Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.9/2022

Heard on: 27.09.2022
Date of Judgment: 29.09.2022

Dimchuingam Ruangmei Vs. The National Investigation Agency

Coram:
Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S. Chakrawarty, Sr.Adv with
Ms. A. Barua, Adv
Ms. E. Slong, Adv

For the Respondent : Dr. N. Mozika, ASG with
Ms. A. Pradhan, Adv
Ms. S. Rumthao, Adv

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice)

This appeal has been carried under Section 21 of the National Investigation Agency Act, 2008 against an order dated March 8, 2021 by which the trial court has framed charges against the appellant herein, inter alia, under the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the UAP Act).

2. No issue as to jurisdiction was raised by the appellant at the time of framing of charges, nor was any specific application filed for discharge on any particular ground. However, an oral prayer for discharge was made on the submission that the charge-sheet did not indicate the ingredients of any offence having been committed by the appellant herein.

3. The charge-sheet made out one Gaisinglung Meiringmei @ Gaising to be the principal accused in a case of kidnapping for ransom. The charge-sheet indicated the association of the appellant herein with the principal accused and the appellant herein being "in constant touch" with the principal accused on the mobile phone during the relevant time. Paragraphs 17.15 to 17.17 of the charge-sheet spelt out the rudiments of the material and the allegations against the appellant herein, while paragraph 17.19 revealed the case against the principal accused.

4. It may do well to notice the case made out in the charge-sheet in the relevant paragraphs 17.15 to 17.19:

> "17.15 During the course of investigation, interrogation of the arrested accused Dimchuingam Ruangmei (A-3) was carried out and during investigation, it is established that he is a member of NSCN (K). Investigation established that he along with Dingalung who is another NSCN (K) hard core cadre and close associate of Gaisinglung Meiringmei @ Gaising (A-1) visited Mukhla on 18-04-2018 and met Gaisinglung Meiringmei @ Gaising (A-1) and conspired to abduct the BIPL employee. He

was arrested by Meghalaya Police on 14.05.2018 while coming to Shillong to accompany the wife of Gaisinglung Meiringmei @ Gaising namely Tanthaoliu Gonmei (A-5) to carry the part of extorted money to Manipur. During investigation, it was revealed that accused Dimchuingam Ruangmei (A-3) came to Shillong to accompany the accused Tanthaoliu Gonmei (A-5), the wife of accused Gaisinglung Meiringmei @ Gaising (A-1) from Shillong to Imphal on 13.05.2018. However, accused Tanthaoliu Gonmei (A-5) had already left Shillong before Dimchuingam Ruangmei (A-3) reached Shillong. As a result, accused Dimchuingam Ruangmei (A-3) could not meet accused (A-5) and therefore, he stayed at Shillong on the night of 13.05.2018.

17.16 During investigation of the case, it was revealed that the accused Dimchuingam Ruangmei (A-3) was arrested by 8th Assam Rifles for being a member of NSCN (K) on previous occasion and later he was handed over to Manipur Police. In this regard, a case vide FIR No.73(8)/2015 dated 07.08.2015 was registered against him at Patsoi Police Station of Manipur. The copy of the FIR has also been collected.

17.17 During analysis of Call Detail Records (CDR) of Dimchuingam Ruangmei (mobile Nos.8414093921 and 9862794992), it is revealed that he was in constant touch with accused Gaisinglung Meiringmei @ Gaising (A-1). Call records and inter-connectivity chart shows that many calls were made between each other. This established their close association between them.

17.18 During investigation it was learnt that one NSCN (K) cadre namely Ganthoulung Rongmei @ Gan (A-4) was arrested by Assam Police vide Jirighat Police Station of Cachar district, Assam Case No.34/2018 dated 09.08.2018 under Section 120B, 121 of IPC, read with Sections 10 and 13 of UA(P) Act and Section 25 (1-A) Arms Act. Thereafter, Ganthoulung Rongmei @ Gan (A-4) was arrested in the instant case on 17.08.2018 after obtaining permission from the Hon'ble Special NIA Court, Shillong, Meghalaya.

