under the Land Acquisition Act, 1894.

(10) It was contended that once having initiated the acquisition proceedings and/or proposal for new town under the provisions of the MRTP Act, the provisions of the MRTP Act, must be followed and any acquisition must be only under the provisions of that Act. It was contended that the State Government is not entitled to invoke simultaneously the power of acquisition under the MRTP Act or the Land Acquisition Act, 1894.

(11) The Division Bench held that there are two parallel modes available to the State Government for acquisition of the land, namely, under the Town Planning Act and under the Land Acquisition Act. Infact, the Division Bench went a step further and rejected the contention that once the acquisition proceedings are commenced for acquisition under the provisions of the MRTP Act, it is not open to the State Government to resort to the acquisition under the provisions of the Land Acquisition Act. In the case before us, this situation does not even arise. As we mentioned earlier the authorities under the PRTPD Act, namely, Greater Mohali Area Development Authority and Punjab Urban Development Authority have expressly stated that they have not requested the State Government to acquire the property under Section 42 of the PRTPD Act.

(12) In the circumstances, the writ petition is dismissed, but with no order as to costs.

P.S. Bajwa

Before Rajiv Narain Raina, J.

BIKRAMJIT SINGH—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No.7048 of 2013

December 23, 2014

Constitution of India, 1950 - Art. 226 - Indian Penal Code, 1860 - Ss. 34, 148, 149, 304, 323, 324 & 506 - Code of Criminal Procedure, 1973 - S.319 - Recruitment - Denial on criminal charges - Petitioner was selected for post of Constable - He was denied appointment on ground that his name was mentioned in a criminal

case - However, in said criminal complaint, police, after investigation, did not find any involvement of petitioner and he was declared innocent - State pleaded that since petitioner could be summoned by Trial Court under Section 319 Cr.P.C. to face trial, he was not entitled for recruitment - Held, that criminal case was not pending against petitioner - He had not been arrested by police in any case nor cited as a witness in any case - Possibility of summoning under Section 319 Cr.P.C must be clear, distinct and very likely to happen but a person cannot be injured in his civil rights by future indeterminate events or a hypothesis which are not real and proximate to denial of right unfairly - Stand of State denying appointment was quashed – State was to consider case of petitioner for appointment.

Held, that it is indirectly admitted in paragraph 5 of the written statement that in fact a criminal case is not pending against the petitioner as the State pleads in the negative that he can be summoned by the learned trial Court under section 319 Cr.P.C. to face trial and accordingly the petitioner is not entitled for recruitment as Constable in Punjab Police. They question whether the petitioner can be summoned under Section 319 Cr.P.C. is not doubted as a legal proposition but it is not an accomplished fact and appears rather remote, if not difficult to believe as a rationale for denial of appointment given the nature of the cross-complaints filed between two families involving themselves in injuries to body over a dispute in land. The FIR was registered on 12-6-2011 and we are at the end of 2014 when the calendar will shift to 2015 in a few days.

(Para 4)

Further held, that there can be no doubt from the reading of the writ papers that the petitioner is not facing prosecution in any criminal case. He has not been arrested by the police in any case nor cited as a witness in any case. If there was truth in any of these three material things, it would have been splashed across the written statement filed by the State. The cross-versions are land disputes which are rampant throughout the Punjab. It would serve no useful purpose to look into the personal lives of holders of office in Punjab Police to ferret out conduct which may justify adverse consequences, forget about a matter of appointments.

(Para 9)

Further held, that in service matters, the Court deals with probabilities and reasonable forseeability and it is less probable that the trial Court would bring in the petitioner to trial via section 319 Cr.P.C. on the basis of depositions of witnesses which might have been or are to be recorded in the trial, the status of which is not disclosed in the extent of evidence let in by the prosecution and whether it reveals any involvement of the petitioner in the commission of a criminal offence and that too after so many years, if the trial is not over by now. The Court is not apprised of the status of the trial.

(Para 13)

Further held, that the Court must stay alive to the principles of remoteness when an argument on section 319 Cr.P.C. is advanced in a civil matter. The possibility must be clear, distinct and very likely to happen but a person cannot be injured in his civil rights by future indeterminate events or a hypothesis which are not real and proximate to the denial of right unfairly in the present is always open to be argued that mere selection does not give a person indefeasible right to appointment. This does not mean that the reasons for denial cannot be looked into by Court on judicial review.

