

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.265 of 2015

A.Ram Mohan

... Petitioner/Accused I

Vs.

1.State by

The Inspector of Police,
CCB Team-I,
Vepery,
Chennai-600 007.

2.The Director,

Agricultural Department,
Ezhilagam, Chennai.

3.The Manager,

HDFC Bank,
Thiruvannamalai Branch,
Thiruvannamalai.

... Respondents/Complainant

(As per order of this Court dated 30.03.2015, R2 and R3 have been impleaded)

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to call for the records pertains to the order dated 18.02.2015 made in CrIMP No.527 of 2015 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, set aside the same and defreeze the petitioner's bank accounts (1)Salary account in A/c.No.50100008256170 with HDFC Bank, Tiruvannamalai Branch and (2)A/C.No.00000010860298490 with State Bank of India, Tiruvannamalai Branch.

For Petitioner : Mr.K.Kannan

For Respondents : Mr.P.Govindarajan,
Additional Public Prosecutor
for R1

JUDGMENT

Criminal Revision Case is directed against an order dated 18.02.2015 made in CrI MP No.527 of 2015 in Central Crime Branch, Team-I, Vepery P.S. Crime No.131 of 2014, on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai.

2. Material on record discloses that a criminal case has been registered on the basis of a complaint lodged by the defacto complainant under Sections 406 and 420 read with 34 IPC. During the course of investigation, the bank accounts of the petitioner/accused have been frozen by the respondent police. He is stated to be an Agricultural Officer in Government of Tamil Nadu.

3. In the application in CrI MP No.527 of 2015 filed under Section 451 CrPC, he has sought for a direction to the Inspector of Police, Central Crime Branch, Team-I, Vepery, Chennai, respondent herein, to defreeze the petitioner's bank accounts (1) Salary account in A/c.No.50100008256170 maintained in HDFC Bank, Tiruvannamalai Branch and (2) Personal account in A/c.No.00000010860298490 maintained in State Bank of India, Tiruvannamalai Branch.

4. The petitioner has contended that he was the absolute owner of the approved plot bearing No.5 to an extent of 3600 sq.ft, comprising in Survey No.317/1 (part), Subramanian Colony, Velachery Village, Chennai, and that he had purchased the same on 02.09.1982, registered in Document No.2963/1982 in the office of the Joint Sub-Registrar, Saidapet.

5. The petitioner has further submitted that when the defacto complainant approached him in the year 2013, with an intention to purchase a plot, the petitioner had disclosed all the facts regarding the existence of development agreement with a builder M/s.Nathan Foundations on 15.12.1999 and also, about an award passed in the Arbitration proceedings initiated by the said developer M/s.Nathan Foundations. Petitioner in CrI MP.No.527 of 2015 has also contended the defacto complainant came forward to purchase the said plot with the knowledge of the disclosed facts. Accordingly, by a registered Sale Deed dated 15.07.2013 in Doc.No.4149 of 2013, the petitioner sold the property.

6. It is the contention of the petitioner that though the defacto complainant was aware of the abovesaid facts, he had lodged a police complaint against the petitioner and the developer contending inter alia that they have colluded with each other and committed offences punishable under law. The

petitioner has further contended that due to freezing of the abovesaid bank accounts, salary paid to the petitioner has not been credited into his salary account in A/c.No.50100008256170 maintained in HDFC Bank, Tiruvannamalai Branch and that salary is kept in the Treasury without any interest. The petitioner's son is studying in Engineering course. Inasmuch as the bank accounts have been frozen, the petitioner is not able to pay the college and incidental expenses. For the reasons stated supra, he has sought for a direction to defreeze the accounts.

7. On receipt of this notice, the police have objected for the prayer on the grounds inter alia that the petitioner has sold the property with an encumbrance to the defacto complainant and thus, cheated him. Police has further contended that the petitioner had deposited the money, received as sale consideration and hence, Bank accounts have to be frozen. According to police, investigation is still pending and statement of accounts have to be collected from the HDFC Bank and some other details have to be gathered. In the abovesaid circumstances, the police has objected to defreeze of the accounts of the petitioner.

8. The defacto complainant has filed an intervening petition stating that the petitioner has suppressed the agreement for development dated 15.12.1999 entered into between the petitioner and M/s.Nathan Foundation Private Limited and also the award passed on 02.07.2011 in the arbitration proceedings against the petitioner. According to the defacto complainant, he came to know about the details only on 27.07.2013, when the Managing Director of M/s.Nathan Foundation Private Limited, claimed that he has right over the property, as an agreement holder with the petitioner/accused. In these circumstances, the defacto complainant was constrained to lodge a complaint against the petitioner. He has also stated that out of the sale consideration of Rs.2,80,00,000/-, he has made two payments by way of Demand Drafts, in the name of the petitioner, for a sum of Rs.80,00,000/- and Rs.60,00,000/- respectively. The Demand Drafts have been encashed from the above mentioned Bank account of the petitioner. Thus, for the reasons stated supra, he has objected to the prayer sought for in CrI.M.P.527 of 2015 filed under Section 451 CrPC for defreezing the accounts.

9. One of the grounds raised by the petitioner, in CrI.M.P.No.527 of 2015, filed under Section 451 of the Code, is that, the respondent Police, without any knowledge and notice to the petitioner, has frozen the petitioner's Bank accounts, and thus, there is a violation of Section 102 of CrPC.

