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SUBJECT – INDEX

CIVIL PROCEDURE CODE, 1908
सिविल प्रक्रिया संहिता, 1908

Section 11, Order 33 Rules 5 & 15-A and Order 7 Rule 11 – (i) Application to sue as indigent person – Can be rejected on the ground that suit is vexatious, barred by *res judicata* or on no cause of action – Observation confined to decision of such application only.

(ii) Rejection of an application to sue as indigent person – Applicant may institute suit after paying requisite court fees – Defendant may object under Order 7 Rule 11 of the Code on such grounds.

धारा 11, आदेश 33 नियम 5, 15–क, एवं आदेश 7 नियम 11 – (i) निर्धन व्यक्ति के रूप में वाद लाने का आवेदन – वाद तंग करने वाला, पूर्वन्याय से बाधित अथवा बिना वाद कारण के आधार पर निरस्त किया जा सकेगा – टिप्पणी केवल आवेदन के निराकरण तक सीमित।

(ii) निर्धन व्यक्ति के रूप में वाद लाने के आवेदन का नामंजूर किया जाना – आवेदक आवश्यक न्याय शुल्क संदाय कर वाद संस्थित कर सकता है – तथापि प्रतिवादी संहिता के आदेश 7 नियम 11 के अधीन ऐसे आधारों पर आपत्ति कर सकेगा। **39 56**

Section 96 (2) and Order 9 Rule 13 – (i) *Ex parte* decree of divorce – Appeal filed on the ground that the matter has been decided by the Family Court swiftly – No ground for appeal.

(ii) Appeal u/s 96(2) of CPC against *ex parte* decree of divorce – Finding given on merit or on jurisdiction of Court below, may be challenged.

(iii) Setting aside *ex parte* decree – Recourse to special procedure under Order 9 Rule 13 CPC is available.

धारा 96(2) आदेश 9 नियम 13 – (i) विवाह विच्छेद की एकपक्षीय आज्ञप्ति – कुटुम्ब न्यायालय द्वारा तीव्र गति से प्रकरण के निराकरण के आधार पर अपील संस्थित – अपील का आधार नहीं ।

(ii) एकपक्षीय विवाह विच्छेद आज्ञप्ति के विरूद्ध सिविल प्रक्रिया संहिता की धारा 96(2) में अपील – गुण–दोष पर अथवा विचारण न्यायालय के क्षेत्राधिकार के संबंध में आक्षेप अनुज्ञेय ।

(iii) एकपक्षीय विवाह विच्छेद आज्ञप्ति को अपास्त कराना – सिविल प्रक्रिया संहिता के आदेश 9 नियम 13 की विशेष प्रक्रिया उपलब्ध। **72 108**

CRIMINAL PROCEDURE CODE, 1973
दण्ड प्रक्रिया संहिता, 1973

Section 125 – (i) Maintenance – Issue of overlapping jurisdiction addressed.

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(iii) Factors to be considered for determining quantum, enumerated.

(iv) From what time maintenance can be granted? Maintenance to be awarded from the date of filing of application

(v) Execution – Order of maintenance may be enforced like a decree of civil court.

धारा 125 – (i) भरण पोषण – क्षेत्राधिकार के अतिव्यापन होने का विवाद संबोधित।

(ii) आवेदन के पक्षकारों को निर्णय में दिये गये प्रारूप I, II एवं III के अनुसार भरण पोषण की समस्त कार्यवाहियों में शपथ–पत्र पर संपत्ति का प्रकटीकरण करना आवश्यक है।

(iii) भरण पोषण के निर्धारण हेतु विचार योग्य कारक बताये गये।

(iv) भरण पोषण कब से देय होगा? भरण पोषण आवेदन प्रस्तुति दिनांक से देय होगा।

(v) निष्पादन – भरण पोषण के आदेश का निष्पादन व्यवहार न्यायालय की डिक्री के समान हो सकेगा। **45 64**

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(iii) "Known sources of income" – Meaning explained.

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(ii)शब्द ''निराधार''– अभिप्राय।

(iii)''आय के ज्ञात स्त्रोत'' – अर्थ समझाया गया। **48** **68**

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धारा 313 – अभियुक्त परीक्षण – अभियुक्त ने कथित रूप से असत्य स्पष्टीकरण दिया – ऐसे स्पष्टीकरण को अतिरिक्त कड़ी के रूप में उपयोग हेतु शर्तें प्रतिपादित की गईं।

उपहति – अभियुक्त को गिरफ्तारी के समय शरीर पर उपहति कारित थी – अभियोजन का यह कर्तव्य है कि वह ऐसी उपहति का स्पष्टीकरण दें – स्पष्टीकरण ना देना अभियुक्त के निर्दोष होने की ओर इंगित करता है।

59 (v) & (vi) **87**

Section 319 – Summoning of co-accused – Held, for adding a co-accused under section 319 of the Code, crucial test is that the evidence, if goes unrebutted, would lead to conviction.

धारा 319 – सह अभियुक्तगण को आहूत किया जाना – अभिनिर्धारित, संहिता की धारा 319 में सह अभियुक्त को संयोजित करने हेतु निर्णायक परीक्षण यह है कि अभिलेख पर आई साक्ष्य, यदि अखंडित रह जाती है, तो दोषसिद्धी होगी।

49 **70**

Section 319 – (i) Power to summon a person who is not an accused – Whether such power can be exercised after judgment has been rendered? Held, No.

(ii) Whether it is appropriate to consider the evidence of main case to summon additional accused in split up case? Held, No.

(iii) Guidelines to follow while exercising power under section 319 Cr.P.C issued.

(iv) Criminal trial – When can it be said that trial is concluded ? Explained.

धारा 319 – (i) ऐसे व्यक्ति को आहूत करने की शक्ति जो अभियुक्त नहीं है – क्या ऐसी शक्ति का प्रयोग निर्णय देने के बाद किया जा सकता है? अभिनिर्धारित, नहीं।

(ii) क्या विभाजित मामले हेतु अतिरिक्त अभियुक्त को आहूत करने के लिये मुख्य मामले के साक्ष्य पर विचार करना उचित है ? अभिनिर्धारित, नहीं।

(iii) द.प्र.स. की धारा 319 के अंतर्गत शक्तियों का प्रयोग करते हुए पालन किये जाने वाले दिशा निर्देश जारी किये गये।

(iv) आपराधिक विचारण – विचारण समाप्त हो गया है, ऐसा कब कहा जा सकता है? स्पष्ट किया गया। **50** **71**

Sections 432, 433 and 433A – See sections 201, 302 and 376 of the Indian Penal Code, 1860 and sections 3, 27 and 106 of the Evidence Act, 1872.

धाराएं 432, 433 एवं 433क – देखें भारतीय दण्ड संहिता, 1860 की धाराएं 201, 302 एवं 376 और साक्ष्य अधिनियम, 1872 की धाराएं 3, 27 एवं 106।

56 **82**

Section 438 – Anticipatory bail – Multiple accused – How to be considered ?

धारा 438 – अग्रिम जमानत – एक से अधिक अभियुक्त – कैसे विचार किया जाएगा ? **51** **75**

Section 439 – Bail – The length of the period of custody or the fact that the charge-sheet has been filed and trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting bail to the accused.

