

law.—No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”

30. The Hon'ble Supreme Court of India in a matter reported in **2020 (4) SCC 46 in re: Dr. Hiralal Vs. State of Bihar & others**, while reiterating the law laid down in **State of Jharkhand (Supra)**, has held that pension is property within the meaning of Article 300-A of the Constitution of India. For ready reference relevant paragraph of the said judgment is being reproduced below :-

"24. The right to receive pension has been held to be a right to property protected under Article 300-A of the Constitution even after the repeal of Article 31 (1) by the Constitution (forty-Fourth Amendment) Act, 1978 w.e.f. 20-6-1979, as held in State of W.B. v. Haresh C. Banerjee [State of W.B. v. Haresh C. Banerjee, (2006) 7 SCC 651 : 2006 SCC (L&S) 1719]."

31. In a recent judgment dated 23.8.2023, passed in Writ-A No.3180 of 2023 (**Prof. Ranjana Sharma & another Vs. State of U.P. & others**), this Court while allowing the writ petition, has followed the dictum of Hon'ble Supreme Court in **State of Jharkhand (Supra)** and **Dr. Hiralal (Supra)** while reiterating *inter-alia* that right to receive pension is included in Right to

property under Article 300-A of the Constitution of India.

32. The impugned punishment order dated 20.12.2019 issued by respondent No.1, whereby the full pension of the petitioner was stopped and the consequential order dated 12.4.1991 issued by respondent No.2 and order dated 20.12.1990 issued by the State Government are in gross violation of right to receive pension which is included in right to property as envisaged in Article 300-A of the Constitution of India as well as in violation of principles of natural justice and the copy of the enquiry report has not been supplied to the petitioner by the Administrative Tribunal nor by the disciplinary authority in the matter.

33. In view of the above, the submission of learned Standing Counsel as well as statement made in the counter affidavit cannot make the impugned order good, therefore, submission advanced by learned Standing Counsel is hereby rejected being no merit.

34. For all the reasons and discussions recorded above, the impugned orders dated 20.12.1990, 12.4.1991 and 7.5.1991 do not sustain and are hereby quashed. The writ petition succeeds and is **allowed**.

(2024) 11 ILRA 478
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.11.2024

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE DR. GAUTAM CHOWDHARY, J.

Criminal Appeal No. 4508 of 2024

Sher Singh & Ors. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

Pradeep Kumar Rai, Sr. Advocate

Counsel for the Respondent:

G.A.

Circumstantial evidence -Neither any complaint was made in respect of the alleged incident occurred four months back- nor any Police report etc is on record-alleged enmity not been substantiated by the prosecution-prosecution has not confronted the accused persons with the circumstance of the incident-in the absence of such facts/circumstances having been referred to the accused persons- the facts in that regard cannot be relied upon by the prosecution as an evidence not confronted to the accused under Section 313 Cr.P.C.- cannot be read or relied upon in evidence- in the second St.ment the motive has been introduced in the testimony of witnesses- neither motive is convincing - circumstantial evidence not been carefully dissected by the trial court and the contradictions in the version of witnesses have been overlooked- related witnesses-impugned judgment and order set aside.

Appeal allowed. (E-9)**List of Cases cited:**

Nizam Vs St. of Raj., (2016) 1 SCC 550

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. This appeal is directed against the judgment and order of conviction and sentence dated 30.03.2024, passed by the Sessions Judge at Firozabad in Sessions Trial No.300669 of 2013 (State of U.P. Vs. Sher Singh and others), arising out of Case Crime No.297 of 2012, Police Station Tundla, District Firozabad, whereby the accused appellants Sher Singh, Arjun Singh and Sanju have been convicted and sentenced to undergo ten years rigorous imprisonment alongwith fine of Rs.10,000/-, each, and in default of payment of fine, they shall undergo six

months additional imprisonment and under Section 302 I.P.C. read with Section 34 of I.P.C. to undergo life imprisonment and a fine of Rs.10,000/-, each, and in default of payment of fine, they shall undergo six months additional imprisonment. All the sentences are directed to run concurrently.

