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(ii) Discovery of fact – Words "Person accused of an offence" and "in the custody of police" are separated by a comma (,) in section 27, thus they have to be read distinctively – As soon as the accused or suspected person comes into the hand of a police officer, he is in the custody of Police within the meaning of sections 25 and 27.

(iii) Information by co-accused – Co-accused cannot be held guilty on the basis of information already given by accused – The same information even if voluntarily made by co-accused, cannot be used against him.

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(iii) सह-अभियुक्त द्वारा दी गई जानकारी – सह-अभियुक्त को अभियुक्त द्वारा पूर्व से दी गई जानकारी के आधार पर दोषी नहीं ठहराया जा सकता – वही जानकारी भले ही सह-अभियुक्त द्वारा स्वेच्छा से दी गई हो, उसका उपयोग उसके विरूद्ध नहीं किया जा सकता। **75 134**

Sections 201, 302 363, 366-A, 376(A), 376(2)(i), 376(2)(j), 376(2)(k) and 376(2)(m) – See sections 5(m) & 5(i) r/w/s 6 of Protection of Children from Sexual Offences Act, 2012.

धाराएं 201, 302, 363, 366-क, 376(क), 376(2)(झ), 376(2)(ञ), 376(2)(ट) एवं 376(2)(ड) – देखें लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 की धाराएं 5(ड) और 5(झ) सहपठित धारा 6। **99 179**

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Sections 299 and 304 – (i) Culpable Homicide – Appreciation of evidence – Determination of nature of injury, whether caused by assault or it is accidental?

(ii) Abscondence of the accused for three years – Whether this fact itself can be treated as a sole ground for establishing his guilt? Held, No.

धाराएं 299 एवं 304 – (i) आपराधिक मानव वध – साक्ष्य का मूल्यांकन – उपहति की प्रकृति का निर्धारण, क्या हमले के कारण या दुर्घटनावश कारित?

(ii) अभियुक्त का तीन साल तक फरार रहना – क्या इस तथ्य को ही उसके अपराध को स्थापित करने का एकमात्र आधार माना जा सकता है? अवधारित, नहीं। **77** **141**

Sections 300 Exception 4, 302 and 304 Part II – Murder or culpable homicide not amounting to murder – Benefit of Explanation 4 to section 300 when available?

धाराएं 300 परंतुक 4, 302 एवं 304 भाग 2 – हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – धारा–300 के स्पष्टीकरण–4 का लाभ कब उपलब्ध होगा ? **78** **142**

Sections 302, 304B and 498A – Murder or dowry death – Presumption – Burden of proof.

धाराएं 302, 304ख एवं 498क – हत्या अथवा दहेज मृत्यु – उपधारणा – सबूत का भार । **79** **145**

Sections 302 and 498A – (i) Matrimonial cruelty and murder – Burden of proof.

(ii) Burden of proof – Facts especially within the knowledge – Until a *prima facie* case is established by prosecution by proving all necessary elements, the onus does not shift to the accused to show that no crime was committed.

धाराएं 302 एवं 498क – (i) वैवाहिक क्रूरता और हत्या – सबूत का भार।

(ii) सबूत का भार – विशिष्ट ज्ञान के तथ्य – जब तक अभियोजन आवश्यक तत्वों को प्रमाणित करते हुए प्रथम दृष्टया प्रकरण स्थापित नहीं कर देता है तब तक यह

धारा 166 – प्रतिकर – आयकर रिर्टन – प्रस्तुत किया जाना – मृतक की मृत्यु के पूर्व जमा किया गया अंतिम आयकर रिटर्न जिसमें ई–फाइलिंग अभिस्वीकृति दर्शाई गयी हो – मृतक की आय के दस्तावेज के रूप में विचार में लिया जा सकता है। **94 174**

Section 166 – Contributory negligence – Offending truck parked in the middle of the road without clear indication or signal – Deceased did not notice the truck as it was night and visibility was poor – Held, truck driver was solely responsible for causing the accident.

धारा 166 – योगदायी उपेक्षा – दुर्घटनाकारी ट्रक को सड़क के बीचों बीच स्पष्ट संकेत या सिग्नल के बिना खड़ा किया गया था– मृतक रात्रि होने और कम दृश्यता के कारण ट्रक को नहीं देख पाया – अभिनिर्धारित, केवल ट्रक ड्रायवर दुर्घटना कारित करने के लिये उत्तरदायी था। **95 175**

Section 166 (1) (c) – Legal representative – Elder married brothers – Two family registers show that brother of deceased lived separately with their respective family – Only on the basis that deceased visited his siblings and had meals together, they cannot be treated as dependent – Not entitled to claim compensation – Award set aside.

धारा 166 (1) (ग) – विधिक प्रतिनिधि – ज्येष्ठ विवाहित भाई – दो पारिवारिक रजिस्टरों से पता चलता है कि मृतक के भाई अपने–अपने परिवार के साथ अलग रहते थे – केवल इस आधार पर कि मृतक अपने भाई–बहनों से मिलने जाता था और एक साथ भोजन करता था, उन्हें आश्रित के रूप में नहीं माना जा सकता – भाई प्रतिकर का दावा करने का अधिकारी नहीं – अवार्ड निरस्त किया गया। ***96 176**

NEGOTIABLE INSTRUMENTS ACT, 1881
परक्राम्य लिखत अधिनियम, 1881

Section 20 – See sections 91 and 202 of the Criminal Procedure Code, 1973.

धारा 20 – देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 91 एवं 202। ***56 96**

Section 138 – Dishonor of cheque – Debt or liability – Allegedly barred by limitation – Question regarding the time barred nature of a debt or liability is a mixed question of fact and law and must be decided on evidence adduced by parties.

धारा 138 – चैक का अनादरण – ऋण अथवा दायित्व – परिसीमा द्वारा वर्जित होने का आक्षेप – ऋण या देनदारी का परिसीमा द्वारा वर्जित प्रकृति का होने

(iii) Concept of a fair trial – It is a dynamic principle, continually adapting to the complexities of new circumstances and the specific nature of each case.

(iv) Judicial calm – Is fundamental to fair trial.

धाराएं 5(ड) और 5(झ) सहपठित धारा 6 – (i) बलात्कार और हत्या – अभियुक्त जेल में था और उसे अपनी पसंद का अधिवक्ता नियुक्त करने की अनुमति नहीं दी गई – विधिक सहायता प्रदान कर एक अधिवक्ता उसके प्रतिनिधित्व हेतु नियुक्त किया गया था – विचारण दिन–प्रतिदिन किया गया – विचारण के दौरान न्यायालय के समक्ष डी.एन.ए. रिपोर्ट, फोरेंसिक रिपोर्ट एवं विसरा रिपोर्ट प्रस्तुत की गईं – बिना समन भेजे साक्षियों को प्रस्तुत किया गया – अभिनिर्धारित, विचारण जल्दबाजी में किया गया – अभियुक्त को अपने बचाव हेतु पर्याप्त अवसर प्रदान नहीं किये गये – दोषसिद्धि अपास्त की गई और मामला आरम्भ से पुनः विचारण हेतु प्रतिप्रेषित किया गया।

(ii) फोरेंसिक साक्ष्य – साक्ष्य का महत्व।

(iii) ऋजु विचारण की अवधारणा – यह एक गतिशील सिद्धांत है जो लगातार नई परिस्थितियों की जटिलताओं और प्रत्येक मामले की प्रकृति के अनुकूल परिवर्तित होता रहता है।

(iv) न्यायिक स्थिरता – ऋजु विचारण हेतु आधारभूत। **99** **179**

REGISTRATION ACT, 1908

रजिस्ट्रीकरण अधिनियम, 1908

Sections 17 and 49 – See sections 33, 35 and 40 of the Stamp Act, 1899.

धाराएं 17 एवं 49 – देखें स्टॉम्प अधिनियम, 1899 की धाराएं 33, 35 एवं 40। **100** **183**

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989

Sections 3(1)(r) and 3(i)(s) – See section 294 of the Indian Penal Code, 1860.

धारा 3(1)(द) एवं 3(1)(ध) – देखें भारतीय दण्ड संहिता, 1860 की धारा 294। **76** **138**

SENTENCING POLICY:

दण्ड नीतिः

See section 307 of the Indian Penal Code, 1860.

देखें भारतीय दण्ड संहिता, 1860 की धारा 307। **81** **152**

PART-III
CIRCULARS/NOTIFICATIONS

EDITORIAL

Esteemed readers,

As we embark upon our journey from 75th year to 100th year of independence, an era which is now being referred to as *"Amrit Kaal",* the nation is all set to ameliorate the criminal justice system with the New Criminal Laws. The Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023 will replace the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, respectively which were the backbone of the system.

The Hon'ble Chief Justice, Shri Justice Ravi Malimath, in the inaugural event of Tenth Biennial Judicial Officers Conference held on 13th and 14th January 2024, while giving the "Vision 2047" for the 100th year of independence, placed a question to us, "What do we have to show after 100 years of independence?" To attain the goals of "Vision 2047", His Lordship emphasized on team work and collective efforts while saying, "Let us bring about a positive change in the institution, by placing the needs of the institution before our own." These New Criminal Laws are expected to bring such change in the justice delivery system and as their date of enforcement inches closer, the Academy is also in full swing so as to ensure that all the judicial officers of the State get acquainted with these laws and get well equipped to confront the problems and challenges in their implementation.

We have conducted a special "Training of Trainers" programme on 16th and 17th March, 2024 to make a pool of resource persons which will bifurcate in the various districts of this gigantic State with a purpose to ensure maximum outreach amongst judicial officers of the District Judiciary in minimum possible time. The programme is so designed that by the end of May 2024, all the judicial officers will be imparted basic training on all the three new laws. I would like to impress upon our readers while we confront legal difficulties in implementation of these new Laws, please do not hesitate in sending your queries to the Academy. We shall try our best to address them in the upcoming editions of the Journal.

Hon'ble Shri Justice Vivek Agarwal, Judge, High Court of Madhya Pradesh has been appointed as Acting Chairman of this Academy. We extend a warm welcome to His Lordship. My Lord has been a Member of Governing Council of the Academy for quite a long time and the Academy was constantly getting insightful ideas from His Lordship. Now, as Acting Chairman of the Academy, we look forward to receiving His Lordship's inputs and are confident that they shall benefit us immensely.

Hon'ble Shri Justice Sujoy Paul, the then Chairman, Governing Council, Madhya Pradesh State Judicial Academy has been transferred as Judge, High Court for the State of Telangana. It will not be an exaggeration to say that the Academy has bloomed under the able guidance of His Lordship. His Lordship was a guardian to us and prioritized creating a positive ambience in the Academy. We extend His Lordship heartfelt best wishes for completing a successful tenure at High Court of Telangana.

In the past two months, various training programmes have also been conducted. The Institutional Advance and Foundation Training Course for District Judges (Entry Level) on promotion and directly appointed from Bar which commenced on 19.02.2024, concluded on 15.03.2024. In addition, a Refresher Course for the Civil Judges (on completion of 5 years service) was conducted from 18.03.2024 to 23.03.2024. The Second Phase Induction Training Course for newly appointed Civil Judges, Junior Division of 2022 and 2023 Batch also took place from 01.04.2024 to 27.04.2024.

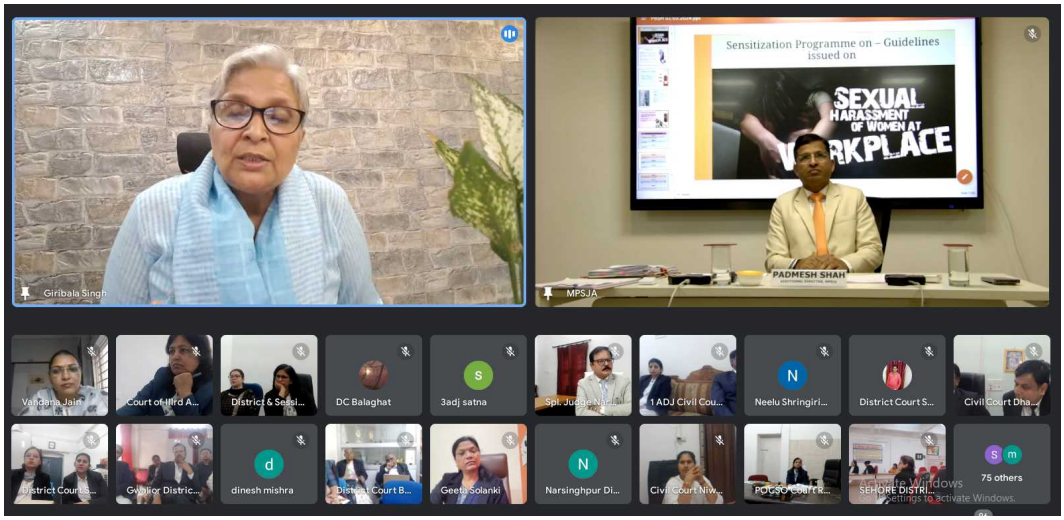
In compliance of the judgment of Hon'ble Supreme Court in ***Aureliano Fernandes v. State of Goa, (2024) 1 SCC 632,*** an online sensitization programme on Prevention of Sexual Harassment of Women at Workplace was conducted on 02.03.2024. Additionally, an awareness programme on Sentencing Policy, Presumption under different Laws and Importance of Section 313 CrPC was held on 23.03.2024 and recognizing the issues arising from the field, a training program on Civil Appeals, Criminal Appeals and Criminal Revisions on 27.04.2024, were also organized through online mode. Justice delivery system cannot be efficient without good quality litigation. Therefore, simultaneously, a Regional Workshop for Advocates was conducted on 22.03.2024 & 23.03.2024. I hope these training programmes contribute in enhancing their litigation skills.

This time around, we are publishing the life journey of one of the most revered jurist Hon'ble Shri Justice G.P. Singh. We all know him through his internationally acclaimed book "Interpretation of Statutes". His Lordship was son of this soil and a legend through and through. I hope our readers will gain inspiration from the insights offered in the article into his life. Discharging our judicial functions to the best of our ability is extremely vital not only for our professional growth but also, the gross ramifications it entails on the overall well-being of the Nation. Let us not forget our *pursuit for excellence* and do every bit in contributing to the growth of our Nation.

Best wishes

Krishnamurty Mishra
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR



Sensitization programme on – Guidelines issued on Sexual Harassment of Women at Work Place (02.03.2024)

Training of Trainers Course on – New Criminal Laws (16.03.2024 & 17.03.2024)

ADVANCE TRAINING COURSE FOR DISTRICT JUDGES (ENTRY LEVEL) ON PROMOTION (19.02.2024 TO 15.03.2024)

Group -I

Group -II

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Refresher Course for Civil Judges (on completion of five years Judicial Service) (Group-II) (18.03.2024 to 23.03.2024)

Refresher Programme on – Cyber Laws & Appreciation & Handling of Digital Evidence for Judicial Officers (ECT_14_2024) (23.03.2024)

SECOND PHASE INSTITUTIONAL INDUCTION COURSE FOR NEWLY APPOINTED CIVIL JUDGES JUNIOR DIVISION (BATCH 2022 & 2023) (01.04.2024 TO 27.04.2024)

Group-I

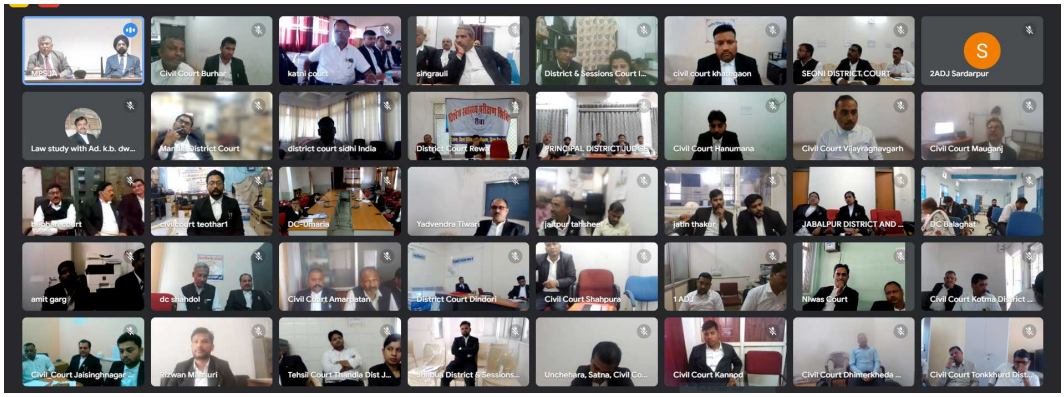
Group-II

GLIMPSES OF TRAINING COURSE ON NEW CRIMINAL LAWS (28.04.2024)

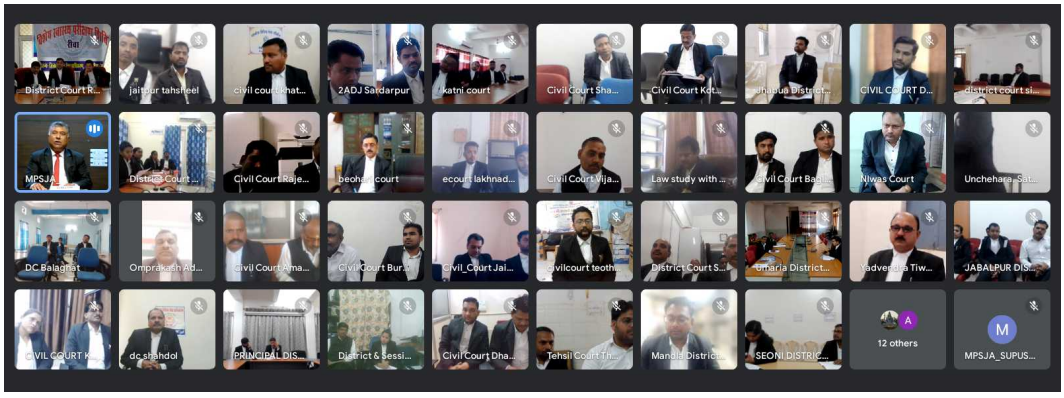
Hon'ble Shri Justice G.S. Ahluwalia, Member, Governing Council, MPSJA addressing the gathering in the Inaugural Session at Jabalpur

At various district headquarters

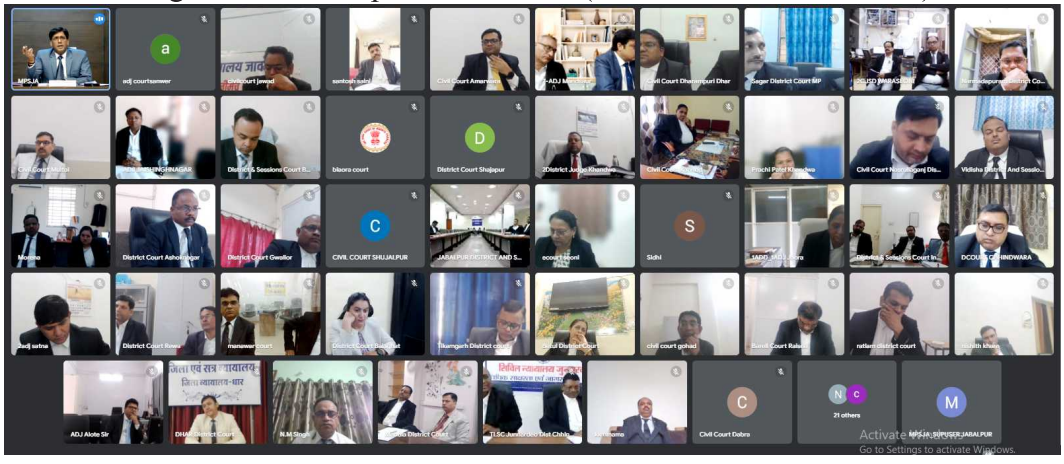
MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR



Awareness programme on – Sentencing Policy, Presumption under different Laws and Importance of Section 313 Cr.P.C. (23.03.2024)



Regional Workshop for Advocates (22.03.2024 & 23.03.2024)



Awareness Programme on – Civil Appeals and Criminal Appeals (27.04.2024)

TRANSFER OF HON'BLE SHRI JUSTICE SUJOY PAUL AS JUDGE, HIGH COURT FOR THE STATE OF TELANGANA

Hon'ble Shri Justice Sujoy Paul, who occupied the august office of Judge, High Court of Madhya Pradesh for thirteen years has been transferred as Judge, High Court for the State of Telangana.

Hon'ble Shri Justice Sujoy Paul was born on 21.06.1964 to Late Shri Noni Gopal Paul and Smt. Manjushri Paul. His Lordship pursued his school education from Pandit L.S. Jha Model Higher Secondary School and did his Graduation, Post Graduation and LL.B from Rani Durgavati University, Jabalpur, Madhya Pradesh. His Lordship enrolled as an Advocate in the year 1990 in the Bar Council of Madhya Pradesh and practiced in varied laws. His Lordship has represented several companies, associations, banks, trade unions etc. His Lordship got elevated as Judge of High Court Madhya Pradesh at Jabalpur on 27.05.2011 and permanent Judge on 14.04.2014.

During his tenure, His Lordship has served as Judge and Administrative Judge and rendered valuable services as senior member of various executive committees of High Court of Madhya Pradesh. It is pertinent to mention that His Lordship also served as Chairman, Juvenile Justice Committee, High Court of Madhya Pradesh wherein many initiatives were taken towards furthering the cause of justice regarding the affected children. His Lordship also served as Member, Governing Council, MPSJA and later on, as Chairman, Governing Council, MPSJA. His Lordship took keen interest in the academic activities of the Academy and provided whole hearted motivation and support. As Chairman, Governing Council, MPSJA, His Lordship laid a lot of emphasis on creating a positive ambience in the Academy, enhanced interaction in the sessions and encouraged experimentation in teaching methodologies. His Lordship endeavoured that the participants of every programme had the best resource persons.

Under His Lordship's guidance, the Academy made several innovative changes in its training schedule, embraced andragogy style of teaching and focused on generating an impact assessment module of the trainings imparted. It is noteworthy that His Lordship pioneered a series of sessions on “Attributes of a Judge” for the new entrants to the service and also, in-service Judges. These sessions focused on developing the core values of an ideal Judge in the Judges of the State so as to develop an effective justice delivery system. His Lordship has also made vital contribution towards the book “Judicial History & Courts of Madhya Pradesh”, a publication of the High Court of Madhya Pradesh. His Lordship's articles on “Sexual

Offences & Sentencing Policy" and "Judicial Ethics, Norms and Behaviour" have been published in the bi-monthly journal of the Academy. In addition, His Lordship has also delivered sessions on divergent topics in various training programmes conducted by the Academy. Academy will always be grateful to His Lordship for his painstaking efforts in ensuring that Academy duly fulfils its obligations and excels in all its assignments.

His Lordship was accorded farewell ovation on 21.03.2024 at High Court of Madhya Pradesh, Jabalpur.

We, on behalf of JOTI Journal, wish His Lordship a very fulfilling and successful tenure at the High Court for the State of Telangana.

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HON'BLE SHRI JUSTICE ROHIT ARYA DEMITS OFFICE

Hon'ble Shri Justice Rohit Arya has demitted office on His Lordship's attaining superannuation.

His Lordship was born on 28.04.1962. After obtaining degrees of B.A. from St. Aloysius College, Jabalpur and LL.B. from Rani Durgawati Vishwavidhyalaya, Jabalpur, His Lordship enrolled as an Advocate in August 1984 in the rolls of the State Bar Council of Madhya Pradesh. His Lordship practiced for more than 29 years in varied fields. His Lordship was empanelled as a Senior Panel Counsel for the State of Madhya Pradesh in the Supreme Court of India from 2007 onwards. His Lordship was empanelled as a Senior Panel Counsel for the State of M.P. in the year 2007. His Lordship appeared in numerous landmark cases before the High Court of Madhya Pradesh and the Supreme Court.

His Lordship was elevated as Judge of the High Court on 12.09.2013 and as a Permanent Judge on 26.03.2015.

During his tenure in the High Court of Madhya Pradesh, His Lordship rendered invaluable services as Administrative Judge, Bench at Gwalior, Chairman/Member of various Administrative Committees of the High Court including Committee for Overall Working of Judicial Officers' Training & Research Institute (MPSJA). His Lordship addressed the participants of various training programmes/workshops conducted by the Academy on divergent topics on many occasions and provided wholehearted support to the Academy.

We, on behalf of JOTI Journal, wish His Lordship a healthy, happy and prosperous life.

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PART – I

OUR LEGENDS
HON'BLE SHRI JUSTICE G.P. SINGH
8th CHIEF JUSTICE OF HIGH COURT OF MADHYA PRADESH

This edition's Legend, Hon'ble Shri Justice Guru Prasanna Singh is probably one of the most revered jurists not only across the country but in the world. This legend is celebrated for delivering pathbreaking judgments, successfully running the administration of the High Court of Madhya Pradesh and authoring the internationally acclaimed book on "Principles of Statutory Interpretation".

To begin with, Justice Singh was born on 03.01.1922 at village Raipur Karchulian and later the family shifted to Dahiya in District Rewa of the erstwhile Princely State of Baghelkhand, which later on, merged in the old and is now in the existing State of Madhya Pradesh. After completing his school education at Central Hindu School, Banaras (Kashi), Justice Singh had his college education from, Banaras Hindu University, a renowned place of learning. He did his Masters of Science (Chemistry) in 1941, by securing top position and obtained his Law Degree in the year 1944 from the said University.

His Lordship's father was an Honorary Magistrate which he gave up to start law practice at the District Bar, Rewa. Justice Singh had hardly completed his education in Law at Banaras when his father passed away. Being the eldest son , in order to take care of his family, His Lordship took the job of ADC/ private secretary to the Maharaja of Rewa Shri Gulab Singh on 18.04.1944 but later on gave up the job. Subsequent to which, to augment his income, he undertook the job as a law lecturer at the Darbar College, Rewa. Once, His Lordship undertook the part-time job, he hardly had any time on family front; he was admirably supported by his wife, Smt. Bharti Devi, a very pious lady, who stood firmly with His Lordship in his difficult times.

Justice G.P. Singh started his career as a pleader in the year 1945 in the Courts of the erstwhile Rewa State and thereafter, enrolled as an Advocate in the Judicial Commissioner's Court of the former State of Vindhya Pradesh on 1954. Owing to his dedication and hard work, he became a popular lawyer and earned good reputation as a promising lawyer commanding respect at the Bar and the society at large. After reorganization of States in the year 1956, Justice Singh shifted to the Principal Seat of the High Court at Jabalpur in 1957. At the Golden Jubilee Commemorate of the High Court of Madhya Pradesh in 2006, His Lordship relegated the incident which led to his shifting to Jabalpur, the excerpts from the speech is reproduced below:

> "My practice was essentially limited to that court, which stood abolished from 1st November, 1956. All the cases of that court were automatically transferred to the High Court at Jabalpur. Justice Jagat Narain, ICS, who was then the judicial commissioner and who later became Chief Justice of Rajasthan, and some of my friends advised me to shift to Jabalpur. Although hesitant, I decided to go to Jabalpur to find out some suitable accommodation. I, in the company of my friend J.S. Verma, came to Jabalpur on 1st November,1956. I had never been to Jabalpur before. I did not know any person at Jabalpur. Verma had some acquaintance. So he came with me to assist me. Jabalpur was then facing an acute housing problem. With the shifting of the high court, many lawyers shifted from Nagpur. Many district lawyers from other places also came to Jabalpur to establish themselves in the high court. On 1st November it was not possible for me, even with the assistance of Verma, to get any rented accommodation. We returned somewhat disappointed but decided to have another try. After a month or so I and Verma again went to Jabalpur to file a writ petition. We were not familiar with the rules of the high court. We wanted to return as early as possible after arguing the writ petition in motion. We wanted the assistance of a lawyer who may guide us without depriving us of our brief. With this mood we entered the High Court Bar room. By sheer good luck we contacted a great gentleman, Shri P.K. Tare. He took us around the high court, showed us the filing section and explained to us the tricks of an urgent application. He also lent us the services of his clerk, the efficient Shamarao. The writ petition was duly filed with an urgent application which took it next day before Justice Choudhari in motion. According to me and also my friend Verma, the petitioner for whom we were appearing had a very good case. But Justice Choudhari was in no mood to admit it. He thought that

> we had a very weak case. He was on the point of summarily dismissing the petition but fortunately for the petitioner and more for me the stenographer was not available. He, therefore, reserved his orders. I and Verma returned to the Bar room somewhat disappointed. I had mentally resolved that I will shift to Jabalpur only if the petition was admitted. When we later went to find out what happened to the petition, the court reader gave us a pleasant surprise by telling us that the petition was admitted. It is difficult to know what prompted Justice Choudhari to change his mind….the admission of that petition settled it that I was to shift to Jabalpur."

Hardly in a matter of few months, Justice Singh impressed the members of the Bar and the Bench and within a short time established himself among the top lawyers of the Bar at Jabalpur. Justice Singh was elevated as Additional Judge of the High Court on 7th of November, 1967 and as Permanent Judge on 29th July, 1968. He was then appointed as Chief Justice of the High Court in 1978. At the welcome ovation conducted on 27th July 1978, His Lordship highlighted that in a country like ours common man has a chance to reach the pinnacles of success, said:

> "My appointment as Chief Justice however, shows that even the highest offices in our great country can be obtained by the common man. Although lacking in qualities of a great Judge, I will do my utmost to maintain the high traditions of this Court and the office of the Chief Justice. I am thankful for the assurance of cooperation of my colleagues and members of the bar of which I never had any doubt. I have the good fortune of leading a team on the bench which is one of the best in the country and of being assisted by a bar of which I was a member and which can compare well with the bar of any other High Court."

On work front, His Lordship prioritized clearing up of arrears of cases. He appealed to the Bar that to achieve the desired result there can be no laxity in admissions and grant of adjournments, which ensured substantial clearing of the arrears.

His Lordship always protected the interest of District Judiciary as is also reflected from the address of his Lordship at his welcome ceremony, His Lordship said :

> "I will like to say a few words about the subordinate judiciary. As compared to other States, the Judiciary in our State has a very bright reputation and our officers on the whole are hard-working, honest and efficient. They do not, however, have good working conditions.

> I was informed a few days back that even at Jabalpur many junior judicial officers have no retiring rooms and their court-rooms are so small that they are very often over crowded. Official residential accommodation in sufficient number is not available at many places for judicial officers. The Court libraries are also ill-equipped. I will take up these matters with the Government and try to do whatever is possible for improving the working conditions of judicial officers."

Justice G.P. Singh also protected the interest of the members of the Bar and encouraged them to prepare their case thoroughly. It is noteworthy that His Lordship gave the present day "Silver Jubilee Hall" to the Bar association. Justice Singh was known for his legal acumen and erudition, was quick to grasp and decide the matters on the Board itself. During this tenure from 1978 till 1984, His Lordship rendered several pathbreaking judgments and worked upon improvising the overall development of the administration of the High Court of Madhya Pradesh. During the tenure as Chief Justice of the High Court, Justice Singh twice functioned as Acting Governor of the State, first from 26th May, 1981 to 9th July, 1981 and thereafter, from 21st September, 1983 to 7th October, 1983.

Despite the many accolades, such was the humility of Justice G.P. Singh that after demitting the office of Chief Justice, he straightway went to the Railway Station, along with his family, to board the train on way to his village Dihiya, Rewa in a modest farm house where he settled. Post-retirement, after about six years, Justice Singh was offered appointment as Chairman, Madhya Pradesh Law Commission, which he accepted and worked as such from the year 1990 to 1992. It may be mentioned that he rendered his services absolutely on honorary basis. Looking to his commitment to the cause of public service and his dedication to the highest ideals of honesty and hard work, he was appointed as Lokayukta of the State on 30.03.1992 which office he held till 29th March, 1997.

Justice Singh had great aptitude for legal education. He was part-time Law Lecturer in T.R.S. College, Rewa and later he shifted to the High Court. He took to writing and published the first edition of his book "Principles of Statutory Interpretation" in the year 1966, which was later on recognized as a *locus classicus* even by the giants of the legal profession. Editions after editions were later on published from time to time and earned international fame. His Lordship's famous book, "Interpretation of Statutes" is compared with the work of Maxwell and is usually referred by the Supreme Court in various judgements. The other book is "Law of Torts" by Ratanlal & Dhirajlal, revised by Justice Singh. This book too became very popular among the law students, law professors, advocates and judges.

Justice Singh was awarded Doctor of Laws (Ll.D) by Rani Durgawati Vishwavidhyalaya, Jabalpur on 7.01.1984 and D. Lit. (*Honoris causa*) by the National Law University, Bhopal on 16.12.2007.

Hale and hearty, Justice Singh passed away quietly and peacefully on 5th October, 2013 at the age of 91 years at Jabalpur. On hearing about the sad demise of Justice G.P. Singh at his residence in Nayagoan colony in the city of Jabalpur, large number of lawyers and number of judges poured in within hours to pay homage to the departed noble soul. Next day, funeral was held on the banks of Holy River Narmada at the funeral ground. Number of advocates, judges and prominent citizens of the town attended the funeral and paid homage to the mortal remains of Justice Singh. The Full Court on 9th of October, 2013 was attended by several lawyers, present and past judges. Paying glowing tributes to the departed noble soul, in a Full Court Reference held in his respect, the Acting Chief Justice Shri K.K. Lahoti observed:

> "Justice G. P. Singh's death is a severe loss to the judicial fraternity of India, in particular to High Court of Madhya Pradesh. It will be indeed very difficult, *nay*, impossible to fill the void created by the sad demise of Justice Singh. He was icon of the entire judiciary for honesty, devotion, sacrifice and high moral values. The judiciary stands deprived of an eminent, dynamic and courageous person who had devoted his entire life for the betterment of judicial system. In passing away of Justice Singh we have lost a great legal luminary and a gentleman to the core. Justice Singh had a disciplined way of living and will always be remembered for his adherence to the value system which he had scrupulously followed throughout his life. Justice G. P. Singh was an ardent believer in independence of Judiciary. He always stressed upon the need of maintaining accountability and credibility of judicial system."

These few pages are very less to speak in detail about the legendary personality of Justice G.P. Singh. His Lordship led a life of a saint with an integrity based on an awareness of his deeper convictions to the entire sense, with self-transcendence. He represented the highest ideals to be observed by a Judge and commanded alike the respect of Bar and Bench. This is something to behold. To conclude, we are extremely fortunate and take pride in calling this legend as 'Our Legend' who continues to stand out for his exemplary legal acumen and also, as a beacon of hope for propriety and integrity in public life.

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INTRODUCTION TO BHARATIYA NYAYA SANHITA, 2023

– Institutional Article

Introduction:

The Bharatiya Nyaya Sanhita, 2023 (45 of 2023) received assent from the Hon'ble President of India on 25th December, 2023. The Home Ministry vide notification dated 23rd February, 2024 notified 1st July, 2024 as the date of enforcement of the Sanhita. This Act will have a huge impact as it is going to repeal the Indian Penal Code, 1860 (45 of 1860) from the date of its enforcement. Therefore, there is an urgent need to decode the new Bharatiya Nyaya Sanhita, 2023 and understand the jurisprudence behind its introduction.

The Bharatiya Nyaya Sanhita, 2023 (hereinafter referred as 'BNS') is enacted with a preamble – **An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.**

The imperative need to reform and replace the old colonial Indian Penal Code, 1860 (hereinafter referred to as IPC) was required to re-organize and systematize the IPC while prioritizing the focus area and to shed colonial era references. The BNS aims to provide a citizen-centric, welfare-oriented, legal structure while also providing security to citizens and strength to nation and also to modernize law to keep pace with new challenges and technological advancements.

Objectives:

The BNS aims to keep a balance, strengthening the State on one hand and keeping the concept of Welfare State with humanitarian approach on top priority on the other hand, by providing major changes as reflected hereinafter. The BNS also strengthens the State by introducing new offences such as terrorist act, organised crime, acts of Secession, armed rebellion, subversive separatist activities endangering sovereignty, unity and integrity of India, mob lynching, hit and run, etc. and simultaneously, enhancing the punishment thereby creating a deterrent, for example, death sentence for rape of a girl child below the age of 18 years has been introduced.

The BNS takes a step forward towards a Welfare State by introducing reformative forms of punishment such as, 'Community Service' as one of the punishments u/s 4 of BNS, also upholding constitutional right of 'freedom of speech and expression' by removing the offence relating to 'Sedition' provided u/s

124-A of IPC. It also removes the offence u/s 309 ‘Attempt to commit suicide’ in consonance with section 115 of Mental Healthcare Act, 2017. This reflects the welfare-oriented approach of the new Act. Furthermore, the BNS has not only decriminalized the offence of ‘Adultery’ and ‘same sex intercourse’ but also included the term ‘Transgender’ in the definition of word ‘Gender’ u/s 2(10) of BNS showing concern towards them.

It is noteworthy that section 377 of IPC was held unconstitutional by the Apex Court in ***Navtej Johar v. Union of India, AIR 2018 SC 4321*** to the extent that it covered homosexual consensual sexual acts. However, heterosexual acts were still criminalized and retained as an offence. But the BNS has not retained any such provisions.

Magnitude of Reforms:

The nature of reforms is in the form of addition of new offences, deletion of sections and offences, enhancement of punishment of imprisonment and fine, introduction of new punishment and rearrangement of chapters and sections. BNS has made various offences gender neutral, giving precedence to offences committed against women and children, murder and offences against the State. The BNS has streamlined the law which consists of only 358 sections as compared to 511 sections in IPC. It has total 20 Chapters as compared to (23+3) 26 Chapters in IPC. In BNS all three inchoate offences i.e., Attempt, Abetment and Conspiracy are brought together under one Chapter i.e. Chapter IV. Further, the offences against women and children which were scattered throughout in the erstwhile IPC have been consolidated under Chapter V and the offences affecting the human body are brought up Chapter VI. Furthermore, the archaic expressions like 'lunatic', 'insane' and 'idiot' and colonial remnants like 'British calendar', 'Queen', 'British India, 'Justice of the peace' etc. have been deleted.