धारा 439 – जमानत – अभिरक्षा की लंबी अवधि अथवा यह तथ्य कि अंतिम प्रतिवेदन प्रस्तुत किया जा चुका है और विचारण आरंभ हो गया है, अभियुक्त को जमानत प्रदान करने के प्रेरक आधारों के रूप में नहीं माना जा सकता।

69 **103**

DRUGS AND COSMETICS ACT, 1940
औषधि एवं प्रसाधन सामग्री अधिनियम, 1940

Sections 27(d) and 34 – See Section 204 of the Criminal Procedure Code, 1973.

EVIDENCE ACT, 1872
साक्ष्य अधिनियम, 1872

Disclosure statement – Effect when Investigating Officer did not mention the exact words uttered by the accused in his oral evidence.

Extra-judicial confession – Accused allegedly made an extra-judicial confession that he had brutally killed his wife – Extra-judicial confession can be relied only when it passes the test of credibility.

Motive – Chain of circumstantial evidence snapped – Disclosure statement was not relied – Consideration of other circumstances such as motive not necessary.

धाराएं 24 एवं 27 – परिस्थितिजन्य साक्ष्य – अभियुक्त को हत्या कारित करने वाले अपराध में दोषसिद्ध किया गया – परिस्थितिजन्य साक्ष्य के आधार पर दोषसिद्ध किये जाने हेतु परीक्षण की विधि प्रतिपादित।

प्रकटीकरण कथन – अनुसंधान अधिकारी द्वारा मौखिक साक्ष्य में अभियुक्त द्वारा बोले गये शब्दों को नहीं बताये जाने का प्रभाव।

न्यायिकेत्तर संस्वीकृति – अभियुक्त ने कथित रूप से न्यायिकेत्तर संस्वीकृति दी कि उसने अपनी पत्नि की निर्दयीता पूर्वक हत्या की थी – न्यायिकेत्तर संस्वीकृति पर तभी विश्वास किया जा सकता है जब वह विश्वसनीयता की कसौटी पर खरा उतरे।

हेतुक – परिस्थितिजन्य साक्ष्य की श्रृंखला टूट गई – प्रकटीकरण कथन पर भी अविश्वास किया गया – अन्य तथ्यों जैसे कि हेतुक पर विचार आवश्यक नहीं।

59 (i) to (iv) 87

Section 45 – See sections 138 and 139 of the Negotiable Instruments Act, 1881.

धारा 45 – देखें परक्राम्य लिखत अधिनियम, 1881 की धाराएं 138 और 139।

70 104

Section 68 – Burden of proving a Will shall always lie on the propounder.

धारा 68 – वसीयत को प्रमाणित करने का भार हमेशा प्रतिपादक पर होता है।

76 (ii) 113

GUARDIANS AND WARDS ACT, 1890
संरक्षक और प्रतिपाल्य अधिनियम, 1890

Section 6 – See sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956

INDIAN PENAL CODE, 1860
भारतीय दण्ड संहिता, 1860

Sections 34 and 302 – See sections 3 and 32 of the Evidence Act, 1872.

धाराएं 34 एवं 302 – देखें साक्ष्य अधिनियम, 1872 की धाराएं 3 एवं 32।

55 **80**

Sections 201, 302 and 376 – Death penalty – Permissibility of awarding capital punishment in case of conviction based on circumstantial evidence.

धाराएं 201, 302 एवं 376 – मृत्यु दण्ड – परिस्थितिजन्य साक्ष्य के आधार पर दोषसिद्धी के मामले में मृत्युदण्ड अधिरोपित किये जाने की अनुज्ञेयता।

56 (iii) **82**

Section 302 – Murder – There can be conviction on the basis of deposition of sole eye-witness.

धारा 302 – हत्या – एकमात्र चक्षुदर्शी साक्षी की साक्ष्य के आधार पर भी दोषसिद्धी की जा सकती है। **57** **84**

Section 302 – See section 3 of the Evidence Act, 1872.

धारा 302 – देखें साक्ष्य अधिनियम, 1872 की धारा 3। **58** **85**

Section 302 – See sections 24 and 27 of the Evidence Act, 1872, section 313 of the Criminal Procedure Code, 1973 and section 9 of the Legal Services Authorities Act, 1987.

धारा 302 – देखे साक्ष्य अधिनियम, 1872 की धाराएं 24 एवं 27, दण्ड प्रक्रिया संहिता, 1973 की धारा 313 एवं विधिक सेवा प्राधिकरण अधिनियम, 1987 की धारा 9। **59** **87**

INTERPRETATION OF STATUTES:
संविधियों का निर्वचनः

– While interpreting a statute, the court has to prefer an interpretation which advances the purpose of the statute.

– किसी भी प्रावधान के निर्वचन के समय न्यायालय को ऐसी व्याख्या को प्रधानता देना चाहिए जो कि संविधि के उद्देश्य को अग्रेषित करे।

60 (ii) **91**

LAND ACQUISITION ACT, 1894
भूमि अधिग्रहण अधिनियम, 1894

Section 23 – (i) Ready Reckoner – Purpose – For the calculation of stamp duty – Cannot be the basis for determination of the compensation.

(ii) Determination of compensation – Factors to be considered.

धारा 23 – (i) तैयार संगणक – प्रयोजन – स्टाम्प शुल्क के आंकलन के लिए – प्रतिकर के निर्धारण के लिए आधार नहीं माना जा सकता।

(ii) प्रतिकर का निर्धारण – विचारित किये जाने वाले कारक। **61** **93**

LEGAL SERVICES AUTHORITIES ACT, 1987
विधिक सेवा प्राधिकरण अधिनियम, 1987

Section 9 – Legal aid – It is the duty of court to ensure that an accused put on a criminal trial is effectively represented by a defense counsel.

धारा 9 – विधिक सहायता – न्यायालय का यह कर्तव्य है कि वह सुनिश्चित करे कि एक अभियुक्त जिसे आपराधिक विचारण में लाया गया है को विचारण के दौरान प्रभावशील रूप से बचाव अधिवक्ता द्वारा अभियुक्त का प्रतिनिधित्व किया जाए। **59 (vii)** **87**

LIMITATION ACT, 1963
परिसीमा अधिनियम, 1963

Sections 5, 12 and 14 – (i) Effect when conduct of party lacks due diligence and is negligent on condonation of delay u/s 5 of the Act and exclusion of time spent in wrong forum u/s 14 of the Act.

(ii) No appeal in the eyes of law – Unless delay in filing appeal is condoned.

(iii) Exclusion of time u/s 14 of the Act rejected – Condonation of delay u/s 5 of the Act – Not permissible on same set of facts.

धाराएं 5, 12 एवं 14 – (i) पक्षकार के आचरण में सम्यक सतर्कता का अभाव अधिनियम की धारा 5 के अधीन विलंब से क्षमा एवं गलत मंच पर व्यतीत किया गया समय धारा 14 के अधीन समय के अपवर्जन का अधिकारी नहीं।

(ii)अपील प्रस्तुत करने में हुआ विलंब क्षमा किये जाने तक – विधिक दृष्टि में अपील का अस्तित्व नहीं।

(iii)अधिनियम की धारा 14 के अधीन समय का अपवर्जन निरस्त – अधिनियम की धारा 5 के अधीन विलंब क्षमा करना – उन्हीं तथ्यों पर अनुज्ञात नहीं ।

62 **94**

Sections 166 and 168 – (i) Motor accident case – Determination of compensation – Income Tax Return (ITR) being statutory document, may be considered for computation of annual income.

