CHAPTER – V
SPECIAL LEAVES TO APPEAL IN CRIMINAL CASES : THE JUDICIAL APPROACH

The post independence era ushered the Indian populace into ecstasy wherein the Indian desired to make India into a dream India. It was hoped that there will not be implementation of Draconian laws, nor the trampling of rights of people and everybody will enjoy and flourish in an atmosphere of harmony and liberation. The same zeal was exhibited in the power corridors of the State.

The Constitution makers exhibited a cautious approach on account of the experience of the colonial rule and therefore armoured the judicial wing of the State with extraordinary powers.

Indeed the Supreme Court of India has given wide power to protect and preserve democratic edifice under constitutional scheme but the special leave to appeal is the distinguished potent weapon in its armoury to resist injustice and to deliver justice. This power of the Supreme Court of India is discretionary in nature and judiciary has exhibited utmost self restrain in the exercise of discretionary power and has laid down certain principles for the exercise of the same. The same stance can be highlighted by the analysis of significant judgments pronounced by the apex court after the independence of India.

Scope and extent:

In Pritam Singh v .The State\(^1\), a conflict arose between Buta Singh and Pritam Singh which resulted in uncompromising situations due to which Pritam Singh shot Buta Singh and soon he died. Pritam Singh (appellant) was tried in the Session Court and Sessions Court gave its verdict in favour of the prosecution. On this, an appeal was filed in High Court by the appellant (Pritam Singh) and the High Court came to the same conclusion holding that the case had been proved beyond reasonable doubt.

Thereafter, the appellant obtained special leave to appeal to Supreme Court and on hearing the arguments, the Supreme Court dismissed the appeal.

The criteria laid down by the Supreme Court for admitting the special leave petition are:

\(^1\) AIR 1950 SC 169
i) The Supreme Court is not an ordinary court of criminal appeal so it will not allow the facts to be reopened.

ii) The Supreme Court has rebutted the assumption that once an appeal has been admitted by special leave, the appellant can raise any point.

iii) Article 136 gives wide discretionary power which is to be exercised sparingly where special circumstances are shown to exist.

iv) Article 136 provides wide discretionary power which is to be exercised in exceptional cases where substantial and grave injustice has been done.

v) It is also taken into consideration where story of the prosecution is neither incredible nor improbable and is not supported by proper witnesses and relied by courts below then Supreme Court would not constitute itself into a third court of fact.

vi) Article 136 is much wider and appeal can lie from any judgment, order, decree or sentence from any court or tribunal in the territory of India.

vii) A uniform standard should be followed by the Supreme Court in granting special leave.

viii) The Supreme Court can grant special leave in civil case, in criminal cases, in income tax cases, in cases which come up before different kinds of tribunals and in a variety of cases.

Further in Janardhan Reddy v. State, concerning the scope of Article 136, the apex court pointed out that prima facie, every legislation is prospective and even without the use of the word ‘hereafter’, the language of Article 136 conveys the same meaning.

Furthermore, the assumption of jurisdiction which is not provided by clear words of Article 136 of the Constitution will tantamount to legislation making by the Supreme Court.

---

2 AIR 1951 SC 124
The principles laid down in Pritam Singh’s case were again followed in *Sadhu Singh Harnam Singh v. The State of Pepsu*[^3], where a case was filed before Additional District Magistrate wherein one person died of a gun shot in a party. The Additional District Judge held the accused guilty under section 304-A, IPC and did not commit the case to the sessions court as he is of the opinion that no prima-facie case of murder is made out on the bases of FIR and on the statements of witnesses. Against this order revisional applications was filed before High Court which set aside the orders of the Additional District Magistrate convicting the accused under section 304-A as well as order of discharging the accused under section 302, IPC. The High Court remanded the case back to the Additional District Magistrate for proper framing of charge and commission of case to the sessions court for trial. The Learned Sessions Judge held the accused guilty under section 302, IPC.

On appeal the conviction of the accused was maintained by High Court. Against this decision, a special leave petition was filed before Supreme Court which opined that the accused is guilty under section 304-A and not under section 302, IPC as there is discrepancy between FIR as well as the statements of informants. Moreover, nobody has seen the accused aiming at the deceased, therefore there was no element of intention to kill. The court opined that the case falls in the exceptional cases as the lower courts were in error in appreciating the evidence.

The court quoted with approval the case of *Pritam Singh v. State*[^4] that it is well established that this court does not by special leave convert itself into a court to review evidence for a third time. Where, however, the court below fails in apprehending the true effect of a material change in the versions given by the witnesses immediately after the occurrence and the narrative at the trial with respect to the nature and character of the offence, it seems to us that in such a situation, it would not be right for this court to affirm such a decision when it occasions a failure of justice.

*In Mohinder Singh v. State*[^5], an appeal by special leave before apex court from the judgment of the High Court of Punjab upholding the conviction of the appellant under section 302 and section 307 read with section 34, Penal Code

[^3]: AIR 1954 SC 271
[^4]: Supra note 1
[^5]: AIR 1953 SC 415
confirming the sentence of death passed against him by the Sessions Judge of Ferozepore.

The reasons for admitting the appeal was that gross processual injustice was done to the appellant because there were gaps in the prosecution story with regard to the weapon used as well as wounds which were not explained properly by the prosecution. Moreover, the conviction was based on the testimony of partisan witnesses and irrespective of the fact that the incident had been pointed out to have taken place in full view of persons, no independent witness was examined by the prosecution.

The court opined that it will not entertain a criminal appeal except in special and exception cases where it is manifest that by a disregard of the forms of legal process or by a violation of the principles of natural justice or otherwise substantial and grave injustice has been done.

In the State of Andhra Pradesh v. I.B.S Prasada Rao⁶, an appeal by special leave was filed against the decision of the High Court of Andhra Pradesh. When the High Court, caused the acquitted of all the accused from all the charges of cheating the bank in personation and for inducing the delivery of property, then the State filed an appeal by special leave before apex court under Article 136 of the Constitution.

The apex court while allowing the appeal opined that before conviction based solely on circumstantial evidence can be sustained, it must be such as to be conclusive of the guilt and must be incapable of explanation of any hypothesis consistent with the innocence of the accused. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must meet any and every hypothesis suggested by the accused, however extravagant and fanciful it might be. Further it is not necessary that the proved facts must in itself be decisive of the complicity of the accused or point conclusively to the guilt. The court has to consider the total cumulative effect of all the proved facts each one of which reinforces the conclusion of guilt while deciding the question of sufficiency of the evidence.

Further it was opined that the extraordinary jurisdiction of the Supreme Court under Article 136 will be exercised by the Supreme Court only when it finds a substantial and grave injustice has been done and exceptional and special

⁶ AIR 1970 SC 648
circumstances exist in the case. The apex court held that the guilt of the accused has been established beyond all the reasonable doubt, so the judgment of High Court is perverse and this proves a fit case for interference of the apex court.

In *Murtaza and Sons v. Nazir Mohd. Khan*\(^7\), an appeal by special leave was filed against the orders of the High Court of Mysore where High Court setting aside the order passed by the District Court adjudicating the respondent insolvent under the Mysore Insolvency Act. The apex court while relying on the principle laid down in *Pritam Singh’s case*\(^8\), opined that the apex court will not grant special leave unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and the case presents feature of sufficient gravity to warrant a review of the decision appealed against. Further it was opined that it was not proper for the appellant to contest all the findings of fact and raise every point in an appeal by special leave which could be raised in the High Court. Only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave to appeal is asked for. This principle is of as much significance in appeal cases as in the trial of criminal appeals.

In *Siddanna Apparao Patil v. State of Maharashtra*\(^9\), an appeal by special leave was filed against the judgment of the High Court of Bombay. The appellant was convicted under section 302 read with section 34 and sentenced to imprisonment for life by the Session Court. He preferred an appeal to High Court by using rights conferred by section 410 of the CrPC where the right to appeal is one both on a matter of fact and a matter of law. The High Court dismissed the appeal by a single word without giving any reason and also refused to grant certificate for appeal to the Supreme Court. Then the appellant preferred an appeal by special leave under Article 136 of the Constitution.

The apex court while allowing the appeal opined that under section 421 CrPC the appellate court undoubtedly has power of summary dismissal; but if the appeal raises arguable and substantial points, the High Court should give reasons for rejection of appeal. The rejection of an appeal by using only one word of dismissal causes difficulties and embarrassment in finding out the reasons which weighed with the High Court in dismissal of the appeal in limine. The High Court should not

---

\(^7\) AIR 1970 SC 668  
\(^8\) AIR 1950 SC 169  
\(^9\) AIR 1970 SC 977
summarily reject criminal appeals if they raise arguable and substantial points. Further the apex court opined that dismissal of appeal under section 410 in limine by High Court by using single word even though it raised substantial and arguable points is improper and the apex court has the power under Article 136 to remand the case for rehearing according to law.

In State of Rajasthan v. Gurcharandas Chadha\(^\text{10}\), an appeal by special leave was filed against the decision of HC allowing the revision application filed against the order of the special judge framing charges under the prevention of corruption Act and IPC. The High Court while allowing the application opined that the special judge will exclude from consideration all the statements which are self exculpatory and confessional in character. Moreover the statements in violation of section 162 and section 163 of CrPC will also be excluded.

The apex court while dismissing the appeal opined that where the High Court by virtue of the impugned order had merely given effect to a recent decision of the Supreme Court, the order may be wrong or even without jurisdiction, but there can be no doubt that it has passed a correct and just order which is in consonance with the decision of the Supreme Court and is calculated to promote the ends of justice. The court, therefore, even if the order is wrong, would in exercise of its discretionary special leave jurisdiction refrain from interfering with the order of the High Court.

In Kantilal Chandulal Mehta v. State of Maharashtra\(^\text{11}\), an appeal by special leave was filed against the order of the High Court of Bombay. Where the high court allowed an oral application of the respondent for amending the charge framed by the magistrate as it was contended by the respondent that the magistrate had framed charges only for the entrustment of the moneys and not for the goods that had also been entrusted to him. The High Court allowed the amendment in the interest of justice. Against this decision, the appellant filed an appeal by special leave under Article 136 of the Constitution.

The apex court while dismissing the appeal opined that the criminal procedure code gives ample power to the courts to alter or amend a charge whether by the trial court or by the appellate court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about

\(^{10}\) AIR 1979 Sc 1895  
\(^{11}\) AIR 1970 SC 359
that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him. The apex court held that what the appellate court did was to amend the charge and remand the case, but did not intent nor did it direct a new trial but only an opportunity was given to the accused to safeguard himself against an prejudice by giving him an opportunity to recall any witness and advice any evidence on his behalf. The whole transaction of misappropriation of money and misappropriation of goods was one and indivisible and no prejudice could be said to have been caused to the accused by the amendment of the charge so as to include misappropriation of goods. Further it was opined that the Supreme Court would not interfere with the judicial exercise of discretion of the judge in framing the charge and in giving the accused an opportunity to adduce fresh evidence on his behalf. If no objection could be taken to the trial court in the framing of original charge, then no such objection can be taken before the apex court in an appeal by special leave.

In Subedar v. The State of U.P.12, an appeal by special leave was filed against the decision of the High Court of Allahabad by which the High Court held the appellant guilty under section 396 IPC for committing murder in the course of dacoity read with section 109 for abetment. The appellant against this decision filed an appeal by special leave under Article 136 of the constitution.

The apex court on the analysis of the case observed that though there was better enmity between the parties in regard to property but there was no material on record to held the appellant guilty. Further, the FIR lodged by the appellant does not seem to be lodged with the object of misleading the police as there is nothing in the contents of report to draw this inference. Moreover, the testimony of the witnesses seems to be too infirm to carry conviction to their deposition. There is no other material on the record which held the appellant guilty. Further, the apex court opined normally it does not proceed to review and reappraise for itself the evidence in criminal cases when hearing appeals under Article 136. But when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or mistake in the reading of evidence then it is not only empowered but is expected to interfere to promote the cause of justice. Article 136 is worded in very wide terms and the power conferred by it is not hedged in any technical hurdles. This overriding

---
12 AIR 1971 SC 125
and exceptional power has been vestos in the apex court to be exercised sparingly and only in furtherance of the cause of justice.

In Union of India v. Lt. Col. G.K. Apte\textsuperscript{13}, an appeal by special leave was filed against the decision of the Assam and Nagaland HC for the offence of criminal misconduct in the discharge of official duty, by corrupt or illegal means or by otherwise abusing position as a public servant. The special judge framed charges against the respondent (Apte) under section 120-B, IPC read with sec. 5(2) and sec. 5(1) (d) of the prevention of corruption Act and held the respondent guilty. On appeal before High Court, the High Court held that the FIR, the chargesheet and other material on record did not disclose that any pecuniary advantage was obtained by the respondent. The High Court further observed that the ingredient of the offence had not been established under the prevention of corruption Act and the charge for the offence of criminal conspiracy under section 120-B could only be framed if there was any prima facie proof of agreement to do or cause to be done an illegal act or an act which was not illegal by illegal means. The entire material on the record did not show any prima facie commission of offence by the respondent. So the High Court quashed the charges against the respondent. Against this decision, the appellant filed an appeal by special leave under Article 136 of the constitution.

The apex court while dismissing the appeal opined that where in exercise of its power under section 561-A of CrPC, the High Court has quashed the charges and the proceedings, the Supreme Court will not interfere if it feels that it will not promote the interest of justice to set aside the orders of the High Court, even assuming that High Court was somewhat wrong in quashing the charges and the proceedings, the Supreme Court will not interfere if it feels that it will not promote the interest of justice to set aside the orders of High Court, even assuming that High Court was somewhat wrong in quashing the charges and the proceedings. The power of the Supreme Court under Article 136 is of an exceptional and overriding nature and has to be exercised sparingly, the paramount consideration always being the perpetuation of justice.

In Jagdev Singh v. State of Punjab\textsuperscript{14}, an appeal by special leave was filed against the decision of the High Court of Punjab and Haryana where the sentence passed by the session judge under section 307 read with section 34, IPC was reduced.

\textsuperscript{13} AIR 1971 SC 1533
\textsuperscript{14} AIR 1973 SC 2427
from four years rigorous imprisonment and converted into one under section 326, IPC and sentence was reduced to two years rigorous imprisonment by the High Court. Then the appellant contended that the provisions of section 4 and section 6 of the Probation of Offenders Act is available to him as the Act is intended to carry out the object of keeping away from unhealthy atmosphere of the jail.

The two judges bench deciding the fate of the appeal while dismissing the appeal opined that the discretionary power of the court under Article 136 of the constitution is intended to be exercised to set right grave injustice and if a case for such interference is made out even at this stage, the limitation imposed while granting special leave should not be held as bar to the power of the court to set right such grave injustice. Further the court opined that while granting special leave for appeal, the scope of the appeal was limited after considering the whole case to the applicability of the probation of offenders Act. to the case, the scope of the appeal will be confined to the limitations specified in the order granting special leave and will not be enlarged for considering the correctness of the conviction for the particular offence. Moreover, it was opined that the appellant cannot be allowed to raise the question of benefit of the probation of offenders Act for the first time in an appeal by special leave before the apex court.

_In Ram Jag v. The State of U.P._15, an appeal by special leave was filed against the order of the High Court of Allahabad causing the conviction of the appellant under section 302 read with section 149 of IPC on the basis of the statement of three witnesses.

The two judges bench deciding the fate of the appeal while allowing the appeal opined that the jurisdiction of Supreme Court under Article 136, though couched in wide terms, is exercised in exceptional cases where the High Court has disregarded the guidelines set by the Supreme Court or by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done or where the finding is such that it shocks the conscience of the court. The code of criminal procedure makes no distinction between the powers of the appellate court in regard to appeals against conviction or acquittal. The High Court must have regard to the fundamental principles that unless the statue provides contrary, there is a presumption of

15 AIR 1974 SC 606
innocence in favour of the accused and that the accused is entitled to the benefit of the doubt. Due regards to the views of the trial court as to the crediability of witness in matters resting on pure appreciation of evidence and the studied slowness of the appellate court in disturbing a finding of fact arrived after seeing and hearing the witnesses, are well known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction. It is implicit that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed. Further it was observed that if after applying these principles, not by their mechanical recitation in the judgment, the High Court has reached the conclusion that the order of acquittal ought to be reversed, the apex court will not reappraise the evidence in appeals brought before it under Article 136 of the constitution.

The Duli Chand v. Delhi Administration\(^\text{16}\), an appeal by special leave was filed against the order of the High Court of Delhi rejecting the Revision application and confirming the sentence passed by session judge under section 304-A for causing the death by rash or negligent driving. Against this decision, the appellant preferred an appeal by special leave under Article. 136 of the Constitution before the apex court.

The apex court while dismissing the appeal opined that both the learned Magistrate at original stage and the learned addl. Sessions judge on an assessment of the evidence arrived at a concurrent finding that the death of the deceased was caused by negligent driving by the appellant. Although the jurisdiction of High Court in a criminal revision application is severely restricted and it cannot embark upon a re-appreciation of evidence but even so the High Court reviewed the evidence in order to satisfy itself that the finding was not perverse, so there seems no reason for interference of Supreme Court under Article 136 of the Constitution. Further, it was opined that the Supreme Court is not a regular court of Appeal to which every judgment of the High Court is criminal case may be brought up for scrutinizing its correctness. It is not the practice of the Supreme Court to re-appreciate the evidence for the purpose of examining whether this finding of fact recorded by the High Court and the subordinate courts is correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and

\(^{16}\) AIR 1975 SC 1960
serious miscarriage of justice that the court under Article 136 of the Constitution would interfere with the finding of fact. Where not only is the appreciation of evidence by the three courts, viz., the Magistrate, the appellate court and the High Court was eminently correct but there were certain tell take circumstances which clearly supported the findings of fact, there is no reason which justify the interference by the apex court.

In Arunachalam v. P.S.R. Setharathnam\textsuperscript{17}, an appeal by special leave was filed against the decision of High Court acquitting the respondent of the charges of murder under section 302 read with section 149, IPC, by the brother of the deceased and not by State. The evidence of the direct witnesses was rejected by High Court on the ground that they were interested witnesses. Moreover dying declaration was also rejected on the ground that it did not explain the serious injury.

The apex court while allowing the appeal opined that Article 136 invests the Supreme Court with a plenitude of plenary appellate power over all courts and Tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the court to set limits to itself within which to exercise such power. It is now the well-established practice of the Supreme Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But, within the restrictions imposed by itself. The Supreme Court has undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted "perversely or otherwise improperly". In dealing with an appeal against acquittal, the court will, naturally, keep in mind the presumption of innocence in favour of the accused. The court will not abjure its duty to prevent violent miscarriage of justice by hesitating to interfere where interference is imperative. Furthermore the court observed that on facts and circumstance, the High Court was entirely wrong and wholly unjustified in rejecting the testimony of direct witnesses and the dying declaration on the irrelevant consideration that they did not explain the injury found on the person.

\textsuperscript{17} AIR 1979 SC 1284
In *P.S.R Sadhanantham v. Arunachalam*\(^ {18} \), the apex court while discussing the fate of appeal filed by a private citizen opined that the Supreme Court has jurisdiction to entertain appeals against judgment of acquittal by the High Court at the instance of private parties. Thus wherein a murder case an appeal against acquittal was not filed by State, a brother of the deceased, a private citizen who is neither a complainant, nor a first informant could invoke the special power under Article 136 for leave to appeal against acquittal and the same would not violate Article 21 of the Constitution.

V.R. Krishna Iyer, J., on behalf of majority opined that there is no statutory provision which creates a right of appeal in favour of a stranger enabling him to challenge an appeal in favour of a stranger enabling him to challenge an acquittal by the High Court. Article 136 does not confer a right of appeal on a party but it confers a wide discretionary power in the Supreme Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the court and it spells by implication, a fair procedure contemplated by Article 21. Article 136 is a special jurisdiction. It is residuary power and is extraordinary in its amplitude. It is manifest that Article 136 is of composite structure, is power-cum-procedure- power in that it vests jurisdiction in the Supreme Court, and procedure in that it spells a mode of hearing.

Further it was opined that that in built prescription of power and procedure in terms of Article 136 meets the demands of Article 21. When a motion is made for leave to appeal against an acquittal, Supreme Court appreciates the gravity of the peril to personal liberty involved in that proceeding. It is fair to assume that while considering the petition under Article 136 for leave to appeal against acquittal, the court will pay attention to the question of liberty, the person who seeks such leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave.

Pathak, J., in minority opined that the jurisdiction conferred by Article 136 seeks to confer on the apex court the widest conceivable range of judicial power, making it perhaps among the most powerful courts in the world. Nonetheless there is a limitation in built into the jurisdiction of the court and flows from the nature and

---

\(^ {18} \) AIR 1980 SC 856
character of the case intended to be brought before the court. It is limitation which requires compliance despite the apparent plenitude of power vested in the court.

Further it was opined that crime is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual. The notion of crime as a threat to the whole community is the material counter part of the formal rule that the state alone is master of criminal prosecution. No private person has a direct interest in a criminal proceeding, although exception may be made by the statute in certain cases. It is common knowledge that a criminal prosecution is not intended for the private satisfaction of a personal vendetta or revenge. The law commission of India also expressed itself against the general durability to encourage appeals against acquittal.

In Union of India v. M.P. Singh, a dispute arose amongst officers in class 'A' of Indian Defence Estates service who were promoted from class 'B' of Military and cantonment service where they were working as Assistant Military Estates Officers (AMEO) and Assistant Military Estates Officers (Technical) (AMEOT). AMEOS were included in class II of Military Land and Cantonment service (class I and II) Rules, 1951 for the first time in 1964 but AMEOT were neither included in the class II of 1951 Rules nor any other rule was applied to them. The Central Administrative Tribunal by its order included every AMEOT whether appointed under 1968 Rules or even prior to it, all those become member of service to whom 1951 Rules applied. An automatic consequence of it was that seniority of AMEOT was to be determined under rule 11 of 1951 Rules on length of regular service in the cadre.

The union of India filed special leave petition against the order of the Tribunal not because of any injustice to AMEO as that has been take care of by Tribunal by protecting all those who are working but because it works out seniority of AMEOT from back date it may have to pay substantial amount and creation of supernumerary put may further entail cost.

The apex court while dismissing the appeal opined that justice is alert to differences and sensitive to discrimination. It cannot be measured in money. A government of a welfare state has gruelling task of being fair and just and so justice oriented in its approach and outlook. Mere rectification of its mistakes or omissions

39 AIR 1990 SC 1098
by courts and Tribunals should not prompt parties or it to approach the apex court by special leave merely for taking a chance or to protect some vested interest except for sake of justice or for laying down law for benefit of court and its guidance.

In Municipal Board, Pratabgarh v. Mahendra Singh Chawla\(^{20}\) an appeal by special leave was filed against the decision of High Court of the Rajasthan. The respondent who was appointed by the appellant in 1956 was prosecuted and convicted for offence under section 161, IPC to accept illegal gratification. During pendency of prosecution, he was suspended from service but in 1963 was given fresh appointment on the minimum salary. The Rajasthan Govt. directed the Municipal Board to terminate his service as it was alleged that his appointment was in violation of state of civil Services rules and this resulted in his termination of services in 1965. Against this, the respondent filed a suit in the court of civil judge which was dismissed. On appeal before High Court, it was held that the appointment given in 1963 was in substance reinstatement after revoking order of suspension and that as he was a permanent servant the nature of the order would not change his status.

In appeal by special leave, the apex court opined that the view taken by High Court was not in conformity with the law. An employee of a Municipal Board committed the offence of accepting illegal gratification involving moral turpitude is liable to be dismissed and no Inquiry would also be necessary before imposing the penalty of dismissal from service. Further it was opined that it was improper for the Municipal Board to give fresh appointment to a person who by abuse of his office had attempted to obtain illegal gratification. So, it was held that this fresh appointment would not clothe the respondent with the status of a permanent employee.

Furthermore, it was opined that the jurisdiction of the Supreme Court under Article 136 of the Constitution is discretionary and, therefore, this court is not bound to tilt at every approach found not in consonance or conformity with law but the interference may have a deleterious effect on the parties involved in the dispute. Having performed that duty under Article 136, it is obligatory on this court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. While administering law, it is to be tempered with

---

\(^{20}\) AIR 1982 SC 1493
equity and if the equitable situation demands after setting right the legal formulations not to take to its logical end, the Supreme Court would be failing in its duty if it does not notice equitable considerations and would the final order in exercise of its extraordinary jurisdiction. Any other approach, would render the Supreme Court a normal court of appeal which it is not.

*In Delhi Judicial Service Association, Hazari Court v. State of Gujarat,*\(^{21}\) the apex court opined that Article 136 vests supreme court wide powers to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India except a court or tribunal constituted by or under any law relating to Armed Forces. The court’s appellate power under Article 136 is plenary, it may entertain any appeal by granting special leave against any order made by any magistrate, Tribunal or any other subordinate court. The width and amplitude of the power is not affected by the practice and procedure followed by the Supreme Court in insisting that before invoking the jurisdiction of the Supreme Court under Article 136 of the Constitution, the aggrieved party must exhaust remedy available under the law before the appellate authority or the High Court. Self imposed restrictions by the Supreme Court do not divest it of its wide powers to entertain any appeal against any order or judgment passed by any court or tribunal in the country without exhausting alternative remedy before the appellate authority or the High Court. The power of the Supreme Court under Article 136 is unaffected by Articles 132, 133, 134 and 134 (A) in view of the expression ‘notwithstanding anything in this chapter’ occurring in Article 136.

*In S. G Nain v. Union of India,*\(^ {22}\) an appeal by special leave was filed against the order of the High Court dismissing the revision application in limine. The appellant was tried for misappropriation of sugar before metropolitan magistrate and on enquiry offence of criminal breach of trust under section 409, IPC was also added. The appellant contended that necessary sanction under section 197 of CrPC was not obtained, so persecution proceedings should be quashed.

The apex court while quashing the complaint against appellant opined that the prosecution against the appellant is pending for almost fourteen years. Apart from mental agony, it must have adversely affected him in his service career.

\(^{21}\) *AIR 1991 SC 2176*

\(^{22}\) *AIR 1992 SC 603*
Moreover it would be their waste of public time and money apart from causing harassment to the appellant.