The magnitude of reforms are shown in the table below:

S. No.	BASIS OF COMPARISION	IPC	BNS
1.	Section	511	358
2.	Chapter	23	20
3.	Offence	481	465
4.	Cognizable	311	294
5.	Non-Cognizable	147	145
6.	Bailable	253	253

S. No.	BASIS OF COMPARISION	IPC	BNS
7	Non-bailable	196	213
8.	Compoundable	43	42
9.	Compoundable (with permission of Court)	13	13
10.	Non-Compoundable	425	410
11.	Session Triable	106	118
12.	JMFC Triable	155	145
13.	Triable by any Magistrate	180	163
14.	Less than seven or up to seven years	170	144
15.	7 years or more	192	190
16.	10 years or more	118	117
17.	L.I. or death	72	77
18.	Death sentence	13	16

Provision as to fine:

It is pertinent to mention here that fines in IPC were very low ranging from Rs.10 to Rs.1,000 and the prescribed punishments also needed rationalization, which led to the enactment of BNS. Hence, terms of imprisonment for 33 offences have been suitably enhanced, fines in 83 offences have been increased and mandatory minimum punishment has also been prescribed for 23 offences.

Enhanced fine:

(Note: This table reflects only the increase of fine. Kindly refer the Bare Act for the period of imprisonment prescribed)

S. No	Section under IPC Fine	Section under BNS	Offence
1.	67 (part 1) – 50 rupees	8(5)(a) – up to 5000 rupees	Amount of fine, liability in default of payment of fine, etc.
2.	67 (part 2) – 100 rupees	8(5)(b) – up to 10,000 rupees	Amount of fine, liability in default of payment of fine, etc.
3.	323 – 1000 rupees	115(2) – up to 10,000 rupees	Imprisonment for one year or fine of ten thousand (one thousand) rupees or both
4.	324 – or with fine	118(1) – up to 20,000 rupees	Imprisonment for three years or fine of twenty thousand rupees or both

S. No	Section under IPC Fine	Section under BNS	Offence
5.	334 – 500 rupees	122(1) – up to 5,000 rupees	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation
6.	335 – 2000 rupees	122(2) – up to 10,000 rupees	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.
7.	336 – 250 rupees	125 – up to 2,500 rupees	Act endangering life/ personal safety of others
8.	337 – 500 rupees	125(a) – up to 5000 rupees	When hurt is caused
9.	338 – 1000 rupees	125(b) – up to 10,000 rupees	When grievous hurt is caused
10.	341 – 500 rupees	126(2) – up to 5000 rupees	Wrongful restraint
11.	342 – 1000 rupees	127(2) – up to 5000 rupees	Wrongful confinement
12.	343 – or with fine	127(3) – up to 10,000 rupees	Wrongful confinement for 3 days or more
13.	344 – shall also be liable to fine	127(4) – shall also be liable to fine which shall not be less than 10,000 rupees	Wrongful confinement for 10 days or more
14.	345	127(5) – and shall also be liable to fine	Wrongful confinement knowing that writ for liberation of person has been duly instituted
15.	346	127(6) – and shall also be liable to fine	Wrongful confinement indicating intention that confinement of such person may not be known or place of confinement may not be known or discovered
16.	352 – 500 rupees	131 – up to 1000 rupees	Assault or criminal force otherwise than on grave provocation

S. No	Section under IPC Fine	Section under BNS	Offence
17.	357 – 1000 rupees	135 – up to 5000 rupees	Assault or criminal force in attempt to wrongfully confine a person
18.	358 – 200 rupees	136 – up to 1000 rupees	Assault or criminal force on grave provocation
19.	137 – 500 rupees	165 – up to 3000 rupees	Deserter concealed on board merchant vessel through negligence of master
20.	140 – 500 rupees	168 – up to 2000 rupees	Wearing garb or carrying token used by soldier, sailor or airman
21.	171H – 500 rupees	176 – up to 10,000 rupees	Illegal payments in connection with elections
22.	171I – 500 rupees	177 – up to 5000 rupees	Failure to keep election accounts
23.	489E(1) – 100 rupees	182(1) – up to 300 rupees	Making or using documents resembling currency notes or bank notes
24.	489E(2) – 200 rupees	182(2) – up to 600 rupees	Refusal to disclose to a police officer, the name and address of person by whom a document was printed or made.
25.	160 – 100 rupees	194(2) – up to 1000 rupees	Affray
26.	152 – may extend to three years, or with fine, or with both.	195(1) – not less than 25,000 rupees	Assaulting or obstructing public servant or using criminal force on any public servant
27.	171 – 200 rupees	205 – up to 5000 rupees	Wearing Garb or carrying token used by public servant with fraudulent intent.
28.	172 (Part 1) – 500 rupees	206(a) – up to 5000 rupees	Absconding to avoid service of summons or other proceeding.
29.	172 (Part 2) – 1000 rupees	206(b) – up to 10,000 rupees	Where such summon/ notice/ order is to attend in person or to produce document in court
30.	173 (Part 1) – 500 rupees	207(a) – up to 5000 rupees	Preventing service of summons or other proceedings or preventing publication
31.	173 (Part 2) – 1,000 rupees	207(b) – up to 10,000 rupees	Where such summon/ notice/ order/ proclamation is to attend in person or to produce document in court

S. No	Section under IPC Fine	Section under BNS	Offence
32.	174 (Part 1) – 500 rupees	208(a) – up to 5000 rupees	Non–attendance in obedience to an order from public servant
33.	174 (Part 2) – 1000 rupees	208(b) – up to 10,000 rupees	Where such summon/ notice/ order/ proclamation is to attend in person in court
34.	175 (Part 1) – 500 rupees	210(a) – up to 5000 rupees	Omission to produce document or electronic record to public servant by person legally bound to produce it.
35.	175 (Part 2) – 1,000 rupees	210(b) – up to 10,000 rupees	Where document or electronic record is to be produced in court
36.	176 (Part 1) – 500 rupees	211(a) – up to 5000 rupees	Omission to give notice or information to public servant by person legally bound to give it.
37.	176 (Part 2) – 1000 rupees	211(b) – up to 10,000 rupees	Where notice or information is in respect to commission of offence or to prevent it or apprehend offender
38.	177 – 1000 rupees	212(a) – up to 5000 rupees	Furnishing false information
39.	178 – 1000 rupees	213 – up to 5000 rupees	Refusing to bind himself by oath or affirmation to state the truth, when required by public servant
40.	179 – 1000 rupees	214 – up to 5000 rupees	Refusing to answer public servant
41.	180 – 500 rupees	215 – up to 3,000 rupees	Refusing to sign statement
42.	182 – 1000 rupees	217 – up to 10,000 rupees	False information, with intent to cause public servant to use his lawful power to injure any person
43.	183 – 1000 rupees	218 – up to 10,000 rupees	Resistance to taking of property by lawful authority of any public servant
44.	184 – 500 rupees	219 – up to 5,000 rupees	Obstructing sale of property offered for sale by authority of public servant
45.	186 – 500 rupees	221 – up to 2,500 rupees	Obstructing public servant in discharge of public functions

S. No	Section under IPC Fine	Section under BNS	Offence
46.	187 (Part 1) – 200 rupees	222(a) – up to 2,500 rupees	Omission to assist public servant
47.	187 (Part 2) – 500 rupees	222(b) – up to 5,000 rupees	Where assistance is demanded for purpose of executing any court process or for preventing commission of offence etc.
48.	188 (Part 1) – 200 rupees	223(a) – up to 2,500 rupees	Disobedience to order duly promulgated
49.	188 (Part 2) – 1000 rupees	223(b) – up to 5,000 rupees	When disobedience causes obstruction, annoyance, etc.
50.	193 (Part 1) – liable to fine	229(1) – up to 10,000 rupees	Giving/fabricating false evidence to be used in judicial proceeding
51.	193 (Part 2) – liable to fine	229(2) – up to 5,000 rupees	Giving/fabricating false evidence in any other case
52.	194 (Part 1) – liable to fine	230(1) – up to 50,000 rupees	Giving/fabricating false evidence to procure conviction of capital offence
53.	202 – or with fine	239 – up to 5000 rupees	Intentional omission to give information of offence
54.	204 – or with fine	241 – up to 5000 rupees	Destruction of document or electronic record to prevent its production as evidence
55.	206 – or with fine	243 – up to 5000 rupees	Fraudulent removal or concealment of property
56.	211 – or with fine	248 (a) – up to two lakh	False charge of offence
57.	228 – 1000 rupees	267 – up to 5000 rupees	Intentional insult or interruption to public servant sitting in judicial proceeding
58.	272 – 1000 rupees	274 – up to 5000 rupees	Adulteration of food or drink intended for sale
59.	273 – 1000 rupees	275 – up to 5000 rupees	Sale of noxious food or drink
60.	274 – 1000 rupees	276 – up to 5000 rupees	Adulteration of drugs

S. No	Section under IPC Fine	Section under BNS	Offence
61.	275 – 1000 rupees	277 – up to 5000 rupees	Sale of adulterated drugs
62.	276 – 1000 rupees	278 – up to 5000 rupees	Sale of drug as a different drug or preparation
63.	277 – 500 rupees	279 – up to 5000 rupees	Fouling water
64.	278 – 500 rupees	280 – up to 1000 rupees	Making atmosphere noxious to health
65.	280 – 1000 rupees	282 – up to 10,000 rupees	Rash navigation of vessel
66.	281 – or with fine	283 – not less than 10,000	Exhibition of false light, mark or buoy
67.	282 – 1000 rupees	284 – up to 5,000 rupees	Conveying person by water for hire in unsafe/ overloaded vessel
68.	283 – 200 rupees	285 – up to 5000 rupees	Danger or obstruction in public way or line of navigation
69.	284 – 1000 rupees	286 – up to 5,000 rupees	Negligent conduct with any poisonous substance
70.	285 – 1000 rupees	287 – up to 2,000 rupees	Negligent conduct with fire or combustible matter
71.	286 – 1000 rupees	288 – up to 5,000 rupees	Negligent conduct with explosive substance
72.	287 – 1000 rupees	289 – up to 5,000 rupees	Negligent conduct with machinery
73.	288 – 1000 rupees	290 – up to 5,000 rupees	Negligent conduct in pulling down, repairing or constructing buildings etc.
74.	289 – 1000 rupees	291 – up to 5,000 rupees	Negligent conduct with animal
75.	290 – 200 rupees	292 – up to 1,000 rupees	Public nuisance not otherwise provided
76.	291 – or with fine	293 – up to 5000 rupees	Repeats or continues public nuisance after injunction

S. No	Section under IPC Fine	Section under BNS	Offence
77.	292(2) – 2000 rupees	294(2) – up to 5000 rupees	Sale, etc. of obscene books, etc.
78.	292(2) – 5000 rupees (second and subsequent conviction)	294(2) – up to 10,000 rupees (second and subsequent conviction)	Sale, etc. of obscene books, etc.
79.	294 – or with fine	296 – up to 1000 rupees	Obscene acts and songs
80.	294A – 1000 rupees	297 – up to 5000 rupees	Keeping lottery office
81.	447 – 500 rupees	329(3) – up to 5000 rupees	Criminal trespass
82.	448 – 1000 rupees	329(4) – up to 5000 rupees	House trespass
83.	510 – 10 rupees	355 – up to 1000 rupees	Misconduct in public by drunken person

Changes in Definition and Interpretation Clause:

In IPC, there was no Definition Clause and Interpretation clauses were scattered from sections 8 to 52-A of IPC. Now, most of these provisions are retained without any change in section 2 of BNS. Few prominent changes in the definition clause are as mentioned below –

1. 'Child' u/s 2 (3) means any person below the age of 18 years. Therefore, uniformity has been introduced in the use of expression 'child' throughout the BNS which is achieved by replacing the expression 'minor' and 'child under the age of eighteen years' with the word 'child'.
2. 'Court' u/s 2(5) means judge or body of judges acting judicially. Some institutions presided over by quasi-judicial authorities are not included anymore.
3. Document u/s 2(8) now includes electronic and digital records.
4. 'Gender' u/s 2(10) now includes 'transgender' and reference of meaning of transgender is provided in the explanation.

5. 'Judge' u/s 2(16) includes a person empowered to give definitive judgment or empowered to give judgment. It excludes quasi-judicial authorities. As a result, the defence u/s 15 of BNS is now unavailable to quasi-judicial authorities.

6. 'Movable property' u/s 2(21) is not limited to corporeal form of property. Now property of every description is included other than immovable property. As a result, definition of movable property will include intangible assets like patents, copyrights, as well as actionable claims.

Punishments:

IPC u/s 53 provided 5 types of punishment. BNS has Introduced 'Community Service' as the 6th type of punishment u/s 4(f) of BNS. BNS does not provide the definition of term 'community service' but it is defined by explanation to section 23 of BNSS which means court may order to perform work that benefits the community without any remuneration. The legislature was serious while introducing the punishment of community service, as they have provided u/s 8(4) & (5) of BNS for imposing imprisonment in default of community service. As it may be, BNS provides punishment of community service in respect of 6 offences mentioned below:

S. No.	IPC Section	BNS Section	Offence	Punishment
1.	168	202	Public servant unlawfully engaging in trade	Simple imprisonment up to one year, or fine, or both, or community service
2.	174A	209 (part 1)	Non-appearance in response to a proclamation u/s 84 (1) of BNSS, 2023	Imprisonment up to three years or fine or both, or community service
3.	New	226	Attempt to commit suicide to compel or restrain exercise of lawful power	Imprisonment up to one year, or fine, or both, or community service
4.	New	303(2) Proviso	Where value of stolen property is less than five thousand rupees and a person is convicted for the first time, and he returns the value of property or restores the stolen property	shall be punished with community service

S. No.	IPC Section	BNS Section	Offence	Punishment
5.	510	355	Misconduct in public by a drunken person	Simple Imprisonment up to twenty four hours or fine up to Rs.1,000 or both or with community service.
6.	500	356(2)	Defamation	Simple Imprisonment up to two years or fine or both, or community service

BNS has introduced a phrase 'unless otherwise provided' u/s 6 of BNS while calculating fractions of terms of punishment and therefore, now 'imprisonment for life' shall be calculated as equivalent to imprisonment of 20 years unless and otherwise provided in BNS, which reflects that life imprisonment term can be considered equivalent to more or less than 20 years as in case of imprisonment for remainder of a person's natural life.

Major changes introduced by BNS in certain offences

- Right of Private defence of property u/s 41 of BNS has been elaborated by including mischief by fire or any explosive substance.
- Abetment of an offence committed in India by a person outside India has now been made an offence u/s 48 of the BNS. This section expands the jurisdiction of the Act in respect of abetment of offences committed by persons who are outside of India and found linked to the commission of offence within India.
- BNS has increased the age from 15 years to 18 years in the exception number 2 of section 63 of BNS, whereby in unequivocal terms sexual intercourse or sexual acts by a man with his own wife, not under 18 years of age, will not be considered as rape.
- BNS has retained punishment for causing death or resulting in persistent vegetative state of victim u/s 66 of BNS. Similarly, a new provision 117(3) has been introduced in the BNS, 2023 to provide stringent punishment for such acts of grievous hurt which results in persistent vegetative state or in permanent disability. Grievous hurt resulting in persistent vegetative state or in permanent disability, will attract higher punishment of rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life (remainder of that person's natural life) as against up to seven years imprisonment only for grievous hurt. Though,

persistent vegetative state of victim is not defined in BNS but reference may be taken from the judgment of the Hon'ble Apex Court in case of ***Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454***, where it has been discussed in great detail.

- Aiming to protect the rights of women at large, a new offence for having sexual intercourse on false promise of marriage, employment, promotion or by suppressing the identity etc. has been introduced in section 69 of the BNS.
- Previously, no death penalty was provided for gang rape of woman aged below 16 years but above 12 years of age. This disparity has been addressed by introducing life imprisonment (till remainder of that person's natural life) or death for gang rape of a woman below the age of 18 years u/s 70 (2) of BNS. As such, changing the age from 16 years to 18 years, expands the scope of this provision to prosecute and punish offenders committing gang rape on women between 16 to 18 years of age. Thus, the age–based parameter for differential punishment for gang rape of a minor girl has been removed in the BNS.
- Previously the word 'man' was used in Sections 354B and 354C of IPC, which is replaced by the word 'whoever' u/s 76 and 77 of the BNS. Thereby, assault or use of criminal force to woman with intent to disrobe her and Voyeurism are made gender neutral.
- The act of hiring, employing, or engaging a child to commit an offence, is made a punishable offence u/s 95 of BNS. It is pertinent to mention here that the explanation of section 95 is covering child in the form of victim, who is hired, employed, engaged or used for sexual exploitation or pornography.
- An aggravated form of murder (culpable homicide) related to 'lynching' has been introduced in the BNS u/s 103(2) addressing issues of 'mob lynching'. Special categories have been created within the offence for murder and grievous hurt by 'group of five or more persons' on the grounds of the victim's social profile, particularly, his 'race, caste or community', sex, place of birth, language, personal belief and any other grounds without specifically using the term 'mob lynching'.
- BNS provides punishment for murder by a life convict u/s 104 with a modification, which corresponds to section 303 of IPC which was struck down by the Hon'ble Apex Court in the case of ***Mithu v. State of Punjab*, *AIR 1983 SC 473***.

- Offence of 'causing death by rash or negligent act', prescribed u/s 304A of IPC, has been retained u/s 106(1) of BNS with enhanced punishment i.e. from 2 years to 5 years imprisonment. However, for medical practitioners, the punishment will still remain to be 2 years.
- BNS has addressed the issue of Hit & Run cases, by providing offence u/s 106 (2) of the BNS. Where death is caused by any person by doing any rash or negligent act and escaping from the scene of incident without disclosing the incident to a Police officer or Magistrate shall be punished with imprisonment of either description for a term which may extend to ten years and with fine.
- Offences of organized crime and terrorist act have been added in BNS with deterrent punishments u/s 111 and 113 of BNS to tackle 'organized crime' and 'terrorist acts' by punishing the commission, attempt, abetment, conspiracy of organized crimes and terrorist acts respectively. Furthermore, being a member of any organized crime syndicate or terrorist organisation, harboring or concealing any person who committed any organized crime or terrorist act and the act of possessing any property derived or obtained from the commission of organized crime or terrorist act is also punishable. Section 111 on organized crime takes care of various State laws enacted in this domain. Therefore, the jurisprudence of UAPA and MCOCA, 1999 may apply in situations. Section 113 on terrorist act has been drafted on the lines of UAPA. It has also been provided that in case of the offence of terrorist act, officer not below the rank of SP will decide whether to register a case under the provisions of BNS or UAPA.
- BNS, keeping in mind the medical advancements and faster recovery of the victim, has reduced the number of days from '20 days' to '15 days' provided for the sufferer in severe bodily pain or unable to follow his ordinary pursuits for the purpose of 'grievous hurt' u/s 116 of BNS.
- BNS has removed the distinction of age for boys and girls in offence of kidnapping u/s137 of BNS by using the word 'child', thereby making kidnapping of boys between 16 to 18 years of age from lawful guardianship, an offence.
- The offence relating to importation of a person from foreign country has been made gender neutral to cover both boys and girls in section 141 of the BNS. It will protect the minor boys and girls from being used for the purposes of forced or seduced illicit intercourse.

- 'Beggary' has been introduced as a form of exploitation for the offence of ‘trafficking’ and has been made punishable under section 143 of the BNS.
- In section 197(l)(d) of BNS, the act of making or publishing false or misleading information which has tendency to jeopardise the sovereignty, unity and integrity or security of India has been made punishable.
- Section 303(2) of the BNS presents a fine example of deterrence and reformative approach of punishment. On the one hand, for a second conviction of any person for theft, the section prescribes a higher punishment of up to 5 years with a mandatory minimum of 1 year. On the other hand, where the value of stolen property is less than 5,000 rupees and the first-time offender returns the value of property or restores the stolen property, the punishment of community service is the only prescribed punishment.
- Offence of 'snatching' has been introduced in the BNS. Till now, the offence of snatching was not present in the IPC which had always created a legal situation whether to treat such cases as 'theft' or 'robbery'. Section 304 of the BNS makes the act of snatching an offence, which punishes act of forcible seizure or grabbing of movable property.
- The domain of offence of theft has been expanded to include theft of vehicle, theft from vehicle, theft of government property and theft of idol or icon from any place of worship u/s 305 of the BNS.
- The offence of mischief in section 324 of BNS has been expanded in accordance to the damage or loss caused to any property including the property of Government or Local Authority.

In order to better equip the readers about the various changes comparative charts are reproduced below:

Sections deleted from the IPC

S. No	Section	Provision
1.	14	Servant of Government
2.	18	India
3.	29A	Electronic record
4.	50	Section
5	53A	Construction of reference to transportation
6.	124A	Sedition

S. No	Section	Provision
7.	153AA	Punishment for knowingly carrying arms in any procession or organizing, or holding or taking part in any mass drill or mass training with Arms
8.	236	Abetting in India the counterfeiting out of India of coin
9.	264	Fraudulent use of false instrument for weighing
10.	265	Fraudulent use of false weight or measure
11.	266	Being in possession of false weight or measure
12.	267	Making or selling false weight or measure
13.	309	Attempt to commit suicide
14.	310	Thug
15.	311	Punishment
16.	377	Unnatural offences
17.	444	Lurking house–trespass by night
18.	446	House–breaking by night
19.	497	Adultery

New Offences added in BNS, 2023

S. No	Section	Offence
1.	48	Abetment outside India for offence in India
2.	69	Sexual intercourse by employing deceitful means, etc.
3.	95	Hiring, employing or engaging a child to commit an offence
4.	103(2)	Murder by group of five or more persons
5.	106(1) (later clause)	relating to registered medical practitioner
6.	106(2)	Causing death by rash and negligent driving of vehicle and escaping without reporting it to Police or Magistrate (hit and run)
7.	111	Organised crime
8.	112	Petty organised crime
9.	113	Terrorist act
10.	117(3)	Voluntarily causing grievous hurt resulting in permanent vegetative state
11.	117(4)	Voluntarily causing grievous hurt by five or more persons
12.	152	Acts endangering sovereignty unity and integrity of India.

S. No	Section	Offence
13.	197(1)(d)	Publishing false or misleading information jeopardizing the sovereignty, unity and integrity or security of India
14.	226	Attempt to commit suicide to compel or restraint exercise of lawful power
15.	304	Snatching
16.	305(b)	Theft of any means of transport used for the transport of goods or Passengers
17.	305(c)	Theft of any article or goods from any means of transport used for the transport of goods or passengers
18.	305(d)	Theft of idol or icon in any place of worship
19.	305(e)	Theft of any property of the Government or of a local authority
20.	341(3)	Possession of counterfeit seal, plate or other instrument knowing the same to be counterfeited
21.	341(4)	Fraudulent or dishonest using as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeited

Offences for which death penalty may be awarded under the BNS, 2023

S. No	Section	Provision
1.	66	Punishment for rape that causes death or results in persistent vegetative state of victim
2.	70(2)	Gang rape
3.	71	Punishment for repeat offenders guilty of rape
4.	103	Murder
5.	104	Punishment for murder by life convict
6.	109(2)	Abetment of suicide of a minor, insane: or intoxicated person.
7.	113(2)	Terrorist Act
8.	140(2)	Kidnapping or abducting in order to murder or for ransom etc.
9.	109(2)	Attempt to murder by a person under sentence of imprisonment for life if hurt is caused
10.	147	Waging, or attempting to wage war or abetting waging of war against the Government of India
11.	160	Abetting mutiny actually committed
12.	230(2)	Giving or fabricating false evidence upon which an innocent person suffers death
13.	310(3)	Dacoity accompanied with murder

Sections related with Vicarious Liability

S. No.	Type of Vicarious Liability	IPC	BNS
1.	Common Intention	34	3 (5)
2.	Abetment	109 (109 to 117)	49 (49 to 57)
3.	Conspiracy	120 B	61 (2)
4.	Common Object	149	190

Imprisonment increased

(Note: This table reflects only the increase of imprisonment. Kindly refer to the Bare Act for the prescribed fine or other kind of punishments)

S. No	Section under IPC	Section under BNS	Offence
1.	67(c) – six months	8(5)(c) – up to 1 year	Imprisonment for non–payment of fine
2.	117 – 3 years, or with fine, or both	57– up to seven years	Abetting commission of offence by public or more than ten persons
3.	373 – may extend to 10 years	99 – shall not be less than seven years but may extend to 14 years	Buying child for purpose of prostitution, etc.
4.	303 – punished with death	104 – punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life	Murder by Life Convict
5.	304 – a term which may extend to 10 years, or fine, or both	105 Part 3 – a term which may extend to 10 years	Culpable Homicide not amounting to murder done with knowledge
6.	304A – may extend to 2 years, or with fine, or both	106 (1) – up to 5 years	Causing death by negligence

S. No	Section under IPC	Section under BNS	Offence
7.	307(2) – punished with death	109 (2) – punished with death or imprisonment for life, which shall mean the remainder of that person's natural life	Attempt to murder under sentence of Imprisonment for life
8.	332 – which may extend to 3 years	121 (1) – up to 5 years	Voluntary causing hurt to public servant in discharging of his public duty, etc.
9.	335 – may extend to 4 years	122(2) – up to 5 years	Voluntary causing grievous hurt on grave and sudden provocation
10.	338 – may extend to 2 years	125(b) – up to 3 years	Act endangering life or personal safety of others where grievous hurt is caused
11.	343 – may extend to 2 years	127(3) – up to 3 years	Wrongful confinement for 3 days or more
12.	344 – may extend to 3 years	127(4) – up to 5 years	Wrongful confinement for 10 days or more
13.	346 – may extend to 2 years	127(6) – up to 3 years in addition to any other punishment for wrongful	Wrongful confinement indicating intention that it should not be known to anyone or place may not be known or discovered.
14.	370A(l) – 7 years	144(1) – up to 10 years	Exploitation of a trafficked child engaging for sexual exploitation
15.	370A(2) – 5 years	144(2) – up to 7 years	Exploitation of a trafficked person engaging for sexual exploitation.
16.	138 – 6 months	166 – up to 2 years	Abetment of Act of insubordination by an officer, etc.
17.	148(3) – 3 years	191(3) – up to 5 years	Rioting being armed with deadly weapon or anything used as weapon of offence
18.	182 – 6 months	217 – up to 1 year	False Information to cause public servant to use lawful power to injure any person

S. No	Section under IPC	Section under BNS	Offence
19.	204 – 2 years	241 – up to 3 years	Destruction of document or electronic record to prevent its production as evidence
20.	206 – 2 years	243 – up to 3 years	Fraudulent removal or concealment of property
21.	211(a) – 2 years	248(a) – up to 5 years	False charge of offence
22.	211(b) – 7 years	248(b) – up to 10 years	If criminal proceedings be instituted on false charge of offence punishable with Death, LI, or 10 years or upwards
23.	274 – 6 months	276 – up to 1 year	Adulteration of drugs
24.	277 – 3 months	279 – up to 6 months	Fouling water
25.	406 – 3 years	316(2) – up to 5 years	Criminal breach of trust
26.	417 – 1 year	318(2) – up to 3 years	Cheating
27.	418 – 3 years	318(3) – up to 5 years	Cheating with knowledge
28.	423 – 2 years	322 – up to 3 years	Dishonest or Fraudulent execution of deed of transfer
29.	424 – 2 years	323 – up to 3 years	Dishonest or Fraudulent removal or concealment of property
30.	426 – 3 months	324(2) – up to 6 months	Mischief
31.	428 – 2 years	325 – up to 5 years	Mischief by killing, etc.

Mandatory Minimum Punishment Introduced:

S. No	Section under IPC	Section under BNS	Provision
1.	373	99	Buying child for purposes of prostitution, etc.
2.	304	105	Punishment for culpable homicide not amounting to murder
3.	New	111(2) (b)	Organised Crime

S. No	Section under IPC	Section under BNS	Provision
4.	New	111(3)	Abetting, attempting etc. of an Organised Crime
5.	New	111(4)	Being a member of Organised Crime syndicate
6.	New	111(5)	Harboring/concealing person who has committed
7.	New	111(6)	Possessing property derived/obtained/acquired from Organised Crime or proceeds of organized crime
8.	New	111(7)	Possession of property on behalf of member of Organised Crime
9.	New	112(2)	Petty Organised Crime
10.	New	113(2)(b)	Terrorist Act apart from resulting death
11.	New	113(3)	Conspiring, attempting, abetting etc. of terrorist Act.
12.	New	113(4)	Organising a training camp or recruits persons for terrorist act
13.	New	113(6)	Harboring/concealing any person who has committed any terrorist act or its attempt
14.	New	117(3)	Voluntarily causing grievous hurt resulting in permanent disability or in persistent vegetative state
15.	326	118(2)	Voluntarily causing grievous hurt by dangerous weapons or means
16.	333	121(2)	Voluntarily causing grievous hurt to deter public servant from his duty
17.	363A	139(1)	Kidnapping or obtaining custody of child not being guardian for employing or to be used for purpose of Begging
18.	363A	139(2)	Maiming a child for employing or to be used for purpose of begging
19.	170	204	Personating a public servant
20.	379	303(2)	Theft (on second or subsequent conviction)
21.	396	310(3)	Dacoity with murder
22.	403	314	Dishonest misappropriation of property
23.	421	320	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

Imprisonment for life, which shall mean the remainder of that person's natural life

S. No	Section	Provision
1.	64(2)	Rape by person in authority
2.	65(1)	Rape on a woman under sixteen years of age
3.	65(2)	Rape on woman under twelve years of age
4.	66	Inflicting injury leading to death or persistent vegetative state due to offence of rape
5.	70	Gang rape
6.	71	Repeat sex offenders
7.	104	Murder by life convict
8.	109(2)	Attempt to murder by life convict if hurt is caused
9.	139(2)	Maiming a child for purpose of begging
10.	143 (6)	Person convicted of trafficking a child on more than one occasion 143(7)Public servant involved in trafficking of person

Conclusion:

This article was an introduction to the changes introduced by the Bharatiya Nyaya Sanhita, 2023 which is set to replace Indian Penal Code, 1860. The BNS, 2023 addresses various aspects, from offences against women, children, and murder to tackling organized crime, terrorism and exploitation. It removes outdated terms, introduces gender-neutral provisions and aligns with evolving societal norms. The Sanhita also offers a far more nuanced approach with regard to the mental health issues which is further reflected from the abolition of offence of attempt to commission of suicide. The above comparative charts highlight the various reforms, so that the readers can get a glimpse of the changes at one stretch.

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OVERVIEW OF BHARATIYA SAKSHYA ADHINIYAM, 2023

– Institutional Article

The Bharatiya Sakshya Adhiniyam, 2023 is to replace the Indian Evidence Act, 1872 with effect from 1st July, 2024. The Indian Evidence Act, 1872 was the brainchild of the British Empire when India was not an independent country. Over a 100 years, several amendments were made to the Act, 1872 so as to bring it in tune with the progressing times and tailor it to the country's changing dynamics. This article aims to highlight the major changes being introduced by the new law.

Legislative intent

It is important to highlight the Statement and Object behind the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as 'BSA'). The same is reproduced as under:

> "2.....The law of evidence (not being substantive or procedural law), falls in the category of 'adjective law', that defines the pleading and methodology by which the substantive or procedural laws are operationalised. The existing law does not address the technological advancement undergone in the country during the last few decades.
>
> ***
>
> 4. The proposed legislation, namely "Bharatiya Sakshya Adhiniyam", *inter alia,* provides as under:-
>
> (i) it provides that 'evidence' includes any information given electronically, which would permit appearance of witnesses, accused, experts and victims through electronic means it provides for admissibility of an electronic original record as evidence having the same legal effect, validity and enforceability as any other document;
>
> (ii) it seeks to expand the scope of secondary evidence to include copies made from original by mechanical processes, copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it and giving matching hash value of original record will be admissible as proof of evidence in the form of secondary evidence;

(iii) it seeks to put limits on the facts which are admissible and its certification as such in the courts. The proposed Bill introduces more precise and uniform rules of practice of courts in dealing with facts and circumstances of the case by means of evidence.

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6. The Bill seeks to achieve the above objectives."

In a nutshell, the BSA aims to consolidate and to provide for general rules and principles of evidence for fair trial. It also incorporates provisions which reflects the technological advancement and aligning the admissibility of evidence with the contemporary needs of people.

Overview

The BSA consists of 170 sections instead of 167 sections as was the case with the Indian Evidence Act, 1872 (hereinafter referred to as IEA). The comparative analysis is further reflected from the table below which goes on to highlight the provisions deleted and new additions made, they are as under:

Sections deleted from IEA

S. No.	Sections deleted from IEA
1.	3 – Definition of "India"
2.	22A – When oral admission as to contents of electronic records are relevant
3.	82 – Presumption as to document admissible in England without proof of seal or signature
4.	88 – Presumption as to telegraphic messages
5.	113 – Proof of cession of territory
6.	166 – Power of jury or assessors to put questions

Explanations deleted from IEA

S. No.	Explanations to Sections deleted from IEA
1.	26 – Confession by accused while in custody of police not to be proved against him
2.	65(B) (5) – Explanation
3.	73A – Proof as to verification of digital signature
4.	88A – Presumption as to electronic messages

With regard to the contents, notable changes are seen in BSA which are highlighted as under:

- **Words otherwise not defined** – This is a new addition. Sub-section (2) of section 2 of BSA provides that words and expressions used herein and not defined but defined in the Information Technology Act, 2000, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhita.
- **Electronic & digital record** – Section 2(1)(d) of BSA gives a new definition of the word "document" which is compatible with the modern digital era. The new definition specifically includes electronic and digital records within the scope of the term "document". Under the new definition, to qualify as "document" or "documentary evidence", it is not necessary that matter be expressed or described upon any substance by means of letters, figures or marks only. Any matter which is "otherwise recorded" upon any substance "by any other means" will also qualify as "document" or "documentary evidence".
- **Inclusion of Electronic Records** – BSA recognizes electronic records as documents, expanding the definition beyond writings, maps, and caricatures.

  Illustration Addition: An illustration to the document definition specifies electronic records like emails, server logs and locational evidence.
- **Relevancy** – Section 6 of IEA did not include the phrase "facts though not in issue are so connected with a relevant fact as to form part of the same transaction". This phrase has been added in BSA. Earlier, this section was confined to facts connected to fact in issue alone.
- **Confessions** – The provisions of sections 25 and 26 have been brought under one section. A new element of "coercion" has been introduced apart from inducement, threat and promise.
- **Primary and Secondary Evidence** – Primary evidence includes originals, while secondary evidence encompasses various proofs, including oral and written admissions. BSA includes a separate chapter outlining detailed provisions for electronic records, their admissibility, handling, and authentication. It also provides for secure handling and proper chain of custody for electronic evidence (metadata, timestamps, etc.) to prevent

tampering. There are certificate requirements which prescribe specific requirements for certificates accompanying electronic evidence to ensure its authenticity and integrity.

- **Simultaneous Storage** – BSA provides that simultaneously stored video recordings in electronic form are considered primary evidence.
- **Synchronisation with IT Act, 2000** – There are inclusion of terms from IT Act, 2000 such as, Section 63 aligns with the IT Act, 2000, by incorporating terms like 'semiconductor memory' for better clarity.
- **Oral Evidence:** BSA allows oral evidence to be given electronically, facilitating testimony through electronic means.
- **Admissibility of Electronic Records** – Electronic records are incorporated as admissible evidence, aligning with advancements in technology. But Section 63(4) of the BSA provides for mandatory requirement of a certificate as specified under section 65 B (4) of the IEA which is to be submitted along with such electronic record. It is also noteworthy that certificate can be provided by any person in-charge of the computer communication device and an expert replacing the previous requirement of a person holding responsible position to tender certificate.
- **Introduction of certificate** – Section 63(4) (c) of the BSA provides for Schedules A and B for this purpose. Part A needs to be filled by the party producing the electronic record/output of the digital record. Part B needs to be filled by an expert to submit that the Hash value of the electronic record is produced from the given algorithms.
- **Accomplice Testimony** – BNS attempts to address the IEA's inconsistencies regarding accomplice testimony by setting out clear conditions for its admissibility and weighting. It also mandates corroboration of accomplice testimony in most cases to ensure its reliability and protect against false accusation.
- **Judicial notice** – Erstwhile references to laws outside India have been deleted.
- **Examination of witness** – Section 146 of BSA provides for circumstances which shall be construed as leading questions as opposed to Section 141 of the IEA which relied upon the suggestive character of the questions.