(ii) The Act being beneficial legislation concept of 'Just and fair' compensation is of paramount importance.

(iii) Calculation of 'Just and fair' compensation – Explained.

धाराएं 166 एवं 168 – (i) मोटर दुर्घटना प्रकरण – प्रतिकर का निर्धारण – आयकर रिटर्न वैधानिक दस्तावेज होने से वार्षिक आय की गणना में विचार योग्य हो सकता है ।

(ii) अधिनियम लाभकारी विधान होने से 'उचित एवं न्यायसंगत' प्रतिकर की अवधारणा अत्यंत महत्वपूर्ण है ।

(iii) 'उचित एवं न्यायसंगत' प्रतिकर की गणना – व्याख्या की गई ।

67 **98**

Section 168 (1) – Compensation – Road accident – Deceased aged 12 years – It is just and proper to accept the notional income of ₹ 30,000/- p.a. including future prospects and using multiplier of 15.

धारा 168 (1) – प्रतिकर – सड़क दुर्घटना – मृतक की आयु 12 वर्ष – भविष्य की संभावनाओं को सम्मिलित करते हुए अनुमानित आय 30,000 रूपये प्रतिवर्ष स्वीकार करना और 15 के गुणक का प्रयोग उचित और न्यायसंगत है।

68 **101**

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985
स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985

Sections 2 (xvii) (a) and 15 – Seizure – Once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no other test would be necessary for establishing the guilt of the accused.

धाराएं 2 (xvii)(क) एवं 15 – जब्ती – एक बार यह निर्धारित हो जाता है कि जब्तशुदा 'पॉपी स्ट्रॉ' में 'मॉर्फीन' एवं 'मेकोनिक एसिड' की अंतर्वस्तु निहित है तो अभियुक्त के दोषसिद्धी के निर्धारण हेतु अन्य किसी परीक्षण की आवश्यकता नहीं है। **60 (i)** **91**

Sections 37 and 67 – See Section 439 of the Criminal Procedure Code, 1973.

धाराएं 37 एवं 67 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 439।

69 **103**

NEGOTIABLE INSTRUMENTS ACT, 1881
परक्राम्य लिखत अधिनियम, 1881

Sections 138 and 139 – Dishonour of cheque – Effect when cheque is filled by a person other than the drawer and signature and delivery of cheque by accused to complainant admitted.

धाराएं 138 और 139 – चेक का अनादरण – लेखीवाल (जारीकर्ता) के अलावा अन्य व्यक्ति द्वारा चेक भरा गया एवं अभियुक्त द्वारा चैक पर हस्ताक्षर एवं परिवादी को प्रदाय करना स्वीकृत होने का प्रभाव। **70** **104**

PREVENTION OF CORRUPTION ACT, 1988
भ्रष्टाचार निवारण अधिनियम, 1988

Sections 13 (1) (e) and 13 (2) – See Sections 239 and 240 of the Criminal Procedure Code, 1973.

धाराएं 13 (1) (ङ) एवं 13 (2) – देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 239 एवं 240। **48** **68**

Section 19 – (i) Sanction for prosecution – Delay – Consequences – After expiry of three months and additional one month, the aggrieved party would be entitled to approach the writ court concerned to seek appropriate remedy.

(ii) Sanction for prosecution – Non-compliance of statutory period in granting of sanction shall not be the sole ground for quashing of the criminal proceeding.

धारा 19 – (i) अभियोजन की मंजूरी – विलंब – परिणाम – तीन माह और अतिरिक्त एक माह की अवधि बीत जाने के पश्चात् व्यथित पक्ष उपयुक्त उपचार प्राप्त करने हेतु संबंधित रिट न्यायालय में प्रार्थना करने का अधिकारी होगा।

(ii) अभियोजन की मंजूरी – मंजूरी प्रदान करने में वैधानिक अवधि का अनुपालन नहीं करना आपराधिक कार्यवाही को अभिखंडित करने का एकमात्र आधार नहीं होगा । **71** **104**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005

Section 12 – See section 125 of the Criminal Procedure Code, 1973.

धारा 12 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 125। **45** **64**

SPECIAL MARRIAGE ACT, 1954

विशेष विवाह अधिनियम, 1954

Section 40-B(3) – See Order 9 Rule 13 of the Civil Prodcedure Code, 1908.

धारा 40-ख(3) – देखें सिविल प्रक्रिया संहिता, 1908 का आदेश 9 नियम 13।

72 108

SPECIFIC RELIEF ACT, 1963

विनिर्दिष्ट अनुतोष अधिनियम, 1963

Section 10 – (i) Amendment in the Act – Prospective in nature and cannot apply to those transactions that took place prior to its coming into force.

(ii) Performance of contract – Limitation – When the time period for performance is not fixed then the purchaser can take recourse to the notice issued but such circumstances do not come into play when fixed time period was clearly mandated in the contract.

(iii) Contract to sell immovable property – Whether time is the essence of contract?

धारा 10 – (i) अधिनियम में संशोधन – प्रकृति में भविष्यवर्ती एवं उन संव्यवहारों पर लागू नहीं जो कि इसके प्रभाव में आने से पूर्व के हैं ।

(ii) संविदा का पालन – परिसीमा – जब पालन हेतु समय सीमा निर्धारित नहीं हो तब क्रेता जारी सूचनापत्र का अवलंब ले सकता है किंतु जब संविदा में निर्धारित समय सीमा स्पष्टतः आदेशित हो तब उक्त परिस्थितियाँ प्रचलन में नहीं आएगी।

(iii) अचल संपत्ति के विक्रय की संविदा – क्या समय संविदा का सार है?

73 109

Section 16(c) – Specific performance of contract – Effect when subsequent deposit of balance consideration was made by the plaintiff after lapse of seven years.

धारा 16 (ग) – संविदा का विनिर्दिष्ट पालन – सात वर्ष व्यतीत होने के उपरांत अवशेष प्रतिफल का पश्चात्वर्ती प्रक्रम पर वादी द्वारा जमा किये जाने पर प्रभाव। **74 111**

Section 20 – Suit for specific performance of contract – When can adverse inference can be drawn?

PART-III
(CIRCULARS/NOTIFICATIONS)

PART- IV
(IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS)

EDITORIAL

Esteemed Readers,

The advent of March marked the commencement of the two month long First Phase Induction course training of the newly appointed Civil Judges Junior Division, 2022 batch. It would not be an exaggeration to say that the Academy came alive with the movement of young Judges. The new entrants to the service brought with themselves the fresh perspectives and it was a delight to witness their enthusiasm and address their curious mindsets. These were indeed an extremely busy two months but nevertheless the most enjoyable one. I hope to see these budding Judges evolve into 'Judges' who prove to be an asset to the Judicial fraternity. Academy has been channelizing all its efforts so as to meet this vital target.