(Para 15)

Further held, that for the foregoing reasons, this petition is allowed. A writ of certiorari is issued quashing the stand of the State in the written statement which denies appointment merely because of a likelihood of an order being passed under Section 319 Cr.P.C. against the petitioner which reason is not found legal or valid in depriving the petitioner of a right of consideration for appointment. A mandamus is issued to the respondents to consider the case of the petitioner for appointment within 30 days of the date of receipt of a certified copy of this order and such a consideration is directed subject to fulfilling other conditions as may remain. The petitioner will be entitled to all consequential benefits of notional increments, seniority etc. from the date of appointment of the 120 constables but he would be entitled to salary and allowances from the date of filing of the present petition which bears the office stamp dated 2-4-2013 as his rights stand crystallized then.

(Para 17)

Rajbir Sehrawat, Advocate, *for the petitioner.*

Rajiv Prashad, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.

(1) In the run up in seeking an appointment as a constable in Punjab Police in Patiala district, the petitioner remained successful till the stage he was declared medically fit to be appointed to the post against a public advertisement calling applications to fill up the posts of constables published on 28th October, 2011. Though his name on merit stood first in the waiting list he was not offered appointment nor was he informed of the reasons why. On enquiry from the office of the 3rd respondent, he says he came to know that appointment was denied to him because in background check it was discovered that his name was mentioned in a criminal case bearing FIR No. 143, dated 12th June, 2011 registered against several persons from the side led by one Gurmukh Singh under sections 323, 324, 506, 148 and 149 IPC at Police Station Patran. The FIR was registered on a complaint made by his uncle Satnam Singh to the police. Gurmukh Singh had made a cross-complaint against Satnam Singh. Gurmukh Singh's complaint was recorded only in the Daily Diary Entry register and no FIR was registered on his statement since no case could be registered in the absence of a statement of commission of cognizable offences. The challan in the case of Satnam Singh was presented before the trial magistrate on 16th February, 2012. It transpired that after investigation, in the cross-complaint of Gurmukh Singh, a report was filed under section 173 Cr.P.C. against 5 persons including the uncle and the father of the petitioner. All that was against the petitioner was that in the complaint of Gurmukh Singh, his name figured but the police did not find any involvement of his after investigation in the case and he was declared innocent and no challan was presented against him. The challan was filed against Satnam Singh, Jaswant Singh, Gurcharan Singh [father of the petitioner], Virsa Singh and Ajit Singh.

(2) The question before the Court is whether the petitioner can be denied appointment from the waiting list for the aforesaid reason. In the written reply of the State filed in defence of the petition, it is stated that during police verification and scrutiny of character antecedents of the selected candidates in the recruitment drive of 120 male constables allotted to district Patiala by the DGP, Punjab, Chandigarh, it was discovered that there existed the aforesaid FIR against the petitioner for which reasons he could not be recruited in Punjab Police department. They referred to column No.14 of the application form where a candidate had to answer the question, "Whether any criminal case is registered and pending against you". The petitioner did not fill up this

column while the criminal case stood registered against him. The respondent-State relied on the ruling of the Supreme Court in ***Delhi Administration*** *versus* ***Sushil Kumar***[1] and the observations made which are quoted in the written statement and are reproduced below :-

> "It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was physically found fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal therefore was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing Authority, therefore, has rightly focused this aspect and found him not desirable to appoint him to the service."

(3) In this case the selected constable was refused appointment when it he found involved in serious criminal offences in background check though he may have been discharged or acquitted in the criminal case. The conduct which was alleged indicated a serious doubt as to character despite acquittal and the judgment has to be read on a larger canvass on which individual cases have to be decided each depending on its own facts. In ***Sushil Kumar's case (supra)***, an opinion was formed by the Delhi Police in a case involving commission of serious offences under sections 304, 324, 34 IPC that the candidate was unfit to be offered appointment. In the short order, the ratio which comes out is that mere discharge or acquittal of criminal offences has nothing to do with the conduct and character as the police is looking for desirable persons as constables and not those who remain in questionable shadows of a criminal case where witnesses resile or crime is

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[1] (1996) 11 SCC 605

compromised. In the present case, the fate of the trial is not known in which the petitioner is not an accused nor can it be said that a criminal case is pending against him nor is there any other material from where one can draw an adverse inference of bad antecedents, bad conduct or bad character as one which is so debased that such a person does not deserve to be in the police force. There is no past history of the petitioner except what is relied upon by the respondent-State and, therefore, ***Sushil Kumar's case (supra)*** can be of no help to the State. If any opinion on any prosecution evidence has been recorded in writing, it has not been shown or produced before this Court. The defence of the State is at best *verba volant, scripta manent;* words fly away, the right remains.

