court passed in the Civil Appeals. However, on the request made by Sahara Group for lifting the embargo on certain properties in order to enable the Saharas to sell those properties so that the interim bail conditions are fulfilled, on 04.06.2014, this Court permitted various Sahara

G Group Companies to deal with/sell some of their assets, but only for the purpose of complying with the order dated 26.03.2014 with further condition that whatever amount is realized by the sale of the said assets, same shall be deposited into the SEBI – 'Sahara Refund Account and for providing the

H requisite bank guarantee in favour of SEBI in the sum of 5000

crores, as per the directions. Though this liberty was granted to Saharas one year ago and some other directions were given from time to time providing various facilities to the three contemnors in judicial custody felicitating contacts and dialogue/interaction with the prospective buyers for clinching of deals, the contemnors have been able to achieve only a partial success. They have mooted various proposals for the sale of these properties. However, major proposals run into rough weather, hitting one or the other kind of road block and had to be terminated midday. We would like to point out that the embargo which was lifted in respect of certain properties, the value thereof as per the books of accounts is in several thousand crores and had the Sahara group succeeded in selling even few of these properties, bail conditions would have been met long ago. Thus, insofar as this Court is concerned it gave all necessary stimulus to enable the applicants to sell the assets, that too at reasonable market price. If, the contemnors have still not been able to achieve the required target, it is either because of the reason that the efforts made by the contemnors as well as other officers of Sahara group in raising money from the sale/encumbrance of these properties were not adequate or it was their ill-luck or it is the market conditions which have to be blamed. Fact remains that by order dated 26.03.2014, this Court had granted bail, albeit with certain conditions. However, it is the contemnors who have not been able to fulfil those conditions for one reason or the other.

7. During this period, certain properties have been sold and the amount realised therefrom stands deposited in the SEBI – Sahara Refund Account. Things have come to a stage where, according to the applicants, they are at the verge of fulfiling the conditions imposed by the orders dated 26.03.2014. It is mentioned that they have certain buyers for some of the properties and the sale proceeds therefrom would meet the deficit. It is also stated that the contemnors have

A been able to negotiate with a nationalised bank, through two of its Sahara group companies and the said bank has agreed to furnish the required bank guarantee. The format of the bank guarantee is also produced at the time of hearing for the approval of the Court, so that the guarantee is given in the B said format, if approved.

8. Assets of various companies of Sahara group have been frozen. According to the applicants, by reason of the said freeze the financial and liquidity position of various Sahara C group companies has been adversely affected and it has also resulted into mounting liabilities in the form of statutory liabilities, unpaid salary and wages, outstanding and overdue amounts payable to banks, etc. Because of this reason, IA Nos. 59-61 of 2015 are filed praying for the following reliefs:

D

"(i) allow the Sahara Group Companies to meet their respective statutory and other liabilities as enumerated in this application under such terms and condition as this Court may deem proper along with the compliance of the E order dated 26.03.2014 passed by this Hon'ble Court;

(ii) permit the Sahara Group Companies to utilize the balance, if any, of the proceeds obtained from the sale/ encumbrance of assets which has been specifically F permitted by this Hon'ble Court that remains after complying with the order dated 26.03.2014 passed by this Hon'ble Court for the purpose of meeting the liabilities enumerated in this application; and

G (iii) For such further and other orders and directions as may appear just, necessary and appropriate to this Hon'ble Court, in the circumstances of the case."

9. Insofar as permission to sell certain properties of H Sahara group is concerned, it was subject to certain conditions as indicated above and one of the conditions was that sale

must not be for a price lower than 5% of the estimated value for such a property. The applicants state that in respect of one such property at Gorakhpur, Uttar Pradesh, they have been able to find a purchaser who is ready to step into the shoes of the applicants for development/ maintenance of the said property. MOU with the said party has already been entered into, which is placed on record. It is pointed out, however, that the price being offered is 64 crores. The price offered is lower than 5% of the estimated value. However, according to the applicants, due to the depressed real estate market, the present estimated market value of the said property is 53.70 crores, as per the valuation report received. This value is calculated on the basis of circle rate of the project land. On that basis, IA Nos. 62-64 of 2015 are filed with the following prayers:

"(i) Allow the applicants to enter into the Definitive Agreement for the property situated at Gorakhpur; and

(ii) pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

10. Insofar as the aforesaid prayer (i) in IA Nos. 62-64 of 2015 is concerned, having regard to the reasons mentioned in paras 4 and 5 of the application, which are stated in brief above, and the fact that the MOU is entered for an area of undeveloped land of 45.71 acres out of the total land area of 146 acres, coupled with the fact that there is slump in the real estate market, we allow the applicants to enter into Definitive Agreement, making it clear that the entire amount from the aforesaid deal shall be deposited in SEBI-Sahara Refund Account after adjusting transaction cost and taxes.