2. The father of the deceased, namely, Charan Singh has lodged a written report stating that his 25 year old son Amar Pal @ Rinku (deceased) was running a shop of toys near the Vaishnav Dham Shrine. He used to sleep in the night at his shop. As per his routine, he had gone at about 7.00 p.m. on 29.04.2012 after having his meals to the shop but did not return in the morning. The informant visited the shop and found his son missing. On inquiry from the nearby shop owners, it transpired that two unknown persons had taken his son on a motorcycle, whereafter his mutilated body was found near the Agricultural University, having multiple stab wounds. Apprehension was expressed that due to enmity his son has been done to death. The body has been recovered near Kishan Dhabba, which is close to NH-2 in Village Kushayni. On this report FIR came to be lodged on 30.04.2012, under Section 302 I.P.C. Inquest was held on 30.04.2012 at 12.30 p.m. The inquest witnesses found multiple stab wounds on the body of the deceased and it was resolved that postmortem be conducted to ascertain the cause of death. The postmortem has been conducted in which following injuries were found on body of the deceased:

“1-A L/W of size 3.0 c.m. x 3.0 c.m. x bone deep over middle of front of fore head clotted blood present.

2-A L/W of size 5.0 x 3.0 x bone deep over left cheek just

below left eye clotted blood present.

3-Multiple abrasion over neck 7.0 c.m. below chin. In an area 14.0 c.m. x 8.0 c.m. over hyoid bone.

4-Multiple abrasion over back. In whole chest and abdomen up to hip."

3. The FIR, admittedly, was lodged against unknown persons and the role of the accused appellants surfaced on the basis of an application of informant dated 17.05.2012, which is exhibited as Ka-2. In his report, the informant alleged that he has come to know that his son was done to death by the accused persons, namely, Sher Singh and Arjun Singh sons of Bhogi Ram and brother-in-law of accused Arjun Singh, namely, Sanju who lives with Arjun Singh. This application further stated that about four months earlier accused Sher Singh had alleged that informant's younger son Deepchand had an affair with his daughter. Deepchand was engaged in running cable business. On this apprehension, the aforesaid three accused had assaulted Deepchand and Amarpal and had extended threats that they would not leave them. It is also asserted that ever since the death of the deceased the accused persons are missing and consequently apprehension was expressed that these appellants have committed the murder of the deceased. It is on the basis of the apprehension expressed in the application of 17.05.2012 that the accused appellants have been implicated and a charge-sheet was submitted by the Investigating Officer on 16.08.2012. Cognizance was taken on the charge-sheet and case was committed to the court of Sessions which was registered as Sessions Trial No.300669 of 2013 (State of U.P. Vs. Sher Singh and others). Charges were

framed against the accused appellants under Sections 364 I.P.C. as well as under Section 302 I.P.C. read with Section 34 I.P.C. Charges were read out to the accused persons, who denied the accusations and demanded trial.

4. During the course of trial following documentary evidences have been produced:-

"i. F.I.R., Ex.Ka.11, dt. 30.04.2012.

ii. Written Report, Ex.Ka.1, dt. 30.04.2012.

iii. Application to S.O., Ex.Ka.2, dt. 17.05.2012.

iv. Recovery Memo of pieces of Blood Stained & Plain Soil, Ex.Ka.10, dt. 30.04.2012.

v. P.M. Report, Ex.Ka.4, dt. 30.04.2012.

vi. 'Panchayatnama', Ex.Ka.3, dt. 30.04.2012.

vii. Charge-sheet 'Mool', Ex.Ka.14, dt. 16.08.2012.

viii. Charge framed by S.J., dt. 18.12.2013.

ix. Note of S.J., dt. 18.12.2013."

5. In addition to the above, oral testimony has been adduced of the informant as P.W.-1. P.W.-2 Bhagwan Singh as well as P.W.-4 Mohar Singh are two witnesses of inquest. P.W.-3 and P.W.-5, namely, Kuldeep Singh and Shyamveer Singh are the witnesses of last seen. P.W.-6 is Dr. NM Pathak, who has conducted the autopsy. P.W.-7 to P.W.-10, namely, Nand Kishor Gaud, Shyam Sundar Gautam, Dashrath Singh and Harpal Singh, are all formal Police witnesses.

