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Mr Bahri referred to a judgment of Achhru . m, J., in *Hasham* v. *Mst. Fazal Begum* (1), which was decision under the proviso to section 10 of of the Punjab Urban Rent Restriction Act of 1941. There the learned Judge was of the opinion that the giving of a notice for ejectment was a necessary preliminary to the ejectment of a tenant. The wording of the proviso was different and section 108 of the Transfer of Property Act was specifically referred to, and it cannot be said that the rule laid down would be applicable to a case where the elaborate and self-contained provisions of the Rent Restriction Act apply. I am therefore of the opinion that the learned Judge was in error and has thereby prevented himself from exercising jurisdiction which was vested in him by law.

I would therefore allow this petition, quash the order of the appellate authority and restore that of the Controller. The petitioner will have his costs in this Court. The costs in the Courts below will be borne as ordered by the appellate authority.

FALSHAW, J. I agree.

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(1) A. I. R. 1947 Lah. 382

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SUPREME COURT

APPELLATE CRIMINAL

Before Mehr Chand Mahajan, N. Chandrasekhara Aiyar, and N. H. Bhagwati, JJ.

1952

Oct. 22nd.

PALVINDER KAUR,—*Appellant*

versus

THE STATE OF PUNJAB,—*Respondent*

Criminal Appeal No. 41 of 1952

Indian Penal Code (XLV of 1860), Section 201—Charge under, when can be sustained—Rule stated—Evidence Act—Confession—Meaning of—What statements amount to confession—Confession or admission—Whether can be accepted in part.

Held, that in order to establish the charge under section 201, Indian Penal Code, it is essential to prove that an offence has been committed,—mere suspicion that it has been committed is not sufficient,—that the accused knew or had reason to believe that such offence had been committed and with requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false.

Held, that the word confession as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which, if true, would negative the offence alleged to be confessed.

Narayanaswami v. *Emperor* (1), relied upon.

Held also, that it is the well-accepted rule regarding the use of confession and admission that these must either be accepted as a whole or rejected as a whole and that the court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible.

Emperor v. *Balmakund* (2), followed.

On appeal by special leave from the Judgment and Order, dated the 3rd October, 1951, of the High Court of Judicature for the State of Punjab at Simla (Bhandari and Soni, JJ.) in Criminal Appeal No. 86 of 1951, arising out of the Judgment and Order, dated the 31st January 1951, of the Court of the Sessions Judge, Ambala, in case No. 23 of 1950 and Trial No. 2 of 1951.

J. G. SETHI, for Appellant.

H. S. GUJRAL, for Respondent.

BHAGAT SINGH CHAWALA, for Caveator.

JUDGMENT

The Judgment of the Court was delivered by—

Mahajan J. MAHAJAN, J.—Palvinder Kaur was tried for offences under sections 302 and 201, I.P.C., in connection with the murder of her husband, Jaspal Singh. She was convicted by the Sessions Judge under section 302 and sentenced to transportation for life. No verdict was recorded regarding the charge under section 201, I.P.C. On appeal to the High Court she was acquitted of the charge of murder, but was convicted under section 201, I.P.C., and sentenced to seven years' rigorous imprisonment. Her appeal by special leave is now before us.

Jaspal Singh, deceased, was the son of the Chief of Bhareli (Punjab). He was married to Palvinder Kaur a few years ago and they had two children. The husband and wife were living together in Bhareli House, Ambala. It is said

(1) A. I. R. 1939 P. C. 47-66 I. A. 66

(2) I. L. R. 52 All. 1011

that Jaspal's relations with his father and grandfather, were not very cordial and the two elders thought that Palvinder Kaur was responsible for this. It is also said that Jaspal lived on the allowance he got from his father and supplemented his income by selling milk and eggs and by doing some odd jobs. Mohinderpal Singh (a fugitive from justice) who is related to the appellant and was employed as a storekeeper in Baldevnagar Camp, Ambala, used occasionally to reside in Bhareli House. It is suggested that he had started a liaison with Palvinder.

The prosecution case is that Sardar Jaspal was administered potassium cyanide poison by the appellant and Mohinderpal on the afternoon of the 6th February 1950. The dead body was then put into a large trunk and kept in one of the rooms in the house in Ambala City. About ten days later, i.e., on the 16th February 1950, Mohinderpal during the absence of the appellant, removed the trunk from the house in a jeep when he came there with Amrik Singh and Kartar Singh (P. W.s), two watermen of the Baldevnagar Camp. The trunk was then taken to Baldevnagar Camp and was kept in a store room there. Three days later, on the 19th February 1950, Mohinderpal accompanied by Palvinder and a domestic servant, Trilok Chand (P. W. 27), took the trunk a few miles on the road leading to Rajpura, got on to a *katcha* road and in the vicinity of Village Chhat took the jeep to a well on a mound and threw the box into it. The jeep was taken to a gurdwara where it was washed.

After the disappearance of the deceased, his father made enquiries from Mohinderpal regarding the whereabouts of his missing son. Mohinderpal made various false statements to him. On the 8th March 1950, the father advertised in the "Daily Milap" begging his son to return home as soon as possible as the condition of his wife and children and parents had become miserable owing to his absence.

On the 10th March 1950, i.e., a month and ten days after the alleged murder and 19 days after

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the trunk was thrown into the well, obnoxious smell was coming out of the well, and the matter being reported to the lambardars of Village Chhat, the trunk was taken out. The matter was reported to the police and Sardar Banta Singh, Sub-Inspector of Police, on the 11th March arrived at the scene and prepared the inquest report and sent for the doctor. The post-mortem examination was performed on the spot the next day. No photograph of the body was taken and it was allowed to be cremated. After more than two and a half months, on the 28th April 1950, the first information report was lodged against the appellant and Mohinderpal and on the 26th June a challan was presented in the court of the committing magistrate. Mohinderpal was not traceable and the case was started against the appellant alone.