*In M/S Munshi Ram RamNiwas v. Collector, Food and Supplies Department*,23 an appeal by special leave was filed against the order of the High Court dismissing the writ petition in limine. During the raid in the business premises of the appellant 80 quintals of Khandsari sugar was found without license whereas only two quintals of sugar containing more than 90% sucrose was allowed to be kept without license. The two samples were taken from three varieties of sugar for analysis by the public analyst and on the report of public analyst, collector was satisfied that 80 quintals of sugar were found in the premises without license and thus passed an order of confiscation as it was enough material on the record, to show that there was violation of licensing order.

The apex court while allowing the confiscation passed by the collector dismissed the appeal considering the fact that there was no effective progress in the case except filing of challan and the state is not serious in pursuing the criminal proceedings as more than 10 years have already elapsed to the alleged commission of the offence and it would be against the interest of justice to further continue any criminal proceedings.

*In Kunhayammed v. State of Kerala*,24 the state of Kerala enacted the Kerala Private Forests (vesting and Assignment) Act, 1971 to provide for the vesting in the Government of private forests in the state of Kerala and for the assignment thereof agriculturists and agricultural labourers for cultivation. The act was given a retrospective operation. The matter was referred to the Forest land to consider whether the land is a private forest or whether such land is vested in the Government. The tribunal held that the land did not vest in the government. The appeal by the state of Kerala before Kerala High Court was dismissed. Then state preferred an appeal by special leave against such order which was also dismissed by a non-speaking order. Then by the amendment of the aforesaid act, the state of Kerala filed an application for review before the High Court which was allowed. Against this order of the High Court, the appellant filed an appeal by special leave

---

23 AIR 1993 SC 1203
24 AIR 2000 SC 2587. See also Aubhadra Rani Pal Choudhary v. SheirlyWeigal Nain, AIR 2005 SC 3011; it was opined that dismissal in limine does not amount to upholding of law propounded in decision sought to appealed against.
contending such application of review could not be entertained as the order of the High Court ceased to exist on affirmation by the apex court.

The apex while dismissing the appeal opined that the review petition was maintainable. It could not be said that the order of High Court merged with the order of Supreme Court dismissing the SLP and was therefore not available to be reviewed. An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case, it does not attract the doctrine of merger. Under Article 136 of the Constitution, the Supreme Court may reverse, modify or affirm the judgment, decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

Further with regard to the question of the legal implications and the impact of the order rejecting a petition seeking grant of special leave under Article 136 of the Constitution of India, the apex court opined that the appellate jurisdiction exercised by the Supreme Court is conferred by Articles 132 to 136 of the Constitution. Articles 132, 133 and 134 provide when an appeal there under would lie and when not. Article 136 of the Constitution is a special jurisdiction conferred on the Supreme Court which is sweeping in its nature. It is a residuary power in the sense that it confers an appellate jurisdiction on the Supreme Court subject to the special leave being granted in such matters as may not be covered by the proceeding article. It is an overriding provision conferring a special jurisdiction providing for invoking of the appellate jurisdiction of the Supreme Court not fettered by the sweep of the preceeding Articles. Article 136 opens with a non-obstante clause and conveys a message that even in the field covered by the preceding articles, jurisdiction conferred by Article 136 is available to be exercised in an appropriate case. It is an untrammelled reservoir of power incapable of being confined to definitional bounds, the discretion conferred on the Supreme Court being subjected to only one limitation, that is, the wisdom and good sense or sense of justice of the judges. No right of appeal is conferred upon any party, only a discretion is vested in Supreme Court to interfere by granting leave to an applicant to enter in its appellate jurisdiction not open otherwise and as of right. The exercise of jurisdiction conferred on the apex court by Article 136 of the Constitution consists of two steps: (i) granting special leave to appeal; and (ii) hearing the appeal. This distinction is
clearly demonstrated by the provisions of order XVI of the Supreme Court Rules framed in exercise of the power conferred by Article 145 of the Constitution. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) lack of locus standi to file the petition, (iv) the question raised by the petitioner for consideration by the apex court being not fit for consideration and so on. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are merits of the special leave petition only and thus neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order.

*In Zahira Habibullah H. Sheikh v. State of Gujarat,* 25 popularly known as ‘Best Bakery Case’, a ghastly incident took place in Best Bakery where a mob in retaliatory cause caused the killing of several persons by putting best bakery on fire. Before the trial court, eye-witnesses resiled from the statement and faulty investigation resulted the acquittal of the accused persons. On this, State of Gujarat filed an appeal before High Court which was also dismissed. Moreover application under section 391 Cr. P.C for adducing additional evidence and for retrial was also rejected. Then the appellant appeared before National Human Rights Commission (NHRC) and deposed that she was threatened by powerful politicians not to state anything. Thereafter NHRC, appellant and another organization, Citizens for Justice and Peace filed SLP challenging the judgment of acquittal affirmed by the High Court.

It was alleged by the appellants that the trial court as well as the High Court did not made any afford to ascertain why a large number of eye-witnesses has turned hostile. It was also alleged that the total prosecution was faulty and manipulated and no step was taken to protect to star witnesses. Furthermore, the prosecution dropped certain witnesses on the ground that they are untraceable or of unsound mind and no effect was made by the court to ascertain the physical presence as well as the mental capacity of the witnesses. Even the witnesses were examined at the request to public prosecutor prior to the date fixed for their examination.

---

It was also alleged that the High Court did not exercise its powers fairly as it refused to allow additional evidence and examined only the record of the case before it in exercising its appellate powers.

On behalf of the respondent, it was pleaded that the courts have acted fairly and everything has been decided by the courts properly on merits. The High Court after analyzing the evidence correctly come to the conclusion that police manipulated in getting false witnesses to rope in wrong people as the accused the approach of the High Court in giving priority to the evidence on record is the right approach. The court has analysed the evidence on record thread-bare and has rightly come to the conclusion that there was no necessity for additional evidence.

The apex court while allowing the appeal opined that if the state’s machinery fails to protect citizen’s life, liberties and property and the investigation is conducted in a manner to help the accused persons, it is but appropriate that the apex court should step in to prevent undue miscarriage of justice that is perpetrated upon the victims and their family members. The High Court had failed to view the true scope and ambit of section 391. No proper reason was given by the High Court for not appreciating the additional evidence. The primary object of section 391 is the prevention of a guilty man’s escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongly accused. Where the court through some careless or ignorance has omitted to record the circumstances essential to elucidation to truth, the exercise of powers under section 391 is desirable. Thus keeping in view the peculiar circumstances of the case, and the ample evidence on record, it is directed that retrial shall be done by a court under the jurisdiction of the Bombay High Court.

Further with regard to irresponsible allegations and remarks made by the High Court about persons / constitutional bodies like NHRC, it was opined the decency, decorum and judicial discipline should be maintained. The proceedings of court normally reflect true state of affairs, therefore, it was not warranted of the High Court to refer to certain objectionable submissions in its judgment and then state that no serious note was taken of the submissions.

In this case, the case highlighted the role of judiciary in connection with requirement of fair trial. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a
criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active.

**In Zahira Habibullah Sheikh v. State of Gujarat**,\(^{26}\) two applications were filed by the applicant – State for directions and modification of the judgment and order in **Zahira Habibullah Sheikh v. State of Gujarat**,\(^{27}\) where the direction was given for retrial of the case under the jurisdiction of Bombay High Court as it was contended that such a direction could only be given on a petition filed under section 406 Cr. PC and not otherwise.

The apex court while dismissing the application opined that the apex court as the appellant court dealing with the judgments of the trial court and the appellate court, exercising plenary powers under Article 136 of constitution, while directing retrial has ample jurisdiction to fix the place or the court which should undertake such exercise. Keeping in view the needs of justice in a given case with the object of ensuring real, substantial, due and proper justice and that too as an ineirtable and necessary corollary of the decision to set aside the judgment of the courts below.

Further it was opined that when the appeals have been directed to be posted before Supreme Court to hear the appeals, the Supreme Court as the appellate court exercising powers under Article 136 of the Constitution is entitled to deal with the appeals as warranted, necessitated and as they deserved in law, and it is pernicious for anyone to think or expect, as to how the court should dispose of it, as some would wish or desire partially or in a perfunctory manner.

**In Ramakant Rai v. Madan Rai**,\(^{28}\) the two judge bench while deciding the fate of appeal filed by a private party against the acquittal of the accused of the charges under section 302 read with section 34, IPC by the impugned order of Allahabad High Court, opined that where an accused in acquitted by High Court and o appeal against acquittal is filed by a state, a private party can file appeal under Article 136 against the judgment of the High Court acquitting the accused. The power under Article 136 is a plenary power, exercisable outside the purview of ordinary law to meet the pressing demands of justice. Article 136 neither confers on anyone the right to invoke the jurisdiction of Supreme Court nor inhibits anyone from invoking the

\(^{26}\) (2004) 5 SCC 353; See also AIR 2004 3467

\(^{27}\) (2004) 4 SCC 158

\(^{28}\) AIR 2004 SC 77
court’s jurisdiction. The exercise of the power of Supreme Court is not circumscribed by any limitation as to who may invoke it.

The apex court while allowing the appeal opined that where the appellate court reversed the judgment of trial court, it must elaborately deal with various aspects. The judgment of High Court was of unsatisfactory nature, unreasoned one and there are certain inherent improbabilities and incongruities in the judgment, so the judgment of trial court is restored interest and elect all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering or cheering and disruption the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of courts is obstructive of the course of justice and must surely be stamped out.

If this vice is peculiar to a particular case and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, irritating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer.

If the justice system grinds to a halt through physical maneuvers or sound and fury of the senseless populace, the rule of law runs aground. Manageable solutions must not sweep this court off its feet into granting an easy transfer but uncontrollable or perilous deterioration will surely persuade us to shift the venue.
The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.

**Judicial or Quasi judicial or a purely Administrative or Executive Act**

In *Virender Kumar Satyawadi v. The State of Punjab*, an appeal by special leave was filed before the Supreme Court concerning an election matter. An application was filled before the District Magistrate against an elected member on the ground that the member has falsely or wrongly declared his status of schedule caste. On enquiry, the District Magistrate found that a prima facie case is made out and therefore filed a case before a 1st class Magistrate. Against this order, the appellant preferred an appeal to the court of sessions which dismissed the appeal on the pretext that Returning Officer is not a court. The appellant took the matter before the High Court which decided that the Returning Officer was a court but decline to interfere on the merits of the case.

The apex court dismissing the appeal opined that in those cases where legislature does not provide for an appeal, the person can claim special appeal. The court opined that an authority may be classified as a court if it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. Decision in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to advise evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question wherefores arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to decided is whether having regard to the provisions of the Act, it possesses all the attributes of a court. Henceforth, it opined that though the power of the Returning Officer undoubtedly judicial but is not to act judicially in discharging it as required in a court.

In *Kuldip Singh v. State of Punjab*, the apex court while allowing the special leave opined that subordination has been given a special meaning in section 476-A. It is not any superior court that has jurisdiction, nor yet the court to which the ‘former court’ is subordinate for, what might may be termed most general purpose, but only the court to which it is subordinate within the meaning of section

---

29 AIR 1956 SC 153
30 AIR 1956 SC 391
In order to determine whether a particular court is subordinate to another court within the meaning of section 195 (3), the first question to be asked is whether any decrees, orders or sentences of the original court are appealable at all. If they are not, and the court is a civil court, then under section 195(3), the appeal against the order making or refusing to make a complaint will be to the principal court of ordinary original civil jurisdiction. If however, appeals from its various decrees and orders lie to different courts, then it has to been seen to which of them they ‘ordinarily’ lies and select the one of the lowest grade from among them. In determining the court or courts to which an appeal will ordinarily lie, it has to be seen which court or courts entertain appeals from that class of tribunals in the ordinary way apart from special notification or laws that left the matter out of the general class.

**Re-appreciation of evidence**

In ChellorMankkal Narayan ItlirviNambudiri v. State of Travancorecochin, a five judge bench of the Supreme Court allowing the SLP against the judgment of the High Court reversing an acquittal order passed by trial court opined that when the High Court is hearing an appeal from an order of acquittal, it enjoys the full power to review the entire evidence on the record and reach on its own conclusion that the acquittal order should be set aside while exercising these powers, the High Court should and will always give proper weight and consideration to such matters as:

i. the views of the trial court as to the credibility of the witnesses;

ii. presumption of innocence certainly not weakened by the fact that he had been acquitted at the trial;

iii. the right of the accused to the benefit of any doubt;

iv. the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

Furthermore, since in this case, the accused had undergone the sentence during the pendency of appeal, therefore, the court declined to refer the case for retrial.

---

31 AIR 1953 SC 478
In Pritam Singh v. State of Punjab, the apex court while dismissing the appeal opined that where the witnesses on a certain point are, after due consideration of the circumstances and the criticisms levelled against their evidence, believed by the both the courts below, it is not for the Supreme Court to reweigh or to reappreciate their evidence and come to a contrary conclusion. Hearing the appeal on special leave, they should nightly interfere with the appreciation of the evidence by the courts below, unless there are compelling reasons to do so.

In Sukha v. State of Rajasthan, there was riot among people belonging to different castes as a result of which four persons were killed. As a result of this, thirty six persons were committed for a trial. Out of these 36 persons, two persons were died and remaining all were charged under section 325/149, IPC and among them eleven were also charged under section 302/149. But when the case came before sessions judge, he acquitted 25 persons of the charge under sections 325/149 and convicted nine. The eleven accused who were charged under sections 302/149 were all acquitted of this charge but nine of them were convicted under sections 325/149. Then both the state and the nine convicts appealed before the High Court but the High Court dismissed the appeal of the convicts and allow the appeal of the state and therefore the sentence passed by the sessions judge was altered and they were punished under sections 302/149 and the lesser sentence of transportation was given to all of them.

Then on dismissal of appeal of all the convicts, a special leave petition was filed by them before the Supreme Court which was dismissed by apex court as apex court opined that although there is confessiion regarding common object and common intention between session’s judge and High Court but that has not caused any prejudice. Furthermore, it was stated that if the two courts of facts are satisfied that an unlawful object developed after the attack had started and there are circumstances from which the courts of facts would deduce such an inference, there is no reason for the Supreme Court to interfere. Moreover, it was also contented by the apex court that is cannot reassess the evidence in special leave as while acting under article 136, it is not a court of appeal and hence cannot review the evidence. The apex court also opined that it will be slow to entertain questions of prejudice when details are not furnished. The fact that the objection regarding the testimony of

---

32 AIR 1956 SC 415
33 AIR 1956 SC 513
witness is not taken at an early stage will be taken into account but the apex court
decline to raise this issue.

In Ramjanam Singh v. The State of Bihar,\textsuperscript{34} a special leave petition was filed
before the apex court against the reversal judgment of High Court convicting the
acquitted appellant in case of corruption. The appellant, (Ramjanam Singh) who was
Sub. Inspector of Dinapore Police State was handling two cases of dacoity which
fall in the jurisdiction of Dinapore Police Station and one which came from Khagual
Police Station. Regarding the case, one Sita Ram Dusadh was suspected and arrested
by the Sub. Inspector. During trial when the suspected was produced before Sub.
Divisional Officer, he was released on bail. The concerned officer recommended the
discharge of suspect as no evidence was gathered against the suspect as well as no
person identified him during identification parade. Before the next learning fixed by
the court in the case of dacoity after the recommendation by the officer concerned,
the suspect and his friend made a complaint to the anticorruption department that the
concerned officer is unnecessarily harassing the suspect and demanding a bribe.
There was contradiction in the statement made by the witnesses in the examination
in chief as well as cross examination. Moreover, there was no reason for the demand
of bribe as officer had already recommended the discharge of the suspect. Therefore,
the trial magistrate acquitted the appellant.

On appeal, the High Court did not appreciated the contradictions in the case
and relying on the prosecution story convicted the appellant.

The apex court after analyzing the record found favour with the judgment of
trial court and set aside the order of conviction.

It emerge out of this case that the special leave petition is allowed by the
apex court in cases where there is contradiction in the decisions of the lower courts
or where the courts have failed to properly appreciate the evidence before it.

In ChikkarangeGowda v. State of Mysore,\textsuperscript{35} an appeal by special leave was
filed in the Supreme Court against the order of Mysore High Court where the
conviction and sentence of appellants under section 148, section 302 read with
section 34 and section 149, IPC was confirmed.

In this case, the four appellants namely ChikkarangeGowda, Govindaraju,
GovidaGowda and Mathikulla were charged under section 302 read with section 34

\textsuperscript{34} AIR 1956 SC 643
\textsuperscript{35} AIR 1956 SC 731
and section 149 for the murder of PutleGowda and NanjeGowda. Appellant No. 1 was charged for murder of PutleGowda while appellant No. 2, 3, 4 for murder of NanjeGowda. Moreover all appellants were charged under section 149, IPC. The Learned Sessions Judge opined that there were sufficient reasons for appellant to be angry with PutteGowda and hence it established a motive and common object of the unlawful assembly or intention of appellants. So all the appellants were convicted under section 302 read with section 149 and section 34, no distinction as such was made by session courts with regard to the punishment to appellants. On appeal before the High Court, the High Court also did not make any distinction with regard to the fact that which of the appellants were guilty of substantive offence under section 302 and which of them are guilty under section 302 read with 5.34 and 5.149 and as such confirmed the sentence of the appellants.

On appeal by special leave, the apex court opined that it is a well settled practice of this court that except where there has been an illegality or an irregularity of procedure or a violation of the principle of natural justice, resulting in absence of fair trial or a gross miscarriage of justice, this court does not permit a third review of evidence with regard to question of fact in cases in which two courts of facts have appreciated and assessed the evidence with regard to such questions.

In this case, the apex court that there was no common intention as well as common objects for the appellant to have kill the deceased. In such a situation, each individual case needs to be determined in view of the act performed by the actors which the lower courts have failed to appreciate. Henceforth depending upon the nature of injury and blow offered, the Supreme Court held the appellant guilty of different offence and only one appellant was held guilty under section 302.

In the *State of Bihar v. Basawan Singh*,36 an appeal by special leave was filed by the state of Bihar from the judgment and order of learned Single judge of High Court of Patna revering the conviction order passed by the learned special Judge Bihar in a case of acceptance of illegal gratification the learned special judge on the basis of the evidence and the statements of the raiding party as well as other witnesses held that sub-Inspector of Police liable under section 161, IPC. The High Court ordering the acquittal opined that since all the witnesses involved in the raid

36 AIR 1958 SC 500
were either the complainants or interested witnesses, therefore in the evidence of corroboration by independent witness, their testimony cannot be relied upon.

The apex court opined that the High Court erred in its approach in appreciating the ratio of *Shiv Bahadur Singh v. State of Vindhya Pradesh*\(^{37}\) and pointed out the decision of the aforesaid case did not lay down any inflexible rule that the evidence of the witness of the raiding party must be discarded in the absence of any independent corroboration. The correct rule is this : if any of the witness are accomplices who are particepscriminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated, if they are not accomplices but are partisan or interested witness, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse consideration which must vary from case to case and in proper case, the court may even look for independent corroboration before converting the accused person. If a Magistrate put himself in the position of a partisan or interested witness, he cannot chain any higher status and must be treated as any other interested witness.

In *Mulk Raj v. The State of U.P.*,\(^{38}\) an appeal by special leave was filed before the apex court against the confirmation of death sentence under section 302, IPC and ten years rigorous imprisonment under section 394, IPC by the Divisional Bench of the High Court of Judicature at Allahabad. It was contented on behalf of the appellant on the basis of extra judicial confession as well as the evidence of witness which do not prove the appellant guilty.

The apex court while dismissing the appeal observed that the presence of appellant on the place of occurrence without any valid reason, FIR was lodged, without delay, statement of witness present on the scene, statement of doctor, a blood stained dagger, blood stained shirt that was worn by appellant, all bring home the guilt to the appellant Furthermore, the court emphasized that the extra-Judicial confession, if voluntary, can be relied upon by the court along with other evidence in courting the accused. The confession will have to be proved just like any other fact. It was further said that it is not an invariable rule that the court should not accept the evidence if not the actual words but the substance were given.

\(^{37}\) AIR 1954 SC 322

\(^{38}\) AIR 1959 SC 902
In *Balwan Singh v. Lakshmi Narain*[^39^], an appeal by special leave was filed by the appellant against the order of the High Court of Allahabad setting aside the order of Election Tribunal and declaring the election of the appellant void. The allegations against the appellant were that he or his agent had hired and procured bullock carts and tractors for conveying women electors to and from the polling station and thus was involved in corrupt practices as described in s. 123(5) of the Representation of the People Act. The Tribunal held that merely by conveying the voters and when the particulars of hiring and procuring of the vehicle were not furnished, no evidence was adduced in support of hiring or procuring, so appellant cannot be held liable. Against this decision of Elections Tribunal an appeal before High Court was filed which held the election of the appellant void and held that appellant had committed the corrupt practices of hiring a vehicle for conveying voters to the polling station. Against the order passed by the High Court, appellant preferred an appeal by special leave under Article 136 before the apex court.

The apex court while dismissing the appeal through the majority view opined that it is not the contract of hiring but the fact of hiring for conveying voters to and from the polling station is declared by section 123 (5) a corrupt practice. In considering, whether a corrupt practice described in section 123 (5) is committed, conveying of electors cannot be dissociated from the hiring of a vehicle. If particulars in support of the plea of that vehicle bring hired or procured by the candidate on his agent or by another person and being used for conveying voters to or from the polling station are set out, failure to set out particular of the contract of hiring or arrangement of procuring will not render the petition defective.

On the other hand, Sarkar J., giving a dissenting view opined that for a corrupt practice as described in section 123(5) of Representation of the People Act, 1951, provides that the contract for the hiring of the vehicle must have made. The vehicle must be hired and that there is no corrupt practice unless the hiring of the vehicle is established.

Furthermore, the contention of the appellant was that the High Court was not justified in disagreeing with the judgment of tribunal on question of appreciation of evidence. On this, the apex court opined that the apex court can grant special leave to appeal under Article 136 only if exceptional and special circumstances exist or

[^39^]: AIR 1960 SC 770
where substantial and gave injustice has been done. The special leave to appeal 
under Article 136 will not be granted on a plea of error committed by the courts 
below in the appreciation of evidence.

In Hussain Umar v. Dalip Singh Ji\textsuperscript{40}, it was observed normally Supreme 
Court does not re-appraise evidence unless the findings are perverse or are vitiates 
by any error of low or there is a grave miscarriage of justice.

In M/s Madhya Pradesh Mines v. R.B. Sreeeram Durga Prasad\textsuperscript{41}, the appeal 
by special leave was filed against the decision of High Court confirming the decree 
of Addl. District the against the appellant for committing breach of contract and the 
trial court decreed the claim against him for Rs. 1,87,955 and proportionate costs. 
The apex court while dismissing the appeal opined that the Supreme Court would 
not reappreciate evidence for determining whether the court erred in reaching 
finding on questions of fact.

In state of Assam v. Mahendra Kumar Das\textsuperscript{42}, the apex court while allowing 
the appeal considered the contention raised by the respondent that the material on 
record disclose that the respondent was appointed permanent Sub-Inspector by the 
Inspector General of Police where as the order of dismissal has been passed by a 
subordinate authority, the superintendent of Police and therefore the order of 
dismissal is illegal and void. The apex court opined that normally this contention 
should not be entertained for the first time by the Supreme Court, it would permit 
such contention because it was supported by record order of dismissal but after a 
reference to the material on record, it was found that the contention was devoid of 
merits.

In Budhsen v. State of U.P.\textsuperscript{43}, an appeal by special leave was filed against the 
decision of the High Court of Allahabad confirming the death sentence passed by the 
trial court under sec. 302 read with section 34, IPC.

The apex court while allowing the appeal opined that the Supreme Court will 
not ordinarily with the conclusions of facts properly arrived at by The High Court on 
appreciation of evidence except where there us legal error or some disregard of the 
forms of legal process or violation of principles of natural justice resulting in grave 
or substantial injustice. Further the apex court opined that the entire case depend on

\textsuperscript{40} AIR 1970 SC 45
\textsuperscript{41} AIR 1970 SC 1025
\textsuperscript{42} AIR 1970 SC 1255
\textsuperscript{43} AIR 1970 SC 1321
identification of accused found on test identification parades, the evidentiary value of which was not appreciated by the High Court. The High Court proceeded on erroneous legal assumption that it is substantive evidence and on basis of such evidence alone convection can be based. Thus, the Supreme Court will discard such legally infirm evidence of identification.

_In Mature alias Girish Chandra v. The State of U.P_44, an appeal by special leave was filed against the judgment of High Court of Allahabad where the High Court caused the convocation of the appellant under section 302 read with section 34, IPC and under section 382 of IPC for theft.

The apex court while allowing the appeal opined the normally it does not go into the evidence and appraise it for itself in criminal appeal under Article 136 of the Constitution because this Article does not confer a right of appeal on a party. It merely clothes this court with discretionary power to scrutinize and go into the evidence in special circumstances in order to satisfy itself that substantial and grave injustice has not been done. Further it was observed that circumstantial evidence in the circumstances from which the conclusion of guilt is to be drawn should be fully established and all the established facts should be consistent only with the hypothesis of the guilt of the accused. Identification test do not constitute substantive evidence. Such tests are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on right lines. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstance of each case. Generally the courts consider it as a very small item in the evidence for sustaining conviction. It cannot certainly be held as a determining link in completing the chain of circumstantial evidence consantent only with the hypothesis of the guilt of the accused. Further the court observed that there was no recovery of weapons used for offence, no blood stained clothes of the appellant’s were recovered, even the appellant accompanied with lodging the FIR, so the chain of circumstantial evidence is not complete to held the appellant guilty.

---

44 AIR 1971 SC 1050
In *Duvur Das aradharamareddy v. The State of Andhra Pradesh*[^45], an appeal by special leave was filed against the decisions of the High Court of Andhra Pradesh confirming the conviction for an offence under section 302, IPC. The High Court placed reliance on the evidence of the witness considering some of them as independent witnesses and by relying on the medical evidence regarding the cause of death, for causing conviction of the appellant. Against this decision of the High Court, the appellant filed an appeal by special leave under Article 136 of the Constitution.