Hon'ble Supreme Court has launched Electronic Version of Supreme Court Records (e-SCR). It is an initiative to provide access to the judgments and orders passed by the Supreme Court free of cost. Recognizing the importance of e-SCR and to maximize its utility, it was felt imperative to conduct training for Judges and other stakeholders from all over the State, the same was conducted in two batches. With the advancement of technology, it is the need of the hour that recourse be made to these tools and utilize them towards increasing the quality of work. Apart from this, the Academy has conducted a Special Online Workshop on Protection of Women from Domestic Violence Act, 2005 as well.

An important event from these two months was the inaugural event of Special Workshop of Advocates at Gwalior Bench of High Court of Madhya Pradesh. Hon'ble Chief Justice was kind enough to inaugurate the workshop on 18th March 2023. His Lordship in his address highlighted the crucial role of the advocates in the Justice Delivery System. We sincerely hope that the success of this series witnessed at Jabalpur and Indore shall be replicated at Gwalior as well.

I would like to part by highlighting the need of making constant endeavour to improvise oneself. Our work should be reflective of a steady progress and must not become stagnant. Stagnant water is the best analogy to elaborate the consequences of getting constant. Water when remains stagnant becomes impure and contaminated whereas flowing water remains fresh and alive. Reading can be one of the many habits which can act as a catalyst in delivering better performance. In our journey towards excellence, we are going to experience various obstacles and hindrances but we must keep moving forward and improvise ourselves. While discharging our duties as a Judge, we should always strive to give our best.

At present, the biggest problem before us is the ever increasing arrears of pending cases. We must constantly ponder upon how we can reduce the number of pending cases which are accumulating day-by-day and should also make such innovations that would aid in reducing the huge backlog of cases. This shall go a long way in affirming the faith of public in the Judiciary. The '25 Debt Scheme' introduced by our Hon'ble Chief Justice Shri Ravi Malimath has proved to be highly successful and effective in reducing the arrears of old cases in our Courts. In future also, it is expected from us to continuously and tirelessly work in this direction so as to make Judiciary stronger and more reliable.

Krishnamurty Mishra
Director

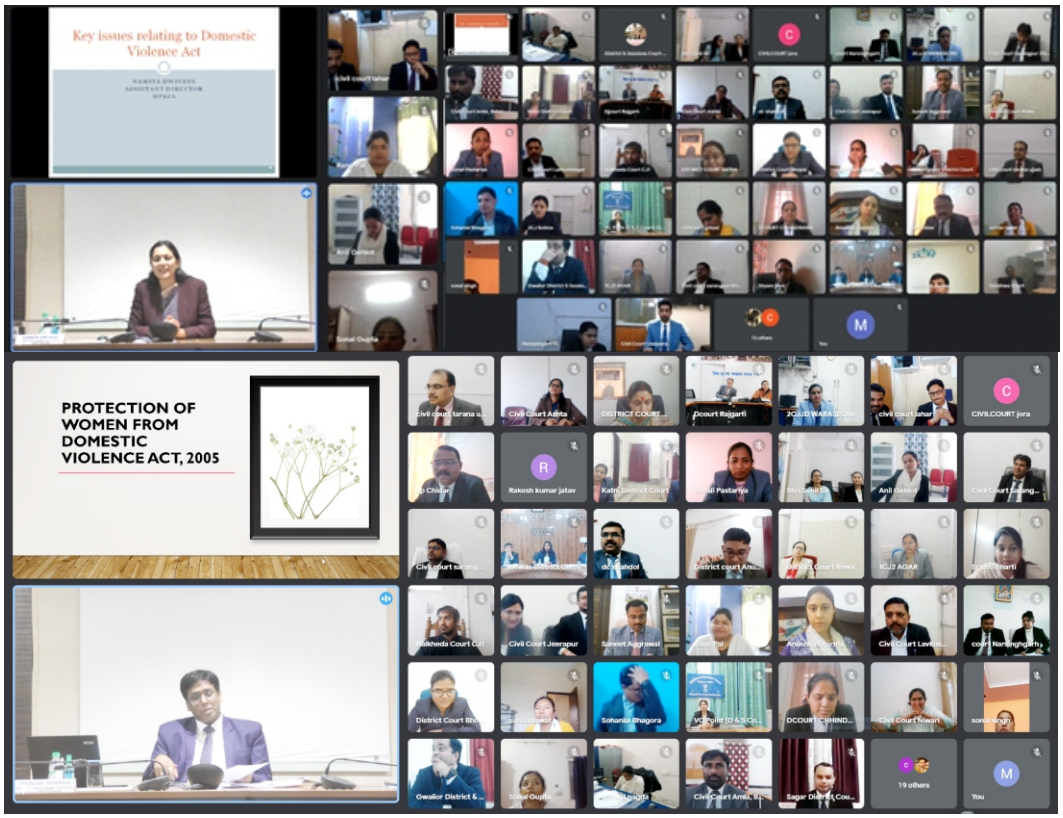
SPECIAL WORKSHOP FOR ADVOCATES

Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh inaugurating the Special Workshop for Advocates at High Court of Madhya Pradesh, Bench at Gwalior (18.03.2023)

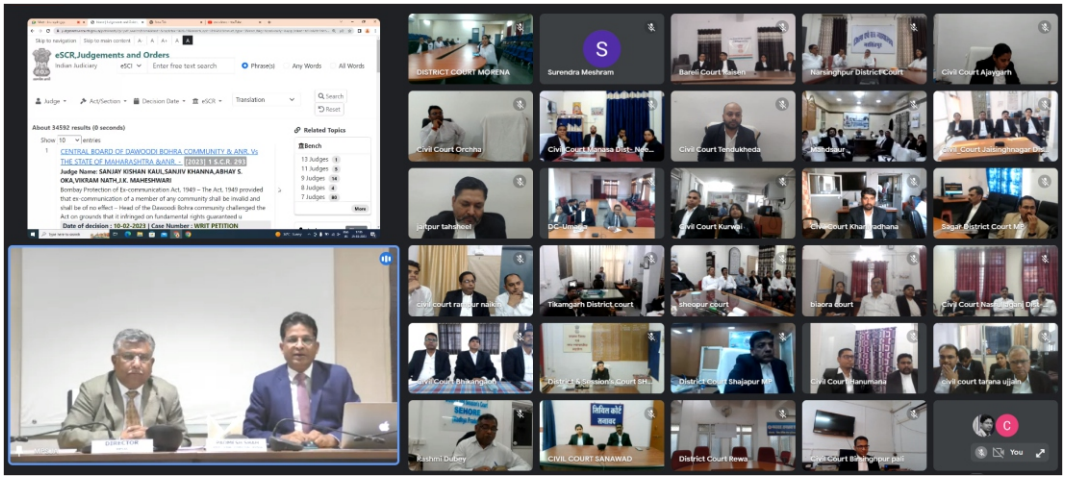
GLIMPSES OF THE FIRST SESSION OF SPECIAL WORKSHOP FOR ADVOCATES AT HIGH COURT OF MADHYA PRADESH, BENCH AT GWALIOR (18.03.2023)