6. The evidence led against the accused persons by the prosecution has

been confronted to the accused who all have stated that they have been falsely implicated on account of Village Partiband. The trial court on the basis of evidence led in the matter has convicted and sentenced the accused appellants as per above. Aggrieved by the aforesaid judgment of conviction and sentence, the accused appellants are before this Court.

7. Shri Kamal Krishna, learned Senior Counsel assisted by Shri Pradeep Kumar Rai, learned counsel for the appellants submits that this is a case of circumstantial evidence in which chain of circumstances is not complete. It is also submitted that except for the testimony of P.W.-3 and P.W.-5, there is no other evidence to implicate the accused appellants. Learned counsel also argues that the testimony of P.W.-3 and P.W.-5 are not reliable. Learned counsel also averred that the motive for the offence has been introduced for the first time vide application dated 17.05.2012 and was not a part of the statement of the prosecution witnesses in their statement under Section 161 Cr.P.C. or in the first information report.

8. Shri Pankaj Kumar Tripathi, learned A.G.A. for the State, on the other hand, submits that the chain of circumstances has been successfully connected by the prosecution in the present case inasmuch as there exists prior enmity between the parties and the testimony of two witnesses of last seen clearly and categorically connects the accused appellants with the commissioning of the offence.

9. We have heard Shri Kamal Krishna, learned Senior Counsel assisted by Shri Pradeep Kumar Rai, learned

counsel for the appellants and Shri Pankaj Kumar Tripathi, learned A.G.A. for the State and have perused the materials on record including the trial court record.

10. Admittedly, this is a case based on circumstantial evidence. The first information report is on record which clearly goes to show that the informant was intimidated by the nearby shop owners that two unknown persons have taken the deceased on a motorcycle, thereafter, his dead body was recovered from near a dhabba on the next morning. P.W.-1, admittedly, is not an eye witness. He is also not a witness of last seen. The persons from whom information was received by P.W.-1 about two unknown persons having taken the deceased on a motorcycle has also not been specified in the testimony of P.W.-1.

11. The primary witnesses of prosecution to implicate the accused appellants are Kuldeep Singh (P.W.-3) and Shyam Veer Singh (P.W.-5). These two witnesses in their examination-in-chief have stated that they had gone to offer prayers at the Vaishno Devi Temple at 8.00 p.m. and they saw that accused Sher Singh on one motorcycle, whereas accused Arjun Singh and Sanju on another motorcycle arrived near the shop of the deceased and were talking to them. It is, thereafter, that the deceased Amar Pal was made to sit behind Arjun Singh on his motorcycle and he saw this incident in the light of the temple. P.W.-3 has stated that he had not objected to the going of the deceased with the accused as this was an internal matter of the villagers.

12. P.W.-3 in his testimony stated that at about 12.00 in the afternoon of 30.04.2012, he came to know that the dead body of the deceased has been found and

being a relative he visited the house of Charan Singh (P.W.-1) at about 4.00 p.m. He had not met Shyam Veer Singh on that day. He states that what he saw at about 8.00 p.m. on 29.04.2012 was not disclosed on 30.04.2012 as he himself was scared. He claims that on 16.05.2012 he informed Charan Singh about the incident and later his statement was recorded by the I.O. on 17.05.2012. This witness has further stated that he had not disclosed the I.O. about having told Charan Singh of the incident on 16.05.2012. He has denied the fact that such a fact was told by the informant to the I.O. P.W.-3 had not met Charan Singh between 12.05.2012 to 16.05.2012. He met Charan Singh on 16.05.2012 and P.W.-5 was sitting there from before. This witness has denied the suggestion that being a related witness, he has made a false statement to implicate the accused appellants. He has admitted that prior to 16.05.2012, he had not told such facts to the Police. He has also stated that the fact about affair between Deepchand and the daughter of Sher Singh came to his knowledge after the murder of the deceased-Amar Pal. He had not disclosed anything to Charan Singh on 29.04.2012. He has also denied the allegation of affair.