17.19 During the course of investigation, it is established that the arrested accused Ganthoulung Rongmei @ Gan (A-4) on the direction of Gaisinglung Meiringmei @ Gaising (A-1), along

with other cadres of NSCN (K) namely Tadulung, Malangsin, Haibamboi and Bacham abducted an employee of BIPL from the work site at Thingou in Manipur. He further disclosed that, all of them carried weapons at the time of abduction."

5. The appellant asserts that there was no material before the designated Special Court constituted under the NIA Act to frame any charge against the appellant herein. The National Investigation Agency, however, insists that the appeal is not maintainable. It is, thus, that the issue of maintainability of the appeal has to be adjudicated first before the merits of the matter may be gone into.

6. Section 21 of the NIA Act provides for appeals against certain decisions passed in proceedings governed by such statute. For the present purpose, sub-sections (1), (3) and (4) of Section 21 of the NIA Act are relevant:

"(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) …

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) …"

7. The NIA submits that in view of the non-obstante clause at the start of Section 21(1) of the NIA Act, an appeal shall lie only from any judgment or sentence or order which has an element of finality and the mere framing of charges, or the rejection of an oral prayer or even a formal application for discharge in course thereof, would not be amenable to appeal.

8. The NIA contends that it is evident from the scheme of the NIA Act that a speedy trial is contemplated without any interruption. The NIA maintains that a "judgment" as the relevant word has being used in Section 21(1) of the NIA Act would mean the final pronouncement on merits at the conclusion of a trial, whether convicting or acquitting an accused. In the same vein, the NIA submits that the word "sentence" would be the punishment awarded as a consequence of a judgment of conviction; whereas the word "order" as used in Section 21(1) of the NIA Act would only mean an order of discharge. The NIA emphasises that other than in the three aforesaid situations, an appeal would not be maintainable in respect of any other order passed in any matter to which such Act applies.

9. In support of its contention that the present appeal is not maintainable, the NIA has primarily relied on a judgment of the Gauhati High Court reported at (2013) 4 Gauhati Law Reports 897 (*Londhoni Devi v. State through National Investigation Agency*) and an unreported judgment rendered by the Karnataka High Court on March 29, 2022 in Criminal Appeal No.755 of 2021 (*Irfan Pasha v. State of Karnataka through National Investigation Agency*). A further unreported judgment of December 4, 2021 passed by a Single Bench of the High Court of Jammu & Kashmir and Ladakh has also been placed along with a judgment of the Supreme Court reported at (2014) 1 SCC 258 (*State of Andhra Pradesh v. Mohd. Hussain*) which is the basis for the view taken in the Karnataka judgment. The NIA has also brought another Supreme Court judgment reported at (1980) Supp SCC 92 (*V.C. Shukla v. CBI*) since the dictum in the Gauhati judgment is largely based on the law enunciated by the Supreme Court in *V.C. Shukla*.

10. The sheet-anchor of the appellant's case is a judgment reported at (1977) 4 SCC 551 (*Madhu Limaye v. State of Maharashtra*). The appellant also asserts that the view taken in *V.C. Shukla* would be inapplicable in the context of the NIA Act, notwithstanding the similar provision in the Special Courts Act, 1979 that fell for consideration in

V.C. Shukla. On the issue of maintainability, the appellant also relies on an unreported judgment of the Chhattisgarh High Court delivered in CRA No.961 of 2021 (*Nishant Jain v. State of Chhattisgarh*) and another unreported judgment of the Bombay High Court in Criminal Appeal No.112 of 2018 (*Lt Col Prasad Purohit v. National Investigation Agency*) delivered on March 5, 2019. The appellant has also placed an order dated September 6, 2019 passed by the Supreme Court on the special leave petition arising out of the Bombay judgment in SLP (Criminal) Diary No.25167 of 2019 by which the Supreme Court refused to interfere with the Bombay judgment.

11. Since the apparent intent and purpose of Section 21 of the NIA Act appear to be to curtail and limit the scope of appeal to the situations specifically indicated therein, it is the contrary argument of the appellant that is required to be noticed first before referring to the law relied upon by the NIA.