The apex court while allowing the appeal opined that the evidence upon which the lower courts are so artificial that it is not safe to place any reliance on such evidence. The evidence appears to be somewhat unusual and mechanical. Moreover, the prosecution had failed to prove the guilt of the accused beyond all reasonable doubts. Further, the apex court opined that though normally this court does not re-appraise the evidence which has been accepted concurrently by the two courts but in view of the strong suspicious circumstances with regard to the truth of the evidence, it is necessary in the interest of justice to consider the evidence more critically.

In *oil and natural gas commission. v The workmen*[^46], the apex court while allowing the appeal that where the tribunal’s conclusion are tainted with serious infirmities justifying the re-appraisal of the evidence by the court, the apex court can come to its own independent conclusion on re-appraisal.

In *Basudev Hazra v. Matiar Rahaman Mandal*[^47], an appeal by special leave was filed against the decision of the High Court of Calcutta. The respondent filed a complaint against the appellant who was a leaseholder in respect of tolls of the public ferry in the court of the Sadar Sub-Divisional officer (Judicial) for realizing illegally certain amount from the cultivator who used to drive their carts across the dry bed of the river. On this the trying Magistrate sentenced the appellant under sections 23 and 24 of the Bengal Ferries Act. Then an application for revision of conviction was filed before the sessions judge and the sessions judge made a reference to the High Court recommending the appellant’s acquittal. The High Court acquitted the appellant under section 23 of the Bengal Ferries Act but with regard to section 24, it was held that the amount had been illegally demanded as a toll and that also in

[^45]: AIR 1971 SC 1461
[^46]: AIR 1973 SC 968
[^47]: AIR 1971 SC 722
excess of permissible rates, so conviction was maintained. Against this decision, an appeal by special leave was filed under article 136 of the constitution.

The apex court while dismissing the appeal opined that section 24 of Bengal Ferries Act. Applies when lessee demands or receives from person using ferry or not, some payment on pretext that it is due as toll when it is legally not so due so the apex court held that the liability of appellant to prosecution for extortion under IPC does not exclude applicability of section 24. Further, it was opined that Article 136 does not confer a right of appeal on party. It only confers discretionary power on Supreme Court to interfere sparingly in cases where grave miscarriage of justice has resulted from illegality or from misapprehension or mistake in reading evidence or from ignoring, excluding evidence or illegally admitting material evidence. If that is not so, there is no reason for the interference of the apex court.

In Nageshwar Sh. Krishan Gobe v. State of Maharashtra\(^48\), an appeal by special leave was filed against the decision of High Court of Bombay convicting the appellant for an offence under section 304-A for death by negligence. The trial court as well as the High Court was on the whole satisfied upon the evidence that the conviction was justified.

On appeal by special leave before the apex court, the three judges bench while deciding the fate of the appeal opined that normally in appeals under Article 136 of the constitution, the Supreme Court will not go into the evidence but when in criminal case the judgment of the trial court and of the High Court proceed principally in assumptions not fully supportable on the material on record and there is a serious lacuna in the case wholly due to the inefficient and perfunctory investigation by the investigating agency in appeal under Article 136 arising from that case, the Supreme Court can itself examine the evidence.

In this case, the investigation was faulty as no photograph of the accident site, the verification of the bus, etc. has been reported by the investigating officer. The courts below believed the prosecution witness whose statements could not throw exact light on the accident, but did not believe the defense witness. On account of this, the Supreme Court allowed the appeal and appreciated the evidence itself.

---

48 AIR 1973 SC 165
In Nanhey v. Stage of U.P\(^{49}\), an appeal by special leave was filed against the decision of High court of Allahabad confirming the death sentence imposed by the sessions judge under section 302, IPC the apex court while dismissing the appeal opined that in an appeal under Article 136 arising from a criminal cases, the Supreme Court normally does not reappraise the evidence unless the conclusion of the lower courts are open to any serious challenge.

Further in Thulia Kali v. The state of Tamil Nadu\(^{50}\), the apex court in appeal under Article 136 opined that the Supreme Court does not normally reappraise evidence in appeal by special leave but that fact would not prevent interference with an order of conviction if on consideration of the vital prosecution evidence in the case the courts finds it to be affected with ex-facie infirmity.

In State of Punjab v. Joginder Singh\(^{51}\), the apex court while dismissing the appeal opined that in appeals against acquittal by special leave, Supreme Court will not normally interfere with appreciation of evidence or finding of fact unless the High Court has acted perversely or other improperly or there has been grave miscarriage of justice.

In Ram PrakashArora v. the state of Punjab\(^{52}\), an appeal by special leave was filed against the decision of the Punjab High Court where the High Court upheld the conviction passed by the special judge under section 5(1) (d) of Prevention of Corruption Act. and secs. 161 and 165 of IPC.

On appeal before apex court by special leave, the two judges bench deciding the fate of appeal while allowing the appeal relied on the principle laid down on State of Bihar, v. Basawan Singh\(^{53}\), opined that the evidence of interested and partisan witness who are concerned in the success of trap must be tested in the same way as that of any other interested witness. In a proper case the court may look for independent corroboration before convicting the accused persons. The prosecution had to prove the changes beyond all reasonable doubt before causing the conviction of the accused.

Further the apex court opined that normally the Supreme Court does not appraise the evidenced and accepts the decision of the courts below with regards to

\(^{49}\) AIR 1973 SC 224
\(^{50}\) AIR 1973 SC 501
\(^{51}\) AIR 1973 SC 1258
\(^{52}\) AIR 1973 SC 498
\(^{53}\) AIR 1958 SC 500
the credibility of the witness. But where the approach of the courts below is bit correct and they have failed to notice certain important aspects of a case, the Supreme Court can appriciate the evidence.

In *Nathan v State of Madras* \(^{54}\) the apex court opined that where evidence revealed that the accused party was possession of certain & a quarrel resulting in death of person of the complainants party arose while the accused was exercising his right of private defence of property and exceeded that right caused the death of person. Moreover the High Court while awarding death sentences ignored certain important piece of evidence like original lease deed was not produced, no document to evidence surrounds of possession, etc., so Supreme Court interfere.

In *Des Raj v. the state of Punjab* \(^{55}\), an appeal by special leave was filed against the judgment of the Punjab and Haryana High Court under s.406 for the criminal breach of trust. The High Court upheld the findings of the trial court and the learned session judge and caused the conviction of the appellant.

The apex court while allowing the appeal opined that the courts below did not give due weight to the evidence of defence witness just because no complaint was made by the appellant to the office bearer about payment and moreover he did not have got any receipt about such a payment. Further the apex court opined that it does not ordinarily go into the question of the facts and appreciate the evidence but where both the trial court and session’s court relying on conjectures and surmises disbelieved defence evidence and convicted the accused on more suspicion, the conviction could not be upheld.

In *HurshadPahelvan Singh Thakore v. State of Gujarat* \(^{56}\), an appeal by special leave was filed against the decision of the High Court of Gujarat causing the conviction of appellant under section 302 read with section 34 IPC.

The apex court while dismissing the appeal opined that judicial symmetry, when the subject of dispute in reappraisal of evidence even on the sophisticated ground is mis-appreciation has to submit itself to certain self-restraining rules of processual symmetry. The Supreme Court cannot be persuaded to go over the ground of reading the evidence and interesting it anew so as to uphold that which appeals to it among possible alternative views. If there is perversity, miscarriage of

\(^{54}\) AIR 1973 SC 665  
\(^{55}\) AIR 1974 SC 2292  
\(^{56}\) AIR 1977 SC 710
justice, shocking misreading or gross misapplication of rules, procedural and substantive, the Supreme Court will interfere without hesitation. Other exceptional circumstances also may invoke the Supreme Court’s jurisdiction.

Further it was observed that there was hardly an flow in the appreciation of evidence by the courts below. Even if some out of the several accused are acquitted but the participating presence of a plurality of assailants is proved, the conjoint culpability for the crime is inescapable.

*Further in Sitavam v. The state of Madhya Pradesh*[^57^], an appeal by special leave was filed against the judgment of the High Court dismissing the appellant petition and convicting him under section 302 read with section 149, IPC for causing the murder of the deceased. The High Court relied on the testing of the witness by holding them reliable.

The apex court, while dismissing the appeal, opined that the Supreme Court in special leave would not re-appraise the evidence for itself unless a clear error of law in the appreciation of evidence is found. Further it was opined that in an appeal under Article 136, Supreme Court will not entertain an appeal on the question of fact.

*In Gokul and Kanhaiya v. The State of Rajasthan*[^58^], an appeal by special leave was filed against the judgment and order of the Rajasthan High Court causing the conviction of appellant under section 302 read with section 149 IPC. The conviction was upheld by High Court on the basis of the testimony of the witness corroborated by the medical evidence. Against this decision of High Court, an appeal by special leave was filed under article 136 of the constitution.

The apex court, while dismissing the appeal, opined that the unlawful assembly formed at the nick of the time was certainly an unlawful assembly, as it was formed with the common object to assault and kills the deceased. Moreover the fact that the victim who was not one those who had originally accompanied the court Nazar happened to be first target to use of violence in accomplishing the common objects did not imply that the members of the assembly participating in the assault on the deceased had a diff. common object from that of the original assembly.

Further the apex court opined that Supreme Court does not, as a rule proceed under Article 136 as it is a court of fact to review or a re-appraise the evidence for

[^57^]: AIR 1979 SC 1235
[^58^]: AIR 1972 SC 209
itself for examining the correctness of the conclusion of the High Court on the credibility and value of the evidence led in the case. Moreover Article 136 without itself conferring a right of appeal on a party, merely reserves to the Supreme Court a special discretionary power of interference, which though couched in wide terms, is to be exercised sparingly and only in exceptional cases where grave and substantial injustice has resulted, by some illegality or material irregularity of procedure or, by violation of rules of natural justice. Thus, the question whether a person happens to be innocently present at the place where the members of an unlawful assembly have gathered together to prosecute their common object, or is a member thereof sharing their common object, is normally one of fact and so not a fit case for interference of the apex court.

The State of U.P. v. Ram Manorath\textsuperscript{59}, where the apex court opined that where the evidence of the prosecution witness was not believed by the session judge who had the advantage of looking at the demeanor of the witness and on appeal the High Court also took the same view of that evidence, the Supreme Court wound not reappraise the evidence unless it is shown that the findings of the lower court is perverse or unreasonable or the courts below have failed to take into account some crucial and vital piece of evidence.

In KrishanLal v. the state of Haryana\textsuperscript{60}, where it was opined that Supreme Court does not act as an ordinary court of criminal appeal to which every High Court judgment in criminal cases can be brought up for security of its correctness. Thus, rules are not however, absolute and may be whenever these has been failure of justice.

In Suryamoorthi v. GovindaSwamy,\textsuperscript{61} an appeal by special leave was filed against the decision of High Court of Madras confirming the order of acquittal passed by the Learned Additional Assistant Sessions Judge. The apex court while allowing the appeal opined that ordinarily Supreme Court exercising jurisdiction under Article 136 of the Constitution is slow in substituting its findings of facts in place of those recorded by the courts below. However, this does not mean that the Supreme Court has no power to do so. The discretion conferred by Article 136 of the Constitution is wide enough to permit the Supreme Court to interfere even on facts

\textsuperscript{59} AIR 1972 SC 701
\textsuperscript{60} AIR 1980 SC 1252
\textsuperscript{61} AIR 1989 SC 1410
in suitable cases if the approach of the courts below has resulted in grave miscarriage of justice. By way of self-imposed discipline, the Supreme Court does not ordinarily reappreciate or reassess the evidence unless it is of the opinion that the approach of the courts below has resulted in failure of justice necessitating correction. If the courts below have misread the evidence or have ignored vital piece of evidence resulting in miscarriage of justice it becomes the duty of this court to interfere in the interest of administration of justice.

_In Appabhai v. State of Gujarat_, 62 an appeal by special leave was filed against the decision of High Court of Gujarat confirming the sentence passed by the trial court under section 302 of IPC. The trial court caused the conviction of all the accused upon considering the evidence produced by the prosecution. On appeal before High Court, the High Court held that the evidence was not sufficient and was of the opinion that out of all the appellants, two have not participated in the perpetration of the crime and the remaining were convicted. Then these appellants preferred an appeal by special leave before the apex court.

The apex court while allowing the appeal opined that if conclusions of the courts below are supported by acceptable evidence, the apex court will not exercise its overriding powers to interfere with the decision appeal against. The apex court will not consider the contentions relating to the re-appreciation of the evidence which has been believed by the courts below. The grant of special leave does not entitle the parties to open out and argue the whole case. The parties are not entitled to contest all findings recorded by the courts below unless it is shown by error apparent on the record that substantial and grave injustice has been done to them.

Further it was opined that although there are many contradictions in the evidence of the victim of assault but there is no ground to reject his entire testimony. The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

_In Madho Ram v. State of U.P._, 63 an appeal by special leave was filed against the Allahabad High Court confirming the conviction of the appellant under section 302 and 325 read with section 149 of the Indian Penal Code.

---

62 AIR 1988 SC 696. See also, _Uday Chand Dutt v. SaibalSeni_, AIR 1988 SC 367
63 AIR 1981 SC 651
The apex court while dismissing the appeal opined that in an appeal by special leave, the apex court can interfere if there is some gross violation of any principle of law or a serious miscarriage of justice. The apex court observed that as the High Court had considered the evidence and circumstances of the case and the judgment of the High Court was a well reasoned one and had considered all the aspects of the prosecution case, there is no justification for interference by the apex court in appeal under Article 136 of the constitution.

In *Heraniba Brahma v. State of Assam*, the apex court while allowing the appeal filed against the decision of the High Court causing the conviction of the appellants for the offence under section 304 read with section 34 of IPC, opined that the Supreme Court in appeal under Article 136 does not re-appreciate or re-evaluate evidence. But where the High Court overlooked a well laid principle of appreciation of evidence, reluctance to re-evaluate evidence would result in miscarriage of justice.

In the instance case, the apex court observed that the High Court did not appreciate the fact that the only eye witness committed an error in identifying accused and moreover the uncorroborated evidence of eye witness itself not sufficient to bring home charge. The extra judicial confession of the appellant / accused was also unworthy of belief. Thus the apex court held that the accused is liable to be acquitted.

In *Purna v. State of U.P.*, the appellant was convicted for the offence of theft under section 379 IPC by the Allahabad High Court against the decision of which this appeal by special leave arose.

The apex court while allowing the appeal opined that ordinarily the apex court does not undertake re-appreciation of evidence unless failure to do so will lead to miscarriage of justice. In this appeal, the apex court observed that FIR was lodged after considerable unexplained delay. This produced serious infirmity in the prosecution case. Moreover the presence of accused at the place of occurrence was not proved by evidence and the witnesses produced were also not trustworthy. Thus accordingly, the Supreme Court set aside the conviction of appellant and caused his acquittal.

---

64 AIR 1982 SC 1595  
65 AIR 1984 SC 454
In State of U.P. v. Pheru Singh, an appeal by special leave was filed against the decision of the High Court of Allahabad acquitting the accused (respondent) of the charges of theft or criminal breach of trust and convicted by the trial court. The High Court by a re-appraisal of the evidence adduced by the prosecution concluded that the prosecution had not decisively proved the case and the evidence inclusive of the circumstantial evidence are inconsistent with the presumption of the accused and as such the accused are entitled to the benefit of doubt.

The apex court while dismissing the appeal opined that it is well settled principles of law in criminal jurisprudence that no finding can be rendered either on mere surmise or conjecture and every finding should be based on satisfactory and acceptable evidence. Therefore, the apex court while exercising its jurisdiction under Article 136 of the constitution of India will not be justified in taking a contrary view to that of the High Court on mere presumption. Further, the apex court opined that the High Court was right in pointing that the prosecution should have taken steps for holding a test identification parade. There is absolutely no evidence either oral or documentary or circumstantial to conclude that all the accused entered into a criminal conspiracy to commit the alleged offence charged. Furthermore, it is opined that the impugned order of acquittal passed by the High Court is neither erroneous nor perverse nor improper resulting in miscarriage of justice and this is not a fit case for interference in exercise of the power of the apex court vested under Article 136 of the Constitution of India.

In State of Andhra Pradesh v. P. Anjaneyulu, an appeal by special leave was filed against the High Court of Andhra Pradesh where the High Court reversed the judgment of the trial court and cause the acquittal of the respondent of the charges under section 5 of the Prevention of Corruption Act. The High Court reversed the judgment as it was found that the sole witness on whom the trial court relied was unreliable.

The apex court while dismissing the petition opined that the question relating to appreciation of evidence does not raise any substantial question of law. Further it was opined that the apex court do not ordinarily entertained appeals if two views of evidence are possible and moreover it was observed that there being no unreasonable view of evidence taken by High Court.

66 AIR 1989 SC 1205
67 AIR 1982 SC 1598
In Khilli Ram v. State of Rajasthan, an appeal by special leave was filed against the decision of the Rajasthan High Court upholding the decision of the special judge and causing the conviction of the appellant under section 161 of the Indian Penal code and also under section 5(1) (d) and section 5(2) of the Prevention of Corruption Act.

The apex court while allowing the appeal opined that the restriction on appreciation of evidence in an appeal opined that the restriction on appreciation of evidence in an appeal by special leave is a self-imposed one and is not a jurisdictional bar. While ordinarily the Supreme Court would refrain from re-examining the evidence, in a case where serious injustice would be done if the evidence is not looked into it would not be proper for the court to shun attention by following the self imposed restriction.

Further the court on the analysis of the case observed, that the appropriate investigation was not being done and chargesheet was not being furnished to the court. There was discrepancy in many material aspects. The place and the manner in which the bribe was said to have been offered and received made the prosecution story totally opposed to ordinary human conduct. In the circumstances, it was held that sufficient material had been brought out to merit interference in the appeal.

In Hussaini v. the Hon’ble The Chief Justice of High Court of Judicature at Allahabad, the two judges bench while allowing the appeal opined that the appellant who was serving at SafaiJamadar in High rendered 20 years of service. The High Court opined that there is no scope of lenient view as he was dismissed on the ground of misconduct. But the supreme opined that there was scope of taking lenient view considering his tenure of service. So the order of dismissal was converted into one of compulsory retirement to ensure him retrial benefits.

In Ch. Pulla Reddy v. State of Andhra Pradesh, an appeal by special leave was filed against the decision of the High Court of the Andhra Pradesh. The six persons were convicted of the charges under section 302/149, IPC. The High Court on appeal gave benefit of doubt to two accused and the rest four were convicted. Out

---

68 AIR 1985 SC 79  
69 AIR 1985 SC 75  
70 AIR 1993 SC 1899; In Metab Singh Gulati v. state of Gujarat,AIR 1991 SC 1925- the apex court opined there was no infirmity in the appreciation of evidence which would demand our interference
of these four accused, one died and rest three filed an appeal by special leave before apex court.

The two judges bench while deciding the fate of appeal opined that though generally speaking the Supreme Court does not re-appreciate the evidence in an appeal, on special leave being granted, under Art 136 of the constitution of India where two courts have appreciated the evidence and recorded concurrent findings, but since the High Court has acquitted two out of six accused, the supreme court could appreciate the material evidence in the case, with a view to determine whether the conviction and sentence recorded against the other accused persons is justified or not.

Further, the apex court opined that after going through the medical evidence as well as statement of the eye witness it appears the prosecution has not been able to establish the guilt of the two accused convicted by the High Court, so by giving benefit of doubt to the two appellants, their conviction was set aside but the conviction of one of the appellants under S. 302/34 was maintained by the apex court.

In *Thakur Kishan Singh v. Arvind Kumar*, the apex court while dismissing the appeal opined that when the appellate court had considered the evidence on record in detail and found that the possession of the appellant was not adverse, there is no reason for before the apex court to interfere and reappreciate the evidence in an appeal leave under Article 136 of the Constitution.

In *Sham Sundar v. Puran*, the two judges bench while deciding the fate of the appeal opined that the High Court, exercising power under section 386, Cr. PC, in appeal from a conviction may reverse the finding and sentence and acquit the accused or alter the finding maintaining the sentence or with or without altering the finding alter the nature or the extent or the nature and extent of the sentence but not so as to enhance the same. The powers of the High Court in dealing with the evidence are as wide as that of the trial court. As the final courts of facts, the High Court has also duty to examine the evidence and arrive at its own conclusion on the entire material on record as to the guilt or otherwise of the appellants before it.

It was further opined that under Article 136, the supreme court does not ordinarily reappraise the evidence for itself for determining whether or not the High Court has.
Court has come to a correct conclusion on facts but where the High Court has completely missed the real point requiring determination whether or not the High Court has come to a correct conclusion on facts but where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the evidence and has failed to consider the fact that on account of long standing enmity between the parties, there is a tendency to involve innocent persons and to exaggerate and lead pre-judged evidence in regard to the occurrence, the supreme court would be justified in going into the evidence for the purpose of satisfying itself that the grave injustice has not resulted in the case.

In *Binay Kumar Singh v. State of Bihar*, an appeal by special leave was filed against the decision of the Patna High Court confirming the conviction of the appellant under sections 302/149, IPC.

The apex court while dismissing the appeal opined that it did not reappreciate the evidence of eye-witnesses on the strength of some discrepancies highlighted from their testimony. Further it was opined that there is no rule of evidence that no conviction can be based unless a certain minimum number of witnesses have identified a particular accused as member of the unlawful assembly. It is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence but the quality that matters. Even the testimony of one single witness, if wholly reliable, is sufficient to establish the identification of an accused as member of an unlawful assembly.

Furthermore with regard to plea of alibi but forth by the appellant, the apex court opined that the plea of the accused need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden, it is incumbent on the accused who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. The apex court in an appeal by special leave granted under Article 136 of the constitution

---

73 AIR 1997 SC 322
would not be inclined to upset the finding of fact based on such weighty reasons advanced by the courts below.

In *Jagannath v. YugalNarainPurohit*, the apex court while dismissing the appeal opined that finding of fact that sale transaction in question was bonafide sale for valuable consideration executed in good faith based on appreciation of evidence, so it cannot be interfered by the apex court in appeal by special leave under Article 136 of the Constitution.

In *Padminja Sharma v. Ratan Lal Sharma*, an appeal by special leave was filed against the judgment of the High Court rejecting the prayer of the appellant (wife) for enhancement of the amount of maintenance of the children.

The apex court while partly allowing the appeal opined that the Supreme Court in an appeal under Article 136 of the Constitution is not going to re-appreciate the evidence led before the family court. There was a concurrent finding of award by the lower courts which could not be disturbed. Further with regard to the application of the appellant for placing on record additional documents, the apex court opined that it cannot permit this application at this state. If circumstances have changed for enhancement of maintenance, appellant can approach the family court again as an order under section 26 of the Hindu Marriage Act is never final and decree passed there under is always subject to modification. Further the courts observed as both the parents of child are employed, both are observed as both the parents of child are employed, both are obliged to pay maintenance and not only father of child, in proportion of their salaries.

In *State of Madhya Pradesh v. Sardar*, the appeal by special leave was filed against the decision of the High Court of Madhya Pradesh causing the acquittal of the respondent. While another appeal was filed by the appellants who were convicted under section 302 read with section 34, IPC by the High Court.

The apex court opined that if the courts below after considering the omissions and contradictions and after appreciating the entire evidence had prove the case beyond reasonable doubt against some accused, it would not be a case for interference under art 136 of the constitution. As the testimony of the prosecution witnesses had not been affected by cross-examination nor there is any contradiction

---

74 AIR 1997 SC 1914  
75 AIR 2000 SC 1398  
76 AIR 2001 SC 3121
or omission, so there was no set of circumstances to disbelieve the prosecution evidence.

Further the court observed that it is the respondent and the appellant (accused) who were the main aggressors and that had been proved by sufficient evidence on record. There is no question of disbelieving neither the prosecution witnesses nor any right of private defence to the accused could be inferred as the accused themselves attack the house to assault the inmates. Merely because the trial court had given benefit of doubt to two other accused persons, it would not mean that the respondent (Sardar) who is the main person should also be given benefit of doubt on the basis of the contradiction in deposition of witnesses despite the fact that all the witnesses had named him as the aggressor and assaulter. Thus, the appeal of the state was allowed and that of the appellants(accused) was dismissed.

*In State of Punjab v. Jugal Singh,* 77 an appeal by special leave was filed against the judgment of the Punjab and Haryana High Court causing the acquittal of the respondent of the alleged charges under section 302 read with section 34, IPC and section 25 and 30 of the Arms Act and reversing the judgment of the trial court.

The apex court while allowing the appeal opined that the apex court in appeal by special leave does not convert itself into a court to review evidence for a third time. However, where the High Court is shown to have failed in appreciating the true effect and material change in the version given by the witnesses, the apex court goes into action only to avert miscarriage of justice if the existence of perversity is shown in the impugned judgment.

Further the apex court opined that the finding of the trial court was correct as findings are based upon the ocular testimony of the eye-witnesses which is supported by the medical evidence. The existence of motive also stood established whereas the findings of the High Court cannot be justified. The High Court disbelieved eye-witnesses on finding a number of injuries on the person of deceased, the High Court substituted its own opinion with the opinion of experts. The high failed to observe that there was prompt lodging of FIR and its dispatch to the magistrate. The finding of the High Court, being contrary to the legal evidence, is perverse and cannot be sustained.

---

77 AIR 2002 SC 1083. see also, *BaluSonbaShinde v. state of Maharashtra*, AIR 2002 SC 3137 where the apex court re-appreciate the evidence to avoid miscarriage of justice
In Alamgir Sani v. State of Assam,\(^78\) the two judge bench while dismissing the appeal filed against the judgment High Court confirming the conviction under section 304-B of the Indian Penal code, opined that both the courts below had rightly relied upon evidence of witnesses for coming to conclusion that there is demand of dowry. The apex court cannot arrive at different conclusion by re-appreciating the evidence particularly when it is not shown that courts below have not taken into consideration some relevant facts or have not appreciated the evidence in a correct perspective. There is no flaw or fallacy in the reasoning adopted by the courts below.

In State of U.P. v. Sunder Singh,\(^79\) appeal by special leave was filed against the judgment of High Court causing the acquittal of the respondents of the alleged offence of which they were earlier convicted under sections 302/149, IPC.