13. P.W.-5 is the other witness of last seen. He has stated that along with P.W.-3 he had gone to the temple on 29.04.2012 at about 8.00 p.m. He too has stated that the three accused came on two motorcycles and took the deceased with them. On the next day, he came to know about the incident. P.W.-5 has categorically stated that he visited the house of P.W.-1 the very next day and explained what he had seen to P.W.-1. He later came to know about the affair between daughter of Sher Singh and Deepchand. In the cross-examination, P.W.-5 has stated that he

informed Charan Singh about the incident on 16.05.2012. He has denied his previous statement under Section 161 Cr.P.C. wherein he told Charan Singh about the incident on the date his statement was recorded. He also stated that the affair between Deepchand and daughter of Sher Singh came to his notice only on 16.05.2012 from P.W.-1. This witness has further stated that he has no knowledge that any incident occurred, wherein accused persons had done anything to Deepchand earlier. He has also admitted that P.W.-3 is his friend.

14. Prosecution case since primarily relies upon the statement of P.W.-3 and P.W.-5 as such we are required to consider the evidentiary value of these two witnesses. P.W.-3 and P.W.-5 admittedly are related to P.W.-1 and being an interested witnesses their testimony will have to be analysed with care and caution. In the FIR, nobody has been named by the informant. It is for the first time by an application filed on 17.05.2012 (Ka-2) that apprehension was expressed against the accused persons by the informant. In his application, P.W.-1 has not stated that he gathered information about the incident from P.W.-3 or P.W.-5. This application dated 17.05.2012 although implicates the accused persons but contains no reference to any disclosure made by P.W.-3 or P.W.-5 to P.W.-1.

15. P.W.-1 in his testimony states that only on 16.05.2012, he was informed by P.W.-3 and P.W.-5 that they saw the accused persons taking the deceased on a motorbike at about 8.00 p.m. on 29.04.2012.

16. As against the testimony of P.W.-1, P.W.-3 and P.W.-5 both state that they visited the house of P.W.-1 on

30.04.2012 itself. If P.W.-3 and P.W.-5 visited the house of P.W.-1 on 30.04.2012 itself, there is no reason why these persons withheld the information with regard to implication of the accused persons on account of their having taken the deceased with them on the motorcycle.

17. There is a contradiction in the version of P.W.-3 and P.W.-5 vis-a-vis the statement of P.W.-1 with regard to the manner in which disclosure was made by P.W.-3 and P.W.-5 to P.W.-1. P.W.-1 states that only on 16.05.2012 such disclosure was made by P.W.-3 and P.W.-5 to him, whereas P.W.-3 and P.W.-5 stated that the incident and the facts relating thereto were told to P.W.-1 by them on 30.04.2012 itself. This contradiction has a material bearing on the reliability of the witness, particularly, as in the FIR, none is named. P.W.-3 and P.W.-5 are otherwise related witnesses and their testimony would require careful evaluation. The version of P.W.-3 and P.W.-5 since is contradicted by the statement of P.W.-1, we do not find the testimony of witnesses of last seen to be entirely reliable.

18. Before coming to a conclusion on the evidentiary value of P.W.-3 and P.W.-5, we would like to refer to the evidence on the aspect of motive relied upon by the prosecution.

19. Prosecution case is that about four months prior to the incident, Sher Singh challenged the deceased and his brother Deepchand on account of alleged affair between Deepchand and the daughter of Sher Singh. It is also the prosecution case that accused persons had assaulted Deepchand and Amar Singh and had also extended threats. This fact, however, has neither been referred to in the FIR nor has

been referred by any of the prosecution witness in their statement under Section 161 Cr.P.C. It is otherwise a matter of record that neither any complaint was made in respect of the alleged incident occurred four months back nor any Police report etc is on record. The alleged enmity on the basis of such incident has otherwise not been substantiated by the prosecution. We also find it some what illogical for the accused persons to have killed the deceased when the motive was against Deepchand on account of Deepchand having an affair with the daughter of the accused Sher Singh. Merely because the brother of the deceased was having an affair with the daughter of Sher Singh, it would be difficult to believe that the accused persons instead of picking Deepchand would eliminate Amar Pal.