Hon'ble Shri Justice Rohit Arya, Administrative Judge, High Court of Madhya Pradesh, Bench at Gwalior in interaction with participating Advocates

Hon'ble Shri Justice Anand Pathak, Judge, High Court of Madhya Pradesh and Member, Governing Council, MPSJA addressing the participants



Interactive session on - Key issues relating to cases under the Protection of Women from Domestic Violence Act, 2005 (Online) (18.03.2023)



Online Training on - e-SCR Portal conducted in two batches (24.03.2023 & 25.03.2023)

HON'BLE SHRI JUSTICE VIRENDER SINGH DEMITS OFFICE

Hon'ble Shri Justice Virender Singh demitted office on His Lordship's attaining superannuation. His Lordship was born on 15.04.1961. After obtaining degrees of B.Sc. and LL.B., His Lordship joined M.P. State Judicial Services as Civil Judge Class-II on 28.10.1985 and was promoted to Higher Judicial Service on 31.05.1997. His Lordship was granted Selection Grade Scale w.e.f. 01.07.2004 and thereafter, Super Time Scale w.e.f. 15.01.2013.

His Lordship as Judicial Officer, worked in different capacities at Bhind, Datia, Seodha, Gohad, Gwalior, Lahar, Shajapur, Morena, Katni, Shahdol, Ujjain, Rewa, New Delhi, Jabalpur.

His Lordship was serving in the capacity of Principal Secretary, Law & Legislative Affairs Department, Bhopal at the time of elevation.

His Lordship took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016 and as Permanent Judge on 17.03.2018.

Apart from judicial work, His Lordship also discharged administrative functions as Member of various Executive Committees of High Court. His Lordship took keen interest in guiding the participants in various training programmes conducted by 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 Ganesh Prasad Bhutt
2nd Chief Justice of High Court of Madhya Pradesh

Hon'ble Shri Justice Ganesh Prasad Bhutt was born on on 22nd September, 1899. After a brilliant academic career, His Lordship joined the Jabalpur Bar in 1922. In 1927, His Lordship was appointed as a subordinate Judge at Raipur. After few years of service, he worked as Chairman of different Debt Conciliation Boards. Later on, His Lordship became the Additional Sessions Judge but his services were transferred to the Central Government in the Ministry of Defence. He worked on the Pensions Appeal Tribunal and on his return to Madhya Pradesh, he was appointed District & Sessions Judge, Nagpur. In 1953, he was appointed as Judge of the Nagpur High Court and on account of reorganization of State, he became a Judge of the High Court of Madhya Pradesh. Five years later, he was appointed as Chief Justice of the High Court of Madhya Pradesh at Jabalpur, the place where he first entered the legal profession. It is pertinent to mention that it is only this singular instance in the history of High Court of Madhya Pradesh wherein a Judge who joined the Provincial Judicial Service rose to be the Chief Justice of the High Court of Madhya Pradesh.

His Lordhsip was administered oath of office by Hon'ble Shri H.V. Pataskar, Governor of Madhya Pradesh at Bhopal on 13th December 1958. On 15th December 1958, a function was held at High Court of Madhya Pradesh, Jabalpur in his honour. In his address His Lordhsip laid great emphasis on carrying humbleness and proper attitude. The relevant extract from his address is reproduced below:

> "The cry of the hour is the creation of proper mentality and not so much the creation of institutions. Institutions have existed and are springing up in numbers. But they are losing their glory and their lustre because we are not having that attitude of mind which should be the foundation of all institutions. We have been insisting on our rights whereas we should be conscious only of our obligations. I feel and I have always felt that rights are granted by others and are granted only to those who are only conscious of their obligations. Therefore, the right attitude should be to regard whatever is granted as having been given to us through the kindness of those forces which are making our destiny. Unless we feel utmost degree of sacredness attaching to the posts that are allotted to us, we cannot create the right type of mentality. I have always tried to think on these lines and to feel that whatever has been given to me has been given through the bountiful mercy of Providence and not because I have deserved it. If one introspects and tries to assess his worth correctly, I feel there can only be one answer. Much has been given to us which we have not deserved and if this feeling is entertained, we would feel humbler and humbler as we rise, because the consciousness of the immensity of mercy that has been the foundation of the gifts is sincerely felt. This is true not only of those who hold office, but also those who work in other spheres of life."

It is noteworthy that Justice G.P. Bhutt regarded everything in God's creation as sacred and treated the lowliest of men as an equal. The tiniest of creatures and the tallest of men were looked upon by him with reverence. He laid great emphasis on introspection and felt that Providence is kind and bestows blessings on people irrespective of their merits.

On work front, His Lordhsip focused a great deal on expeditious disposal of cases. In his anxiety to reduce the arrears of work in the High Court, he requested co-operation of his colleagues and lawyers to work even in summer vacation. On administrative front, it is said that he would sit in his chamber for hours after Court work to attend to the details of every administrative matter. He exercised benign influence on the ministerial staff with paternal care; hardly ever had he any occasion to rebuke any one and yet the administration ran as smoothly as ever.

As far as his relationship with Bar is concerned, His Lordship was known as a Judge who had infinite patience and no lawyer ever thought that he had no fullest hearing; yet his disposal was quick. To highlight the bond which he shared with the members of Bar, the relevant extract from His Lordship's ovation address is reproduced below:

> "It shall be my endeavour to give members of the Bar all manner of encouragement so that their destiny may be fulfilled. I am especially fond of young members of the Bar, those who have a career before them, and feel immense joy whenever I find something in them that shall make them good and great. I would wish that everyone of you should live to the utmost in the present so that your future should be assured. In the making of you as good members of the Bar, you will find nothing that I shall do, which shall embarrass you in the discharge of your duties. On the other hand, you will find everything that will encourage you. If you put forward any point of view which is commendable, it shall receive due recognition and in this manner even though you may commit faults, which shall certainly be indicated, if necessary, you shall never fail to receive encouragement for the efforts that you will be making. Let us bind ourselves together in bonds of affection and good will and let us all discharge our duties knowing that there is Providence, which is looking after us and which will reward us if we do its service well and which will punish us if we do not do it properly and conscientiously."

His Lordship demitted the office of the Chief Justice of High Court of Madhya Pradesh on 12th September, 1959. After retirement, he served as Vice-Chancellor of Dr. Hari Singh Gaur University, Sagar, Madhya Pradesh. His Lordship passed away on 11th May 1969. He was a spiritual person and regarded everything in God's creation as sacred. His Lordship was the second Chief Justice of newly established High Court of Madhya Pradesh and heavily contributed in laying its strong foundation by illuminating the path forward.

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JURISDICTION OF COURT *VIS-A-VIS* BAR AGAINST SUIT

- Institutional Article

Jurisdiction

The term "Jurisdiction" has not been explained in the Civil Procedure Code, 1908 (in short "Code"). It is the power of the Court to settle any matter. Indian Legal System has adopted legal maxim "*ubi jus ibi remedium*", which means where there is a right, there is a remedy. In fact, right and remedy cannot be dissociated. Therefore, it is expected that judicial forums must have jurisdiction to deal with any matter. Accordingly, a litigant may file civil suit in a competent Civil Court for any grievance of civil nature, unless its cognizance is expressly or impliedly barred by any statute.