10. Reading of the impugned order discloses that when the

wife of the petitioner, Mrs.Mallika filed a petition before the lower Court, in CrIIMP.No.113 of 2015 and sought for a direction from the said Court to defreeze the accounts maintained in HDFC Bank, vide order dated 29.01.2015 in CrIIMP.No.113 of 2015, the prayer sought for, by Mrs.Mallika has been allowed on the ground that she is not an accused in the criminal case. By observing that Mrs.Mallika, is not an accused in Crime No.131 of 2014 under Sections 406, 420 read with 34 IPC on the file of the Central Crime Branch, Team-I, Vepery, Chennai and whereas, the petitioner is an accused in the abovesaid crime, and taking note of the fact that money received by him, has been deposited in the Bank accounts of the petitioner, the Court below has held that there is no need to send any notice to the accused, before freezing the bank accounts. The Court below has also taken note of the averments made in the intervening petition that out of sale consideration of Rs.2,80,00,000/-, the intervener has made two payments by way of Demand Drafts, in the name of the petitioner, for a sum of Rs.80,00,000/- and Rs.60,00,000/- respectively. The said amount has already been encashed. Thus, upon perusal of the averments, documents and submissions of the learned counsel for the petitioner/accused, police and the intervener and taking note of the contentions that if the bank accounts of the petitioner have to be defreezed, the petitioner would withdraw all the alleged cheated money said to be deposited, in the bank accounts and that it would be very difficult to recover the same, vide order dated 18.02.2015 in CrIIMP.No.527 of 2015, the learned XI Metropolitan Magistrate, Saidapet, Chennai, has dismissed the petition filed under Section 451 CrPC, filed for defreezing the bank accounts.

11.Though Mr.K.Kannan, learned counsel for the petitioner assailed the correctness of the abovesaid order, on the grounds inter alia that the police has not complied with the mandatory requirements under Section 102 CrPC and further contended that the money deposited, reflected a genuine sale transaction and further contended that the complainant was aware of the transaction with the builder namely, M/s.Nathan Foundation Private Limited and that no offences were committed, at this juncture, this Court is not inclined to accept the said contentions. Attention of this Court was also invited to an order made in CrIOP No.1092 of 2015 dated 20.01.2015, in which, a direction has been granted by this Court, to the Police, to file a final report in Crime No.131 of 2014 on the file of the Inspector of Police, Central Crime Branch, Team-I, Vepery, Chennai, on or before 30.06.2015.

12.Section 102 of the Code of Criminal Procedure is extracted hereunder:

"102. Power of police officer to seize certain

property. (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances, which create suspicion of the Commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required and to give effect to the further orders of the court as to the disposal of the same."

13. Offences under Sections 406 and 420 read with 34 IPC have been registered against the petitioner. According to the defacto complainant, knowing fully well, the development agreement dated 15.12.1999 entered into between the petitioner and M/s.Nathan Foundation Private Limited and also the award dated 02.07.2011, in the arbitration proceedings, the petitioner has sold the property for a sum of Rs.2,80,00,000/- for which two payments have been made, by way of Demand Drafts in the name of the petitioner, for a sum of Rs.80,00,000/- and Rs.60,00,000/- respectively, and that the Demand Drafts have also been encashed through Bank accounts of the petitioner. The Police in their objections have stated that the investigation is still pending and statement of accounts have to be collected from HDFC Bank, Thiruvannamalai Branch and some other documents have to be gathered. As rightly observed by the learned XI Metropolitan Magistrate, Saidapet, Chennai, that if the money is deposited in the petitioner's accounts, and if the petitioner's bank account, not defreezed, then there is a likelihood of the petitioner withdrawing the money.

14. On the aspect of the petitioner being served with a notice under Section 102 CrPC, the learned XI Metropolitan Magistrate, Saidapet, Chennai, has made a clear distinction. In the light of the above discussion, this Court is of the view that there is no manifest illegality in the impugned order dated 18.02.2015 in CrI.M.P.527 of 2015 in Central Crime Branch, Team-I, Veperiy P.S. Crime No.131 of 2014, on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai.

15. In the memorandum of grounds of revision, the petitioner

has contended that he being a government servant alleged to have involved in the commission of crime, has been placed under suspension. Subsistence allowance has not been credited in his Salary account in A/c.No.50100008256170 with HDFC Bank, Tiruvannamalai Branch. Education Fees to the son of the petitioner and other incidental expenses could not be met out.

16.On the above aspect, this Court is of the view that though the petitioner is alleged to have committed offences under Sections 406 and 420 read with 34 IPC, in Crime No.131 of 2015, the Central Crime Branch, Team-I, Vepery, Chennai, the said investigating agency is directed to collect the statement of accounts from the salary account of the petitioner in A/c.No.50100008256170 with HDFC Bank, Tiruvannamalai Branch, as expeditiously, as possible and proceed with the investigation of the case and to file a final report, as directed by this Court in CrIOP No.1092 of 2015 dated 20.01.2015.

17.Before addressing the some of the issues, raised in the present revision cases, let me consider some of the decisions of the Courts, as to how to interpret, a statute and sections in a statute.

18.In LT.-Col. Prithi Pal Singh Bedi v. Union of India reported in 1983 (3) SCC 140, at Paragraph 8, held as follows:

"8. The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity.If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act."

19.In Narendra H.Khzurana v. Commissioner of Police reported in 2004 (2) Mh.L.R. 72, it is held that it must be noted the proper course in interpreting a statute in the first instance is to examine its language and then ask what is the natural meaning uninfluenced by the considerations derived from previous state of law and then assume that it was property intended to leave unaltered. It is settled legal position, therefore, that the

Courts must try to discover the real intent by keeping the direction of the statute intact.

20. In *Nathi Devi v. Radha Devi Gupta* reported in AIR 2005 SC 648, the Apex Court held that, "The interpretation function of the Court is to discover the true legislative intent, it is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional."

21. In *Nathi Devi's* case, it is further held that, "It is equally well-settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors."

22. Let me consider some more judgments on the interpretation of the statutes,

(i) In Justice G.P. Singh's *Principles of Statutory Interpretation* (11th Edn., 2008), the learned author while referring to judgments of different Courts states (at page 134) that procedural laws regulating proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of court. He further states (at pages 135 and 136) that: "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument ab inconvenienti", said LORD MOULTON, "is one which requires to be used with great caution"."