The major changes made to BSA are enumerated in the table below:

S. No.	Section	Modifications in BSA
1	2(1)(d)	"document" means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or ***any other means*** or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes ***electronic and digital records***
2	2(1)(e)	**"evidence" means and includes –** (i) all statements including statements ***given electronically*** which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence; (ii) all documents ***including electronic or digital records*** produced for the inspection of the Court and such documents are called documentary evidence;
3	4	**Relevancy of facts forming part of same transactions** – Facts which, though not in issue, are so connected with a fact in issue or ***a relevant fact*** as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places
4	22	**Confession caused by inducement, threat, *coercion* or promise, when irrelevant in criminal proceeding** – A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, ***coercion*** or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him:
5	22 Proviso	Provided that if the confession is made after the impression caused by any such inducement, threat, ***coercion*** or promise has, in the opinion of the Court, been fully removed, it is relevant:
7	26	**Cases in which statement of *facts in issue or* relevant fact by person who is dead or cannot be found, etc., is relevant** – Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the

S. No.	Section	Modifications in BSA
		circumstances of the case appears to the Court unreasonable, are themselves ***facts in issue or*** relevant facts in the following cases-
8	31	**Relevancy of statement as to fact of public nature contained in certain Acts or notifications** – When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Central or State Act or in a Central or State Government notification appearing in the respective Official Gazette or in any printed paper or in ***electronic or digital form*** purporting to be such Gazette, is a relevant fact.
9	32	**Relevancy of statements as to any law contained in law books including *electronic or digital form*** – When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published including in electronic or digital form under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book ***including in electronic or digital form*** purporting to be a report of such rulings, is relevant
10	35	**Relevancy of certain judgments in probate, etc.,** jurisdiction – A final judgment, order or decree of a competent Court ***or Tribunal,*** in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant
11	39	When the Court has to form an opinion upon a point of foreign law or of science or art, ***or any other field,*** or as to identity of handwriting or finger impressions, the opinions upon that point, of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts **and** such persons are called experts
12	52	**Facts of which Court must take judicial notice** – The Court shall take judicial notice of the following facts:- (1) All laws in force in the territory of India ***including laws having extra-territorial operation***;

S. No.	Section	Modifications in BSA
		(2) ***International treaty, agreement or convention with country or countries, or decisions made at the international associations or other bodies;*** (3) The course of proceeding of the Constituent Assembly of India, of Parliament and ***of the State Legislatures*****,** (4) ***The seals of all Courts and Tribunals***; (5) The seals of Courts of Admiralty and Maritime Jurisdiction, Notaries Public, and all seals which any person is authorised to use by the Constitution or by an Act of Parliament ***or State Legislatures or Regulations having*** the force of law in India: (6) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette; (7) The existence, title and national flag of every State or Sovereign recognised by the Government of India; (8) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette; ***(Reference to colonial language removed)***
13	54	**Proof of facts by oral evidence** – All facts, except the contents of documents may be proved by oral evidence. ***Omitted*** – electronic records
14	57	**Primary evidence –** Primary evidence means the document itself produced for the inspection of the Court. Explanation 1.— Where a document is executed in several parts, each part is primary evidence of the document. Explanation 2.— Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. Explanation 3.— Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

S. No.	Section	Modifications in BSA
		Explanation 4.— Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence. ***Explanation 5.— Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.*** ***Explanation 6.— Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.*** ***Explanation 7.— Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence*** ***Explanation 4 to 7 are new addition.***
15	58	**Secondary evidence. Secondary evidence means and includes –** (1) certified copies given under the provisions hereinafter contained; (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; (3) copies made from or compared with the original; (4) counterparts of documents as against the parties who did not execute them; (5) oral accounts of the contents of a document given by some person who has himself seen it; (6) ***oral admissions;*** (7) ***written admissions;*** (8) ***evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.***
16	63	**Admissibility of electronic records** – (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to

S. No.	Section	Modifications in BSA
		the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible. (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: (a) the computer output containing the information was produced by the computer or communication device which was used to create, store or process information for the purposes of any activity by the person having lawful control over the use of the computer or communication device; (b) the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents. (3) the function of creating, storing or processing information for the purposes of any activities as mentioned in clause (a) of sub-section (2) was performed by one or more computer or communication device, as the case may be, whether- (a) in standalone mode; or (b) on a computer system; or (c) on a computer network; or (d) on a computer resource enabling information creation or providing information processing and storage; or (e) through an intermediary. *Explanation.* – All the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly. (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, that is to say,

S. No.	Section	Modifications in BSA
		(a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device or other electronic mean as mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (3): (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person in charge of the computer or communication device, as the case may be, or an expert (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the form specified in the Schedule (5) For the purposes of this section, – (a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; (b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic mean as mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (3). ***Provision is analogoos to section 65B of IEA but lot of changes have been made. A schedule has also been provided which lays down the format of certificate to be tendered under this provision.***
16	64	**Rules as to notice to produce** – Secondary evidence of the contents of the documents referred to in clause (a) of section 60, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate ***or representative*** such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case

S. No.	Section	Modifications in BSA
17	74	**Public and private documents** – 74(1)(b) public records kept in any State or Union territory of private documents. ***(Reference to colonial language removed)***
18	77	**Proof of other official documents** – 77(a) Acts, orders or notifications of the Central Government in any of its Ministries and Departments or of any State Government or any Department of any State Government or Union territory Administration 77(b) the proceedings of Parliament or a State Legislature, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned; 77(e) the proceedings of a municipal or local body in a State, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body; ***(Reference to colonial language removed)***
19	81	**Presumption as to Gazettes in electronic *or digital*** – The Court shall presume the genuineness of every electronic ***or digital record*** purporting to be the Official Gazette, or purporting to be electronic or digital record directed by any law to be kept by any person, if such electronic ***or digital record*** is kept substantially in the form required by law and is produced from proper custody.
20	85	**Presumption as to electronic agreements** – The Court shall presume that every electronic record purporting to be an agreement containing the electronic ***or digital signature*** of the parties was so concluded by affixing the electronic or digital signature of the parties.
21	101	Evidence as to meaning of illegible characters, etc. ***"Provincial" replaced with "regional"***
22	122	**Estoppel of tenant and of licensee of person in possession** – No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy ***or any time thereafter,*** be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

S. No.	Section	Modifications in BSA
23	138	**Accomplice** – An accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the ***corroborated*** testimony of an accomplice. ***("Uncorroborated" word replaced with "corroborated")***
24	138	**Judge's power to put questions or order production** – The Judge may, in order to discover or obtain proof of relevant facts, ask any question ***he considers necessary,*** in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing: and neither the parties nor their ***representatives*** shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question.

Conclusion:

The Bharatiya Sakshya Adhiniyam, 2023 represents a significant step towards modernizing the legal framework related to recording of evidence in India. It introduces provisions that reflect technological advancements and aims to provide a more comprehensive and inclusive approach to the admissibility of electronic and digital evidence in legal proceedings. Several keynote changes have been made in the Law relating to evidence to provide for inclusivity of digital evidence. In addition, illustrations have been added and deleted to signify a departure from the old methods of dealing and making an initiative towards embracing the digital era. BSA in a way reflects the emergence of the society and levels up to deal with the changing nature of evidence. The preamble of BSA provides for general rules and principles of evidence for fair trial and the changes affirm the same.

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If you salute your work you do not have to salute anybody
If you pollute your work you have to salute everybody.

– *Dr. A.P.J. Abdul Kalam*

PART – II

NOTES ON IMPORTANT JUDGMENTS

51. CIVIL PROCEDURE CODE, 1908 – Section 10
SUCCESSION ACT, 1925 – Sections 276 and 278

(i) Stay of suit – Applicability – Whether applies to proceedings of different nature instituted under any other statute? Held, No – Further held, it applies only to a suit instituted in civil court.

(ii) Suit for title and application for probate – Scope of proceeding – Whether simultaneous pendency of these two will attract section 10 CPC? Held, No – Both are different and distinct proceedings, the parties and the reliefs claimed are also different – Application for stay of suit, held rightly rejected.

सिविल प्रक्रिया संहिता, 1908 – धारा 10
उत्तराधिकार अधिनियम, 1925 – धाराएं 276 एवं 278

(i) वाद का रोक दिया जाना – प्रयोज्यता – क्या यह किसी अन्य संविधियों के तहत संस्थित अन्य प्रकृति की कार्यवाहियों पर लागू होता है? अवधारित, नहीं – यह भी अभिनिर्धारित किया गया कि यह केवल सिविल न्यायालय में संस्थित वाद पर लागू होता है।

(ii) प्रोबेट के लिए आवेदन और स्वत्व के लिए वाद – कार्यवाही का विस्तार क्षेत्र – क्या इन दोनों का एक साथ विचाराधीन होना धारा 10 सी. पी. सी. को आकर्षित करेगा? अवधारित, नहीं – दोनों पृथक और अलग कार्यवाहियाँ हैं, पक्षकार और दावा किया गया अनुतोष भी अलग हैं – वाद को रोक दिये जाने का आवेदन, उचित रूप से निरस्त किया गया।

Gayatriraje Puar (Smt.) & ors. v. Smt. Shailjaraje Puar & ors.

Order dated 09.10.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 5626 of 2023, reported in ILR 2024 MP 277

Relevant extracts from the order:

In the case of ***National Institute of Mental Health and Neuro Sciences v. C. Parameshwara, AIR 2005 SC 242***, the Apex Court held that section 10 CPC applies to suit instituted in civil court and it cannot apply to proceedings of other nature instituted under any other statute. Apart from that, it has been held in the

cases of ***Kanwarjit Singh Dhillon v. Hardayal Singh Dhillon and ors., (2007) 11 SCC 357*** and ***Chandrashekhar Kashinath Patange v. Ramesh Kashinath Patange and ors., 2013 (3) MPLJ 669*** that scope of the suit is therefore distinct from the scope of the probate proceedings. The probate proceedings would be the entitlement of the petitioner to the probate of the Will of his father whereas the issue would be as regards the legality and validity of the Will and further, when the scope of the two proceedings are different and distinct, the suit sought to be stayed need not be stayed. Once a probate is granted by a competent court, it would become conclusive of the validity of will itself, but that cannot be decisive whether the probate Court would also decide the title of the testator in the suit properties which can only be decided by the civil court on evidence. The probate of the Will granted by the competent probate court would be admitted into evidence that may be taken into consideration by the civil court while deciding the civil suit for title but grant of probate cannot be decisive for declaration and title and injunction whether at all the testator had any title to the suit properties or not.

Apart from that, the reliefs in the suit and the proceedings and the parties are different, therefore, the court below has rightly rejected the application under section 10 CPC.

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52. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17 and Order 41 Rule 23-A SPECIFIC RELIEF ACT, 1963 – Section 22(2)

(i) Remand – Scope of – First appellate court remanded the matter on the ground that plaintiff should be given opportunity to amend the plaint in the light of section 22 (2) of the Act without giving any finding that re-trial is necessary – No application for seeking the said amendment was filed – Remand order held, improper – Until and unless re-trial is found necessary, the case cannot be remanded back.

(ii) Proviso of section 22 (2) – Applicability – Suit is for declaration of title and not for specific performance of contract – The proviso is applicable in cases of specific performance of contract – Applying it on a title suit, held illegal.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17 एवं आदेश 41 नियम 23–क विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 22(2)

(i) रिमांड – विस्तार – प्रथम अपील न्यायालय ने प्रकरण को यह निष्कर्ष दिये बिना कि पुनः विचारण आवश्यक है इस आधार पर रिमांड किया कि वादी को धारा 22(2) के आलोक में वाद में संशोधन करने का अवसर दिया जाना चाहिए – उक्त संशोधन के लिए कोई आवेदन प्रस्तुत नहीं किया गया था – रिमांड आदेश अनुचित ठहराया गया – जब तक कि पुनः विचारण आवश्यक नहीं पाया जाता है, प्रकरण को रिमांड नहीं किया जा सकता।

(ii) धारा 22(2) का परंतुक – प्रयोज्यता – वाद स्वामित्व की घोषणा के लिए था न कि संविदा के विनिर्दिष्ट पालन के लिए – यह प्रावधान संविदा के विनिर्दिष्ट पालन के वादों पर लागू होता है – इसे स्वत्व के वाद पर लागू करना, अवैध माना गया।

Nihal Singh v. Savitri Bai & ors.

Order dated 17.10.2023 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 4516 of 2019, reported in ILR 2024 MP 283

Relevant extracts from the order:

On plain reading of Section 22 of Specific Relief Act indicates that this provision is applicable for the specific performance of contract for the transfer of immovable property. In this case, suit is not filed for specific performance of contract, but is filed for declaration of title and, therefore, the learned first appellate Court has committed illegality by applying the proviso of sub-section 2 of section 22 of Specific Relief Act.

It is also apparent that impugned order of remand was passed by learned first appellate Court against the provision of Order 41 Rule 23-A of CPC.

However, in the case at hand, the learned first appellate Court has not given any finding that re-trial is necessary. Unless and until there is a finding that re-trial is necessary, the case cannot be remanded back.

The Apex Court in the case of ***Municipal Corporation, Hyderabad v. Sunder Singh, (2008) 8 SCC 485*** held in order to exercise the power of remand under Order 41 Rule 23A of CPC, there has to be a specific finding of the Court that a retrial is necessary.

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53. CIVIL PROCEDURE CODE, 1908 – Order 22 Rule 4 and Order 23 Rule 1(3) Suit instituted against dead persons – Application filed for withdrawal of suit with liberty to institute fresh suit – Trial Court rejected the application observing that filing of suit against dead persons does not fall within the category of formal defect and is a nullity since the very inception – Held, such suit shall be deemed to have been not instituted at all and substitution of legal representatives would also be not permissible – Treating it to be a formal defect, prayer for withdrawal of suit with liberty to file fresh suit should have been allowed – Order set aside, revision petition allowed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 4 एवं आदेश 23 नियम 1 (3) मृत व्यक्ति के विरूद्ध संस्थित वाद – नया वाद संस्थित करने की स्वतंत्रता के साथ वाद वापिस लिये जाने का आवेदन पेश – विचारण न्यायालय द्वारा आवेदन इस आधार पर निरस्त किया गया कि मृत व्यक्ति के विरूद्ध संस्थित वाद प्ररूपिक त्रुटि की श्रेणी में नहीं आता है एवं ऐसा वाद प्रारंभ से ही अकृत था – यह माना जायेगा कि वह संस्थित ही नहीं हुआ एवं विधिक प्रतिनिधियों का प्रतिस्थापन भी अनुमत नहीं होगा – उक्त त्रुटि को प्रारूपिक त्रुटि मानते हुए नया वाद संस्थित करने की स्वतंत्रता के साथ वाद वापिस लेने की अनुमति दी जानी चाहिए थी – आदेश अपास्त, पुनरीक्षण याचिका स्वीकार की गई।

Laxminarayan and ors. v. Jankibai and ors.

Order dated 09.10.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 591 of 2023, reported in 2024 (1) MPLJ 212

Relevant extracts from the order:

A suit instituted against a dead person believing him to be alive on the date of filing of the suit but later on being discovered that he has already expired, is a nullity since the very inception. The same shall be deemed not to have been instituted at all. Since the suit is against a dead person, substitution of legal representatives would also not be permissible under the provisions of Order 22 Rule 4 of the CPC. However, since the suit has already been filed, which is its physical aspect, a prayer for its withdrawal ought to be permitted with liberty to file a fresh suit on the same cause of action.

The judgments in the case of ***Raghuraj and ors. v. Ramprakash and ors., 2017 (2) MPLJ 158*** and ***Vinod Kumar Gupta v. Ramadevi Shivhare and anr., 2008 (2) of MPLJ 151*** were dealing with the issue of non-joinder of a necessary party to the suit and for that reason withdrawal of the suit was not permitted upon holding that non-impleadment of a necessary party is not a formal defect within the meaning of Order 23 Rule 1(3) of the CPC as the same strikes at the root of the suit. It was not held that the suit itself is a nullity. Non-impleadment of a necessary party would certainly not be a formal defect but institution of a suit against a dead person would be a formal defect as the suit itself would be a nullity. In ***Promila Bakshi and ors. v. Ashok Bhatia and ors., AIR 2007 HP 14*** withdrawal was not permitted for the reason that the entire trial in the suit had been concluded and at the fag end of the trial plaintiff had sought permission to withdraw the suit. However, in the present case the suit is at the very initial stage and the trial has not even begun. The judgments relied upon by the learned counsel for the respondents, hence do not support him in any manner.

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54. CIVIL PROCEDURE CODE, 1908 – Order 37 Rule 3(5)

Summary suit – Leave to defend – Plaintiff brought suit for recovery of money against the defendants – Defendants moved application for leave to defend on the ground that they do not know plaintiff and have never entered into any transaction with him – Defendants have shown that they have substantial defence in the matter – Held, at this stage, the court has only to determine if any triable issue is shown by the defendants – Order of trial court rejecting the application of leave to defend was set aside – Defendants granted leave to defend the matter.

सिविल प्रक्रिया संहिता, 1908 – आदेश 37 नियम 3(5)

संक्षिप्त वाद – प्रतिरक्षा के लिए अनुमति – वादी ने प्रतिवादीगण के विरूद्ध धन वसूली हेतु वाद संस्थित किया – प्रतिवादीगण ने प्रतिरक्षा की अनुमति हेतु आवेदन इस आधार पर प्रस्तुत किया कि वे वादी को नहीं जानते और उनका वादी के साथ कभी कोई संव्यवहार नहीं हुआ है – प्रतिवादीगण ने यह दर्शित किया कि मामले में उनकी प्रतिरक्षा सारवान है – अभिनिर्धारित, इस प्रक्रम पर न्यायालय को सिर्फ यह निर्धारित करना है कि क्या प्रतिवादीगण कोई विचारणीय विवाद्यक दर्शित कर रहे हैं – विचारण न्यायालय द्वारा प्रतिरक्षा की अनुमति की

अस्वीकृति संबंधी आवेदन अपास्त किया गया – प्रतिवादीगण को प्रकरण में प्रतिरक्षा प्रस्तुत करने की अनुमति प्रदान की गई।

Satish Gehlot and anr. v. Krishna Irrigation India Pvt. Ltd. Order dated 23.08.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 603 of 2023, reported in 2024 (1) MPLJ 557

Relevant extracts from the order:

It is to be considered whether the defendants have raised any triable issues in the present matter or that they have a substantial defence. The ancillary question which needs consideration is as to whether the defendants at the time of seeking leave to defend were required to substantiate and prove the plea taken by them in their application. The Supreme Court in the case of ***Santosh Kumar v. Bhai Moolsingh, AIR 1958 SC 321*** has held that the test is to see whether the defence raises a real issue and not a sham one, in the sense that, if the facts alleged by the defendants are established, there would be a good, or even a plausible, defence on those facts. The defendants should raise an issue of fact, the truth and good faith of which could be tested by going into the evidence. It has been observed that a defence which on the face of it is clear would not become vague simply because the evidence by which it is to be proved is not brought on file at the time the defence is put in. The stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether "if the facts alleged by the defendant are duly proved" they will afford a good, or even a plausible, answer to plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and once leave is granted the normal procedure of a suit so far as evidence and proof go, obtains.

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55. CONSUMER PROTECTION ACT, 1986 – Section 12

Theft of vehicle – Information to police – Vehicle was stolen on the intervening night of 29/30 July, 2013 and police was informed on 30.07.2013 – FIR was registered on 02.08.2013 – Insurance Company repudiated the claim on the ground of delay in filing FIR as well as informing insurance company about the incident of theft – Whether repudiation of claim is justified? Held, No – If police is informed

immediately about the theft but some delay is caused to submit insurance claim, it cannot be repudiated on the ground of violation of conditions of policy.

उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 12

वाहन चोरी – पुलिस को सूचना – वाहन 29–30 जुलाई 2013 की मध्यरात्रि चोरी हुआ एवं पुलिस को सूचना दिनांक 30.07.2013 को दी गई – प्रथम सूचना रिपोर्ट 02.08.2013 को दर्ज की गई – बीमा कंपनी ने प्रथम सूचना रिपोर्ट विलम्ब से दर्ज होने और बीमा कंपनी को चोरी की सूचना देने में हुए विलंब के आधार पर दावा अस्वीकार किया – क्या दावे की अस्वीकृति न्यायोचित थी ? अभिनिर्धारित, नहीं – यदि पुलिस को चोरी की सूचना तत्काल दे दी गई थी परंतु बीमा दावा प्रस्तुत करने में कुछ विलंब हुआ हो तब भी बीमा पालिसी की शर्तों के उल्लंघन के आधार पर दावे को अस्वीकार नहीं किया जा सकता ।

Trilok Singh v. Manager, Cholamandalam MS General Insurance Co. Ltd. and ors.

Judgment dated 18.07.2023 passed by the Supreme Court in Civil Appeal No. 4530 of 2023, reported in 2023 ACJ 2394 (SC)

Relevant extracts from the judgment:

It is clear that condition No. 1 is in two parts. The first part deals with occurrence of any accidental loss or damage. In that event, the insured is required to go to the company immediately for such loss or damage by the insured and furnish all such information and assistance to the company as required. The intention thereof is that the company must immediately have the knowledge of any impending prosecution, inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. The second part of condition No. 1 deals with the situation where in case of theft or criminal act, if any, which is the subject matter of the claim under the policy, the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender. Condition No. 9 is general condition regarding due observance and fulfillment of the terms of the policy in case of liability of the company to make any payment under the policy.

In the facts of the present case, it is not in dispute that during the period of insurance cover, the theft took place on the intervening night of 29-30.07.2013 of which, as per the findings recorded by the District Forum and the State Commission

which are affirmed by the NCDRC, intimation was given by the appellant on 30.07.2013 but police registered FIR on 02.08.2013. The final report was submitted by the police on 18.12.2013 by which the recovery of the vehicle was not found possible. Even after such final report, the claim submitted by the petitioner on 09.09.2013 was repudiated on 10.02.2014 on the ground of violation of the condition Nos. 1 and 9.

In view of the judgment of ***Gurshinder Singh v. Shriram General Insurance Co. Ltd., (2020) 11 SCC 612***, our analysis to condition no. 1 fortifies the necessity of immediate action to the police in case of the theft of the vehicle. If immediately, action is taken informing the police and some delay is caused to submit the insurance claim, it cannot be repudiated on the ground of belated information to insurance company indicating violation of condition no. 1 of the policy. In our view, the District Forum has rightly appreciated the issue and held that repudiation of claim was not justified. The NCDRC and the State Commission committed an error to set-aside the order of the District Forum. The NCDRC was also not justified in confirming the order of the State Commission and wrongly applied the ratio of the judgment of the ***Om Prakash v. Reliance General Insurance, (2017) 9 SCC 724*** without due appreciation of the second part of the condition no. 1 which applies in the case of theft.

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***56. CRIMINAL PROCEDURE CODE, 1973 – Sections 91 and 202**
NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 20
Power to summon a document – Court is empowered to call any document u/s 91 of the Code which is necessary for fair proceeding in the case – Court can issue summons to the person in whose possession the desired documents are kept – Power is discretionary in nature and should be exercised judiciously and properly.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 91 एवं 202
परक्राम्य लिखत अधिनियम, 1881 – धारा 20
दस्तावेज को आहूत करने की शक्ति – न्यायालय को संहिता की धारा 91 के अंतर्गत यह अधिकारिता है कि वह कोई भी दस्तावेज आहूत कर सकता है जो कि प्रकरण की निष्पक्ष कार्यवाही के लिए आवश्यक है – न्यायालय उस व्यक्ति को समन जारी कर सकता है जिसके आधिपत्य में वांछित दस्तावेज रखे हैं

– यह शक्ति वैवेकिक प्रकृति की है एवं इसे न्यायसम्मत रूप से तथा उचित रूप से प्रयोग किया जाना चाहिए।

Sanjay Kumar v. Vasudev & anr.

Order dated 23.06.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 37462 of 2022, reported in ILR 2023 MP 1948

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57. CRIMINAL PROCEDURE CODE, 1973 – Sections 167(2) and 173(2) & (8) Default bail – When such right is not available? Charge sheet was filed against the accused – Further investigation is pending as regards other accused or for production of some documents not available at the time of filing of charge sheet – On the ground of incomplete charge sheet or investigation pending for other accused would not entitle accused to claim right to get default bail.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 167(2) एवं 173(2) और (8) व्यतिक्रम जमानत – कब ऐसा अधिकार उपलब्ध नहीं होता ? अभियुक्त के विरूद्ध अभियोग पत्र प्रस्तुत किया गया – अन्य अभियुक्त के संबंध में अग्रिम जांच लंबित या अभियोग पत्र प्रस्तुत करते समय जो दस्तावेज पेश नही थे उन्हें पेश करना शेष है – अपूर्ण अभियोग पत्र या अन्य अभियुक्तों के लिए जांच लंबित होने के आधार पर, अभियुक्त को व्यक्तिक्रम जमानत प्राप्त करने का अधिकार नहीं।

Central Bureau of Investigation v. Kapil Wadhawan and anr.

Judgment dated 24.01.2024 passed by the Supreme Court in Criminal Appeal No. 391 of 2024, reported in 2024 CriLJ 1082

Relevant extracts from the judgment:

The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a charge-sheet is not filed and the investigation is kept pending against him. Once however, a charge-sheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are

not filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the charge-sheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation *qua* the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2) of Cr. P. C.

In view of the afore-stated legal position, we have no hesitation in holding that the charge-sheet having been filed against the respondents-accused within the prescribed time limit and the cognizance having been taken by the Special Court of the offences allegedly committed by them, the respondents could not have claimed the statutory right of default bail under Section 167(2) on the ground that the investigation qua other accused was pending. Both, the Special Court as well as the High Court having committed serious error of law in disregarding the legal position enunciated and settled by this Court, the impugned orders deserve to be set aside and are accordingly set aside.

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58. CRIMINAL PROCEDURE CODE, 1973 – Section 173 (8) r/w/s 158
Further investigation and re-investigation – Scope – Investigating officer has a right to further investigate in respect of an offence, even after filing of final report under sub-section (2) of Section 173 of CrPC without prior permission/approval of Magistrate – However, so far as re-investigation is concerned, prior permission/ approval of the Magistrate is required – Order passed by the Home Secretary without taking prior permission/ approval for further investigation by CBCID and all resultant proceedings are quashed and set aside.

दण्ड प्रक्रिया संहिता, 1973 – धारा 173 (8) सहपठित धारा 158
अतिरिक्त अन्वेषण एवं पुनः अन्वेषण – विस्तार – धारा 173 की उपधारा (2) के अंतर्गत अंतिम प्रतिवेदन प्रस्तुत कर देने के उपरांत भी अन्वेषण अधिकारी को

मजिस्ट्रेट की पूर्व अनुमति/अनुमोदन के बिना अपराध के संबंध में अतिरिक्त अन्वेषण का अधिकार होता है – किन्तु जहाँ तक पुनः अन्वेषण का संबंध है, मजिस्ट्रेट की पूर्व अनुमति/अनुमोदन आवश्यक है – गृह सचिव द्वारा बिना पूर्व अनुमति/अनुमोदन, सी.बी.सी.आई.डी. से अतिरिक्त अन्वेषण कराने के संबंध में पारित आदेश एवं परिणामस्वरूप हुई समस्त कार्यवाहियाँ अपास्त एवं निरस्त की गईं।

Bohatie Devi (Dead) through LR v. The State of Uttar Pradesh and ors.

Judgment dated 28.04.2023 passed by the Supreme Court in Criminal Appeal No. 1294 of 2023, reported in 2023 (3) Crimes 98 (SC)

Relevant extracts from the judgment:

There cannot be any dispute that even after the charge-sheet is filed, it is the right of the investigating officer to further investigate in respect of offence even after a report under sub-section (2) of Section 173 of Cr.PC forwarded to a Magistrate and as observed and held by this Court the prior approval of the Magistrate is not required. However, as per the settled position of law, so far as the reinvestigation is concerned, the prior permission/approval of the Magistrate is required.

Now, so far as the submission on behalf of the accused relying upon Section 173(3) of CrPC is concerned, it provides how to submit/send a report to the Magistrate and who shall send the report to the Magistrate. It provides that where a superior officer of police has been appointed under Section 158, the report, shall be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation. Therefore, Section 173(3) read with Section 158 does not permit the Secretary (Home) to order for further investigation/reinvestigation by another agency, other than the officer in charge of the concerned Police Station and/or his superior officer.

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59. CRIMINAL PROCEDURE CODE, 1973 – Sections 190, 202 and 203

(i) Dismissal of first complaint – Maintainability of subsequent complaint – Order of dismissal u/s 203 of CrPC is no bar to entertain second complaint on the same facts, but it can be done only in exceptional circumstances.

(ii) Summoning of accused – Nature of order – Duty of Magistrate – Summoning of an accused is a serious matter – Magistrate is obliged to scrutinize carefully the allegations made with a view to prevent an innocent person from being called upon to face any frivolous complaint – One of the objects of section 202 CrPC is also to enable the Magistrate to prosecute a person against whom grave allegations are made – Just as it is necessary to curtail vexatious and frivolous complaints against innocent persons, it is equally essential to punish the guilty.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 190, 202 एवं 203

(i) प्रथम परिवाद का खारिज होना – पश्चात्वर्ती परिवाद की प्रचलनशीलता – धारा 203 दण्ड प्रक्रिया संहिता के अधीन परिवाद खारिज किये जाने पर उन्हीं तथ्यों पर दूसरे परिवाद पर विचार करने में कोई बाधा नहीं है, किंतु यह केवल अपवाद स्वरूप परिस्थितियों में ही किया जा सकता है।

(ii) अभियुक्त को समंस जारी किया जाना – आदेश की प्रकृति – मजिस्ट्रेट का कर्तव्य – अभियुक्त को समंस जारी किया जाना एक गंभीर विषय है – मजिस्ट्रेट लगाए गए आक्षेपों का सतर्कतापूर्वक परीक्षण करने हेतु आबद्ध है, जिससे एक निर्दोष व्यक्ति को किसी मिथ्या परिवाद का सामना करने के लिए आहूत किए जाने से निवारित किया जा सके – धारा 202 दण्ड प्रक्रिया संहिता का एक उद्देश्य यह भी है कि मजिस्ट्रेट को उस व्यक्ति का अभियोजन करने हेतु सक्षम किया जा सके, जिसके विरूद्ध गंभीर आक्षेप हैं – जिस प्रकार निर्दोष व्यक्तियों के विरूद्ध तंग करने वाले एवं तुच्छ परिवाद पर रोक लगाया जाना आवश्यक है, उसी प्रकार दोषी को दण्डित किया जाना भी आवश्यक है।

Cardinal Mar George Alencherry v. State of Kerala and anr.

Judgment dated 17.03.2023 passed by the Supreme Court in Criminal Appeal No. 836 of 2023, reported in 2023 (3) Crimes 62 (SC)

Relevant extracts from the judgment:

It is true that the respondent no. 2, in the instant complaints, should have disclosed the full and correct facts more particularly with regard to the previous complaint filed by him against the appellant and other accused in respect of the alleged fraudulent sale of the properties belonging to Archdiocese, mere non-disclosure of such facts, would not be a ground to set aside the summons issued by

the Trial Court after applying its mind and having been prima facie satisfied about the commission of the alleged offences.

In case of ***Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876*** it was held with regard to filing of the second complaint that a fresh complaint could be entertained after the dismissal of previous complaint under Section 203 of the Criminal Procedure Code when there was manifest error or manifest miscarriage of justice or when fresh evidence was forthcoming. It was further held that an order of dismissal under Section 203 of the Criminal Procedure Code is no bar to the entertainment of a second complaint on the same facts, but it will be entertained only in exceptional circumstances, e.g. that the previous order was passed on an incomplete record or on a misunderstanding of nature of complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings have been adduced.

No doubt, summoning of an accused is a serious matter and therefore the Magistrate before issuing the summons to the accused is obliged to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face any frivolous complaint, nonetheless one of the objects of Section 202 Cr.P.C. is also to enable the Magistrate to prosecute a person or persons against whom grave allegations are made. Just as it is necessary to curtail vexatious and frivolous complaints against innocent persons, it is equally essential to punish the guilty after conducting a fair trial.

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60. CRIMINAL PROCEDURE CODE, 1973 – Section 389(1)
Suspension of conviction – Parameters to be considered, summarized – Further held, granting stay of conviction or suspension should not be a rule but an exception and should be accepted in rare cases – Question of relevance of "moral turpitude" in such matters also explained.

दण्ड प्रक्रिया संहिता, 1973 – धारा 389(1)
दोषसिद्धि का निलंबन – विचार में लिए जाने योग्य मापदंड, सारांशित – यह भी अवधारित कि दोषसिद्धि का स्थगन या निलंबन एक नियम नहीं अपितु अपवाद

होना चाहिए और दुर्लभ मामलों में ही इसे स्वीकार किया जाना चाहिए – ऐसे मामलों में ''नैतिक पतन'' के प्रश्न की प्रासंगिकता को भी समझाया गया।

Afjal Ansari v. State of Uttar Pradesh

Judgment dated 14.12.2023 passed by the Supreme Court in Criminal Appeal No 3838 of 2023, reported in (2024) 2 SCC 187 (Three Judge Bench)

Relevant extracts from the judgment:

This Court has undertaken a comprehensive examination of this issue on multiple occasions, laying down the broad parameters to be appraised for the suspension of a conviction under Section 389(1) of the CrPC. There is no gainsaying that in order to suspend the conviction of an individual, the primary factors that are to be looked into, would be the peculiar facts and circumstances of that specific case, where the failure to stay such a conviction would lead to injustice or irreversible consequences. [***Ravikant S. Patil v. Sarvabhouma S. Bagali, (2007)1 SCC 673***] The very notion of irreversible consequences is centered on factors, including the individual's criminal antecedents, the gravity of the offence, and its wider social impact, while simultaneously considering the facts and circumstances of the case.

This Court has on several occasions opined that there is no reason to interpret Section 389(1) of the CrPC in a narrow manner, in the context of a stay on an order of conviction, when there are irreversible consequences. Undoubtedly, ***Ravikant Patil*** (supra) holds that an order granting a stay of conviction should not be the rule but an exception and should be resorted to in rare cases depending upon the facts of a case. However, where conviction, if allowed to operate would lead to irreparable damage and where the convict cannot be compensated in any monetary terms or otherwise, if he is acquitted later on, that by itself carves out an exceptional situation. Having applied the specific criteria outlined hereinabove to the present factual matrix, it is our considered view that the Appellant's case warrants an order of stay on his award of conviction, though partially.

In this context, it is crucial that we also address the final issue which is before us for consideration, i.e., the question of relevance of 'moral turpitude' in the present circumstances. While contemplating to invoke the concept of 'moral turpitude' as a decisive factor in granting or withholding the suspension of

conviction for an individual, there is a resounding imperative to address the issue of depoliticising criminality. There has been increasing clamour to decriminalise polity and hold elected representatives accountable for their criminal antecedents. It is a hard truth that persons with a criminal background are potential threats to the very idea of democracy, since they often resort to criminal means to succeed in elections and other ventures. In the present context too, substantial doubt has been cast upon the Appellant's criminal antecedents along with the veracity and threat posed by these claims, in light of the many FIRs that have been produced in these proceedings.

While this concern is undeniably pertinent, it remains the duty of the courts to interpret the law in its current form. Although 'moral turpitude' may carry relevance within the context of elected representatives, the courts are bound to construe the law in its extant state and confine their deliberations to those facets explicitly outlined, rather than delving into considerations pertaining to the moral rectitude or ethical character of actions. This is especially true when it is solely motivated by the convicted individual's status as a political representative, with the aim of disqualification pursuant to the RPA.

Having said so, we hasten to hold that societal interest is an equally important factor which ought to be zealously protected and preserved by the Courts. The literal construction of a provision such as Section 389(1) of the CrPC may be beneficial to a convict but not at the cost of legitimate public aspirations. It would thus be appropriate for the Courts to balance the interests of protecting the integrity of the electoral process on one hand, while also ensuring that constituents are not bereft of their right to be represented, merely consequent to a threshold opinion, which is open to further judicial scrutiny.

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61. CRIMINAL PROCEDURE CODE, 1973 – Section 397
PREVENTION OF MONEY LAUNDERING ACT, 2003 – Sections 8(8), 65 and 71
PREVENTION OF MONEY LAUNDERING (RESTORATION OF PROPERTY) RULES, 2016 – Rules 2(b), 3 and 3A

(i) Revision – Maintainability – Order of Trial Court can be challenged in revision on the ground of violation of law or not following the prescribed procedure or lack of jurisdiction of the Court – Handing

over custody of property provisionally attached under the PMLA would be considered as final order – Revision is maintainable.

(ii) Release of property – In lieu of fixed deposit – Attached property of the claimant can be restored only when the requirement as contained in proviso to Section 8(8) of the Act is satisfied and procedure prescribed in Rule 3 and 3A of the Rules is followed – Accused cannot be treated as 'claimant' as defined in Rule 2(b) of the Rules – Order releasing property in favour of accused set aside.

दण्ड प्रक्रिया संहिता, 1973 – धारा 397

धन शोधन निवारण अधिनियम, 2003 – धाराएं 8(8), 65 एवं 71

धन शोधन निवारण (संपत्ति का पुनःस्थापन) नियम, 2016 – नियम 2(ख), 3 एवं 3क

(i) पुनरीक्षण – पोषणीयता – विचारण न्यायालय के आदेश को पुनरीक्षण में विधि के उल्लंघन, उचित प्रक्रिया का पालन न किया जाना अथवा न्यायालय की क्षेत्राधिकारिता के अभाव के आधारों पर चुनौती दी जा सकती है – धन शोधन निवारण अधिनियम के अंतर्गत अनंतिम रूप से जब्त की गई संपत्ति की अभिरक्षा सौंपने को अंतिम आदेश की तरह माना जाएगा– पुनरीक्षण पोषणीय।

(ii) संपत्ति का मुक्त किया जाना – सावधि जमा के एवज में – दावाकर्ता की कुर्क की गई संपत्ति केवल तभी वापस की जा सकती है जब अधिनियम की धारा 8(8) के परंतुक में निहित आवश्यकताएं पूर्ण हों और नियमों के नियम 3 और 3क में निर्धारित प्रक्रिया का पालन किया जाए – अभियुक्त को दावेदार के रूप में नहीं माना जा सकता जैसा कि नियमों के नियम 2(ख) में वर्णित है – अभियुक्त के पक्ष में संपत्ति संदाय करने का आदेश अपास्त ।

Directorate of Enforcement v. Vinod Bhandari and ors.

Judgment dated 07.11.2023 passed by High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 3394 of 2023, reported in 2024 CriLJ 250

Relevant extracts from the judgment:

Having gone through the principles laid down by Hon'ble Apex Court and also High Court in ***Aruni Sahgal v. State of M.P.,*** (Criminal Revision No. 2179/2020, High Court of M.P., Seat at Jabalpur)***, Shyam Tiwari v. State of M.P., 2021 SC OnLine MP 2671, Manish v. State of Madhya Pradesh, 2023 SC OnLine***

MP 909, Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401, K. Basha v. State, MANU/TN/0211/2012, Central Bank of India v. Directorate of Enforcement and ors. passed on 06.09.2016 in Criminal Revision No. 947/2014 and ***Girish Kumar Sunej v. C.B.I.*** passed on 13.07.2017 in Criminal Appeal No. 1137/2017, it emerges that if the order is finally deciding the rights and liabilities of the parties, even, in an interim stage, it will be treated as final order and revision against that order lies. In this case, the petitioner has also challenged the order on the basis of violation of PMLA, 2002 and also passing the order without jurisdiction. On this aspect, I want to quote the view of Hon'ble Constitutional Bench of Apex Court taken in ***Mohanlal Maganlal Thakre v. State of Gujarat, AIR 1968 SC 733***. In the para 6 of the judgment, Hon'ble Apex Court endorsing another judgment held as under :-

> "6 The decision in ***Ramesh v. Patni, (1966) 3 SCR 198*** would seem to throw light on these questions. There the Claims Officer under the Madhya Pradesh Abolition of Proprietory Rights Act, 1950 held in an application by the appellants that a debt due by them to the respondents was a secured debt though the respondents had obtained a decree therefore. He, accordingly, called upon the respondents to file their statement of claim as required by the Act. The respondents filed the statement, but the officer held that it was out of time and discharged the debt. In appeal the Commissioner held that though the Claims Officer had jurisdiction, he could not discharge the debt as action under S. 22(1) of the, Act had not been taken. The appellants thereupon filed Art. 226 petition alleging that the Commissioner had no jurisdiction to entertain or try the appeal. The High Court dismissed the petition summarily. The contention was that the High Court's order was not a final order be-cause it did not decide the controversy between the parties and did not of its own force affect the rights of the parties or put an end to the controversy. This court observed:
>
> (1) that the word 'proceeding' in Art. 133 was a word of a very wide import,
>
> (2) that the contention that the order was not final because it did not conclude the dispute between the parties would have had force if it was passed in the exercise of the appellate or revisional jurisdiction of the High Court, as an order of the High Court if passed in an appeal or revision would not be final if the suit or proceeding from which there was such an

appeal or revision remained still alive after the High Court's order,

(3) but a petition under Art. 226 was a proceeding independent of the original controversy between the parties;

the question therein would be whether a proceeding before a Tribunal or an authority or a court should be quashed on the ground of want of jurisdiction or on other well recognised grounds and that the decision in such a petition, whether interfering or declining to interfere, was a final decision so far as the petition was concerned and the finality of such an order could not be judged by co-relating it with the original controversy between the parties. The court, however, observed that all such orders would not always be final and that in each case it would have to be ascertained what had the High Court decided and what was the effect of the order. If, for instance, the jurisdiction of the inferior tribunal was challenged and the High Court either upheld it or did not, its order would be final."