12. In the case of *Madhu Limaye*, Section 397 of the Code of Criminal Procedure, 1973, which was then at its nascent stage, fell for consideration in the backdrop of the comparable provision in the predecessor statute of 1898. At first blush, the principle enunciated by the Supreme Court in *Madhu Limaye* appears to be confined to a scenario

where a serious objection as to the jurisdiction of the trial court or the legality of the proceedings is taken and decided against an accused as would be evident from paragraph 4 of the report. However, while deciding the issue, the Supreme Court spelt out its view on the broader scope of the provision. The Supreme Court summarised the three principal contentions raised by the appellant before it in the Sessions Court and the High Court in assailing the validity and legality of the trial. The first contention was that even if it were to be conceded that the statements made by the accused against the defacto complainant were *per se* defamatory, such imputation was not in respect of the conduct of the defacto complainant in the discharge of his public functions. The essence of such contention was that a person aggrieved by the alleged defamatory statements could file a complaint before a competent Magistrate who, after taking cognizance, could try the case or commit it to the court of session, if permitted in law; but the court of session could not take cognizance of the matter without the committal of the case to it. The second jurisdictional objection taken was that the sanction to prosecute was not given by the State government but was given by its Chief Secretary. The third objection pertained to the Chief Secretary having

granted the sanction in a mechanical manner and without applying his mind.

13. The Sessions Court rejected the objections and framed a charge against the accused under Section 500 of the Indian Penal Code, 1860. The accused challenged the order by way of a revision before the Bombay High Court, but it was rejected without entering into the merits of the contentions on the ground that an order by which charges are framed would only be an interlocutory order and a revision was not maintainable against such order in view of the prohibition in Section 397(2) of the Code that barred the power of revision to be exercised in respect of interlocutory orders. It was such order of rejection by the High Court on the ground of maintainability that was assailed before the Supreme Court.

14. The view taken by the Supreme Court is found at paragraph 13 of the report, particularly in the following passage:

> "13. … The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words "interlocutory order" occurring in Section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory

the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior Criminal Court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. It has been pointed out repeatedly, vide for example, *The River Wear Commissioners v. William Adamson* and *R. M. D. Chamarbaugwalla v. The Union of India* that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the Legislature. On the one hand, the Legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in *Kuppuswami's case* (supra), but, yet it may not be an interlocutory order – pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well-known and can be culled out from many decided cases. We may,

> however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course."

15. The appellant next seeks to distinguish the dictum in the majority opinion in *V.C. Shukla* by referring to the special features of the Special Courts Act, 1979 as noticed at paragraph 14 of the Supreme Court judgment and in the Bombay judgment relied upon by the appellant. At paragraph 22 of the Bombay judgment in *Lt Col Prasad Purohit*, the court set out the various distinguishing features between the NIA Act and the Special Courts Act, particularly that an appeal under the Special Courts Act was maintainable only before the Supreme Court. It was on such basis that the Bombay High Court held that the *ratio decidendi* in *V.C. Shukla* was inapplicable to a case under the NIA Act and that the order impugned before it by which applications for discharge filed by various accused were rejected did not amount to an interlocutory order within the meaning of Section 21 of the NIA Act; and, thus, could be appealed against.

16. In the Chhattisgarh judgment of *Nishant Jain*, the short discussion therein noticed a few Supreme Court judgments without referring in any great detail to the circumstances in which such judgments were rendered.

At paragraph 6 of such unreported judgment, inter alia, the view taken in *Madhu Limaye* was referred to and such judgment was perceived to have "authoritatively pronounced that the order of framing charge as also order of discharge would not constitute interlocutory order, though, it cannot be said to be a final order also." It was in such circumstances that it was concluded that an order framing charges in a matter governed by the NIA Act would be appellable under Section 21(1) of such Act.

17. In the unreported judgment of the Karnataka High Court in *Irfan Pasha* that has been brought by the NIA, in the discussion pertaining to the nature of decisions passed in a matter covered by the NIA Act from which appeals would lie, it has been clearly held at paragraph 13 that "it is absolutely clear that the only interlocutory order passed by the Special Court against which an appeal is maintainable to the High Court is the order granting or refusing to grant bail." To arrive at such conclusion, the Karnataka High Court quoted paragraphs 16 and 17 of the Supreme Court judgment in *Mohd. Hussain* and merely relied on the observation therein without seeking to ascertain the context in which such observation was made.