(ii) In the words of Tindal, C.J., in *Sussex Peerage case* [(1844) 11 Cl & F 85], wherein, he said thus, "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver."

(iii) In *Nairin v. University of St. Andrews* reported in 1909 AC 147, the Apex Court held that, "Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice."

(iv) In *Ram Rattan v. Parma Nand* reported in AIR 1946 PC 51, the Hon'ble Mr.S.R.Das, held as follows:

"The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

(v) In *Poppatlal Shah v. State of Madras* reported in AIR 1953 SC 274, the Supreme Court held that, "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."

(vi) In *Rao Shive Bahadur Singh v. State*, reported in AIR 1953 SC 394, the Supreme Court held that, "While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute, and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application."

(vii) What is the spirit of law, Hon'ble Mr. Justice S.R.Das

in *Rananjaya Singh v. Baijnath Singh* reported in AIR 1954 SC 749, said that, "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act."

(viii) In *Hari Prasad Shivashanker Shukla v. A.D. Divelkar* reported in AIR 1957 SC 121, the Apex Court held that, "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

(ix) In *Kanai Lal Sur v. Paramnidhi Sadhukhan* reported in AIR 1957 SC 907, the Supreme Court held that,

"it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act."

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct."

(x) In *Attorney-General v. HRH Prince Ernest Augustus of Hanover* reported in (1957) 1 All.ER 49, Lord Somervell of Harrow has explained the unambiguous, as "unambiguous in context".

(xi) In *State of W.B., v. Union of India* reported in AIR

1963 SC 1241, the Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

(xii) In *State of Uttar Pradesh v. Dr. Vijay Anand Maharaj* reported in AIR 1963 SC 946, the Supreme Court held as follows:

"But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p. 68, and in Crawford on 'Statutory Construction' at p. 492, that it is the duty of the Judge 'to make such construction of a statute as shall suppress the mischief and advance the remedy,' and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p. 68 of his book:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature.

The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature."

(xiii) In *Namamal v. Radhey Shyam* reported in AIR 1970 Rajasthan 26, the Court held as follows:

"It was observed by Pollock C. B. in *Waugh v. Middleton*, 1853-8 Ex 352 (356):-- "It must, however, be conceded that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent

grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." And substantially the same opinion is expressed by Lord Selborne in *Caledonian Ry, v. North British Ry.* (1881) 6 AC 114 (222):-- "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which, that intention can be better effectuated." Again Lord Fitzgerald in *Bradlaugh v. Clarke*, (1883) 8 AC 354 at p. 384 observed as follows:-- "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." 11. Maxwell in his book on *Interpretation of Statutes* (11th Edition) at page 226 observes thus:--

"The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Cole's words, to suppress the mischief and advance the remedy."

(xiv) In *Inland Revenue Commissioner v. Joiner* reported in (1975) 3 All. ER 1050, it has been held that normally a statutory provision consists of a general description of some factual situation and the legal consequences ensuing from it.

Whether the general description is wide or narrow, it will have some limits. The question before a court of law in dealing with a statute is whether the factual situation proved before it falls within the general description given in the statute. A real difficulty in determining the right answer can be said to arise from an "ambiguity" in the statute. It is in this sense that the words, "ambiguity" and "ambiguous" are widely used in judgments.

(xv) In *Commissioner of Sales Tax v. M/s. Mangal Sen Shyamlal* reported in 1975 (4) SCC 35 = AIR 1975 SC 1106, the Apex Court held that, "A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it 'according to the intent of them that made it'. From that function the court is not to resile. It has to abide by the maxim, 'ut res magis valiat quam pereat', lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(xvi) In *C.I.T., Madras v. T. Sundram Iyengar (P) Ltd.*, reported in 1976 (1) SCC 77, the Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

(xvii) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In *Ku. Sonia Bhatia v. State of U.P.*, and others reported in 1981 (2) SCC 585 = AIR 1981 SC 1274, the Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(xviii) In *Philips India Ltd., v. Labour Court* reported in 1985 (3) SCC 103, the Apex Court, at Paragraph 15, held as follows:

"(15) No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (See *Attorney General v. Bastow* [(1957) 1 All.ER 497]) and as a 'settled rule' (See *Poppatlal Shall v. State of Madras* [1953 SCR 667 : AIR 1953 SC 274]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of

what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers' (Quoted with approval in Punjab Beverages Pvt. Ltd. v. Suresh Chand [(1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165])."

(xix) In Nyadar Singh v. Union of India reported in AIR 1988 SC 1979, observed that ambiguity need not necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context.

(xx) It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Reference can be made to the decision of the Apex Court in Nelson Motis v. Union of India reported in AIR 1992 SC 1981.

(xxi) In M/s.Oswal Agro Mills Ltd., v. Collector of Central Excise and others reported in 1993 Supp (3) SCC 716 = AIR 1993 SC 2288, the Apex Court held that, where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand.

(xxii) In Nasiruddin v. Sita Ram Agarwal reported in (2003) 2 SCC 577, the Supreme Court held as follows:

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of

the legislation must be gathered from the language used.But the intention of the legislature must be found out from the scheme of the Act."

(xxiii) In *Indian Dental Association, Kerala v. Union of India* reported in 2004 (1) Kant. LJ 282, the Court held that, "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(xxiv) In *State of Jharkhand v. Govind Singh* reported in (2005) 10 SCC 437, the Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself

interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See Frankfurter: "Some Reflections on the Reading of Statutes" in Essays on Jurisprudence, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs* [(1980 (1) All.ER 529] (All ER at p. 542c-d):

"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest."

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted.