In view of the aforesaid verdict, it is crystal clear that if the jurisdiction is challenged, the order will be considered as final. On this aspect, the law laid down in the judgment of ***Praveen Kumar v. State of Himachal Pradesh, 1989 CriLJ 2537 (HP)***, is also pertinent to mention here. The relevant para 8 of the judgment is mentioned below :-

"8. An application under Section 451 Cr.P.C. has to be decided by the Court after hearing the parties seeking the release of the property in question. The parties are allowed to adduce evidence and it is only after hearing them that the Court passes the order thereby giving the custody of the property to one of them who may be adjudged by the Court to be best entitled for the same. To say that such an order is revisable by the Court on the termination of the proceedings or in between is no reason to call the order interlocutory order. Till such an order is made, it is final between the parties and the Magistrate cannot arbitrarily or without proper justification change the same during the course of the proceedings. The argument of the petitioner that such an order becomes final on the termination of the proceedings cannot be accepted because even that order is subject to determination by a Civil court. Therefore, in the light of the decision of the Supreme Court in ***Madhu Limaye v. State of Maharashtra, 1978 Cri LJ 165***, it can be held that this kind of order

> is final between the parties deciding their entitlement to the property in question finally at that stage. Therefore, such an order is necessarily subject to revision by the Court and revision against the same is competent before a Court of Session. The view which I have taken has a support from ***Bharat Heavy Electricals Ltd. v. State, 1981 CriLJ 1529 (AP)*** and ***Ishar Singh v. The State of Punjab, 1974 CriLJ 231***. The argument of Sh. S. S. Kanwar on this count, therefore, fails and is rejected."

On going through the aforesaid analysis in entirety, it is explicitly evident that the order passed by the Courts regarding handing over the custody of property would be considered as final order since they are finally adjudging the possession of the property. However, when the order is challenged on the basis of violation of law, without applying proper procedure and passed without jurisdiction, the revision certainly lies. Accordingly, the contention of respondents regarding non-maintainability of this revision deserves to be and is dismissed.

The aforesaid observation frescoes that the order for provisional attachment was passed by Directorate of Enforcement, but it was not passed by the Special Judge. Certainly, Hon'ble Apex Court, in order to secure the justice, directed that in case the petitioner furnishing the fixed deposit, the provisional attachment shall be lifted. However, the impugned order was passed by Special Judge, hence, no benefit can be afforded to the respondents by the aforesaid verdict.

In view of the proviso of section 8(8) of PMLA Act, 2002, the question arises that who is a 'claimant' and what is 'such manner as may be prescribed'. On this aspect, the Prevention of Money-Laundering (Restoration of Property) Rules, 2016 (hereinafter referred to as 'PMLA Rule, 2016') is required to be perused. In this rule, the claimant is defined as under :-

> 2(b) "claimant" means a person who has acted in good faith and has suffered a quantifiable loss as a result of the offence of Money-Laundering despite having taken all reasonable precautions, and is not involved in the offence of money laundering;

It is nowhere mentioned that the applicants can be treated as claimants defined in the rules. One applicant is Dr. Vinod Bhandari, who is accused in the concerned criminal case and others applicants are his relatives. Then, at this stage, it cannot be presumed that they have acted in good faith and have suffered a quantifiable loss as a result of the offence of Money-laundering despite having taken all reasonable

precautions. Since, Dr. Vinod Bhandari himself is an accused, he cannot be treated as 'claimant' in view of the aforesaid definition enshrined under Rule 2(b) of PMLA Rules, 2016. The respondents at this stage also cannot satisfy the first proviso of Section 8(8) of PMLA, 2002.

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62. CRIMINAL PROCEDURE CODE, 1973 – Sections 438 and 439 (2)

(i) Anticipatory bail – Grant of – Factors required to be taken into consideration – Court must maintain balance between individual rights and public interest on one hand and right to liberty with presumption of innocence on the other, after considering gravity of offence, its impact on society and need for a fair and free investigation.

(ii) Anticipatory bail – Cancellation of – Cancellation of bail should be done only for substantial and compelling reasons – Where the facts and circumstances for custodial interrogation is imperative to unearth the truth, anticipatory bail should not be granted – Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting truth ineffective.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 438 एवं 439 (2)

(i) अग्रिम जमानत – प्रदान किया जाना – कारक जिनका विचार में लिया जाना आवश्यक है – न्यायालय को अपराध की गंभीरता, समाज पर पड़ने वाले उसके प्रभाव तथा निष्पक्ष एवं स्वतंत्र अन्वेषण की आवश्यकता पर विचार करते हुए एक तरफ वैयक्तिक अधिकार एवं लोकहित तथा दूसरी तरफ निर्दोषिता की उपधारणा सहित स्वतत्रंता के अधिकार के मध्य संतुलन बनाए रखना चाहिए।

(ii) अग्रिम जमानत – निरस्त किया जाना – जमानत का निरस्तीकरण केवल पर्याप्त एवं बाध्यकारी कारण के लिए ही किया जाना चाहिए – जहाँ तथ्य एवं परिस्थितियों में सत्य को ज्ञात करने के लिए अभिरक्षा में पूछताछ आवश्यक हो, अग्रिम जमानत प्रदान नहीं की जाना चाहिए – गिरफ्तारी – पूर्व जमानत की सुरक्षा के साथ अन्वेषण में सम्मिलित होने से सत्य को ज्ञात करने की कार्यवाही प्रभावहीन हो जाएगी।

Pratibha Manchanda and anr. v. State of Haryana and anr.

Judgment dated 07.07.2023 passed by the Supreme Court in Criminal Appeal No. 1793 of 2023, reported in (2023) 8 SCC 181

Relevant extracts from the judgment:

The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.

It is inarguable that the cancellation of bail should be done only for substantial and compelling reasons, however, setting aside an erroneous bail order is altogether different from cancelling bail. This Court does not intend to interfere with the judicial discretion exercised by the High Court in granting bail to an accused as a standard practice. However, it is essential to ensure that all the material facts are brought on record and thereafter only the discretionary jurisdiction is exercised in accordance with the fundamental principles of anticipatory bail laid down in various decisions over time by this Court.

The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No. 2 and his co-accused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent No. 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case.

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63. CRIMINAL PROCEDURE CODE, 1973 – Sections 451 and 457
EXCISE ACT, 1915 (M.P.) – Sections 47-A(3)(a) and 47-D
Interim custody – Vehicle of petitioner was allegedly seized for carrying 725.76 litre of foreign liquor without any permit – Petitioner filed an application before the Magistrate court for interim custody of the vehicle

– Trial court sought information from District Magistrate regarding initiation of confiscation proceedings – It was informed by the Collector that confiscation proceeding has been initiated – Trial court rejected the application – Held, on the date of application, no intimation was received by the court regarding initiation of proceedings for confiscation – As bar u/s 47-D would not attract, the vehicle was liable to be released.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 451 एवं 457
आबकारी अधिनियम, 1915 (म.प्र.) – धाराएं 47-क(3)(क) एवं 47-घ
अंतरिम अभिरक्षा – याचिकाकर्ता का वाहन बिना परमिट के 725.76 लीटर विदेशी मदिरा का परिवहन करने के कारण जब्त हो गया – याचिकाकर्ता ने मजिस्ट्रेट न्यायालय के समक्ष वाहन की अंतरिम सुपुर्दगी हेतु आवेदन प्रस्तुत किया – विचारण न्यायालय ने जिला मजिस्ट्रेट से राजसात कार्यवाही के आरंभ होने के संबंध में जानकारी माँगी – जिला मजिस्ट्रेट द्वारा यह जानकारी दी गई कि राजसात की कार्यवाही आरंभ हो गई है – विचारण न्यायलय ने आवेदन निरस्त कर दिया – अभिनिर्धारित, आवेदन प्रस्तुति दिनांक को राजसात की कार्यवाही आरंभ होने संबंधी कोई सूचना न्यायालय को प्राप्त नहीं हुई थी – अतः धारा 47–घ का वर्जन आकर्षित नहीं होता है एवं वाहन मुक्त किये जाने योग्य था ।

Karan Singh v. State of M.P. & anr.

Order dated 09.05.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 14200 of 2023, reported in ILR 2023 MP 1906

Relevant extracts from the order:

On bare reading of Section 47(D) of the Act, it is apparent that if the Criminal Court has been given intimation as per provision under section 47(A) (3)(a) of the Act about initiation of confiscation proceedings by the Collector regarding confiscation then the criminal court is ceased of the matter and has no jurisdiction to pass any order for interim custody of vehicle as held by this Court in the order dated 03.01.2003 passed in the case of ***Suresh R. Dave v. State of Madhya Pradesh, 2003 (1)MPHT 439*** and ***Pratik Parik v. State of Madhya Pradesh, 2010 (1) MPLJ (Cri) 205.***

Upon hearing counsel for the parties, at the outset, it is expedient to observe that if law requires a particular act to be done in a particular manner, it can be done in the same manner and not otherwise. Conjoint reading of Section 47-A and 47-D

of the Act suggests that jurisdiction of the Court is barred, if intimation of initiation of confiscation proceedings of seized property is received under clause (a) of sub-section (3) of Section 47-A of the Act.

In the facts of the present case, it is evident that the application for interim custody of the vehicle was moved on 25.01.2023 and the matter was heard on 28.01.2023. Thereafter, the Court sought information from the Collector regarding initiation of proceedings for confiscation. In turn, on 02.02.2023 intimation was sent by the Collector to the Court regarding initiation of confiscation proceedings. Thus, on the date of the application, there was no intimation received by the Court from the Collector, Rajgarh regarding initiation of proceedings for confiscation and, therefore, the bar under Section 47(D) of the Act would not attract.

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64. EVIDENCE ACT, 1872 – Sections 3 and 32
APPRECIATION OF EVIDENCE:

(i) Criminal trial – Practice and procedure – Oral dying declaration – Proof of – Prosecution has to prove that the deceased was in a fit state of mind and was in a position to make oral dying declaration to the witness or doctor.

(ii) "Interested witness" and "related witness" – Meaning – "Interested witness" is one who has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons and has a strong motive to falsely implicate him – A witness closely related to the deceased in known as "related witness" – Their credibility and trustworthiness – Law explained.

(iii) Un-exhibited document of prosecution – Whether it can be used? Held, if such document is in favour of the accused, then it can be read in his favour but such document cannot be read against the accused.

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 32
साक्ष्य का मूल्यांकनः

(i) आपराधिक विचारण – पद्धति और प्रक्रिया – मौखिक मृत्यु कालिक कथन – प्रमाण – अभियोजन को यह साबित करना होता है कि मृतक स्वस्थ मानसिक अवस्था में था और साक्षी या चिकित्सक के समक्ष मौखिक मृत्यु कालिक कथन देने की स्थिति में था।

(ii) ''हितबद्ध साक्षी'' और ''संबंधित साक्षी'' – अर्थ – ''हितबद्ध साक्षी'' वह है जिसकी आरोपी को पूर्व शत्रुता या अन्य कारणों से दंडित होते देखने में प्रत्यक्ष या अप्रत्यक्ष रुचि है और जिसका प्रबल हेतुक उसे मिथ्या आलिप्त करने में है – जबकि मृतक से निकट संबंध रखने वाले साक्षी को ''संबंधित साक्षी'' के रूप में जाना जाता है – उनकी विश्वसनीयता तथा साख – विधि समझाई गई।

(iii) अभियोजन पक्ष का अप्रदर्शित दस्तावेज – क्या इसका उपयोग किया जा सकता है? अभिनिर्धारित, यदि ऐसा दस्तावेज अभियुक्त के पक्ष में है, तो इसे उसके पक्ष में पढ़ा जा सकता है, लेकिन ऐसे दस्तावेज को अभियुक्त के विरूद्ध नहीं पढ़ा जा सकता है।

Hari Narayan v. State of Madhya Pradesh

Judgment dated 17.01.2024 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 2446 of 2005, reported in 2024 CriLJ 871

Relevant extracts from the judgment:

In a case of burning, where prosecution case was mainly based on oral dying declaration made by the deceased, the mental condition of the deceased at the time of making such oral dying declaration assumes importance.

It is well established principle of law that if an un-exhibited document of prosecution is in favour of the accused, then it can be read in his favour but an un-exhibited document of prosecution cannot be read against the accused. Although the photocopies of bed head ticket of the deceased are available on record as un-exhibited documents, but unfortunately, this Court cannot look into the same.

Evidence of a "related witness" cannot be discarded only on the ground of relationship. On the contrary, why a "related witness" would spare the real culprit in order to falsely implicate some innocent person? There is a difference between "related witness" and "interested witness". "Interested witness" is a witness who is vitally interested in conviction of a person due to previous enmity.

If a witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and has a strong motive to falsely implicate the accused, then he would be called an "interested witness".

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65. EVIDENCE ACT, 1872 – Section 63

Photocopy of document (Will) – When can be admitted as secondary evidence? Mere averment that original document is lost, would not be sufficient – First of all, it is required to be shown that the copies are made from mechanical process and also that they are compared with the original – This requirement is *sine qua non* for a document to be produced as secondary evidence.

साक्ष्य अधिनियम, 1872 – धारा 63

दस्तावेज (वसीयत) की छायाप्रति – द्वितीयक साक्ष्य के रूप में कब ग्राह्य होगी? मात्र यह अभिकथन करना की मूल दस्तावेज गुम हो गया है, पर्याप्त नहीं है – सर्वप्रथम यह दर्शाना आवश्यक है कि प्रतिलिपियॉ यांत्रिक प्रक्रिया से तैयार की गई हैं और उनका मूल से मिलान किया गया है – द्वितीयक साक्ष्य के रूप में प्रस्तुत किये जाने वाले दस्तावेज के लिए यह अपेक्षा अपरिहार्य शर्त है।

Narendra Kumar v. Deepchand and ors.

Order dated 06.09.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellanous Petition No. 1971 of 2022, reported in 2024 (1) MPLJ 173

Relevant extracts from the order:

On perusal of the decision of ***Gwalior Development Authority v. Dushyant Sharma and ors., 2013 (3) MPLJ 172,*** it clearly reveals that when it comes to copying the original documents, the copies must be made by original from mechanical process, and copies are compared with original and cases in which secondary evidence relating to documents must be given which also reveals that original has been destroyed or lost or cannot be produced in the reasonable time. Thus, before a document can be produced in the Court, first of all it is required to be shown that the copies are made from mechanical process, and also that they are compared with the original. Thus, this requirement is *sine qua non* for a document to be produced in secondary evidence, and merely pleading that the original document is lost would not suffice.

So far as the decision rendered by the Hon'ble Apex Court in the case of ***Rakesh Mohindra v. Anita Beri and ors., 2015 MPLJ Online (SC) 51*** is concerned, on which the respondent has relied upon, in that case the petitioner was able to comply with the provisions of Section 65, i.e., the original document stands

misplaced, and the photo copy of the document was also produced from the custody of D.E.O., Ambala, and the Apex Court has held that it is the compliance of Section 65 of the Evidence Act, whereas in the present case the photo copy of the Will has been produced from the possession of the defendant itself who is a private person. Thus, this decision is of no avail to the defendants.

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66. EVIDENCE ACT, 1872 – Section 68
SUCCESSION ACT, 1925 – Section 63
Will – Validity and execution – Proof of – The requirements enshrined u/s 63 of the Succession Act have to be categorically complied with for the execution of the Will to be proven in terms of section 68 of the Evidence Act – In short, Civil Court must ascertain that: (i) testator signed the Will out of his own free will; (ii) at the time of execution, he was in sound state of mind; (iii) was aware of nature and effect thereof; and (iv) Will was not executed under any suspicious circumstances.

साक्ष्य अधिनियम, 1872 – धारा 68
उत्तराधिकार अधिनियम, 1925 – धारा 63
वसीयत – विधिमान्यता एवं निष्पादन – प्रमाणन – धारा 68 साक्ष्य अधिनियम के अनुसार वसीयत का निष्पादन प्रमाणित करने हेतु धारा 63 उत्तराधिकार अधिनियम में निर्दिष्ट आवश्यकताओं की स्पष्टतः पूर्ति किया जाना होगा – संक्षिप्त में, न्यायालय को यह अवश्य सुनिश्चित करना होगा कि (i) वसीयतकर्त्ता ने स्वतंत्र इच्छा से वसीयत पर हस्ताक्षर किए; (ii) निष्पादन के समय वह स्वस्थ मनःस्थिति में था; (iii) उसकी प्रकृति एवं प्रभाव से अवगत था; एवं (iv) वसीयत किसी संदिग्ध परिस्थितियों मे निष्पादित नहीं हुई थी।

Meena Pradhan and ors. v. Kamla Pradhan and anr.

Judgment dated 21.09.2023 passed by the Supreme Court in Civil Appeal No. 3351 of 2014, reported in (2023) 9 SCC 734

Relevant extracts from the judgment:

A bare reading of the abovementioned provisions would show that the requirements enshrined under Section 63 of the Succession Act have to be categorially complied with for the execution of the Will to be proven in terms of Section 68 of the Evidence Act.

A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

Relying on ***H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC Online SC 31 (three-Judge Bench), Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 (three-Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91 (two-Judge Bench), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 (three-Judge Bench)*** and ***Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (three-Judge Bench)***, we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind [***Shivkumar*** (*supra*)]'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances.

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67. EVIDENCE ACT, 1872 – Sections 120, 135 to 139, 154 and 155
CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 14 (4), Order 8 Rule 1-A (4) (a), Order 13 Rule 1 (3), Order 14 Rule 21, Order 16 Rules 14 & 21 and Order 18 Rule 3-A

(i) Party to a suit and witness in a suit – Whether the phrase "plaintiff's/defendant's witness" excludes the plaintiff or defendant themselves, when they appear as a witness in their own case? Held, No – Law explained.

(ii) Production of documents during cross-examination – Whether law differentiates between party to a suit and witness of a party? Held, No – In view of the provisions contained in Order 7 Rule 14, Order 8 Rule 1-A and Order 13 Rule 1, production of documents for both a party to the suit and a witness, as the case may be, at the stage of cross-examination, is permissible within law.

(iii) Trial of a suit – Recording of evidence – Duty of the court – Judge should ask questions to clear any point – Should ensure that advocates behave properly and exclude irrelevancies – Make timely interventions, when necessary – Objectives of rules for conducting civil proceedings summarised.

साक्ष्य अधिनियम, 1872 – धाराएं 120, 135 से 139, 154 एवं 155
सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 14 (4), आदेश 8 नियम 1–क (4) (क), आदेश 13 नियम 1 (3), आदेश 14 नियम 21, आदेश 16 नियम 14 और 21 एवं आदेश 18 नियम 3–क

(i) वाद में पक्षकार और वाद में साक्षी – क्या ''वादी/प्रतिवादी का साक्षी'', वादी या प्रतिवादी से भिन्न है, जब वे अपने मामले में साक्षी के रूप में उपस्थित होते हैं? अवधारित, नहीं – विधि समझाई गई।

(ii) प्रतिपरीक्षा के दौरान दस्तावेज प्रस्तुत किया जाना – क्या विधि किसी वाद के पक्षकार और किसी पक्षकार के साक्षी के मध्य अंतर करती है? अभिनिर्धारित, नहीं। आदेश 7 नियम 14, व आदेश 8 नियम 1–क और

आदेश 13 नियम 1 में विहित प्रावधानों को देखते हुए, प्रति परीक्षा की अवस्था पर दस्तावेज़ों का प्रस्तुत करना, वाद के पक्षकार और साक्षी दोनों के लिए, जैसा भी मामला हो, विधि के अनुसार अनुमत है।

(iii) वाद का विचारण – साक्ष्य का अभिलेखन – न्यायालय का कर्तव्य – न्यायाधीश को किसी भी बिंदु को स्पष्ट करने के लिए प्रश्न पूछने चाहिए – यह सुनिश्चित करना चाहिए कि अधिवक्ता उचित व्यवहार करें और असंगतियों को बहिष्कृत करना चाहिये – जब आवश्यक हो तो समय पर हस्तक्षेप करना चाहिये – सिविल कार्यवाही के संचालन के लिए नियमों के उद्देश्यों को सारांशित किया गया।

Mohammed Abdul Wahid v. Nilofer and anr.

Judgment dated 14.12.2023 passed by the Supreme Court in Civil Appeal No. 8146 of 2023, reported in (2024) 2 SCC 144

Relevant extracts from the judgment:

It would be useful to refer to the objectives in framing rules for conducting civil proceedings. The *Halsbury's Law of England* state the following overriding objectives of the Civil Procedure Rules:

(i) ensuring that the parties are on equal footing;

(ii) saving expense;

(iii) dealing with the case in ways which are proportionate:

(a) to the amount of money involved;

(b) to the importance of the case;

(c) to the complexity of the issues; and

(d) to the financial position of each party;

(iv) ensuring that it is dealt with expeditiously and fairly; and

(v) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and

(vi) enforcing compliance with rules, practice directions and orders.

The parties are required to help the court to further the overriding objective. Undoubtedly, perhaps unquestionably, the same objectives guide the interpretation of the Code of Civil Procedure 1908.

In this search for truth, while placing these rules or in the case of our country, the Code, in highest regard, on the role of a judge, we may benefit from Lord Denning's observations in ***Jones v. National Coal Board, (1957) 2 QB 55*** where his Lordship remarked:

"The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law, to exclude irrelevancies and discourage repitition, to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate, and the change does not become his well".

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68. HINDU MARRIAGE ACT, 1955 – Sections 13 (1) (i-a) and 13 (1)(i-b)

(i) Cruelty – As a ground of divorce – Conduct of one party adversely affecting the other – It may be mental or physical, intentional or unintentional – Has to be construed and interpreted considering various factors.

(ii) Desertion – Heavy burden lies upon the party who seeks divorce on this ground – He has to prove factum of separation, *animus deserendi*, absence of his or her consent and absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial house.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 13 (1)(i–क) एवं 13 (1)(i–ख)

(i) क्रूरता – विवाह विच्छेद का आधार – एक पक्ष का आचरण जो दूसरे पर प्रतिकूल प्रभाव डालता है – क्रूरता मानसिक अथवा शारीरिक, जानबूझकर अथवा बिना जाने बूझे हो सकती है – विनिश्चय और निर्वचन विभिन्न कारकों पर विचार कर किया जाना चाहिए।

(ii) अभित्यजन – गुरूत्तर प्रमाण भार उस पक्ष पर होगा जो इस आधार पर विवाह विच्छेद चाहता है – उसे पृथक रहने का तथ्य, विरोधपूर्ण भावना, उसकी सहमती का अभाव एवं उसके ऐसे आचरण का अभाव जो अभित्यजन करने वाले पक्ष को वैवाहिक निवास के त्यागने का युक्तियुक्त कारण रहा, को सबित करना होगा।

Dr. Nirmal Singh Panesar v. Paramjit Kaur Panesar @ Ajinder Kaur Panesar

Judgment dated 10.10.2023 passed by the Supreme Court in Civil Appeal No. 2045 of 2011, reported in 2024 (1) MPLJ 20 (SC)

Relevant extracts from the judgment:

We have given anxious thought and consideration to the submissions made by the learned advocates for the parties in the light of the evidence on record. There could not be any disagreement with the proposition of law vancassed by the learned counsel for the appellant that the allegations of 'cruelty' and 'desertion' are legitimate grounds for seeking a decree of divorce u/s 13(1) of the said Act.

It is well accepted proposition that "cruelty" is a course or conduct of one party which adversely affacts the other. The "cruelty" may be mental or physical, intentional or unintentional.

The crux of the decisions of this Court in ***Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan, (1981) 4 SCC 250, Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105*** and ***Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73*** on the interpretation of the word "cruelty" is that it has to be construed and interpreted considering the type of life the parties are accustomed to; or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

Similarly, the law is also well settled as to what could be said to be "Desertion" in the divorce prodeedings filed u/s 13 of the said Act. The expression "Desertion" had come up under the judicial scrutiny of this court in ***Bipin Chandra Jai Singh Bai Shah v. Prabhavati, AIR 1957 SC 176*** which was again considered in case of ***Lachman Uttam Chand Kirpalani v. Meena alias Mota AIR 1964 SC 40.*** This court collating the observations made in earlier decisions, stated its view as under:-

> "Collating the aforesaid observations, the view of this Court may be stated thus: Heavy burden lies upon a petitioner who seeks divorce on the ground of desertion to prove four essential conditions, namely (1) the factum of separation; (2) animus deserendi; (3) absence to his or her consent; and (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home."

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69. HINDU SUCCESSION ACT, 1956 – Section 6
CIVIL PROCEDURE CODE, 1908 – Section 96, Order 3 Rules 2 & 4, Order 20 Rule 12 and Order 23 Rule 3

(i) Partition suit – Devolution of interest in coparcenary property and rights of daughter – After substitution of new section 6 w.e.f. 09.09.2005, daughters are also entitled to equal share in the coparcenary property of their father as that of a son – Where matter is subjudice and final decree proceedings are not concluded, parties may get benefit of amended law – Preliminary decree can be modified, as final decree must be in accordance with the amended law and daughter must be alloted share as per amended law. [*Vinita Sharma v. Rakesh Sharma, (2020) 9 SCC 1* followed]

(ii) Consent decree – Compromise deed in a partition suit must include written consent of all parties – Decree by consent amongst some of the parties only in a suit for partition of joint property, will be unlawful.

(iii) Duty of Advocate – Advocate owes fiduciary duties to their clients, not to transgress authority conferred by client while making concession/admission or compromise before Court – He cannot settle and compromise claim without specific authorization from his client. [*Himalayan Coop. Group Housing Society v. Balwan Singh, (2015) 7 SCC 373* relied upon]

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 6
सिविल प्रक्रिया संहिता, 1908 – धारा 96, आदेश 3 नियम 2 और 4, आदेश 20 नियम 12 एवं आदेश 23 नियम 3

(i) बंटवारे का वाद – सहदायिक सम्पत्ति में हित का न्यागमन एवं पुत्री के अधिकार – नवीन प्रतिस्थापित धारा 6 के दिनांक 09.09.2005 से प्रभावशील होने के उपरांत पुत्रियां भी उनके पिता की सहदायिक सम्पत्ति में, पुत्र के समान बराबर अंश की अधिकारी हैं – जहाँ मामला लंबित हैं एवं अंतिम डिक्री की कार्यवाहियां समाप्त नहीं हुई है वहां पक्षकार संशोधित विधि का लाभ प्राप्त कर सकते है – प्रारंभिक डिक्री उपांतरित की जा सकती है, क्योंकि अंतिम डिक्री संशोधित विधि के अनुरूप होनी चाहिए तथा पुत्री को संशोधित विधि के अनुसार अंश मिलना चाहिए। (*विनिता शर्मा वि. राकेश शर्मा, (2020) 9 एससीसी 1* अनुसरित किया गया)

(ii) सहमति डिक्री – बंटवारे के वाद में प्रस्तुत राजीनामा विलेख में सभी पक्षकारों की लिखित सहमति होना चाहिए – संयुक्त सम्पत्ति के बटवारे के वाद में पक्षकारों में से केवल कुछ के मध्य हुई सहमति के आधार पर पारित डिक्री विधि विरूद्ध होगी।

(iii) अधिवक्ता का कर्तव्य – अधिवक्ता का अपने पक्षकार के प्रति यह वैश्वासिक कर्तव्य है कि वह न्यायालय के समक्ष रियायत देने/स्वीकृति या समझौता करते समय उसे प्रदत्त प्राधिकार का उल्लंघन न करे – वह पक्षकार से विशेष प्राधिकार प्राप्त किये बिना मामले का समझौता एवं निपटारा नहीं कर सकता है।*(हिमालय सहकारी समूह गृह समिति वि. बलवान सिंह, (2015) 7 एससीसी 373 पर विश्वास किया गया)*

Prasanta Kumar Sahoo & ors. v. Charulata Sahu & ors.

Judgment dated 29.03.2023 passed by the Supreme Court in Civil Appeal No. 2913 of 2018, reported in (2023) 9 SCC 641

Relevant extracts from the judgment:

Question before this Court in ***Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC*** was: in case during the pendency of partition suit or during the period between the passing of preliminary decree and final decree in the partition suit, any legislative amendment or any subsequent event takes place which results in enlargement or diminution of the shares of the parties or alteration of their rights, whether such legislative amendment or subsequent event can be taken into consideration and given effect to while passing final decree in the partition suit. The Court held that even though filing of partition suit brings about severance of status of jointness, such legislative amendment or subsequent event will have to be taken into consideration and given effect to in passing the final decree in the partition suit. This is because, the partition suit can be regarded as fully and completely decided only when the final decree is passed. It is by a final decree that partition of property of joint Hindu Family takes place by metes and bounds.

It is now well settled that under Order XXIII Rule 3 of the CPC as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree.

In a suit for partition of joint property, a decree by consent amongst some only of the parties cannot be maintained.

It is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

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70. HINDU SUCCESSION ACT, 1956 – Sections 14 (2), 15 and 16
Property acquired by a Hindu female in partition – She had pre-existing right in the joint family property – She would be deemed to have become the full owner thereof despite the fact that the partition deed prescribed a limited estate for her – Upon her intestate death, her property would devolve by way of succession as per sections 15 and 16 of the Act.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धाराएं 14 (2), 15 एवं 16
हिन्दू महिला द्वारा विभाजन में अर्जित संपत्ति – महिला का संयुक्त परिवार की संपत्ति में पूर्व विद्यमान अधिकार था – यद्यपि उसे विभाजन विलेख में सीमित संपदा प्रदान की गई थी परन्तु वह पूर्ण स्वामी मानी जायेगी – उसकी निर्वसीयती मृत्यु होने पर उसकी संपत्ति उत्तराधिकार अधिनियम की धाराएं 15 एवं 16 के अनुसार न्यागत होगी।

Jagdish Chandra v. Chandrakant and ors.

Order dated 04.10.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 2822 of 2022, reported in 2024 (1) MPLJ 134

Relevant extracts from the order:

When property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of pre-existing right and such an acquisition would not be within the scope and ambit of Sub-Section (2) of Section 14 of the Act, 1956 even if the instrument allotting the property prescribes a restricted estate in the

property. She would be deemed to have become the full owner thereof notwithstanding that the instrument under which the same was given to her prescribed a limited estate for her. She would have a restricted estate only when property is acquired by her for the first time without any pre-existing right under an instrument the terms of which prescribe a limited estate for her in the property.

In the present case, Smt. Rampyari Bai was allotted certain joint family property by way of her share in the partition effected in the family. She had a pre-existing right/share in the property and by way of partition, a specific part of the same was allotted to her. Since she had a pre-existing right in the joint family property which was crystallized by way of allotment of her share therein in the partition, she acquired her property not by way of a restricted estate but by way of absolute ownership. Upon her death, the same would not devolve as per the condition stipulated in the partition deed but would devolve by way of succession as per sections 15 and 16 of the Act, 1956 since no Will or any other testamentary instrument was executed by her during her lifetime. The lower appellate Court has hence rightly held to the said effect.

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71. INDIAN PENAL CODE, 1860 – Sections 84 and 302

(i) Defence of insanity or unsoundness of mind – Burden of proof – Accused has to establish legal insanity/unsoundness of mind at the time of commission of offence – Standard of proof to prove the same is only 'reasonable doubt'.

(ii) Murder – Appellant killed his grandfather by means of sharp-edged weapon – He did not run away after commission of the offence – His behavior at the time of incident and immediately thereafter was found to be totally abnormal – Evidence shows that he was suffering from psychiatric ailments which were relapsable and there was every chance of attack anytime – He was undergoing treatment for such ailment and was prescribed tablet Lorazepam, which is a psychotropic substance apart from being an anxiolytic agent – At the time of arrest, he was found to be under the influence of psychotropic substance – Inference of legal insanity drawn – Conviction set aside and appellant acquitted.

भारतीय दण्ड संहिता, 1860 – धाराएं 84 एवं 302

(i) उन्मत्तता एवं विकृत चित्तता की प्रतिरक्षा – सबूत का भार – अभियुक्त को अपराध कारित करते समय विधिक उन्मत्तता/ विकृत चित्तता का होना स्थापित करना होगा – यह साबित करने हेतु सबूत का मानक 'युक्तियुक्त संदेह' हैं।

(ii) हत्या– अपीलार्थी ने उसके दादा को धार–दार आयुध से मार दिया – वह अपराध कारित करने के उपरांत भागा नहीं – घटना के समय और उसके तत्काल बाद उसका व्यवहार पूर्णतः असामान्य था – साक्ष्य से दर्शित है कि वह मनौवैज्ञानिक रोगों से ग्रसित था, पुनरावर्तन योग्य था तथा उसे किसी भी समय दौरा पड़ने की प्रत्येक संभावना थी – ऐसे रोग के लिए वह चिकित्सारत था एवं चिकित्सक द्वारा उसे लोराजेपाम दवाई निर्देशित की गयी थी, जो चिंता–विरोधी दवा होने के अतिरिक्त मनःप्रभावी पदार्थ है – गिरफ्तारी के समय वह मनःप्रभावी पदार्थ के प्रभाव में पाया गया था – विधिक विकृत चित्तता का निष्कर्ष निकाला गया – दोषसिद्धि अपास्त कर अपीलार्थी को दोषमुक्त किया गया।

Rupesh Manger (Thapa) v The State of Sikkim

Judgment dated 13.09.2023 passed by the Supreme Court in Criminal Appeal No. 2069 of 2022, reported in (2023) 9 SCC 739

Relevant extracts from the judgment:

The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions: (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code: the accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that which rests upon a party to civil proceedings. (3) Even if the. accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.

In ***Surendra Mishra v. State of Jharkhand, (2011) 11 SCC 495, Hari Singh Gond v. State of M.P., (2008) 16 SCC 109*** and ***Bapu v. State of Rajasthan, (2007) 8 SCC 66*** this Court has held that an accused who seeks exoneration from liability of an act under Section 84 of IPC has to prove legal insanity and not medical insanity. Since the term insanity or unsoundness of mind has not been defined in the Penal Code, it carries different meaning in different contexts and describes varying degrees of mental disorder. A distinction is to be made between legal insanity and medical insanity. The court is concerned with legal insanity and not with medical insanity.

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72. INDIAN PENAL CODE, 1860 – Sections 104, 148, 149, 307 and 324 Attempt to murder – Right of private defence of property – Accused persons were in settled possession of the disputed land – In demarcation, the said land was found to be in the title of complainant party – Without adopting due procedure of law, they tried to dispossess the accused party – Accused persons had also sustained injuries by sharp, hard and blunt objects – Complainant party was guilty of committing criminal trespass – It is therefore, found that accused persons had inflicted injuries in exercise of the right of private defence of property – Offence not made out – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 104, 148, 149, 307 एवं 324
हत्या करने का प्रयत्न – संपत्ति की निजी प्रतिरक्षा का अधिकार – अभियुक्तगण का विवादित भूमि पर सुस्थापित कब्जा था – सीमांकन में उक्त भूमि परिवादी पक्ष के स्वामित्व की पाई गई – उचित वैधानिक प्रक्रिया अपनाए बिना उन्होंने अभियुक्त पक्ष को बेदखल करने का प्रयास किया – अभियुक्तगण को भी धारदार, कठोर और कुंद वस्तुओं से चोटें कारित हुई – परिवादी पक्ष आपराधिक अतिचार कारित करने का दोषी – इसलिये यह पाया गया कि अभियुक्तगण ने संपति की प्रायवेट प्रतिरक्षा के अधिकार का प्रयोग करते हुए चोटें पहुंचाई थी – अपराध गठित नहीं हुआ – दोषसिद्धि अपास्त।

Baboo Khan v. State of M.P.

Judgment dated 01.11.2023 passed by High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 432 of 2000, reported in 2024 CriLJ 118

Relevant extracts from the judgment:

As per statement of SHO, L.S. Solanki (PW/ 9), and counter FIR (Ex.D/ 9), on 10.09.1992 at 06:30 PM, sons of Ramzan (PW/ 11), Abdul Malik (PW/ 1) and Abdul Khaliq (PW/ 2), Chand Babu (PW/ 5) and Naushad Khan (PW/ 6) were constructing hut on the land of accused party. Accused Babu and accused Bhaiyu went there and asked the complainant party to not construct hut in their land. Upon this, the complainant party by means of Pharsa, Dahariya, Knife, Sabbal and Lathi had physically assaulted the accused persons with intent to kill them. Other accused persons Munna, Arif and Gulam Nabi came to intervene, then the complainant party physically assaulted them as well. On the same day, at 07:00 PM, an FIR was lodged against the complainant parties by accused Bhaiyu for the offence punishable u/s 307, 147, 148, 323, 324 r/w/s 149 of IPC and section 25 of the Arms Act, 1959.

It appears from statement of Dr. A.K. Jain (PW/ 7) that on 10.09.1992, he examined accused Babu Khan (died) and he found incised wounds on his stomach, chest, right forearm, right lumber region, intestine was dropping out of stomach injury. MLC report is Ex.D/ 3. He examined accused Bhaiyu and found incised wound on his parietal region and abrasion on left forearm (MLC- Ex.D/ 4). He further examined accused Gulam Nabi and found 2 incised wound on his parietal occipital, MLC report Ex.D/ 5. He also examined accused Munna and found 3 incised wound on his right side of back, left side of chest and on stomach and lacerated wound on left knee, (MLC report Ex.D/ 6). Therefore, it appears that the accused persons Babu Khan, Bhaiyu, Ghulam Nabi and Munna had also received injuries on their body parts in the same incident.

