accordance with law. Since the matters have remained pending for long, the High Court is requested to hear and decide the matters expeditiously, preferably within six months.

9. The impugned order in the third appeal, dated 05.02.2009 passed by the High Court of Judicature for Rajasthan at Jodhpur has been relied upon and followed while passing the order dated 02.04.2009 impugned in the other two appeals. Since that order has been set aside while allowing those appeals hence the order impugned in this appeal also has to be set aside for the same very reasons and for the view taken by us in respect of scope and ambit of Section 482 of the Cr.P.C. Accordingly this appeal is also allowed and impugned order is set aside with the same directions as in the other two appeals.

Result:- Appeals allowed.

ABC 2016 (II) 132 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Anil R. Dave & L. Nageswara Rao, JJ.)

Criminal Appeal No.181 of 1998 with Criminal Appeal No.210 of 1998

(From Bombay High Court)

Decided On 30 September, 2016

VILAS V. SANGHAI ***- Appellant(s).***

Versus

SUMERMAL MISHRIMAL BAFNA & ANR ***- Respondent(s).***

Law Covered:- ***(A) Contempt of Courts Act, 1971 — Section 15— Cognizance of criminal contempt in other cases— (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by— (a) the Advocate-General, or — (b) any other person, with the consent in writing to the Advocate-General, or — (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer — (2) Criminal contempt of a subordinate court— the High Court may take action on a reference made to it by the subordinate court or —***

on a motion made by the Advocate-General or— in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf. (Para 13)

(B) Contempt of Courts Act, 1971 — Criminal contempt of a subordinate Court — Proceedings initiated by a private person — Held, the action could have been taken on a reference made to the High Court by the subordinate Court — or on a Motion made by the Advocate General — No reference was made to the High Court & no consent taken from Advocate General — Mandatory provision not complied with — Proceedings vitiated — order for punishment quashed. (Para 14)

Facts:- *A private complaint was filed against Respondent No.1 to the effect that he had committed an offence punishable u/s 420 r/w Ss 120-B and 109 of the IPC. Investigation in relation to the said complaint had been entrusted to the Appellant. Respondent No.1 filed an application for anticipatory bail. The learned Public Prosecutor had made a statement that during the pendency of the said application, Respondent No.1 would not be arrested, provided he would cooperate with the Police in the investigation. In spite of the aforestated assurance given to the Court by the learned Public Prosecutor, Respondent No.1 was arrested. In these circumstances, Respondent No.1 had initiated contempt proceedings against the Appellant. The High Court came to the conclusion that the Appellant was guilty of committing contempt of Court and was, therefore, sentenced to simple imprisonment for 7 days with a fine of Rs.2,000/-. The Honourable Supreme Court, however, observed that the criminal contempt proceedings had not been initiated as per the provisions of Section 15 of the Contempt of Courts Act. The proceedings were held as vitiated, order of conviction passed by the High Court was set aside.*

Law of relief:- ***Contempt proceedings of a subordinate Court, initiated by a private complainant, without the consent of Advocate General, are vitiated.***

Held:- The impugned order is in violation of the provisions of Section 15 of the Act. Relevant portion of Section 15 reads as under :

"**15. Cognizance of criminal contempt in other cases. -** (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing to the Advocate-General, or

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) xxx xxx xxx." (Para 13)

In the instant case, the alleged criminal contempt was of a subordinate Court and therefore, the action could have been taken on a reference made to the High Court by the subordinate Court or on a Motion made by the Advocate General, but the proceedings had been initiated in pursuance of an application submitted by Respondent No.1. From the record, we do not find that the learned Advocate General had ever given his consent for initiation of the said proceedings. (Para 14)

JUDGMENT

ANIL R. DAVE, J.: - 1. Being aggrieved by the judgment dated 22nd December, 1997 delivered by the High Court of Judicature at Bombay in Criminal Writ Petition No.22 of 1994, Criminal Appeal No.181 of 1998 has been filed by Vilas V. Sanghai against the order of punishment imposed upon him under the provisions of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") and Criminal Appeal No.210 of 1998 has been filed by the State of Maharashtra for setting aside the said judgment.

2. The facts giving rise to the present litigation in a nutshell are as under :-

As two appeals have been filed against the same judgment, for narration of the facts, we have referred to the facts from Criminal Appeal No.181 of 1998, which has been filed by Vilas V. Sanghai, a

Police Inspector, who was entrusted with investigation of a case filed against Respondent No.1, Sumermal Mishrimal Bafna, a Trustee of Bafna Charitable Trust. Respondent no.1, who is aged about 64 years and is having some heart ailment, claims to be a man with good reputation. A private complaint was filed against Respondent No.1 by Shri Umesh Karia to the effect that Respondent No.1 had committed an offence punishable under the provisions of Section 420 read with Sections 120-B and 109 of the Indian Penal Code. Investigation in relation to the said complaint had been entrusted to the Appellant, who was attached to the Crime Branch at the relevant time.

3. Respondent No.1 had an apprehension that he might be arrested in the course of investigation and therefore, he had filed an application for anticipatory bail. During the pendency of the said anticipatory bail application, the Appellant used to remain present to brief the learned Public Prosecutor, who was opposing the said application. No interim order was passed in the said application when the application was being heard but in the presence of the Appellant and in pursuance of the instructions given by the Appellant, the learned Public Prosecutor had made a statement that during the pendency of the said application, Respondent No.1 would not be arrested, provided Respondent No.1 would cooperate with the Police in the investigation.