The apex court while dismissing the appeal opined that the High Court had considered the evidence of the witnesses and pointed out the infirmities in their evidence which discredited their testimony. The appreciation of the evidence by the High Court is neither perverse nor are the findings recorded not supported by evidence on record. Moreover, conclusion reached by High Court is possible reasonable conclusion, so there is no justification for interference with the order of acquittal.

In Ram Singh v. Sonia,\(^80\) appeals by special leave was filed against the judgment of Punjab and Haryana High Court where the High Court uphold the convictions under section 302 read with section 34 and section 120-B of the IPC but committed the sentence of death into life imprisonment.

The apex court while allowing the appeal of the state as well as of private prosecutor and dismissing the appeal of the accused opined that courts below have very elaborately discussed the material produced by the prosecution. While accepting each of the circumstances, thus there would have been no need to go into these circumstances, especially when the finding qua conviction is concurrent. But as the accused were awarded death sentence by trial court which has been converted into life imprisonment by the High Court and as the case is one of circumstantial

\(^{78}\) AIR 2003 SC 2108  
\(^{79}\) AIR 2005 SC 2238  
\(^{80}\) AIR 2007 SC 1218
evidence, so in the interest of justice, it would be appropriate to reappreciate the evidence.

Further the court observed that as the confession was made voluntarily and the dying declaration was recorded by the judicial magistrate and also the medical evidence proved the injuries, all this support the prosecution case. Moreover the murders were committed in a diabolic manner while the victims were sleeping, without any provocation indicates the cold-blooded and premediated approach. The deceased included three tiny tots of 45 days, 2½ years and 4 years along with mother and father. In view of these facts, there would be failure of justice in case death sentence is not awarded as the case falls within the category of rarest of rare cases.

In *State of Maharashtra v. Tulshiram Bhanudas Kamble*, the two judge bench while allowing the appeal filed against the judgment of High Court of Bombay where by the High Court in a murder case had caused the acquittal of the accused who were earlier convicted by trial court, opined that High Court had not assigned cogent or sufficient reasons for disagreeing with the findings of the trial court. There was sufficient evidence including eye-witnesses proving that the accused armed with deadly weapons had entered into the house of deceased. Moreover the multiple injuries found on the deceased as well as on injured also proved the fact. The statement of one injured person who received injuries on his head was also recorded by Magistrate as soon as he regained consciousness but that too was not considered by the High Court. All the shows that the reasoning of High Court is perverse and thus the Supreme Court by setting aside the judgment of High Court cause the conviction of the respondent (accused).

**Interference with finding of fact**

In *Kunjilal v. the state of Madhya Pradesh*, a case was filed before the court of Magistrate where the two appellants were prosecuted under section 392 and section 332, IPC for robbing a public servant of the goods lawfully seized as well as causing hurt to public servant discharging his duties and were sentenced under the former section to one year’s rigorous imprisonment and under the latter to a find of Rs. 500/- each. On appeal, their conviction was uphold but regarding Ist appellant, sentence was reduced to six months rigorous imprisonment and fine of Rs. 350/- while imprisonment of IInd appellant was set aside and fine under section 332 was

---

81 AIR 2007 SC 3042
82 AIR 1955 SC 280
reduced to Rs. 250/-. The matter was then carried in revision to the High Court but it was dismissed.

Against the decision, a SLP was filed before Supreme Court where the court opined that it is not open to the appellants to re-agitate questions of fact and ask the court to disturb the findings of fact arrived at by the courts below. Those findings must therefore be accepted as binding.

In *Haripeda Dey v. the State of West Bengal*,\(^83\) the apex court pointed out that where the question of fact is involved, the High Court should not grant a certificate for appeal to the Supreme Court but the best recourse in such a situation is to leave the aggrieved party to approach the Supreme Court under Article 136 for special leave to appeal. The special leave will be allowed if there has been a gross miscarriage of justice or a departure from legal procedure such as vitiates the whole trials, it would certainly intervene and it would intervene if the findings of facts were such as were shocking and grant in such cases special leave to appeal under Article 136(1). That is a special jurisdiction which the apex court can exercise under Article 136(1) but no High Court can arrogate that function to itself. In such a case, the High Court should refuse to give a certificate under Article 134(1)(C).

In *State or Madras v. A. VaidyanathIyer*,\(^84\) an appeal by special leave was filed by the state of Madras from the judgment and order of the High Court of Madras reversing the judgment of the special judge of Coimbatore and thus cause the acquittal of the respondent who had been convicted by special judge and sentenced to six months simple imprisonment under section 161, IPC read with section 4 of the Prevention of Corruption Act for taking illegal gratification. Then the matter came before the Supreme Court against the order of High Court by way of Article 136.

The apex court opined that it should not interfere with the order of the High Court merely on the ground that it took a different view of the facts. The Supreme Court can interfere where the High Court acts perversely or otherwise improperly or has been deceived by fraud. It was contended that in Article 136 the use of the words, "Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India" show that in criminal matters

\(^{83}\) AIR 1956 SC 757

\(^{84}\) AIR 1958 SC 61
no distinction can be made as a matter of construction between a judgment of conviction or acquittal. It was said that when it is proved that a gratification has been accepted, then a presumption shall at once arise and it is presumption of law and therefore it is obligatory on the court to raise this presumption in every case brought under section 4 of the prevention of corruption act because unlike the case of presumption of fact, presumption of law constitutes a branch of jurisprudence. Since the prevention of corruption Act provides that the accused shall presume to be guilty of having accepted the gratification unless he proves the contrary. The use of the word 'shall presume' make it obligatory on the part of the court. Since the High Court while appreciating the evidence has given the benefit of doubt in utter disregard to the presumption. Therefore, the approach of the High Court was on erroneous lines.

In Ratan Gond v. State of Bihar, the appeal by special leave was filed before the apex court against the confirmation of death sentence by the high court to the appellant for a cold blooded murder. It was contended on behalf of appellant that the lower courts have awarded the death sentence on the basis of extra judicial confession as well as unproved evidence. Furthermore it was alleged that the confession was not voluntary and there are other infirmities in the story of the prosecution which does not complete the chain of events.

The apex court after the analysis of the case observed that the lower courts were right in awarding the death sentence as the extra judicial confession and the recovery of the weapon, dead body, blood strains and hair of the deceased female are sufficient to constitute a complete chain of events. Furthermore, the court emphasized that in case of special appeal, a person is not normally allowed to raise a question of fact or ask for interference in concurrent finding of lower courts unless the findings are vitiated by errors of law or the conclusion or patently opposed to principles of fair justice.

In Ram Prakash v. the State of Punjab, an appeal by the special leave was filed by the appellant against the decision of the high court of Punjab by which the death sentence of the appellant was confirmed. The contention of the appellant was that the sentence passed by the lower courts was not proper as it is based on a retracted confession made by a co-accused and it was not materially corroborated.

---

85 AIR 1959 SC 18
86 AIR 1959 SC 1
The apex court after the analysis of the case while dismissing the appeal observed that when two persons are tried jointly for the same offence, confession of one accused can be used against the co-accused. In case of retracted confession, it was observed that the evidence act do not prevent the court from taking into consideration a retracted confession against the confessing accused and his co-accused, though it is a weak evidence unless properly corroborated. Furthermore, it was also observed that the magistrate took all necessary precautions before recording the confession and the confession was materially corroborated by the statements made by the other witnesses, recovery of the weapon used by the accused, blood stained pajama hanging on the door of the store room, recovery of gold ornaments of the deceased on the statement of appellant from his mistress. The apex court opined that it is not ordinarily permissible to make submissions on questions of fact in an appeal by special leave.

In Nathu v. State of U.P, a person was convicted for murder by the session’s court on the basis of confessions made by the co-accused and the conviction was confirmed by the High Court. The person knewly filed a SLP to appeal before the Supreme Court of India which was allowed by the apex court. It was contended that the determination of conviction on the basis of confessions is a question of fact which could not be entertained by the apex court. Yet the apex court opined that if there is infirmity in confession which could not be explained by the persecution then the conviction on the sole basis of confession cannot be sustained.

In Rafiq v. State of Uttar Pradesh, the apex court opined that the concurrent findings of fact ordinarily acquire a deterrent sanctity and tentative finality when challenged in supreme court and the supreme court rarely invoke the special jurisdiction under Article 136 of the Constitution which is meant mainly to correct manifest injustice or errors of law of great moment.

In Jayaram Paddickal v. T.V. Eachanawarriyar, the apex court while dismissing the appeal opined that the supreme court should not interfere with the impugned order of the high court directing the appellant’s prosecution under section 340, code of criminal procedure. However, trial should proceed according to law unfettered by observations of high court made in impugned judgment.

87 AIR 1956 SC 56
88 AIR 1981 SC 96
89 AIR 1981 SC 161
In *State of Jammu and Kashmir v. Hazara Singh*, the apex court opined that in an appeal by special leave under Article 136 of the Constitution against an order of acquittal passed by the High Court, the apex court does not normally interfere with a finding of fact based on appreciation of evidence. Unless the approach of the high court is clearly erroneous, perverse or improper or there has been a grave miscarriage of justice. In this case, the apex court observed that the reasoning and conclusion of the High Court and the approach adopted, the findings of fact recorded and conclusion drawn from the totality of facts by the high court cannot be said to be unreasonable.

In *KarsanHira v. State of Gujarat*, an appeal by special leave was filed against the decision of the high court of Gujarat causing the conviction of the appellant under section 5(1) (d) read with section 5(2) of the Prevention of Corruption Act. He was also convicted under section 161, IPC. The apex court while dismissing the appeal opined that there was absence of any error of law. The courts below accepted the case of the prosecution based on the evidence of the prosecution witness. Moreover, there was recovery of money in person from the appellant. So, on such findings of facts, the apex court refused to interfere.

In *Rafiq v. State of Uttar Pradesh*, the two judges bench of the apex court while dismissing the appeal filed against the decision of the Allahabad causing the conviction of the appellant for an offence of rape opined that concurrent findings of fact ordinarily acquire a deterrent sanctity and tentative finality when challenged in the supreme court and the supreme court rarely invoke the special jurisdiction under Article 136 of the Constitution which is meant mainly to correct manifest injustice or errors of law of great moment.

In *Kehar Singh v. State (Delhi Admin)* an appeal by special leave was filed against the decision of the high court confirming the death sentence passed by trial court under s. 302 read with s. 120-B, IPC. The case relates to a very unfortunate incident where the Prime Minister Smt. Indira Gandhi was assassinated by persons posted for her security at her residence. The apex court opined that where the high court has reached conclusions based on inadmissible evidence and partly on circumstances which are not justified on the basis of evidence, or partly on facts

---

90 AIR 1981 SC 451
91 AIR 1981 SC 460
92 AIR 1981 SC 559
93 AIR 1988 SC 1833

290
which are not borne out from the evidence on record it cannot be said that in an appeal under Article 136, the supreme court will not go into facts of the case and come to its conclusion.

**In M/S Medimpex (India) Pvt. Ltd. v. The Drug controller cum chief licensing authority,** an appeal by special leave was filed against the judgment of the Patna High Court where the High Court by affirming the findings of the Drug controller that renewal certificate of the licence granted to the appellant was forged and fabricated dismissed the writ petition and opined that the Photostat copy of the renewal certificate did not bear any impression of the signature of the chief licensing authority and as such the said document cannot be relied upon.

The apex court while dismissing the appeal opined that such a renewal certificate which was held forged by the high court cannot be considered by Supreme Court in special leave petition particularly in absence of affidavit of licensing authority vouchsafing genuineness of document because such a finding as aforesaid was finding of fact based on material placed before court.

Further the contention of the appellant that the high court committed an error in holding that no appeal lay to the state government against the finding by the drug controller that no licence had ever been granted to manufacture particular drug, in compliance with the direction of the high court, was not maintainable as such an order could not obviously be treated as an order either refusing to grant licence or to renew it and as such no appeal can lie against it.

**In Jinnat Mia alias Jinu Mia v. State of Assam,** an appeal by special leave was filed against the judgment of the High Court reversing the order of the trial court and convicting the appellant for committing murder under sections 302/34, IPC.

The apex court while dismissing the appeal opined that the practice of the court is not to interfere on questions of fact except in exceptional cases when the finding is such that it shocks the conscience of the court. Further it was opined that the high court considered the evidence on record and found that there was no reason to disbelieve the prosecution witness. The injuries suffered by the complainant were proved to be not superficial. Moreover, the delay of one day is forwarding FIR did not vitiate the prosecution case. So conviction of accused was held proper.

---

94 AIR 1990 SC 544  
95 AIR 1998 SC 533
In *Gulam Hussain Shaikh Chougule v. S. Reynolds, Suptd. of Customs*,96 Marangoa, an appeal by special leave was filed against the order of the Bombay High Court dismissing the criminal revision application of the appellant and thus maintain his conviction under s. 135 of the Customs Act. The contention of the appellant with regard to the point that the provisions of section 134 of CrPC was not followed while recording his statement under section 108 of the Customs Act by the customs officer and as such the statement was not voluntary, was rejected by the High Court as it was held that the statement recorded under section 108 of the Act is neither hit by section 164 CrPC nor section 25 of the Evidence Act.

The apex court while dismissing the appeal opined that the supreme court cannot interfere with the order of the high court in an appeal under Article 136 where the high court declined to accept the plea of the appellant on examination of the facts emerging from evidence in case.

In *State of Orissa v. DibakarNaik*,97 the two judges bench while partly allowing the appeal filed against the judgment of the Orissa High Court causing the acquittal of the respondents of the charges under section 376 and section 302, Indian Penal Code for which they were earlier convicted by sessions court, opined that generally supreme court does not interfere with the finding of fact arrived after proper appreciation of evidence by the courts below. If however, such a finding is perverse based upon no evidence or based upon such evidence which is inadmissible or is the result of imaginative hypothesis and conjectures, the court is entitled to re-appreciate the evidence to ascertain the validity of the impugned judgment.

Further it was opined that where in a criminal trial while acquitting the accused for offence of rape, the high court failed to observed the complainant (husband) of the deceased was under shock, he did not go for rescue as he had his infant child with him and moreover the accused persons were armed with weapons while not relying on his testimony, thus it was held that it was a fit case requiring interference of supreme court since the accused were wrongly acquitted on surmises and conjectures ignoring the trustworthy evidence of complainant by reaching at perverse conclusions regarding the facts of the case.

---

96 AIR 2001 SC 2930
97 AIR 2002 SC 2148
In State of Haryana v. Sher Singh, an appeal by special leave was filed against the decision of Punjab and Haryana High Court causing the acquittal of all respondents except respondent no. 10 whose sentence was modified and he was convicted under section 304, part I and thus the judgment of the trial court was reversed which caused the conviction under section 302, IPC. While reversing the judgment of the trial court the high court considered the decree of pre-emption obtained by father of accused, entries in KhasaraGirdewari, injunction obtained by accused against deceased and also the failure of prosecution to let in evidence regarding allegation that accused had let in cattle’s in filed and plea of private defence of the accused to safeguard the property.

The apex court while allowing the appeal with regard to respondent no. 1 (Sher Singh) and dismissing the appeal with regard to other respondents opined in appeal against acquittal, the apex court opined that it cannot disturb the finding of the fact reached by the High Court unless it is perverse or the material evidence is over looked or an erroneous legal approach is adopted.

With regard to respondent no. 1, it was opined that as he exceeded his right of private defence and caused much more harm than necessary, he should be punished under section 326 read with section 322, IPC.

Interference with Concurrent Findings of Facts:

The Supreme Court will not interfere with a concurrent finding of fact by the courts below, except where there is some infirmity in the appreciation of the evidence and the finding is perverse.

In Shri Ram, Daya Ram v. the State of Maharashtra, appeals by special leave came before the apex court against the judgement of the High Court where the High Court upheld the decision of the learned sessions judge and held the appellants guilty under section 304, Part I, read with Section 34. The appellants raised two contentions before the apex court i.e. the Sessions Court and the High Court have not properly appreciated the evidence and circumstances of the case and the trial and conviction of the appellants by Sessions Court were null and void as the Magistrate had no jurisdiction to commit the appellants to Sessions Court without examining the witnesses under sub-section (4) of section 207-A of the Code.

98 AIR 2002 SC 3223
99 AIR 1961 SC 674
The apex court while dismissing the appeal opined with regard to first contention of the appellant that the apex court will not interfere on the questions of fact, particularly when they are concurrent findings, except under exceptional circumstances.

Furthermore, with regard to the interpretation of section 207-A of the code, the apex court observed that the first part of the section provides for the examination of witnesses produced by the prosecution and the second part for the examination of other witnesses. One of the fundamental rule of interpretation is that if the words of a statue are in themselves precise and unambiguous "no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature". The first part of the Sub-Section reads: "The Magistrate shall then proceed to take the evidence by such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged". The word 'shall' impose a peremptory duty on the Magistrate to take the evidence, but the nature of the said evidence is clearly defined thereafter. The clause "as may be produced by the prosecution as witnesses to the actual commission of the offence alleged" governs the words "such persons", with the result that the duty of the Magistrate to take evidence is only confined to the witnesses produced by the prosecution. The wording of the second part of the Sub-Section is also without any ambiguity and its reads: "and if the Magistrate is of the opinion that it is necessary in the interests of justice to take the evidence of anyone or more of the other witnesses for the prosecution, he may take such evidence also". No doubt the word 'may' in the clause 'he may take evidence' impose a duty upon the Magistrate to take other evidence; but that duty can arise only if he is of the opinion that it is necessary in the interests of justice to take evidence. The fulfilment of the condition that gives rise to the duty is left to the discretion of the Magistrate. The duty to take evidence arises only if he is of the requisite opinion. Doubtless the discretion being a judicial one, it should be exercised reasonably by the Magistrate. If he exercises it perversely, it may be liable to be set aside by a superior court.

In Padma Vithoba Chakkayya v. Mohd. Multani\(^\text{100}\), it was observed by Supreme court that if two lower courts have recorded a concurrent finding with regard to a fact, then there is no sufficient reason for the Supreme Court to interfere

\(^{100}\) AIR 1963 SC 70
with the concurrent finding and allow the reagitation of the question of fact. In this case, the Addl. District Judge as well as the High Court of Hyderabad recorded a finding in a suit for recovery of possession of the land that the defendant attained majority three years prior to the institution of suit, therefore the said suit became time barred.

In large number of cases, the Supreme Court has laid down the principle that it would not interfere with the findings of facts arrived at by the lower courts and/or Tribunals and it will not reappreciate the evidence as it is not a third court of appeal but where the facts and circumstances of a case justify interference it will not hesitate to do so.

In *Sanwat Singh v. State of Rajasthan*\(^\text{101}\), an appeal by special leave was filled against the conviction and sentence passed by the High Court of Rajasthan under s. 304, read with section 149 and s. 148, Indian Penal Code. The case provides that the appellant Chagrined by the attitude of deceased as they occupied the place of appellant in the temple, conferred for some time and then attack them with gun shots as a result, 16 persons received injuries and among them, two were succumbed to injuries. This results in the trial of appellant before sessions judge and it was held that there was not common object and it had been proved beyond reasonable doubt, so sessions judge cause the acquittal of all the accused. On appeal, the High Court found the accused guilty of culpable homicide not amounting to murder under section 304 read with section 149 and section 148, IPC as it was relied by the High Court that they formed an unlawful assembly and had a common object.

In appeal by special leave, the apex court while rejecting the contention of the appellant that High had no substantial and compelling reasons to take different view from that of the sessions judge, provides the power of an appellate court and in that regard made a reference to the decision of Privy Council in *Sheo Swarup v. Emperor*\(^\text{102}\), and observed that the High Court should and always give proper weight and consideration to the views of trial judges as to the credibility of the witnesses, presumption of innocence in favour of accused, the right of accused judge who had the advantage of seeing the witnesses.\(^\text{103}\) Moreover, it was further held that the

\(^{101}\) AIR 1961 SC 715

\(^{102}\) AIR 1934 PC 227

\(^{103}\) Per Lord Russel at p. 404. The same decision was followed with approval in *Noor Mohd. v. Emperor*, AIR 1945 PC 151; *Puran v. State of Punjab*, AIR 1953 SC 459; *Naryan v. State of Travancore*, AIR 1953 SC 478; *Shiv Bhadur v. State of Vindhya Pradesh*, AIR 1954 SC 322 (Though
The appellate court has full power to review the evidence upon which the order of acquittal is founded.

The apex court on the analysis of the facts of the case found that the session’s judge had rejected the evidence of main witnesses for the prosecution, the learned sessions judge did not give a definite finding on the version of the prosecution case. In that sense, the approach of the High Court was correct and the High Court gave definite findings on the consideration of the entire evidence.

Furthermore, the apex court has to decide with regard to interference with the judgement of High Court under Article 136 of the Constitution. The apex court discussing the scope of Article 136 opined that Article 136 of the Constitution confers a wide discretionary power on the Supreme Court to entertain appeals in suitable cases not otherwise provided for by the constitution. Though Article 136 is couched in widest terms, the practice of the court is not to interfere on question of fact except in exceptional cases when the finding is such that it shocks the conscience of the court.

Further in Raghav Prapanna Tripathi v. State of U.P.\textsuperscript{104}, the apex court while allowing the appeal against the order of the High Court of Allahabad affirming the conviction of the appellant under sections 302, 201 an 176, IPC, observed that ordinarily the Supreme Court does not reassess or re-examine the findings but if the case is solely based on circumstantial evidence, then the court can look into the findings of the fact which was found missing by the court to complete the chain of events justifying the conviction.

Moreover in Kirpal Singh v. State of U.P.\textsuperscript{105}, it was held that normally Supreme Court does not proceed to review the evidence in appeals in criminal cases unless the trial is viliated by some illegality or irregularity of procedure or the trial is held in manner violative of the rules of natural justice resulting in an unfair trial or unless the judgement under appeal has resulted in gross miscarriage of justice.

\textsuperscript{104} AIR 1963 SC 74
\textsuperscript{105} AIR, 1965 SC 712
In *RadhaKishan v. State of U.P.*\(^{106}\), the appeals by the special leave was prefered by the appellant against the decision of the High Court of Allahabad which reverses the acquittal order of the addl. Sessions judge and cause the conviction of the appellant under section 52 of the Indian Post Office Act, 1898.

Before the apex Court, the appellant contended that there is contravention of the provisions of section 103 and section 165 of Cr. PC and the search was illegal and sessions judge did not comply with section 342 Cr PC in examining the appellant and no offence under section 52 of the Post Office Act has been made out.

The apex court observed that where the provisions of sections 103 and 165 Cr PC are contravened the search can be resisted by the person whose premises are sought to be searched. Because of the illegality of the search, the court may be inclined to examine carefully the evidence regarding the seizure but the seizure of articles is no vitiated where the High Court in an appeal from acquittal has chosen to accept the evidence of the prosecution with regard to the fact of seizure, that being a question to be decided only by the court of fact, the supreme court in an appeal under Article 136 of the Constitution would not re-examine the evidence for satisfying itself as to the correctness or otherwise of the conclusions reached by the High Court. Further, the apex court opined that where no grievance was made in the lower courts about non-compliance with the requirements of section 342, Cr PC; the point as to the prejudice to the accused appellant cannot be allowed to be raised for the first time in an appeal under Article 136, the reason being that whether there was prejudice is a question of fact. Then the apex court observed that for proceedings under section 52, Post Office Act, for secreting certain registered postal articles against appellant were merely presumption of the prosecution as appellant and his father was living jointly, the key of almirah from where articles are founded was furnished by the appellant's father and moreover in almirah there are certain articles belonging to the father of appellant. The fact that the accused had the opportunity to get at the articles is not sufficient to infer exclusive possession of the accused of those articles. No presumption can, therefore be drawn against accused and even in inference of joint possession would not be legitimate.

\(^{106}\) *AIR 1963 SC 822*
In *Noor Khan v. State of Rajasthan*\(^{107}\), the appellant along with the nine others were tried under section 302, IPC. The session judge acquitted all the persons accused at the trial but on appeal High Court of Rajasthan confirmed the acquittal order except in case of the appellant and held him guilty under section 302 and sentenced him imprisonment for life. The appellant then filled an appeal by special leave under Article 136 of the Constitution before the apex court.

The apex court on analysis of the case dismissed the appeal and opined that in the very case session judge had failed to appreciate the full significance of the important evidence. Further the apex court observed the relevance of sections 162, 173 (4) and 207 A(3) which provide that the accused should be provided with copy of FIR and all other copy of documents and the magistrate should satisfy himself regarding this fact but the failure to furnish statements of witnesses recorded in the course of investigation may not vitiate the trial. It does not affect the jurisdiction of the court to try a case, if the evidence warrants such a course. With regard to the provisions of s. 537 of the code, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgement or other proceedings before or during trial or in any inquiry or other proceedings unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice.

The apex refused to interfere with the conclusion of the High Court in an appeal with special leave when there has not been any substantial infirmity in the reasoning of that court.

In *Nihal Singh v. the State of Punjab*\(^{108}\), the apex court while relying on the principle down in *Sanwant Singh v. State of Rajasthan*\(^{109}\) and *State of Bombay RusyMistry*\(^{110}\) opined that in an appeal under Article 136 against the judgment of the High Court convicting an accused after setting aside the order of acquittal made by a subordinate court, the Supreme Court has undoubted jurisdiction to interfere even with findings of fact arrived at by the High Court. Article 136 of the Constitution is couched in the widest phraseology. The Supreme Court's jurisdiction is limited only by its discretion. It can, therefore, in its discretion, entertain as appeal and exercise

\(^{107}\) AIR 1964 SC 286

\(^{108}\) AIR 1965 SC 26

\(^{109}\) AIR 1961 SC 715

\(^{110}\) AIR 1960 SC 391
all the powers of an appellate court in respect of judgments, decrees, determinations, sentences or orders mentioned therein. But that wide jurisdiction has to be regulated by the practice of the court.

The practice of the Privy Council and that followed by the federal court and the Supreme Court is not to interfere on questions of fact except in exceptional cases, when the findings is such that it shocks the conscience of the court or by disregard to the form of legal process or some violation of the principles of natural justice or otherwise substantial and grave injustice has been done.

Article 136 of the Constitution does not confer a right of appeal on any party from the decision of a court; but it confers a discretionary power on the Supreme Court to interfere in suitable cases.

