LALU PRASAD @ LALU PRASAD YADAV

v.

STATE OF BIHAR THROUGH CBI (AHD) PATNA

DECEMBER 6, 2006

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Prevention of Corruption Act, 1988; s.13(1)(e) r/w s.13(2) and s.19(1)(b)/Code of Criminal Procedure, 1973; ss. 197, 227, 228, 239, 240 and 245:

Prosecution of public servant—When not holding the same office which he allegedly abused—Sanction to prosecute—Requirements of—Held: Order rejecting plea of lack of sanction and jurisdiction required to be passed by a speaking order—Sanction of Governor had no sanctity in the eye of law—Sanction so granted earlier has no validity—It cannot be construed as a case of **causus omissus**—*Cases in which question raised as to recording of reasons at the time of framing of charge differs from cases of opinion on the basis of which accused discharged—In case of question relating to jurisdiction, reasons dealing with jurisdiction required to be recorded—In the facts and circumstances of the case, appeals are without merit—Hence dismissed.*

Interpretation of Statutes:

*Principles of construction—Statute—***Casus omissus**—*Discussed.*

Corruption case—Prosecution—Requirement of sanction before prosecution—Applicability of s.197 Cr.P.C./s.19 of Prevention of Corruption Act—Distinction between—Discussed.

In these appeals the basic question raised for determination by this Court related to the validity of sanction to prosecute the accused-appellants for offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. Sanction has been accorded both under the provisions of Section 19(1)(b) of the Act and Section 197 of the Code of Criminal Procedure, 1973.

Appellants contended that even though a public servant does not hold

A the same office and holds some other office, then also sanction is necessary; that the effect of the recommendations made by the Law Commission in its 41st report which necessitated sanction in terms of Section 197 of the Code extending the protection of sanction for a retired public servant as well should have been also extended under Section 6(1) of the Prevention of Corruption Act, 1947 corresponding to Section 19(1) of the Act; that the courts below B had erroneously come to the conclusion that both in the case of discharge and for framing of charge no reasons are necessarily to be recorded; and that report of Dr. Bakshi Tekchand Committee which formed the basis of inserting Sub-section (2) of Section 6 of 1947 Act admits of no doubt and the same envisages two offices being held by the public servants one at the time C of alleged offence and other at the time of taking cognizance.

Dismissing the appeals, the Court

HELD: 1.1. The decision in *R.S. Nayak* case cannot be regarded as a binding precedent in respect of the issues which did not relate to the three D questions which were required to be decided in that case. The order rejecting the plea of lack of sanction and the jurisdiction is required to be passed by a speaking order. The Secretary to the Government had no jurisdiction to sign the sanction order on the instructions of the Governor. Therefore, the so-called sanction of the Governor has no sanctity in the eye of law. There is no material to show that the alleged dis-proportionate assets were relatable to a E period when wife of the appellant was the Chief Minister. At that time she was also either holding the office of MLC or MLA and, therefore, the sanction granted has no validity. [255-C, D, E]

R.S. Nayak v. *A.R. Antulay,* [1984] 2 SCC 183, held not applicable.

F 1.2.The sanction had been given by the Governor. The prosecution did not obtain the sanction separately so far as wife of the appellant is concerned as she was only a house wife and not a public servant during the relevant period. In the sanction accorded in respect of the appellant, it has been expressly mentioned that the acts of his wife amounted to aiding and abetting G of commission of offence under Section 13(1)(e) by her husband and she was thus liable to be prosecuted for offence punishable under Sections 107 and 109 of the Indian Penal Code, 1860. [255-E, F]

2.1. Two principles of construction - one relating to causus omissus and the other in regard to reading the statute as a whole - appear to be well H settled. Under the first principle a *causus omissus* cannot be supplied by the

Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *causus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. [256-C, D] A B

Maulavi Hussein Haji Abraham Umarji v. *State of Gujarat and Anr.*, JT (2004) 6 SC 227, referred to. C

Artemiou v. *Procopiou,* (1966) 1 QB 878; *Luke* v. *IRC* (1963) AC 557; *Fenton* v. *Hampton,* (1858) XI, P.C. 347 and *Jones* v. *Smart* (1 T.R. 52), referred to.