18. The Supreme Court judgment in *Mohd. Hussain* did not deal with the entire gamut or scope of appellability under Section 21 of the NIA

Act. The judgment in that case was passed on an application for clarification of a pervious order of the Supreme Court. By the previous order of the Supreme Court, appellate orders passed by Single Benches of several High Courts against orders granting or refusing to grant bail in matters governed by the NIA Act were set aside and directed to be placed before the appropriate Division Bench of the relevant High Courts in view of the mandate of Section 21(2) of the NIA Act that appeals under Section 21 thereof would be taken up by a Bench of two Judges of the High Court. Strictly speaking, the passage from paragraph 17 of the judgment in *Mohd. Hussain* as relied upon by the Karnataka High Court, would have to be regarded as *obiter dictum*; though it must be added that even an *obiter* of the Supreme Court is of great persuasive value. But it may not have the same impact as its *ratio decidendi* would. It may also be noticed that the Karnataka judgment in *Irfan Pasha* was rendered in the backdrop of a challenge to the jurisdiction of the trial court on the ground that the sanction secured by the prosecution was from an incompetent authority.

19. The Gauhati judgment in *Londhoni Devi*, on the other hand, proceeded to declare the law in rather wide terms at paragraph 50 thereof in the following words:

> "50. From the above discussion, what clearly surfaces is that the term, interlocutory order, which appears in section 21(1) and 21(3) of the NIA Act, 2008, includes an order framing charge meaning thereby that while the term, interlocutory order, in the context of the Code, has to be construed as an intermediate order and, therefore, revisable, the term, interlocutory order, which appears in the special statute, namely, section 21(1) and 21(3) of the NIA Act, 2008, would have to be construed according to its ordinary and natural meaning and when attributed its natural and ordinary meaning, the term, interlocutory order, would convey any order, including even an order, framing charge, passed at the intermediate stage."

20. The appeals in *Londhoni Devi* arose out of an order passed by the Special Judge, NIA framing charges under certain provisions of the Penal Code and of the UAP Act against the appellants therein. The entire foundation for arriving at the conclusion in *Londhoni Devi* was the answer to the issue as to whether an order by a Special NIA Court framing charges would merely be an interlocutory order. Paragraph 47 of the judgment reveals that the expression "interlocutory order" was read by the Gauhati High Court to imply an order which is in contrast to a final order. The Gauhati High Court then proceeded to extract the essence of the dictum in the majority opinion rendered in *V.C. Shukla*, particularly as *V.C. Shukla* had also noticed *Madhu Limaye*, before observing as follows:

> "Thus, the expression interlocutory order is to be understood and taken to mean converse of the term final order."

21. In the yet unreported judgment of the Jammu & Kashmir and Ladakh High Court in *Waheed Ur Rehman Parra*, the Single Bench relied on the Gauhati High Court judgment in *Londhoni Devi* and went on to add as follows at paragraph 8 of the judgment:

> "8. From the foregoing enunciation of the law on the subject, it becomes clear that a restrictive meaning has been given to the expression "interlocutory order", which appears in Section 397(2) of Cr.P.C. and the Courts have held that an order framing charge is an intermediate order and not an interlocutory order so as to take it outside the purview of expression "interlocutory order" appearing in Section 397(2) of the Code. However, in the case at hand, where the application of Code stands excluded due to non-obstante clause appearing in Section 21(1) of the NIA Act, and keeping in view the avowed object of the Act, the expression "interlocutory order" has to include even an order framing charge. Thus, an appeal would not lie against an order framing charge relating to offences to which NIA Act applies, as the same is an interlocutory order."

22. On the merits of the grievance canvassed in this appeal, the appellant has placed a judgment reported at (1979) 3 SCC 4 (*Union of India v. Prafulla Kumar Samal*). The appellant relies on the principles enunciated at paragraph 10 of the report as to the duties of the court while framing charges and submits that there has to be some material in the charge-sheet to prompt the judge to harbour a reasonable suspicion that the accused may have committed the offence. The appellant refers to the previous judgments quoted in *Prafulla Kumar Samal* to the effect that a Magistrate holding an inquiry or a judge at the time of framing charges

does not act as a mere post-office or a recording machine, but he has to apply his mind to ascertain whether there is any material to proceed against an accused in respect of the commission of the offence that is alleged in the charge-sheet.