11. Insofar as prayers (i) and (ii) contained in IA Nos. 59-61 of 2015 are concerned, we are of the opinion that the stage

A for making such prayers has not ripened as yet. The Sahara group companies want to meet their statutory and other liabilities from the surplus that would be available after complying with order dated 26.03.2014. As soon as there is a compliance with the said order, this Court shall consider at
B that stage the availability of the surplus funds along with other factors and then pass appropriate orders on these applications. It is necessary to mention that even after order dated 26.03.2014 is complied with, there is a huge deficit in the form of balance amount that would still be required to be deposited
C by the applicants/contemnors in order to comply with the directions contained in the orders dated 31.08.2012 and 05.12.2012 passed by this Court in the civil appeals. Therefore, orders on the prayers made in IA Nos. 59-61 of
D 2015 are deferred for the time being.

12. Coming to the format of the guarantee given by the applicants, on which the applicants want seal of approval from this Court in order to enable them to submit the requisite bank guarantee, we would like to reproduce the same, which reads
E as follows:

"**GUARANTEE**

We _____ Bank, a scheduled Bank within the
F meaning of the Banking Regulation Act, and having our office at _____ do hereby grant and issue this unconditional and irrevocable guarantee of Rs.5000 crores (rupees five thousand corres) in favour of Securities and Exchange Board of India (SEBI) at the request made
G by Amby Valley (Mauritius) Ltd. on behalf of Sahara India Real Estate Corporation Ltd. and Sahara Housing Investment Corporation Ltd., in compliance with the order of the Hon'ble Supreme Court of India dated 26th March 2014.

H

We hereby guarantee that on the demand in writing made by SEBI, we shall, without demur, pay the amount demanded upto the maximum amount of Rupees Five Thousand Crores.

This guarantee shall remain in force initially for a period of six months and shall be extended for further periods of six months at the time, until SEBI otherwise directs pursuant to the order of Hon'ble Supreme Court."

13. SEBI has given its nod to the aforesaid format. Likewise, Mr. Shekhar Naphade, learned *amicus* appointed by this Court, has made a statement that the guarantee to be furnished in the aforesaid format may be accepted. At the same time, Mr. Arvind Datar, learned senior counsel appearing for SEBI, as well as Mr. Naphade were very emphatic in pointing out that this Court should indicate in its order as to what should be the trigger point for encashing the bank guarantee. In other words, it was their submission that insofar as balance amount payable by the applicants/contemnors is concerned, this Court may give some specified time to them for this purpose and on the contemnors/applicants failure to deposit the balance amount, with accrued interest with SEBI, SEBI should be allowed to encash the bank guarantee in question.

14. M/s. Kapil Sibal, Rajeev Dhawan and S. Ganesh, learned senior counsel appearing for the applicants, on the other hand, submitted that it is not necessary to go into this aspect at this stage. They pointed out that last para of the bank guarantee categorically mentions that the guarantee is to remain in force *'until SEBI otherwise directs, pursuant to the orders of the Hon'ble Court'* and, thus, this Court can direct at any stage as at what point of time the bank guarantee is to be encashed. Their argument was that the applicants have refunded almost 16,000 crores to the investors and voluminous

A record of documents in support thereof has already been handed over to SEBI. It is for the SEBI to verify the same and inform as to what would be the balance amount payable after adjustment of the amounts already paid to the investors and to the extent it is found to be genuine, the same be refunded. B They submitted that it is SEBI which is not fulfilling its part of obligation by going into the verification of those documents, for which applicants cannot be blamed or prejudiced.