(4) It is indirectly admitted in paragraph 5 of the written statement that in fact a criminal case is not pending against the petitioner as the State pleads in the negative that he can be summoned by the learned trial Court under section 319 Cr.P.C. to face trial and accordingly the petitioner is not entitled for recruitment as Constable in Punjab Police. They question whether the petitioner can be summoned under Section 319 Cr.P.C. is not doubted as a legal proposition but it is not an accomplished fact and appears rather remote, if not difficult to believe as a rationale for denial of appointment given the nature of the cross-complaints filed between two families involving themselves in injuries to body over a dispute in land. The FIR was registered on 12th June, 2011 and we are at the end of 2014 when the calendar will shift to 2015 in a few days.

(5) In order to prima facie examine the nature of the allegations in the criminal cases and to go to the root of the matter, this Court passed interim order on 1st October, 2013 directing production of a copy of the FIR No. 143 dated 12th June, 2011. The State has filed an additional affidavit of Gursharan Singh Bedi, PPS, Superintendent of Police (Headquarters), Patiala on behalf of the respondents appending a copy of the FIR. It is revealed in the affidavit that this was a cross version case. Therefore, a cross case was registered against the petitioner, Bikramjit Singh and others on the basis of DDR entry No.14 dated 11th June, 2011, Roznamcha Police Station Shutrana recorded on the statement of Gurmukh Singh son of Ujjagar Singh resident of village Sagra. This statement was supported by Bhajan Singh [injured witness] and Gurnam Singh son of Ujagar Singh. Copy of DDR No. 14 is attached as R-1/T. It is stated in paragraph 3 of the affidavit that this version finds support in the challan form under Section 173 Cr.P.C. [P-

6]. Thus, two challans were filed, one under FIR No. 143 and one under DDR No. 14. This Court has been through the documents attached with the affidavit with the assistance of the learned counsel. Reference to the petitioner Bikramjit Singh is found at page 65 of the paperbook which is a part of Annexure R-1/T. It reads : -

> "Then Jaswant Singh after taking Dang from his nephew Bikramjit Singh, gave blow on him which hit on the right side of him (sic) of my brother Bhajan Singh, then Khushhal Singh gave hockey stick blow on the left leg of my brother Bhajan Singh. At this my brother also fallen on the ground. Then all of them beaten us with dangs while we were lying on the ground [reading of the statement of Gurmukh Singh in the text/context does not appear to refer to petitioner Bikramjit Singh son of Gurcharan Singh]."

(6) The word 'him' means someone else and not the petitioner. At best, the petitioner's name is mentioned in the report but does not figure in the incident except to the extent of statement extracted in inverted comas above. It cannot be disputed that the petitioner's name does not figure in the list of the 3 accused facing trial. The other mention of the name of the petitioner in the statement of Gurmukh Singh is at page 64 of the paper book where it is recorded that the petitioner was one among many armed with dangs. Lalkara is not attributed to the petitioner in the statement of Gurmukh Singh where he says :—

> "Puran Singh, Shinder Singh, Ajit Singh, Wirsa Singh, Jaswant Singh, Swaran Singh, Kulwant Singh, Kikkar Singh, Gurcharan Singh and Malkiat Singh raised Lalkara in high voice that today Gurmukh Singh should not escape and teach him lesson for possession over 4½ acre of land."

(7) No injury is attributed to the petitioner and he can at best be viewed as a person present on the date of occurrence but that does not mean that he is involved directly in causing alleged injuries to Gurmukh Singh. Copy of the challan is placed as R-2/T.

(8) This Court has read it carefully and word for word but find that motive attributed for the alleged occurrence is that one Ajit Singh is alleged to have wanted to take forcible possession of the land as Gurmukh Singh and his party was not leaving possession of the land. His name in the challan is mentioned in the same manner as in R-1/T in formal duplication in the challan docket.

(9) There can be no doubt from the reading of the writ papers that the petitioner is not facing prosecution in any criminal case. He has not been arrested by the police in any case nor cited as a witness in any case. If there was truth in any of these three material things, it would have been splashed across the written statement filed by the State. The cross-versions are land disputes which are rampant throughout the Punjab. It would serve no useful purpose to look into the personal lives of holders of office in Punjab Police to ferret out conduct which may justify adverse consequences, forget about a matter of appointments.