23. Before deciding the objection raised by the NIA as to the maintainability of the appeal and seeking to discern the combined effect of the high authorities cited by the rival parties, it would do well to remember some basic principles. A judgment is an authority for what it actually decides and not what may logically follow from it. The ratio of any judgment must be gleaned from the facts and the background. Indeed, the famous words of Lord Halsbury, LC, in *Quinn v. Leathem* (1901 AC 495) resonate through a number of Supreme Court judgments over the last seven decades:

> "Before discussing *Allen* v. *Flood* and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before – that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

24. Even when noticing the interpretation rendered in respect of similar words used in another statute, the context of the provision of the statute in respect whereof such interpretation is made, the surrounding circumstances pertaining thereto and the object and purpose thereof qua the comparable provision of the statute at hand must be kept in mind. In other words, while considering the application of the previous interpretation of a similar or identical set of words, the court must be mindful of the fact that the exact words used in two different statutes may have completely different connotations if the contexts and purposes of the two enactments or, even of the comparable provisions, are different. Finally, when a High Court is faced with apparently conflicting or somewhat divergent views of the Supreme Court in two different cases cited before it, the one better suited, if at all, may be accepted always keeping in mind that it is the cause of justice that has ultimately to be served. There is no doubt that the doctrine of precedents instructs that dicta of superior fora are binding on inferior courts. At the same time, deference to authority does not imply slavish obeisance by throwing reason to the wind.

25. With the aforesaid preface, one may embark on analysing what exactly was said and decided in *Madhu Limaye* and what, essentially,

would be the dictum in *V.C. Shukla*. Neither case pertained to the NIA Act or the appeal provision in Section 21 thereof. At the highest, both matters dealt with provisions that had similar words but, as experience and not logic instructs us, similar words in different situations may imply completely different senses.

26. The judgment in *Madhu Limaye* dealt with a situation brought about by the introduction of sub-section (2) in Section 397 of the then relatively new Code of 1973 in the comparable provision in the Code of 1898. *Madhu Limaye* did not deal with a special Act, but it involved the interpretation of the general code applicable to all criminal matters. There is no doubt that the dictum in *Madhu Limaye* lays down that apart from serious objections as to the jurisdiction of the trial court or the legality of the criminal proceedings, even the plausibility of the charges framed may be looked into in course of a revision by regarding an order framing charges to be an intermediary order and not an interlocutory order within the meaning of the relevant expression in Section 397(2) of the Code. Without being flippant, the onerous duty that the Supreme Court was tasked with in rendering the interpretation cannot be overstated. It is only a small percentage of the criminal complaints that are regularly filed that pertain to heinous offences or severe punishments and the

overwhelmingly larger number of complaints are magistrate-triable cases.

27. At the time that the judgment in *Madhu Limaye* was rendered in 1977, the Supreme Court was mindful that for every small offence where a charge may have been framed recklessly or mindlessly, if the accused were required to approach only the High Court to invoke the inherent jurisdiction under Section 482 of the Code or the constitutional power of superintendence under Article 227 thereof, it would be a tall order; as, say, in respect of a matter pertaining to a petty offence before a court at Baghpat, the accused would have had to carry the grievance pertaining to the framing of charge to the High Court in Allahabad. It would be a rather difficult remedy to avail. It is in such context that the dictum in *Madhu Limaye* must be seen not to have diluted the restriction pertaining to interlocutory orders in Section 397(2) of the Code, but only to have allowed a possible remedy before a nearby district court when the criminal proceedings may be completely without jurisdiction or any charge framed absolutely without basis. After all, junior judicial officers in the post of magistrate would be more prone to making errors than the more experienced District Judges manning the Sessions Courts.