15. Since this aspect was hotly debated at the Bar, we C have gone into the same in some depth and detail. We find that the issue of refund of 17,000 crores approximately to the depositors has been raked up by the contemnors/applicants time and again, but to their dismay, this Court has not accepted their plea to this effect, so far. In the writ petition (Writ Petition D (Criminal) No. 57 of 2014, titled ***Subrata Roy Sahara*** v. ***Union of India & Ors.***[16]), this very plea of exempting the applicants from depositing the amount already redeemed by them was considered at length and rejected. In the said judgment, the Court took note of and expressed its opinion on this aspect at E various places. In para 55 of the judgment, the Court observed that such a plea was not accepted even earlier by a three Judge Bench while disposing of Civil Appeal No. 8643 of 2012 vide order dated 05.12.2012, in the following manner:

F "During the pendency of the contempt proceedings, we also decided to determine the veracity of the redemption theory, projected by the two companies. As a matter of law, it was not open to the two companies to raise the aforesaid defence. This is because, exactly the same G defence was raised by the two companies, when they had approached this Court by filing Civil Appeal No. 8643 of 2012 (and Writ Petition (Civil) No. 527 of 2012). In the aforesaid Civil Appeal, it was submitted on behalf of the two companies that they should be exempted from H depositing the amount already redeemed by them. The

above contention advanced by the two companies was not accepted, by the three Judge Division Bench, when it disposed of Civil Appeal No. 8643 of 2012 (and Writ Petition (Civil) No. 527 of 2012) by order dated 5.12.2012. It is, therefore, apparent that the instant defence of having already redeemed most of the OFCD's was not open to the two companies (and even the contemnors). Yet, so as to ensure that no injustice was done, we permitted the two companies to place material on the record of this case to substantite the factum of redemption.

(emphasis supplied)"

16. The Court, thus, went into this issue again permitting the two companies to place requisite material on record to substantiate the factum of redemption and took into consideration whatever material was placed on record. However, it refused to accept the plea of the two companies, which is clear from the following discussion in paras 86 and 108 of the said judgment:

"When asked how disbursements were made to the investors, the response was that 95% of the payments made to the investors were also made by way of cash, the learned Senior Counsel representing the Contemnors (including the petitioner herein) invited our attention to the books of accounts (only general ledger entries) to demonstrate proof of the transactions under reference. Details in this behalf have been recorded by us under heading IX: "A few words about the defence of redemption of OFCDs offered by the two Companies". The above explanation may seem to be acceptable to the contemnors, but our view is quite the converse. It is not possible for us to accept that the funds amounting to thousands of crores were transacted by way of cash, we would therefore, on the face of it, reject the above

A explanation tendered on behalf of the two Companies."

17. The Court further found that in order dated 05.12.2012 in Civil Appeal No. 8643 of 2012, balance amount of 17,400 crores, together with interest @ 15% per annum, was still B payable even after the deposit of 5,120 crores. It further mentioned that this figure has swelled up to 36,608 crores. Thereafter, the position was concluded in para 154 as under:

"Therefore, viewed from any angle, there is no substance C in the contention advanced on behalf of the two companies that the moneys payable to the investors had been refunded to them. Accordingly, there is no merit in the prayer, that while making payments in compliance with this Court's orders dated 31.08.2012 and 05.12.2012, the D two companies were entitled to make deductions of Rs. 17,443 crores (insofar as SIRECL is concerned) and Rs.5,442 crores (insofar as SHICL is concerned)."

18. The aforesaid discussion clinchingly shows, without E any cavil of doubt, that the contemnors/applicants have failed to give satisfactory proof of redemption of 17,400 crores by SIRECL and 5,442 crores for SHICL.

19. Mr. Sibal, however, drew our attention to certain lines F appearing in paragraph 154 of the same judgment and submitted that it is still open to the applicants to demonstrate that the aforesaid amount is redeemed to the depositors and virtually nothing more is payable. This window which was still kept open by the Court in the said paragraph is in the following G form:

"154. ".....Be that as it may, we have still retained a safety valve, inasmuch as, SEBI has been directed to examine the authenticity of the documents produced by the two Companies, and in case SEBI finds that redemptions have H actually been made, the two Companies will be refunded

the amounts, equal to the redemptions found to have been genuinely made." A

20. No doubt, this much scope is still left for Sahara group. Fact remains that a definite course of action that is to be chartered is also laid down, namely, in the first instance it is obligatory on the part of the contemnors/applicants to deposit the entire balance amount along with interest accrued thereon in the SEBI-Sahara Refund Account. This obligation has to be performed in all circumstances. It is only thereafter, if and when the applicants are able to substantiate the factum of redemption, they would be entitled to refund of the said amount to the extent they are able to prove in this behalf. Therefore, at this stage, one thing which is more than apparent is that after the conditions for interim bail stipulated in order dated 26.03.2014 are fulfilled and pursuant thereto the three contemnors who are in judicial custody are released, the obligation or liability to deposit the balance would still remain. We may remind the contemnors that as per directions dated 05.12.2012, this amount was to be deposited in two installments, first installment by the first week of January 2013 and the second by the first week of February 2013. Therefore, it would be essential for the applicants/contemnors to not only to deposit the balance amount in a time bound schedule but also the manner on which they propose to muster the said amount. This cannot go on endlessly. B C D E F