They are not entitled to usurp legislative function under the disguise of interpretation."

(xxv) In Vemareddy Kumaraswamy Reddy v. State of A.P., reported in (2006) 2 SCC 670, the Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

(xxvi) In A.N.Roy Commissioner of Police v. Suresh Sham Singh reported in AIR 2006 SC 2677, the Apex Court held that,

"It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(xxvii) In Adamji Lookmanji & Co. v. State of Maharashtra reported in AIR 2007 Bom. 56, the Bombay High Court held that, when the words of status are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.

(xxviii) In State of Haryana v. Suresh reported in 2007 (3) KLT 213, the Supreme Court held that, "One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies

heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

(xxix) In Visitor Amu v. K.S.Misra reported in 2007 (8) SCC 594, the Supreme Court held that, "It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(xxx) In Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., reported in (2008) 4 SCC 755, the Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd."

(xxxi) In Phool Patti v. Ram Singh reported in (2009) 13 SCC 22, the Supreme Court held that,

"9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear."

(xxxii) In Mohd. Shahabuddin v. State of Bihar, reported in (2010) 4 SCC 653, the Supreme Court held that,

"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and

unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd. v. State of Haryana* [2009 (3) SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

(xxxiii) In *Satheedevi v. Prasanna* reported in (2010) 5 SCC 622, the Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise—*Kanai Lal Sur v. Paramnidhi Sadhukhan* [AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot

correct the defect or supply the omission - Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323] and Shyam Kishori Devi v. Patna Municipal Corpn. [AIR 1966 SC 1678]"

(xxxiv) In Sri Jeyaram Educational Trust & Ors., v. A.G.Syed Mohideen & Ors. reported in 2010 CIJ 273 SC (1), it is held that,

"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

(xxxv) In Delhi Airtech Services (P) Ltd. v. State of U.P., reported in (2011) 9 SCC 354, the Supreme Court, while dealing with a provision under Section 17(3-A) of the Act, held that,

"55. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In Attorney General v. Prince Ernest Augustus of Hanover [1957 AC 436], Lord Viscount Simonds very elegantly stated the principle that it is the duty of court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration "not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I

can, by those and other legitimate means, discern that the statute was intended to remedy." (All ER p. 53 I)

57. These principles have been followed by this Court in its Constitution Bench decision in *Union of India v. Sankalchand Himatlal Sheth* [1977 (4) SCC 193]. At SCC p. 240, Bhagwati, J. as His Lordship then was, in a concurring opinion held that words in a statute cannot be read in isolation, their colour and content are derived from their context and every word in a statute is to be examined in its context. His Lordship explained that the word context has to be taken in its widest sense and expressly quoted the formulations of Lord Viscount Simonds, set out above.

23. In the context of purposive construction, Hon'ble Justice Sinha in *New India Assurance Co. Ltd., v. Nusli Nerille Wadia* reported in 2008 (3) SCC 279, states that,

"With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations.

24. In *Shri Ram Saha v. State* reported in AIR 2004 SC 5080, it is held that in applying a purposive construction a word of caution is necessary that the text of the statute is not to be sacrificed and the Court cannot rewrite the statute on the assumption that whatever furthers the purpose of the Act must have been sanctioned.

25. Crawford on 'Statutory Construction' (Ed. 1940, Art. 261, p. 516) sets out the following passage from an American case approvingly as follows:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its

design, and the consequences which would follow from construing it the one way or the other."

26. In *State of U.P., v. Baburam Upadhyaya* reported in AIR 1961 SC 751, the Hon'ble Mr. Justice Subbarao, has observed that,

"the Court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered".

In the same judgment, the Hon'ble Judge has further held that when a statute uses the word 'shall', prima facie it is mandatory but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

27. The Hon'ble Mr. Justice Hidayatullah, in *M/s. Sainik Motors v. State of Rajasthan* reported in AIR 1961 SC 1480, observed that ordinarily though the word "shall" is mandatory, it can be interpreted as directory if the context and intention otherwise demands.

28. In *P.T. Rajan v. T.P.M. Sahir* reported in 2003 (8) SCC 498, the following conclusions are relevant,

"45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependant on the user of the words 'shall' or 'may'. Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.

46.

47. The construction of a statute will depend on the purport and object for which the same had been used.

48.

49. Furthermore, a provision in a statute which is procedural in nature although employs the word 'shall' may not be held to be mandatory if thereby no prejudice is caused."

29. In *Ashok Lanka v. Rishi Dixit* reported in 2005 (5) SCC

598, para No.53 is relevant, which reads as under:-

"53. The question as to whether a statute is mandatory or directory would depend upon the statutory scheme. It is now well known that use of the expression 'shall' or 'may' by itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve. (see P.T.Rajan v. T.P.M.Sahir and U.P.SEB v. Shiv Mohan Singh). "

30. In Delhi Airtech Services (P) Ltd., v. State of U.P., reported in 2011 (9) SCC 354, one of the substantial questions of law framed by the Hon'ble Supreme Court of India, was whether Section 17(3-A) of the Land Acquisition Act, 1894, is mandatory or directory and whether non-compliance of the same, would vitiate the entire land acquisition proceedings, even when the land had already vested in the State, in terms of Section 17(1) of the Act. Due to the divergent views expressed by the Hon'ble Judges, the matter has been referred to a larger Bench. However, the decisions considered by Hon'ble Mr. Justice Swatanter Kumar, are worth consideration, in this case,

"117. In 'Principles of Statutory Interpretation', 12th Edition, 2010, Justice G.P. Singh, at page 389 states as follows:

"As approved by the Supreme Court:

"The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislation must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other"

"For ascertaining the real intention of the Legislature", points out Subbarao, J,

"the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of the other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the

legislation will be defeated or furthered".