2.2. Golden rule for construing all written instruments is that the grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further. [257-C] D

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Grey v. *Pearson,* (1857) 6 H.L. Cas. 61 and *Abley* v. *Dale* 11, C.B. 378, referred to.

3. Plea that the effect of Law Commission's report and Dr. Bakshi Tekchand report has not been considered by the Legislature and therefore this is a case of *"causus omissus"* is clearly without any substance. [257-E] F

Kalicharan Mahapatra v. *State of Orissa,* [1998] 6 SCC 411, referred to.

4. Section 197 of the Code of Criminal Procedure and Section 19 of the Prevention of Corruption Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the Code, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in G H

A **case of Section 19 of the Act. [258-B, C]**

Shivendra Kumar **v.** *State of Maharashtra,* **[2001] 9 SCC 303, referred to.**

5.1. The question raised relating to recording of reasons at the time of
B **framing of charge is different from a case of opinion on the basis of which an order of discharge of the accused is passed. [260-D]**

State of Bihar **v.** *Ramesh Singh* **AIR (1977) SC 2018 and** *Kanti Bhadra Shah and Anr.* **v.** *State of West Bengal,* **[2000] 1 SCC 722, referred to.**

C **5.2. Where the question of jurisdiction is raised and the trial Court is required to adjudicate that issue, it cannot be said that reasons are not to be recorded. In such a case reasons relate to question of jurisdiction and not necessarily to the issue relating to framing of charge. In such a case reasons dealing with a plea relating to jurisdiction have to be recorded. [263-D]**

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1276 of 2006.

From the Final Judgment and Order dated 21-6-2005 of the High Court of Judicature at Patna in Criminal Misc. No. 14894 of 2000.

E P.P. Rao, P.H. Parekh, E.R. Kumar and Shakun Sharma (for Ms. P.H. Parekh & Co.) for the Appellant.

Mohan Parasaran, A.S.G., Amarjit Singh, A.S.G., P. Parmeswaran, Chidananda D.L., K.K. Senthilvelan, Gaurav Dhingra, Gopal Singh and Nishakant Pandey for the Respondent.
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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. Leave granted.

In both these appeals the basic question raised relates to the validity
G of sanction to prosecute the appellants for offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act'). Sanction has been accorded both under the provisions of Section 19(1)(b) of the Act and Section 197 of the Code of Criminal Procedure, 1973 (in short the 'Code').

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Plea relating to cognizance of the offence is that previous sanction is necessary under the Act if the public servant does not hold the same office which he allegedly abused on the date when the cognizance was taken by the Court. Stand of the appellants is that even though a public servant does not hold the same office and holds some other office, then also sanction is necessary. It is stated in that context that the decision in *R.S. Nayak* v. *A.R. Antulay,* [1984] 2 SCC 183 is *per incuriam* because the effect of Section 19(2) of the Act had not been considered. It is also submitted that the effect of the recommendations made by the Law Commission in its 41st report which necessitated sanction in terms of Section 197 of the Code extending the protection of sanction for a retired public servant as well should have been also extended under Section 6(1) of the Prevention of Corruption Act, 1947 (in short the '1947 Act') corresponding to Section 19(1) of the Act. This according to us is a case of *causus omissus.* The decision in *R. S. Nayak's* case (supra) cannot be regarded as a binding precedent in respect of the issues which did not relate to the three questions which were required to be decided in that case. The order rejecting the plea of lack of sanction and the jurisdiction is required to be passed by a speaking order. The Secretary to the Government had no jurisdiction to sign the sanction order on the instructions of the Governor. Therefore, the so-called sanction of the Governor has no sanctity in the eye of law. There is no material to show that the alleged disproportionate assets were relatable to a period when Smt. Rabri Devi was the Chief Minister. At that time she was also either holding the office of MLC or MLA and, therefore, the sanction granted has no validity.

It is to be noted that in *Lalu Prasad Yadav's* case the sanction had been given by the Governor. The prosecution did not obtain the sanction separately so far as the appellant Rabri Devi is concerned as she was only a house wife and not a public servant during the relevant period. In the sanction accorded in respect of the appellant- Lalu Prasad Yadav, it has been expressly mentioned that the acts of Smt. Rabri Devi amounted to aiding and abetting of commission of offence under Section 13(1)(e) by her husband Lalu Prasad Yadav and she was thus liable to be prosecuted for offence punishable under Sections 107 and 109 of the Indian Penal Code, 1860 (in short the 'IPC').