There is no direct evidence to establish that the appellant or Mohinderpal or both of them administered potassium cyanide to Jaspal and the evidence regarding the murder is purely circumstantial. The learned Sessions Judge took the view that the circumstantial evidence in the case was incompatible with the innocence of the accused, and held that the case against the appellant was proved beyond any reasonable doubt. The High Court on appeal arrived at a different conclusion. It held that though the body found from the well was not capable of identification, the clothes recovered from the trunk and found on the body proved that it was the body of Jaspal. It further held that the cause of death could not be ascertained from the medical evidence given in the case. The evidence on the question of the identity of the dead body consisted of the statement of Constable Lachhman Singh, of the clothes and other articles recovered from inside the trunk and of an alleged confession of the accused. As regards the first piece of evidence the High Court expressed the following opinion :—

> " There is in our opinion considerable force in the contention that not only are Foot Constable Lachhman Singh and Assistant Sub-Inspector Banta Singh

testifying to the facts which are false to their knowledge *but that the prosecution are responsible for deliberately introducing a false witness and for asking the other witnesses to support the story narrated by Lachhman Singh that he identified the body to be that of Jaspal Singh on the 11th March* and communicated the information to the father of the deceased on the following day."

As regards the extra-judicial confessions alleged to have been made to Sardar Rup Singh and Sardar Balwant Singh, father and grandfather of the deceased, they were held inadmissible and unreliable. The confession made by Palvinder to the magistrate on the 15th April 1950, was, however, used in evidence against her on the following reasoning:—

"It is true that strictly speaking exculpatory statements in which the prisoner denies her guilt cannot be regarded as confessions, but these statements are often used as circumstantial evidence of guilty consciousness by showing them to be false and fabricated."

It was also found that though Palvinder might have desired to continue her illicit intrigue with Mohinderpal she may not have desired to sacrifice her wealth and position at the altar of love. She may have had a motive to kill her husband but a stronger motive to preserve her own position as the wife of a prospective chief of Bhareli and that in this situation it was by no means impossible that the murder was committed by Mohinderpal alone without the consent and knowledge of Palvinder, and that though a strong suspicion attached to Palvinder, it was impossible to state with confidence that poison was administered by her. Therefore it was not possible to convict her under section 302, I.P.C.

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Concerning the charge under section 201, I.P.C., the High Court held that the most important piece of evidence in support of the charge was the confession which Palvinder made on the 15th April 1950, and this confession, though retracted, was corroborated on this point by independent evidence and established the charge.

The judgment of the High Court was impugned before us on a large number of grounds. *Inter alia*, it was contended that in examining Palvinder Kaur at great length the High Court contravened the provisions of the Code of Criminal Procedure and that the Full Bench decision of the High Court in *Dhara Singh's case* (1) was wrong in law, that the alleged confession of the appellant being an exculpatory statement, the same was inadmissible in evidence and could not be used as evidence against her, that it had been contradicted in most material particulars by the prosecution evidence itself and was false and that in any case it could not be used piecemeal; that the offences under sections 302/34 and 201, I.P.C., being distinct offences committed at two different times and being separate transactions, the appellant having been convicted of the offence under section 302, I.P.C., only by the Sessions Judge, the High Court had no jurisdiction when acquitting her of that offence to convict her under section 201 of the same Code ; that the statements of Mohinderpal to various witnesses and his conduct were not relevant against the appellant ; that Karamchand and Mst. Lachhmi were in the nature of accomplices and the High Court erred in relying on their testimony without any corroboration; that the High Court having disbelieved eight of the witnesses of the prosecution and having held that they were falsely introduced into the case, the investigation being extremely belated and the story having been developed at different stages, the High Court should not have relied on the same ; and lastly, that the pieces of circumstantial evidence proved against the appellant were consistent with several innocent explanations and the High Court therefore erred in

(1) 54 P. L. R. 58

relying on them without excluding those possibilities.

The decision of the appeal, in our view, lies within a very narrow compass and it is not necessary to pronounce on all the points that were argued before us. In our judgment, there is no evidence to establish affirmatively that the death of Jaspal was caused by potassium cyanide and that being so, the charge under section 201, I.P.C., must also fail. The High Court in reaching a contrary conclusion not only acted on suspicions and conjectures but on inadmissible evidence.

The circumstances in which Jaspal died will for ever remain shrouded in mystery and on the material placed on the record it is not possible to unravel them. It may well be that he was murdered by Mohinderpal without the knowledge or consent of Palvinder and the incident took place at Baldevnagar Camp and not at the house and that Mohinderpal alone disposed of the dead body and that the confession of Palvinder is wholly false and the advertisement issued in "Milap" correctly reflected the facts so far as she was concerned. The evidence led by the prosecution, however, is of such a character that no reliance can be placed on it and no affirmative conclusions can be drawn from it. The remarks of the Sessions Judge that the consequences had definitely revealed that justice could not always be procured by wealth and other worldly resources and that the case would perhaps go down in history as one of the most sensational cases because of the parties involved and the gruesome way in which the murder was committed, disclose a frame of mind not necessarily judicial. It was unnecessary to introduce sentimentalism in a judicial decision. The High Court was not able to reach a positive conclusion that Palvinder was responsible for the murder of her husband.

Whether Jaspal committed suicide or died of poison taken under a mistake or whether poison was administered to him by the appellant or by

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Mohinderpal or by both of them are questions the answers to which have been left very vague and indefinite by the circumstantial evidence in the case. In view of the situation of the parties and the belated investigation of the case and the sensation it created it was absolutely necessary for the courts below to safeguard themselves against the danger of basing their conclusions on suspicions howsoever strong. It seems to us that the trial court and to a certain extent the High Court fell into the same error against which warning was given by Baron Alderson in *Reg.* v. *Hodge* (1) where he said as follows:—

> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

We had recently occasion to emphasize this point in *Nargundkar* v. *The State of Madhya Pradesh* (2).

In order to establish the charge under section 201, I.P.C., it is essential to prove that an offence has been committed,—mere suspicion that it has been committed is not sufficient,—that the accused knew or had reason to believe that such offence had been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false. It was essential in these circumstances for the prosecution to establish affirmatively that the death of Jaspal was caused by the administration of potassium cyanide by some person (the appellant having been acquitted of

(1) (1838) 2 Lew. 227

(2) Cri Appls. Nos. 56 & 57 of 1951

this charge) and that she had reason to believe that it was so caused and with that knowledge she took part in the concealment and disposal of the dead body. There is no evidence whatsoever on this point. The following facts, that Jaspal died, that his body was found in a trunk and was discovered from a well and that the appellant took part in the disposal of the body do not establish the cause of his death or the manner and circumstances in which it came about. As already stated, there is no direct evidence to prove that potassium cyanide was administered to him by any person. The best evidence on this question would have been that of the doctor who performed the post-mortem examination. That evidence does not prove that Jaspal died as a result of administration of potassium cyanide. On the other hand, the doctor was of the opinion that there were no positive post-mortem signs which could suggest poisoning. He stated that potassium cyanide being corrosive poison, would produce hypermia, softening and ulceration of the gastro-intestinal track and that in this case he did not notice any such signs. He further said that potassium cyanide corrodes the lips and the mouth, and none of these signs was on the body. This evidence therefore instead of proving that death was caused by administration of potassium cyanide, to the extent it goes, negatives that fact.