Competence of Civil Court refers to the legal "ability" of a Court to exert jurisdiction over a person or a property which is the subject-matter of suit. Competence of Court and Jurisdiction are intermingled in law, represent the extent of the authority of a Court to administer justice, with reference to the subject-matter, pecuniary value and local limits, as has been laid down in case of ***Raja Soap Factory and ors. v. S. P. Shantharaj and ors., AIR 1965 SC 1449***.

The ratio laid down by Hon'ble Supreme Court in ***Raja Soap Factory*** (supra) is in fact, reflecting the classification of jurisdiction mainly in the following categories:

(1) Territorial/Local Jurisdiction, i.e. territory limits fixed by the Government, beyond which Court cannot exercise its jurisdiction. Therefore, District Judge may exercise jurisdiction within his district or that Court has no jurisdiction to try Sections 15 to Section 20 of the Code.

(2) Pecuniary Jurisdiction, where amount or value of the subject matter is the basis, as provided under Section 6 r/w/s 15 of the Code.

(3) Jurisdiction as to subject matter, where different Courts are empowered to decide different type of suits.

Hon'ble Supreme Court has laid down in case of ***Carona Ltd. v. Parvathy Swaminathan & Sons, (2007) 8 SCC 559*** that Jurisdiction of a Court, Tribunal or any Authority depends upon fulfillment of certain conditions precedent or existence of particular fact, which is well known as 'Jurisdictional Fact'. Existence of such Jurisdictional Fact is condition precedent or *sine qua non* for the Court to assume jurisdiction, otherwise Court may not act. Issue of jurisdiction must be tried as preliminary issue.

It is, therefore, well settled that decision as to jurisdiction must be taken at the commencement and not at the conclusion of the inquiry.

Further, wrong assumption of jurisdiction will have serious repercussion, as in matters of inherent lack of jurisdiction, the defect goes to the root of the matter and strikes at the authority of a Court to pass a decree. In fact, a decree passed without jurisdiction is *nullity, non-est* and *coram non judice*. Considering its utmost importance, an elaborate discussion is expected.

Jurisdiction of Civil Court, as mentioned in Section 9 of the Code provides that a Civil Court has jurisdiction to try all suits of civil nature unless expressly or impliedly barred. Explanation 1 clarifies that suits in which right to property or right to an office is contested, are suits of civil nature.

A three Judge bench of Hon'ble Supreme Court has laid down in case of ***Rajasthan State Road Transport Corporation and anr. v. Bal Mukund Bairwa, (2009) 4 SCC 299*** that Civil Courts can try all suits, unless barred by a statute, either expressly or by necessary implication. Civil Court, being a Court of plenary jurisdiction, has the power to determine its jurisdiction upon considering averment made in the plaint but that does not mean that plaintiff can circumvent provisions of law in order to invest jurisdiction on Civil Court, which it may not otherwise possess. There is a presumption that a Civil Court has jurisdiction. Ouster of Civil Court's jurisdiction is not to be readily inferred. A person taking a plea that jurisdiction is barred, must establish the same. Even in a case where jurisdiction of a Civil Court is sought to be barred under a statute, the Civil Court can exercise its jurisdiction in respect of some matters particularly, when the statutory authority or tribunal acts without jurisdiction.

It is therefore, crystal clear that exclusion of jurisdiction is not to be readily inferred, that there is always presumption to be made in favour of the existence of such jurisdiction rather than exclusion. Consequently, statutes ousting the jurisdiction of Civil Courts' must be strictly construed. In fact, the burden of proving exclusion of Civil Court's jurisdiction is always on the party who asserts it.

The discussion on issue of exclusion of jurisdiction of Civil Court can never be complete without considering the law laid down in case of ***Dhulabhai v. State of M.P., AIR 1969 SC 78***, where following principles relating to the exclusion of jurisdiction of Civil Courts are laid down:

(1) Where the statute gives a finality to the orders of the special tribunals, the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as *ultra vires* cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional, or the constitutionality of any provision is to be challenged, proper recourse is filing a Suit. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment, apart from its constitutionality, are for the decision of the authorities and a civil suit does not lie, if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined because it is a relevant inquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not to be readily inferred unless the conditions above seldom apply.

Hon'ble Supreme Court has settled law regarding effect of lack of jurisdiction in case of ***Devasahayam (Dead) By LRs. v. P. Savithramma and ors., (2005) 7 SCC 653***, referring its earlier judgment in ***Kiran Singh and ors. v. Chaman Paswan and ors., AIR 1954 SC 340***, where it was laid down that it is a fundamental principle well established that a decree passed by a Court without jurisdiction is nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

Suits expressly barred under Code of Civil Procedure, 1908

Section 12 of the Code bars further suit in respect of any particular cause of action, if its institution is precluded by rules provided in the Code itself. There is a long list of provisions in the Code which expressly bar certain type of suits. In a chronological sequence, the provisions are:

(1) Section 11 of the Code bars a fresh trial of matters which have already been adjudicated upon between the parties by a competent Court.

(2) Section 21A of the Code bars a suit filed challenging the validity of a decree passed in a former suit between the same party on any ground based on an objection as to the place of suing, i.e. territorial jurisdiction.

(3) Section 34(2) of the Code bars a separate suit for recovery of further interest, where in a previous suit, decree was silent regarding payment of further interest on principal sum from the date of decree till date of payment or earlier date.

(4) Section 47(1) of the Code bars suit for determination of all questions relating to execution, satisfaction and discharge of decree and arising between parties or their representatives.

(5) Section 88(Proviso) of the Code bars institution of Inter pleader suit, where any suit is already pending in which the rights of all parties can properly be decided.

(6) Section 95(2) of the Code bars a suit for compensation in respect of arrest before judgment, attachment before judgment or temporary injunction granted on insufficient ground or without reasonable or probable grounds, where defendant has filed application for compensation and order has been passed.

(7) Section 144(2) of the Code bars a suit for the purpose of obtaining any restitution or other relief, which could be obtained by filing application u/s 144 (1) of the Code.

(8) Order 2 Rule 2(2) of the Code prescribes that plaintiff who omits to sue in respect of or intentionally relinquishes any portion of the claim, shall not afterwards be entitled to sue in respect of the portion omitted or relinquished.

(9) Order 2 Rule 2(3) of the Code prescribes that plaintiff entitled to more than one relief in respect of the same cause of action, may sue for all or any relief, but if he omits, except with leave of Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

(10) Order 9 Rule 9 of the Code bars a fresh suit, when suit filed before on same cause of action was wholly or partly dismissed under Order 9 Rule 8 of Code.

(11) Order 11 Rule 21 of the Code bars a fresh suit, when suit filed before on same cause of action was dismissed for want of prosecution in non-compliance of an order to answer interrogatories or for discovery or inspection of documents.

(12) Order 21 Rule 58(2) of the Code bars a separate suit regarding all questions, including questions relating to right, title or interest in the property attached in execution of a decree, arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, which shall be determined by the Court dealing with the claim or objection.