The apex court while going through the SLP has two options i.e. firstly to go through the entire evidence as in a regular appeal and then come to a conclusion whether the appeal is an exceptional one which calls for the interference in the interest of justice. The second method is to allow the counsel to state the case broadly and after going through the judgements of the lower courts, to come to a conclusion that it is a fat case to review the entire evidence. The apex court consider the second method as more convenient as it enables the Supreme Court to do justice in an app. case and it also prevents the unnecessary waste of time involved in adopting the alternative procedure of treating practically such an appeal as a regular appeal.

On the analysis of the case RaghubarDayal, J., in concurrent judgment opened that it is not desirable to lay down any limitation about the scope of the jurisdiction of the Supreme Court and the limits of the exercise of its discretion in an appeal under Article 136 against the judgment of the High Court convicting an accused after setting aside the order of acquittal made by the subordinate court. The entire exercise of the court's discretion under Article 136 is solely dependent on the views of a particular Bench deciding a certain appeal on the basis of the facts and law and it is far that Bench as to how to proceed to hear and decide that appear. It is for the Bench hearing the special leave petition to consider as fully as possible whether the case deserves a hearing in the apex court, if it deserves a hearing whether that is to be limited to any particular aspect of law or fact and therefore if the Bench grants special leave it should make clear the matters on which it considers a hearing in this court desirable or necessary. If parties know that once they obtain
special leave without limitations they will be free to argue on facts, they will come prepared and will present the case as best as possible and the court too would be in a better position to decide.

In *Dahyabhai Chhanganbai Thakkar v. State of Gujarat*¹¹¹, the appellant (accused) was charged for murdering his wife and was sentenced to rigorous imprisonment for life by Addl Sessions Judge and the same was affirmed by the High Court on appeal. The accused raised the place of insanity as a defence but was disallowed by the lower courts. On appeal by special leave to the Supreme Court the apex court observed that as a matter of practice the court will not re-appreciate the evidence deliberated upon by the lower courts but in exceptional cases it can do so. In disallowing the appeal, the court observed that when a plea of legal insanity is set up, the court has to consider whether at the time of commission of the offence the accused, by reason of unsoundness of mind, was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of section 84 of the penal code can only be established from the circumstances which preceded, attended and followed the crime.

In *Mohinder Singh v. State of Punjab*¹¹², the apex court placed reliance on the principle laid down in *Pritam Singh v. State of Punjab* and held that Supreme Court is not a court of appeal in criminal matters except on a certificate by the High Court or in the exceptional case described in Article 134 of the Constitution and it is not the practice of that court in a criminal appeal on special leave to examine at large the evidence in the case unless there are circumstances which make it feel that these has been a miscarriage of justice.

In *Saravanabhavan and Govindaswamy v. State of Madras*¹¹³, the appellants had been convicted for the murder of three persons and had been convicted under sections 302/34 and were sentenced to death as they were found guilty of murders. On appeal, the sentence was confirmed by the High Court. The appellant then filed an appeal by special leave under Article 136 of the Constitution. The main contention of the appellant was that the main evidence against the accused was that

---

¹¹¹ AIR 1964 SC 1563  
¹¹² AIR 1965 SC 79  
¹¹³ AIR 1966 SC 1273
of an approver and that was incredible and moreover there was neither general corroboration of testimony of the approver nor corroboration in respect of either of the appellants.

Hidayatullah, J., on behalf of majority opined that in an appeal by special leave under Article 136 of the Constitution there is no sacred right of appeal. The court's ordinary appellate jurisdiction in criminal cases is laid down in Article 134 of the Constitution. Some of the appeals in that Article are available as of right and others lie if a special certificate is granted by the High Court. The principle for the exercise of jurisdiction in criminal cases under Article 136 which the Supreme Court will ordinarily follow is that the court will not reassess the evidence at large, particularly when it has been concurrently accepted by the High Court and the courts below. Therefore, where the court interferes it must be shown that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a misreading of vital evidence or an improper reception or rejection of evidence and that the courts below have committed an error of law or of the forms of legal process or procedure by which justice itself has failed. The majority observed that in the present case, the session's judge and the High Court were fully alive to the law relating to approver's testimony. The evidence was scanned properly in that light and there was nothing in the circumstances of the case which called for interference under Article 136.

On the other hand, Wanchoo, J., on behalf of minority held that ordinarily the Supreme Court does not go into the evidence. When dealing with appeals under Article 136 of the Constitution particularly where there are concurrent findings. The does not mean that it will in no case interfere with a concurrent finding of fact in a criminal appeal; it only means that it will not so interfere in the absence of special circumstances. One such circumstances is where there is an error of law vitiating the findings, for example, where the conviction is based on the testimony of an accomplice without first considering the question whether the accomplice is a reliable witness. Another circumstance is where the conclusion reached by the courts below is so patently opposed to well established principles of judicial approach, that it can be characterised as wholly unjustified or perverse. In the present case, the High Court does not seem to have addressed itself first to the question whether the evidence of the approver is credible in itself and can be relied upon. For the purpose, the approver's evidence is to be scrutinised as a whole along with other evidence and
the High Court does not seem to have done the same. Hence, it is a case where the Supreme Court must itself scrutinise the evidence to find out whether his evidence is credible in itself and he can be said to be a reliable witness.

In *Ramabhupala Reddy v. the State of Andhra Pradesh*¹¹⁴, an appeal by special leave was filled against the decision of the High Court of Andhra Pradesh. The appellants were charged with the murder under section 302, IPC. The learned District Judge disbelieving the witnesses acquitted all the accused but on appeal before the High Court, the appellants were held guilty and convicted under section 302 read with section 149, IPC. Then the appellants filed an appeal by special leave under Article 136 of the Constitution.

The apex court while dismissing the appeal opined that although the powers of the Supreme Court under Article 136 are very wide, the Supreme Court, following the practice adopted by the Judicial Committee has prescribed limits on its own power and in criminal appeals, except under exceptional circumstances, it does not interfere with the findings of fact reached by the High Court unless it is of the opinion that the High Court had disregarded the forms of legal process or had violated the principles of natural justice or otherwise substantial and grave injustice has resulted. The Supreme Court does not ordain reappraise the evidence if the High Court has approached the case before it is accordance with the guidelines laid down by the Supreme Court unless some basic error on the part of the High Court is brought to the notice of the Supreme Court. It is to be observed that except in certain special cases, the High Court is the final court of appeal and the Supreme Court is only a court of special jurisdiction.

Further it was observed that all the points taken into consideration by the trial court to arrive at the verdict of acquittal has been considered by the High Court and it has given reasons for differing from the conclusions reached at by the trial court. There is nothing basically wrong in the approach adopted by the High Court. It considered the evidence on record on the basis of human probabilities and tested the evidence given by the witnesses by various methods known to the law. On consideration of findings of fact by High Court, the apex court held that there was no reason for interference.

¹¹⁴ AIR 1971 SC 460
Further in *Noor Mohd. Yusuf Monin v. State of Maharashtra*\(^{115}\), the apex court while partly allowing the appeal opined that under Article 136, the Supreme Court does not normally proceed to review and re-appraise the evidence for itself and the conclusions of the High Court on questions of fact on appreciation of evidence are considered to be final. This is so even if the Supreme Court were to feel that a different view of the evidence is possible. But where it was represented that the evidence on the record did not support the conclusion of the High Court and that grave and substantial and injustice had been caused, the Supreme Court undertook to go into the evidence to satisfy itself if there was any sufficient ground for interference on appeal by special leave.

In *Ram Ekbal Rai v. Jaldhari Pandey*\(^{116}\), an appeal by special leave is filed against the decision of High Court of Patna where the High Court dismissed the revision application and caused the conviction of the appellant under section 379 and section 143 of IPC. The respondent’s case before the session judge was that he got the possession of land by an order of the court but the appellant forcibly got the standing crop harvested and thus committed the said offence. The Sessions Court held the appellant guilty and caused the conviction of the appellant. The High Court also dismissed the revision application. Against this decision of High Court, the appellant filed an appeal by special leave before the apex court under Article 136 of the Constitution.

The apex court while allowing the appeal opined that ordinarily the apex court in an appeal under Article 136 of the Constitution is reluctant to reopen concurrent findings of fact arrived at by the trial court and the appellate court. The court observed that the lower courts had not paid proper attention to the evidence which results in the misjudgement of the respective position of the parties and it resulted in the interference by the apex court.

Further in *Sahaj Ram v. The State of U.P.*\(^{117}\), the apex court opined that the case relates to section 302 read with section 149, IPC for causing murder. As there was failure on the part of lower courts to call eye - witnesses and the reasons given for not examining eye witnesses are neither legal nor sufficient. Moreover, the court witnesses also indirectly supported the version of the accused party. The failure of

---

\(^{115}\) AIR 1971 SC 885  
\(^{116}\) AIR 1972 SC 949  
\(^{117}\) AIR 1973 SC 618
the High Court to take into account material circumstances coupled with fact of High Court's appreciation of evidence on the wrong basis that sessions judge had not disbelieved the evidence. All this calls for the interference with the concurrent findings of act in appeal by special leave.

In *State of U.P. v. Sheo Ram*¹¹⁸, an appeal by special leave was filled against the decision of High Court acquitting the respondents who was convicted under section 302 and was sentenced to death. The High Court held that there is no credible evidence to hold that respondent stabbed the deceased. Against this decision of High Court, State prefered an appeal by special leave under Article 136 of the Constitution before apex court.

The apex court while allowing the appeal in case of respondent opined that there is no evidence to justify the apprehension of the High Court that the respondent was involved on account of suspicion. The apex court observed that where a case against some of the accused, whose conviction was maintained by the High Court was not at all distinguishable from the case of other co-accused whom the High Court acquitted, the Supreme Court on appeal against acquittal, reversed the acquitted and convicted the accused. Furthermore, it was opined that the concurrent finding of fact by the session court and the High Court that the assembly was unlawful and the object of that assembly was to cause grievous hurt was not disturbed by the Supreme Court in appeal under Article 136. So, the High Court was held in error in holding that the respondent was entitled to the benefit of doubt.

In *Ashok Kumar v. State of Punjab*¹¹⁹, an appeal by special leave was filed against the decision of the High Court confirming the conviction of appellant passed by the session’s judge for the offence of intentionally causing the death of the deceased under section 302 of IPC.

The three judges bench while allowing the appeal opined that being an appeal by special leave, it would not be right for the Supreme Court to embark on a reappreciation of the evidence and to interfere with the concurrent view taken in regard to the evidence by the learned sessions judge and the High Court but it was observed that there was nothing in evidence to show that the appellant inflicted fatal injury. The concurrent finding of the courts below was that the common intention of the accused was to cause grievous hurt to deceased, so the possibility of the appellant

¹¹⁸ AIR 1974 SC 2267
¹¹⁹ AIR 1977 SC 109
causing simple injury could not be ruled out and his conviction under section 302, IPC could not be sustained.

In *Chuhar Singh v. the State of Haryana*\(^{120}\), an appeal by special leave was filed against the decision of the Punjab and Haryana High Court confirming the sentence passed by the Sessions Court with regard to causing death of the deceased under section 304 Part-I read with section 34, IPC. The conviction was based on the testimony of a single eye witness.

The apex court while allowing the appeal opined that normally, the Supreme Court is slow to interfere with the findings of fact recorded by the High Court and the session’s court and if two views of the evidence are reasonably possible, the Supreme Court would refrain from upsetting the judgment of the High Court. But where the conviction of the accused was based on the evidence of the only eye witness which on scrutiny by the Supreme Court was found to suffer from serious infirmities it was held that the conclusion of the lower courts that he was an eye witness to the occurrence could not be accepted as correct and therefore, conviction could not be sustained.

In *Lala Ram v. State of U.P.*\(^{121}\) an appeal by special leave was filed against the judgment of the High Court confirming the sentence passed by the session’s court of the charges under section 148 and section 302 read with section 149, IPC.

The apex court while allowing the appeal opined that it is true that the Supreme Court generally will not interfere in the concurrent findings of criminal court but it has also been held that where the interests of justice requires the court can interfere even in such cases. Further it was opined that there was omnibus allegation by two eye-witnesses that as many as 10 accused fired shots at victims. The victims were setting in close promixity with other persons but no other person was injured. There were glaring infirmities in the settlements and the conviction on such omnibus allegation is bound to result in injustice.

In *Baldev Raj v. State of Haryana*\(^{122}\), an appeal by special leave was filed against the decision of High Court causing the conviction of the appellant under section 302, IPC. The High Court relied on the extra-judicial confession made by the appellant in presence of the prosecution witnesses.

\(^{120}\) AIR 1977 SC 386

\(^{121}\) AIR 1990 SC 1185

\(^{122}\) AIR 1991 SC 37
The apex court while dismissing the appeal opined that normally this court does not interfere with the concurrent findings of the facts of the courts below in the absence of very special circumstances or gross errors of law committed by the High Court and violation of the well established principles of appreciation of circumstantial evidence, which results in serious and substantial miscarriage of justice to the accused.

Further it was opined than an extra judicial confession, if voluntary, can be relied upon by the courts along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence.

In *Mathura Prashad v. State of Madhya Pradesh*<sup>123</sup>, an appeal by special leave was filed against the decision of the High Court confirming the conviction of the appellant passed by the trial court of the charges under section 302 read with section 34, IPC for intentionally causing the death of the deceased.

The apex court while allowing the appeal opined that on scrutinising the facts and circumstances of the case, it appears that the findings of the courts below suffer from the vice of perversity. Both the courts below overlooked and ignored the fact that both the appellants were present at the scene of occurrence but none pointed out to the police that the appellants participated in the crime. The concurrent findings recorded by both the courts were not proper but perverse. Moreover, the prosecution had not satisfactorily established the guilt of these two appellants beyond all reasonable doubt and thus compelled the apex court to interfere.

In *Ganga Kumar Srivastava v. State of Bihar*<sup>124</sup>, an appeal by special leave was filed against the judgment of Patna High Court agreeing with the judgment of Special Judge (Vigilance) and thus causing the conviction of the appellant under section 161 of the IPC and under section 5 (2) of the Act for taking bribe for giving electric connection.

The apex while allowing the appeal laid down certain guidelines which should be kept in mind while interfering with the concurrent findings of fact in case of appeal against conviction:

<sup>123</sup> AIR 1992 Sc 49  
<sup>124</sup> AIR 2005 SC 3123
i) The powers of the apex court under Article 136 of the Constitution are very wide but in criminal appeals the apex court does not interfere with the concurrent findings of the fact save in exceptional circumstances.

ii) It is open to the apex court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.

iii) It is open to the apex court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the court.

iv) When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

v) The appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.

On the analysis of the case, the apex court observed that the findings of the courts below were vitiated as due and proper consideration of the materials on record and also proper appraisal of materials on record was not made by the lower courts. Further it was opined that the trap case was initiated by the vigilance department at the instance of the complaint filed by the complainant because of the fact that a criminal case was initiated by the appellant against the complainant for theft of electricity. All this was done to put the appellant into trouble in his service and therefore, the judgements and orders of the court below are liable to be set aside on the ground that such findings of fact and appreciation of evidence are vitiated as the evidence adduced by the prosecution fell short of the test of reliability and acceptability and it was highly unsafe on the part of the courts below to act upon it.

In *Chandra Bihari Gautam v. State of Bihar*125, the two judges bench while dismissing the appeal by special leave filed against the judgement of the Patna High Court causing the concretion of the appellant under section 302 read with section 149, IPC, opined that the mere possibility of the occurrence having taken place in the manner suggested by the defence counsel is no ground for interference in the appeals filed by special leave under Article 136 of the Constitution. No interference

---

125 AIR 2002 SC 1836. See also *Ochathevar v. State by Inspector of Police, T.N.*, AIR 2002 SC 2392, where the apex court refused to interfere with concurrent finding of lower court.
would be made with the concurrent finding of fact based on pure appreciation of evidence even if Supreme Court was to take a different view on the evidence. The court will normally not enter into reappraisal or the review the evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. Court may interfere where on proved facts wrong inferences of law are shown to have been drawn. It needs to be emphasised that Supreme Court is not a regular court of appeal to which every judgment of the High Court in criminal cases may be brought for scrutinising its correctness. It is only in rare or exceptional case where there is some manifest illegality or grave irregularity that the court would interfere with such findings of fact.

In Zafar v. State of U.P.\(^{126}\), the two judge bench while deciding the fate of appeal filed against the judgement of the High Court confirming the conviction of the appellant under section 302, IPC.

The apex court while allowing the appeal opined ordinarily, the Supreme Court does not interfere with the concurrent finding of fact but where the trial court and the High Court overlooked certain important aspects while appreciating child witness i.e. the child witness was examined after 4-5 days after the occurrence and omission in FIR that child had told his grandfather that the appellant (accused) had killed his father is significant. There are fatal infirmities in the evidence relied upon by the prosecution which were not adverted to by the High Court, so it is a fit case for interference under Article 136.

In DayanidhiBisoi v. State of Orissa\(^{127}\), the two judge bench while deciding the fate of appeal filed against the judgement of the High Court confirming the death penalty under section 302, IPC of the appellant, opined that in normal course the apex court does not interfere with concurrent findings of lower courts but as the case is based on circumstantial evidence and the appellant is facing death penalty, it would be in the interest of justice to re-appreciate the evidence brought on record by the prosecution.

Further, the apex court while dismissing the appeal opined that on reappraisal of material on record, it was observed that the murder was done in deliberate and diabolic manner without any provocation while the deceased were

\(^{126}\) AIR 2003 SC 931
\(^{127}\) AIR 2003 SC 3915
sleeping. Hence, the findings of the courts below that this is a rarest of rare case involving a pre-planned brutal murder without provocation need no interference by the apex court in appeal under Article 136 of the constitution.

In A.V. PapayyaSastry v. Government of Andhra Pradesh\(^{128}\), an appeal by special leave was filed against the order of High Court wherein the High Court observed that the earlier orders with regard to the determination of the surplus land was obtained by the appellant by exercising fraud in collusion with officers of beneficiary, when the appellant pleaded that possession of land was already taken by beneficiary of land and therefore it could not be declared surplus land under the land ceiling Act. Therefore, High Court had recalled all its earlier order as they were obtained by exercising fraud.

The apex court while dismissing the appeal opined that Article 136 does not confer a right of appeal on any party. It confers discretion on the apex court to grant leave to appeal in appropriate cases. In other words, the constitution has not made the Supreme Court a regular court of appeal or a court of error. The apex court only intervenes where justice, equity and good conscience require such intervention.

Further, it was opined that report submitted by Central Bureau of Investigation (CBI), prima facie show the commission of fraud and initiation of criminal proceedings. Thus it was held that order of High Court recalling earlier order by using direction to authorities to pass appropriate order a fresh in accordance with law was proper and there was no miscarriage of justice calling for interference of Supreme Court.

**Interference with Sentence or Fine:**

In Pandurang v. State of Hyderabad\(^{129}\), a three judges bench of the Supreme Court was constituted to deliberate the fate of SLP filed against the decision of Hyderabad High Court where there was a conflict of opinion between the judges of High Court, one of the judges of the High Court, M.S. Ali Khan, J., considered that the convictions for murder should be maintained but was of the opinion that sentence should not be death but imprisonment of life; While, V.R. Deshpands, J., favoured acquittal in case of all five accused. Because of difference of opinion, the matter as then referred to a third judge, P.J. Reddy, J., who agreed with the first about convictions and adjudged all the five to be guilty under section 302. He passed

\(^{128}\) AIR 2007 SC 1546

\(^{129}\) AIR 1955 SC 216
death sentence to three appellants namely Pandurang, Tukia and Bhilia and to others two transportation for life. Then all the five convicts applied to High Court for leave to appeal to Supreme Court which was refused. Then three convicts who were sentenced to death applied for special leave to appeal which was granted.

It was opined that ordinarily Supreme Court would not have enquired into questions of fact but as three persons have been sentenced to death on the divergence of opinion, the judges of High Court as highlighted above, the court thought it pertinent to reappreciate the evidence.

On reappreciation of evidence, the apex court found that the blows of Bhilia and Tukia are responsible for the cause of the death of deceased Ramchandra. This was ascertained from the statements of the eye-witnesses as well as medical report of the deceased. The third accused namely Pandurang’s blow was not fatal enough to cause death and moreover there was no pre-planning as highlighted from the statements of the eye-witnesses. Henceforth, he was held guilty under section 326, IPC. Therefore, the apex court reduced the sentence of imprisonment for a term of 10 years. Moreover, the court highlighted that if there is difference of opinion among the judges concerning sentence of death penalty, then the death penalty should be converted to transportation for life.

In Ahir Raja Khima v. State of Saurashtra\textsuperscript{130}, the sessions court acquitted a person from the charges of murder on the basis that the confession was not voluntarily as well as a clear cut case was not made out by the prosecution. On appeal by the State govt., the High Court reverses the judgment of the session’s court and convicted the person for murder. On appeal the Supreme Court while allowing the appeal opined through the majority judgment that it is well settled that it is not enough for the High Court to take a different view of the evidence; there must also be substantial and compelling reasons for holding that the trial court was wrong and if the trial court takes a reasonable view of the facts of the case, interference under section 417 is not justifiable unless there are really strong reasons for reversing that view.

In Smt. Mathri v. the State of Punjab\textsuperscript{131}, there was dispute over a certain land between appellant (accused) and the deceased (decree holders). The revenue officers who heard the case made a decree in favour of the five persons and a data for

\textsuperscript{130} AIR 1956 SC 217
\textsuperscript{131} AIR 1964 SC 986
execution was also prescribed in the order. Despite of various unsuccessful attempts of possession, the decree-holders tried one more attempt of possession after the date mentioned in the order along with police officials. As decree-holders were attacked by a large mob consisting of men and women, the police officers also fired to disperse the mob. This resulted in the death of two decree holders and other were injured. 39 persons were tried before the session judge who on the analysis of evidence considered the ten accused guilty under sections 148, 326, 324, 323, IPC and cause the acquittal of the rest 29 as their membership of the unlawful assembly had not been proved beyond reasonable doubt. Then an appeal was filed by the 10 accused against the order of session judge and the state against acquittal of the rest and for enhancing the sentence, under section 302 of the accused. The High Court agreed with the finding of session judge and dismissed the appeal. Against this order both the accused and the state presented an appeal by special leave under Article 136 of the Constitution before the apex court.

The apex court while dismissing the appeal of both, the accused and the state opined that to Constitute criminal free pass court has to consider all the relevant circumstances including presence of knowledge and to natural consequences. Further it was opined that the participation of accused in unlawful assembly is a question of fact which cannot be interfered by the apex court. The apex court observed that the High Court had committed serious error by not examining the evidence properly as the blood stained weapons found in the field had not been proved to have been recovered from the possession of any of the appellant. So Supreme Court found it necessary to examine evidence for itself, although ordinarily it does not do so.

The apex further opined that the questions of sentence is in the discretion of trial cannot and would not ordinarily be disturbed by the High Court in appeal if the discretion has been exercised judicially ordinarily the Supreme Court will not interfere with the sentence passed by the trial court and confirmed by High Court but whose the discretion in the repeat was not juficially exercised, the apex court can interfere. So, the apex court considering the age and sex of the appellants cause the reduction of sentence in the interest of justice.
In Bhupendra Singh v. State of Punjab\(^{132}\), an appeal by special leave was filed against a judgment of the High Court of Punjab and Haryana confusing the death sentence under section 302, IPC, passed by the session judge. The main contention of the accused was that there was omission to examine the defence evidence by the High Court and that the High Court did not discharge its duty properly, so the order of the dismissal of the appeal was illegal.

The apex court on the analysis of the case opined that ordinarily, in a criminal appeal against conviction the appellate court, under Section 423 of the code of criminal procedure, can dismiss the appeal, if the court is of the opinion that there is no sufficient ground for interference, after examining, all the grounds urged before it for challenging the correctness of the decision given by the trial court. It is not necessary for the appellate court to examine the entire record for the purpose of arriving, at an independent decision of its own but if the accused is sentenced to death, the High Court while dealing with the appeal before it, on a reference for confirmation of sentence of death, the High Court is required to proceed in accordance with sections 375 and 376 of the Cr.P.C. and the provisions of these sections make it clear that the duty of the High Court in dealing with reference, is not only to see whether the order passed by the session judge is correct, but to examine the case for itself and even direct a further enquiry or the taking of additional evidence if the court considers it desirable in order to ascertain the guilt or innocence of the convicted person. Further, it was observed that the fact that the prosecution witness in a murder trial are the sons and daughter of the victim does not detract from the value to be attached to their evidence because their feelings would be strongest against the real culprit and they are interested in seeing that the real murderer of their father is convicted of the offence.

Further, the apex court observed that the murder was committed without premeditation and in sudden heat of anger, so there exists special features where the Supreme Court can interfere for the reduction of sentence to meet the ends of justice.

In Hazara Singh v. State of U.P.\(^{133}\), an appeal by special leave was filled against the judgement of the High Court of Allahabad confirming the sentence of death passed by the Addl. Sessions Judge by relying on the dying declaration and

\(^{132}\) AIR 1968 SC 1438  
\(^{133}\) AIR 1969 SC 951
other evidences. The content of the appellant was that the investigation was not proper as police started investigation after delay of 4 days.

The apex court opined that there seems no reason for destroying the credibility of dying declaration. There are concurrent findings of fact where Supreme Court cannot interfere. With regard to death sentence, Supreme Court opined that there were no aggravating circumstances to justify death sentence. Moreover, as intention to murder was lacking, so in such circumstances, imprisonment for life held appropriate.

In *Ram Narain v. State of U.P.*\(^{134}\), the three judge bench while allowing the appeal in a murder case opined that normally the apex court does not interfere with the discretion exercised by the High Court on the question of sentence even though the same has been enhanced but where the trial court has exercised its discretion on proper consideration of the material on record and its order cannot be described to be either contrary to recognised principle or otherwise having caused failure of justice and further when the state does not consider that the ends of justice require enhancement of the sentence but the High Court interferes at the instance of a private complainant, the apex court would be fully justified in considering for itself the propriety of the sentence as enhanced by the High Court.