Abdul Malik (PW/ 1), Abdul Khaliq (PW/ 2) and Ramzan (PW/ 11) have admitted in their cross-examination that prior to construction of hut, they had got the demarcation of land done and it was discovered that their piece of land was in possession of accused Babu Khan. In the said piece of land possessed by the accused Babu Khan, the complainant party was building a hut. Therefore, it appears that the disputed land was in settled possession of the accused party. But in demarcation, the questioned land was found to be in the title of complainant party. It also appears that the complainant party without adopting the due procedure of law, had tried to dispossess the accused party from their settled possession of land. Therefore, it is apparent that the complainant party had committed criminal trespass.

The accused persons were in the possession of the questioned land in which the complainant party started to construct a hut. The act of complainant party caused annoyance u/s 441 of IPC, to the accused persons. The complainant party trespassed the land possessed by the accused party giving rise to the right of private defence of property to accused persons u/s 104 of IPC. Further looking to the wounds sustained by the accused persons inflicted by the complainant party appears to have been given by sharp and hard, blunt and hard weapons. This act of the complainant party puts it into the ambit of intent to commit an offence u/s 441 of IPC. Therefore, the accused persons had right to protect their property. The accused party have not violated the extent and limit in exercising their right to private defence of property. The injuries inflicted by the accused persons to the complainant party are the result of private defence which restricts their act to fall in definition of alleged offence. Therefore it is not found proved that the accused persons had inflicted injury with common object to cause death of Abdul Malik (PW/ 1) and Abdul Khaliq (PW/2) and had voluntarily caused hurt to Ramzan (PW/ 11) by dangerous weapon.

From the foregoing analysis, it also appears that the accused persons had inflicted injury to the complainant party in exercise of their right to private defence of property. Therefore, their act does not come in the ambit and scope of the alleged offence. But the trial court has not considered the aforementioned evidence properly in the impugned judgment and has wrongly convicted and sentenced the appellant in the offence. Therefore, the impugned judgment is liable to be set aside.

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73. INDIAN PENAL CODE, 1860 – Section 149

(i) Unlawful assembly – Liability of members – It is not necessary that every member of that unlawful assembly must play an active role for convicting him with the aid of section 149 of the Code – It has to be established that the person constituting the assembly had shared the common object of the assembly alongwith other members.

(ii) Unlawful assembly – Common object – Incident arose due to quarrel that happened a day prior to the day of occurrence – Although the accused had assembled to teach lesson to informant, there was no intention to cause death – Common object not revealed from the record – Prosecution failed to prove common object of unlawful assembly.

भारतीय दण्ड संहिता, 1860 – धारा 149

(i) विधि विरूद्ध जमाव – सदस्यों का दायित्व – धारा 149 की सहायता से दोषसिद्ध करने के लिए विधि विरुद्ध जमाव के प्रत्येक सदस्य का सक्रिय भूमिका निभाना आवश्यक नहीं है – यह स्थापित किया जाना चाहिए कि जमाव करने वाले व्यक्ति ने अन्य सदस्यों के साथ जमाव के सामान्य उददेश्य को साझा किया ।

(ii) विधि विरूद्ध जमाव – सामान्य उद्देश्य – घटना वाले दिन के एक दिन पूर्व हुए झगड़े के कारण घटना घटित हुई – यद्यपि अभियुक्त सूचनाकर्ता को सबक सिखाने के लिये एकत्रित हुए थे किंतु उनका उद्देश्य मृत्यु कारित करना नहीं था – अभिलेख से सामान्य उद्देश्य प्रकट नहीं हुआ – अभियोजन विधि विरूद्ध जमाव का सामान्य उद्देश्य साबित करने में असफल रहा।

Parshuram v. State of M.P.

Judgment dated 03.11.2023 passed by the Supreme Court in Criminal Appeal No. 524 of 2021, reported in 2024 CriLJ 81 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

The law with regard to conviction under section 302 read with section 149 of IPC has been succinctly discussed by a Constitution Bench of this Court in the locus classicus of ***Masalti v. State of U.P, (1964) 8 SCR 133*** wherein this Court observed thus:

> "What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by section 141 IPC. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of

> some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin [AIR 1956 SC 181] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly".

It could thus clearly be seen that the Constitution Bench has held that it is not necessary that every person constituting an unlawful assembly must play an active role for convicting him with the aid of section 149 of IPC. What has to be established by the prosecution is that a person has to be a member of an unlawful assembly, i.e. he has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly, as defined u/s 141 of IPC. As provided u/s 142 of IPC, whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

From the material placed on record, it is also not clear as to whether the common object of the unlawful assembly was to cause the death of the deceased or not. The entire incident arose on account of the happening on a day prior to the day of occurrence of the present incident, i.e. the buffalo of the complainant party spoiling the taparia built by accused Jalim Singh. It is quite possible that the accused persons did not have an intention to cause death of anybody from the complainant party. It is possible that the accused persons only assembled to teach a lesson to the complainant party on account of the buffalo from their party damaging the taparia of the accused Jalim Singh.

We are therefore of the considered view that the appellants are entitled to benefit of doubt. The conviction under Section 302 IPC would not be sustainable. The prosecution has failed to prove beyond reasonable doubt that the unlawful assembly had an intention to cause the death of the deceased. As such, we find that the case would fall under Part-II of Section 304 of IPC.

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74. INDIAN PENAL CODE, 1860 – Sections 149 and 302

(i) Murder – Proof of – Absence of FSL report – Prosecution witness proved that blood stained knife, shirt and pant were recovered from the possession of accused – Non-mentioning the name of accused in FIR – Not fatal to prosecution case as the witnesses who were not aware of the name of accused person, identified them later on – Testimony of witness coupled with medical evidence and other incriminating articles recovered from the accused, proved the case of the prosecution beyond doubt – Conviction held proper.

(ii) Unlawful assembly and murder – Involvement of co-accused – Test identification parade was not conducted – No cogent statement regarding active participation of co-accused persons and incriminating weapons were also not recovered from their possession – Their presence on the spot was also found to be doubtful – Held, co-accused rightly acquitted.

भारतीय दण्ड संहिता, 1860 – धाराएं 149 एवं 302

(i) हत्या – सबूत – फोरेंसिक रिपोर्ट का अभाव – अभियोजन साक्षी ने साबित किया कि खून सना चाकू, शर्ट और पेंट अभियुक्त के कब्जे से बरामद किये गये – प्रथम सूचना रिपोर्ट में अभियुक्त का नाम वर्णित नहीं करना – अभियोजन के मामले हेतु घातक नहीं है क्योंकि जिन साक्षियों को अभियुक्त के नाम के बारे में जानकारी नहीं थी उन्होनें बाद में उनकी पहचान कर ली – साक्षियों की परिसाक्ष्य के साथ–साथ चिकित्सीय साक्ष्य और अभियुक्त से बरामद अन्य संलिप्तकारी वस्तुओं ने अभियोजन के मामले को संदेह से परे साबित कर दिया – दोषसिद्धि उचित ठहराई गई ।

(ii) विधि विरूद्ध जमाव और हत्या – सहअभियुक्त की संलिप्तता – पहचान परेड नहीं कराई गई – सहअभियुक्त की सक्रिय संलिप्तता के संबंध में कोई तर्कपूर्ण कथन नहीं किया गया और उनके कब्जे से कोई संलिप्तकारी

आयुध भी बरामद नहीं हुए – घटनास्थल पर उनकी उपस्थिति भी संदिग्ध पाई गई – अभिनिर्धारित, सहअभियुक्त की दोषमुक्ति उचित।

Mohammad Asif v. State of Madhya Pradesh

Judgment dated 01.11.2023 passed by High Court of Madhya Pradesh (Bench Indore) in Criminal Appeal No. 162 of 2015, reported in 2024 CriLJ 222

Relevant extracts from the judgment:

On the basis of the citations ***Piara Singh and ors. v. State of Punjab, (1977) 4 SCC 452*** and ***Chandrasekar and anr. v. State, (2017) 13 SCC 583*** and the evidence available on record, all these witnesses appears to be trustworthy. The evidence of the aforesaid eyewitnesses are well corroborated by the medical evidence available on record and also the evidence of Inspector Ajay Jain (PW-20). He has deposed that on 5.10.2011 he has arrested the accused Asif through arrest memo (Ex.P/34) and on the basis of discovery statement (Ex.P/35), recovered blood stained pant and shirt and a knife from his house through seizure memo (Ex.P/36). Although prosecution did not prove the FSL report regarding the seized articles, but Abhishek (PW-17) who is the witness of arrest memo (Ex.P/34), discovery statement (Ex.P/35) and seizure memo (Ex.P/36) has also corroborated that police has arrested Asif before him and on the basis of his statement, police recovered a knife and pant & shirt from the possession of accused Asif. There is no reason to disbelieve the statement of investigating officer Inspector Ajay Jain (PW-20) and witness Abhishek (PW-17). On the basis of the aforesaid ocular and documentary evidence available on record, it is proved that a knife and blood stained shirt and pant were recovered from the possession of appellant Asif.

Learned counsel for the appellant Asif submitted that name of the appellant Asif and other co-accused persons were not mentioned in the Dehati Nalishi (Ex.P/1) and FIR (Ex.P/13) and the persons who were present in the mob, were not identified by the independent witnesses, therefore, prosecution has failed to prove its case, but it is noteworthy that the incident had taken place all of a sudden and witnesses Jagdish and Madanlal were not aware about the name of the appellant/accused, therefore, they could not name all the accused persons in their earlier report, but later on they have identified the appellant Mohd. Asif. Therefore, no adverse inference can be drawn against the prosecution.

In view of the foregoing analysis and unimpeachable testimony of witnesses coupled with the medical evidence and seizure of weapon and other incriminating articles from the possession of appellant Mohd. Asif, according to us the prosecution has not committed any error in holding that appellant Mohd. Asif has murdered the deceased Mahesh Rami by stabbing knife over his abdomen during the communal riots between Hindu and Muslim community. Therefore, we are not inclined to take a different view that was taken by the learned trial Court. Hence, we hold that the learned trial court has rightly convicted and sentenced the appellant Mohd. Asif for the offence under Section 148 and 302 of IPC.

So far as the other Criminal Appeal No.1457 of 2015 ***(State of M.P. v. Pista @ Shakil and ors.)*** and Criminal Appeal No.276 of 2016 ***(State of M.P. v. Mohd. Ayyub Kala and anr.)*** are concerned, which have been filed by the State against the judgment of acquittal of other accused persons except Mohd. Asif. From perusal of the entire evidence available on record, it appears that although Jagdish (PW-1) in para-6 of his examination-in-chief stated that Pista, Mousin, Jafar, Imran, Latif and Ajhar are the persons who have beaten him and his brother Mahesh by using kicks and fists, but no test identification parade was conducted by the prosecution regarding the identification by Jagdish (PW-1) to other co-accused persons except Mohd. Asif. In para1 of his examination he categorically stated that he does not know the accused persons by name, therefore, disclosure of the name by the Jagdish appears to be doubtful. Madanlal (PW-2) has also deposed that except Mohd. Asif he does not know the name of other co-accused persons. The prosecution has not arranged T.I. parade for Madanlal (PW-2), therefore, his statement against the other co-accused persons also appears to be vague and doubtful.

Although Kundan Bagoliya (PW-3) deposed that Imran caught hold the deceased Mahesh and he has identified him during the test identification parade, but statement of Kundan (PW-3) is not supported by the other eyewitnesses. Pankaj Rami (PW-5) also deposed that Pista, Jafar, Mohsin and Asif surrounded his father and uncle and beaten them, but Piyush Chaturvedi (PW-7) has denied from T.I. parade proceedings by stating that he never identified any accused in Bhairavgarh Jail. From perusal of statement of all these witnesses, it appears that they have made only omnibus statements against the other co-accused persons. They have not made any cogent statement regarding the active participation of all these accused persons. No incriminating weapon has been recovered from their possession and their presence on the spot is also doubtful.

Apart from above, the prosecution has failed to point out any material evidence against the accused/respondents of Criminal Appeal No.1457 of 2015 and Criminal Appeal No.276 of 2016 regarding the aforesaid offence. Considering the statement of prosecution witnesses and the finding given by the learned trial Court, we are of the considered view that the prosecution has failed to prove its case beyond reasonable doubt against the respondents of Criminal Appeal No.1457 of 2015 and Criminal Appeal No. 276 of 2016.

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75. INDIAN PENAL CODE, 1860 – Sections 201 and 302
EVIDENCE ACT, 1872 – Sections 3, 8, 27 and 106

(i) Circumstantial evidence – Murder – Accused is alleged to have murdered the deceased and after cutting into pieces threw his dead body in the river – Deceased was missing for several months – Accused was relative of deceased and property dispute was pending between accused and father of deceased – Two bags containing decomposed human body parts and bones were recovered at the instance of accused – Forensic report established that recovered skull and mandible were of the deceased – Other articles belonging to deceased were also recovered on the basis of disclosure statement of accused – In the statement recorded u/s 313 accused has not furnished any explanation regarding his knowledge of the place from where the parts of the dead body were recovered – Adverse inference u/s 106 of the Evidence Act was drawn and motive was also proved – Conviction upheld.

(ii) Discovery of fact – Words "Person accused of an offence" and "in the custody of police" are separated by a comma (,) in section 27, thus they have to be read distinctively – As soon as the accused or suspected person comes into the hand of a police officer, he is in the custody of Police within the meaning of sections 25 and 27.

(iii) Information by co-accused – Co-accused cannot be held guilty on the basis of information already given by accused – The same information even if voluntarily made by co-accused, cannot be used against him.

भारतीय दण्ड संहिता, 1860 – धाराएं 201 एवं 302
साक्ष्य अधिनियम, 1872 – धाराएं 3, 8, 27 एवं 106

(i) परिस्थितिजन्य साक्ष्य – हत्या – अभियुक्त पर आरोप था कि उसने मृतक की हत्या की और टुकड़ों में काटने के बाद शव को नदी में फेंक दिया – मृतक कई महीनों से लापता था – अभियुक्त मृतक का रिश्तेदार था और अभियुक्त और मृतक के पिता के मध्य संपत्ति का विवाद लंबित था – अभियुक्त की निशानदेही पर दो बोरियों में सड़े हुए मानव शरीर के अंग और हड्डियाँ बरामद की गई – फोरेंसिक रिपोर्ट ने स्थापित किया कि बरामद खोपड़ी और जबड़ा मृतक के थे – मृतक से संबंधित अन्य सामान भी अभियुक्त के प्रकटीकरण कथन के आधार पर बरामद किए गए – धारा 313 के तहत कथन में अभियुक्त ने उस स्थान के बारे में अपनी जानकारी के विषय में कोई स्पष्टीकरण नहीं दिया जहां से शव के अंग बरामद किए गए थे – साक्ष्य अधिनियम की धारा 106 के तहत प्रतिकूल निष्कर्ष निकाला गया और हेतुक भी साबित हुआ – दोषसिद्धि स्थिर रखी गई।

(ii) तथ्य की खोज – ''अपराध का अभियुक्त व्यक्ति'' और ''पुलिस की अभिरक्षा में'' शब्दों को धारा 27 में अल्पविराम द्वारा अलग किया गया है, इस प्रकार उन्हें विशिष्ट रूप से पढ़ा जाना चाहिए – जैसे ही आरोपी या संदिग्ध व्यक्ति एक पुलिस अधिकारी के हाथ में आता है, वह धारा 25 और 27 के अर्थ में पुलिस की अभिरक्षा में होता है।

(iii) सह–अभियुक्त द्वारा दी गई जानकारी – सह–अभियुक्त को अभियुक्त द्वारा पूर्व से दी गई जानकारी के आधार पर दोषी नहीं ठहराया जा सकता – वही जानकारी भले ही सह–अभियुक्त द्वारा स्वेच्छा से दी गई हो, उसका उपयोग उसके विरूद्ध नहीं किया जा सकता।

Perumal Raja alias Perumal v. State, Rep. by Inspector of Police

Judgment dated 03.01.2024 passed by the Supreme Court in Criminal Appeal No. 248 of 2024, reported in 2024 CriLJ 1013

Relevant extracts from the judgment:

On the basis of the prosecution evidence, the following factual position has been established:

(i) Rajini @ Rajinikanth was missing for months before his father Rajaram came from France to India, on 20.04.2008.

(ii) On return, Rajaram had noticed that the articles in the property No.13, Chinna Vaikkal street, Puducherry, where deceased Rajini @ Rajinikanth used to

reside and was owned by Rajaram, were scattered. The motorcycle owned by Rajaram, which the deceased Rajini @ Rajinikanth used to use, was missing.

(iii) Rajaram was murdered on 21.04.2008.

(iv) The appellant – Perumal Raja @ Perumal is a close relative of Rajini @ Rajinikanth and Rajaram (son of sister of Rajaram).

(v) Rajaram as the owner of the immovable property No.13, Chinna Vaikkal street, Puducherry and Rajini @ Rajinikanth, as the son of Rajaram, were hindrance in the way of the appellant – Perumal Raja @ Perumal acquiring the said property. There were also inter se family disputes relating to the property in Kurumbapet. This was the motive for the offence.

(vi) On the basis of the disclosure statement made by the appellant – Perumal Raja @ Perumal on 25.04.2008 (Exhibit P-37) – (a) two nylon sack bags were recovered containing decomposed human body parts; and (b) human bones were also recovered from the sump tank in property bearing No.13, Chinna Vaikkal street, Puducherry.

(vii) The superimposition report dated 20.01.2009 (Exhibit P-25) by C. Pushparani (PW-29), Scientific Assistant Grade II, Anthropology Division, Forensic Sciences Department, Chennai states that the skull and the mandible which were recovered from the river and the sump tank were that of the deceased Rajini @ Rajinikanth. The report relies on the computer laser print out of the skull and the mandible for comparison with the photograph of the deceased Rajini @ Rajinikanth. It is shown that the skull and the mandible were of the deceased Rajini @ Rajinikanth.

(viii) As per the post mortem report (Exhibit P-16), though the cause of death could not be ascertained due to decomposition of the body, the bones were that of a person between 25-30 years of age. Further, the death had probably occurred six months prior to the autopsy. The deceased Rajini @ Rajinikanth was of 30 years in age and he had been missing for about six months.

(ix) Motorcycle bearing registration No. PY 01 X 9857 belonging to Rajaram (which was then at Rajaram's house and in possession of Rajini @ Rajinikanth, as Rajaram was in France), keys, insurance papers, as well as other personal belongings were recovered from Mohan Kumar @ Mohan and a juvenile, whose name is withheld.

The appellant – Perumal Raja @ Perumal in his statement under Section 313 of the Code of Criminal Procedure, 1973 plainly denied all accusations without furnishing any explanation regarding his knowledge of the places from which the dead body was recovered. In this circumstance, the failure of the appellant – Perumal Raja @ Perumal to present evidence on his behalf or to offer any cogent explanation regarding the recovery of the dead body by virtue of his special knowledge must lead to a reasonable adverse inference, by application of the principle under Section 106 of the Evidence Act, thus forming an additional link in the chain of circumstances. The additional link further affirms the conclusion of guilt as indicated by the prosecution evidence.

The words "person accused of an offence" and the words "in the custody of a police officer" in section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term "police custody" is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of sections 25 to 27 of the Evidence Act. Thus, in our considered view the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in "custody" within the meaning of sections 25 to 27 of the Evidence Act. It is for this reason that the expression "custody" has been held, as earlier observed, to include surveillance, restriction or restraint by the police.

Acquittal of the co-accused, again is for want of evidence against them. At best, they were found in possession of the articles connected with the crime on the basis of the disclosure statement (Exhibit P-37) dated 25.04.2008 made by the appellant – Perumal Raja @ Perumal. Section 27 of the Evidence Act could not have been applied to the other co-accused for the simple reason that the provision pertains to information that distinctly relates to the discovery of a 'fact' that was previously unknown, as opposed to fact already disclosed or known. section 27 of the Evidence Act does apply to joint disclosures, but this is not one such case. This was precisely the reason given by the trial court to acquit the co-accused. Even if section 8 of the Evidence Act is to apply, it would not have been possible to convict the co-accused. The trial court rightly held other co-accused not guilty. For the same reason, acquittal of co-accused Chella @ Mukundhan, who was earlier absconding, is also of no avail.

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76. INDIAN PENAL CODE, 1860 – Section 294
SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Sections 3(1)(r) and 3(1)(s)
PRACTICE & PROCEDURE:

(i) Obscene acts – Mere filthy abuses used by accused – None of the witnesses deposed anything about causing annoyance to others – As annoyance being main ingredient, offence punishable u/s 294 of the Code and section 3(1)(s) of the Act not made out – Accused rightly acquitted.

(ii) Criminal intimidation – Witness deposed that accused told him that he has been rescued but if he came to his field he would be killed – Said intimidation was conditional, so does not come under the purview of offence punishable u/s 506 Part-II of IPC and section 3(1)(r) of the Act.

(iii) Criminal appeal – Non-appearance of appellant before the appellate Court – Counsel of appellant and appellant himself did not appear on the date of final hearing – Criminal appeal should be decided on merits based on contentions mentioned in appeal memo. (*Shyam Deo Pandey & ors. v. State of Bihar, AIR 1971 SC 1606* followed)

भारतीय दण्ड संहिता, 1860 – धारा 294
अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3(1)(द) एवं 3(1)(ध)
प्रथा एवं प्रक्रियाः

(i) अश्लील कृत्य – अभियुक्त द्वारा केवल गंदी गालियाँ दी गईं – किसी भी गवाह ने दूसरों को क्षोभ कारित होने के विषय में कुछ भी नहीं कहा – चूँकि क्षोभ कारित होना मुख्य घटक है अतः धारा 294 और धारा 3 (1) (ध) के अंतर्गत दण्डनीय अपराध गठित नही होता – अभियुक्त की दोषमुक्ति उचित।

(ii) आपराधिक अभित्रास – साक्षी ने कथन किया कि अभियुक्त ने उससे कहा कि उसे बचा लिया गया है लेकिन अगर वह अपने खेत पर गया तो वह मार दिया जाएगा – धमकी सशर्त थी, इसलिए भारतीय दण्ड संहिता की धारा 506 भाग–II और अधिनियम की धारा 3 (1) (द) के तहत दंडनीय अपराध की परिधि में नहीं आती।

(iii) आपराधिक अपील – अपीलीय न्यायालय के समक्ष अपीलार्थी की अनुपस्थिति – अपीलार्थी स्वयं और अपीलार्थी का अधिवक्ता अंतिम सुनवाई दिनांक को उपस्थित नहीं हुए – आपराधिक अपील का निर्णय अपील ज्ञापन में उल्लिखित तर्कों के आधार पर गुण–दोषों पर किया जाना चाहिए। (*श्याम देव पांडे एवं अन्य विरूद्ध बिहार राज्य, ए.आई.आर. 1971 एस.सी. 1606* अनुसरित)

Premchand Jagannath Ji v. State of Madhya Pradesh and anr.

Order dated 26.07.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 4239 of 2022, reported in 2024 CriLJ 1164

Relevant extracts from the order:

In terms of the charges of offence punishable under Section 294 of IPC, it is well settled that these type of abuses are uttered in general parlance in altercations between rustic people. In this regard, the principle laid down by the Hon'ble High Court of M.P. in ***Dhal Singh v. State of M.P., 1957 MPLJ 21 (Note 62),*** is relevant to refer here:-

> "That in the class of society to which the parties belonged the abuses had no more significance than mere platitudinous utterances signifying the enraged state of the persons mind. As the accused were villagers and filthy abuses were not uncommon among villagers and in the strata of society to which they belonged, the sting was taken out of the words and they could not be characterised as obscene within the meaning of Section 294 of the IPC. Annoyance is the gist of the offence under Section 294 and in the absence of positive proof of annoyance, there could be no offence under Section 294, IPC."

In view of the above case law, it is envisaged that annoyance is main substance of the offence punishable u/s 294 IPC. The above preposition has been followed by Hon'ble High Court of M.P. in ***Roshanlal v. State of M.P., 1966 MPLJ 87*** (Note172) and ***Kamal Singh v. State of M.P., 2002 (4) MPHT 7***.

Virtually, in colloquial language such type of abuses are often used and therefore, they cannot be accepted in their literal sense. In ***Om Prakash v. State of M.P., 1989 MPLJ 657***, it has been held by Hon'ble High Court that no literal significance can be attached to the abuses. They only delineate the enraged state of mind. Further, in ***Sharad Dave and anr. v. Mahesh Gupta and ors., 2005 LawSuit***

(MP) 442, Hon'ble High Court of M.P. endorsing the aforesaid ratio decidendi adumbrated as under:-

> "Mere platitudinous utterances signifying the enraged state of the person's mind would not be sufficient to attract the application of the provisions of section 294, of the Indian Penal Code. Thus mere 'vulgar abuses' do not constitute offence under section 294 of the Indian Penal Code."

Now, turning to the next limb of the case, the finding of the trial Court regarding acquittal of accused persons from the charges punishable u/s 506 of I.P.C. and Section 3(1)(r) of the Act, is considered, it is well based on available evidence placed before the trial Court, and there is no substantial and compelling reasons available for setting aside the order of acquittal. In order to bring home an offence of criminal intimidation to cause death punishable under section 506 (Part-II) and Section 3(1)(r) of the Act, the prosecution requires to prove that accused threatened the victim to cause his death or grievous hurt to a person or another in whom, he is specially interested. After considering the definition of criminal intimidation u/s 506 of IPC, Hon'ble Apex Court in ***Manik Taneja and anr. v. State of Karnatka and anr., 2015 LawSuit (SC) 52*** ordained as under:

> "A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do."

In view of the aforesaid propositions, threatening is the most important ingredient of criminal intimidation. If the threat be to cause death or grievous hurt, the offence would be punishable under Section 506 (Part-II) of I.P.C. and Section 3(1)(r) of the Act. In this case the sole eye witness Premchand (PW-1) has deposed in his examination in chief that accused Dharmendra told him that he has been rescued but if he came to this field he will be killed. This intimidation is conditional, so it doesn't come under the purview of offence punishable under Section 506(Part-II) of I.P.C. and Section 3(1)(r) of the Act, hence, the finding of learned trial Court regarding acquittal under these sections is also found inviolable in the eyes of law and fact.

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77. INDIAN PENAL CODE, 1860 – Sections 299 and 304

(i) Culpable homicide – Appreciation of evidence – Determination of nature of injury, whether caused by assault or is it accidental? Documents related with treatment in hospitals were not produced – Autopsy report disclosed several unexplained abrasions – No medical document to show that the fatal injuries were caused by the alleged rubber stick – Defence version corroborated by medical and other evidence – Injuries determined to be accidental in nature.

(ii) Accused absconding for three years – Whether this fact itself can be treated as a sole ground for establishing his guilt? Held, No, as it cannot establish the guilt or his guilty conscience.

भारतीय दण्ड संहिता, 1860 – धाराएं 299 एवं 304

(i) आपराधिक मानव वध – साक्ष्य का मूल्यांकन – उपहति की प्रकृति का निर्धारण, क्या हमले के कारण या दुर्घटनावश कारित? – चिकित्सालय में हुए उपचार से संबंधित दस्तावेज प्रस्तुत नहीं किए गए – शव परीक्षण प्रतिवेदन में कई अस्पष्टीकृत खरोचों का खुलासा किया गया – यह दिखाने के लिए कोई चिकित्सीय दस्तावेज नहीं कि घातक चोटें कथित रबर की छड़ी से कारित हुई थीं – प्रतिरक्षा कथन, चिकित्सीय और अन्य साक्ष्य द्वारा संपुष्ट – चोटों को दुर्घटनात्मक प्रकृति का माना गया।

(ii) अभियुक्त का तीन साल तक फरार रहना – क्या इस तथ्य को अपने आप में उसके अपराध को स्थापित करने का एकमात्र आधार माना जा सकता है? अवधारित, नहीं, यह तथ्य स्वयं अपराध या उसके दोषी मनःस्थिति को स्थापित नहीं करता ।

Sekaran v. State of Tamil Nadu

Judgment dated 12.12.2023 passed by the Supreme Court in Criminal Appeal No. 2294 of 2010, reported in (2024) 2 SCC 176 (Three Judge Bench)

Relevant extracts from the judgment:

From the evidence of the two doctors, viz. PWs 7 and 8, it does not appear that Palas was physically disabled to speak or that any conversation took place in course whereof Palas did disclose that he was assaulted by the appellant. It was incumbent on the prosecution to produce documents relating to admission of Palas in the nursing home and at the government hospital as well as those relating to his treatment to prove that Palas himself was not in a position to speak. None of these

medical documents having been produced, there is no corroboration that the head injury which Palas suffered was caused by the blow of the rubber stick and also that the same could not have been suffered as a result of a fall from the tree.

That apart, it is seen from the evidence of the autopsy surgeon (PW-9) that there were several scratch injuries suffered by Palas near to his left shoulder, on his left elbow, on his upper right thumb, and lower to left knee on his left foreleg. Most importantly, there was a lacerated injury on the corner of the tongue. It was not elicited from PW-9 how these injuries could have been sustained by Palas; on the contrary, the chemical examiner's report dated 31st March 1999 (Ex. P6) reveals positive results for Indoform, Dichromate and Ethyl Acetate tests. Presence of ethyl alcohol in the blood, liver and kidney of Palas, which was not disputed by PW-9 and his further statement that "liquor was remained up to 3 days" coupled with his testimony in course of cross-examination that it is "possible to have sustain injuries found on head if a person fallen down from a high tree", gives us reason to entertain serious doubts about the prosecution case which get amplified by what is discussed now.

Although not brought to our notice in course of arguments, it is revealed from the oral testimony of PW-11 that the appellant could be apprehended 3 (three) years after the incident from Puliyur road junction in (1 km. away from Ambalakalai) in Kerala after vigorous search. However, abscondence by a person against whom an FIR has been lodged and who is under expectation of being apprehended is not very unnatural. Mere absconding by the appellant after alleged commission of crime and remaining untraceable for such a long time itself cannot establish his guilt or his guilty conscience. Abscondence, in certain cases, could constitute a relevant piece of evidence, but its evidentiary value depends upon the surrounding circumstances. This sole circumstance, therefore, does not enure to the benefit of the prosecution.

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78. INDIAN PENAL CODE, 1860 – Sections 300 Exception 4, 302 and 304 Part II

Murder or culpable homicide not amounting to murder – Benefit of Explanation 4 to Section 300, when available? Accused husband was quarrelling and beating deceased wife under influence of alcohol – When beating became unbearable, wife poured kerosene oil on her body whereupon accused lighted a matchstick and set her on fire – Accused

was found to be conscious of the consequences of lighting a matchstick in such situation – This shows the intention of the accused to kill – Moreover, accused had taken undue advantage of the situation by lighting the matchstick and throwing it upon his wife – Benefit of Explanation 4 cannot be extended to accused – Conviction u/s 302 upheld.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 परंतुक 4, 302 एवं 304 भाग 2

हत्या या हत्या की कोटि में न आने वाला आपराधिक मानव वध – धारा 300 के स्पष्टीकरण–4 का लाभ कब उपलब्ध होगा ? अभियुक्त पति ने मत्तता के प्रभाव में मृतिका पत्नि से झगड़ा किया और मारपीट की – जब मारपीट असहनीय हो गई तो पत्नि ने अपने उपर कैरोसिन उड़ेल दिया जिसके बाद अभियुक्त ने माचिस की तीली जला कर उसको आग लगा दी – यह पाया गया कि अभियुक्त इस तथ्य के प्रति सचेत था कि यदि वह माचिस की तीली से पत्नि को आग लगाएगा तो जलने से उसकी मृत्यृ हो जावेगी – यह अभियुक्त के मृत्यु कारित करने के आशय को दर्शित करता है – इतना ही नहीं अभियुक्त ने परिस्थिति का अनुचित लाभ लेते हुए माचिस जलाई और पत्नि के उपर फेंका – स्पष्टीकरण–4 का लाभ अभियुक्त के लिए विस्तारित नहीं किया जा सकता – धारा–302 में दोषसिद्धि कायम रखी गई ।

Anil Kumar v. State of Kerala

Judgment dated 01.11.2023 passed by the Supreme Court in Criminal Appeal No. 2697 of 2023, reported in 2024 CriLJ 199 (SC)

Relevant extracts from the judgment:

In view of the aforesaid facts and circumstances and the overwhelming evidence on record, there is no escape from the conclusion that the deceased died of burn injuries. She had herself poured kerosene upon her body and that the appellant set her ablaze and later tried to douse the fire by pouring water. The appellant also accompanied the deceased to the hospital.

Now the only point for consideration is whether in the above circumstances, the appellant had any premeditated mind to kill the deceased or was it due to grave and sudden provocation which would not amount to murder or would at best be a case of culpable homicide not amounting to murder punishable with imprisonment for a term which may extend up to 10 years or with fine or with both under Section 304 Part II of IPC.

In support of his above argument, learned counsel for the appellant relied upon ***Kalu Ram v. State of Rajasthan (2000) 10 SCC 324,*** which was case of a similar kind in connection with uxoricide by burning. However, it would be relevant and material to refer to Exception 4 to Section 300 IPC which defines "Murder" before extending the benefit of the above decision to the appellant. The said exception reads as under:

> "***Exception 4.*** – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.
>
> ***Explanation.*** – It is immaterial in such cases which party offers the provocation or commits the first assault."

It is on the strength of the above exception that from the side of the appellant it has been argued that the appellant is not guilty of murder as he had no premeditated mind and that the action of the appellant arose out of a sudden fight. In the first place, the fight was not sudden. The appellant and the deceased wife had a past history of quarrel and that they had been quarrelling on the fateful day also since before the actual incident. During their quarrel, a neighbour/(Sahajan) i.e. PW1 had visited their house and the deceased wife had shown some injuries received by her during the assault.

However, realizing the quarrel between the two, he left saying that he would come later on. It was thereafter that the incident of pouring kerosene and burning took place. So, there was sufficient time in between the two acts and it cannot be said that there was a sudden quarrel and provocation leading to burning. The appellant saw the deceased wife drenched in kerosene and was conscious that if lighted, she would be burnt to death even then ignited her to fire.

This shows premeditated mind to kill her. More particularly, the appellant cannot take advantage of the 4th Exception only on the pretext that it was not on account of premeditated mind or out of a sudden fight or that his intentions were not bad as he tried his best to douse the fire and to save the life of the deceased wife for the reason that the benefit of the above exception would have been available to him, had he not taken undue advantage of the situation.

The exception clearly in unequivocal term states that it would be applicable where culpable homicide is committed not only without premeditated mind in a

sudden fight or quarrel but also without the offender taking "undue advantage" of the situation. In the instant case, the appellant upon seeing the deceased drenched in kerosene clearly took advantage of the situation and lighted a matchstick and threw it upon her so that she can be burnt. The appellant having taken "undue advantage" of the situation cannot be extended the benefit of Exception 4 to Section 300 IPC so as to bring the case within the ambit of Part II of 304 IPC.

In view of the above legal position, the ruling cited above, *viz*. ***Kalu Ram v. State of Rajasthan, AIR 2000 SC 3630*** would not benefit the appellant.

The First Information Report and the dying declarations on record clearly contain the statement of the deceased that when she had poured kerosene upon herself to deter the appellant from fighting and assaulting, he lighted a matchstick and with the intention to kill her, threw it upon her by saying "You Die".

The aforesaid evidence clinches the issue and establishes beyond doubt that the appellant is guilty of the offence of culpable homicide amounting to murder and is not entitled to benefit of the Exception 4 to Section 300 IPC.

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79. INDIAN PENAL CODE, 1860 – Sections 302, 304B and 498A

Murder or dowry death – Presumption – Burden of proof – Death of deceased due to asphyxia – No evidence to show that accused caused the death of his wife – Unnatural death occurred within 10 months of marriage – Presumption of dowry death drawn against accused as it was proved that accused made persistent demand of dowry and had subjected his wife to cruelty soon before her death – Conviction converted from section 302 to section 304B.

भारतीय दण्ड संहिता, 1860 – धाराएं 302, 304ख एवं 498क

हत्या अथवा दहेज मृत्यु – उपधारणा – सबूत का भार – दम घुटने के कारण मृतिका की मृत्यु – यह दर्षित करने हेतु कोई साक्ष्य नहीं कि अभियुक्त ने अपनी पत्नि की मृत्यु कारित की – विवाह के 10 माह के भीतर अप्राकृतिक मृत्यु हुई – अभियुक्त के विरूद्ध दहेज हत्या की उपधारणा की गई क्योंकि यह साबित हुआ कि उसने लगातार दहेज की मांग की थी और मृत्यु के कुछ समय पूर्व तक अपनी पत्नी के साथ क्रूरता की थी – दोषसिद्धि धारा 302 से धारा 304ख में परिवर्तित की गई ।

Sunil Anandilal Ji Sahu v. State of Madhya Pradesh

Judgment dated 01.11.2023 passed by High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 948 of 2014, reported in 2024 CriLJ 264 (DB)

Relevant extracts from the judgment:

In the present case the trial court has relied upon the testimony of Bhikarilal Sahu (PW-1) and Sarla Sahu (PW-2) who happens to be parents of the deceased and Sunita Sahu (PW-3) and Jyoti Sahu (PW-4) who happens to be sisters of deceased. All these witness categorically stated in their statement that appellant used to frequently quarrel with his wife and demanded Rs. 2 lakhs cash as dowry. When they saw the dead body of deceased they found some black marks over her eye and neck and swelling on her face. All these witnesses stated that due to non fulfillment of demand of dowry appellant has murdered the deceased by strangulating her neck.

Learned counsel for appellant submits that there are so many omission and contradiction of PW-1 to PW-4 in their court statement and police statement, all these witnesses belong to same family and are close relatives of deceased, therefore, their statement cannot be relied upon.