The High Court placed reliance on the confession of Palvinder made on the 15th April 1950 to hold this fact proved. The confession is in these terms:—

> "My husband Jaspal Singh was fond of hunting as well as of photography. From hunting whatever skins (khalls) he brought home he became fond of colouring them. He also began to do the work of washing of photos out of eagerness. One day in December 1949 Jaspal Singh said to my cousin (Tay's son) Mohinderpal Singh to get him material for washing photos. He

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(Mohinderpal Singh) said to Harnam Singh, who is Head Clerk in Baldevnagar Camp, to bring the same from the Cantt. Harnam Singh went to the Cantt. and on return said that the material for washing photos could be had only by a responsible Government official. He told so to Mohinderpal Singh, who said that Harnam Singh should take his name and get the medicine. Thereupon Harnam Singh went to the Cantt. and brought the medicine. I kept this medicine. As the medicine was sticking to the paper I put it in water in a small bottle and kept it in the almirah. In those days my husband was in Ambala and I lived with him in the kothi in the city. He went for hunting for 2-3 days and there he developed abdominal trouble and began to purge. He sent for medicine for 3-4 days from Dr Sohan Singh. One day I placed his medicine bottle in the almirah where medicine for washing photos had been placed. I was sitting outside and Jaspal Singh enquired from me where his medicine was. I told him that it was in the almirah. By mistake he took that medicine which was meant for washing photos. At that time, he fell down and my little son was standing by his side. He said 'Mama, Papa had fallen'. I went inside and saw that he was in agony and in short time he expired. Thereafter I went to Mohinderpal Singh and told him all that had happened. He said that father of Jaspal Singh had arrived and that he should be intimated. But I did not tell him, because his connections were not good with his son and myself. Out of fear I placed his corpse in a box and Mohinderpal Singh helped me in doing so. For 4-5 days the box remained in my kothi. Thereafter I said to Mohinderpal Singh that

if he did not help me I would die. He got removed that box from my kothi with the help of my servants and placing the same in his jeep went to his store in Baldevnagar Camp and kept the same there. That box remained there for 8—10 days. Thereafter one day I went to the camp and from there got placed the trunk in the jeep and going with Mohinderpal Singh I threw the same in a well near Chhat Banur. I do not remember the date when Jaspal Singh took the medicine by mistake. It was perhaps in January 1950."

The statement read as a whole is of an exculpatory character. It does not suggest or prove the commission of any offence under the Indian Penal Code by any one. It not only exculpates her from the commission of an offence but also exculpates Mohinderpal. It states that the death of Jaspal was accidental. The statement does not amount to a confession and is thus inadmissible in evidence. It was observed by their Lordships of the Privy Council in *Narayanaswami* v. *Emperor* (1) that the word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, or at any rate, substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed. In this view of the law the High Court was in error in treating the statement of Palvinder as the most important piece of evidence in support of the charge under section 201, I.P.C. The learned Judges in one part of their judgment observed that strictly speaking exculpatory statements in

(1) A. I. R. 1939 P. C. 47

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which the prisoner denies her guilt cannot be regarded as confessions, but went on to say that such statements are often used as circumstantial evidence of guilty consciousness by showing them to be false and fabricated. With great respect we have not been able to follow the meaning of these observations and the learned counsel appearing at the Bar for the prosecution was unable to explain what these words exactly indicated. The statement not being a confession and being of an exculpatory nature in which the guilt had been denied by the prisoner, it could not be used as evidence in the case to prove her guilt.

Not only was the High Court in error in treating the alleged confession of Palvinder as evidence in the case but it was further in error in accepting a part of it after finding that the rest of it was false. It said that the statement that the deceased took poison by mistake should be ruled out of consideration for the simple reason that if the deceased had taken poison by mistake the conduct of the parties would have been completely different, and that she would have then run to his side and raised a hue and cry and would have sent immediately for medical aid, that it was incredible that if the deceased had taken poison by mistake, his wife would have stood idly by and allowed him to die. The court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well accepted rule regarding the use of confession and admission that these must either be accepted as a whole or rejected as a whole and that the court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible. Reference in this connection may be made to the observations of the Full Bench of the Allahabad High Court in *Emperor* v. *Balmakund* (1) with which observations we fully concur. The confession there comprised of two elements, (a) an account of how the accused killed the women, and (b) an account of his reasons for doing so, the former element being inculpatory and the latter exculpatory and the

(1) I. L. R. 52 All. 1011

question referred to the Full Bench was : Can the court, if it is of opinion that the inculpatory part commends belief and the exculpatory part is inherently incredible, act upon the former and refuse to act upon the latter ? The answer to the reference was that where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. The alleged confession of Palvinder is wholly of an exculpatory nature and does not admit the commission of any crime whatsoever. The suspicious circumstances from which an inference of guilt would be drawn were contained in that part of the statement which concerned the disposal of the dead body. This part of the statement could not be used as evidence by holding that the first part which was of an exculpatory character was false when there was no evidence to prove that it was so, and the only material on which it could be so held was the conduct mentioned in the latter part of the same statement and stated to be inconsistent with the earlier part of the confession.

The result therefore is that no use can be made of the statement made by Palvinder and contained in the alleged confession and which the High Court thought was the most important piece of evidence in the case to prove that the death of Jaspal was caused by poisoning or as a result of an offence having been committed. Once this confession is excluded altogether, there remains no evidence for holding that Jaspal died as a result of the administration of potassium cyanide.