Further in *Surendra v. State of U.P.*\(^{135}\), the two judge bench while deciding the fate of appeal with regard to question of sentence passed to the appellant by High Court causing conviction under section 325 read with section 149 and sentenced him to suffer rigorous imprisonment of two years, opined that the imposition of sentence is always a matter of discretion and unless the Supreme Court finds that the discretion has been exercised arbitrarily or capriciously or on unsound principles or that the sessions court or the High Court has not taken into account any relevant factors in imposing the sentence, the Supreme Court would not be justified in reducing the sentence, merely because it feels that a lesser sentence might well have been imposed.

In *NabiBux v. the State of Madhya Pradesh*\(^{136}\), an appeal by special leave was filed against the decision of High Court where the High Court has caused the enhancement of sentence passed by the session judges under section 325 read with

\(^{134}\) AIR 1971 SC 757
\(^{135}\) AIR 1977 SC 709
\(^{136}\) AIR 1972 SC 495
section 34, IPC for causing grievous hurt. The sentence was enhanced from six months to two years. The appellant questioned the justification of enhancement of sentence by an appeal by special leave before the apex court.

The two judges bench while deciding the fate of the appeal opined that the High Court in considering the question of sentenced exercised powers with reference to the facts and circumstances of the case. The exercise of this power cannot be said to suffer from any infirmity or lack of appreciation of facts. Nor can it be said that the High Court was not justified in observing that the sentence passed by the trial court was lenient in the circumstances of the case. Further, the Supreme Court opined that any interference with the sentence passed by the High Court has to be supported by rules and principles in the administration of justice. The apex court interferes with sentence only when it is established that the sentence is harsh or unjust in the facts and circumstances of the case.

In *Gopal v. State of Tamil Nadu*\(^{137}\), the two judges bench while dismissing the appeal relied on earlier decisions i.e. *State of Maharashtra v. Mayer Hans Geerge*\(^ {138}\), *Pritam Singh v. the State*\(^ {139}\) and *Sadhu Singh v. State of Pepsu*\(^ {140}\) and opined that the appellant (accused was convicted by the court below on the finding that the offences charged against them have been moved by the eye witnesses beyond any reasonable doubt. There was no illegality nor any question of principle involved in the matter of making order sentencing them to imprisonment as provided in sections 302 and 364 IPC. Thus the Supreme Court would not interfere with the sentence passed by the courts below unless there is an illegality in it or the same involves any question of principle.

In *Nathu Singh v. State of Madhya Pradesh*\(^ {141}\), an appeal by special leave was filed against the decision of the Madhya Pradesh High Court dismissing the revision application of the appellant caused the conviction of appellant under section 25 (1) (a) of the Arms Act, 1959 for possessing unlicensed catridges and sentencing him to two years rigorous imprisonment.

The apex court opined that in appeal by special leave ordinarily the Supreme Court does not interfere on a question of sentence. But as the High Court and the

---

\(^{137}\) AIR 1986 SC 702

\(^{138}\) AIR 1965 SC 722

\(^{139}\) AIR 1950 SC 169

\(^{140}\) AIR 1954 SC 271

\(^{141}\) AIR 1973 SC 2783
Sessions Court seemed to have been affected by hearsay evidence not supported by any direct or admissible evidence in according two years rigorous imprisonment to the appellant against whom no previous conviction was shown, the ends of justice would be met by reducing the sentence to one years rigorous imprisonment.

In *Apren Joseph alias Current Kunjakunju v. The State of Kerala*[^142^], ten persons belonging to marxist party were charged with murder of the deceased belonging to krishaksang. The trial court sentenced the accused No. 1 to 5 to death whereas order the acquittal of accused No. 6 to 10. On appeal to the High Court, the High Court confirmed the conviction of accuses No. 1 to 5 whereas reversed the order of acquittal of accused No. 6 to 10 and sentenced them to life imprisonment. Accused No. 1 to 5 filed special leave to appeal to the Supreme Court whereas accused No. 6 to 10 preferred appeal under section 2 (a) of Supreme Court (enlargement of criminal jurisdiction) Act.

It was contended on behalf of the appellant that there was delay in the filing of the FIR and this report was not filed by an eye witness which is the basis of the prosecution story. Enough time had been taken to fabricate the story in falsely implicating the accused persons and the same is the result of highly imaginative and fertile brain.

The apex court while relying of *Emperor v. Khwaja*[^143^] opined that the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statue provide that such information report can only be made by an eye-witness. FIR under section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informants evidence in court. But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and oppportunity to embolish or before the informants memory fades. Undue or unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for delay and consider its effects on the truthworthiness or otherwise of the prosecution version. In the opinion of apex court, no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the court in each

[^142^]: AIR 1973 SC 1
[^143^]: AIR 1945 PC 18
More delay in lodging the FIR with the police is, therefore, not necessarily as a matter of law, fatal to the prosecution.

Moreover, the eye witness were so frightened with the gruesome murder that they did not dare to immediately report the matter to the police. The Supreme Court reduced the sentence of death to sentence of imprisonment for life as it believed the offence has been committed on account of political intolerance.

In *E.K. Chandraseman v. State of Kerala*\(^{144}\), an appeal by special leave was filled against the decision of the Kerala High Court, confirming the conviction of the appellant passed by the trial court for the offence under sections 326, 328 and 272, IPC.

The apex court while dismissing the appeal opined that the High Court had analysed the sufficient evidence (direct or circumstantial) to find out the offence. The person who supplied arrack after mixing dangerous substance like methyl alcohol had knowledge that consumption of liquor distributed was likely to cause very serious adverse effects. This results in many deaths and cases of loss of eye sight occurring, due to consumption of liquor distributed was likely to cause very serious adverse effects. This results in many deaths and cases of loss of eye sight occurring due to consumption of liquor so the apex court observed that considering the nature of offence, the sentence should be enhanced.

With regard to enhancement of sentence, the appellant contended that under Article 136, the court has a limited jurisdiction and is confined to the examination of legality or otherwise of the judgement under appeal.

On this the apex court opined that the Supreme Court has power in an appropriate case to issue suomotu rule of enhancement of sentence. What is contained in Article 142 would in any case provide sufficient power to the Supreme Court to order to issue of rule of enhancement of sentence if the court where to be of the view that the same is necessary for doing complete justice where an appellate authority is conferred with power, without hedging the same with any restriction, the same has to regarded as one of the widest amplitude and the power of such an appellate authority would be co-extensive with that of the lower authority. It is apparent that the appellate power available to the Supreme Court under Article 136 is not circumscribed by any limitation. Conclusion is warranted that being a court to

\(^{144}\) AIR 1995 SC 1066
whom appeals lie from the judgment of the High Court, the Supreme Court would have the same power which is available to a High Court; and in exercise of such a power, the rule of enhancement can be issued. Thus the apex court enhanced the sentence of the appellant to imprisonment for life.

In *State of U.P. v. Dharmendra Singh*\(^{145}\), an appeal by special leave was filled against the judgement and order passed by the High Court of Allahabad wherein the High Court while conforming the conviction of the respondents rejected the reference made by the sessions judge for confirmation of death sentence of the respondents and commuted the said sentence to life imprisonment for offences punishable under section 302, IPC.

The apex court while allowing the appeal opined that an appeal to the Supreme Court under Article 136 of the Constitution is not the same as a statutory appeal under the code. The apex court under Article 136 is not a regular court of appeal which an accused can approach as of right. It is an extraordinary jurisdiction which is exercisable only in exceptional cases when the Supreme Court is satisfied that it should interfere to prevent a grave or serious miscarriage of justice as distinguished from mere error in appreciation of evidence. While exercising this jurisdiction, this court is not bound by the rules of procedure as applicable to the courts below. The apex court's jurisdiction under Article 136 of the Constitution is limited by its own discretion. A persual of section 377 (3) shows that this provision is applicable only when the matter is before the High Court and the same is not applicable to the apex court when an appeal for enhancement of sentence is made under Article 136 of the Constitution. However, this would not mean that Supreme Court will be unmindful of the principles analogous to those found in the code including those under section 377 (3) of Cr.P.C. Apart from the Supreme Court Rules applicable for the disposal of the criminal appeals in Supreme Court, the court also adopts such analogous principles found in the criminal procedure code as to make the procedure a "fair procedure" depending on the facts and circumstances of the case.

Further, it was opined that the High Court has erred in coming to the conclusion causing reduction of sentence both factually as well as inferentially on the ground that the accused was languishing in death cell for more than three years,

\(^{145}\) AIR 1999 SC 3789
when in fact the accused was not in death cell for three years and also there is no law which says that a person in death cell for three years ipro facts is entitled for commutation of death sentence. If the view taken by the High Court is to be accepted as a correct principle then practically in no murder case death sentence can be awarded, since in this country normally a murder trial and confirmation of death sentence takes more than three years.

The apex thus found that the sentence awarded by the trial court was just and proper and thus the death sentence awarded by the trial court was confirmed by the Supreme Court.

In *State of Rajasthan v. KishanLal*\(^{146}\), an appeal by special leave was filled against the judgment of the Rajasthan High Court and by the impugned judgement, the High Court cause the concretion of the respondent of the offence under section 376 of the Indian Penal Code reduced his sentence to the period already undergone but without recording any adequate reasons for the reduction of the sentence. The appellant contended before the apex court as no special reasons was shows for reduction of sentence, such order is inadequate and illegal should be set aside and thus the sentence should be enhanced.

The apex court while dismissing the appeal opined that the apex court in exercise of its extra ordinary jurisdiction under Article 136 of the Constitution may apply the principle analogous to one enshrined in section 377 (3) of Code of Criminal Procedure which in turn provides that when an appeal is filled against the sentence on the ground of its inadequacy, the accused while showing cause may plead for his acquittal or for reduction of sentence.

Further the apex court opined that on analysis of the case it appears there is a serious doubt about the truthfulness of the prosecution case and thus the respondent is entitled to the benefit of doubt and therefore he was acquitted of all charges levelled against him.

In *Mayuram Subramanian Srinivasan v. C.B.I.*\(^{147}\), the special court constituted under the special court (Trial of Offences Relating to Transactions in Security) Act, 1992 considering the application of appellant caused the suspension of sentence for 10 weeks. While feeling an appeal by special leave, the appellant in each appeal had not surrendered and contended that Supreme Court Rules do not

\(^{146}\) AIR 2002 SC 2250

\(^{147}\) AIR 2006 SC 2449
apply as there is special provision i.e. section 9 (4) of the said Act authorising the concerned court to regulate its procedure as it may deem fit. Moreover, it was opined that section 389, Cr.P.C. permits a court to suspend the sentence pending the appeal and for release of the appellant on bail.

Arijit Pasayat, J., opined that section 389 (3) has application when there is a right of appeal. When prayer for grant of certificate of High Court to appeal in apex court in terms of Article 136 of Constitution or is made under Article 134 (A) of the Constitution there is no right of appeal involved. In such case section 389 (3) has no application.

Further, it was opined that order XXI relates to special leave petitions in criminal proceedings and criminal appeals. So far as special leave petitions are concerned, rule 6 application thereto is in almost identical language as that of rule 13A. In both cases, it is stipulated that unless the petitioner or the appellant as the case may be has surrendered to the sentence, the petition/appeal shall not be registered and cannot be posted for hearing unless the court on written application for the purpose, orders to the contrary. Under section 9 (4) of the Act, the Special Court is authorized to formulate its own procedure to be adopted. That cannot do away with the requirement stipulated under order XXI, rule 13A.

Altamas Kabir, J., opined that the plea that once bail has been granted to a convicted person by the trial court, the Supreme Court cannot insist that he should surrender to the sentence in terms of r. 13A before his appeal can be registered, would not be tenable. sub-section (3) of section 389, Cr.P.C. empowers the trial court to release a convicted person on bail for such period as will provide him time to present an appeal. The provisions of section 389 Cr.P.C. and that of the Supreme Court Rules, 1966 are independent provisions and will have to be considered on their own standing.

Thus, it was held that the appeals can be posted only after the appellants surrender and proof of surrender is filed.

Fresh pleas

In Tika Ram and Sons Ltd. v. Its Workman, a dispute arose between the appellant and one of its workman and the respondent was held guilty of misconduct for falsification of accounts by the appellant and thus was terminated from his
services. Moreover, the appellant filed a criminal complaint against the respondent in the court of Magistrate and later a revision application which both were dismissed. The respondent also moved the Regional conciliation officer for settlement of dispute and on failure of conciliation officer to settle the dispute, the matter was referred by conciliation officer to industrial tribunal which on failure of appellant to produce sufficient evidence gave its decision in favour of respondent. Against this decision, the appellant moved the labour Appellate Tribunal which also dismissed the appeal of appellant. Then the appellant moved the Supreme Court by filing the special leave petition under Article 136 of the Constitution.

In appeal by special leave, the appellant made an application for admission of additional evidence. The apex court while dismissing the appeal opined that it was the duty of the party to adduce evidence at proper stage as the apex court does not admit the additional evidence in appeals under Article 136. With regard to the contention of the appellant that the matter cannot be referred to industrial tribunal as an individual workman is involved, the Supreme Court opined that when the question with regard to jurisdiction had not been raised before Appellate Tribunal, the apex court cannot allow this objection to be raised for the very first time before it.

In NandLal Misra v. Kanhaiya Lal Misra\(^{149}\) an appeal by special leave was filed against the judgment of the High Court rejecting the reference made by the Learned Sessions judge under section 488 of Cr. P.C. The High Court after the analysis of the case held that the magistrate had acted in consonance with Cr. P.C. in holding preliminary inquiry and so there is no illegality or irregularity. It was further held that appellant had conceded before the Magistrate that Magistrate could hold preliminary inquiry and therefore it was not open to the appellant to question its propriety.

Then appeal by special leave under Article 136 was filed against the decision of High Court and the apex court opined that section 488 does not contemplate a preliminary enquiry before issuing a notice but it is in the interest of both the appellant as well as respondent that the evidence should be taken in the presence of respondent or his pleader.

\(^{149}\) AIR 1960 SC 882

320
Furthermore, it was opined that the plea of invalidity of enquiry was raised before the apex court for the first time and the Supreme Court would not interfere in such a case under Article 136 but after the analysis of the case, the apex court observed that the appellant was not given full opportunity to establish his case in the manner prescribed by law, so the apex court set aside the order of High Court.

No doubt, in cases of maintenances, the apex court emphasized on the issuance of notice to the alleged father/husband after construing section 488 especially sub-section (6) of the said section. But it is humbly submitted that the application of the relevant section requires the existence of a husband - wife relationship which was non-existent in the case under consideration. Henceforth, to achieve the ends of justice, it seems proper on the part of magistrate to hold the preliminary inquiry.

In *Ashiq Miyan v. State of Madhya Pradesh*[^150] an appeal by special leave was filed against the decision of the High Court of Madhya Pradesh confirming the sentence passed by the lower courts and held the appellants guilty of charges under section 120-B, IPC and section 9 (a) of the opium Act for committing conspiracy and for the recovery of large quantity of opium from their house.

The apex court, while dismissing the appeal, opined that the presence of all the appellants at the time of the recovery had been established, and there was no chance of any outsider to throw the article in the courtyard of the appellant's home. Moreover proceedings commenced on a report made by a police officer, so in this case section 251-A, Cr PC had been attracted and the trial was perfectly legal. Further it was opined that there was no legal error or infermity committed by any of the courts below in arriving at conclusion, so findings cannot be interfered by the Supreme Court.

In *Dhian Singh v. Municipal Board*[^151], an appeal by special leave was filed against the decision of the High Court of Allahabad where High Court disagreeing with the rial court cause the conviction of the appellant and sentence him two months rigorous imprisonment and to pay a fine of Rs. 100 for selling adulterated sweets. Even the application to review its judgment before the High Court was dismissed. The High Court also refused the prayer for certificate under Article 134

[^150]: AIR 1969 SC 4
[^151]: AIR 1970 SC 318
of the Constitution. Thereafter, the appellant moved the apex court by an appeal by special leave under Article 136 of the Constitution.

The appellant's contention was that the appeal filed by the Municipal Board before the High Court under section 417 (3), Cr. PC was not maintainable as the complaint from which that appeal had arisen had been instituted by the Food Inspector.

The apex court while dismissing the appeal opined that where a complaint for an offence under the prevention of Food Adulteration Act, was purported to have been filed by the Municipal Board but it was signed by its Food Inspector, the Municipal Board held, was competent to file appeal, under section 417 (3) of Cr. P.C. against the acquittal of the accused. The Municipal Board being a local authority was competent to file complaint in view of Section 20, Prevention of Food Adulteration Act. It was also competent for that Board to authorise someone else to file complaints under the prevention of Food Adulteration Act on its behalf, so it was competent for the Municipal Board to Authorise a Food Inspector to file the complaint. Further the apex court opined that the authority of the Food Inspector to file complaint on behalf of Municipal Board was neither challenged before trial court nor in appeal before High Court so the appellant cannot be permitted to take the contention for the first time before Supreme Court after disposal of the appeal by the High Court.

In Santokh Singh v. Delhi Administration\textsuperscript{152}, an appeal by special leave was filed against the judgment of the learned single judge of High Court of Delhi rejecting the appellant's petition under sections 439 and 561-A of the Code of Criminal Procedure. In the revision application, appellant prayed that the charge framed against him under section 9 of Punjab Security Act of State Act, 1953 for making a speech and inciting the employees of Defence Department to commit offences prejudicial to the security of the state.

Before the apex court, appellant contended that section 9 of the Act is correlative of the fundamental right guaranteed by Article 19 (1) (a) of the Constitution. The apex court opined that no doubt, this point was not raised in the High Court but as it was a pure question of law raising the constitutionality of

\textsuperscript{152} AIR 1973 SC 1091
section 9 of the Acts it can be allowed to be raised for the first time in appeal under Article 136.

While in *Holar v. State of Haryana*\(^{153}\), the apex court opined that where the trial court has converted the accused for committing the offence under sections 467 and 417 by identifying a wrong person at the time of registry of a document inspite of his plea of complete denial of factum of identification, he cannot be allowed to take a plea before the High Court and the Supreme Court that he made the identification innocently when there is no evidence to support the alternative plea. Thus it was opined that in the absence of any evidence to support, a new case cannot be allowed to be set up in appeal.

**No Question of law involved - No Interference**

In *Chhutanni v. State of U.P.*\(^ {154}\), the Supreme Court declined to allow an appeal by special leave on the ground that the session’s court as well as the High Court have effectively appreciated the evidence in a case for murder. The court opined that in such cases where no question of law is raised or where there has been no miscarriage of justice, the apex court cannot intervene.

In *R.P. Kapur v. State of Punjab*\(^ {155}\), the appellant had come to the apex court by special leave against the order of the High Court of Punjab refusing to exercise its inherent jurisdiction under section 561-A of Cr. P.C. In this case, no action was initiated on the basis of FIR lodged against the appellant for several offences. The appellant filed a complaint in this regard which was adjourned. The appellant's proceedings under section 561-A Cr. PC were dismissed by the High Court of Punjab. Against this decision, the apex court while dismissing the SIP opined that in the circumstances of the case the High Court was justified in refusing to quash the proceedings which had reached the criminal court and the allegations made by the petitioner that the FIR was false or about the dilatory conduct on the part of the investigating agency cold not assist the appellant. Furthermore, it was opined that when an appellant preferred an appeal before the apex court by special leave against the order of High Court under section 561-A, Cr. PC refusing to exercise its inherent power to quash criminal proceedings at interlocutory stage, the apex court has to decide whether there is an error of law to call for interference under Article 136 and

---

\(^{153}\) AIR 1973 SC 1413  
\(^{154}\) AIR 1956 SC 407  
\(^{155}\) AIR 1960 SC 866
if it is of no consideration that apex court has come to same conclusion as that of High Court.

Laches

In the State of Bihar v. Hira Lal Kejriwal, an appeal by special leave was filled by the state against the judgement of High Court of Patna which cause the discharge of the accused. The apex court while dismissing the appeal opined that the petition is time barred as the offence was alleged to have been committed more than four years ago. Furthermore, the apex court opined that the High Court was right in dismissing the application for leave to appeal to Supreme Court as no sufficient reason was given by the appellant for delay in filing the application and moreover it results in violation of Rs. 28 of Patna High Court rules which provides that the application should have been filed immediately after the judgment was delivered. It was also opined that public interest does not require that state matter should be resuscitated.

In K.P.M. Basheer v. state of Karnataka, an appeal by special leave was filed against the order of High Court of Karnataka dismissing the writ petition of the appellant challenging the legality and validity of the order of detention passed by the state of Karnataka. The appellant was directed to be detained by the State of Karnataka under section 3 (1) (iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 to prevent the appellant from engaging in keeping and transporting smuggled goods.

Before the apex court, the appellant contended that there was delay of more than five months in executing the order of detention which was not only an inordinate and unreasonable one but also stand unexplained and on that ground the High Court ought to have set aside the order of detention. On this point, the apex court, while allowing the appeal opined that there can be no bar to advance a legal argument in a case of this nature and especially when such contentions has been raised before the High Court. Further it was opined that the live and proximate link between the grounds of detention and the purpose of detention is snapped on account of undue and unreasonable delay in securing and detaining the appellant, so the order of detention is liable to be set aside.

---

156 AIR 1960 SC 47 (See also State of Bihar v. Kripa Shankar Jamwal AIR 1961 SC 304)
157 AIR 1992 SC 1353
In *Sumer Singh v. Surajbhan Singh*\(^{158}\), an appeal by special leave was filed against the judgment of the High Court of Rajasthan whereby the question for consideration is that whether the learned single judge while converting the conviction of the respondent (accused) from one under section 307 to one under section 308 IPC and sustaining the conviction under sections 148, 147, 326 and 323 IPC read with section 149 IPC is justified in restricting the period of sentence to seven days which the respondent had already undergone and to impose a fine of Rs. 50,000/- in default of payment of fine to suffer rigorous imprisonment of two years.

The apex court while partially allowing the appeal opined that two principles are absolutely clear, first an injured who is an aggrieved party can prefer an appeal by special leave and this court's power under Article 136 being of wide amplitude, it can remove injustice when it witnesses it and second in an appeal preferred by state for enhancement of sentence, the accused can plead that his is entitled to an acquittal as there is no material on record to sustain the conviction. The principles which are analogous to section 377 (3) of the code are applicable and the power under Article 136 is of wide amplitude. Thus apex court opined that it does not as any reason why this court, while entertaining an appeal at the instance of an injured, cannot impose adequate sentence when the facts and circumstance so warrant but prior to that, for applying the requisite test, that apex court opined that it should appreciate the material on record to come to a conclusion whether, the recording of conviction is unjustified and whether the High Court has absolutely error in restructuring the sentence to the period already undergone.

**Appeal against conviction**

In *Anandroo Tulsivam Bhawar v. the State of Maharashtra*\(^{159}\), an appeal by special leave was filed against the decision of the High Court of Bombay where the High Court cause the conviction of the appellant under section 494 for co-habitating with a woman in a deceitful manner pretending it as an lawful marriage. The trial magistrate gave the appellant the benefit of reasonable doubt and had acquitted him but on appeal before the High Court, the High Court observed that the magistrate had discarded the evidence on account of certain discrepancies which did not affect the credibility of the witnesses. There are sufficient evidence with regard to marriage well corroborated by the birth of the child and on that basis the High Court cause the

\(^{158}\) AIR 2014 SC 2840
\(^{159}\) AIR 1972 SC 1232
conviction of the appellant. Against this decision, an appeal by special leave was filed before the apex court under Article 136 of the Constitution.

The apex court while dismissing the appeal opined that in an appeal by special leave against decision of High Court in criminal appeal convicting appellant for the offence, in order to justify interference by Supreme Court therewith the appellant must show error in the reasoning or the conclusion of the High Court.

Further in *Rahim Beg v. State of U.P.* 160, the apex court opined that the order of conviction resulting in death sentence to two persons found to affected with ex-faire infermities not noticed by both the trial court and the High Court, hence the Supreme Court can interfere with the order of conviction.

In *Mahesh Chander v. the State of Delhi* 161, the apex court while allowing the appeal opined that the power under Article 136 can be invoked in very exceptional circumstances when a question of law of general public importance arises or a decision shakes the conscience of the court and the court within its restrictions imposed by itself has the undoubted power to interfere even with the findings of fact making no distinction between judgment of acquittal and conviction, if the High Court, in arriving at those findings, has acted either perversely or otherwise improperly. Further the apex court opined that where in a murder trial, the trial court and the Appellate Court without making comprehensive and detailed analysis of the evidence in the proper perspective and by overlooking the manifest errors and glaring infirmities surrounding the case rendered their conclusions that the accused was guilty of the offence charged, the Supreme Court disagreeing with the conclusions arrived at by both the courts, set aside the conviction holding that the prosecution had failed to establish the guilt of the accused beyond all reasonable doubts.

In *Dandu Lakshmi Reddy v. State of A.P.* 162, an appeal by special leave was filed against the decision of the Andhra Pradesh High Court causing the conviction of the appellant under section 302 read with section 34 of the Indian Penal Code on the strength of dying declarations given by the deceased as it was held that the deceased would not have been in a position to give a dying declaration as she sustained extensive burns.

160 AIR 1973 SC 343
161 AIR 1991 SC 1108
162 AIR 1999 SC 3255
The two-judge Bench of the apex court while allowing the appeal and causing the acquittal of the appellant opined that as there is a difference in the version of the two dying declarations as to what she was doing at the relevant point of time. The High Court had sidelined such a noticeable discrepancy looming large as between the two different statements made by the same person. Where the sphere of Scrutiny of dying declaration is a restricted area, the court cannot afford to sideline such a material divergence relating to the very occasion of the crime. The High Court made an approach which is seemingly violation of legal sanction.

Further, the apex court opined that the father and mother of the deceased had stated that deceased was not mentally sound. A criminal court cannot ignore the said evidence of the parents of the deceased. If the court has even a slight doubt about the mental soundness of the author of the dying declaration, it would be unsafe to base a conviction on such a statement, albeit its inadmissibility under section 32 of the Evidence Act. As the dying declaration is tested thus on the touchstones available in evidence and permitted by law, it does not stand Scrutiny. It will be unsafe to convict any person on the strength of such a fragile and rickety dying declaration.

The apex court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. On the evaluation of a case, if the apex court reaches the conclusion that no conviction of any accused is possible, the benefit of that decision must be extended to his co-accused also though he has not challenged the order by means of an appeal petition to the Supreme Court.