(10) Entries in columns on application forms which reveal involvement in crime are to be viewed by in a layman's understanding and by a layman's approach and not at the levels of forensic debate. All concealments of facts may not be deliberate and wilful misrepresentation amounting to a firm declaration of a person being unfit for public appointment. These two approaches have been advised by the Supreme Court in ***State of Haryana and others*** *versus* ***Dinesh Kumar***[2] in a case of a constable driver in Haryana Police being deprived of appointment while interpreting the statements made in the application form which revealed involvement in crime. The two questions which Dinesh Kumar was required to answer were :—

1. Have you ever been arrested?
2. Have you ever been convicted by the court of any offence?

(11) A background check revealed that Dinesh Kumar was involved in a FIR registered in 1994 and was granted bail a few days thereafter but was not arrested by the police. He had appeared before the trial court for bail and was granted the concession. He was not offered appointment because he failed to disclose the criminal case which had been registered against all his family members long before he applied for the post. The criminal trial had proved Dinesh Kumar and his family members innocent and they were acquitted of the charges framed in 1998. The answer to the first question was obvious that he was not arrested and it was truthful statement made in the application/declaration form. On the 2nd question, he answered that he had never been convicted by a court since he was acquitted which too a truthful statement was when made while applying years later. In the circumstances, the Supreme Court did not approve the decision of the

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[2] (2008) 3 SCC 222

DGP, Haryana in denying appointment to Dinesh Kumar and directed that it be done with notional benefits of continuous employment but with salary from the date of the judgment.

(12) What is required to be seen now is as to whether the two material questions which the petitioner was to answer, if left unanswered in the application form by omission then what would be its legal effect. In other words, writing a wrong fact is one thing but not writing at all may be another even if the answer were correct but the author may not have been sure what to write without legal help. Column No. 14 demands information "whether any criminal case is registered or is pending against you". Answers had to be given with respect to "register" or "pending". It is alleged against the petitioner that he left the column blank. The fact is not denied since no replication has been filed. Needless to say that such an omission would be taken as by a person unsure of himself of what to say in writing. It is quite possible, given the facts that his name found mention in the challan docket he may have justifiably required legal advice at his level of education and understanding of the law to fill column 14 in the form. If he failed to fill the column for lack of understanding of what he was expected to say in the layman approach should his case be thrown out altogether. Had he sought advice of someone well versed with the criminal law he would have been advised that no criminal case has been registered against him nor can it be said that a criminal case is pending because the petitioner is not an accused in the cross cases. To rope him in advance through the provisions of Section 319 Cr.P.C. would be asking too much. If he did not fill the column, he did not conceal any fact of which he is accused today. He preferred to keep mum and leave it to be resolved when the time came. Mere presence on the date of occurrence on an allegation that Jaswant Singh took the dang from his nephew, the petitioner Bikramjit Singh does not suggest that the petitioner handed over or permitted the use of his dang by Jaswant Singh who allegedly gave the blow on the complainant party. If Jaswant Singh took the dang, which may suggest snatching or use of force, then the petitioner can be accused of nothing except to have been present on the land with family members in a fight between two disputing sides over possession of agricultural land. All that is forthcoming from his conduct is that the petitioner did not know where he stood in law and not in fact. This is how the case deserves to be read and not to straightaway throw out the case on the mere fact that he did not fill column No. 14. In omitting to fill Column 14, the petitioner should only be non-suited if there was a term or condition that

incomplete applications or verification forms would be rejected outright. This is not the defence taken by the State in its written statement and it cannot be said that this would not be a material fact in the determination of right of consideration. The fact remains, that a fact whether pleaded or not, vocalized or not, still remains a verifiable fact. Proof of fact may follow later if the condition is not mandatory. Court should not adopt a negative approach to throw out a just claim. When an application form and its columns or a declaration/verification form required to be filled short of offer of appointment after selection vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. But fortunes cannot be destroyed on such a procedural issue where substantive rights are involved. Equity will always overpower technicality and find its way to human justice.

(13) In denying appointment to the petitioner from the wait list No.1 position, the respondents cannot remain in the fond hope that one day the petitioner will be roped in the criminal case through the provisions of Section 319 Cr.P.C. That has not happened for almost 4 years and miracles are not expected to happen though it cannot be held as a legal proposition of absolute certainty that such a thing cannot happen or be ruled out. In service matters, the Court deals with probabilities and reasonable forseeability and it is less probable that the trial Court would bring in the petitioner to trial via section 319 Cr.P.C. on the basis of depositions of witnesses which might have been or are to be recorded in the trial, the status of which is not disclosed in the extent of evidence let in by the prosecution and whether it reveals any involvement of the petitioner in the commission of a criminal offence and that too after so many years, if the trial is not over by now. The Court is not apprised of the status of the trial.