The circumstantial evidence referred to by the High Court which according to it tends to establish that Jaspal did not die a natural death is of the following nature. That Palvinder and Mohinderpal had a motive to get rid of the deceased as she was carrying on with Mohinderpal. The motive, even if proved in the case, cannot prove the circumstances under which Jaspal died or the cause which resulted in his death. That Mohinderpal was

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proved to be in possession of a quantity of potassium cyanide and was in a position to administer it to the deceased is a circumstance of a neutral character. Mere possession of potassium cyanide by Mohinderpal without its being traced in the body of Jaspal cannot establish that his death was caused by this deadly poison. In any case, the circumstance is not of a character which is wholly incompatible with the innocence of the appellant. The other evidence referred to by the High Court as corroborating the latter part of Palvinder's alleged confession in the view of the case that we have taken does not require any discussion because if the confession is inadmissible, no question of corroborating it arises.

Mr Sethi argued that the statements contained in the alleged confession are contradicted rather than corroborated by the evidence led by the prosecution and that the confession is proved to be untrue. It is unnecessary to discuss this matter in the view that we have taken of the case.

The result, therefore, is that we are constrained to hold that there is no material direct or indirect for the finding reached by the High Court that the death of Jaspal was caused by the administration of potassium cyanide. If we believe the defence version his death was the result of an accident. If that version is disbelieved, then there is no proof as to the cause of his death. The method and manner in which the dead body of Jaspal was dealt with and disposed of raise some suspicion but from these facts a positive conclusion cannot be reached that he died an unnatural death necessarily. Cases are not unknown where death is accidental and the accused has acted in a peculiar manner regarding the disposal of the dead body for reasons best known to himself. One of them might well be that he was afraid of a false case being started against him. Life and liberty of persons cannot be put in jeopardy on mere suspicions, howsoever strong, and they can only be deprived of these on

the basis of definite proof. In this case, as found by the High Court, not only were the Sub-Inspector of Police and police constables and other witnesses guilty of telling deliberate lies but the prosecution was blameworthy in introducing witnesses in the case to support their lies and that being so, we feel that it would be unsafe to convict the appellant on the material that is left after eliminating the perjured, false and inadmissible evidence.

For the reasons given above we allow this appeal, set aside the conviction of the appellant under section 201, I.P.C., and acquit her of that charge also.

SUPREME COURT

APPELLATE CRIMINAL

Before M. Patanjali Sastri, C.J., and Bijan Kumar Mukherjea, Sudhi Ranjan Das, Vivian Bose, and Ghulam Hasan, JJ.

THE STATE OF PUNJAB,—*Appellant,*

versus

AJAIB SINGH AND ANOTHER,—*Respondents*

Criminal Appeal No. 82 of 1952

1952

November 10th

Abducted Persons (Recovery and Restoration) Act (LXV of 1949)—Section 4—Constitution of India, Article 22—Section 4 whether offends Article 22 of the Constitution of India—Custody and detention of the abducted person—Whether arrest and detention within the meaning of Article 22 (1) and (2)—categories of arrest—To what arrest protection of Article 22 available—Impugned Act (LXV of 1949), whether inconsistent with Articles 14, 15, 19 (1) (d) and (e) and 21 of the Constitution—Tribunal constituted under section 6 of the Act—Whether legal—Interpretation of the Constitution—Duty of Court stated.

Held, that broadly speaking arrests may be classified into two categories, namely, arrests under warrants issued by a Court and arrests otherwise than under such warrants. As to the first category of arrest the warrant quite clearly states the grounds of the arrest whether the warrant is issued by a Civil Court or a Criminal Court which means that a judicial mind has been applied

before the issue of the warrant, while no judicial mind is applied in the case of arrests without warrants. There can, therefore, be no manner of doubt that arrests without warrants issued by a Court call for greater protection than do arrests under such warrants. The provision that the arrested person should within 24 hours be produced before the nearest Magistrate is particularly desirable in the case of arrest otherwise than under a warrant issued by the Court, for it ensures the immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him. In the case of arrest under a warrant issued by a Court, the judicial mind had already been applied to the case when the warrant was issued, and, therefore, there is less reason for making such production in that case a matter of a substantive fundamental right. The requirements of Article 22 (1) that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest indicates that the clause really contemplates an arrest without a warrant of Court, for, a person arrested under a Court's warrant is made acquainted with the grounds of his arrest before the arrest is actually effected. There can be no doubt that the right to consult a legal practitioner of his choice is to enable the arrested person to be advised about the legality or sufficiency of the grounds for his arrest. The right of the arrested person to be defended by a legal practitioner of his choice postulates that there is an accusation against him against which he has to be defended. The language of Article 22 (1) and (2) indicates that the fundamental right conferred by it gives protection against him against which he has to be defended. The a warrant issued by a Court on the allegation or accusation that the arrested person has, or is suspected to have, committed, or is about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or the State interest. In other words, there is indication in the language of Article 22 (1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority. Whatever else may come within the purview of Article 22 (1) and (2), suffice it to say for the purposes of this case, that we are satisfied that the physical restraint put upon an abducted person in the process of recovering and taking that person into custody without any allegation or accusation of any actual or suspected or apprehended commission by that person of any offence of a criminal or quasi-criminal nature or of any act prejudicial to the State or the public interest, and delivery of that person to the custody of the officer in charge of the nearest camp under section 4 of the impugned Act cannot be regarded as arrest and detention within the meaning of Article 22 (1) and (2).

Held, that the Act is not inconsistent with Article 14 of the Constitution of India. There can be no doubt that Muslim abducted persons constitute a well-defined class for the purpose of legislation. The fact that the Act is extended only to the several States mentioned in section 1 (2) does not make any difference, for a classification may well be made on geographical basis. Indeed, the consent of the several States to the passing of this Act quite clearly indicates, in the opinion of the governments of those States who are the best judges of the welfare of their people, that the Muslim abducted persons to be found in those States form one class having similar interests to protect. Therefore the inclusion of all of them in the definition of abducted persons cannot be called discriminatory. Finally, there is nothing discriminatory in sections 6 and 7. Section 7 only implements the decision of the Tribunal arrived at under section 6. There are several alternative things that the Tribunal has been authorised to do. Each and every one of the abducted persons is liable to be treated in one way or another as the Tribunal may determine. It is like all offenders under a particular section being liable to fine or imprisonment. There is no discrimination if one is fined and the other is imprisoned, for all offenders alike are open to the risk of being treated in one way or another.