**Appeal against acquittal**

In the *State of Uttar Pradesh v. Sahai*[^163^], an appeal by special leave was filed against the decision of High Court of Allahabad causing the acquittal of the respondent of the charges under section 302 read with section 149. The apex court after going through the judgments of lower courts opined that in a judgement of reversal, the High Court ought not to have rejected the evidence of importance eye witnesses on general grounds or broad probabilities in such a serious case which resulted in four murders and serious injuries to one. The High Court has not cared to examine the details of the intrinsic merits of the evidence of the eye witnesses and has rejected their evidence on the general grounds. On the other hand, the trial court

[^163^]: AIR 1981 SC 1442
had very closely considered the evidence of the eye witnesses, and has held that they were worthy of credence.

Further the apex court opined that normally the Supreme Court is reluctant to interfere with an order of acquittal and that too when passed by the High Court. But the instant case is rarest of the rare cases where the High Court has on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case and ignoring some of the most vital facts, has acquitted the accused persons who had been proved to be guilty of committing as many as four murders. In view of the illegal, speculative and erroneous approach made by the High Court to the evidence and circumstances of this case, the order of acquittal passed by the High Court has resulted in a grave and substantial miscarriage of justice so as to invoke extraordinary jurisdiction of Supreme Court under Article 136 of the Constitution.

In Mohan Lal v. the Management of M/S Bharat Electronics Ltd.\(^ {164}\), the two judges bench while deciding the fate of appeal filed against the award of Addl. Labour Court, Delhi opined that the appellant was employed and was on duty when his services was terminated. He had rendered service for a period of 240 days. Within a period of 12 months and indisputably, therefore, his case falls within section 25-B (2) (a) and he shall be deemed to be in continuous service for a period of one year. He has thus satisfied both the eligibility criteria for claiming retrenchment compensation. The apex court further observed that the labour court in the industrial dispute was wrong in terminating the services of the appellant during the extended period of probation for his unsatisfactory work. He was either temporary or permanent. Furthermore, it was opined that it was gross error apparent on face of record which if not interfered with, would result in miscarriage of justice.

In State of Maharashtra v. Champalal\(^ {165}\), an appeal by special leave was filed against the decision of High Court causing the acquittal of the respondent of the charges under section 120-B of IPC read with section 135 of customs Act. The apex court while allowing the appeal opined that to rely on circumstantial evidence, it must be of a conclusive nature and circumstances must not be capable of a duality of explanations. It does not however mean that the court is bound to accept any exaggerated, capricious or ridiculous explanation which may suggest itself to a

\(^{164}\) AIR 1981 SC 1253

\(^{165}\) AIR 1981 SC 1675
highly imaginative mind. The explanation fancied by the High Court was a wholly unreasonable explanation in the circumstances of the case. There was gross miscarriage of justice if the apex court feels reluctant to interfere with the judgement of High Court. Further, it was observed that the accused himself was responsible for a fair part of delay and he has not been able to show cause how he was prejudiced in the conduct of his defence by reason of delay. So, the apex court opined that the offence and it is impossible to take a casual or a light view of the offence.

In *M/S Noorulla Ghazanfarulla v. the Municipal Board of Aligarh*\(^\text{166}\), the two judges bench while deciding the fate of appeal by special leave filed against the judgement of High Court of Allahabad where the High Court erroneously did not allow the appellants to amend their writ petition so as to include the constitutional validity of the U.P. Municipal (Amendment) Act of 1975.

The apex court while allowing the appeal opined that even though the new plea is not allowed to be raised in special leave petition, it would always be open to the appellant to file another writ petition challenging the constitutional validity of the Amendment Act. So the apex court remitted the matter back to the High Court to decide all questions including question of constitutional validity.

*In State of Maharashtra v. Narsingroo Gangaram Pimple*\(^\text{167}\), an appeal by special leave was filled against a judgement of the Bombay High Court acquitting the respondent of the charges framed against him under section 161, IPC and also under section 5 (1) (a) and 5(2) of the Prevention of Corruption Act.

The apex court while allowing the appeal opined that a trap was installed to caught respondent (accused) red-handed which was proved by the independent witnesses. So it was opined that in a trap case, where the judge magnified every minor detail omission to falsify or threw even a shadow of doubt on the prosecution evidence then, it would be the very antithesis of a correct judicial approach to the evidence of witnesses in a trap case. The entire evidence led by the prosecution had been supported by at least two independent witnesses. Thus it was held that the judgment of the High Court suffers from serious and substantial ever of law and legal infirmities. This is one of those rarest of rare cases where the apex court would be failing in its dirty if it did not interfere with the order of acquittal and set aside the judgment of the High Court.

---

\(^\text{166}\) AIR 1981 SC 2176  
\(^\text{167}\) AIR 1984 SC 63
In State of Rajasthan v. Sukhpal Singh\textsuperscript{168}, an appeal by special leave was filed against the decision of the Rajasthan High Court causing the acquittal of the respondents of the charges under section 395, IPC by setting aside the judgment of the Session Judge who had convicted the respondent (accused) for the said offence.

The two judges bench while allowing the appeal opined that where the evidence which was incontrovertible had been rejected by the High Court on suspicion and surmises, witnesses who had no axe to grind and had no personal motive to implicate the accused on a false charge had been disbelieved on feeble considerations and the recovery of incriminating articles has been by passed and disbelieved by characterising it as unnatural and incredible, the Supreme Court, in an appeal against acquittal, will substitute its own assessment of the evidence for that of the High Court.

In State of Punjab v. Bhura Singh\textsuperscript{169}, an appeal by special leave was filed against the decision of Punjab and Haryana High Court causing the acquittal of all the five respondents of the charges of the murder under section 302, IPC.

The apex court opined that ordinarily, Supreme Court is reluctant to disturb an acquittal recorded by the High Court but it becomes its duty to do so, interalia, when incriminating evidence of a satisfactory character is ignored or overlooked resulting in an unwarranted acquittal in order to redeem the course of justice.

Further the apex court on the analysis of the facts observed that the accused was in possession of a gun which had been used in commission of murder and the forensic report also proved the use of the same gun on examining the empty shells of cartridges used. The aforesaid circumstantial evidence itself was of unimpeachable character which proved the guilt of the accused persons. Thus, while setting aside the acquittal, it was opined if incriminating evidence of satisfactory character is ignored or overlooked, acquittal is liable to be set aside.

In State of Kerala v. Bahuleyan\textsuperscript{170}, an appeal by special leave was filed against the decision of High Court causing the acquittal of the respondent of the charges under section 302 IPC for having committed murder of his appeal. The session’s judge relying on the evidence of prosecution witnesses held the respondent guilty.

\textsuperscript{168} AIR 1984 SC 207
\textsuperscript{169} AIR 1985 SC 769
\textsuperscript{170} AIR 1987 SC 482
The two judge bench of the apex court while allowing the appeal opined that the sessions judge had established the case beyond reasonable doubt. Moreover the motive of the respondent for murder, i.e., his willingness to marry PW 2 and refusal to permit him to marry by his wife, was not established. Further it was opened that the High Court was clearly extremely unreasonable in brushing aside the compulsive evidence of the witness and acquitting the accused by giving free reign to flights of fancy.

In this case, by interfering under Article 136 against acquittal, the apex court caused the conviction of the respondent.

In *State of U.P. v. Anil Singh*[^171], an appeal by special leave was filed against the decision of High Court causing the acquittal of the accused of the charges of the murder. The apex court while allowing the appeal opined that the scope of appeals under Article 136 of the Constitution is undisputedly very much limited. The Supreme Court does not exercise its overriding powers under Article 136 to reweigh the evidence. The Supreme Court does not disturb the concurrent finding of facts reached upon proper appreciation. Even if two views are reasonably possible, one indicating conviction and other acquittal, the court will not interfere with the order of acquittal. But the Supreme Court will not hesitate to interfere if acquittal is perverse in the sense that no reasonable person would have come to that conclusion or if the acquittal is manifestly illegal or grossly unjust. Further it was opined that it is the duty of the court to all out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies of falsehood are so glaring as utterly to destroy confidence in the witnesses. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as other. Both are public duties which the judge has to perform.

In *State of U.P. v. Chet Ram*[^172], an appeal by special leave was filed against the decision of the High Court setting aside the conviction of the respondent of the charges under section 394 and 302 read with section 34, IPC and acquitting the respondent.

The apex court while allowing the appeal opined that the High Court has not drawn consistent inferences as in one portion of the judgment, High Court stated that

[^171]: AIR 1988 SC 1988
[^172]: AIR 1989 SC 1543
there is no controversy regarding the date, time and place of occurrence but in another portion it observed that victim was found unconscious and seriously injured only in the early hours of the morning and then the story was fabricated. Moreover High Court brushed aside the entire evidence of prosecution witness merely because he was declared hostile but it must be observed by High Court has his entire evidence does not get excluded or rendered unworthy of consideration.

Further the apex court opened in the exercise of powers under Article 136, the apex court has to act with utmost circumspection. There is the need for exercising care and restraint in the exercise of powers under Article 136 in the matter of setting aside a judgment of acquittal but where the ends of justice require the exercise of such powers this court will be failing in its duty if it does not do so.

*In Kailash Kaur v. State of Punjab*\(^{173}\), an appeal by special leave was filed against the decision of the High Court concerning bride burning for dowry. The trial judge relying on the prosecution witness as well as the dying declaration caused the conviction of two accused i.e. mother-in-law and sister-in-law of the deceased, but gave the benefit of doubt to the husband. On appeal before the High Court the sister-in-law of the deceased was also acquitted.

The apex court while dismissing the appeal by special leave opined that the deceased was murdered by barbaric method of pouring kerosene oil. So there was grave doubt about propriety of giving benefit of doubt to one of the accused. But as the state has not preferred any appeal against acquittal of that accused, so Supreme Court will not interfere into the aspect of acquitted of accused.

*In State of V.P. v. Lalla Singh*\(^{174}\), the two judges bench while dismissing the appeal opined that where in a criminal trial against accused persons for several offences under penal code, the trial court while recording the conviction gave reasons which appeared to be fairly sound and in appeal against such conviction, the High Court acquitted the accused and the reasons given by the High Court also could not be characterized as perverse or wholly unsound and the view taken by the High Court also seemed to be reasonable, it can be said that two views are possible and in such a situation interference under Article 136 by Supreme Court is not warranted.

\(^{173}\) AIR 1987 SC 1368  
\(^{174}\) AIR 1990 SC 1013
In Ramesh Chand v. State of Uttar Pradesh\textsuperscript{175}, an appeal by special leave was filed against the decision of High Court of Allahabad affirming the appellant's conviction under section 302 read with section 34 of the Penal Code. The trial Court relying on the prosecution version accepted that the blood stained knife was recovered from the appellant and draw support for the charge from blood strained wearing apparel to hold that it was the appellant who stabbed the deceased. On appeal before the High Court, the High Court for causing appellant's conviction relied on the circumstantial evidence such as (i) an attempt by the appellant to escape and his arrest after a chase (ii) he being found to be in possession of the blood stained knife (iii) his clothes having become blood stained (iv) if the defence version was true namely that the appellant was trying to rescue the deceased, he would have received injuries in the scuffle and (v) if the appellant had really tried to intervene in the way he claims, he being a well built man could have saved the life of the deceased.

The apex court while allowing the appeal opined that the circumstances relied by High Court for concretion of accessed was not completing the chain so as to lead to conclusion that accused and no other could have been assailant. So it shows that prosecution has failed to establish the charge. Further, it was opined that the powers of Supreme Court under Article 136 of the constitution are plenary and restrictions in the exercise, if any, are self imposed. Ordinarily Supreme Court does not enter into appreciation of evidence but where evidence is placed and the conviction appears to the court to be not justified in law, nothing stands in the way in directing reversal of conviction.

In Dharma v. Nirmal Singh Bittu\textsuperscript{176}, an appeal by special leave was filed against the decision of the High Court confirming the decision of the trial court causing the acquittal of the respondent despite there being clinching and conclusive evidence to find the accused guilty.

The apex court while dismissing the appeal and causing the conviction of the respondent under sections 376/511 and section 302 of the Indian Penal Code opined that there were sufficient evidence to held the accused guilty. There was testimony of sole eye witness corroborated by medical evidence, extrajudicial confession made by the accused before Sarpanch, recovery of weapon, the fact of abscondance of

\textsuperscript{175} AIR 1985 SC 766
\textsuperscript{176} AIR 1996 SC 1136, See also State of Punjab v. Dalbir Singh, AIR 2012 SC 1040.
accused, all held respondent guilty of committing offence of attempt to rape and murder.

Further with regard to contention of the respondent that under the revisional power available to the High Court under section 401, Cr PC, the High Court could not have altered the finding of acquittal into one of conviction, so it would not be within the competence of the apex court to cause the conviction of the respondent.

The apex court opined that in case of appeal against acquittal, if acquittal was found wrongful, then the Supreme Court would be competent to convict accused and the case could not be sent back for retrial. The limitation imposed by section 401 (3), Cr. P.C. cannot be read into the power available to Supreme Court under Article 136 of constitution. Article 136 is not circumscribed by any limitation. In any case, power under Article 142 is available to pass such order as may be deemed appropriate to do complete justice.

Exhaustion of statutory remedies

In Rajendra Kumar Jain v. state through Spl. Police Establishment, by a govt. order prosecution was initiated against various well known personalities including Ex-Central Minister Governor of the State and many more. They were committed in the court of Chief Metropolitan Magistrate but later in the public interest and changed circumstances, the Central Govt. withdraw from the prosecution of all the accused which were permitted by the Chief Metropolitan Magistrate. Against this decision, the appellant filed a revision application in the High Court which was dismissed by the High Court. Against this decision, the appellant moved the apex court by filing the appeal by special leave under Article 136 of the Constitution.

The apex court while dismissing the appeal opined that notwithstanding the fact that the offences for which the accused persons were to be tried were exclusively triable by the Court of Session, the committing magistrate had jurisdiction to give consent to the public prosecutor to withdraw from the prosecution. Further it was opined that the power conferred by section 321 of CrPC is itself a special power conferred on the court before whom a prosecution is pending and the exercise of the power is not made dependent upon the power of the court to acquit or discharge the accused under some other provision of the code. It

---

177 AIR 1980 SC 1510
may not be accurate to say that the Committing Magistrate has no judicial function
to perform under the 1973 CrPC. The Magistrate has to be satisfied that an offence
is prima facie disclosed and the offences so disclosed istriable exclusively by the
Court of Session. If no offence is disclosed the Magistrate may refuse to take
cognizance of the case of if the offence disclosed is one not triable exclusively by
the Court of Session he may proceed to deal with it under other provisions of the
code. Moreover, it shall be the duty of the Public Prosecutor to inform the court and
it shall be the duty of the court to appraise itself of the reasons which prompt the
public prosecutor to withdraw from the prosecution. The court has a responsibility
and a stake in the administration of criminal justice and so has the public prosecutor.
Both have a duty to protect the administration of criminal justice against possible
abuse or misuse by the executive by resort to the provisions of section 321, Cr.PC.
The courts when moved from permission for withdrawl from prosecution must be
vigilant and inform themselves fully before granting consent.

Furthermore, the apex court opined that when an appellant moved the apex
court by filing an appeal by special leave under Article 136 of the Constitution,
against the order of the Chief Judicial Magistrate without going to the High Court in
the first instance, ordinarily such petitions are not entertained by the Supreme Court.

In Bhagat Ram v. State of Himachal Pradesh\(^{178}\), an appael by special leave
was filed against the decision of High Court of Himachal Pradesh. A disciplinary
enquiry was initiated against appellant for felling trees on the Govt. land and on the
basis of report submitted by the inquiry officer, he was removed from the service.
Moreover, he had not got the opportunity to appoint an officer of the department to
defend himself whereas the disciplinary authority was represented by the presenting
officer. Thereafter, the appellant filed a revision petition to the Forest Minister but
pending that petition, he moved the High Court dismissed the petition in limine.

The apex court while allowing the appeal opined that justice and fair play
demand that where in a disciplinary proceeding, the department is represented by a
presenting officer, it would be incumbent upon the Disciplinary authority while
making appointment of a Presenting Officer to appear on his behalf simultaneously
to inform the delinquent of the fact of appointment and the right of the delinquent to
take help of another Govt. servant before the commencement of inquiry. It is a

\(^{178}\) AIR 1983 SC 454
highly technical approach not conducive to a just and fair adjudication of the charges levelled against the appellant.

Further, it was opined that in a petition under Article 226, the High Court does not function as a court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse, the High Court can always interfere with the same. So it was held on facts that finding of the enquiry officer was utterly perverse and dismissal of the writ petition in lemine against penalty of dismissal imposed on such findings were liable to be set aside.

Furthermore, it was opined that once the Supreme Court quashes the order of imposing of penalty it is open to the court to give any direction which would not permit a fresh enquiry to be held. After all what is the purpose of holding a fresh inquiry. The Supreme Court in such circumstances without prolonging the matter may itself impose appropriate penalty.

In M/S Onkarlal Nandlal v. State of Rajasthan, an appeal by special leave was filed against the judgment of the Commercial Tax Officer where it was held that the resales of the Poppy seeds purchased by the assessee against Declarations in Form No. S.T. 17 stating that purchase of poppy seeds was for the purpose of resale within the state were sales in the course of interstate trade and commerce and were therefore no Lales within the state and thus was liable to be included in the taxable turnover of the accessee. The apex court opined that ordinarily the Supreme Court does not entertain an appeal directly against an order made by a Commercial Tax Officer in the hierarchy, when there were other remedies by way of appeal or revision provided to an assesses under the statue. But where the assesses a registered dealer under the State Act and Central Act purchase pappy for resale within the state but he was assessed to include purchase price in his turnover on the ground that resale of poppy seeds were sales in the courts of inter-state trade and commerce and the High Court in some other cases had already taken similar view by holding that such resales would constitute a breach of the Declaration, it would be fertile to drive the assessee to the procedure of appeal and revision and then a writ petition to the High Court. So the Supreme Court entertained direct appeal against the order of Commercial Tax Officer in such case.

179 AIR 1986 SC 2146
Appeal against interlocutory orders

In *Kashmira Singh v. the State of Punjab*\(^{180}\), an appeal by special leave was filed against the decision of High Court setting aside the order of acquittal and convicted under section 302. The appellant filed an application for bail pending the appeal by special leave before the apex court.

The apex court while allowing the application opined that the practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Court and in the Supreme Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose so long as his conviction and sentence are not set aside. The rationale of this practice can have no application where the court is not in a position to dispose of the appeal for five or six years. It is, therefore, absolutely essential that the practice which the Supreme Court has been following in the past must be reconsidered and as long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the court should ordinarily unless there are cogent grounds for acting otherwise, release the accused on bail in case where special leave has been granted to the accused to appeal against his conviction.

Further it is opined that the very fact that the Supreme Court has granted to the appellant special leave to appeal against his conviction shows that there is prima facie a good case to consider and in the circumstances it would be highly unjust to detain him in jail any longer during the hearing of the appeal.

In *Bihar Legal Support Society, New Delhi, v. Chief Justice of India*\(^{181}\), the question relates to the taking of the special leave petition filed against the order of refusing bail or anticipatory bail of the weaker section of the society with the same anxiety as in the case of big industrialist.

The five judge bench speaking through *P.N. Bhagwati, C.J.*, opined that the special leave petitions of 'small men' are as much entitled to consideration as special leave petitions of 'big industrialists'. In fact, the apex court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent, the businessmen and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long, long years: they have no access to justice on account of their poverty, ignorance and illiteracy. They

\(^{180}\) AIR 1977 SC 2147

\(^{181}\) AIR 1987 SC 38
are not aware of the rights and benefits conferred upon them by the constitution and the law. The strategy of public interest litigation has been evolved by the apex court with a view to bringing justice within the easy reach of the poor and the disadvantaged sections of the community.

Further it was opined that the special leave petition against refusal of bail or anticipatory bail should be tested immediately or not is a question within the administrative jurisdiction of the Chief Justice and the Supreme Court cannot give any direction in that behalf in a writ petition under Article 32. The apex court was created for the purpose of laying down the law for the entire country and extraordinary jurisdiction for granting special leave was conferred upon it under Article 136 of the constitution so that it could interfere whenever it found that law was not correctly exunicated by the lower courts of tribunals and it was necessary to pronounce the correct law on the subject. This extraordinary jurisdiction could also be availed by the apex court for the purpose of correcting grave miscarriage of justice, but such cases would be exceptional by their very nature. It is not every case where the apex court finds that some injustice has been done that it would grant special leave and interfere. That would be converting the apex Court into a regular court of appeal and moreover, by so doing, the apex court would soon be reduced to a position where it will find itself unable to remedy and justice at all on account of the tremedous backlog of cases which is bound to accumulate. The apex court thus, should not ordinarily save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter.

*In Pokar Ram v. State of Rajasthan*182, an appeal by special leave was filed against the decision of High Court rejecting the application of the appellant for cancellation of bail of the second respondent. The son of the appellant was fired and suffered fatal injuries and later succumbed to his injuries. The session’s judge granted anticipatory bail under section 438, Cr PC which was later approved by the learned judge of High Court on the ground that while interfering with discretionary order of the learned sessions judge two considerations weigh with the court, whether:

i) The accused would be readily available during the trial.

---

182 AIR 1985 SC 969
ii) He is not likely to abuse the discretion granted in his favour by tampering with the prosecution witnesses.

The High Court observed that no such grounds are shown to exit and accordingly rejected the application.

The apex court while allowing the appeal opined that ordinarily, Supreme Court is loath to interfere with the orders granting or refusing bail but it cannot be an insurmountable obstacle in the way of rectifying the order which tends to disclose miscarriage of justice.

Further it was opined that when a person is accused of an offence of murder by the use of a fire arm, the court has to be careful and circumspect in entertaining an application for anticipatory bail. Status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. Anticipatory bail to some extent intrudes the sphere of investigation of crime and the court must be cautious and circumspect in exercising such power of a discretionary nature. When the power under section 438 Cr. PC was exercised Sub-Silentio as to reasons or on considerations irrelevant or not germane to the determination, the Supreme Court to avoid miscarriage of justice, must interfere. Some very compelling circumstances must be made out for granting bail to a person accused of committing murder and that too when the investigation is in progress.

In the State through the Delhi Administration v. Sanjay Gandhi183, an appeal by special leave was filed against the decision of the High Court of Delhi for the cancellation of the application moved by the Delhi Administration with regard to the dismissal of respondent's bail. The respondent was charged by the Chief Metropolitan Magistrate under section 120-B read with sections 409, 435 and 201. Against this decision of High Court appellant preferred an appeal by special leave before apex court.

The apex court while allowing the appeal opined that in an appeal against order of the High Court rejecting application for the cancellation of bail, the state cannot be allowed to rely on any new material which was not available to the High Court and which came into existence after the High Court gave its judgment. It would be unfair to the accused to make use of that material without giving him an adequate opportunity to meet it. Besides, though in appropriate cases the court has

183 AIR 1978 SC 961
the power to take additional evidence, that power has to be exercised sparingly, particularly in appeals brought under Article 136 of the constitution. In an appeal by special leave against order of the High Court rejecting application for cancellation of bail, normally the High Court's findings are treated by the Supreme Court as binding on issues whether the accused while at large on bail has tampered with witnesses and there is a reasonable apprehension that he will continue to indulge in that course of conduct if he is allowed to remain at large. However, the Supreme Court will interfere if the High Court has rejected incontrovertible evidence on hypertechnical considerations. If two views of the evidence were reasonably possible and the High Court had taken on view, the Supreme Court would decline to interfere therewith in appeal under Article 136 of the Constitution. But the Supreme Court would interfere if the evidence points in one direction only, leaving no manner of doubt that the accused has misused the facility afforded to him by the High Court by granting anticipatory bail to him.

In State of U.P. v. Manisha Dwivedi\textsuperscript{184}, the apex court while dismissing the appeal opined that as there was delay for more than one year in filing the special leave petition which remained unexplained and moreover the impugned order is only an interlocutory order and the writ petition is still pending. The apex court will not normally exercise of an interlocutory order except in special circumstances to prevent manifest injustice or abuse of the process of the court.

While in Sukhjinder Singh v. State (N.C.T.) of Delhi\textsuperscript{185}, the appellant was arrested for an offence under sections 302, 201, 34 and section 120-B of IPC. He moved an application under section 167 (2) of the Cr. P.C. for release on bail which was rejected by the learned Magistrate and later by sessions court as well as by the High Court. Against this order of High Court, an appeal by special leave was filed.

The apex court also declined to order release of the appellant on bail in exercise of its jurisdiction under Article 136 of the Constitution and directed the appellant to file application for regular bail stating all the facts and urging all available grounds.

In C.R. Patil v. State of Gujarat\textsuperscript{186}, an appeal by special leave was filed against the order of the High Court of Gujarat rejecting the bail application of the

\textsuperscript{184} AIR 2001 SC 3750
\textsuperscript{185} AIR 2001 SC 2941
\textsuperscript{186} AIR 2005 SC 3117
petitioners. The petitioners were accused of misappropriating huge amounts of crores. The apex court released them on temporary bail and when the period of temporary bail was to be over, they again filed a petition. The apex court while allowing bail opined that as there were no allegations that petitioners had violated order of temporary bail and as the petitioners also showed their Willingness to repay amount, so it would be in interest of justice to enlarge them on bail so as to enable them to make arrangements for payment.

**Interference with orders in revision**

*In State of Maharashtra v. Ramdas Shrinivas Nayak*\(^ {187}\), an appeal by special leave was filed against the decision of the High Court of Maharashtra, dismissing the revision application on the same ground as that entertained by the Metropolitan Magistrate i.e. sanction, of the government is necessary under section 6 of the Prevention of Corruption Act, for maintaining charges against the then Chief Minister, A.R. Antulay for commission of offences punishable under sections 161 and 185 of the Penal Code and section 5 of the Prevention of Corruption Act. While dismissing the application, the learned judges noticed that an application has been made to the Governor of Maharashtra for grant of requisite sanction and observed that the application should not be decided by the Law Minister or any other Minister by that it deserved to be decided by the Governor in his individual discretion. The state of Maharashtra though not aggrieved by the dismissal of the criminal revision application, seeks special leave to appeal to the apex court under Article 136 of the Constitution.