One of the submissions made by Shri P.P. Rao, learned senior counsel appearing for the appellants is that the courts below had erroneously come to the conclusion that both in the case of discharge and for framing of charge no reasons are necessarily to be recorded. It is submitted that report of Dr. Bakshi Tekchand Committee which formed the basis of inserting Sub-section

A (2) of Section 6 of 1947 Act admits of no doubt and the same envisages two offices being held by the public servants one at the time of alleged offence and other at the time of taking cognizance.

Learned counsel for the respondent-State submitted that none of the pleas raised have any substance in law.

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So far as the plea relating to *causus omissus* is concerned the position in law is as follows:

Two principles of construction one relating to *causus omissus* and the other in regard to reading the statute as a whole appear to be well settled.
C Under the first principle a *causus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *causus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed
D with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, *L.J. in Artemiou* v. *Procopiou,* (1966) 1 QB 878, "is not to
E be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke* v. *IRC,* (1963) AC 557 where at p. 577
F he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is
G *causus omissus,* and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See *Fenton* v. *Hampton,* (1858) XI Moore, P.C. 347. A *causus omissus* ought not to be created by interpretation, save in some case of strong necessity.
H Where, however, a *causus omissus* does really occur, either through the

inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt* legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - *Causus omissus et oblivioni datus dispositioni communis juris relinquitur;* "a causus omissus," observed Buller, J. in *Jones* v. *Smart,* (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws." The principles were examined in detail in *Maulavi Hussein Haji Abraham Umarji* v. *State of Gujarat and Anr.,* JT (2004) 6 SC 227.

The golden rule for construing all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See *Grey* v. *Pearson,* (1857) 6 H.L. Cas. 61. The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See *Abley* v. *Dale* 11, C.B. 378).

The plea that the effect of Law Commission's report and Dr. Bakshi Tekchand report has not been considered by the Legislature and therefore this is a case of *"causus omissus"* is clearly without any substance. This Court had occasion to deal with a similar plea in *Kalicharan Mahapatra* v. *State of Orissa,* [1998] 6 SCC 411. It has been noted as follows:

> "13. It must be remembered that in spite of bringing such a significant change to Section 197 of the Code in 1973, Parliament was circumspect enough not to change the wording in Section 19 of the Act which deals with sanction. The reason is obvious. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge

A of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

B It may be noted that Section 197 of the Code and Section 19 of the Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the Code, the substratum and basic features of the case have C to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of Section 19 of the Act.

The plea of *causus omissus* as raised by learned counsel is at variance with the stand taken in respect of a similar plea in *Parkash Singh Badal's* case. In that case the stand of learned counsel for the appellant was that the D provision does not exist and has to be read into the statute and since the effect of Section 19(2) of the Act has not been considered in *R.S. Nayak's* case (supra) therefore it is a case of per incuriam. We have examined the issue in the said case and have turned out the plea.

In *Shivendra Kumar* v. *State of Maharashtra,* [2001] 9 SCC 303 it was E *inter alia* observed as follows:

"11. On a perusal of Section 6 of the Act, it is clear that previous sanction is mandatorily required for launching prosecution against a public servant who is alleged to have committed an offence punishable under Section 161 or 164 or 165 IPC or under sub-section (2) or sub- F section (3-A) of Section 5 of the Act. Indeed the language of the section is in the form of a prohibition against any court taking cognizance of such offences except with previous sanction. The authority/authorities to grant such sanction are specified in clauses (a), (b) and (c) of sub-section (1). Under clause (a) it is laid down that G in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with sanction of the Central Government, of the Central Government. Under clause (b), it is provided that in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the H State Government; and under clause (c) in the case of any other