(13) Order 21 Rule 101 of the Code bars a separate suit regarding all questions, including questions relating to right, title or interest in the property, arising between the parties to a proceeding on an application under rule 97 or 99 or their representatives, and relevant to the adjudication of the application, which shall be determined by the Court dealing with the application.

(14) Order 22 Rule 9 of the Code bars a fresh suit, when a suit on same cause of action abates or is dismissed under Order 22 of Code.

(15) Order 23 Rule 1(4) of the Code bars a fresh suit, when a suit in respect of same subject matter or part of the claim was abandoned or withdrawn by plaintiff without the permission of Court.

(16) Order 23 Rule 3A of the Code bars a suit filed to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

Suits expressly barred under special statute

(1) Section 430 of Companies Act, 2013 bars jurisdiction of Civil Court, with a non-obstante clause:

> "No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

Hon'ble High Court of Madhya Pradesh has laid down in case of ***Parenteral Drugs (India) Limited v. Jagdish Mangal HUF and ors., AIR 2020 MP 91*** that the dispute between the parties is a company matter and not a civil dispute as held by the learned Trial Court. After incorporation of new Companies Act, 2013 such matters have to be heard and decided by the Company Law Tribunal constituted under the new Company Law and is the only competent authority and has jurisdiction under the law to decide the conflict between the parties in respect of any company matter. It can hold enquiry into the matter under Section 84 of the Act, 1956 or 46 of the Companies Act, 2013 read with the Companies (Issue of Share Certificates) Rules, 1960 or the Companies (Share Capital and Debentures) Rules, 2014 and take a decision in the matter.

(2) Section 34, of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SERFAESI) Act, 2002 bars jurisdiction of Civil Court, with a non-obstante clause:

> "No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts

> Recovery Tribunal (DRT) or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

Hon'ble Supreme Court has laid down in case of ***State Bank of Patiala v. Mukesh Jain and ors., 2016 (4) MPLJ 531*** that if bank started loan recovery after default in re-payment and Civil suit is filed challenging notice under Section 13(2) and further proceedings, it will be hit by Section 34 of SERFAESI Act, 2002, as proper remedy was available under Section 17 of SERFAESI Act, 2002 and therefore, jurisdiction of Civil Court is barred.

Hon'ble High Court of Madhya Pradesh has laid down in case of ***Punjab National Bank v. Jainam Dormitary and anr., 2018 Law Suit (MP) 781*** that civil suit filed for permanent injunction against bank in relation to mortgaged property claiming to be tenant, when proceedings under the Act has already been initiated. The civil suit is hit by Section 34 (SERFAESI) Act, 2002, as proper remedy was available under Section 17(4-A) of (SERFAESI) Act, 2002 and therefore jurisdiction of Civil Court is barred.

(3) Section 85 of the Waqf Act, 1995 bars jurisdiction of Civil Court, Revenue Court and other authority with a non-obstante clause:

> "No suit or other legal proceeding shall lie in any Civil Court, Revenue Court and any other Authority in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by a Tribunal."

Hon'ble Supreme Court has settled law regarding bar of civil suit in case of ***Rashid Wali Beg v. Farid Pindari and ors,. (2022) 4 SCC 414*** that the basis of the decision in ***Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726*** was removed through an amendment under Act 27 of 2013 by including the words "eviction of tenant or determination of rights and obligations of the lessor and lessee of such property" in Section 83 (1) of the Act. After Amendment Act 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of

the Tribunal. In case the property is admitted to be Waqf property, the mandate of Sections 83 and 85 of the Act cannot be ignored by allowing plaintiff to seek decree of permanent and mandatory injunction from Civil Court.

(4) Section 257 of the M.P. Land Revenue Code, 1959 provides exclusive jurisdiction of revenue authorities with a non-obstante clause:

> "Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:-

For illustration, legal position on few are taken into consideration:

Hon'ble High Court has settled law in case of ***Bhagwandas v. Shriram and ors,. 2010 (11) MPJR 26*** that any claim to compel performance of any duty imposed by this Code on any Revenue Officer or other Officer appointed under MP Land Revenue Code, 1959 cannot be decided by the Civil Court and the exclusive jurisdiction would rest in the Revenue Authorities. Joint reading of Section 257 (Z-2) of M.P. Land Revenue Code, 1959 along with Section 115 and 116 of M.P. Land Revenue Code, 1959 clarify that Civil Court has no jurisdiction to try a suit only for correction of wrong khasra entry. Tehsildar can decide the dispute.

Hon'ble High Court has laid down in case of ***Mohanlal v. Rampratap, 2003 (1) MPHT 66*** that the work relating to the measurement and demarcation of boundary marks is work assigned to Revenue Officer and jurisdiction of Civil Court is barred under Section 257 (g) r/w/s 129 of the M.P. Land Revenue Code, 1959.

Hon'ble Supreme Court has well settled in case of ***Beni Madhav Singh v. Ram Naresh, (1998) 8 SCC 751*** that a suit to challenge the scheme of consolidation of holdings is barred but a suit for possession and injunction claimed on the basis of title between two parties is maintainable.

Note- Plaintiff may file a civil suit for title declaration or for recovery of possession on the basis of title without availing speedy remedy under

Section 250 of M.P. Land Revenue Code, 1959. Such a civil suit is maintainable and not barred by Section 257 MP Land Revenue Code, 1959. Jurisdiction of Civil Court is not barred in respect of question of title. ***Om Prakash & Anr. v. Ashok Kumar and anr., 2013 (2) MPHT 494***, where Hon'ble High Court relied on full bench decision of ***Ramgopal v. Chetu 1976 JLJ 278***, which is approved and affirmed by Hon'ble the Supreme Court twice in ***Rohini Prasad and Ors. v. Kasturchand and anr,. (2000) 3 SCC 668 & Hukum Singh (dead) by LRs. and ors., v. State of MP (2005) 10 SCC 124***.

(5) Section 82(1) and 82 (e) of M. P. Co-operatives Societies Act, 1961 provides that:

"Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of –

(a) the registration of a society or of byelaws or of an amendment of a bye law;

(b) the removal of a committee and management of the society after such removal;

(c) any dispute, required to be referred to the Registrar or his nominee or board of nominees;

(d) any matter concerning the winding up and the dissolution of a society."

82 "while a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with, or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose".

Hon'ble High Court has laid down in case of ***Bruhtakar Sahakari Sakh Sanstha Maryadit, Mandsaur v. Bherulal, 2001 (3) MPHT 363*** that question whether any amount is due to the society from any of its member is exclusive domain of the authorities empowered to decide the question under Section 84 of the Act. Therefore, civil suit for recovery of due amount or suit filed for the enforcement of charge or for challenging the proceedings for recovery of loan would be touching the business of the society and would be barred under Section 82 of the Act.

(6) Section 22 (1) of Sick Industrial Companies (Special Provisions) Act, 1985 provides for suspension of legal proceedings, contracts, etc. with a non-obstinate clause that and Section 26 of the Act provides for bar of Jurisdiction which are as under.

> 22(1).“Where in respect of an industrial company, an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no suit for recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or the Appellate Authority, as the case may be”.
>
> 26. “No order passed or proposal made under this Act shall be appealable except as provided therein and no Civil Court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any Court or other Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act”.