28. Similarly, in *V.C. Shukla*, the Supreme Court dealt with a special statute whereunder the trial was to be conducted by a sitting High Court Judge and the expansive interpretation of "interlocutory order" must be seen in such context. It must be borne in mind that almost as a matter of uniform practice in High Courts across the country, criminal revision matters were then and are even now taken up by Single Benches. Since the relevant statute that was under consideration in *V.C. Shukla* did not expressly provide for orders of the trial judge thereunder being carried in appeal or revision to a Division Bench of the concerned High Court, the interpretation given by the judgment in *V.C. Shukla* must be regarded to have avoided the ridiculous situation of a Single Judge of a High Court sitting in judgment over the order of another Single Judge of the same High Court. Thus, the *ratio decidendi* in *V.C. Shukla* must be confined to the Special Courts Act and not perceived to be one of general applicability.

29. When it is apparent from the scheme of the NIA Act that a speedy process of trial and finality of the action is contemplated thereunder in respect of serious offences involving the State, the appeal provision in Section 21 of the NIA Act must be read exactly as it says and a broader interpretation thereof that would stretch the process would not be

permissible. Fundamental canons of statutory interpretation instruct thus. As much as it is elementary that an appeal is a creature of statute and is not an inherent right, when an appeal provision is hedged with certain conditions or restrictions, unless such conditions or restrictions are found to be arbitrary and unreasonable as falling foul of the constitutional ethos, such appeal provision has to be taken and accepted as it is. If the law giveth, it may also taketh away; whether in part or in full.

30. Though, ordinarily, a provision may be seen to be *in pari materia* with another when the words used in the two provisions are identical or materially similar, the contexts and purposes of the two enactments, the different objects that they may seek to espouse or the different forms of mischief that they may endeavour to remove, must be kept in mind. Merely because a set of words in one statute is identical or apparently similar to another set in a different enactment would not imply that the two sets of words would invariably bear the same meaning. In most situations, they may; but in several other circumstances, they may not. "*In pari materia*" means materially equal, not merely equal. Situation A would be materially equal to situation B if the backdrops and the surrounding circumstances were to be the same, in the sense of similar but not identical. But when the contexts of the two situations are

materially different, whether in their purpose or application, merely the apparent commonality may not be the only guiding factor without the other relevant parameters being taken into consideration.

31. The NIA Act provides in Section 11 thereof that a Court of Session would be designated as a Special Court by the Central Government in consultation with the Chief Justice of the concerned High Court. Thus, any grievance against any form of judicial pronouncement on a matter falling under the NIA Act by a Court of Session may only be carried to a superior forum, the immediate superior forum being the concerned High Court. The NIA Act does not cover the entire gamut of offences as in the Penal Code for any interpretation thereof to be dependent on the convenience of the parties to the everyday criminal proceedings as was the underlying consideration in the general situation under the Code and weighed with the majority in *Madhu Limaye*. At the end of the day, notwithstanding the restricted scope of appeal under Section 21 of the NIA Act, the High Court's jurisdiction to invoke its inherent power for the ends of justice and to arrest abuse of process under Section 482 of the Code has not been impinged upon. Even though an appeal may not lie from an order framing charges in a matter covered by the NIA Act, when a charge is framed without the charge-sheet indicating

the ingredients of any offence or when an obvious jurisdictional lacuna is disregarded despite an objection raised, the High Court may be approached in its jurisdiction under Section 482 of the Code or under its plenary authority of superintendence conferred by Article 227 of the Constitution.

32. In such a scenario, even though the strict interpretation as contained in the majority opinion in *V.C. Shukla* may not be attracted because of the extraordinary features of Special Courts Act that guided the majority opinion in that case, a genuine accused, aggrieved by the mindless framing of charges in a matter falling under the NIA Act or the continuation of such proceedings without jurisdiction, would not be left without a remedy. As such, considering the purpose of the NIA Act and the limited scope of appeal allowed in Section 21 thereof, there is no escape from the reality that an order framing charges by disregarding the objections of the accused in course thereof may be amenable to correction in extreme cases under the extraordinary authority available to the High Court under Section 482 of the Code or under Article 227 of the Constitution, but such an order cannot be made the subject-matter of an appeal under Section 21 of the NIA Act.

33. It needs to be stated that when paragraph 17 of the report in *Mohd. Hussain* is read in isolation, particularly since such judgment was rendered in the context of Section 21 of the NIA Act, it may appear to be a complete answer to the maintainability issue that has arisen in the present case. However, as indicated at the beginning of the discussion, such judgment and the dictum therein have to be read and understood in the context of the *lis* and what arose for consideration; and not what logically follows from the apparent absoluteness of any observation made therein.