From perusal of the statement of all these witness, this court is of the considered view that the trial court has rightly considered that such contradictions and omissions in the statement of all these witnesses are trivial in nature and same is neither material nor sufficient to discard their testimony which has been duly corroborated by the statement of each other. The Hon'ble Apex Court in the case of ***State of M.P. v. Chhaakkilal and ors. and Ramveer and Chhaakki Lal and anr., AIR 2019 SC 381*** has observed that finding recorded by trial Court is entitled to great weight. The same cannot be interfered with unless vitiated by serious error. It is also observed that the evidence as a whole having a ring of truth cannot be discarded merely because the maker is a related witness. Conviction can be based on evidence of solitary eye witness. It is further observed that omissions or lapses in investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent.

Section 106 of Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him, if

appellant was alone with her wife/deceased inside his bedroom, burden of proof lies upon appellant to explain certain circumstances in respect of his plea regarding the suicidal death. But the appellant did not produce any evidence in his defence, even he did not inform the police authorities about the incident. Therefore, his conduct just after the incident appears to be very suspicious. He tried to hide the rope, which is also suspicious circumstances against him. Recovery of incriminating material rope on his disclosure statement is a duly proved positive circumstances against him.

It is noteworthy that unnatural death of deceased occurred within 10 months of her marriage. Considering the aspect of demand of dowry from the evidence of father, mother and sister of deceased it appears that although no dowry was taken or demanded by appellant at the time of marriage, however, there is evidence to suggest that on and after Makar Sankranti, the deceased had complained to her family members of the parental house that she was being harassed for dowry of Rs. 2 lakhs by appellant. There of course has to be some major cause for resorting to extreme steps by the deceased, this being an instance of unnatural death within very short period of her marriage and with no explanation under section 106 of the Evidence Act by appellant.

It is also noteworthy that appellant has been convicted under section 498-A of IPC for harassment and cruelty with his wife. Death of his wife has taken place within 10 months of their marriage. Therefore, presumption under section 113-B of Evidence Act has been also drawn against the appellant. In the instant case, prosecution has successfully 12 proved that soon before her death deceased has been subjected by appellant to cruelty or harassment, therefore, the court should presume that such person has caused the dowry death.

In view of the above legal position, this court is of the considered view that accused made persistent demand of dowry due to which deceased unnaturally died within 10 months of her marriage therefore, the conviction of the appellant under section 302 IPC is not appropriate and death of deceased is considered as dowry death therefore, it will be appropriate that appellant is convicted for offence under section 304B IPC instead of Section 302 of IPC.

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80. INDIAN PENAL CODE, 1860 – Sections 302 and 498A
EVIDENCE ACT, 1872 – Section 106

(i) Matrimonial cruelty and murder – Burden of proof – Conduct of accused husband – Accused husband allegedly harassing his wife for dowry and ultimately killing her by administering poison – Cause of death found to be poisoning – Theory of suicide as sought to be put forward by accused was completely ruled out – Conduct of the accused immediately after the incident found to be suspicious – Family members of deceased wife were not informed – He has not explained in any manner as to what had actually happened to his wife when undisputedly she was in his company – Burden shifted on accused to explain what caused death of his wife, which was not discharged – Conviction found to be proper.

(ii) Burden of proof – Facts especially within the knowledge – Until a *prima facie* case is established by prosecution by proving all necessary elements, the onus does not shift to the accused to show that no crime was committed.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 498क
साक्ष्य अधिनियम, 1872 – धारा 106

(i) वैवाहिक क्रूरता और हत्या – सबूत का भार – आरोपी पति का आचरण – आरोपी पति कथित तौर पर अपनी पत्नी को दहेज के लिए परेशान कर रहा था और अंततः उसकी विष देकर मृत्यु कारित की – मृत्यु का कारण विष देना पाया गया – अभियुक्त की ओर से प्रस्तुत आत्महत्या किये जाने की थ्योरी पूर्ण रूप से खारिज हो गई – घटना के तत्काल पश्चात का अभियुक्त का आचरण संदिग्ध पाया गया – मृतक पत्नी के परिवार के सदस्यों को सूचित नहीं किया गया – अभियुक्त ने किसी भी तरह से यह नहीं बताया कि उसकी पत्नी के साथ वास्तव में क्या हुआ था जब वह निर्विवाद रूप से उसके साथ थी – अभियुक्त पर सबूत का भार अंतरित हुआ कि वह स्पष्ट करे कि उसकी पत्नी की मृत्यु किस कारण से हुई जिसका निर्वाह नहीं किया गया – दोषसिद्धि उचित पाई गई।

(ii) सबूत का भार – विशिष्ट ज्ञान के तथ्य – जब तक अभियोजन आवश्यक तत्वों को प्रमाणित करते हुए प्रथम दृष्टया प्रकरण स्थापित नहीं कर देता है तब तक यह साबित करने का भार कि अभियुक्त ने कोई अपराध कारित नहीं किया, उस पर अंतरित नहीं होता है।

Balvir Singh v. State of Uttarakhand

Judgment dated 06.10.2023 passed by the Supreme Court in Criminal Appeal No. 301 of 2015, reported in 2024 CriLJ 1 (SC)

Relevant extracts from the judgment:

We take notice of the fact that the appellant-convict (husband) has not explained in any manner as to what had actually happened to his wife more particularly when it is not in dispute that the appellant-convict was in company of his wife i.e., deceased. It is important to bear in mind that the deceased died on account of poisoning. The poison which was detected in the viscera was found to be "aluminium phosphide". Although, the appellant-convict tried to project a picture that no sooner the deceased fell sick than he immediately took her to the Sanjay Gandhi Hospital at Delhi, yet, there is no evidence worth the name in this regard. The appellant-convict was expected to lead some evidence as to what had transpired at the Sanjay Gandhi Hospital. He has maintained a complete silence. It is only the appellant-convict who could have explained in what circumstances and in what manner he had taken his wife to the Sanjay Gandhi Hospital and who attended his wife at the hospital. If it is his case, that his wife was declared dead on being brought at the hospital then it is difficult to believe that the hospital authorities allowed the appellant to carry the dead body back home without completing the legal formalities.

Even where there are facts especially within the knowledge of the accused, which could throw a light upon his guilt or innocence, as the case may be, the accused is not bound to allege them or to prove them. But it is not as if the section is automatically inapplicable to the criminal trials, for, if that had been the case, the Legislature would certainly have so enacted. We consider the true rule to be that Section 106 does not cast any burden upon an accused in a criminal trial, but that, where the accused throws no light at all upon the facts which ought to be especially within his knowledge, and which could support any theory of hypothesis compatible with his innocence, the Court can also consider his failure to adduce any explanation, in consonance with the principle of the passage in ***Deonandan Mishra v. The State of Bihar, AIR 1955 SC 801***, which we have already set forth. The matter has been put in this form, with reference to Section 106 of the Evidence Act, in ***Smith v. R., 1918 AIR Mad. 111***, namely, that if the accused is in a position to explain the only alternative theory to his guilt, the absence of explanation could

be taken into account. In the present case, taking the proved facts together, we are unable even to speculate about any alternative theory which is compatible with the innocence of the accused.

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81. INDIAN PENAL CODE, 1860 – Section 307
SENTENCING POLICY:
Sentence – Reduction of – Aggravating and mitigating circumstances assume importance as there is no statutory sentencing policy in India – Reduction of sentence considering long pendency of matter, old enmity between parties, lack of criminal antecedents and offence committed without premeditation as the mitigating factors.

भारतीय दण्ड संहिता, 1860 – धारा 307
दण्ड नीतिः
दण्डादेश – कमी किया जाना – गुरूत्तरकारी एवं शमनकारी परिस्थितियॉ महत्वपूर्ण हो जाती है, क्योंकि भारत में कोई समविधिक दण्ड नीति नहीं हैं – मामले का अत्यधिक समय तक लंबित रहना, पक्षकारों के मध्य पुरानी शत्रुता, आपराधिक पूर्ववृत्त का अभाव एवं पूर्व–चिंतन के बिना अपराध कारित करने के शमनकारी कारकों को विचार में लेते हुए दण्डादेश में कमी की गयी।

Pramod Kumar Mishra v. State of U.P.
Judgment dated 04.09.2023 passed by the Supreme Court in Criminal Appeal No. 2710 of 2023, reported in (2023) 9 SCC 810

Relevant extracts from the judgment:

Having regard to the submissions made by the counsel appearing for the parties and findings of the Courts below, it can be seen that 39 years have passed since the date of offence and both the other accused persons have come to be acquitted. From a reading of the impugned order, it is a matter of record that there was old enmity between the complainant and A1 relating to the piece of land where the offence came to be committed, while pertinently, the appellant (A2) is the nephew of A1.

There are no criminal antecedents of the appellant that have been brought on record. Further, from the record, it cannot be said that the appellant acted in a premeditated manner, whatsoever.

Therefore, in the interest of justice and in consideration of the abovementioned mitigating factors, this Court reduces the sentence imposed on the appellant-accused from 5 years rigorous imprisonment to 3 years of rigorous imprisonment. The appellant shall pay a fine amount of Rs.50,000/- (Rupees Fifty Thousand) within a period of 6 weeks from today. In default of payment of fine, the appellant shall undergo rigorous imprisonment for 3 months. The fine to be paid to the Complainant by way of compensation.

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82. INDIAN PENAL CODE, 1860 – Sections 313, 316 and 324

(i) Causing miscarriage – *Mens rea* for the offence – If the woman seemed to be pregnant at the time of offence and was still assaulted physically, section 313 will be attracted – Pregnancy cannot be guessed by presumption of physical appearance – Court needs evidence to determine the apparent visibility of her pregnancy.

(ii) Causing death of unborn child – Where victim was only two months pregnant, offence of section 316 is not made out as a quick child refers to a foetus that begins moving in the womb which is typically felt around 4-5 months of pregnancy.

भारतीय दण्ड संहिता, 1860 – धाराएं 313, 316 एवं 324

(i) गर्भपात कारित करना – अपराध के लिए दुराशय – यदि महिला अपराध के समय गर्भवती प्रतीत होती है और फिर भी उस पर शारीरिक हमला किया गया है, यह धारा 313 को आकर्षित करेगा – उसके गर्भवती होने का शारीरिक रूप से अनुमान नहीं लगाया जा सकता है इसलिए न्यायालय को उसकी गर्भावस्था की स्पष्ट दृश्यता निर्धारित करने के लिए साक्ष्य की आवश्यकता होगी।

(ii) अजन्मे बच्चे की मृत्यु कारित करना – जहां पीड़ित की गर्भावस्था केवल दो माह की थी, वहां धारा 316 का अपराध गठित होना नहीं माना जा सकता है क्योंकि स्पदंन गर्भा का अर्थ जब गर्भ में भ्रूण स्पंदन शुरू कर देता है जो कि लगभग 4–5 महीने में महसूस होता है ।

Bhupnath Tiwari & ors. v. State of M.P. & anr.

Order dated 06.09.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Cases No. 57350 of 2021, reported in ILR 2024 MP 345

Relevant extracts from the order:

On going through the averments available on record and material available in the charge sheet, it is found that Poonam has suffered miscarriage. She was having pregnancy of two months and was not quick with child. As per Butterworths Medical Dictionary, quick child means when fetus start moving in womb. Quickening is the first movement in the pregnancy which was felt by mother usually in 4 to 5 months pregnancy.

Requirement for making out an offence under Section 316 of I.P.C. is that accused person caused culpable homicide of woman but such act resulted into death of a quick unborn child. In the present case, there was no quickening as pregnancy was only 2 months, therefore, offence under Section 316 will not be made out against the petitioners.

It has been argued that petitioner has not voluntarily caused woman with child to miscarriage. Offence will only be made out, if petitioner voluntarily caused woman with child to miscarriage. It is alleged that victim was pregnant by two months. What is the condition of woman and what was her physical appearance at this stage cannot be guessed by presumption. It will require evidence before the Trial Court that whether her pregnancy was apparent from seeing her. If pregnancy was apparent, and then also petitioners physically had assaulted her then offence under Section 313 of the IPC will be made out. At this stage, it will be too early to register the offence and the same can only be established after evidence is adduced by the parties.

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83. INDIAN PENAL CODE, 1860 – Sections 364 and 364-A
EVIDENCE ACT, 1872 – Section 32 (1)

(i) Offence of kidnapping for ransom – Ingredients to be established for conviction – If the ingredient of demand of ransom coupled with threat of life of the person kidnapped, is not proved beyond reasonable doubt, offence is not made out.

(ii) Dying declaration – Survival of the person making such statement – Effect of – Such statement or supplementary statement, if any, shall be nothing more than a statement u/s 162 CrPC – Principle reiterated.

भारतीय दण्ड संहिता, 1860 – धाराएं 364 एवं 364-क
साक्ष्य अधिनियम, 1872 – धारा 32 (1)

(i) फिरौती के लिए अपहरण का अपराध – दोषसिद्धि के लिए तत्वों का स्थापित किया जाना – यदि फिरौती की मांग के साथ-साथ अपहरण किए गए व्यक्ति के जीवन के खतरे का घटक उचित संदेह से परे साबित नहीं होन पर अपराध गठित नहीं होगा।

(ii) मृत्युकालिक कथन – इस तरह का कथन देने वाले व्यक्ति का जीवित रहना – प्रभाव – इस तरह के कथन या पूरक कथन, यदि कोई हो, धारा 162 द.प्र.सं. के तहत किये गये कथन से अधिक कुछ नहीं होंगे – सिद्धांत दोहराया गया।

Neeraj Sharma v. State of Chhattisgarh

Judgment dated 03.01.2024 passed by the Supreme Court in Criminal Appeal No 1420 of 2019, reported in (2024) 3 SCC 125

Relevant extracts from the judgment:

This Court in the case of ***Vikram Singh v. Union of India, (2015) 9 SCC 502*** has observed as follows:

> "Applying the above to the case at hand, we find that the need to bring in Section 364-A IPC arose initially because of the increasing incidence of kidnapping and abduction for ransom. This is evident from the recommendations made by the Law Commission to which we have made reference in the earlier part of this judgment. While those recommendations were pending with the Government, the spectre of terrorism started raising its head threatening not only the security and safety of the citizens but the very sovereignty and integrity of the country, calling for adequate measures to curb what has the potential of destabilising any country. With terrorism assuming international dimensions, the need to further amend the law arose, resulting in the amendment to Section 364-A IPC, in the year 1994. The gradual growth of the challenges posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organised activity for economic gains but by terrorist organisations is what necessitated the incorporation of Section 364-A IPC and a stringent punishment for those indulging in such activities."

It needs to be clarified, as it was done in ***Vikram Singh*** (supra), that Section 364A IPC does not merely cover acts of terrorism against the Government or Foreign State but it also covers cases where the demand of ransom is made not as a part of a terrorist act but for monetary gains for a private individual.

In the present case, the evidence placed by the prosecution to establish a case under Section 364-A is in the form of a phone call to the father of the victim at 12 noon by Ravi Kumar Dwivedi (the third accused who was acquitted by the Trial Court). Although, according to the prosecution the number has been traced to Ashwani Kumar Yadav, one of the two accused here, but no evidence to this effect, as required under Section 165 of the Evidence Act, has been placed before the Court. The supplementary statement given by the complainant before the police on 21.03.2013, (his first statement is on 03.01.2013), has little relevance as PW-6 never speaks of this in his examination in chief.

This court in the case of ***S. Ahmed v. State of Telangana, (2021) 9 SCC 59*** has held that in order to make out an offence under Section 364 A, three conditions must be met:

(A) There should be a kidnapping or abduction of a person or a person is to be kept in detention after such kidnapping or abduction;

(B) There is a threat to cause death or hurt to such a person or the accused by their conduct give rise to a reasonable apprehension that such person may be put to death or hurt.

(C) Or cause death or hurt to such a person in order to compel the Government or any foreign state or intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

The necessary ingredients which the prosecution must prove, beyond a reasonable doubt, before the Court are not only an act of kidnapping or abduction but thereafter the demand of ransom, coupled with the threat to life of a person who has been kidnapped or abducted, must be there. It was reiterated by this Court in the case of ***Ravi Dhingra v. State of Haryana, (2023) 6 SCC 76.***

In the present case, what the prosecution has miserably failed to establish is the demand of ransom. As per the prosecution, the complainant's father i.e., Praneet Sharma (PW-5) received a phone call from which a demand of ransom was made. The phone call was allegedly traced as being of one Ravi Kumar Dwivedi but no evidence was placed on record to establish the demand of ransom before the Court

which was absolutely necessary in view of the law laid done by this Court in ***Rajesh v. State of Madhya Pradesh, (2023) 15 SCC 521.***

The statement given by the complainant/victim (PW-6) on 03.01.2013 was firstly to the investigating officer (PW-10). But more importantly it cannot be called "a dying declaration" simply because PW-6 had mercifully survived. This statement cannot be read as a dying declaration because the person making this statement or declaration had ultimately survived. This supplementary statement given to the investigating officer on 21.03.2013 is nothing more than a statement under Section 162 of Criminal Procedure Code (see: ***Gentela Vijayavardhan Rao and anr. v. State of A.P., (1996) 6 SCC 241; Sunil Kumar and ors. v. State of M.P., (1997) 10 SCC 570; Shrawan Bhadaji Bhirad and ors. v. State of Maharashtra, (2002) 10 SCC 56; State of U.P. v. Veer Singh and ors., (2004) 10 SCC 117*** and ***S. Arul Raja v. State of Tamil Nadu, (2010) 8 SCC 233.***

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84. INDIAN PENAL CODE, 1860 – Section 376

(i) Rape – Appreciation of evidence – Evidence of prosecutrix will have to be kept at a higher pedestal – Such testimony will have to satisfy the conscience of the Court and has to be seen contextually in light of other evidence available.

(ii) Non-examination of material independent witness – When can be termed as suffering from deficiency leading to adverse inference against the prosecution? When it may not be material and when it will not vitiate the case of the prosecution? Law explained. [*Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145* and *Rajesh Yadav v. State of Uttar Pradesh, (2022) 12 SCC 200* relied upon]

भारतीय दण्ड संहिता, 1860 – धारा 376

(i) बलात्संग – साक्ष्य का मूल्यांकन – अभियोक्त्री की साक्ष्य को उच्च स्तर पर रखा जावेगा, किंतु ऐसी साक्ष्य को न्यायालय की अंतरात्मा को संतुष्ट करना होगा, जिसे अन्य उपलब्ध साक्ष्य के प्रकाश में देखा जावेगा।

(ii) सारवान स्वतंत्र साक्षी का परीक्षण न होना – कब इसे अभियोजन के विपरीत अभिमत की ओर इंगित करने वाली कमी से ग्रसित होना मान्य किया जा सकता है? कब यह सारवान नहीं होगा और कब यह अभियोजन

के मामले को दूषित नहीं करेगा? विधि समझाई गई। (*टखाजी हिराजी वि. ठाकोर कुबेरसिंह चमनसिंह, (2001) 6 एससीसी 145* एवं *राजेश यादव वि. उत्तरप्रदेश राज्य, (2022) 12 एससीसी 200* पर विश्वास किया गया)।

Davinder Singh v. State of Punjab

Judgment dated 22.06.2023 passed by the Supreme Court in Criminal Appeal No. 12 of 2015, reported in 2023 (3) Crimes 80 (SC)

Relevant extracts from the judgment:

On the issue of non-examination of material witness, we wish to place reliance on the decision of this Court in ***Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145***:-

> "It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself - whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

In ***Rajesh Yadav v. State of Uttar Pradesh, (2022) 12 SCC 200***:

> "A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the

quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it."

There is no doubt that the evidence of the prosecutrix will have to be kept at a higher pedestal but then, such a testimony will have to satisfy the conscience of the Court. It has to be seen contextually in the light of the other evidence available.

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85. INDIAN PENAL CODE, 1860 – Sections 405, 406, 419, 420, 467 and 468/34

Offence of cheating/criminal breach of trust – Ingredients – Fraudulent or dishonest intention or misappropriation of property entrusted from the beginning is must – Intention is the gist of the offence – For criminal breach of trust, entrustment of property whether to clerks, servants, business partners or other persons, is an essential ingredient – Where these ingredients are not present, the offence is not made out – Mere violation of any terms of the loan agreement by the party cannot give rise to criminal prosecution for the offence – A civil dispute cannot be given a criminal colour.

भारतीय दण्ड संहिता, 1860 – धाराएं 405, 406, 419, 420, 467 एवं 468/34

छल/आपराधिक न्यास भंग का अपराध – तत्व – कपटपूर्ण या बेइमानी पूर्ण या प्रारंभ से ही सौंपी गई संपत्ति का दुरुपयोग का आशय आवश्यक है – आशय अपराध का सार है – न्यासभंग के लिए, चाहे क्लर्क, नौकर, व्यावसायिक भागीदार या अन्य व्यक्तियों को, संपत्ति का न्यस्त किया जाना एक आवश्यक घटक है – जहां ये तत्व मौजूद नहीं हैं, अपराध गठित होता नहीं – केवल किसी पक्ष द्वारा ऋण करार की किसी शर्त का उल्लंघन अपराध के लिए आपराधिक अभियोजन को जन्म नहीं दे सकता है – एक सिविल विवाद को आपराधिक रूप नहीं दिया जा सकता।

Neeraj Shrivastava v. State of M.P. & anr.

Order dated 05.09.2023 passed by the High Court of Madhya Pradesh Jabalpur in Miscellaneous Criminal Cases No. 11632 of 2019, reported in ILR 2024 MP 316

Relevant extracts from the order:

In the case on hand, the charge sheet has been filed for commission of offence under Sections 420, 406, 467, 468 of IPC and charges have been framed. In order to ascertain the veracity of contentions made by the parties herein, it is imperative to firstly examine whether the relevant ingredients of offences which the petitioner herein with co-accused had been charged with, are prima facie made out.

It is clear that the act of criminal breach of trust would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:-

"(i) The representation made by the person was false

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed."

The ingredients to constitute an offence under Section 420 are as follows:

"(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to;

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC."

Now it has to be considered by the averments in the FIR even assuming to be true make out the ingredients of the offence punishable either under Section 467 or 468 of IPC.

An analysis of section 464 of Indian Penal Code shows that it divides false documents into three categories:

> "(1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
>
> (2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
>
> (3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration. In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorized by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses."

Thus, having regard to the serious factual disputes which are purely of civil nature and for which Civil Suit is pending. Allowing the respondents to continue criminal proceedings against the petitioner would be nothing but abuse of the process of the law. Hon'ble Supreme Court in the case of ***Mitesh Kumar J. Sha v. State of Karnataka and ors., 2022 CriLJ 231***, observed as under:

> "Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety."

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86. INDIAN PENAL CODE, 1860 – Sections 420 and 468
CRIMINAL PROCEDURE CODE, 1973 – Section 173 (8)

(i) Offence of cheating and forgery – Accused wife is alleged to have forged the signatures of her husband on the application submitted for obtaining passport for her minor child – The said act might be unlawful but it cannot be labelled as deceitful – Grant of passport did not confer any benefit upon the wife, nor did it result in any loss or damage to her husband – Offence of cheating not made out – When primary ingredients of dishonest intention itself could not be established, the offence of forgery too could not be constituted.

(ii) Supplementary charge sheet – Further investigation – It is obligatory upon the officer in-charge of the Police station to obtain further evidence, oral or documentary and only then forward a supplementary report regarding such evidence, in the prescribed form.

भारतीय दण्ड संहिता, 1860 – धाराएं 420 एवं 468
दण्ड प्रक्रिया संहिता, 1973 – धारा 173 (8)

(i) छल और कूटरचना का अपराध – आरोपी पत्नी पर आरोप है कि उसने अपने अवयस्क बच्चे के लिए पासपोर्ट प्राप्त करने के लिए जमा किए गए आवेदन पर अपने पति के जाली हस्ताक्षर किए – उक्त कार्य अवैध हो सकता है लेकिन इसे छल के रूप में चिन्हित नहीं किया जा सकता – पासपोर्ट प्राप्त करने से पत्नी को कोई लाभ नहीं हुआ न ही इससे उसके पति को कोई नुकसान या हानि हुई – छल का अपराध गठित नहीं – जब छल के आशय के प्राथमिक तत्व स्वयं स्थापित नहीं किए जा सके, तब कूटरचना का अपराध भी गठित नहीं होता।

(ii) पूरक अभियोग पत्र – अतिरिक्त जांच – पुलिस थाना प्रभारी के लिए यह अनिवार्य है कि वह मौखिक या दस्तावेजी अतिरिक्त साक्ष्य प्राप्त करे और केवल तभी निर्धारित प्रपत्र में ऐसी साक्ष्य के संबंध में एक पूरक रिपोर्ट भेजे।

Mariam Fasihuddin and anr. v. State by Adugodi Police Station and anr.

Judgment dated 22.01.2024 passed by the Supreme Court in Criminal Appeal No. 335 of 2024, reported in 2024 CriLJ 1033

Relevant extracts from the judgment:

It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

The crux of Respondent No. 2's allegations is that the Appellants purportedly forged his signature on the passport application submitted to obtain the minor child's passport. Assuming the allegation to be accurate, it would undoubtedly constitute an unlawful act. However, as set out earlier, it is crucial to underscore that not every unlawful act automatically qualifies as 'deceitful'. In the peculiar facts and circumstances of this case, the Appellant – wife seems to have breached the notion of mutual marital trust and unauthorized projected Respondent No. 2's consent in obtaining the passport for their minor child. It, however, remains a question as to how such an act can be labelled as 'deceitful'. The motivations prompting either of the Appellants to procure a passport for the minor child were not rooted in deceit. Furthermore, the grant of passport to the minor child did not confer any benefit upon the Appellant wife, nor did it result in any loss or damage to Respondent No. 2. In the same vein, Appellant No. 2, being the father of the Appellant – wife and assisting in securing the passport for the child, derived no direct or indirect benefit from this action.

There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely: (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.

The offences of 'forgery' and 'cheating' intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of 'cheating' under Section 420 IPC, it stands established that no dishonest intent can be made

out against the Appellants. Our focus therefore will now be confined, for the sake of brevity, to the first element, i.e., the preparation of a false document. The determination of whether the Appellants prepared a false document, by forging Respondent No. 2's signature, however, cannot be even prima facie ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand. It is also significant to highlight that the proceedings as against the concerned Passport Officer, who was implicated as Accused No. 4, already stand quashed. In such like situation and coupled with the nature of allegations, we are unable to appreciate as to why the Appellants be subjected to the ordeal of trial.

It is a matter of record that in the course of 'further investigation', no new material was unearthed by the investigating agency. Instead, the supplementary charge-sheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which was already available when the original charge-sheet was filed. The term 'further investigation' stipulated in Section 173(8) Cr. P. C. obligates the officer incharge of the concerned police station to 'obtain further evidence, oral or documentary', and only then forward a supplementary report regarding such evidence, in the prescribed form.

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87. INDIAN PENAL CODE, 1860 – Sections 420, 498A and 506

Matrimonial dispute – Allegation on vexatious grounds – Phenomenon of false implication by way of general *omnibus* allegation in the course of matrimonial disputes is not unknown to the Courts – It is the duty of Court to consider the allegation with great care to protect against the danger of unjust prosecution.

भारतीय दण्ड संहिता, 1860 – धाराएं 420, 498क एवं 506

वैवाहिक विवाद – तुच्छ आधारों पर आरोप – वैवाहिक विवादों में सामान्य सर्वव्यापी प्रकृति के आरोपों के माध्यम से मिथ्या फंसाये जाने की घटनाएं न्यायालयों के लिये अज्ञात नहीं हैं – यह न्यायालय का कर्तव्य है कि अन्यायपूर्ण अभियोजन के खतरों से बचाने हेतु आरोपों पर बहुत सावधानी से विचार करे ।

Mamidi Anil Kumar Reddy v. The State of Andhra Pradesh & anr.

Order dated 05.02.2024 passed by the Supreme Court in Criminal Appeal No. 758 of 2024, reported in 2024 (1) Crimes 141 (SC)

Relevant extracts from the order:

In the considered opinion of this Court, there is significant merit in the submissions of the Learned Counsel for the Appellants. A bare perusal of the complaint, statement of witnesses' and the charge-sheet shows that the allegations against the Appellants are wholly general and omnibus in nature; even if they are taken in their entirety, they do not prima facie make out a case against the Appellants. The material on record neither discloses any particulars of the offences alleged nor discloses the specific role/allegations assigned to any of the Appellants in the commission of the offences.

The phenomenon of false implication by way of general omnibus allegations in the course of matrimonial disputes is not unknown to this Court. In ***Kahkashan Kausar alias Sonam v. State of Bihar, (2022) 6 SCC 599***, this Court dealt with a similar case wherein the allegations made by the complainant-wife against her in-laws u/s. 498A and others were vague and general, lacking any specific role and particulars. The court proceeded to quash the FIR against the accused persons and noted that such a situation, if left unchecked, would result in the abuse of the process of law.

Considering the dicta in ***Mahmood Ali v. State of U.P., 2023 SCC OnLine SC 953,*** we find that the High Court in this case has failed to exercise due care and has mechanically permitted the criminal proceedings to continue despite specifically finding that the allegations are general and omnibus in nature. The Appellants herein approached the High Court on inter alia grounds that the proceedings were re-initiated on vexatious grounds and even highlighted the commencement of divorce proceedings by Respondent No. 2. In these peculiar circumstances, the High Court had a duty to consider the allegations with great care and circumspection so as to protect against the danger of unjust prosecution.

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88. INDIAN PENAL CODE, 1860 – Sections 499 and 500

(i) Defamation – Exceptions to offence – Relevant factors before issuance of process – It is the duty of the Magistrate to prevent false/frivolous complaints – After due inquiry or investigation, if the matter appears to have been covered by any exception to Section 499, would be justified to dismiss such complaint.

(ii) Precedents – Binding effect – Divergent views by Benches of co-equal strength – Pendency of reference before larger bench – During the pendency of matter before larger bench, former decision will continue to prevail/ govern the field until the larger bench decides the matter.

(iii) Applicability of precedents – Extent – Similarity of facts in criminal cases – Each case must rest on its own facts – Similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case. [*Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42* referred.]

भारतीय दण्ड संहिता, 1860 – धाराएं 499 एवं 500

(i) मानहानि – अपराध के अपवाद – आदेशिका जारी करने से पूर्व के सुसंगत कारक – झूठी/तुच्छ शिकायतों को रोकना मजिस्ट्रेट का कर्तव्य है – उचित जाँच या अन्वेषण के बाद यदि मामला धारा 499 के किसी अपवाद की परिधि में आना प्रतीत होता है तब ऐसी शिकायत को निरस्त करना उचित होगा।

(ii) पूर्व निर्णय – बाध्यकारी प्रभाव – समसंख्या वाली पीठों द्वारा भिन्न मत– वृहद पीठ के समक्ष संदर्भ की लंबितता – वृहद पीठ के समक्ष मामला लंबित रहने के दौरान पूर्ववर्ती निर्णय तब तक प्रभावी रहेगा जब तक कि वृहद पीठ मामले पर निर्णय नहीं करती।

(iii) पूर्व निर्णय की प्रयोज्यता – विस्तार – आपराधिक मामलों में तथ्यों की समानता – प्रत्येक मामले को अपने तथ्यों पर अवलंबित होना चाहिए – एक मामले में तथ्यों की समानता का उपयोग दूसरे मामले में तथ्य पर निष्कर्ष देते समय ध्यान में रखने के लिए नहीं किया जा सकता है। (*कल्याण चंद्र सरकार बनाम राजेश रंजन, (2005) 2 एस. सी. सी. 42* उल्लिखित।)

Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya and anr.

Judgment dated 05.10.2023 passed by the Supreme Court in Criminal Appeal No. 1959 of 2012, reported in (2024) 2 SCC 86

Relevant extracts from the judgment:

What applies to Judges of the High Courts faced with decisions of this Court where a cleavage of opinion is discernible, and particularly when the High Courts

are technically bound by both decisions, equally applies to Hon'ble Judges of this Court. It would be inappropriate for a Bench, comprised of 2 (two) Judges of this Court, to hold which line of decisions lays down the correct law. In such a scenario, when there are decisions of this Court not expressing views in sync with each other, the first course to be adopted is to ascertain which is the decision that has been rendered by a larger Bench. Obviously, inter se decisions of this Court, a decision of a Constitution Bench would be binding on Benches of lesser strength. None of the decisions that we have considered is rendered by a Constitution Bench. However, a sole judgment rendered by a Bench of 4 (four) Hon'ble Judges and 3 (three) decisions rendered by Benches comprised of 3 (three) Hon'ble Judges are there, which call for deference. Ordinarily, the decision of a larger Bench has to be preferred unless of course a Bench of lesser strength doubts an earlier view, formulates the point for answer and refers the matter for further consideration by a larger Bench in accordance with law. If, however, the decisions taking divergent views are rendered by Benches of co-equal strength, the next course to be adopted is to attempt to reconcile the views that appear to be divergent and to explain those contrary decisions by assuming, to the extent possible, that they applied to different facts. The other course available is to look at whether the previous decision has been noticed, considered and explained in the subsequent decision; if not, the earlier decision continues to remain binding whereas if the answer is in the affirmative, the subsequent decision becomes the binding decision. We add a caveat that if the subsequent Bench, instead of deciding the matter before it finally upon consideration of the decision of the earlier Bench, formulates the point of difference and makes a reference for a decision by a larger Bench, it is the former decision that continues to govern the field so long the larger Bench does not decide the reference.

There is also authority for the proposition that while deciding cases on facts, more so in criminal cases, the courts should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case. We may usefully refer to the decision in ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42*** in this context.

Since initiation of prosecution is a serious matter, we are minded to say that it would be the duty of the Magistrate to prevent false and frivolous complaints eating up precious judicial time. If the complaint warrants dismissal, the Magistrate

is statutorily mandated to record his brief reasons. On the contrary, if from such materials a prima facie satisfaction is reached upon application of judicial mind of an "offence" having been committed and there being sufficient ground for proceeding, the Magistrate is under no other fetter from issuing process. Upon a prima facie case being made out and even though much can be said on both sides, the Magistrate would have no option but to commit an accused for trial, as held in ***Chandra Deo Singh v. Prakash Chandra Bose, (1964) SCR 639***. The requirement of recording reasons at the stage of issuing process is not the statutory mandate; therefore, the Magistrate is not required to record reasons for issuing process. This is also the law declared by this Court in ***Jagdish Ram v. State of Rajasthan, (2004) 4 SCC 432***. Since it is not the statutory mandate that reasons should be recorded in support of formation of opinion that there is sufficient ground for proceeding whereas dismissal of a complaint has to be backed by brief reasons, the degree of satisfaction invariably must vary in both situations. While in the former it is a prima facie satisfaction based on probability of complicity, the latter would require a higher degree of satisfaction in that the Magistrate has to express his final and conclusive view of the complaint warranting dismissal because of absence of sufficient ground for proceeding.

In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in section 200/ section 202) as to whether 'sufficient ground for proceeding' exists as distinguished from 'sufficient ground for conviction', which has to be left for determination at the trial and not at the stage when process is issued. Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to section 499, IPC is attracted, there is no bar either. After all, what is 'excepted' cannot amount to defamation on the very terms of the provision. We do realize that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold. However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given

case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to section 499, IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.

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89. MOTOR VEHICLES ACT, 1988 – Sections 149 and 166

Contributory negligence – Triple riding – There should be specific evidence with regard to negligence even if an additional pillion rider was carried on the two wheelers – No evidence to indicate there was negligence on the part of the rider of two-wheeler, hence no amount should be deducted as contribution to the accident.

मोटर यान अधिनियम, 1988 – धाराएं 149 एवं 166

योगदायी उपेक्षा – तीन सवारी बैठाना – लापरवाही के संबंध में विशिष्ट प्रमाण होने चाहिए भले ही दोपहिया वाहन में पीछे सीट पर एक अतिरिक्त व्यक्ति सवार हो – दोपहिया वाहन चालक की लापरवाही का कोई प्रमाण नहीं, अतः दुर्घटना में योगदान के रूप में कोई राशि नहीं काटी जानी चाहिए।

Jeyarani and anr. v. Manager, Bajaj Allianz General Insurance Co. Ltd. and anr.

Judgment dated 10.07.2023 passed by the Supreme Court in Civil Appeal No. 4310 of 2023, reported in 2023 ACJ 2390 (SC)

Relevant extracts from the judgment:

The only issue which arise for consideration in these appeals are with regard to the aspect of contributory negligence, and also the appropriate income to be taken for the purpose of calculation of the quantum of compensation to be awarded. On the aspect relating to contributory negligence though, the High Court had referred to the decisions/judgments of this Court, we also take note of the decision/judgment of this Court in ***Mohammed Siddique v. National Insurance Company Ltd., AIR 2020 SC 520*** wherein, the aspect which is under consideration in the instant appeals, was specifically dealt with, and has been held that there should be specific

evidence with regard to negligence even if an additional pillion was being carried on the two-wheeler, which is the vehicle on which the deceased was travelling while the accident took place.

In that background, a perusal of the award in the instant case would indicate that P.W.2 was examined as an eye witness, and a finding has been rendered by the Tribunal that as per the evidence of the said eye witness (P.W.2), there is no negligence on the part of the rider of the two-wheeler. As against the same, there is no rebuttal evidence to indicate the negligence of the rider of the two-wheeler. Therefore, in that circumstance, the High Court could not have arrived at the conclusion that there was contributory negligence on the part of the rider of the two-wheeler. Hence, to that extent, the finding holding contributory negligence is set aside.

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90. MOTOR VEHICLES ACT, 1988 – Section 149 (2) (a) (ii)

Fake driving licence – Liability of Insurance Company – Burden of proof – There is no statutory mandate in the policy that a person before employing a driver should get the driving licence verified from the Transport Authority – If the owner is satisfied that the licence produced before him was issued by a seemingly competent authority and its validity has not expired, the burden shifts on the Insurance Company to prove that due diligence was not carried out by the owner.

मोटर यान अधिनियम, 1988 – धारा 149 (2) (क) (ii)

नकली चालन अनुज्ञप्ति – बीमा कंपनी का दायित्व – सबूत का भार – पॉलिसी में ऐसी कोई संविधिक बाध्यता नहीं है कि वाहन चालक को नियुक्त करने वाला प्रत्येक व्यक्ति संबंधित परिवहन प्राधिकरण से अनुज्ञप्ति की वैधता और वास्तविकता के विषय में सत्यापन कराए – यदि स्वामी संतुष्ट है कि उसके समक्ष प्रस्तुत की गई अनुज्ञप्ति किसी सक्षम प्राधिकारी द्वारा जारी की गई है और जिसकी वैधता समाप्त नहीं हुई है तब स्वामी द्वारा उचित तत्परता नहीं बरती गई यह साबित करने का भार बीमा कंपनी पर अंतरित हो जाता है।

Iffco-Tokio General Insurance Co. Ltd. v. Geeta Devi and ors.