Held further, that the impugned Act is not inconsistent with the provisions of Articles 15, 19 (1) (d) and (e) and 21 of the Constitution of India.

Held, that the Tribunal was not properly constituted under Section 6 of the Act and its orders were without jurisdiction.

Held further, that in construing the Constitution, if the language of the Article is plain and un-ambiguous and admits of only one meaning then the duty of the Court is to adopt that meaning irrespective of the inconvenience that such a construction may produce. If, however, two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory.

On appeal under Article 132 (1) *of the Constitution of India from the Judgment and Order, dated the* 10*th June* 1952, *of the High Court of Judicature for the State of Punjab at Simla* (*Bhandari and Khosla, JJ.*) *in Criminal Writ No.* 144 *of* 1951.

M.C. SETALVAD, Attorney-General for India and C.K. DAPHTARY, Solicitor-General for India, for Appellant.

J.B. DADACHANJI, *amicus curiae,* for Respondent.

JUDGMENT.

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Das J.

The Judgment of the Court was delivered by—

DAS J. This appeal arises out of a *habeas corpus* petition filed by one Ajaib Singh in the High Court of Punjab for the production and release of one Musammat Sardaran alias Mukhtiar Kaur, a girl of about 12 years of age.

The material facts leading up to the filing of that petition may be shortly stated as follows. On the report made by one Major Babu Singh, Officer Commanding No. 2 Field Company, S. M. Faridkot, in his letter, dated February 17, 1951, that the petitioner Ajaib Singh had three abducted persons in his possession, the recovery police of Ferozepore, on June 22, 1951, raided his house in Village Shersingwalla and took the girl Musammat Sardaran into custody and delivered her to the custody of the Officer in charge of the Muslim Transit Camp at Ferozepore from whence she was later transferred to and lodged in the Recovered Muslim Women's Camp in Jullundur City.

A Sub-Inspector of Police named Nihar Dutt Sharma was deputed by the Superintendent of Police, Recovery, Jullundur, to make certain enquiries as to the facts of the case. The Sub-Inspector as a result of his enquiry made a report on October 5, 1951, to the effect, *inter alia*, that the girl had been abducted by the petitioner during the riots of 1947.

On November 5, 1951, the petitioner filed the *habeas corpus* petition and obtained an interim order that the girl should not be removed from Jullundur until the disposal of the petition. The case of the girl was then enquired into by two Deputy Superintendents of Police, one from India and one from Pakistan who, after taking into consideration the report of the Sub-Inspector and the statements made before them by the girl, her mother who appeared before them while the enquiry was in progress, and Babu alias Ghulam Rasul, the brother of Wazir deceased, who was said to be the father of the girl and other materials, came to the conclusion, *inter alia*,

that the girl was a Muslim abducted during the riots of 1947 and was, therefore, an abducted person as defined in section 2(a) (1) of the Abducted Persons (Recovery and Restoration) Act, LXV of 1949. By their report made on November 17, 1951, they recommended that she should be sent to Pakistan for restoration to her next of kin but in view of the interim order of the High Court appended a note to the effect that she should not be sent to Pakistan till the final decision of the High Court.

The matter then came before a Tribunal said to have been constituted under section 6 of the Act. That Tribunal consisted of two Superintendents of Police, one from India and the other from Pakistan. The Tribunal on the same day, i.e. November 17, 1951, gave its decision agreeing with the findings and recommendation of the two Deputy Superintendents of Police and directed that the girl should be sent to Pakistan and restored to her next of kin there.

The *habeas corpus* petition came up for hearing before Bhandari and Khosla, JJ., on November 26, 1951, but in view of the several questions of far-reaching importance raised in this and other similar applications, the learned Judges referred the following questions to a Full Bench :—

1. Is Central Act No. 65 of 1949 *ultra vires* the Constitution because its provisions with regard to the detention in refugee camps of persons living in India violate the rights conferred upon Indian citizens under Article 19 of the Constitution ?

2. Is this Act *ultra vires* the Constitution because in terms it violates the provisions of Article 22 of the Constitution ?

3. Is the Tribunal constituted under section 6 of the Act a Tribunal subject to the general supervision of the High Court by virtue of Article 227 of the Constitution ?

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At the same time the learned Judges made it clear that the Full Bench would not be obliged to confine itself within the narrow limits of the phraseology of the said questions. On the next day the learned Judges made an order that the girl be released on bail on furnishing security to the satisfaction of the Registrar in a sum of Rs 5,000 with one surety. It is not clear from the record whether the security was actually furnished.

The matter eventually came up before a Full Bench consisting of the same two learned Judges and Harnam Singh, J. In course of arguments before the Full Bench the following further questions were added:—

"4. Does this Act conflict with the provisions of Article 14 on the ground that the State has denied to abducted persons equality before the law or the equal protection of the laws within the territory of India?

5. Does this Act conflict with the provisions of Article 15 on the ground that the State has discriminated against abducted persons who happen to be citizens of India on the ground of religion alone?

6. Does this Act conflict with Article 21 on the ground that abducted persons are deprived of their personal liberty in a manner which is contrary to principles of natural justice?"

There was also a contention that the Tribunal which decided this case was not properly constituted in that its members were not appointed or nominated by the Central Government and, therefore, the order passed by the Tribunal was without jurisdiction.

By their judgments delivered on June 10, 1952, Khosla and Harnam Singh, JJ., answered Question 1 in the negative but Bhandari, J., held

that the Act was inconsistent with the provisions of Article 19 (1) (g) of the Constitution. The learned Judges were unanimous in the view that the Act was inconsistent with the provisions of Article 22 and was void to the extent of such inconsistency. Question 3 was not fully argued but Bhandari and Khosla, JJ., expressed the view that the Tribunal was subject to the general supervision of the High Court. The Full Bench unanimously answered questions 4, 5 and 6 in the negative. Bhandari and Khosla, JJ., further held that the Tribunal was not properly constituted for reasons mentioned above, but in view of his finding that section 4 (1) of the Act was in conflict with Article 22 (2) Harnam Singh, J., did not consider it necessary to express any opinion on the validity of the constitution of the Tribunal.