20. In addition to the peculiarities referred to above, we also find that prosecution has not confronted the accused persons with the circumstance of the incident that occurred four months prior to the incident in question. The statement under Section 313 Cr.P.C. has been placed before this Court and we find no reference to the evidence with regard to the incident which occurred four months prior to the murder of the deceased, wherein the deceased and Deepchand were allegedly assaulted. In the absence of such facts/circumstances having been referred to the accused persons, the facts in that regard cannot be relied upon by the prosecution as an evidence not confronted to the accused under Section 313 Cr.P.C. cannot be read or relied upon in evidence. Reliance has placed upon the recent judgment of the Supreme Court in Premchand Vs. The State of Maharashtra (2023) 5 SCC 522. Reliance has also placed upon the recent judgment of the Supreme Court in Maheshwar Tigga Vs. State of Jharkhand

(2020) 10 SCC 108. Relevant para Nos. 7 to 9 of the later judgment are reproduced hereinafter:-

“7. A bare perusal of the examination of the accused under Section 313 CrPC reveals it to be extremely casual and perfunctory in nature. Three capsuled questions only were asked to the appellant as follows which he denied:

“Question 1. There is a witness against you that when the informant V. Anshumala Tigga was going to school you were hiding near Tomra canal and after finding the informant in isolation you forced her to strip naked on knifepoint and raped her.

Question 2. After the rape when the informant ran to her home crying to inform her parents about the incident and when the parents of the informant came to you to inquire about the incident, you told them that “if I have committed rape then I will keep her as my wife”.

Question 3. On your instruction, the informant's parents performed the “Lota Paani” ceremony of the informant, in which the informant as well as your parents were present, also in the said ceremony your parents had gifted the informant a saree and a blouse and the informant's parents had also gifted you some clothes.”

8. It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put

to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.

9. This Court, time and again, has emphasised the importance of putting all relevant questions to an accused under Section 313 CrPC. In Naval Kishore Singh v. State of Bihar [Naval Kishore Singh v. State of Bihar, (2004) 7 SCC 502 : 2004 SCC (Cri) 1967], it was held to be an essential part of a fair trial observing as follows : (SCC p. 504, para 5)

“5. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and

intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence."

21. It is only after 17.05.2012 that in the second statement the motive has been introduced in the testimony of witnesses. The motive was clearly missing in the first statement of witnesses recorded under Section 161 Cr.P.C.

22. On evaluation of the above evidence, we find that neither motive is convincing nor the alleged instance occurred four months prior to the incident, giving rise to the motive, can be read or relied upon against the accused persons in the absence of such facts having been confronted to the accused persons under Section 313 Cr.P.C.

23. Coming to the evidence of last seen, we find that the two prosecution witnesses of last seen, namely, P.W.-3 and P.W.-5 have clearly stated that they visited the house of the informant on 30.04.2012 itself. They are otherwise related to P.W.-1. In such circumstances, it was expected that these two persons would disclose P.W.-1 about what they saw on previous day,

wherein the accused persons took the deceased on the motorcycle. The fact that P.W.-1 for the first time introduced such case by an application moved on 17.05.2012 creates a doubt as the delay of nearly 16 days in disclosing such facts to the I.O. raises a doubt upon the credibility of P.W.-3 and P.W.-5. In a recent judgment of the Supreme Court in *Shahid Khan Vs. State of Rajasthan* (2016) 4 SCC 96 the Hon'ble Supreme Court viewed with suspicion the non furnishing of explanation in respect of three days delay in recording of statement under Section 161 Cr.P.C. para 20 of the judgment, in this regard, is reproduced hereinafter:-

"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source

either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt.”