21. We are conscious of the fact that three persons are under confinement for the last fifteen months. The circumstances under which orders dated 04.03.2014 were passed taking these persons into custody and sending them to jail are well known. This court was virtually compelled to do so, going by the stubborn attitude of the contemnors in taking the orders dated 31.08.2012 and 05.12.2012 for granted, as if those orders were only on papers and were not meant to be complied with. So many opportunities were given, showing G H

A all that leniency which could be extended, to enable the contemnors to comply with those directions. It is only when the Court felt that unless some drastic action is taken there will be no desired effect, that this extreme step was taken. However, this step was taken in good faith to uphold the rule of law and
B to ensure that dignity of this Court is maintained and there is faithful compliance with its directions. The contemnors, instead of taking steps to follow and fulfil the directions, started making hue and cry. Still, in the application filed immediately thereafter for release, this Court showed desired compassion and
C empathy by passing orders dated 26.03.2014, thereby paving a way for grant of interim bail. It was, however, with a legitimate condition that out of almost ₹ 33,000 crores that had become due by that time, the contemnors deposit at least 10,000 crores, that too with relaxed provision of deposit of 50% thereof by
D means of bank guarantee only. There was a genuine hope that for the sake of attaining their own freedom, the contemnors shall at least comply with this direction immediately. Since then, though there have been attempts on the part of the
E contemnors to do the needful, but all in vain. This is notwithstanding the fact that insofar as this Court is concerned, it has shown and extended all support in the form of giving desired facilities in jail; lifting the attachments in respect of those properties chosen by the applicants themselves, for sale/
F encumbrances etc.; allowing these applicants to accept the offer of lesser amount than the book value of a particular asset, going by the fact that these were akin to distress sales in a depressed real estate market. May be the applicants now see the light at the end of the tunnel as it is projected that the
G Sahara companies has finally found the buyers for certain assets and/or financers who are ready to provide the requisite finance against some of the Sahara Companies properties and that would bridge the gap insofar as conditions of interim bail are concerned. However, as mentioned above, the matter
H does not rest with the deposit of ₹ 5,000 crores and ₹ 5,000

crores by way of bank guarantee. Total liability has swelled to more than ₹ 36,000 crores. The aforesaid deposit of ₹ 10,000 crores is only a condition of interim bail. It is the bounden duty of this Court to ensure that balance amount is also deposited by the applicants. A

B

22. This Court feels concerned with the fact that three persons are deprived of their liberty for the last fifteen months and this situation is quite onerous to them. On the other hand, public interest as well as public good demands that the two Sahara Companies, which had collected whopping amount of more than ₹ 22,000 crores from the public in an illegal and unauthorised manner, are made accountable for the same in the manner it is directed vide orders dated 31.08.2012 and 05.12.2012. By any yardstick, this is a huge liability, which the contemnors are bound to discharge by depositing the same with SEBI. It is, thus, an unprecedented situation of personal liberty of the three applicants on the one hand *vis a vis* majesty of law and ensuring larger public good, on the other hand. It is this sense of justice, in an unprecedented kind of situation, that has compelled the Court to take such an extreme step. It is this legal realism which has compelled the Court to adopt an approach which sounds more pragmatic. It is "doing what comes naturally" approach to the problem at hand, which required such a drastic step, going by the experience of this case, giving rise to 'Reflection' that provided 'Understanding'. This case is a burning example where the true dictate of justice is difficult to discern, and the law needed to come down on the side of practical convenience. We may borrow the jurisprudential theory propounded by Ronald Dworkin, albeit in somewhat different context, viz. the "conventional jurisprudential wisdom" which holds that in certain cases of a particularly complex or novel character the law does not provide a definite answer. In denying that judges in hard cases have a discretion to determine what the law is, Dworkin has instead C D E F G H

A argued for the judicial use of public standards or principles in a way that is capable of providing the right legal answer. The process of reaching a right answer in hard cases obviously differs from the process of reaching the legal answer in easy cases. After all, the avowed objective of rule of law is also to B ensure that the orders of this Court are respected and obeyed. Therefore, its a classic case where the approach adopted is influenced by the necessity of "making the law work". Therefore, the orders passed may not be strictly construed as arising out of contempt jurisdiction, but in exercise of inherent jurisdiction C vested in this Court to do complete justice in the matter and to ensure that the applicants render full compliance of its orders. It's the unprecedented situation which has led to passing of unprecedented, but justifiable, orders.