Judgment dated 30.10.2023 passed by the Supreme Court in Special Leave Petition (C) No. 19992 of 2023, reported in 2023 ACJ 2701 (SC)

Relevant extracts from the judgment:

As regards the contention that the driver of the vehicle was not duly licensed as he possessed a fake licence, it may be noted that neither section 149 (2) (a) (11) of the Act of 1988 nor the 'Driver Clause' in the subject insurance policy provides that the owner of the insured vehicle must, as a rule, get the driving licence of the person employed as a driver for the said vehicle verified and checked with the concerned transport authorities. Generally, and as a matter of course, no person employing a driver would undertake such a verification exercise and would be satisfied with the production of a licence issued by a seemingly competent authority, the validity of which has not expired. It would be wholly impracticable for every person employing a driver to expect the transport authority concerned to verify and confirm whether the driving licence produced by that driver is a valid and genuine one, subject to just exceptions. In fact, no such mandatory condition is provided in any car insurance policy and it is not open to the petitioner-insurance company, which also did not prescribe such a stringent condition, to cite the failure of the deceased-vehicle owner to get Ujay Pal's driving licence checked with the RTO as a reason to disclaim liability under the insurance policy.

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91. MOTOR VEHICLES ACT, 1988 – Sections 149 and 166

Involvement of vehicle – Delay in lodging FIR – Mere delay in lodging FIR cannot be a ground to dislodge the case of claimant – Motorcycle owner's choice to remain silent and withhold information about the accident, in order to evade potential legal complications, is not unreasonable – No error in holding that the accident was caused by the offending motorcycle.

मोटर यान अधिनियम, 1988 – धाराएं 149 एवं 166

वाहन की संलिप्तता – प्रथम सूचना रिपोर्ट दर्ज करने में विलंब – केवल प्रथम सूचना रिपोर्ट दर्ज करने में विलंब दावेदार के प्रकरण को निरस्त करने का आधार नहीं हो सकता – मोटरसाइकिल के स्वामी का दुर्घटना के बारे में चुप रहने और प्रकट न करने का आचरण अयुक्तियुक्त नहीं था क्योंकि वह किसी विधिक जटिलता में उलझना नहीं चाहता था – दुर्घटना मोटरसाइकिल द्वारा कारित की गई, यह निर्धारित करने में कोई त्रुटि नहीं की गई ।

Iffco-Tokio General Insurance Co. Ltd. v. Diwakar Singh and ors. Judgment dated 14.03.2023 passed by High Court of Madhya Pradesh in Miscellaneous Appeal No. 1363 of 2021, reported in 2023 ACJ 2408

Relevant extracts from the judgment:

The contention of counsel for the appellant that the offending motorcycle was falsely planted at a later stage is based on the fact that the registration number of the offending motorcycle was not mentioned in the merg intimation (Ex.P/7) as well as in the history informed to the doctor in pre MLC (Ex.P/5). From the pre MLC (Ex.P/5) as well as the merg intimation (Ex.P/7), one thing is clear that it was mentioned that the deceased has suffered injuries on account of his fall from the motorcycle. The merg intimation regarding death of the deceased was given to the police on 27.02.2018 itself. If the police thereafter was lethargic in conducting the merg enquiry then for the same, the claimants cannot be blamed. It is well established principle of law that mere delay in lodging the FIR is not sufficient to dislodge the case of the claimant as held by the Supreme Court in the case of ***Ravi v. Badrinarayan, AIR 2011 SC 1226***. In the case in hand, it is not the case of the appellant that no information at all was given to the police. Mere intimation to the police was given on the very same day. However, it was a lethargic attitude of the police which resulted in delay in lodging the FIR.

So far as the conduct of the owner of the motorcycle in remaining silent by not disclosing the accident to the police is concerned, the said conduct of the owner cannot be said to be an unnatural one. The owner of a vehicle would like to hide the factum of accident so that he is not involved in any legal complication.

Aditya Pandey (AW/2) has specifically stated that he had seen the incident. There is no reason to disbelieve his evidence, only on the ground that his merg statement was recorded by the police belatedly. Furthermore, the injured Diwakar Singh (PW/1) has specifically stated that he was dashed by the offending vehicle. There was no occasion for him not to narrate the truth by falsely alleging against driver of offending motorcycle.

As the claims tribunal did not commit any error by holding that the accident was caused by the offending motorcycle bearing registration no. MP-19-MR-8815, this Court is of the considered opinion that the insurance company has been rightly held jointly and severally liable along with the owner and driver of the vehicle to pay compensation amount.

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92. MOTOR VEHICLES ACT, 1988 – Section 166

(i) Compensation – Deceased an employed lady – Motor Accident Claim Tribunal awarded Rs. 1,00,000/- to claimant husband – Taking into account actual salary of the deceased, the High Court enhanced the amount to Rs. 9,55,600/- – Keeping in view the contribution that would be made by the lady of the house to the family, the Supreme Court further enhanced it by Rs. 2,50,000/-.

(ii) Compensation – Injury – Loss of earning – No material placed on record showing that victim has lost his promotional opportunities – Considering that victim would have suffered discomfort and after retirement, the prospects could have got affected to some extent, lump sum enhancement to a sum of Rs. 2,00,000/-, in addition to the compensation already awarded was granted.

मोटर यान अधिनियम, 1988 – धारा 166

(i) प्रतिकर – मृतक कर्मचारी महिला – मोटर दुर्घटना दावा अधिकरण ने दावेदार पति को 1,00,000/- रूपये प्रतिकर प्रदान किया – उच्च न्यायालय ने मृतिका के वास्तविक वेतन को ध्यान में रखते हुए उक्त राशि को बढ़ाकर 9,55,600/- रूपये किया – उच्चतम न्यायालय ने घर की महिला व्दारा परिवार को किये जाने वाले योगदान को ध्यान में रखते हुऐ प्रतिकर की राशि में अतिरिक्त 2,50,000/- रूपये की वृद्धि की ।

(ii) प्रतिकर – क्षति – आय का कोई नुकसान नहीं – अभिलेख में ऐसा कोई तथ्य नहीं रखा गया जिससे यह दर्शित हो कि पीड़ित ने अपनी पदोन्नति के अवसर खो दिये हैं – इस तथ्य को ध्यान में रखते हुए कि पीड़ित को असुविधाओं का सामना करना पड़ा और उसकी सेवानिवृत्ति के बाद की संभावनाऐं कुछ सीमा तक प्रभावित हो सकती थी, पूर्व से पारित प्रतिकर में अतिरिक्त एकमुश्त राशि के रूप में 2,00,000/- की वृद्धि की गई ।

Rakesh Swarup Saxena v. Vinod Kumar and ors.

Judgment dated 12.09.2023 passed by the Supreme Court in Civil Appeal No. 5880 of 2023, reported in 2023 ACJ 2680 (SC)

Relevant extracts from the judgment:

The fact of the accident having occurred on 08.10.1994 and the wife of the appellant having succumbed to the injuries is not in dispute. In respect of the said claim, the Motor Accident Claims Tribunal (for short MACT) through its judgment

dated 16.04.1996 had awarded a sum of Rs.1,00,000/-. The High Court through its judgment dated 06.07.2018 had enhanced it to Rs.9,55,600/-. Though contentions are put forth seeking enhancement, taking note that the High Court has taken into consideration the actual salary of the deceased, on that aspect we see no error. However, some additional amount would have to be taken into consideration, keeping in view the contribution that would be made as a lady of the house to the family. Therefore, keeping in view all these aspects of the matter and without getting into details, we deem it appropriate to grant the global enhancement to Rs.2,50,000/- in respect of the death of the wife of the appellant in addition to the compensation already awarded by the High Court.

Insofar as the injuries suffered by the appellant, though it is contended that he has lost his promotional opportunities, there is no definite material placed on record. Be that as it may, considering that the appellant was working in a bank and had continued in such employment, he would have suffered the discomfort and after retirement, the prospects, to some extent, could have got affected. Therefore, in the instant case also keeping in view all aspects, we find it appropriate to grant the lump sum enhancement which shall be in a sum of Rs.2,00,000/- in addition to the compensation already awarded by the MACT/High Court.

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93. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Deceased was a carpenter at the time of accident in the year 2009 – No evidence was available to establish his definite income – Tribunal assessed the income at Rs. 4000/- per month whereas the High Court reckoned it at Rs. 6000/- per month – Supreme Court, taking into consideration the fact that deceased was a carpenter and was undertaking carpentry work in another State, held that it would be reasonable to reckon the daily income of the deceased at Rs. 400/- – Also added 40% of income for future prospects and enhanced the compensation accordingly.

मोटर यान अधिनियम, 1988 — धारा 166

प्रतिकर — दुर्घटना के समय वर्ष 2009 में मृतक बढ़ई का काम कर रहा था — उसकी निश्चित आय स्थापित करने के लिये कोई साक्ष्य उपलब्ध नहीं थी — अधिकरण ने मृतक की आय 4000 रूपये प्रतिमाह आंकलित की जबकि उच्च न्यायालय ने इसे 6000 रूपये प्रतिमाह माना — उच्चतम न्यायालय ने मृतक के

बढ़ई होने एवं अन्य राज्य में भी बढ़ई का कार्य करने के तथ्य को विचार में लेते हुए माना कि मृतक की आय 400 रूपये प्रतिदिन आंकलित किया जाना उचित होगा – आय में भविष्य की संभावना के लिए 40 प्रतिशत राशि को भी जोड़कर तद्नुसार प्रतिकर की राशि में वृद्धि की गई ।

Kunta Devi and ors. v. Bhura Ram and anr.

Judgment dated 21.08.2023 passed by the Supreme Court in Civil Appeal No. 5356 of 2023, reported in 2023 ACJ 2384 (SC)

Relevant extracts from the judgment:

The MACT, at the first instance, while considering the claim, has reckoned the income of the deceased at Rs.4,000/- per month. In the absence of evidence to establish the same, the High Court has reckoned it at Rs.6,000/- per month. In a matter where there can be no serious dispute with regard to the avocation of the deceased being a carpenter, who was undertaking the carpentry work in another State, we deem it appropriate that even in the year 2009, when the accident had taken place, it would be reasonable to reckon the daily income of the deceased at Rs. 400/-. If the same is done, the monthly income of the deceased could be taken at Rs. 12,000/-. 40% of the said amount i.e. Rs. 4,800/- is to be added towards future prospects. Out of the total income of Rs. 16,800/-, one-fourth is to be deducted towards self-expenses being Rs. 4,200/-. Hence, the loss of dependency per month would be in a sum of Rs.12,600/-. If the same is taken on the annual basis and the appropriate multiplier of '17' is applied, the compensation would work out to Rs. 25,70,400/-. Rs.70,000/- is added towards conventional heads. Hence, the total amount of compensation would be in a sum of Rs.26,40,400/-.

Since, the High Court has awarded the sum of Rs.14,30,200/-,the appellants-claimants would be entitled to the enhanced compensation of Rs.12,10,200/- with interest at 7.5% per annum from the date of the claim made before the MACT till the time of deposit.

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94. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Income Tax Return – Production of – Last Income Tax Return filed prior to the death of the deceased depicting e-filing acknowledgment – Can be considered as income document of the deceased.

मोटर यान अधिनियम, 1988 – धारा 166

प्रतिकर – आयकर रिर्टन – प्रस्तुत किया जाना – मृतक की मृत्यु के पूर्व जमा किया गया अंतिम आयकर रिटर्न जिसमें ई–फाइलिंग अभिस्वीकृति दर्शाई गयी हो – मृतक की आय के दस्तावेज के रूप में विचार में लिया जा सकता है ।

Saroj Devi and ors. v. Balbir Singh and ors.

Judgment dated 26.09.2023 passed by the Supreme Court in Civil Appeal No. 6186 of 2023, reported in 2023 ACJ 2678 (SC)

Relevant extracts from the judgment:

The deceased was an income tax assessee, is not in dispute. The income of the deceased, as taken by the MACT is at Rs.1,02,700/-. However, the subsequent income tax return filed on 18.02.2012, which is prior to the death of the deceased, though, has been discarded on the ground that there is no acknowledgment, we note that the e-filing acknowledgment is depicted on the face of the form for income tax return. Therefore, the income, as indicated therein, is required to be taken.

If that be the position, the income assessed for the tax, which is paid therein, is in a sum of Rs.1,50,000/-. If the said amount, i.e., Rs.1,50,000/- is taken into consideration and the other parameters are applied, 40 per cent of the same is to be added towards future prospects, which would be in a sum of Rs. 60,000/-. Hence, the total income that could be reckoned is Rs.2,10,000/- of which one-third is to be deducted towards self-expenses which would be in a sum of Rs. 70,000/-. Hence, the loss of dependency would be Rs.1,40,000/- per annum. If the appropriate multiplier of 17 is applied, the compensation would work out to Rs.23,80,000/-. Towards the conventional heads, a sum of Rs. 70,000 is awarded. Hence, the appellants claimants would be entitled to the compensation of Rs.24,50,000/-. The High Court has awarded a sum of Rs.12,92,130/- as compensation, which if deducted, the balance of Rs.11,57,870/- shall be payable as enhancement. The enhanced compensation with interest at 7.5 per cent per annum from the date of the claim shall be deposited by the respondent(s) before the MACT. The said amount shall be deposited within a period of six weeks from the date of receipt of a copy of this judgment whereupon the amount shall be disbursed to the appellants/ claimants herein.

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95. MOTOR VEHICLES ACT, 1988 – Section 166

Contributory negligence – Offending truck parked in the middle of the road without clear indication or signal – Deceased did not notice the truck as it was night and visibility was poor – Held, truck driver was solely responsible for causing the accident – Finding recorded by the Tribunal and affirmed by the High Court that deceased contributed to the accident to the extent of 50%, set aside.

मोटर यान अधिनियम, 1988 – धारा 166

योगदायी उपेक्षा – दुर्घटनाकारी ट्रक को सड़क के बीचों बीच स्पष्ट संकेत या सिग्नल के बिना खड़ा किया गया था– मृतक रात्रि होने और कम दृश्यता के कारण ट्रक को नहीं देख पाया – अभिनिर्धारित, केवल ट्रक ड्रायवर दुर्घटना कारित करने के लिये उत्तरदायी था – मृतक का 50 प्रतिशत की सीमा तक दुर्घटना में योगदान संबंधी निष्कर्ष जो कि अधिकरण द्वारा दिया गया था और जिसे उच्च न्यायालय द्वारा उचित ठहराया गया था, को अपास्त किया गया।

Laxmi Devi and ors. v. Mehboob Ali and ors.

Judgment dated 25.08.2023 passed by the Supreme Court in Civil Appeal No. 5420 of 2023, reported in 2023 ACJ 2386 (SC)

Relevant extracts from the judgment:

Firstly, with regard to the negligence, as held, a perusal of the judgment passed by the Motor Accidents Claims Tribunal (for short MACT) itself would indicate the manner in which the accident had occurred and as rightly observed both by the MACT as well as by the High Court, the accident having taken place during the month of December after it was dark, certainly, the visibility would be poor. In that circumstance, when it was a case where the truck (offending vehicle) was parked in middle of the road and the deceased had not noticed it as there was no clear indication or signal, it cannot be said that there was negligence on the part of the deceased as he could notice the vehicle (the truck) only when he had approached the same.

Therefore, in the present facts and circumstances of the case, we are of the opinion that the conclusion, as reached, both by the MACT and the High Court that the deceased was negligent to the extent of 50 per cent is not justified. Furthermore, when there was no explanation on the part of the driver of the truck by examining him with regard to the manner in which the accident had occurred we are of the

opinion that the entire negligence is to be fastened on the driver of the truck (the offending vehicle).

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***96. MOTOR VEHICLES ACT, 1988 – Section 166 (1) (c)**

Legal representative – Elder married brothers – Two family registers show that brother of deceased lived separately with their respective family – Only on the basis that deceased visited his siblings and had meals together, they cannot be treated as dependent – Not entitled to claim compensation – Award set aside.

मोटर यान अधिनियम, 1988 – धारा 166 (1) (ग)

विधिक प्रतिनिधि – ज्येष्ठ विवाहित भाई – दो पारिवारिक रजिस्टरों से पता चलता है कि मृतक के भाई अपने–अपने परिवार के साथ अलग रहते थे – केवल इस आधार पर कि मृतक अपने भाई–बहनों से मिलने जाता था और एक साथ भोजन करता था, उन्हें आश्रित के रूप में नहीं माना जा सकता – प्रतिकर का दावा करने का अधिकारी नहीं – अवार्ड निरस्त किया गया।

New India Assurance Co. Ltd. v. Anand Pal and ors.

Judgment dated 04.12.2023 passed by the Supreme Court in Criminal Appeal No. 7920 of 2023, reported in 2024 ACJ 6

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97. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Dishonor of cheque –Debt or liability – Allegedly barred by limitation – Question regarding the time barred nature of debt or liability is a mixed question of fact and law and must be decided on evidence adduced by parties.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

चैक का अनादरण – ऋण अथवा दायित्व – परिसीमा द्वारा वर्जित होने का आक्षेप – ऋण या देनदारी का परिसीमा द्वारा वर्जित प्रकृति का होने संबंधी प्रश्न तथ्य और विधि का मिश्रित प्रश्न है और इसका निर्णय पक्षकारों द्वारा प्रस्तुत साक्ष्य के आधार पर किया जाना चाहिए।

Atamjit Singh v. State (NCT of Delhi) and anr.

Order dated 22.01.2024 passed by the Supreme Court in Criminal Appeal No. 516 of 2024, reported in 2024 (1) Crimes 128 (SC)

Relevant extracts from the order:

Upon a perusal of the impugned judgment, it is disclosed that High Court has relied upon (i) the Assured Returns Agreement dated 16.09.2011; and (ii) other receipts issued by the Appellant to Respondent No. 2, all of which pertain to transaction(s) entered into in the year 2011 to conclude that in the absence of an acknowledgment of any underlying debt between 2011 and the date of issuance of the Subject Cheque i.e., 06.03.2017, the underlying debt could not be held to be legally enforceable debt or liability on account of being barred by limitation. Accordingly, in the aforesaid circumstances, the prosecution of Respondent No. 2 under Section 138 of the NI Act was held to be improper; and accordingly, by way of impugned judgment, the High Court quashed the summoning order issued by the Trial Court; and the underlying complaint.

At the threshold, it would be apposite to refer to decisions of this Court in ***Yogesh Jain v. Sumesh Chadha, 2022 SCC OnLine SC 2195*** where under this Court has opined on the scope of interference by the High Court in proceedings under 138 of the NI Act *qua* an allegedly time barred debt at the stage of issuance of summons, whilst exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973. The operative paragraph in ***Yogesh Jain v. Sumesh Chadha, Criminal Appeal Nos. 1760-1761 of 2022*** has been reproduced as under:

> "8. Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the accused to dislodge the legal presumption available under sections 118 and 139 reply of the N.I. Act. Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the accused under section 482 of the Cr.P.C."

From perusal of legal position enunciated above, it is clear that the classification of the underlying debt or liability as being barred by limitation is a question that must be decided based on the evidence adduced by the parties. We agree with aforesaid opinion. Undoubtedly, the question regarding the time barred nature of an underlying debt or liability in proceedings under section 138 of the NI Act is a mixed question of law and fact which ought not to be decided by the High Court exercising jurisdiction under Section 482 of the Cr.P.C.

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98. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 141 (1)

Offence of dishonour of cheque by company – Vicarious liability – Necessary averments required to be made in the complaint – Merely because somebody is managing the affairs of the company, *per se*, would not become liable – Vicarious liability would be attracted only against that person who, at the time of commission of offence, was incharge of and was responsible to the company for the conduct of business of the company.

परक्राम्य लिखत अधिनियम, 1881 – धारा 141(1)

कंपनी द्वारा चैक का अनादरण – प्रतिनिधिक दायित्व– परिवाद में किए जाने वाले आवश्यक अभिकथन – केवल इसलिए कि कोई व्यक्ति कंपनी के कार्य का प्रबंधन कर रहा है, स्वयमेव उत्तरदायी नहीं होगा – प्रतिनिधिक दायित्व केवल उस व्यक्ति के विरूद्ध आकर्षित होगा जो अपराध के समय कंपनी का प्रभारी था और कंपनी के व्यवसाय के संचालन के लिए कंपनी के प्रति उत्तरदायी था।

Siby Thomas v. Somany Ceramics Limited

Judgment dated 10.10.2023 passed by the Supreme Court in Criminal Appeal No 3139 of 2023, reported in (2024) 1SCC 348

Relevant extracts from the judgment:

In the light of the dictum laid down in ***Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473*** it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

In such circumstances, paragraph 24 in ***Ashok Shewakramani's*** case (supra) is also relevant. After referring to the Section 141(1) of NI Act, in paragraph 24 it was further held thus:

> "24 On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the

business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between."

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99. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 5(m) and 5(i) r/w/s 6
INDIAN PENAL CODE, 1860 – Sections 201, 302, 363, 366-A, 376(A), 376(2)(i), 376(2)(j), 376(2)(k) and 376(2)(m)
WORDS AND PHRASES:

(i) Rape and murder – The accused, who was in jail, was not allowed to engage the counsel of his choice – An advocate from legal aid was appointed to represent him – Trial was conducted on day-to-day basis – Copies of DNA report, FSL report and viscera report were presented before Court during the course of trial – Witnesses were produced without issuing summons – Held, trial was conducted in a hurried manner – Sufficient opportunity was not given to the accused to defend himself – Conviction set aside and matter was remitted back to the trial court for *de novo* trial.

(ii) Forensic evidence – Evidentiary value – If the collection, packaging and preserving of samples are doubtful and techniques applied for getting result is not clear and no fair opportunity to cross-examine the expert was given to accused, should not be relied upon.

(iii) Concept of a fair trial – Is centre to the administration of justice, demanding impartiality and thoroughness in the legal process – It is a dynamic principle, continually adapting to the complexities of new circumstances and the specific nature of each case – Fair trial balances the rights of the accused, victim and societal interests, ensuring that justice serves all without bias or prejudice.

(iv) Judicial calm – Is fundamental to fair trial – Judges should maintain an atmosphere of measured deliberation and tranquility in the courtroom as this serenity allows every voice to be heard and every piece of evidence to be carefully considered – It reinforces the integrity of the legal process and building public trust in the judicial system.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 5(ड) और 5(झ) सहपठित धारा 6

भारतीय दण्ड संहिता, 1860 – धाराएं 201, 302, 363, 366-क, 376(क), 376(2)(झ), 376(2)(ञ), 376(2)(ट) एवं 376(2)(ड)

शब्द एवं पदः

(i) बलात्कार और हत्या – अभियुक्त जेल में था और उसे अपनी पसंद का अधिवक्ता नियुक्त करने की अनुमति नहीं दी गई – विधिक सहायता प्रदान कर एक अधिवक्ता उसके प्रतिनिधित्व हेतु नियुक्त किया गया था – विचारण दिन–प्रतिदिन किया गया – विचारण के दौरान न्यायालय के समक्ष डी.एन.ए. रिपोर्ट, फोरेंसिक रिपोर्ट एवं विसरा रिपोर्ट प्रस्तुत की गईं – बिना समन भेजे साक्षियों को प्रस्तुत किया गया – अभिनिर्धारित, विचारण जल्दबाजी में किया गया – अभियुक्त को अपने बचाव हेतु पर्याप्त अवसर प्रदान नहीं किये गये – दोषसिद्धि अपास्त की गई और मामला आरम्भ से पुनः विचारण हेतु प्रतिप्रेषित किया गया।

(ii) फोरेंसिक साक्ष्य – साक्ष्यिक मूल्य – यदि नमूनों का संग्रह, पैकेजिंग और रखरखाव संदिग्ध है, परिणाम प्राप्त करने हेतु अपनायी जाने वाली तकनीकें स्पष्ट नहीं हैं और विशेषज्ञ से प्रतिपरीक्षण करने का उचित अवसर अभियुक्त को नहीं दिया गया है तो उस पर विश्वास नहीं किया जाना चाहिए।

(iii) ऋजु विचारण की अवधारणा – यह न्याय प्रशासन का केन्द्र है जो निष्पक्षता और विधिक प्रक्रिया में सम्पूर्णता की मांग करती है – यह एक गतिशील सिद्धांत है जो लगातार नई परिस्थितियों की जटिलताओं और प्रत्येक मामले की प्रकृति के अनुकूल परिवर्तित होता रहता है – ऋजु विचारण समाज के हितों, अभियुक्त और पीड़ित के अधिकारों को संतुलित करते हुए बिना किसी पक्षपात या पूर्वाग्रह के सभी के लिये न्याय की प्राप्ति को सुनिश्चित करता है ।

(iv) न्यायिक स्थिरता – ऋजु विचारण हेतु आधारभूत – न्यायाधीशों को न्यायालय कक्ष में संयमित विचारण और धैर्यता का वातावरण बनाए रखना चाहिए इससे सभी की बात सुनने और प्रत्येक साक्ष्य पर सावधानीपूर्वक विचार करने का अवसर मिलता है – इससे न्यायिक प्रक्रिया की अखंडता पुष्ट होती है और आमजन का न्यायिक प्रक्रिया पर विश्वास बढ़ता है ।

Naveen @ Ajay v. State of Madhya Pradesh

Judgment dated 19.10.2023 passed by the Supreme Court in Criminal Appeal No. 489 of 2019, reported in 2024 (1) Crimes 145 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

A close reading and scrutiny of the order-sheet recorded by the Trial Court, as stated above in brief, would manifest that the accused was not provided an opportunity to engage a counsel of his choice and instead his submission was recorded that he desires to be defended by a counsel appointed through legal aid. From the very beginning, the trial proceeded on day-to-day basis except on Saturday and Sunday and all the witnesses examined by the prosecution were produced without issuing summons. One witness-Sunil was directed to be produced from District Jail, Dhar through production warrant. However, this witness was never examined nor there is any indication that this witness has been given up. It is this witness (Sunil) who was named as a suspect in the FIR. Non- examination of this witness has therefore left a crucial gap in the prosecution case. It is significant to note that the FSL report, Viscera report and DNA report were not submitted along with the charge-sheet. The same were presented before the Trial Court on 04.05.2018. The accused was never asked as to whether he admits the documents, as required under Section 294 of CrPC. Neither any witnesses were called to prove these reports. After the prosecution case was closed on 08.05.2018, the accused examination was conducted on the very next day i.e. on 09.05.2018 and thereafter on the next day i.e. on 10.05.2018, the case was fixed for examination of defence witness. It requires special notice that the accused was in jail and was not defended by a counsel of his choice but by a legal aid counsel. He was not in a position to present the witness himself, yet he was directed to keep his witnesses present on the next day i.e. on 10.05.2018. On this date, he could not produce his witnesses, therefore, his defence was closed, and the case was posted for final arguments after recess.

In a case of this nature, the trial was conducted on day-to-day basis and the order-sheet does not record that copies of statement of witnesses were supplied to the accused or his counsel, it is not known as to whether the defence counsel was supplied all the requisite material basing which he could have advanced his final arguments.

The Order-sheet would thus clearly indicate that the trial was conducted in a hurried manner without providing ample and proper opportunity to the defence counsel, who was engaged through legal aid, to prepare himself effectively. It is

also to be noted that copies of DNA Report, FSL Report and Viscera Report were presented before the Court during the course of trial on 04.05.2018.

Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor, and the atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial. It is thus settled that a hasty trial in which proper and sufficient opportunity has not been provided to the accused to defend himself/herself would vitiate the trial as being meaningless & stage-managed. It is in violation of the principle of judicial calm.

In the case of ***Manoj & ors. v. State of M.P., (2023) 2 SCC 353***, it was held that if DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence as it can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen even when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches the area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed, and sent for DNA Profiling.

In the case at hand, the prosecution is based on circumstantial evidence in which the prosecution has to prove each link in the chain of circumstantial evidence and the important chains in the link are DNA report, FSL report and Viscera report. When the reports were challenged by the accused before the High Court, it was brushed aside by observing that even if the authors of the reports were not called for evidence, in terms of Section 293 Cr.P.C., the reports are not open to question

as the defence had an opportunity to cross-examine the authors of the reports during the trial. In our considered view, the High Court was not correct in saying that the defence had an opportunity to cross-examine the experts. The trial has been conducted on day-to-day basis wherein the accused, who was in jail and defended by a counsel from legal aid, was compelled by the Trial Court to produce defence witness of his own in one day. It was impossible for the accused himself to produce Dr. Anil Kumar Singh and Dr. Kamlesh Kaitholiya, the authors of the Reports (Ex.P-72), in one day because the said experts are government servants and could not have attended the Court at the request of an accused in jail. The Trial Court treated the accused as if he is carrying a magic wand which is available to produce highly qualified experts, who are government servants, on a phone call. There was no opportunity, in the real sense, to the appellant to cross-examine the experts.

For all the afore-stated reasons, we are of the considered view that the Trial Court conducted the trial in a hurried manner without giving proper opportunity to the accused to defend himself. Therefore, the judgment of conviction and sentence passed by the Trial Court and affirmed by the High Court is hereby set aside and the matter is remitted back to the trial court for *de novo* trial by affording proper opportunity to the appellant to defend himself. The trial court and the District Legal Services Authority, Indore, are directed to provide assistance of a senior counsel to the appellant to contest the trial on his behalf.

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100. STAMP ACT, 1899 – Sections 33, 35 and 40
REGISTRATION ACT, 1908 – Sections 17 and 49
Impounding of document – Deficit stamp duty – Scope of adjudication – By virtue of the amendment made in sections 35 and 40 of the Act, Court is now competent to pass an order u/s 35(1)(a) before admission of a document in evidence.

स्टॉम्प अधिनियम, 1899 – धाराएं 33, 35 एवं 40
रजिस्ट्रीकरण अधिनियम, 1908 – धाराएं 17 एवं 49
दस्तावेज़ का परिबद्ध किया जाना – स्टाम्प शुल्क में कमी – विनिश्चय की परिधि – अधिनियम की धारा 35 और 40 में किए गए संशोधन के परिपेक्ष्य में, न्यायालय अब साक्ष्य में दस्तावेज़ को स्वीकार करने से पहले धारा 35 (1) (क) के अंतर्गत आदेश पारित करने में सक्षम है।

Mahendra v. Ramvilas Shukhla & ors.

Order dated 22.08.2023 passed by the High Court of Madhya Pradesh (Bench Indore) in Miscellaneous Petition No. 3009 of 2022, reported in ILR 2024 MP 249

Relevant extracts from the order:

Clause (a) of the proviso to section 35 provides that any such instrument shall be admitted in evidence, registered or authenticated on payment of the duty, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with a penalty of two percent of the deficient portion of stamp duty. Therefore, for the purpose of admission of the document in the Court, the newly inserted provision would be applicable for which the Court is competent to pass an appropriate order.

Section 40 applies to a situation where the Collector impounds any instrument under Section 33, or receives an instrument sent to him under sub-section (2) of section 38. Section 40(1)(b) also provides for payment of amount required to make up the same, together with a penalty of 2% of the deficit portion of stamp duty. Therefore, there is no scope of adjudication by the Collector and as on today only the Court can pass an order under section 35(1)(a) before admission of agreement to sale in the evidence. Hence, no case for interference is made out in the matter.

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PART - III

CIRCULARS/NOTIFICATIONS

न्यायिक अधिकारियों को दिए जाने वाले भत्तों के संबंध में विधि एवं विधायी कार्य विभाग, भोपाल द्वारा जारी अधिसूचना दिनांक 15.03.2024

फा. क्रमांक 1127/21–ब(एक)/2024 राज्य शासन माननीय उच्चतम न्यायालय द्वारा रिट पिटीशन (सिविल) क्रमांक 643/2015 ऑल इण्डिया जजेज एसोसिएशन विरूद्ध भारत संघ एवं अन्य में दिनांक 04.01.2024 को दिए गए निर्देशों के परिपालन में मंत्रिपरिषद् द्वारा आयटम क्रमांक 17 दिनांक 11.03.024 में लिए गए निर्णय के अनुसरण में मध्यप्रदेश की जिला न्यायपालिका के सेवारत् एवं सेवानिवृत्त न्यायिक अधिकारियों को निम्नानुसार सुविधाएं प्रदान करता है:–

1. **गृह निर्माण अग्रिम :–**

(एक) न्यायिक सेवा के सदस्यों को केन्द्र सरकार के, गृह निर्माण अग्रिम नियम, 2017 (परिशिष्ट–1) के अनुसार गृह निर्माण अग्रिम उपलब्ध कराया जायेगा।

(दो) न्यायिक अधिकारियों को, उक्त अग्रिम की राशि बने हुए मकानों को निजी व्यक्तियों से क्रय करने के लिए भी, राज्य सरकार द्वारा उच्च न्यायालय के परामर्श से विहित सुरक्षा मानकों के अनुसार उपलब्ध कराई जायेगी।

2. **बालक शिक्षण भत्ता :–**

(1) प्रत्येक न्यायिक अधिकारी को, शैक्षणिक सत्र 2019–20 से केन्द्रीय कर्मचारियों को सातवें वेतन आयोग की अनुशंसा अनुसार देय बालक शिक्षण भत्ता, (शैक्षणिक सत्र 2019–20 से), निम्नांकित शर्तों का देय होगा:–

(क) अधिकतम दो बच्चो में से प्रत्येक के लिए कक्षा 12 तक रूपये 2250/– प्रतिमाह बालक शिक्षण भत्ता (Children Education Allowance) तथा रूपय 6750/– प्रति माह होस्टल सब्सिडी के रूप में देय होगा।

(ख) न्यायिक सेवा के सदस्यों के ऐसे बालकों हेतु, जिन्हें विशेष सहायता की आवश्यकता है, शैक्षणिक भत्ता कण्डिका (क) में वर्णित भत्ते का दोगना देय होगा।

(ग) महंगाई भत्ता 50 प्रतिशत से अधिक हो जाने की स्थिति में बालक शिक्षण भत्ता तथा होस्टल सब्सिडी 25 प्रतिशत वृद्धि के साथ देय होगी।

(घ) यदि पति–पत्नी दोनों ही न्यायिक सेवा के सदस्य हैं, तो दोनों में से कोई एक ही बालक शिक्षण भत्ता तथा होस्टल सब्सिडी प्राप्त करने का अधिकारी होगा।

3. **समवर्ती प्रभार भत्ता :–**

(1) किसी न्यायिक अधिकारी द्वारा अपने कर्तव्य के साथ अन्य न्यायालय या न्यायालयों के समवर्ती प्रभार में 10 कार्य दिवस से अधिक अवधि तक कार्य किया जाता है, तो ऐसे अतिरिक्त प्रभार के लिए वह न्यायिक अधिकारी समवर्ती प्रभार भत्ता पाने का अधिकारी होगा।

(2) समवर्ती प्रभार भत्ता उस न्यायालय के न्यायाधीश, जिनका अतिरिक्त प्रभार रहा है, के मूल वेतन के अधिकतम 10 प्रतिशत की दर से देय होगा।

(3) माननीय उच्च न्यायालय द्वारा समवर्ती प्रभार भत्ता न्यायिक अधिकारी द्वारा समवर्ती प्रभार में व्यतीत कार्यदिवस तथा उस दौरान किये गए न्यायिक व प्रशासकीय कार्य के आधार पर वेतन के अधिकतम 10 प्रतिशत की सीमा तक निर्धारित किया जा सकेगा।

(4) प्रथम न्यायिक वेतन आयोग द्वारा समवर्ती प्रभार भत्ते के संबंध में निर्धारित 'Appreciable Judicial Work' को विलोपित करते हुए न्यायिक कार्य के निष्पादन के संबंध में तत्संबंधी कोई मापदण्ड निर्धारित नहीं किए जायेंगे।

4. **यात्रा/परिवहन भत्ता :–**

(1) प्रथम न्यायिक वेतन आयोग द्वारा न्यायिक अधिकारियों को प्रदत्त पूल कार की सुविधा इस आदेश के प्रभावी होने के दिनांक से समाप्त की जाती है, फिर भी न्यायिक अधिकारी की वांछा पर परिवहन भत्ता का परित्याग कर पूल कार की सुविधा का चयन किए जाने की दशा में एक वर्ष या न्यायिक अधिकारी द्वारा पूल कार के उपयोग की अवधि तक उक्त सुविधा निरंतर प्रदान की जा सकेगी।

(2) प्रत्येक न्यायिक अधिकारी, जिन्हें पूल कार उपलब्ध नहीं है, यदि वे स्वयं का चार पहिया वाहन धारित करते हैं, तो उन्हें रख–रखाव और चालक के वेतन हेतु दिनांक 01.01.2016 से दिनांक 31.12.2020 तक रूपये 10000/– (दस हजार) प्रतिमाह तथा दिनांक 01.01.2021 के रूपये 13500/– (तेरह हजार पांच सौ) प्रतिमाह प्रदान किया जायेगा।

परंतु, यदि न्यायिक अधिकारी को विभाग द्वारा वाहन चालक उपलब्ध कराया गया, तब से ऐसे न्यायिक अधिकारी को घटी हुई दर से परिवहन भत्ते के रूप में रूपये 4000/– (चार हजार) प्रतिमाह प्रदान किये जायेंगे।

(3) उक्त परिवहन भत्ते के अतिरिक्त प्रत्येक न्यायिक अधिकारी को, जिन्हें शासकीय वाहन प्राप्त नहीं है, शहरी क्षेत्र में 100 लीटर एवं अन्य क्षेत्र में 75 लीटर पेट्रोल/डीजल के मूल्य के समतुल्य राशि की प्रतिपूर्ति की जायेगी।

(4) न्यायिक अधिकारी, जिन्हें शासकीय वाहन प्राप्त है, उन्हें प्रतिमाह वास्तविक खपत अनुसार ईंधन व्यय प्रदत्त किया जाएगा। शासकीय वाहन के लिए पेट्रोल/डीजल की मात्रा की गणना संबंधित अधिकारी द्वारा शासकीय कार्य

के उपयोग हेतु दिये गए प्रमाण पत्र, जो भरे हुए लॉग बुक से समर्थित होगा, के आधार पर की जायेगी, ऐसे न्यायिक अधिकारी जो शासकीय वाहन का उपयोग कर रहे है उन्हें उक्त वाहन को 300 किलोमीटर प्रतिमाह तक निजी उपयोग करने की पात्रता भी होगी।