24. As against the delay of three days in the above matter, we find that the delay occasioned in the present case is of 16 days for which no plausible explanation has been put-forth. In view of the fact that the accused persons otherwise are related witnesses, the delay in that regard would raise a further doubt on the prosecution case. Since the motive has otherwise not been found convincing, we find that chain of circumstances is not connected by the prosecution, which may establish the hypothesis of guilt specifically attributed to the accused appellants. Even otherwise merely on the strength of evidence of last seen, the chain of circumstance would not be complete. We find support in taking such a view from the observations made by the judgment of Supreme Court in *Nizam v. State of Rajasthan*, (2016) 1 SCC 550. The relevant para 14 of the judgment is reproduced hereinafter:-

“14. The courts below convicted the appellants on the evidence of PWs 1 and 2 that the deceased was last seen alive with the appellants on 23-1-2001. Undoubtedly, the “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the

accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well settled by this Court that it is not prudent to base the conviction solely on “last seen theory”. “Last seen theory” should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”

25. We have been taken through the judgment of conviction and sentence passed by the court below by the learned A.G.A. in order to submit that the appeal lacks merit. However, having perused the judgment, we find that circumstantial evidence relied upon by the prosecution has not been carefully dissected by the trial court and the contradictions in the version of P.W.-1 vis-a-vis P.W.-3 and P.W.-5 have been overlooked. The fact that P.W.-3 and P.W.-5 were related witnesses and their testimony required careful examination has also escape the attention of the trial court. Since we do not find the testimony of P.W.-3 and P.W.-5 to be entirely reliable, in view of the contradictory statement made therein, as such, in the absence of any cogent corroboration of the prosecution case in order to implicate the accused persons, we disapprove the conclusions and findings returned by the trial court with regard to conviction and sentence of the accused appellants, consequently, this appeal succeeds and is allowed. The judgment and order dated 30.03.2024, passed by the Sessions Judge at Firozabad in Sessions Trial No.300669 of 2013 (State

of U.P. Vs. Sher Singh and others), arising out of Case Crime No.297 of 2012, Police Station Tundla, District Firozabad against the accused appellants is hereby set aside.

26. The accused-appellants, namely, Sher Singh, Arjun Singh and Sanju would be released, forthwith, unless they are wanted in any other case, subject to compliance of Section 437-A Cr.P.C./481 BNSS-2023.

(2024) 11 ILRA 487
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.11.2024
BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ C No. 14257 of 2024

Phoolmati **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:

Azaz Ahmad

Counsel for the Respondents:

C.S.C., Karuna Srivastava, Santosh Kumar Srivastava

Dispossession-impugned notice issued mentioning that the petitioner is illegally occupying the house and to hand over the possession to the owner of the house-Petitioner has been dispossessed -from the possession memo, it is apparent that the possession was taken by the joint revenue and police team-Respondent No. 3-Sub-Divisional Magistrate has no authority in law to interfere with the possession of the petitioner at the behest of private respondents- admittedly a civil dispute pending - Respondent No. 3 acted against the settled law of the land -prohibiting the executive authorities from interfering with the private disputes between the parties, especially, where the suits are pending before the competent court-respondents are directed to restore the possession of the petitioner. (E-9)

List of Cases cited:

1. Jitendra Bahadur Singh Vs St. of U.P. & ors.- Writ C No. 50033 of 2015
2. Devmani Vs St. of U.P. & ors. in Writ C No. 17017 of 2018 decided on 06.12.2018
3. Vijai Vs St. of U.P. & ors. in Writ C No. 20102 of 2022 decided on 11.08.2022
4. Mohammad Aijaz Vs St. of U.P. & ors. in Writ C No. 19053 of 2022 on 27.07.2022
5. Rame Gowda (Dead) By Lrs. Vs M. Varadappa Naidu (Dead) By Lrs. & anr.reported in (2004) 1 SCC 769
6. Gulab Devi Vs St. of U.P. (Allahabad; reported in 2007 (2) All LJ 220
7. Bishan Das & ors. Vs The St. of U.P. & ors.; AIR 1961 SC 1570

(Delivered by Hon'ble Manish Kumar Nigam, J.)

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the records.

2. This petition has been filed for the following reliefs:-

“(I) A writ order or direction in the nature of certiorari to quash the impugned order dated 25.03.2024 passed by respondent No. 3.

“(II) Issue a writ, order or direction in the nature of Mandamus directed the Respondent no.3 not to dispossess to the petitioner from the house In dispute.”

3. By means of this writ petition, the petitioner has challenged a notice dated 25.03.2024 issued by Sub-Divisional Magistrate, Nizamabad, District Azamgarh-