The Full Bench with their aforesaid findings remitted the case back to the Division Bench which had referred the questions of law to the larger Bench. The case was accordingly placed before the Division Bench which thereafter ordered that Musammat Sardaran alias Mukhtiar Kaur be set at liberty. The girl has since been released.

The State of Punjab has now come up on appeal before us. As the petitioner respondent Ajaib Singh represented to us that he could not afford to brief an advocate to argue his case, we requested Sri J. B. Dadachanji to take up the case as *amicus curiae* which he readily agreed to do. He has put forward the petitioner's case with commendable ability and we place on record our appreciation of the valuable assistance rendered by him to the Court.

In his opening address the learned Solicitor-General frankly admitted that he could not contend that the Tribunal was properly constituted under section 6 of the Act and conceded that in the premises the order of the High Court directing the girl to be released could not be questioned. He, however, pressed us to pronounce upon the constitutional questions raised in this case and

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decided by the High Court so that the Union Government would be in a position to decide whether it would, with or without modification, extend the life of the Act which is due to expire at the end of the current month. We accordingly heard arguments on the constitutional questions on the clear understanding that whatever view we might express on those questions, so far as this particular case is concerned, the order of the High Court releasing the girl must stand. After hearing arguments we intimated, in view of the urgency of the matter due to the impending expiry of the Act, that our decision was that the Act did not offend against the provisions of the Constitution and that we would give our reasons later on. We now proceed to set forth our reasons for the decision already announced.

In order to appreciate the rival contentions canvassed before us it is necessary to bear in mind the circumstances which led to the promulgation of an ordinance which was eventually replaced by Act LXV of 1949 which is impugned before us as unconstitutional. It is now a matter of history that serious riots of virulent intensity broke up in India and Pakistan in the wake of the Partition of August 1947 resulting in a colossal mass exodus of Muslims from India to Pakistan and of Hindus and Sikhs from Pakistan to India. There were heart-rending tales of abduction of women and children on both sides of the border which the governments of the two Dominions could not possibly ignore or overlook. As it was not possible to deal with and control the situation by the ordinary laws the two governments had to devise ways and means to check the evil. Accordingly there was a conference of the representatives of the two Dominions at Lahore in December 1947 and Special Recovery Police Escorts and Social Workers began functioning jointly in both the countries. Eventually on November 11, 1948, an Inter-Dominion Agreement between India and Pakistan was arrived at for the recovery of abducted persons on both sides of the border. To implement that agreement was promulgated on

January 31, 1949, an Ordinance called the Recovery of Abducted Persons Ordinance, 1949. This Ordinance was replaced by Act LXV of 1949 which came into force on December 28, 1949. The Act was to remain in force up to October 31, 1951, but it was eventually extended by a year. That the Act is a piece of beneficial legislation and has served a useful purpose cannot be denied, for up to February 29, 1952, 7,981 abducted persons were recovered in Pakistan and 16,168 in India. This circumstance, however, can have no bearing on the constitutionality of the Act which will have to be judged on purely legal considerations.

The Act is a short one consisting of *eleven* sections. It will be observed that the purpose of the Act is to implement the agreement between the two countries as recited in the first preamble. The second preamble will show that the respective governments of the States of Punjab, Uttar Pradesh, Patiala and East Punjab States Union, Rajasthan and Delhi gave their consent to the Act being passed by the Constituent Assembly—a circumstance indicative of the fact that those governments also felt the necessity for this kind of legislation. By section 1 (2) the Act extends to the several States mentioned above and is to remain in force up to October 31, 1952. The expression "abducted person" is defined by section 2 (1) (a) as meaning "a male child under the age of sixteen years or a female of whatever age who is, or immediately before the 1st day of March 1947, was a Muslim and who, on or after that day and before the 1st day of January 1949, has become separated from his or her family, and in the latter case includes a child born to any such female after the said date." Section 4 of the Act, which is important, provides that if any police officer, not below the rank of an Assistant Sub-Inspector or any other police officer specially authorised by the State government in that behalf, has reason to believe that an abducted person resides or is to be found in any place, he may, after recording the reasons for his belief, without warrant, enter and take into custody any

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person found therein who, in his opinion, is an abducted person, and deliver or cause such person to be delivered to the custody of the officer in charge of the nearest camp with the least possible delay. Section 6 enacts that if any question arises whether a person detained in a camp is or is not an abducted person, or whether such person should be restored to his or her relatives or handed over to any other person or conveyed out of India or allowed to leave the Camp, it shall be referred to, and decided by, a tribunal constituted for the purpose by the Central Government. The section makes the decision of the tribunal final, subject, however, to the power of the Central Government to review or revise any such decision. Section 7 provides for the implementation of the decision of the tribunal by declaring that any officer or authority to whom the custody of any abducted person has been delivered shall be entitled to receive and hold the person in custody and either restore such person to his or her relatives or convey such person out of India. Section 8 makes the detention of any abducted person in a camp in accordance with the provisions of the Act lawful and saves it from being called in question in any Court. Section 9 gives the usual statutory immunity from any suit or proceeding for anything done under the Act in good faith. Section 10 empowers the Central Government to make rules to carry out the purposes of the Act.

The main contest before us has been on Question 2 which was answered unanimously by the Full Bench against the State, namely, whether the Act violates the provisions of Article 22. If the recovery of a person as an abducted person and the delivery of such person to the nearest camp can be said to be arrest and detention within the meaning of Article 22(1) and (2) then it is quite clear that the provisions of sections 4 and 7 and Article 22(1) and (2) cannot stand together at the same time, for, to use the language of Bhandari, J., " it is impossible to obey the directions contained in sections 4 and 7 of the Act of 1949 without disobeying the directions contained

in clauses (1) and (2) of Article 22 ". The Constitution commands that every person arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours excluding the time requisite for the journey from the place of arrest to the Court of the Magistrate but section 4 of the Act requires the police officer who takes the abducted person into custody to deliver such person to the custody of the officer-in-charge of the nearest camp for the reception and detention of abducted persons. These provisions are certainly conflicting and inconsistent. The absence from the Act of the salutary provisions to be found in Article 22(1) and (2) as to the right of the arrested person to be informed of the grounds of such arrest and to consult and to be defended by a legal practitioner of his choice is also significant. The learned Solicitor-General has not contended before us, as he did before the High Court, that the overriding provisions of Article 22(1) and (2) should be read into the Act, for the obvious reason that whatever may be the effect of the absence from the Act of provisions similar to those of Article 22(1), the provisions of Article 22(2) which is wholly inconsistent with section 4 cannot possibly, on account of such inconsistency, be read into the Act. The sole point for our consideration then is whether the taking into custody of an abducted person by a police officer under section 4 of the Act and the delivery of such person by him into the custody of the officer-in-charge of the nearest camp can be regarded as arrest and detention within the meaning of Article 22(1) and (2). If they are not, then there can be no complaint that the Act infringes the fundamental right guaranteed by Article 22(1) and (2).