4. In spite of the aforestated assurance given to the Court by the learned Public Prosecutor in pursuance of the instructions given by the Appellant, Respondent No.1 was arrested on 21st September, 1993, though hearing of the anticipatory bail application was fixed on 22nd September, 1993. The case made out against the Appellant was that after the arrest, Respondent No.1 was handcuffed and was photographed in handcuffed condition and the said photograph had been published in local newspapers. Publication of such a photograph adversely affected reputation of Respondent No.1.

5. In the aforestated circumstances, Respondent No.1 had initiated contempt proceedings against the Appellant as the Appellant had committed breach of an assurance given to the Court through the learned Public Prosecutor that Respondent No.1 would not be arrested during the pendency of the anticipatory bail application.

6. In the aforestated contempt proceedings, defence of the Appellant was that the assurance or undertaking which had been

given to the Court was conditional. The condition was that Respondent No.1 would extend his cooperation in the investigation, but as Respondent No.1 was not cooperative and was deliberately trying to create hurdles in the investigation, the Appellant was constrained to arrest Respondent No.1 on 21st September, 1993.

7. After hearing the concerned parties and looking at the record, the High Court came to the conclusion that the Appellant was guilty of committing contempt of Court and was, therefore, sentenced to simple imprisonment for 7 days with a fine of Rs.2,000/-.

8. The learned counsel appearing for the Appellant submitted that the Appellant had not committed criminal contempt, as alleged or otherwise. The main thrust of the argument of the learned counsel was that the provisions of Section 15 of the Act had not been complied with before passing the impugned order punishing the Appellant for committing criminal contempt of Court. He also submitted that there was no breach of any undertaking or assurance given to the Court as the assurance given on behalf of the Appellant was conditional. By not extending cooperation to the investigating agency, Respondent No.1 had committed breach of his assurance and therefore, undertaking given by the Appellant had also come to an end.

9. So far as the legal provisions are concerned, he submitted that the provisions of Section 15 of the Act ought to have been complied with for initiating proceedings for punishing the Appellant for criminal contempt. In the instant case, the action was not initiated on a Motion made by the Advocate General or on a reference made by the subordinate Court concerned as per the provisions of Section 15 of the Act. For the aforestated reason, the entire proceedings were vitiated.

10. On the other hand, the learned counsel appearing for Respondent No.1 supported the order passed by the High Court and submitted that there was clear violation of the undertaking given by the Appellant to the Court. He stressed on the fact that the application for anticipatory bail was to be heard on 22nd September, 1993 and Respondent No.1 was arrested on 21st September, 1993. There was no justifiable reason for arresting Respondent No.1 a day before the date of hearing. The Appellant could have very well waited for a day and could have made the grievance before the Court that Respondent No.1 was not cooperative and therefore, the investigation was

adversely affected, if the averment with regard to non-cooperation of the Appellant was correct. Instead of waiting for a day, in a hot haste, the Appellant arrested Respondent No.1 on 21st September, 1993 and the said fact clearly denotes that the Appellant had very scant respect for the assurance given by him to the Court. He, therefore, submitted that the impugned order is just and proper and therefore, the Appeal deserved dismissal.

11. We have heard the learned counsel and have recorded the facts of the case.

12. We find substance in what has been submitted by the learned counsel appearing for the Appellant.

13. The impugned order is in violation of the provisions of Section 15 of the Act. Relevant portion of Section 15 reads as under :

> "**15. Cognizance of criminal contempt in other cases. -** (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—
>
> (a) the Advocate-General, or
>
> (b) any other person, with the consent in writing to the Advocate-General, or
>
> (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.
>
> (2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.
>
> (3) xxx xxx xxx."

14. In the instant case, the alleged criminal contempt was of a subordinate Court and therefore, the action could have been taken on a reference made to the High Court by the subordinate Court or on a Motion made by the Advocate General, but the proceedings had been initiated in pursuance of an application submitted by Respondent No.1.

From the record, we do not find that the learned Advocate General had ever given his consent for initiation of the said proceedings.

15. Without going into the facts of the case, only on this limited ground that the criminal contempt proceedings had not been initiated as per the provisions of Section 15 of the Act, in our opinion, the proceedings are vitiated and therefore, the impugned order passed by the High Court is neither just nor legal and therefore, we set aside the impugned order.

16. The appeals are accordingly disposed of as allowed.

Result:- Appeals allowed.

ABC 2016 (II) 138 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(V. Gopala Gowda & R.K. Agrawal, JJ.)
Criminal Appeal No. 2135 of 2009
(From Rajasthan High Court)
Decided On 9 September, 2016

PANKAJ ***- Appellant(s).***

Versus

STATE OF RAJASTHAN ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 302 — Murder by gunshot injury — Bullet recovered — had not been connected with the weapon — Held, no material to connect the gunshot injury was due to the shot fired from the firearm of the appellant-accused—Motive — not proved clearly — Circumstances in which the appellant was alleged to have fired at the deceased — not proved — Benefit of doubt— Acquittal. (Para 12 & 13)***

(B) Indian Evidence Act, 1872 — Section 32 — Suspicious Dying Declaration — Held, when a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (Para 7)

(C) Indian Evidence Act, 1872 — Section 3 — Presence of witness — Sole eye witness — testimony of — Corroborative witness — presence doubtful —fatal to prosecution. (Para 8)

(D) Indian Evidence Act, 1872 — Section 3 — Presence of witness — Version of witness — Blood was oozing from the body of