(5) प्रत्येक न्यायिक अधिकारी को अपने वाहन पर विंड स्क्रीन के बांयी ओर नीचे की तरफ मध्यम अक्षरों में प्रिंटेड 'Judge' का स्टीकर लगाने की पात्रता होगी।

(6) राज्य सरकार द्वारा न्यायिक अधिकारी को कार खरीदे हेतु 'Soft Loan' (सुलभ ऋण) के रूप में रूपये 1000000/– (दस लाख) तक नाममात्र की ब्याज दर पर उपलब्ध कराये जायेंगे।

5. **महंगाई भत्ताः–** प्रत्येक न्यायिक अधिकारी को केन्द्र सरकार द्वारा प्रदत्त अनुसार महंगाई भत्तर देय होगा।

6. **अर्जित अवकाश नगदीकरणः–**

प्रत्येक न्यायिक अधिकारी निम्नलिखित सीमा तक अपने अर्जित अवकाश के नकदीकरण का अधिकारी होगा :–

(1) (i) न्यायिक अधिकारी को उसकी सेवानिवृत्ति के समय अधिकतम 300 दिवस के अर्जित अवकाश के नकदीकरण की पात्रता होगी।

(ii) 300 दिवस की गणना में न्यायिक अधिकारी के स्वत्व में शेष संपूर्ण अर्जित अवकाश एवं उसके अर्द्ध–वैतनिक अवकाश लेखे में शेष अर्द्ध–वैतनिक अवकाश में से इतने अर्द्ध–वैतनिक अवकाश जोड़े जायेंगे जिससे न्यायिक अधिकारी को 300 दिन के अर्जित अवकाश नकदीकरण का भुगतान किया जा सके।

(2) (क) एलटीसी की सुविधा लेते समय अधिकतम 60 दिवस की सीमा के अध्याधीन रहते हुए 10 दिवस का अर्जित अवकाश प्राप्त करने का अधिकारी होगा।

परंतु, उक्त सुविधा संपूर्ण सेवाकाल में 6 अवसर से अधिक और प्रत्येक अवसर पर 10 दिवस से अधिक नहीं होगा।

(ख) न्यायिक अधिकारी को प्रति 2 वर्ष के ब्लॉक में 30 दिवस का अर्जित अवकाश नकदीकरण प्राप्त करने का अधिकारी होगा।

(ग) खण्ड ख तथा ग में दी गई सुविधा सेवानिवृत्ति के समय के 300 दिवस के अर्जित अवकाश नकदीकरण के अतिरिक्त होगी।

7. **विद्युत तथा जल प्रभार :–**

(1) प्रत्येक न्यायिक अधिकारी को दिनांक 01.01.2020 से उसके द्वारा उपभोग की गई विद्युत प्रभार और जल प्रभार की राशि के 50 प्रतिशत राशि का निम्नलिखित सीमा तक भुगतान किया जायेगा :–

क्रमांक	पदनाम	विद्युत यूनिट	जल युनिट
1	जिला न्यायाधीश	8000 यूनिट प्रतिवर्ष	420 किलो लीटर्स प्रतिवर्ष
2	व्यवहार न्यायाधीश	6000 यूनिट प्रतिवर्ष	336 किलो लीटर्स प्रतिवर्ष

(2) उक्त विद्युत और जन प्रभार व्यय की प्रतिपूर्ति न्यायिक सेवा के सदस्य द्वारा प्रभार शुल्क का प्रमाण प्रस्तुत करने पर त्रैमासिक रूप से की जायेगी।

8. उच्च अर्हता भत्ता :–

(1) न्यायिक अधिकारी द्वारा उच्च शिक्षा अर्थात् विधि में स्नाकोत्तर या डॉक्टरेट अर्थात् पी.एच.डी. की उपाधि प्राप्त किए जाने पर अग्रिम वेतनवृद्धियां मंजूर की जायेगी।

(2) विधि में स्नातकोत्तर उपाधि प्राप्त करने पर 3 अग्रिम वेतन वृद्धियां तथा यदि वह विधि में पीएचडी की उपाधि प्राप्त करता है तो एक अतिरिक्त अग्रिम वेतन वृद्धि मंजूर की जायेगी।

(3) विधि स्नाकोत्तर उपाधि अथवा पीएचडी (विधि) के लिए मंजूर की गई अग्रिम वेतन वृद्धियां के अतिरिक्त भविष्य में किसी अन्य विषय में स्नाकोत्तर अथवा डाक्टरेट उपाधि प्राप्त करने का कोई अग्रिम वेतन वृद्धि मंजूर नहीं की जायेगी।

(4) उस न्यायिक अधिकारी को अग्रिम वेतन वृद्धि प्राप्त होगी, जिसने या तो नियुक्ति के पूर्व या उसके पश्चात् सेवा में रहते हुए, कभी भी, स्नाकोत्तर उपाधि या डॉक्टरेट की उपाधि प्राप्त की हो एवं चाहे ऐसी उच्च अर्हता नियमित अध्ययन (पूर्णकालिक यास अंशकालिक) के माध्यम से अर्जित की हो या दूरस्थ अध्ययन कार्यक्रम के माध्यम से।

(5) यदि अधिकारी ने सेवा में आने से पूर्व ही स्नातकोत्तर या डॉक्टरेट उपाधि अर्जित कर ली हो तो अग्रिम वेतन वृद्धि प्रारंभिक भर्ती की दिनांक से मंजूर की जाएगी और यदि सेवा में नियुक्ति पश्चात् स्नातकोत्तर या डाक्टरेट उपाधि प्राप्त की हो तो, उस दिनांक से मंजूर की जाएगी, जिस दिनांक को उसने वह उपधि प्राप्त की है।

(6) अग्रिम वेतन वृद्धियां एसीपी के स्तर तथा न्यायिक अधिकारी व्यवहार न्यायाधीश (कनिष्ठ खण्ड) से व्यवहार न्यायाधीश (वरिष्ठ खण्ड) और व्यवहार न्यायाधीश (वरिष्ठ खण्ड) से जिला न्यायाधीश संवर्ग में पदोन्नत होता है तो इस दशा में किसी भी स्तर पर उपलब्ध रहेंगी।

(7) अग्रिम वेतन वृद्धियां जिला न्यायाधीश प्रवेश स्तर से जिला न्यायाधीश संवर्ग से जिला न्यायाधीश चयन श्रेणी और जिला न्यायाधीश चयन श्रेणी से जिला न्यायाधीश वरिष्ठ वेतनमान में उपलब्ध होगी।

(8) व्यवहारिक प्रयोजनों के लिए अग्रिम वेतन वृद्धियां वेतन का भाग होंगी और उन पर महंगाई भत्ता भी देय होगा।

09. पहाड़ भत्ता/कठिन अवस्थिति भत्ताः–

(1) न्यायिक अधिकारियों को पहाड़ी क्षेत्र/कठिन अवस्थिति में पदस्थापना के दौरान 5 हजार रूपये प्रतिमाह की दर से पहाड़ी क्षेत्र/कठिन अवस्थिति भत्ता प्रदाय किया जायेगा।

(2) राज्य/केन्द्र शासित प्रदेशों के अधिकारियों को पहले से ही अनुज्ञेय प्रलाभकारी उपबंध न्यायिक अधिकारियों को उपलब्ध होंगे।

(3) इस भत्ते के लिए पहाड़ क्षेत्र/कठिन अवस्थिति क्षेत्र को परिभाषित करने का अधिकार उच्च न्यायालय को होगा एवं उच्च न्यायालय द्वारा समय–समय पर विनिश्चित किए गए क्षेत्र में उक्त भत्ता देय होगा।

(4) उक्त भत्ता दिनांक 01.01.2016 से देय होगा।

10. गृह अर्दली/गृह सहायक भत्ताः–

(1) प्रत्येक सेवारत् न्यायिक अधिकारी को दिनांक 01.01.2020 से एवं सेवानिवृत्त न्यायिक अधिकारी तथा पारिवारिक पेंशनर्स के लिए 01.01.2016 से निम्नांकित दर पर गृह अर्दली/गृह सहायक भत्ता प्रदान किया जायेगा–

(क) प्रत्येक जिला नयायाधीश को, एक अकुशल श्रमिक के लिए समय–समय पर निर्धारित न्यूनतम मजदूरी दर या रूपये 10 हजार, इनमें से जो भी अधिक हो, प्रतिमाह देय होगा।

(ख) प्रत्येक व्यवहार न्यायाधीश को, एक अकुशल श्रमिक के लिए समय–समय पर निर्धारित न्यूनतम मजदूरी दर का 60 प्रतिशत या रूपये 7500/–, इनमें से जो भी अधिक हो, प्रतिमाह देय होगा।

(ग) सेवानिवृत्त न्यायिक अधिकारी के लिए 9000 हजार रूपये प्रतिमाह तथा पारिवारिक पेंशन प्राप्त करने वाले सदस्य के लिए 7500 रूपए प्रतिमाह देय होगा।

(घ) सेवानिवृत्त न्यायिक अधिकारी एवं पारिवारित पेंशनर्स के लिए उक्त सुविधा दिनांक 01.01.2016 से 5 वर्ष पूर्ण होने पर अर्थात् दिनांक 01. 01.2021 से 30 प्रतिशत की वृद्धि के साथ देय होगी।

(2) उक्त भत्ता न्यायिक अधिकारी/पेंशनर्स/परिवारिक पेंशनर्स के स्वप्रमाणन पर प्रदत्त किया जायेगा।

(3) उक्त भत्ते का कोई भी प्रभाव न्यायिक अधिकारी को प्राप्त हो रहे या दिए जा रहे किसी ऐसे ऑफिस प्यून या ऑफिस अटेंडर या ग्रुप डी के ऐसे कर्मचारी, जो रात्रि ड्यूटी पर जिला न्यायाधीश या उनके समकक्ष स्तर के अधिकारियों को उनके प्रशासनिक उत्तरदायित्व के अंतर्गत प्रदत्त किए जाते हैं या सुरक्षा की दृष्टि से सुरक्षा गार्ड के रूप में दिए जाते हैं, पर नहीं पड़ेगा।

11. **गृह भाड़ा भत्ता तथा आवासीय मकान :–**

(क) <u>आवासीय मकान</u> :–

(1) न्यायिक अधिकारियों को उनके पद ग्रहण करने की दिनांक से एक मास के भीतर शासकीय आवास या अधिगृहीत निजी आवास उपलब्ध कराया जायेगा।

(2) यदि न्यायिक अधिकारी को एक मास के भीतर शासकीय आवास या निजी आवास उपलब्ध नहीं कराया जाता है, तो न्यायिक अधिकारी निम्न शर्तों के अधीन निजी आवास किराए पर ले सकेगा,–

(क) यदि निजी आवास का किराया नीचे उल्लेखित किए गए अनुसार अनुज्ञेय गृह भाड़ा भत्ता की सीमा के अंदर है, तो किराया नियत करने की अपेक्षा नहीं की जाएगी, किंतु संबंधित न्यायिक अधिकारी को यह प्रमाणित करना होगा कि वास्तविक किराया राशि का भुगतान किया जा रहा है।

(ख) यदि निजी आवास का किराया अनुज्ञेय गृह भाड़ा भत्ता से अधिक है, तो प्रधान जिला न्यायाधीश द्वारा पीडब्ल्यूडी (आर एण्ड बी) अधिकारियों की सहायता से किराया निर्धारित किया जायेगा।

(ग) यदि अनुज्ञेय गृह भाड़ा, भत्ता तथा निर्धारित किराये का अन्तर 15 प्रतिशत से अधिक है, और उक्त अधिकारी अंतर की रकम का भुगतान करने हेतु सहमत नहीं है, तो प्रधान जिला न्यायाधीश उक्त अन्तर राशि के भुगतान के संबंध में उच्च न्यायालय का अनुमोदन प्राप्त कर सकेगा।

(3) जिला न्यायाधीश के लिए आवासीय किराए का न्यूनतम प्लिंथ एरिया 2500 स्कवायर फीट तथा व्यवहार न्यायाधीश के लिए 2000 स्कवायर फीट होगा तथापि उच्च न्यायालय प्रशासन के पास अधिक प्लिंथ एरिया के डिजाइन को स्वीकृत करने का विवेकाधिकार होगा।

(ख) <u>गृह भाड़ा भत्ता</u> :–

(1) उन न्यायिक अधिकारियों, जिन्हें शासकीय आवास आवंटित किया गया है, जो कोई गृह भाड़ा देय नहीं होगा।

(2) न्यायिक अधिकारी, जो स्वयं के मकान में रह रहे है, जिसमें माता–पिता या पति/पत्नि का मकान सम्मिलित हैं, को भी उच्च न्यायालय से अपने घर में रहने के लिए अनुमति प्राप्त करने के पश्चात् दिनांक 01.01.2016 से अनुशंसित गृह भाड़ा भत्ता प्रदाय किया जायेगा। ऐसे न्यायिक अधिकारी, जो पूर्व से ही किराए के आवास में रह रहे हैं, उक्त सीलिंग के भीतर अदा किए गए वास्तविक किराए की सीमा के अधीन रहते हुए दिनांक 01.01.2020 से अनुशंसित गृह भाड़ा प्राप्त करने के अधिकारी होंगे।

(3) * ऐसे अधिकारी, जो अनुशंसित गृह भाड़ा भत्ता प्राप्त करने के पास नहीं हैं, के किराये का भुगतान प्रधान जिला न्यायाधीश या समकक्ष के कार्यालय द्वारा सीधे मकान मालिक को किया जायेगा।

(4) समस्त न्यायिक अधिकारियों को सातवे वेतन आयोग की अनुशंसा पर भारत सरकार द्वारा जारी अधिसूचना दिनांक 07.07.2017 के अनुसार गृह भाड़ा भत्ता की दरें अनुज्ञेय होंगी, जो निम्नानुसार हैं :–

x स्तर के शहर के लिए संबंधित न्यायाधीश के मूल वेतनमान का 24 प्रतिशत

y स्तर के शहर के लिए संबंधित न्यायाधीश के मूल वेतनमान का 16 प्रतिशत

z स्तर के शहर के लिए संबंधित न्यायाधीश के मूल वेतनमान का 8 प्रतिशत

तथापि न्यूनतम विहित दरें क्रमशः 5400, 3600 और 1800 हैं और यह दरें महंगाई भत्ते में परिवर्तन के अनुसार निम्नानुसार परिवर्तित की जायेंगी –

शहरों का वर्गीकरण	मूल वेतन का ..... प्रतिशत के रूप में प्रतिमाह गृह भाड़ा भत्ते की दरें	जब महंगाई भत्ता निम्नलिखित को पार कर जाए
X	27 प्रतिशत	25 प्रतिशत
	30 प्रतिशत	50 प्रतिशत
Y	18 प्रतिशत	25 प्रतिशत
	20 प्रतिषत	50 प्रतिशत
Z	9 प्रतिशत	25 प्रतिशत
	10 प्रतिशत	50 प्रतिशत

वर्तमान में Z प्रवर्ग अवर्गीकृत है और उच्च न्यायालय शहरों को विभिन्न वर्गों में प्रोन्नत और जोड़ने के लिए अधिकृत है।

(ग) फर्नीचर तथा एयर कंडीशनर भत्ता :–

(1) प्रत्येक न्यायिक अधिकारी को, उसके द्वारा क्रय का प्रमाण प्रस्तुत करने पर, प्रति 5 वर्ष में रूपये 1.25 लाख फर्नीचर अनुदान उपलब्ध कराया जायेगा।

(2) ऐसे अधिकारी, जिनकी सेवा 2 वर्ष से कम नहीं है, उनको भी उक्त भत्ते की पात्रता होगी।

(3) प्रत्येक न्यायिक अधिकारी को उसके द्वारा प्रयोग किए जा रहे फर्नीचर को मूल्यह्रास दर पर क्रय करने का विकल्प नवीन अनुदान या सेवानिवृत्ति के समय उपलब्ध होगा।

(4) प्रत्येक न्यायिक अधिकारी के आवास पर प्रत्येक 5 वर्ष में फर्नीचर अनुदान के अतिरिक्त 1 एयर कंडीशनर भी उपलब्ध कराया जायेगा।

(5) फर्नीचर तथा एयर कंडीशनर भत्ता न्यायिक अधिकारी को दिनांक 01.01.2016 से देय माना जाएगा एवं ऐसे न्यायिक अधिकारी, जिन्होंने आदेश प्रभावी होने और 01.01.2016 के मध्य कोई राशि प्राप्त कर ली है, उन्हें इस मध्य का एरियर प्रदान किया जाएगा।

(6) इस अनुदान का उपयोग करते समय न्यायिक अधिकारी घरेलू विद्युत उपकरण (House hold Electrical Appliances) भी क्रय कर सकते हैं।

(घ) शासकीय आवास अनुरक्षण :–

उच्च न्यायालय की रजिस्ट्री द्वारा राज्य सरकारी को न्यायिक अधिकारियों के शासकीय आवास अनुरक्षण हेतु प्रस्ताव भेजे जाने पर राज्य शासन प्रस्ताव प्राप्त होने के 2 माह के भीतर प्रत्येक प्रधान जिला न्यायाधीश को 10 लाख रूपये तक की राशि उपलब्ध करायेगा।

(2) विश्राम गृह/ट्रांजिट एकोमेडेशन :–

राज्य शासन, उच्च न्यायालय के परामर्श से स्थान चिन्हित कर और आकार तथा सुविधाएं निश्चित कर, चरणबद्ध तरीके से विश्राम गृह/ट्रांजिट एकोमेडेशन का निर्माण करेगा। राज्य शासन 6 माह के अंतर्गत निर्माण के प्रथम चरण में वित्तीय आबंटन उपलब्ध कराने की कार्यवाही प्रारंभ करेगा।

12. अवकाश यात्र रियायत (एलटीसी)/गृह यात्रा रियायत (एचटीसी):–

(1) प्रत्येक न्यायिक अधिकारी को सेवा में 2 वर्ष की पूर्णता पर और परिवीक्षा अवधि पूर्ण करने पर एलटीसी प्राप्त करने की अनुज्ञा होगी।

(2) न्यायिक अधिकारी को सेवा के अंतिम वर्ष में भी एलटीसी की सुविधा प्राप्त करने की पात्रता होगी।

(3) एलटीसी की सुविधा का लाभ लेने के दौरान 10 दिवस के अर्जित अवकाश का भुगतान (अधिकतम 60 दिवस की सीमा के अध्यधीन रहते हुए) प्राप्त किया जा सकेगा। जो सेवानिवृत्ति के समय के 300 दिवस के भुगतान तथा 2 वर्ष के ब्लॉक में 30 दिवस के भुगतान के अतिरिक्त होगा।

(4) न्यायिक अधिकारी को 3 वर्ष की ब्लॉक अवधि में 1 एलटीसी और 1 एचटीसी अनुज्ञात किया जा सकेगा।

(5) नवनियुक्त न्यायाधीश की दशा में 3 वर्ष के प्रथम ब्लॉक में 2 बार एचटीसी प्राप्त करने की पात्रता होगी। तथापि 3 वर्ष ब्लांक परिवीक्षा के लिए विहित अवधि पूर्ण करने पर प्रारंभ होगा।

(6) किसी भी श्रेणी के न्यायिक अधिकारियों को हवाई यात्रा अनुज्ञेय होगी और इस शर्त के अधीन रहते हुए प्रतिपूर्ति की जायेगी, कि उनके द्वारा टिकिट सीधे एयरलाईस से या प्राधिकृत अभिकर्ताओं यथा अशोका ट्रेवल्स, बामर एण्ड लॉरी या आई.आर.सी.टी.सी. के माध्यम से क्रय किए गए हों।

(7) अन्य ब्यौरे यथा यात्रा की श्रेणी, अग्रिम आदि से संबंधित प्रावधान केन्द्र सरकार के अधिकारियों को लागू नियमों/आदेश द्वारा तय किए जायेंगे।

(8) न्यायिक अधिकारी अपनी सेवानिवृत्ति पर एल.टी.सी. की सुविधा को सेवानिवृत्ति दिनांक से एक वर्ष की अवधि के लिए विस्तारित कर सकता है।

(9) न्यायिक अधिकारियों से एलटीसी/एचटीसी प्रयोजन के लिए केवल अर्जित अवकाश लेने की अपेक्षा नहीं की जाएगी और उन्हें आगे और पीछे दो–दो दिवस तक का आकस्मिक अवकाश अनुज्ञात किया जा सकेगा।

13. चिकित्सा भत्ता/चिकित्सा सुविधाएंः–

(1) प्रत्येक न्यायिक अधिकारी को नियत चिकित्सा भत्ता निम्नानुसार देय होगा :–

(अ) सेवारत् न्यायिक अधिकारी को रूपये 3000/– प्रतिमाह।

(ब) सेवानिवृत्त न्यायिक अधिकारी एवं पारिवारिक पेंशन पाने वाले व्यक्ति को रूपये 4000/– प्रतिमाह।

(स) इस भत्ते की राशि दिनांक 01.01.2016 से देय होगी और ऐसे न्यायिक अधिकारी, जो दिनांक 01.01.2016 के पश्चात् राशि प्राप्त कर चुके हैं, उसे समायोजित कर उन्हें एकमुश्त एरियर दिनांक 01.01.2016 से इस आदेश के लागू होने की दिनांक तक का प्रदत्त किया जायेगा।

(2) उपरोक्त नियत चिकित्सा भत्ते के अतिरिक्त प्रत्येक न्यायिक अधिकारी, जिसमें सेवानिवृत्त न्यायिक अधिकारी एवं पारिवारिक पेंशन पाने वाला व्यक्ति भी सम्मिलित है, निम्नानुसार चिकित्सा सुविधाएं पाने का अधिकारी होगाः–

(क) न्यायिक अधिकारी जिसमें पेशनर्स/पारिवारिक पेंशनर्स सम्मिलित हैं, वे शासन द्वारा अधिसूचित/पंजीबद्ध निजी चिकित्सालयों/पेथोलॉजी लेब से परामर्श/उपचार के लिए अधिकारी होंगे और उन्हें प्रचलित प्रक्रिया के अनुसार बिल प्रस्तुत करने पर प्रतिपूर्ति की जायेगी। इस हेतु शासकीय अस्पताल के चिकित्सा अधिकारी से रेफर/अनुशंसा की आवश्यकता नहीं होगी।

(ख) डी.जी.ई.एच.एस. अथवा सी.जी.एच.एस. द्वारा शासित न्यायिक अधिकारियों के संबंध में ऐसी विद्यमान प्रक्रिया, जो कि सरल और आसान हो, अपनाई जा सकेगी।

(ग) ऐसा अस्पताल, जहां न्यायिक अधिकारी/पेंशनर्स/पारिवारिक पेंशनर्स भर्ती है अथवा भर्ती किया जाना है, की ओर क्रेडिट लेटर जारी किये

जाने हेतु प्रधान जिला न्यायाधीश अथवा उच्च न्यायालय की रजिस्ट्री (प्रधान जिला न्यायाधीश के मामले में) को अधिकृत किया जायेगा।

(घ) पेंशनर्स और पारिवारिक पेंशनर्स के लिये मेडिकल कार्ड, (परिशिष्ट–2 में दर्शित), प्रधान जिला न्यायाधीश द्वारा जारी किया जायेगा।

(ड) अन्तः रोगी के उपचार में उपगत व्यय या गंभीर बीमारी, जिसमें कम या ज्यादा निरन्तर उपचार आवश्यक है, के उपचार के संबंध में उपगत व्यय, संबंधित प्रधान जिला न्यायाधीश या उसी श्रेणी के प्राधिकृत अधिकारी या जैसा मामला हो उच्च न्यायालय की रजिस्ट्री द्वारा संसाधित (Processed) और स्वीकृत किया जायेगा।

(च) आकस्मिक/आपद स्थिति मे सेवारत्, सेवानिवृत्त न्यायिक अधिकारी अधिकारी व पारिवारिक पेंशनर्स किसी भी निकटवर्ती निजी अस्पताल में उपचार करवा कर सामान्य प्रक्रिया में प्रतिपूर्ति प्राप्त कर सकते हैं, यह आवश्यक नहीं कि उक्त अस्पताल शासन द्वारा अधिसूचित अस्पताल हो। आवश्यकता पड़ने पर इस उद्देश्य के लिए क्रेडिट लेटर भी जारी किया जा सकेगा।

(छ) मान्यता प्राप्त/सूचीबद्ध अस्पताल द्वारा किया गया **प्राक्कलित व्यय** (Estimate) प्रस्तुत करने पर प्रधान जिला न्यायाधीश या उच्च न्यायालय की रजिस्ट्री द्वारा प्रधिकृत समतुल्य रैंक के जिला न्यायाधीश द्वारा प्रारंभिक संवीक्षा (Scrutony) के अधीन रहते हुए 80 प्रतिशत तक अग्रिम मंजूर किया जा सकेगा। शेष राशि की प्रतिपूर्ति पदाभिहित सिविल सर्जन या चिकित्सा तथा स्वास्थ्य सेवाओं के अधिकारी, जैसा भी मामला हो, द्वारा प्रमाणित किये जाने पर की जायेगी। यदि किसी विशेष मद में शासन द्वारा अनुमोदित दरें उपलब्ध नहीं हैं, तो संबंधित अस्पताल द्वारा मान्य दरों के अनुसार प्रमाणन अधिकारी द्वारा दर अनुमोदित की जायेगी।

परंतु इस संदर्भ में बिलों को विशेष परिस्थितियों में ही अस्वीकार किया जायेगा और यदि बिल अस्वीकार किये जाते हैं तो संबंधित प्रमाणन अधिकारी ऐसी अस्वीकृति का कारण प्रकट करेगा। पदाभिहित सिविल सर्जन/संचालनालय के अधिकारी की संवीक्षा (Scritomu) के लिए जिला न्यायाधीश द्वारा भेजे गए देयकों को प्राप्ति दिनांक से 1 माह की अधिकतम समयावधि के भीतर पास किया जायेगा।

(ज) सेवानिवृत्त न्यायिक अधिकारियों और पारिवारिक पेंशनर्स, जो किसी अन्य राज्य में निवासरत् है, को उस राज्य से चिकित्सा प्रतिपूर्ति/अग्रिम के दावे करने की सुविधा होगी जहां से वे पेंशन/पारिवारिक पेंशन प्राप्त कर रहे हैं।

(झ) प्रवास (शासकीय या निजी) पर किसी अन्य राज्य में गये सेवारत अधिकारी या सेवानिवृत्ति के बाद अन्य राज्य में निवासरत् अधिकारी द्वारा आपद या अन्यथा परिस्थिति में उस राज्य के किसी शासकीय/शासन द्वारा अधिसूचित/मान्यता प्राप्त अस्पताल या पैथोलॉजिकल लैब में कराये गये उपचार के व्यय, जिसमें रूम चार्जेज व जांच का व्यय भी सम्मिलित है, की प्रतिपूर्ति की जायेगी चाहे वह अस्पताल/लैब उस राज्य में मान्यता प्राप्त नहीं है जहां अधिकारी सेवारत् है अथवा सेवारत् रहा था।

(3) उच्च न्यायालय की रजिस्ट्री यह परीक्षण करेगी कि अधिसूचित/सूचीबद्ध अस्पताल न्यायिक अधिकारियों जिसमें सेवानिवृत्ति अधिकारी/पारिवारिक पेंशनर्स सम्मिलित हैं, की आवश्यकताओं की पूर्ति करने के लिए पर्याप्त हैं और आवश्यक होने पर सरकार को अतिरिक्त अस्पतालों/पेथोलॉजिकल लैब को अधिसूचित करने के लिए प्रस्ताव भेजेगी।

(4) उच्च न्यायालय की रजिस्ट्री उपचार देयकों के भुगतान में विलम्ब से बचने के लिए अतिरिक्त राशि आवंटन हेतु त्वरित प्रस्ताव शासन को भेजेगी तथा शासन का वित्त विभाग तत्काल कार्यवाही करते हुए उच्च न्यायालय को राशि उपलब्ध करायेगा।

14. समाचार पत्र एवं पत्रिका भत्ताः–

(1) प्रत्येक न्यायिक अधिकारी को दिनांक 01.01.2020 से समाचार पत्र और पत्रिका भत्ता निम्नांकित सीमा तक देय होगा :–

(क) जिला न्यायाधीश को समाचार पत्र एवं पत्रिकाओं (2 समाचार पत्र और 2 पत्रिकाओं) के लिए रूपये 1 हजार तक तथा व्यवहार न्यायाधीश को (2 समाचार पत्र और 1 पत्रिका) रूपये 700 प्रतिमाह की दर से प्रतिपूर्ति की जायेगी।

(ख) न्यायिक अधिकारी को उक्त भत्ते की प्रतिपूर्ति स्वयं द्वारा प्रदत्त प्रमाण पत्र के आधार पर छःमाही आधार पर जनवरी से जून तथा जुलाई से दिसम्बर तक के लिए की जायेगी।

(2) न्यायिक अधिकारी द्वारा दिनांक 01.01.2020 के पश्चात् एवं इस आदेश के प्रभावी होने के पूर्व यदि उक्त भत्ता प्राप्त किया गया है, तो उसे समायोजित कर अंतर राशि का भुगतान एरियर के रूप में किया जायेगा।

15. गणवेश भत्ता :–

(1) प्रत्येक न्यायिक अधिकारी को दिनांक 01.01.2016 से प्रत्येक तीन वर्ष में एक बार रूपये 12 हजार गणवेश भत्ता के रूप में देय होगा।

(2) न्यायिक अधिकारी द्वारा दिनांक 01.01.2016 के पश्चात् एवं इस आदेश के प्रभावी होने के पूर्व यदि गणवेश भत्ता प्राप्त किया गया है, तो उसे समायोजित कर अंतर राशि का भुगतान एरियर के रूप में किया जायेगा।

16. प्रशासनिक कार्य के लिए विशेष भत्ता :–

(1) न्यायिक अधिकारी द्वारा प्रशासनिक कर्तव्य किए जाने पर उसे विशेष प्रशासनिक भत्ता दिनांक 01.01.2019 से निम्नांकित रूप से देय होगाः–

(क) प्रधान जिला एवं सत्र न्यायाधीश को रूपये 7000 प्रतिमाह

(ख) अन्य जिला न्यायाधीश, जिसमें अतिरिक्त जिला न्यायाधीश सम्मिलित है, जिन्हें न्यायालय कार्य अवधि के अतिरिक्त प्रशासनिक कार्य करना पड़ता है, को रूपये 3500 प्रतिमाह

(ग) विशेष न्यायालयों और अधिकरणों में स्वतंत्र रूप से प्रशासनिक दायित्व निभाने वाले जिला न्यायाधीश को रूपये 3500 प्रतिमाह

(घ) मुख्य न्यायिक मजिस्ट्रेट और वरिष्ठ और कनिष्ठ व्यवहार न्यायाधीश और अन्य न्यायिक अधिकारी, जिनके पास स्वतंत्र न्यायालयों के प्रभार के साथ प्रशासनिक दायित्व भी है, रूपये 2000 प्रतिमाह।

17. अतिथि सत्कार भत्ता :–

(1) प्रत्येक न्यायिक अधिकारी को दिनांक 01.01.2016 से निम्नांकित दरों पर अतिथि सत्कार भत्ता प्रदान किया जायेगाः–

जिला न्यायाधीश को रूपये 7800 प्रतिमाह;

व्यवहार न्यायाधीश (वरिष्ठ खण्ड) को रूपये 5800 प्रतिमाह;

व्यवहार न्यायाधीश (कनिष्ठ खण्ड) को रूपये 3800 प्रतिमाह;

(2) उक्त के अतिरिक्त निम्नलिखित प्रवर्गों के न्यायिक अधिकारी को उनके स्तर या उनके द्वारा निष्पादित किये गए अतिरिक्त उत्तरदायित्व के लिए रूपये 1000 अतिरिक्त प्रदान किया जायेगाः–

(क) जिला/नगरों में प्रशासन का प्रभार संभाल रहे प्रधान जिला न्यायाधीश;

(ख) सिलेक्शन ग्रेड और सुपरटाईम स्केल के जिला न्यायाधीश;

(ग) न्यायिक एकेडमी/न्यायिक प्रशिक्षण संस्थान के निर्देशक/राज्य विधिक सेवा प्राधिकरण के सदस्य सचिव।

(घ) मुख्य न्यायिक मजिस्ट्रेट/मुख्य मेट्रोपोलिटन मजिस्ट्रेट।

(3) सेवानिवृत्ति के पश्चात् न्यायिक अधिकारी को उक्त भत्ता प्राप्त नहीं होगा।

18. **दूरभाष सुविधाः–**

प्रत्येक न्यायिक अधिकारी को दिनांक 01.01.2016 से आवासीय टेलीफोन, मोबाईल फोन व कार्यालयीन टेलीफोन व इंटरनेट सुविधा निम्नांकित दर से प्राप्त होंगीः–

(1) आवासीय टेलीफोन (लैण्डलाइन)

(क) न्यायिक अधिकारियों को उनके आवास पर एक ही सेवा प्रदाता या विभिन्न सेवा प्रदाताओं द्वारा लेंडलाईन टेलीफोन और ब्रोडबैंड सुविधा निम्नानुसार उपलब्ध होगीः–

जिला न्यायाधीश – रूपये 1500 प्रतिमाह

व्यवहार न्यायाधीश – रूपये 1000 प्रतिमाह

जिसमें किराया, कॉल्स (लोकल तथा एसटीडी दोनों) तथा इंटरनेट सम्मिलित हैं।

(ख) उन सभी स्थानों पर, जहॉ पर ब्रॉडबैंड सुविधा उपलब्ध नहीं है, वहां पर निम्नानुसार स्वीकृत किया जायेगाः–

जिला न्यायाधीश – रूपये 1000 प्रतिमाह

व्यवहार न्यायाधीश – रूपये 750 प्रतिमाह

जिसमें किराया तथा कॉल्स (लोकल तथा एसटीडी दोनों) सम्मिलित हैं।

(2) मोबाईल फोन

(क) निम्नानुसार इंटरनेट के साथ मोबाईल फोन (हैंडसेट) दिया जाएगाः–

जिला न्यायाधीश – रूपये 30000/–

व्यवहार न्यायाधीश – रूपये 20000/–

(कनिष्ठ और वरिष्ठ खण्ड)

तथा अनुज्ञय उपयोग निम्नानुसार होगाः–

जिला न्यायाधीश – रूपये 2000/– प्रति माह

व्यवहार न्यायाधीश – रूपये 1500/– प्रति माह

इसमें इंटरनेट डाटा पैकेज सम्मिलित होगा।

(ख) न्यायिक अधिकारी के अनुरोध पर 3 वर्ष में एक बार मोबाइल हैंड्सेट बदला जायेगा।

(ग) न्यायिक अधिकारी को, उच्च न्यायलय की रजिस्ट्री द्वारा जारी किये गए दिशा निर्देश के अनुसार निर्धारित मूल्य पर पुराना मोबाईल हैंड्सेट रखने का विकल्प, नवीन अनुदान या सेवानिवृत्ति के समय दिया जायेगा।

(3) कार्यालयीन दूरभाष

कार्यालय में दूरभाष के संबंध में वर्तमान प्रचलित व्यवस्था लागू रहेगी।

19. **स्थानांतरण अनुदानः–**

(1) प्रत्येक न्यायिक अधिकारी का स्थानांतरण होने पर वह एक माह के मूल वेतन के बराबर स्थानांतरण अनुदान पाने का अधिकारी होगाः

परंतु यदि किसी न्यायिक अधिकारी का स्थानांतरण ऐसे स्थान पर हुआ हो, जो उसके मुख्यालय से 20 किलोमीटर या उससे कम की दूरी पर है या उसी स्थान पर है, परंतु उसे गृह निवास परिवर्तित करना पड़ रहा है, तो वह अपने मूल वेतन का एक तिहाई भाग पाने का अधिकारी होगा।

(2) न्यायिक अधिकारी स्थानांतरण इस प्रकार होता है कि वह सड़क के माध्यम से अपना सकल घरेलू सामान ले जाता है, तो उसे 50 रूपये प्रति किलोमीटर की दर से, जिसमें सामान चढाने–उतारने का वास्तविक लेबर चार्ज भी सम्मिलित है, प्रदत्त किया जायेगा।

(3) क्रमांक (2) में दर्शित राशि, मंहगाई भत्ता 50 प्रतिशत होने पर 25 प्रतिशत वृद्धि के साथ भुगतान योग्य होगी।

(4) यह भत्ता दिनांक 01.01.2016 से लागू होगा।

(5) इस आदेश के लागू होने के पूर्व दिनांक 01.01.2016 के बाद से यदि किसी न्यायिक अधिकारी को पुरानी दरों पर स्थानांतरण अनुदान प्राप्त हुआ है, तो वह अंतर की राशि एरियर के रूप में पाने का अधिकारी होगा।

<u>प्रवर्तन एवं सेविंग क्लांज</u>

यह आदेश ऑल इंडिया जजेज एसोसिएशन विरूद्ध यूनियन ऑफ इंडिया व अन्य रिट पिटिशन सिविल 643/2015 में पारित निर्णय दिनांक 04.01.2024 के अनुक्रम में जारी किया जा रहा है। अतः आदेश में किसी भी प्रकार की अस्पष्टता होने की स्थिति में माननीय उच्चतम न्यायालय द्वारा पारित निर्णय का अनुसरण कर मार्गदर्शन प्राप्त किया जा सकेगा।

यह आदेश, उन सभी न्यायिक अधिकारियों, जो प्रतिनियुक्ति पर पदस्थ हैं, पर उसी प्रकार लागू हो, जैसे कि यदि वह न्यायिक सेवा में होते तो उन पर लागू होता। प्रतिनियुक्ति पर पदस्थ न्यायिक अधिकारी को यदि प्रतिनियुक्ति पर इस आदेश के अतिरिक्त यदि कोई भत्ता या सुविधा प्राप्त होती है, तो वह इस आदेश के अतिरिक्त मानी जायेगी और उन अतिरिक्त सुविधाओं पर इस आदेश का कोई प्रभाव नहीं पड़ेगा।

इस आदेश में जहां उनके प्रभावी होने की कोई अन्य तिथि उल्लेखित न हो, वहां संबंधित भत्ते दिनांक 01.01.2016 से प्रभावी माने जायेंगे।

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