If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored, but only that the prima facie inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative construction. Thus, the use of the words 'as nearly as may be' in contrast to the words 'at least' will prima facie indicate a directory requirement, negative words a mandatory requirement 'may' a directory requirement and 'shall' a mandatory requirement."

118. Maxwell, in Chapter 13 of his 12th Edition of 'The Interpretation of Statutes', used the word 'imperative' as synonymous with 'mandatory' and drew a distinction between imperative and directory enactments, at pages 314-315, as follows:

"Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the legislature on questions necessarily arising out of its enactments and on which it has remained silent."

The first such question is: when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, is the requirement to be regarded as imperative (or mandatory) or forms prescribed by the statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of them involving nothing more than liability to a penalty, if any were imposed, for breach of the enactment. "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially".

It is impossible to lay down any general rule for determining whether a provision is imperative or directory. "No universal rule," said Lord Campbell

L.C., "can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

And Lord Penzance said:

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

119. In a recent judgment of this Court, *May George v. Tahsildar* [(2010) 13 SCC 98], the Court stated the precepts, which can be summed up and usefully applied by this Court, as follows:

"(a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;

(b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;

(c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;

(d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

(e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;

(f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weightage to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

120. Reference can be made to the following paragraphs of May George (supra) :

"16. In Dattatraya Moreshwar v. The State of Bombay and Ors. [AIR 1952 SC 181], this Court observed that law which creates public duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below:

'7.....It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.'

17. A Constitution Bench of this Court in State of U.P. v. Babu Ram Upadhyaya [AIR 1961 SC 751] decided the issue observing:

'29.....For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.'

22. In B.S.Khuna and Ors. v. Municipal Corporation of Delhi and Ors. [(2000) 7 SCC 679], this Court

considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

23. In *State of Haryana and Anr. v. Raghubir Dayal* [(1995) 1 SCC 133], this Court has observed as under:

'5. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, or consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word 'shall; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.' "

121. The Legislature in Sections 11A and 17(3A) of the Act has used the word 'shall' in contradistinction to the word 'may' used in some other provisions of the Act. This also is a relevant consideration to bear in mind while interpreting a provision.

122. The distinction between mandatory and

directory provisions is a well accepted norm of interpretation. The general rule of interpretation would require the word to be given its own meaning and the word 'shall' would be read as 'must' unless it was essential to read it as 'may' to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word 'shall' is used in a substantive statute, it normally would indicate mandatory intent of the legislature.

123. Crawford on 'Statutory Construction' has specifically stated that language of the provision is not the sole criteria; but the Courts should consider its nature, design and the consequences which could flow from construing it one way or the other.

124. Thus, the word 'shall' would normally be mandatory while the word 'may' would be directory. Consequences of non-compliance would also be a relevant consideration. The word 'shall' raises a presumption that the particular provision is imperative but this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction.

125. Where a statute imposes a public duty and proceeds to lay down the manner and timeframe within which the duty shall be performed, the injustice or inconvenience resulting from a rigid adherence to the statutory prescriptions may not be a relevant factor in holding such prescription to be only directory. For example, when dealing with the provisions relating to criminal law, legislative purpose is to be borne in mind for its proper interpretation. It is said that the purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property and it is in the interests of everyone that serious crime be effectively investigated and prosecuted. There must be fairness to all sides. (Attorney General's Reference (No. 3 of 1999) (2001) 1 All ER 577 Reference : Justice G.P. Singh on 'Principles of Statutory Interpretation', 11th Edition 2008). In a criminal case, the court is required to consider the triangulation of interests taking into consideration the position of the accused, the victim and his or her family and the public.

126. The basic purpose of interpretation of statutes is further to aid in determining either the

general object of the legislation or the meaning of the language in any particular provision. It is obvious that the intention which appears to be most in accordance with convenience, reason, justice and legal principles should, in all cases of doubtful interpretation, be presumed to be the true one. The intention to produce an unreasonable result is not to be imputed to a statute. On the other hand, it is not impermissible, but rather is acceptable, to adopt a more reasonable construction and avoid anomalous or unreasonable construction. A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to the well settled rules of construction, but it may properly lead to the selection of one, rather than the other, of the two reasonable interpretations. In earlier times, statutes imposing criminal or other penalties were required to be construed narrowly in favour of the person proceeded against and were more rigorously applied. The Courts were to see whether there appeared any reasonable doubt or ambiguity in construing the relevant provisions. Right from the case of *R. v. Jones, ex p. Daunton* [1963 (1) WLR 270], the basic principles state that even statutes dealing with jurisdiction and procedural law are, if they relate to infliction of penalties, to be strictly construed; compliance with the procedures will be stringently exacted from those proceedings against the person liable to be penalized and if there is any ambiguity or doubt, it will be resolved in favour of the accused/such person. These principles have been applied with approval by different courts even in India. Enactments relating to procedure in courts are usually construed as imperative. A kind of duty is imposed on court or a public officer when no general inconvenience or injustice is caused from different construction. A provision of a statute may impose an absolute or qualified duty upon a public officer which itself may be a relevant consideration while understanding the provision itself. (See 'Maxwell on The Interpretation of Statutes', 12th Edition by P. St. J. Langan and *R. v. Bullock*, [(1964) 1 QB 481])

127. One school of thought has accepted that the word 'shall' raises a presumption that the particular provision is imperative, while the other school of thought believes that such presumption is merely prima facie, subject to rebuttal by the other considerations mentioned above. For example, in *M/s. Sainik Motors, Jodhpur & Others v. The State of Rajasthan* [AIR

1961 SC 1480], the word 'shall' has been held to be merely directory.

128. G.P. Singh in the same edition of the above-mentioned book, at page 409, stated that the use of the word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of a statute will normally lead to the conclusion that the word 'shall' imposes an obligation, whereas the word 'may' confers a discretionary power. But that by itself is not decisive and the Court may, having regard to the context and consequences, come to the conclusion that the part of the statute using 'shall' is also directory. It is primarily the context in which the words are used which will be of significance and relevance for deciding this issue.

129. Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See 'Maxwell on The Interpretation of Statutes', 12th Edition by P. St. J. Langan)

130. This Court in the case of Devinder Singh (supra) held that the Land Acquisition Act is an expropriatory legislation and followed the case of Hindustan Petroleum Corporation v. Darius Shapur Chennai and Ors. [(2005) 7 SCC 627]. Therefore, it should be construed strictly. The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary.

131. If I analyze the above principles and the various judgments of this Court, it is clear that it may not be possible to lay down any straitjacket formula, which could unanimously be applied to all cases, irrespective of considering the facts, legislation in question, object of such legislation, intendment of the legislature and substance of the enactment. In my view, it will always depend upon all these factors as stated by me above. Still, these precepts are not exhaustive and are merely negative. There could be cases where the word 'shall' has been used to indicate the legislative intent that the provisions should be mandatory, but when examined in light of the scheme of the Act, language of the

provisions, legislative intendment and the objects sought to be achieved, such an interpretation may defeat the very purpose of the Act and, thus, such interpretation may not be acceptable in law and in public interest.

132. Keeping in mind the language of the provision, the Court has to examine whether the provision is intended to regulate certain procedure or whether it vests private individuals with certain rights and levies a corresponding duty on the officers concerned. The Court will still have to examine another aspect, even after holding that a particular provision is mandatory or directory, as the case may be, i.e., whether the effect or impact of such non-compliance would invalidate or render the proceedings void ab initio or it would result in imposition of smaller penalties or in issuance of directions to further protect and safeguard the interests of the individual against the power of the State. The language of the statute, intention of the legislature and other factors stated above decide the results and impacts of non-compliance in the facts and circumstances of a given case, before the Court can declare a provision capable of such strict construction, to term it as absolutely mandatory or directory."

31. In *R. Sivaraj v. State rep. by Inspector of Police, District Crime Branch, Salem*, reported in 2013 (3) MWN (Cr.) 450, certain depositors were cheated; on their complaints, a case was registered; the District Crime Branch, Salem, has registered Crime Nos. 24, 25 and 26 of 2012, for the offences under Sections 420 IPC and Section 4 and 5 of Prize Chits and Money Circulation (Banning) Act, 1978. Subsequently, investigation has been transferred to EOW-II Unit, Salem. Offence has been initially registered under Section 420 IPC, had been altered into Section 420 IPC and Section 5 of TNPID Act. The petitioner therein was maintaining two bank accounts in IDBI Bank Ltd and his wife was also maintaining a separate accounts in the same Bank. She was also not an accused in the crime registered. Investigating Officer has sought for freezing of the Bank account of the petitioner therein and accordingly, they were frozen. CrIOP Petitions were filed under Section 482 CrPC, to defreeze the bank accounts on the grounds inter alia that provision under Section 102 (3) has not been followed and that freezing of bank accounts was not immediately reported to the learned Magistrate.

32. In *R. Sivaraj's case*, the reliance has been made to the decision of this Court in *Padmini v. The Inspector of Police*,

DCB, Tirunelveli and others reported in 2008 (3) CTC 657, Vinoshkumar Ramachandran Valluvar v. The State of Maharashtra, reported in 2011 (1) MWN (Cr.) 497 (FB) (Bom), and the order of this Court made in CrIOP No.13103, etc of 2013 dated 30.08.2013, in T.Subbulakshmi v. The Commissioner of Police, Chennai and others.

33.In R.Sivaraj's case, the learned Public Prosecutor had not disputed the fact that the Investigating Officer has not reported freezing of the Bank accounts to the Magistrate. He had contended that it was only an irregularity and the same would not vitiate the freezing of bank accounts.

34.Reading of the order made in R.Sivaraj's case, shows that the learned Sessions Judge, has considered the process of investigation, collection of evidence, seizure of case properties, properties used in the commission of offence, with a reference to the commission of offence. Mandatory requirements of the investigating Officer under Section 102(3) CrPC had been taken note of.

"15.In STATE OF MAHARASHTRA VS. TAPAS D.NEOGY [1999 (3) CTC 350 (SC)], it was held that the bank account is the property capable of seizure thus, for the purpose of investigation, if it has some bearing on the crime reported, the investigating officer can seize it under section 102 Cr.P.C. by serving a prohibitory order on the bank to freeze the bank account, prohibiting the (accused) / account holder from operating the account. [Also see: SWARAN SABHAR WAL Vs. COMMISSIONER OF POLICE (1998 Cr.L.J 241), RAJAMANI Vs. INSPECTOR OF POLICE, SALEM, (2003 Cr.L.J., 2902) and RANGANATHAN Vs. STATE (2003 Cr.L.J.2779)]

16. Section 102(1) describes the categories of properties to be seized. When an officer subordinate to the SHO seized them, he must report his seizure to his superior. Section 102(3) mandates that every seizure of property under Section 102(1) Cr.P.C. shall be reported to the jurisdiction Magistrate.

17. For the purpose of Section 102(1) Cr.P.C. cash on hand and cash at bank in bank account are properties.

18.In R.CHANDRASEKAR VS. INSPECTOR OF POLICE, SALEM [2002 (5) CTC 598], it was held that seizure of bank account by the investigating officer must be reported to the Magistrate as it is a mandatory requirement of law.

19. In Dr.SHASHIKANT D. KARNIK VS. STATE OF MAHARASHTRA [2008 CRL.L.J. 148], it was held that seizure of property under Section 102 Cr.P.C has to be reported to the Magistrate.

20. CHANDRASEKAR (supra) was subsequently followed in PADMINI VS. THE INSPECTOR OF POLICE, DCB, TIRUNELVELI [2008 (3) CTC 657].