(14) Mr.Rajiv Prashad, learned Additional Advocate General, Punjab appearing on behalf of the State contends that the argument of Mr.Sehrawat appearing for the petitioner that there are no obstacles in the way of the petitioner in securing appointment as per merit is not quite correct as it is always open to the police department to appoint constables against whom a finger cannot be pointed as to their character, conduct and antecedents. Their antecedents must be above board and impeccable and mere presence of the petitioner at the place of occurrence when not denied should alone disentitle him to relief. This, to the mind of the Court, is taking too narrow, impractical and pedantic approach to a trifling issue since all that is involved in this

case indisputably is that the petitioner does not have, nor did, a case registered or pending against him. Nothing further was asked by the State in the application form and to this extent, Mr.Prashad's technical insistence that it still remains open to the trial Court and within its jurisdiction to pass orders under section 319 Cr.P.C. is an injudicious, ritualistic and unrealistic approach which does not commend to this Court. In an agrarian State that Punjab is, protection of land rights is a historical necessity of survival and self preservation against invasions over many centuries. Policemen in service and in uniform too protect their holdings. It is not a case where judicial remedy should not issue.

(15) The Court must stay alive to the principles of remoteness when an argument on section 319 Cr.P.C. is advanced in a civil matter. The possibility must be clear, distinct and very likely to happen but a person cannot be injured in his civil rights by future indeterminate events or a hypothesis which are not real and proximate to the denial of right unfairly in the presenti. It is always open to be argued that mere selection does not give a person indefeasible right to appointment. This does not mean that the reason for denial cannot be looked into by Court on judicial review.

(16) In the present case, the State Government has not passed an order either denying or depriving the petitioner of his right or issued a letter informing him of the decision not to appoint him. Technically speaking, where there is no impugned order, a writ may not lie or may be premature. In response to the writ petition, it was always open to the State not to file a written statement but to produce an order declining the appointment by recording reasons in writing so that in the challenge brought, the Court would know what weighed in the mind of the officer who passed the order but instead of doing that the State has offered its defence in the written statement which itself creates the cause of action since it discloses reason for denial which then become open to judicial review. Where defence is known, then the writ petition cannot be dismissed for lack of existence of an impugned order. Therefore, this Court would treat the written statement as the impugned order and quash that stand in the written statement. It is not disputed that an advertised post is not available on which the petitioner can be appointed from wait list No.1. Therefore, there are no practical difficulties in considering appointment of the petitioner who has cleared all the steps of the recruitment process up to the declaration of medical fitness.

(17) For the foregoing reasons, this petition is allowed. A writ of certiorari is issued quashing the stand of the State in the written statement which denies appointment merely because of a likelihood of an order being passed under Section 319 Cr.P.C. against the petitioner which reason is not found legal or valid in depriving the petitioner of a right of consideration for appointment. A mandamus is issued to the respondents to consider the case of the petitioner for appointment within 30 days of the date of receipt of a certified copy of this order and such a consideration is directed subject to fulfilling other conditions as may remain. The petitioner will be entitled to all consequential benefits of notional increments, seniority etc. from the date of appointment of the 120 constables but he would be entitled to salary and allowances from the date of filing of the present petition which bears the office stamp dated 2nd April, 2013 as his rights stand crystallized then.

S. Gupta

Before Paramjeet Singh, J.

PANKAJ GUPTA AND OTHERS—*Petitioners*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

C.R. No. 5588 of 2006

September 24, 2013

Indian Stamp Act, 1899 - S. 47A - Stamp duty valuation - Reference to Collector - Petitioner purchased industrial plot along with constructed ground floor - After objection was raised by Sub-Registrar at the time of registration of sale deed, petitioners deposited deficient stamp duty - Sale deed was duly registered - After 17 days of registration of sale deed, Sub-Registrar made reference to Collector to determine value of property - Collector inspected site after about 15 months - In the meantime, substantial construction was done - Collector made higher valuation and petitioner was directed to deposit balance amount of stamp duty - Held, that Collector becomes functus officio after registration of document and he ceases to have any jurisdiction over the same - Action of Sub-Registrar in making reference to Collector is totally illegal - Further, no evidence has been brought in shape of mutations or sale deeds of adjoining area to indicate undervaluation - Collector was not cross-examined to explain valuation - Orders passed by Collector are without jurisdiction and void ab intio.