Sri Dadachanji contends that the Constitution and particularly part III thereof should be construed liberally so that the fundamental rights conferred by it may be of the widest amplitude. He refers us to the various definitions of the word "arrest" given in several well-known law dictionaries and urges, in the light of such definitions,

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that any physical restraint imposed upon a person must result in the loss of his personal liberty and must accordingly amount to his arrest It is wholly immaterial why or with what purpose such arrest is made. The mere imposition of physical restraint, irrespective of its reason, is arrest and as such, attracts the application of the constitutional safeguards guaranteed by Article 22(1) and (2). That the result of placing such a wide definition on the term "arrest" occurring in Article 22(1) will render many enactments unconstitutional is obvious. To take one example, the arrest of a defendant before judgment under the provisions of Order XXXVIII, rule 1 of the Code of Civil Procedure or the arrest of a judgment-debtor in execution of a decree under section 55 of the Code will, on this hypothesis, be unconstitutional inasmuch as the Code provides for the production of the arrested person, not before a Magistrate but before the civil court which made the order. Sri Dadachanji contends that such consideration should not weigh with the Court in construing the Constitution. We are in agreement with learned counsel to this extent only that if the language of the Article is plain and unambiguous and admits of only one meaning then the duty of the Court is to adopt that meaning irrespective of the inconvenience that such a construction may produce. If, however, two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory. We have, therefore, to examine the Article in question with care and ascertain the meaning and import of it primarily from its language.

Broadly speaking, arrests may be classified into two categories, namely, arrests under warrants issued by a Court and arrests otherwise than under such warrants. As to the first category of arrest, sections 75 to 86 collected under sub-heading "B—Warrant of Arrest" in Chapter VI of the Code of Criminal Procedure deal with arrests in

execution of warrants issued by a Court under that Code. Section 75 prescribes that such a warrant must be in writing signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench and bear the seal of the Court. Form No. II of Schedule V to the Code is a form of warrant for the arrest of an accused person. The warrant quite clearly has to state that the person to be arrested stands charged with a certain offence. Form No. VII of that Schedule is used to bring up a witness. The warrant itself recites that the Court issuing it has good and sufficient reason to believe that the witness will not attend as a witness unless compelled to do so. The point to be noted is that in either case the warrant *ex facie* sets out the reason for the arrest, namely, that the person to be arrested has committed or is suspected to have committed or is likely to commit some offence. In short, the warrant must notify the substance thereof to the person to be arrested. Section 80 requires that the Police Officer or other person executing a warrant must notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant. It is thus abundantly clear that the person to be arrested is informed of the grounds for his arrest before he is actually arrested. Then comes section 81 which runs thus:—

> "The Police Officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person".

Apart from the Code of Criminal Procedure, there are other statutes which provide for arrest in execution of a warrant of arrest issued by a Court. To take one example, Order XXXVIII, rule 1 of the Code of Civil Procedure authorises the Court to issue a warrant for the arrest of a defendant before Judgment in certain circumstances. Form No. 1 in Appendix F sets out the

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terms of such a warrant. It clearly recites that it has been proved to the satisfaction of the Court that there is probable cause for belief that the defendant is about to do one or other of the things mentioned in rule 1. The Court may under section 55 read with Order 21, rule 38 issue a warrant for the arrest of the judgment-debtor in execution of the decree. Form No. 13 sets out the terms of such a warrant. The warrant recites the decree and the failure of the judgment-debtor to pay the decretal amount to the decree-holder and directs the Bailiff of the Court to arrest the defaulting judgment-debtor, unless he pays up the decretal amount with costs and to bring him before the Court with all convenient speed. The point to be noted is that, as in the case of a warrant of arrest issued by a Court under the Code of Criminal Procedure, a warrant of arrest issued by a Court under the Code of Civil Procedure quite plainly discloses the reason for the arrest in that it sets out an accusation of default, apprehended or actual, and that the person to be arrested is made acquainted with the reasons for his arrest before he is actually arrested.

The several sections collected under subheading "B—Arrest without warrant" in Chapter V of the Code of Criminal Procedure deal with arrests otherwise than under warrants issued by a Court under that Code. Section 54 sets out nine several circumstances in which a police officer may, without an order from a Magistrate and without a warrant, arrest a person. Sections 55, 57, 151 and 401 (3) confer similar powers on police officers. Column 3 Schedule II to the Code of Criminal Procedure also specifies the cases where the police may arrest a person without warrant. Section 56 empowers an officer in charge of a police station or any police officer making an investigation under Chapter XIV to require any officer subordinate to him to arrest without a warrant any person who may lawfully be arrested without a warrant. In such a case, the officer deputing a subordinate officer to make the arrest has to deliver to the latter an order in writing specifying the person to be arrested and the

offence or other cause for which the arrest is to be made and the subordinate officer is required, before making the arrest, to notify to the person to be arrested the substance of the order and, if so required by such person, to show him the order. Section 59 authorises even a private person to arrest any person who in his view commits a non-bailable and cognisable offence or any proclaimed offender and requires the person making the arrest to make over the arrested person, without unnecessary delay, to a police officer or to take such person in custody to the nearest police station. A perusal of the sections referred to above will at once make it plain that the reason in each case of arrest without a warrant is that the person arrested is accused of having committed or reasonably suspected to have committed or of being about to commit or of being likely to commit some offence or misconduct. It is also to be noted that there is no provision, except in section 56, for acquainting the person to be arrested without warrant with the grounds for his arrest. Sections 60 and 61 prescribe the procedure to be followed after a person is arrested without warrant. They run thus :—

> "60. A police officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station".