21. In VINOSHKUMAR RAMACHANDRAN VALLUVAR VS. THE STATE OF MAHARASHTRA [2011 (1) MWN (Cr.) 497 (FB)(Bom.)], a Full Bench of the Bombay High Court held that the requirement of reporting of freezing of bank account to the Magistrate prescribed under Section 102(3) Cr.P.C is mandatory in nature.

22. In pursuing their investigation under Section 102 Cr.P.C., the Code empowered the police officers to deprive a person of his properties. In this context, the phrase, "shall" employed in Section 102(3) Cr.P.C, is held to be mandatory in nature. Violation of it cannot be an irregularity committed by the investigating officer.

23. Very recently, a learned single judge of this court in CrI.O.P.No.13103 of 2013, etc, on 30.8.2013 [T.SUBBULAKSHMI VS. THE COMMISSIONER OF POLICE, EGMORE, CHENNAI AND OTHERS] also took similar view."

35.Ultimately, while declining to accept the contention of the learned Additional Public Prosecutor that it was only an irregularity in not reporting of a freezing of bank accounts and that it would not vitiate the same, the learned Judge of this Court, has directed defreezing of the accounts of the accused therein.

36.A cursory look at sub Section (3) of Section 102 CrPC, no doubt, makes it clear that it is the duty of the police officer acting under sub-section (1) shall forthwith the report the seizure to the magistrate having jurisdiction.

37.Section 157 of the Code of Criminal Procedure deals with the procedure for investigation, and it states that (1)If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his

subordinate officers not being below such rank as the State Government may by general order, prescribe in this behalf, to proceed, to the spot, to investigate circumstances of the case, and, if necessary to take measures for the discovery of the offender: Provided that- (a) When information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in-charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot; (b) If it appears to the officer in charge of a police station that there is sufficient ground for entering off an investigation, he shall not investigate the case. (2) In each of the cases mentioned in clauses (a) and (b) of the proviso sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements to that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the information, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case of cause it to be investigated.

38. Section 158 of the Code of Criminal Procedure which deals with Report how submitted states that (1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf. (2) Such superior officer may give such instructions to the officer in charge or the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

39. Section 159 of the Code of Criminal Procedure which deals with Power to hold investigation or preliminary inquiry states that Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed of depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into or otherwise to dispose of, the case in the manner provided in this Code.

40. Section 164 of the Code of Criminal Procedure which deals with Recording of confessions and statements states that (1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any, time afterwards before the commencement of the inquiry or trial: Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force. (2) The

Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is true, made voluntarily. (3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorize the detention of such person in police custody. (4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect.

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B.
Magistrate".

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded. (6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

41. Section 167 of the Code of Criminal Procedure which deals with Procedure when investigation cannot be completed in twenty-four hours states that -

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary

hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom all accused person is forwarded under this section may, whether he has or not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-[(a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence, And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(c) No Magistrate of the second class, not specially empowered in this behalf by the high Court, shall authorize detention in the custody of the police.

[Explanation I. For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in Custody so long as he does not furnish bail.]

[Explanation II].If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention.

[(2A) Notwithstanding, anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he

is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and on the expiry of the period of detention so authorized, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence

subject to such directions with regard to bail and other matters as he may specify.

42. Section 169 of the Code of Criminal Procedure which deals with the Release of accused when evidence deficient states that If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient, evidence or reasonable round of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, of such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizable of the offence on a police report, and to try the accused or commit him for trial.

43. Section 170 of the Code of Criminal Procedure which deals with Cases to be sent to Magistrate when evidence is sufficient states that (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed. (2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary, to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused. (3) If the court of the Chief Judicial Magistrate is mentioned in the bond, such court shall be held to include any court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons. (4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

44. Section 173 of the Code of Criminal Procedure which deals with Report of police officer on completion of investigation states that (1) Every investigation under this Chapter shall be completed without unnecessary delay. (2) (i) As

soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) The names of the parties;
- (b) The nature of the information;
- (c) The names of the persons who appear to be acquainted with the circumstances of the case;
- (d) Whether any offence appears to have been committed and, if so, by whom;
- (e) Whether the accused has been arrested;
- (f) Whether he has been released on his bond and, if so, whether with or without sureties;
- (g) Whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

- (a) All documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) The statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witness.

(6) If the police officer is of opinion that any part of

any such statement is not relevant to the sub-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Notwithstanding in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

45. Reverting to Section 102(3) of CrPC, every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction. As per Sub Section (1) of Section 102 CrPC, any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances, which create suspicion of the Commission of any offence.

46. Sub Section (3) of Section 102 of CrPC also states that where the property seized is such that it cannot be, conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required and to give effect to the further orders of the court as to the disposal of the same.

47. Reading of sub-section (3) of Section 102 CrPC, makes it clear that every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction. As stated supra, no sooner a crime is registered, the same has to be reported to the Magistrate having jurisdiction. The Magistrate monitors the progress of the crime

registered and he is empowered to pass suitable orders during investigation, recording and collection of an evidence, in relation to the crime reported.

48.The word 'shall' used in Sub Section (3) of Section (2) of the Act, cast a duty on the police officer towards seizure of the properties and to report forthwith to the Magistrate who had jurisdiction.

49.The word "shall" used under Sub Section (3) of the Section 102 CrPC can be meant and interpreted to cast a mandatory duty on the police officer, to seize the property and to report to the Magistrate having jurisdiction. In the light of the decisions dealing with interpretation of statutes and Section, this Court is unable to accept the contention that non compliance of sub Section (3) of Section 102 CrPC, i.e., in not reporting the factum of the seizure to the learned Magistrate having jurisdiction, would entitle the accused to seek for defreezing of the bank accounts, when the investigation is in progress and with reference to the facts on hand, statements of bank accounts have to be collected from the HDFC Bank.