person, of the authority competent to remove him from his office. The difference in the language used in clauses (a) and (b) on the one hand and clause (c) on the other, cannot be lost sight of. While in the former, the Central Government or the State Government, as the case may be, is to grant the sanction, under clause (c) it is specifically provided that the authority competent to remove the delinquent public servant from office is one who is competent to grant the sanction. As noted earlier, Section 6(1)(b) is applicable in the present case. The said provision does not specify any particular officer as the competent authority to grant sanction. It only states that the State Government, without whose sanction the delinquent officer cannot be removed from office/post, is the competent authority to pass the order of sanction. From the sanction order, which is available on the record, it is clear that the Secretary, Medical Education Department passed/ signed the order of sanction of prosecution against the appellant on behalf of the Governor. It is not the case of the appellant that the Secretary had no authority to act on behalf of the State Government. It follows that the order of sanction in the present case was passed by the Secretary of the Medical Education Department with the authority of the Governor of the State Government. No material on record has been brought to our notice to show that the Governor had issued any order authorising an officer other than the Secretary of the Department to pass order of sanction in the case. If that was the case, then the appellant should have produced the order or at least raised the contention that an officer other than the Secretary had been authorised for that purpose. No such material appears to have been produced. When the Secretary was being examined in support of the sanction order passed by him such question was also put to him. Reliance is placed on a sentence in his deposition that he is not the authority to remove the appellant. This statement, without further material, cannot form the basis of the contention that the Secretary, Medical Education Department was not competent to pass the order of sanction on behalf of the State Government. The Government functions through its officers. The Secretary is the Head of the Department and the principal officer representing the State Government in the Department concerned. Unless specific material is produced to show that some other officer was competent to deal with the matter of sanction of prosecution against the appellant it can be reasonably assumed that the Secretary of the Department is the competent authority to pass the order of sanction. *The object of Section 6 or for*

A *that matter Section 197 of the Criminal Procedure Code, which is a* pari materia *provision, is that there should be no unnecessary harassment of a public servant; the idea is to save the public servant from the harassment which may be caused to him if each and every aggrieved or disgruntled person is allowed to institute a criminal complaint against him. The protection is not intended to be an absolute and unqualified immunity against criminal prosecution. In a case where it is seen that a sanction order has been passed by an authority who is competent under the law to represent the State Government, the burden is heavy on the party who challenges the authority of such order to show that the authority competent to pass the order of sanction is somebody else and not the officer who has passed the sanction order in question."*

(underlined for emphasis)

That brings us to another question which though may not have any relevance after the rejection of the principal plea, has to be considered because such issues frequently come up for consideration.

The question raised relating to recording of reasons at the time of framing of charge is different from a case of opinion on the basis of which an order of discharge of the accused is passed. Sections 227 and 228 of the Code with regard to discharge of accused and framing of charges against the accused respectively in a case triable by Court of Session; Sections 239 and 240 concern discharge and framing of charge in case of warrant, triable by the Magistrate whereas Section 245 deals with discharge and framing of charges in cases instituted other than on the police report, indicates the difference. The relevant provisions read as follows:

"227-*Discharge:* If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

"228.-*Framing of Charge*-(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame

a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

"239. *When accused shall be discharged.*—(l) If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

"240. *Framing of charge.*—(l) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

"245: When accused shall be discharged—(1) If upon taking all the evidence referred to in Section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate

A from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

This Court in *State of Bihar* v. *Ramesh Singh,* AIR (1977) SC 2018 observed as follows:

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"Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused.
C It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment, which is to be finally applied before recording a finding regarding the guilt or otherwise of the
D accused not exactly to be applied at the stage of deciding the matter under Sections 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction."

E In *Kanti Bhadra Shah and Anr.* v. *State of West Bengal,* [2000] 1 SCC 722 again the question was examined. It was held that the moment the order of discharge is passed it is imperative to record the reasons. But for framing of charge the Court is required to form an opinion that there is ground for presuming that the accused has committed the offence. In case of discharge of the accused the use of the expression "reasons" has been inserted in
F Sections 227, 239 and 245 of the Code. At the stage of framing of a charge the expression used is "opinion". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. It was *inter alia* held as follows:

G "It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

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Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context, it is pertinent to point out that even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge."

A B C

But where the question of jurisdiction is raised and the trial Court is required to adjudicate that issue, it cannot be said that reasons are not to be recorded. In such a case reasons relate to question of jurisdiction and not necessarily to the issue relating to framing of charge. In such a case reasons dealing with a plea relating to jurisdiction have to be recorded.

D

In the ultimate, analysis in these appeals is that they are without merit and are dismissed.

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S.K.S. Appeals dismissed.