> "61. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

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Apart from the Code of Criminal Procedure, there are other statutes which authorise the arrest of a person without a warrant issued by any Court. Reference may, by way of example, be made to sections 173 and 174 of the Sea Customs Act (VIII of 1878) and section 64 of the Forest Act (XVI of 1927). In both cases, the reason for the arrest is that the arrested person is reasonably suspected to have been guilty of an offence under the Act and there is provision in both cases for the immediate production of the arrested person before a Magistrate. Two things are to be noted, namely, that, as in the cases of arrest without warrant under the Code of Criminal Procedure, an arrest without warrant under these Acts also proceeds upon an accusation that the person arrested is reasonably suspected of having committed an offence and there is no provision for communicating to the person arrested the grounds for his arrest.

Turning now to Article 22 (1) and (2), we have to ascertain whether its protection extends to both categories of arrests mentioned above, and, if not, then which one of them comes within its protection. There can be no manner of doubt that arrests without warrants issued by a Court call for greater protection than do arrests under such warrants. The provision that the arrested person should within 24 hours be produced before the nearest Magistrate is particularly desirable in the case of arrest otherwise than under a warrant issued by the Court. for it ensures the immediate application of a judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him. In the case of arrest under a warrant issued by a Court, the judicial mind had already been applied to the case when the warrant was issued and, therefore, there is less reason for making such production in that case a matter of a substantive fundamental right. It is also perfectly plain that the language of Article 22 (2) has been practically copied from sections 60 and 61 of the Code of Criminal Procedure which admittedly prescribe the

procedure to be followed after a person has been arrested without warrant. The requirement of Article 22 (1) that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest indicates that the clause really contemplates an arrest without a warrant of Court, for, as already noted, a person arrested under a Court's warrant is made acquainted with the grounds of his arrest before the arrest is actually effected. There can be no doubt that the right to consult a legal practitioner of his choice is to enable the arrested person to be advised about the legality or sufficiency of the grounds for his arrest. The right of the arrested person to be defended by a legal practitioner of his choice postulates that there is an accusation against him against which he has to be defended. The language of Article 22(1) and (2) indicates that the fundamental right conferred by it gives protection against such arrests as are effected otherwise than under a warrant issued by a Court on the allegation or accusation that the arrested person has, or is suspected to have, committed, or is about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or the State interest. In other words, there is indication in the language of Article 22(1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority. The *Blitz case* (Petition No. 75 of 1952) on which Sri Dadachanji relies, proceeds on this very view, for there the arrest was made on a warrant issued, not by a Court, but, by the Speaker of a State legislature and the arrest was made on the distinct accusation of the arrested person being guilty of contempt, of the Legislature. It is not, however, our purpose, nor do we consider it desirable, to attempt a precise and meticulous enunciation of the scope and ambit of this fundamental right or to enumerate exhaustively the cases that come within its protection. Whatever else may come within the purview of Article 22(1) and (2), suffice it to say for the purposes of this case, that we are satisfied that the physical restraint put upon an abducted person in the process of recovering and

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taking that person into custody without any allegation or accusation of any actual or suspected or apprehended commission by that person of any offence of a criminal or quasi-criminal nature or of any act prejudicial to the State or the public interest, and delivery of that person to the custody of the officer in charge of the nearest camp under section 4 of the impugned Act cannot be regarded as arrest and detention within the meaning of Article 22 (1) and (2). In our view, the learned Judges of the High Court over-simplified the matter while construing the Article, possibly because the considerations herein before adverted to were not pointedly brought to their attention.

Our attention has been drawn to sections 100 (search for persons wrongfully confined) and 552 (power to compel restoration of abducted females) of the Code of Criminal Procedure, and it has been urged that neither of those sections contemplates an accusation against the victim and yet such victim, after recovery, has to be brought before a Magistrate. It is to be observed that neither of the two sections treats the victim as an arrested person for the victim is not produced before a Magistrate under sections 60 and 61 which require the production of a person arrested without warrant, or under section 81 which directs the production of a person arrested under a warrant issued by a Court. The recovered victim is produced by reason of special provisions of two sections, namely, sections 100 and 552. These two sections clearly indicate that the recovery and taking into custody of such a victim are not regarded as arrest at all within the meaning of the Code of Criminal Procedure and, therefore, cannot also come within the protection of Article 22(1) and (2). This circumstance also lends support to the conclusion we have reached, namely, that the taking into custody of an abducted person under the impugned Act is not an arrest within the meaning of Article 22(1) and (2). Before the Constitution came into force, it was entirely for the Legislature to consider whether the recovered person should be produced before a Magistrate as is provided by sections 100 and 552 of the Criminal Procedure Code in the

case of persons wrongfully confined or abducted. By this Act, the Legislature provided that the recovered Muslim abducted person should be taken straight to the officer in charge of the camp, and the Court could not question the wisdom of the policy of the Legislature. After the Constitution, Article 22 being out of the way, the position in this behalf remains the same.

Sri Dadachanji also argued that the Act is inconsistent with Article 14. The meaning, scope and ambit of that Article need not be explained again, for they have already been explained by this Court on more than one occasion [See *Chiranjit Lal Chowdhury* v. *The Union of India*(1) *The State of Bombay* v. *F. N. Balsara* (2), *The State of West Bengal* v. *Anwar Ali Sarkar* (3), and *Kathi Raning Rawat* v. *The State of Saurashtra* (4)]. There can be no doubt that Muslim abducted persons constitute a well-defined class for the purpose of legislation. The fact that the Act is extended only to the several States mentioned in section 1 (2) does not make any difference, for a classification may well be made on a geographical basis. Indeed, the consent of the several States to the passing of this Act quite clearly indicates, in the opinion of the governments of those States who are the best judges of the welfare of their people, that the Muslim abducted persons to be found in those States form one class having similar interests to protect. Therefore the inclusion of all of them in the definition of abducted persons cannot be called discriminatory. Finally, there is nothing discriminatory in sections 6 and 7. Section 7 only implements the decision of the Tribunal arrived at under section 6. There are several alternative things that the Tribunal has been authorised to do. Each and everyone of the abducted persons is liable to be treated in one way or another as the Tribunal may determine. It is like all offenders under a particular section being liable

(1) 1950 S. C. R. 869
(2) 1951 S. C. R. 682
(3) 1952 S. C. R. 284
(4) 1952 S. C. R. 435