50.For the reasons stated supra, this Court is of the view that no manifest illegality is committed by the learned XI Metropolitan Magistrate, Saidapet, Chennai, in dismissing CrIMP No.527 of 2015 in Central Crime Branch, Team-I, Vepery P.S. Crime No.131 of 2014, dated 18.02.2015.

51.Salary or subsistence allowance to the petitioner, an agriculture officer working in Government of Tamilnadu, cannot at any stretch of imagination be included as part of money transaction, involved in the crime registered against the petitioner. That stands apart, as to whether the petitioner is an accused or not and he is entitled to subsistence allowance, in accordance with the rules.

52. On the facts and circumstances of this case, instead of directing the petitioner/accused to seek for a direction against the employer to credit of subsistence allowance, which is now stated to be lying in the District Treasury, Thiruvannamalai, this Court, in exercise of powers under Section 482 of CrPC, deems it fit to suo motu implead the Director of the Agriculture Department, Ezhilagam, Chennai, as a party respondent to this revision case, only for the purpose of enabling him to credit the subsistence allowance to which the petitioner is entitled as a Government Servant.

53.The Manager, HDFC Bank, Thiruvannamalai Bank, who maintain the salary A/c.No.50100008256170 is also suo motu

impleaded as a party respondent in this revision case for the only purpose of allowing the Director, Agriculture Department, Government of Tamil Nadu, to credit the subsistence allowance due and payable to the petitioner/accused.

54.Mr.P.Govindarajan, learned Additional Public Prosecutor for the respondent submitted that both the Salary account in A/c.No.50100008256170 maintained in HDFC Bank, Tiruvannamalai Branch and (2)Personal account in A/c.No.00000010860298490 maintained in State Bank of India, Tiruvannamalai Branch, have been frozen by the respondent Police on 08.05.2014. Taking note of the submissions of the learned counsel for the petitioner, it could be deduced that from May 2014 to till date, the petitioner has not been paid the subsistence allowance.

55. In the light of the above, a direction is issued to the Manager, HDFC Bank, Thiruvannamalai Branch, to defreeze the salary account only to the limited extent of permitting the Director, Agriculture Department, Chennai, to deposit the subsistence allowances due and payable to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. On such deposit, the petitioner is also permitted to move appropriate application before the learned XI Metropolitan Magistrate, Saidapet, Chennai, to permit him to get his salary/subsistence allowance from the Salary account in A/c.No.50100008256170 maintained in HDFC Bank, Tiruvannamalai Branch. Directions issued to defreeze the salary account is only to a limited extent and shall not be extended to other transactions made by the petitioner, prior to 08.05.2014.

With the above directions, this Criminal Revision Case is disposed of.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mps

To

1.The XI Metropolitan Magistrate,
Saidapet, Chennai.

2.The Inspector of Police,
CCB Team-I,
Vepery, Chennai-600 007.

3.The Director,
Agricultural Department,
Ezhilagam, Chennai.

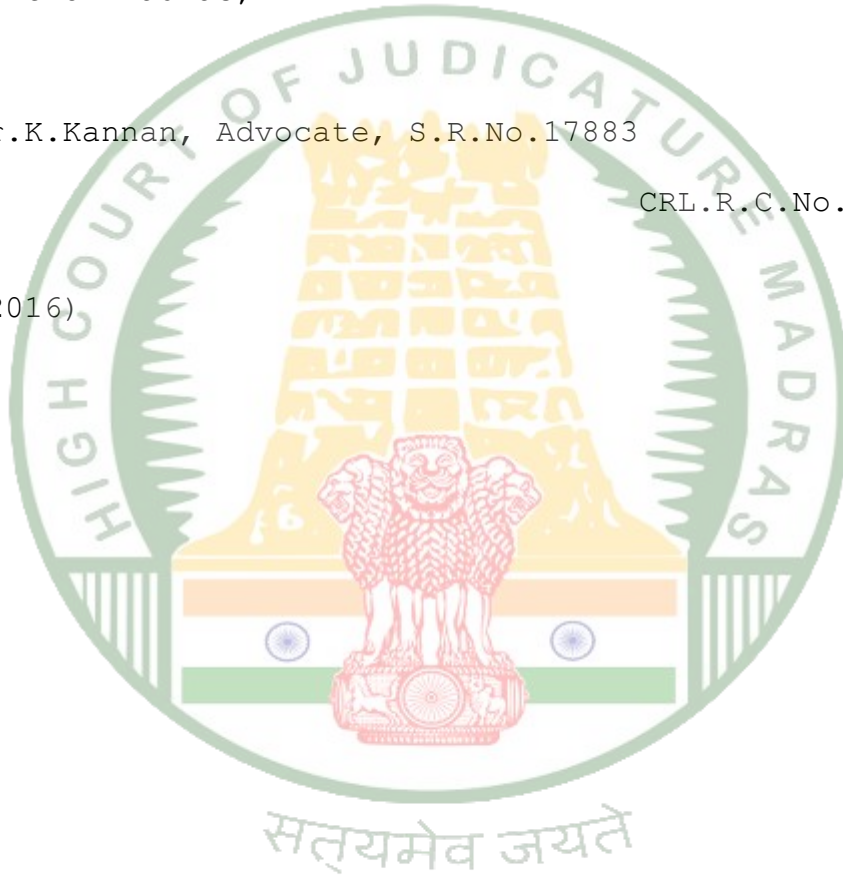
4.The Manager,
HDFC Bank,
Thiruvannamalai Branch,
Thiruvannamalai.

5.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.K.Kannan, Advocate, S.R.No.17883

CRL.R.C.No.265 of 2015

KSJ(CO)
CA(17/02/2016)



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