D 23. This Court is not powerless as it can always direct selling the properties of the Sahara Companies to ensure recovery of the aforesaid amount as the value of those properties is stated to be much higher. However, it is not done so far pursuant to the wishes of the applicants who have E pleaded against the sale of these properties by the Court with repeated assurances that these companies would be taking necessary steps for generating the desired finances and the Court has accepted their request and given them opportunities and chances to do so. F

24. Shri Datar, Senior Counsel for SEBI and Shri Naphade, Amicus Curiae contended and in our view rightly so, that if the format of the bank guarantee is accepted, this Court ought to indicate the circumstances in which the SEBI can seek G encashment of the said guarantee. It was argued that the Bank Guarantee as furnished by the contemnors did not indicate a trigger point for encashment which ought to be suitably mentioned and entered either in the guarantee or in the order of this Court. It was further argued that release of the H contemnors from the custody even after deposit of a sum of

Rs.5000 crores and a bank guarantee of Rs.5000 crores pursuant to the order of this Court was meant only to enable them to deposit the balance amount. It was submitted that in case the contemnors comply with the conditions for release from custody, the next thing they must do is to comply with the directions regarding deposit of the balance amount. This Court, it was argued, should not only direct the deposit of balance amount but provide for the consequences in default of such deposits.

The bank guarantee format does not provide for a trigger point for its encashment. Furnishing the bank guarantee without stipulating the situations in which the guarantee shall become encashable, will be meaningless. The Bank guarantee is actually meant to ensure that the entire amount is deposited by the contemnors once they are released from custody. That is because the liability to deposit the amount does not get obliterated by furnishing the bank guarantee which is intended to grant release of the contemnors from custody to enable them to comply with the orders passed by this Court. We have in that view examined several options that may provide for a trigger point for encashment. We are of the view that since most of the properties owned by Sahara group remain frozen by the order of this Court, the contemnors require time to enable them to deposit the balance outstanding. In case the bank guarantee is made encashable on default, the trigger point for encashment would be the default by the contemnors in depositing the balance amount in terms of the directions that we propose to issue. It is in that spirit that we accept the bank guarantee format furnished by the contemnors and grant to them time to deposit the balance amount that remains to be deposited subject to the following conditions:

(1) Keeping in view the total liability which according to SEBI, has risen to Rs.36,000 crores (approximately), the contemnors shall deposit the balance outstanding amount

within a period of 18 months commencing from the date of their release from custody in nine installments. First eight installments shall be of Rs.3,000 crores payable every two months from the date of their release from custody and last installment shall be of the remaining amount.

(2) In the event of the default in payment of two instalments (not necessarily consecutive) the bank guarantee furnished by the contemnors pursuant to the order of this Court shall be encashed by SEBI and the amount so received counted towards part compliance with the earlier directions given by this Court.

(3) The bank guarantee shall also be encashable in the event of failure of the contemnors to deposit the full amount outstanding against them within a period of 18 months commencing from the date of their release.

(4) In the event of failure of the contemnors to deposit three instalments (not necessarily consecutive), the contemnors shall surrender back to custody and in case they fail to do so, they shall be taken into custody and committed to jail.

(5) Since only some of the properties have been released by this Court for sale by the contemnors, the contemnors shall be free to apply for permission to sell any further property within 15 days from their release in order to enable them to raise funds for deposit of the required amount in terms of the order of this Court.

(6) Keeping in view the fact that a large amount remains to be deposited by the contemnors, we direct the contemnors to deposit their passports in this Court within 15 days from the date of this order or before their release, whichever is earlier. They shall not leave the country without prior permission of this Court. Insofar as their movements within the country are concerned, they shall keep police station Tilak Marg, New Delhi

informed and updated about their whereabouts every fortnight. A

25) The Interlocutory Applications stand disposed of on the aforesaid terms.

Nidhi Jain I.As disposed of.