The apex court while dismissing the appeal opined that the judges record was conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself. The court is bound to accept the statement of judges recorded in their judge, as to what transpired in the court. It cannot allow the statement of the judges to be contradicted by statements at the bar or by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgement, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is only way to have the record corrected. If no such step is

\(^ {187}\) AIR 1982 SC 1249
taken, the matter must necessarily end there of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice, but he may not call in question the very fact of making the concession as recorded in the judgment.

Further it was opined that the Governor would while determining whether sanction for such prosecution should be granted or not under section 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers. In the special leave petition, the Supreme Court cannot permit the state to resile from the concession made before the High Court. The Concession was made to advance the cause of justice.

**Interference with discretionary powers**

*In Municipal Committee v. Hazara Singh*¹⁸⁸, an appeal by Special leave was filed against the decision of High Court where the division bench of High Court upholding the judgment of the Sessions judge causing the acquittal of the respondent dismissed the petition in limine presuming it too trivial for an appeal against acquittal. It was held that such sort of adulteration in milk is in the nature of permissible error.

The three judges bench deciding the fate of appeal by special leave opined that where an appeal against acquittal of accused stands dismissed in Limine of High Court as too trivial and no question of grave miscarriage of justice or that of general public importance is involved Supreme Court's jurisdiction under Article 136 should not be invoked in trivial questions. It is of paramount importance that this court's time should not be consumed by questions which are trifles. The high purpose of reserving the Supreme Court's for substantial legal issues should not be taken by cases of lesser consequence. An appeal with special have under Article 136 should not a filed merely which ex-facie had no kinship with the question under impugned decision was not the ratio in the case.

In this case, the session’s judge referred unreported judgment of the apex court to fortify himself where therein the apex court made a pasing reference that minor error or minimal deficiencies can be there in the apex court made a passing

¹⁸⁸ AIR 1975 SC 1087
reference that minor errors or minimal deficiencies can be these in food adulteration cases. The apex court opined that "Judicial propriety, dignity and decorum demand that being the highest judicial tribunal' in the country even obiter dectum of the Supreme Court should be accepted as binding. Declaration of law by that court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that court would be attracted by Article 141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that court itself has pointed out in Gurcharan Singh v. State of Punjab189 and Parkash Chandra Pathak v. State of Uttar Pradesh190 that as an facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied up as precedents for decision of other cases.

In State of Bihar v. Uma Shankar Kotriwal191, an appeal by special leave was filed against the order of the Patna High Court quashing the entire proceedings in a criminal case against respondents who were facing a charge under Section 7 of the Essential Commodities Act.

The apex court while dismissing the appeal opined that where the trial had not made much headway even though a period of 20 years had gone by and the High Court had quashed the proceedings, the Supreme Court refused to interfere with the order of the High Court in appeal by special leave even though the accused themselves were responsible in a large measure for the slow pace of the case and allegation in the public report disclosed serious offence, as such protraction meant considerable harassment to the accused.

In Jayaram Paddickal v. T.V. Eachanawarryar192, the apex court while dismissing the appeal opined that the Supreme Court should not interfere with the impugned order of the High Court indirectly the appellant's prosecution under section 340, code of criminal procedure. However, trial should proceed according to law unfettered by observation of High Court made in impugned judgment.

189 AIR 1972 FAC 549
190 AIR 1960 SC 195
191 AIR 1981 SC 641
192 AIR 1981 SC 161
Remand of the case

*In Qamruddin v. Acqueel*¹⁹³, an appeal by special leave was filed against the order of the High Court of Allahabad allowing the appeal and acquitting the respondent of the charges framed against them.

The apex court while allowing the appeal opined that the trial court had convicted the accused on a full and complete appraisal of the evidence. The High Court had not tried to displace some important reasons given by trial court, nor making any attempt to scan intrinsic merits of evidence. Moreover the judgment of the High Court was not be in accordance with law. So the apex court remanded the case back to High Court for fresh disposal according to law.

Summary dismissal

*The Supreme Court in RaghunathLaxamanMakadwada v. State of Maharashtra*¹⁹⁴ opined that where the High Court rejected the appeals by non-speaking orders, the apex court maintained that the power to dismiss an appeal in lumina must be exercised sparingly and with great circumspection. In a case of conviction for murder, the High Court must admit the appeal and allow fair and independent consideration of evidence. Summary rejection of the appeal with the laconic expression 'dismissed' seems to be drastic step in such case. To do reject an appeal is to practically deny the right of appeal. "The requirement of recording reasons for summary dismissal, however concise, serves to ensure proper functioning of the judicial process". There must be some indication that the High Court addressed itself to the questions at issue and had the record before it.

Whenever a further right to question the judgement of a court or tribunal is provided by the constitution or statute, the court or tribunal should make a speaking order when finally adjudicating the case. It is noticed that writ petitions under Article 226 of the Constitution are often dismissed by the High Courts without a speaking order thus virtually compelling the Supreme Court to re-hear the matter in a petition under Article 136 of the Constitution. If a speaking order, however brief, is made; it will be most helpful to the Supreme Court in dealing with applications under Article 136 of the Constitution.

---

¹⁹³ AIR 1982 SC 1229
¹⁹⁴ AIR 1986 SC 1070
A similar view was expressed in *Arun Mohadeorao Danka v. Additional Inspector General of Police*.<sup>195</sup>

Commenting upon the practice adopted by the High Courts opined that such a practice would jeopardise the public confidence in the administration of justice. Furthermore such a practice would complicate the working of the apex court in tackling with the indiscriminate inflow of special leave petition under Article 136 of the Constitution.

**Expunction of remarks**

*In NiranjanPatnaik v. Sashibhusan*<sup>196</sup>, an appeal by special leave was filed against the judgment of the High Court causing the acquittal of the respondent of the charges under section 5 (2) read with section 5 (1) (d) of the Prevention of Corruption Act and under section 161 of IPC and while acquitting the respondent, the learned judge had made several adverse remarks about the conduct of the appellant and about the credibility of his testimony. This special leave is made for expunction of several highly derogatory remarks made by the learned judge of the High Court against appellant.

The two judge bench while allowing the appeal opined that it is settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof of animadvert on that conduct. Further it was opined that the adverse remarks made against the owner of the crime were thus neither justified nor called for even considering the evaluation of the evidence of the appellant. The apex court further remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be.

In the matter of *'K' a Judicial Officer*<sup>197</sup>, an appeal by special leave was filed against the judgment of the High Court by a judicial officer of sub-ordinate court where the appellant sought expunging of remarks detrimental to her, made by the High Court in disposing of a criminal miscellaneous petition under section 482 of the Code of Criminal Procedure.

---

<sup>195</sup> AIR 1986 SC 1497

<sup>196</sup> AIR 1986 SC 819

<sup>197</sup> AIR 2001 SC 972
The apex court while allowing the appeal opined that a subordinate judge faced with disparaging and underserving remarks made by a court of superior jurisdiction is not without any remedy. He may approach the High Court invoking its inherent jurisdiction seeking expunction of objectionable remarks which jurisdiction vests in the High Court by virtue of its being a court of record and possessing inherent powers as also the power of superintendence. However, if a similar relief is sought for against remarks or observations or order of High Court, the aggrieved judicial officer, can in exceptional cases, approach the apex court also invoking its jurisdiction under Articles 136 and/or 142 of the Constitution.

Further it was opined that the existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders can not be denied, however, the High Court have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities. Firstly, the judicial is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard. Secondly, the harm caused by such criticism or observation may be incapable of being done. Thirdly, human nature being what it is, such criticism of a judicial officer contained in the judgement of a higher court gives the litigating party presence of victory not only over his opponent but also over the judge who had decided the case against him. This is subversive of judicial authority of the deciding judge. Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition of this own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court - a situation not very happy from the point of view of the functioning of the judicial system. And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous judge being caught unawares in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralising effect not only on him but also on his colleagues.

Furthermore, it was opined that remarks were not necessary for the decision of the case by the High Court in a criminal proceeding, the marks have a potential to prejudice the career of the appellant, so remarks were directed to be expunged.
In *State of Maharashtra v. Public Concern of Governance Trust*\(^{198}\), an appeal by special leave was filed against the judgement of the Bombay High Court Concerning the expunging of remarks made by the High Court against the then Chief Minister which may affect the working and functioning of the office of the Chief Minister of the State. The Chief Minister who was heading the Urban Development Department while going through the applications for allotment of land made notation that the application be put up before the concerned authority. The High Court observed that by making such a notation, the applicants had blessings of the then Chief Minister. Moreover, the High Court passed certain strictures against the then Chief Minister behind his back without calling for an explanation from him.

The apex court while allowing the appeal opined that as the allegations against the then Chief Minister was made without making him a party before the court, so such allegations being one-sided are illegal incorrect and unwarranted as there is negation of the basic principles of natural justice.

Further it was opined that since the nature of remarks made in judgment of High Court will cast a serious aspersion on the Chief Minister affecting his reputation, career etc. and therefore such structures are liable to be expunged.

In *National Insurance Co. Ltd. v. M/S Swaranlata Das*\(^{199}\), an appeal by special leave was filed against the order of the High Court of Gauhati enhancing in appeal the compensation in a fatal accident's action awarded by the Motor Accident claims Tribunal.

The apex court while dismissing the appeal opined that the appropriate method of assessment of compensation is the method of capitalisation of not income choosing a multiplier appropriate to the age of the deceased or the age of the dependents whichever multiplier is lower. The Tribunal determined the compensation applying the method of capitaluation of loss of dependency but the High Court enhanced the compensation without any cogent reasons. But the Supreme Court declined to interferes in special leave petition in view of the fact that it was a hard case where a youth of 26 years who was bread winner of family was the victim of accident and also in view of the fact that by applying multiplier of 15 which was appropriate with regard to the age of accused together with lose to estate

\(^{198}\) AIR 2007 SC 777

\(^{199}\) AIR 1993 SC 1259
and loss of consortion, the quantification arrived at by the High Court could be justified though on different reasoning.

**Directions issued by Supreme Court**

In Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary v. State of Punjab\(^{200}\), an appeal by special leave was filed against the five judge bench judgement of High Court rejecting the writ petition which was filed in the public interest demanding judicial enquiry in the gruesome murder of a practising lawyer, his wife and child.

The apex court opined that as the investigation had been completed by the police and charge sheet submitted to the court, it is not for the Supreme Court, ordinarily to re-open the investigation. Nevertheless, in the facts and circumstances of the case, to do complete justice in the matter and to instil confidence in the public mind, the apex court directed the Central Bureau of Investigation to take up the investigation of the case.

**SuoMotu action**

In Pawan Kumar v. State of Haryana\(^{201}\), an appeal by special leave was filed against the judgment of Punjab and Haryana High Court causing the conviction of the appellant under section 302 read with section 34, IPC.

The apex court while allowing the appeal opined that the murder of the deceased took place in the hotel room but neither the waiter was examined nor the documentary evidence regarding entry alleged to be made in register was proved. Moreover, the letter written by appellant to his mother where he confessed his guilt was also not proved. The recovery of gold chains and ring belonging to deceased from appellant was not reliable in view of disclosure statements. Fill this shows that the High Court was in error in upholding the conviction of the appellant.

Further, the apex court opined that very wide powers have been conferred on the apex court for due and proper administration of justice. Apart from the salutary powers exercisable by Supreme Court under Article 142 of the Constitution for doing complete justice to the parties, the power under Article 136 of the Constitution can be exercised by it in favour of a party even SuoMotu when the Court is Satisfied that compelling grounds for its exercise exist but it should be used very sparingly with caution and circumspection in asmuch as only in rarest of rare cases. In the case

---

\(^{200}\) AIR 1994 SC 1023

\(^{201}\) AIR 2003 SC 2987

348
as in the present one, where the Supreme Court observed that conviction of appealing as well as non-appealing accused both was unwarranted and it results in violation of Article 21 of the Constitution, it is not discretion of the Supreme Court but a duty is enjoined upon it to exercise the same by setting right the illegality in the judgment of the High Court as it is well settled that illegality should not be allowed to be perpetuated and failure with the same would amount to allowing the illegality to be perpetuated.

Miscellaneous issues

In Kapur Chand Kesrimal Jain v. State of Maharashtra202, an appeal by special leave was filed against the judgment of the High Court of Bombay dismissing the appeal in limine without recording a speaking order indicating its reasons for repelling the appellant's contention and dismissing the appeal. The High Court upholding the judgement of trial court with regard to the possession of the contraband gold by the appellant caused the conviction under section 135 (a) and (b) read with section 135 (1) of the Customs Act, 1962 and under rule 126 H (A) of Part II-A of the Defence of India Rules, 1962. Against this decision of the High Court, appellant filed an appeal before apex court under Article 136 of the Constitution.

The three judges bench while deciding the fate of the appeal opined that when an appeal in the High Court raises substantial and arguable questions of fact and law, it would not be proper for the High Court to dismiss it in limine without indicating its reasons for dismissal and in such cases the Supreme Court would have no option but to send the case back to the High Court for fresh decision in accordance with law.

In Munir SayedIbna Hussain v. the State of Maharashtra203, an appeal by special leave was filed against the decision of High Court of Bombay where the Dursion Bench of the High Court rejected the appeal in limine without giving any reasons for the rejection.

The two benches while allowing the appeal opined that the power of summary rejection of a criminal 1st appeal under section 421, Cr PC should be only exercised when the court is satisfied from a perusal of the judgment as well as the

---

202 AIR 1973 SC 243. Similar state was expressed by the apex court in State of Mysore v. R.A.N. Rajanna, AIR 1973 SC 364- where the apex court in a service matter opined that the respondent is not entitled to class II post as he was temporary made incharge of the same and had no lien to as opined by the High Court.

203 AIR 1976 SC 1992
record, that there is absolutely no reasonable opportunity of its success for the reasons mentioned in the order. In cases where there are arguable points, the High Court should give its grounds and reasons in support of its decision to reject summarily on some absolutely clinching ground.

Further the court observed that where the High Court had dismissed an appeal in limine without giving any reason, the Supreme Court has no option but to remand the case back for disposal according to the law.

_In State of U.P. v. Buddha_204, an appeal by special leave was filed against the decision of the High Court of Allahabad acquitting the respondent who was earlier sentenced by sessions court under section 302 read with section 34, IPC.

The apex court while allowing the appeal opined that the High Court reached its conclusions without taking into consideration all the relevant evidence and circumstances of the case. The findings recorded by the High Court appeared to be much too Speculative and could hardly be called legitimate inferences from the evidence on record. For these reasons it must be held that the case in the High Court was not disposed of according to law. The matter should be sent back to the High Court for hearing the appeal afresh.

_In Ganeshmal Jashraj v. Government of Gujarat_205, the appellant was booked under section 16 of the Prevention of Food Adulteration Act. When the appellant was called upon to make his plea before the commencement of the prosecution evidence, he pleaded not guilty in respect of the offence charged against him and it was only after the prosecution evidence was closed and his examination under section 313 of the Code of Criminal Procedure was completed that he admitted guilt presumably as a result of plea bargaining. On the basis of plea bargaining, the judicial Magistrate sentenced him to simple imprisonment till the rising of the court and to pay a fine of Rs. 300 or in default to suffer further rigorous imprisonment for one month. On an anonymous application, the High Court too Suo Moto Action in exercise of its revisional jurisdiction and opined that though the appellant had admitted his guilt by filing an application after the closing of the prosecution evidence, the learned Judicial Magistrate had not founded his order convicting the appellant on the admission of guilt but he had considered the evidence led by the prosecution and come to the conclusion on the basis of such evidence that the

---

204 AIR 1977 SC 1799  
205 AIR 1980 SC 264
appellant was guilty of the offence charged against him and the conviction was, therefore, not vitiated, but so far as the sentence was concerned, it was patently in breach of the requirement of section 16 (1) (a) (i) of the Act which provided for a minimum sentence of imprisonment for three months.

The apex court while allowing the appeal set aside the order of the High Court as well as Judicial Magistrate and remanded the case back to the trial court. The apex court was very critical of the fact that under the Food Adulteration Law, the action is being taken against the small tradesmen and who aer out a precarious existence living almost from hand to mouth are sent to jail for selling food stuff which is often enough not adulterated by them and the wholesalers and manufacturers who really adulterate the food stuff and father themselves ion the misery of others escape the arm of the law.

In this case, Bhagwati, J., opined that there can be No doubt that when there is and admission of guilt made by the accused as a result of plea bargaining or otherwise, the evaluation of the evidence by the count is likely to become a little superficial and perfunctory and the court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. The entire approach of the court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused. Here it is obvious that the approach of the Learned Judicial Magistrate was affected by the admission of guilt made by the appellant and in the circumstances, it would not be right to sustain the conviction of the appellant.

In RajamanickaMathurar v. Dharamraj206 the apex court allowing the appeal opined that where the High Court while remanding the case of first appellate court did not point out what relevant considerations wwere taken into account by the first appellate court but instead made sweeping remarks which might prejudices a free and fair re-consideration of the matter by the first appellate court. The judgement of the High Court was not liable to be maintained more so when it was vague and indefinite.

206 AIR 1980 SC 493
In State of U.P. v. Possu\textsuperscript{207}, an appeal by special leave was filed against the decision of High Court of Allahabad where the five judges bench of the apex court has to consider whether the Supreme Court while granting special leave to appeal under Article 136 of the Constitution, against an order of acquittal on capital charge, has the power, to issue a non-bailable warrant for the arrest and committal to prison of the accused who had been acquitted by High Court.

The apex court while allowing the appeal opined that the Supreme Court while granting special leave to appeal against an order of acquittal on a capital charge is competent by virtue of Article 142 read with Article 136, to exercise the same powers which the High Court has under section 427. Further, the apex court observed that as soon as the High Court on perusing a petition of appeal against an order of acquittal considers that there is sufficient ground for interfering, proceedings against the accused revive. Similar is the position when the Supreme Court in its discretion, grants special leave to appeal under Article 136 of the constitution against an order of acquittal passed by the High Court. Although, the discretion is exercised judicially it is not possible to computerise and reduce into immutable formulae the diverse consideration on the basis of which this discretion is exercised. In addition, the court may also take into consideration the period during which the proceedings against the accused were pending in the courts below and the period which is likely to elapse before the appeal the appeal comes up for final hearing in the court. This overriding discretionary jurisdiction under Article 136 is invoked sparingly in exceptional cases, where the order of acquittal recorded by the High Court is perverse or clearly erroneous and results in a gross miscarriage of justice.

Furthermore, it was opined that an order directing the re-arrest and detention of an accused who had been acquitted by the High Court of a capital offence does not in anyway offend Article 21 or any other fundamental right guaranteed in Part III of the Constitution. Such an order is made by the Supreme Court in the exercise of its plenary jurisdiction conferred by Article 136 and Article 142.

In State of U.P. v. JashodaNandan Gupta\textsuperscript{208}, an appeal by special leave was filed against the decision of High Court of Allahabad where the High Court reversing the judgement of session judge cause the acquittal of the respondent under

\textsuperscript{207} AIR 1976 SC 1750
\textsuperscript{208} AIR 1974 SC 753
sections 302/149. The High Court held that the testimony of the witnesses was unreliable and unacceptable as they were never sure about the fact that who was assaulting the deceased. Moreover, they had met deceased by chance and the fatal accident was sudden and unanticipated, so it cannot be said that they had common object or they had formed an unlawful assembly.

The two judge bench deciding the fate of the appeal while dismissing the appeal opined that the Supreme Court does not interfere with the findings of fact reached by the High Court, unless exceptional and grave circumstances exist or there has been a gross miscarriage of justice. Further, it was observed that where the subject of appeal under Article 136 is one of acquittal, the Supreme Court will not interfere with the same in the exercise of its overriding jurisdiction unless the judgment is clearly unreasonable on perverse or manifestly illegal or grossly unjust. Therefore, if in the nicely balancing probabilities of a case, two views of the evidence, one indicating acquittal and the other conviction were reasonably possible, this court would not disturb the High Court's order of acquittal.

While in Bhubneswar Mandal v. State of Bihar, the apex court opined that where the High Court fails to realise the limitation with which it has to function and the caution that it had to observe in considering an appeal against acquittal and there is no justification for the High Court to interfere with the order of acquittal passed the sessions judge, the Supreme Court will interfere even if it is considering an appeal under Article 136.

In State of V.P. v. HariharBux Singh, an appeal by special leave was filed against the decision of the High Court of Allahabad reversing the judgment of the session judge and acquitting the respondent from the charge under section 302 read with section 34, IPC. The High Court found that the testimony of the witnesses was not reliable and moreover no motive was found to have been proved on the record.

The apex court while dismissing the appeal opined that there was no infirmity in the appraisement of the evidence. So the apex court opined that in an appeal under Article 136, the Supreme Court does not interfere with the finding of acquittal recorded by the High Court unless that finding is vitiating by some glaring infirmity in the appraisement of evidence. The fact that another view could also have

---

209 AIR 1973 SC 399
210 AIR 1974 SC 1890
been taken on the evidence on record would not justify interference with the judgment of acquittal.

In the *State of U.P. v. Ram Kishan*\(^{211}\), the two judges bench of the apex court while deciding the fate of appeal by special leave filed against the decision of High Court setting and the conviction of the respondent under sections 302/149 for causing the death and also under sections 307/149, IPC for attempting to murder opined that in an appeal against acquittal the Supreme Court is slow to interfere with the decision of the High Court, even though it has interfered with the conviction by the trial court, where the ame is reached after a proper appreciation of the entire evidence. The possibility that it may just be reasonably feasible for the Supreme Court to take a different view of the evidence from that of the High Court is not the test in an appeal against acquittal. But where the High Court has read the evidence in an unusual way which is obvious from the perusal of the judgment and when the injuries on the victim are resipsaloqitur and tell tale and when a completely erroneous view of the prosecution evidence is take resulting in failure of justice, the Supreme interfered in appeal.

*In State of Punjab v. Pritam Singh*\(^{212}\), an appeal by special leave was filed against the decision of Punjab and Haryana High Court acquitting the respondent from the charge under section 302 read with section 149, IPC and section 27 of the Arms Act and sections 4 and 5 of the Exposive Substances Act. The High Court found that the case against the respondent was not proved beyond reasonable doubt as it was replete with inherent improbabilities and consisted of purely partisan evidence without any corroboration from independent sources.

The apex court while dismissing the appeal opined that the wholly interested and partisan nature of the testimony of the witnesses examined by the prosecution and the complete absence of corrobative evidence which though in possession of the prosecution was not produced without any adequate explanation, so it was observed that the prosecution has not been able to prove its case beyond reasonable doubt. Furthermore, it was opined that this appeal is directed against the order of acquittal passed by the High Court and unless there are special circumstances or grave errors committed by the High Court leading to serious miscarriage of justice,

\(^{211}\) *AIR 1976 SC 2016*

\(^{212}\) *AIR 1977 SC 2005*
this court would not interfere in special leave in order to set aside an order of acquittal.

In *State of U.P. v. Hakim Singh*\(^{213}\), an appeal by special leave was filed against the decision of the Division Bench of the High Court of the Allahabad acquitting the accused of the charges of double murder framed against them by the trial court.

The apex court on the analysis of the case while allowing the appeal opined that the High Court in appeal against conviction of accused in murder case has not dealt with the intrinsic merits of the evidence of the eye witnesses. The High Court brushed aside their evidence on surmises and cionjectures and preponderance of improbabilities not in existence. It did not make any effort to appreciate or marshal the evidence in order to reach the conclusion regarding the credibility of the eye witnesses, although prosecution case found to be fully established beyond reasonable doubt.

In *Ram Das BhikajiChandhari v. Sadanand*\(^{214}\), the High Court of Bombay acquitted to the respondents after paying reliance on *Rajandas Gurunamal Pamanani v. State of Maharashtra*\(^{215}\), a case concerning applicability of Section 16 of Prevention of Food Adulteration Act. The same case was overruled by the apex court in the case of *State of Kerala v. AlasserryMohd.*\(^{216}\) which was not relied upon by the High Court.

The apex court while allowing the appeal opined that such a decision of the High Court is legally erroneous as it is well settled that whenever a previous decision is overruled by a larger Bench, the previous decision is completely wiped and Article 141 will have no application to the decision which has already been overruled and the court would have to decide the case according to law laid down by the latest decision of the Supreme Court and not by the decision which has been expressly overruled.

In *Mohanlal Hargovind Dass v. Ram Narain*\(^{217}\), an appeal by special leave was filed against the decision of High Court reversing the judgment of dessions judge and acquitting the respondents on the ground that the prosecution had not

\(^{213}\) AIR 1980 SC 184
\(^{214}\) AIR 1980 SC 126
\(^{215}\) (1975) 2 SCR 886
\(^{216}\) (1978) 2 SCR 820
\(^{217}\) AIR 1980 SC 1743
proved the case beyond reasonable doubt. The High Court had serious doubt regarding the manner in which the incident of dacoity took place. The two judge bench while dismissing the appeal opined that as the prosecution case was fraught with inherent improbabilities and as it could not be said that the view taken by the High Court was not reasonably possible or that the judgment of the High Court was in any way perverse, the Supreme Court would not interfere merely because it might have taken a different view in the evidence.

CONCLUSION

The analysis of the significant judgments exhibits that the Supreme Court does not grant the special leave to appeal on flimsy grounds and has allowed the appeal only in cases which warranted the use of its discretionary power. It has laid down the guidelines for the exercise of its discretionary power which interalia include that:

i) It is not an ordinary court of appeal and shall not be allowed to reopen the facts for the first time.

ii) The admission of a appeal is not a license to raise any point especially it shall be reluctant entertain new pleas before it.

iii) The discretionary power shall be exercise only where substantial and grave injustice has been done or gross prosessual injustice has taken place.

iv) The finality clause used in various statutes cannot impose a restriction on the exercise of discretionary power by the apex court.

v) No technical hurdle can be placed on the exercise powers by the apex court though the Supreme Court can refure the grant of leave in cases involving delay.

vi) Though the court is not a third court of review but in exceptional case there can be reappreciation of evidences especially in cases where there is contradictions in the lower courts or where the lower courts have failed to reappreciate the evidence before it.

vii) It cannot interfere with interlocutory orders as well as where no question of law is involved.