34. For reasons quite distinct from the basis of the ultimate findings rendered in the Karnataka and Gauhati judgments referred to above, it is held that an appeal will not lie under Section 21 of the NIA Act against an order framing charges. With respect, the reasons furnished in the Chhattisgarh and Bombay judgments referred to above, do not appeal. The mere fact that the petition for special leave to appeal to the Supreme Court against the Bombay judgment in *Lt Col Prasad Purohit* was dismissed does not amount to the law laid down therein being accepted by the Supreme Court for it to have a binding impact on the present discussion.

35. At any rate, notwithstanding *Madhu Limaye*, in effect, diluting the restriction in Section 397 of the Code, as appropriately noticed by the Single Bench in the Jammu & Kashmir and Ladakh High Court case referred to above, Section 21 of the NIA Act overrides anything contained in the Code.

36. Since the matter has taken up considerable time, the ends of justice would be subserved if the grievance of the appellant were to be considered within the scope of the authority available under Section 482 of the Code or under Article 227 of the Constitution. Such exercise must be prefaced with the caveat that the scope of interference under either provision is extremely limited and it has to be an egregiously foul order that results in manifest miscarriage of justice in the accused having to face trial without any basis whatsoever, that a High Court would be excited to exercise such jurisdiction and discharge the accused.

37. The limited authority that is available does not call for a detailed analysis but a mere consideration whether the order impugned reveals any application of mind. The case made out here is not one of any jurisdictional error. The accused in this case merely claims that there was no material indicated in the charge-sheet for any charge to be framed against him. For a start, since the accused in this case faces a charge under

Section 120B of the Penal Code for criminal conspiracy along with another under Section 18 of the UAP Act for conspiracy, the nature of the allegations in the charge-sheet may be cursorily glanced to ascertain whether the ingredients of the relevant offences are made out therein. Even if what has been stated in paragraphs 17.15 of the charge-sheet pertaining to the accused herein intending to accompany another accused with the extortion money is disregarded, the reference to the call records and the inter-connectivity chart pertaining thereto as indicated in the charge-sheet reveal telephonic conversations with the principal accused at or about the time of the incident when the principal accused is alleged to have abducted a person and, possibly, extracted a ransom. Add to this that the accused herein is alleged to be a member of the same perceived extremist outfit as the principal accused and he had been previously apprehended as such, though the trial in the previous case may not have been concluded nor the accused herein yet found guilty therein. Such consideration appears to have been taken into account while framing the charges against this accused.

38. On the basis of what was indicated in the charge-sheet, there was sufficient room for suspicion that the accused herein may have committed the offence for which he has been charged. It must be remembered that

at the time of framing charges, there has only to be a strong suspicion which leads the court to think that there is some ground for presuming that the accused may have committed the offence. This presumption is for the purpose of only deciding whether the court should proceed with the trial. At the stage of framing charges, the prosecution is not required to produce the entire evidence that may be necessary to prove the charges at the trial. There is no doubt that the trial court was obliged to sift through and weigh the material, but only for the limited purpose of whether or not a prima facie case against the accused had been made out.

39. On the basis of the material that was before the trial court in this case by way of the charge-sheet, it cannot be said that the trial court acted as a mere post-office while framing the charges or that there was no material at all for the trial court to harbour a reasonable suspicion that the relevant accused may have been a part of the conspiracy. It is just as possible that there may not be enough evidence to prove the charge of conspiracy or any other charge beyond reasonable doubt at the stage of the trial; but that is an altogether different kettle of fish.

40. As a consequence, the appeal is dismissed as not maintainable. The essence of the appellant's grievance has been looked into in exercise of the authority available under Section 482 of the Code and under Article

227 of the Constitution. There is nothing so grievous or unjust in the order impugned for the Court to interdict the proceedings at this stage and annul the trial by discharging this accused.

41. It is made clear that the observations herein are confined to the exercise that was necessary to be conducted in course of the present proceedings and will not prejudice either the prosecution or the concerned accused at the trial.

42. Crl.A.No.9 of 2022 is dismissed.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
29.09.2022
"Lam DR-PS"