Hon’ble Supreme Court has laid down in case of ***Ghanshyam Sarda v. M/s Shiv Shankar Trading Company and ors., AIR 2015 SC 403*** that Sick Industrial Companies (Special Provisions) Act, 1985 is a complete Code in itself. It gives complete supervisory control to the Board for Industrial and Financial Reconstruction (BIFR) over the affairs of a sick industrial company. Therefore, concluded that suit for declaration that company is no longer a sick company is not maintainable.

(7) Sections 14 and 41 (e) of Specific Relief Act, 1963 provides for reinstatement of employee:

Hon’ble Supreme Court has settled the legal position regarding reinstatement of an employee and laid down in case of ***Maharashtra State***

Cooperative Housing Finance Corp. Ltd. v. Prabhakar Shivam Bhadonge (2017) 5 SCC 623 that:

> "If the employee of a Co-operative society claims a relief of reinstatement, the Co-operative Court will have no jurisdiction to entertain such a claim. Such a relief can only be granted by the Labour Court or the Industrial Tribunal constituted under the Industrial Disputes Act, having regard to the fact that special and complete machinery for this purpose is provided under the provisions of the Industrial Disputes Act. The jurisdiction of the Civil Court stands ousted. This is so held by this Court consistently in case of ***U.P. Warehousing Corporation Ltd. v. Chandra Kiran Tyage, 1970 1 LLJ 32, Dr. S. Dutt v. University of Delhi, 1959 SCR 1236*** and ***S. R. Tewari v. District Board, Agra, 1964 1 LLJ 1***.
>
> These observations are made on the premise that even if it is accepted that the Co-operative Court established under the Act is a substitute of a Civil Court, the jurisdiction of the Civil Court to grant relief would not go beyond the jurisdiction which has been vested in the Civil Court. When admittedly the Civil Court does not have jurisdiction to grant any such relief and its jurisdiction is barred in view of the law laid down in the aforesaid judgment, as *a fortiori*, the jurisdiction of the Co-operative Court shall also stand barred. Further clarified that Contract of personal services is not enforceable under the common law. Section 14 r/w/s 41(e) of the Specific Relief Act 1963, specifically bars enforcement of such a contract. It is for this reason the principle of law which is well established is that the Civil Court does not have the jurisdiction to grant relief of reinstatement, as giving of such relief would amount to enforcing the Contract of personal services. However, as laid down in the cases referred to above, and also in ***Executive Committee of Vaish Degree College, Shamli & ors. v. Lakshmi Narain & ors., (1976) 2 SCC 58***, there are three exceptions to the aforesaid rule, where the Contract of personal services can be enforced:
>
> (a) in the case of a public servant who has been dismissed from service in contravention of Article 311 of the Constitution of India;

(b) in the case of an employee who could be reinstated in an industrial adjudication by the Labour Court or an Industrial Tribunal; and

(c) in the case of a statutory body, its employee could be reinstated when it has acted in breach of the mandatory obligations imposed by the statute.

Even when the employees falling under any of the aforesaid three categories raise dispute *qua* their termination, the Civil Court is not empowered to grant reinstatement and the remedy would be, in the first two categories, by way of writ petition under Article 226 of the Constitution or the Administrative Tribunal Act, as the case may be, and in the third category, it would be under the Industrial Disputes Act. An employee who does not fall in any of the aforesaid exceptions cannot claim reinstatement. His only remedy is to file a suit in the Civil Court seeking declaration that termination was wrongful and claim damages for such wrongful termination of services."

(8) Section 15 of the Railway Claims Tribunal Act, 1987 bars jurisdiction of Civil Court with a non-obstante clause that:

> "On and from the appointed day, no Court or other Authority shall have, or be entitled to, exercise any jurisdiction, powers or Authority in relation to the matters referred to in sub-sections (1), (1A) & (1B) of Section 13."

Note:- Section 13 empowers Railway Claim Tribunal to entertain such claim.

Hon'ble High Court of Madhya Pradesh has laid down in case of ***Union of India and anr. v. M.P. State Electricity Board, 2011 (1) MPLJ 540*** that clause (b) of sub-section (1) of section 13 of the Railway Claims Tribunal Act, 1987 clearly empowers the claims tribunal to entertain the claim in respect of the refund of any freight paid in respect of animals or goods entrusted to the railway administration to be carried by the Railway. This being so, the jurisdiction of Civil Court to entertain the suit for refund of freight stands excluded by virtue of Section 15 of the said Act.

The list is not exhaustive. In other cases same principle, as discussed above may be taken into consideration.

Suits Impliedly barred

(1) Sections 7, 8 and 9 of the Indian Treasure Trove Act, 1878:

In case of ***Azizuddin Qureshi v. State of M.P., ILR (2011) MP 978,*** the Hon'ble Court has considered the facts of the case and after going through the scheme of the Act, held that the jurisdiction of Civil Court is barred in treasure Trove cases.

The facts of the case need to be considered. It is undisputed fact that in the course of the inquiry either under Section 7 or 8 of the Act, no direction to file civil suit was given by the Collector to the appellant, by adjourning the case. On the other hand, after holding the inquiry by virtue of earlier part of Section 9 of the Act such treasure was declared to be the ownerless property and by virtue of later part of Section 9, such order is made appealable under the Act.

On going through the entire provision and the scheme of the aforesaid Act 1878, it appears to be a complete Code to resolve all the questions relating to the treasure trove property and in such premises unless specific direction or observation is given by the Collector under Section 8 of the Act to the party to approach the Civil Court to get decided the title by adjourning the case, the Civil Court did not have any jurisdiction to entertain the civil suit in the matter.

(2) Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976:

Hon'ble Supreme Court has settled in case of ***State of M.P. v. Ghisilal, AIR 2022 SC 275*** that the Urban Land (Ceiling and Regulation) Act, 1976 is a self-contained Code. Various provisions of the Act make it clear that if any order is passed by the competent authority, there is provision for appeal, revision before the designated appellate and revisional authorities. In view of such remedies available for aggrieved parties, the jurisdiction of the Civil Courts to try suit relating to land which is subject-matter of ceiling proceedings, stands excluded by implication. Civil Court cannot declare, orders passed by the authorities under the ULC Act, as illegal or *non est*. More so, when such orders have become final, no declaration could have been granted by the Civil Court. In this regard reference may be made to the judgment of this Court in the case of ***Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976 and anr. v. David Mantosh and Ors., (2020) 12 SCC 542***.

(3) Section 4 and 6 of the Land Acquisition Act, 1894:

Hon'ble Supreme Court in case of ***H.N. Jagannath & Ors. v. State of Karnataka and ors. AIR 2017 SC 5805***, referred previous judgment of ***Bangalore***

Development Authority v. Brijesh Reddy and anr., (2013) 3 SCC 66, wherein it has been laid down that:

> "It is clear that the Land Acquisition Act is a complete Code in itself and is meant to serve public purpose. By necessary implication, the power of the Civil Court to take cognizance of the case under Section 9 CPC stands excluded and a Civil Court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4, declaration under Section 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the Civil Court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power."

(4) Permanent Lok Adalat under Section 22 D of Legal Services Authority Act, 1987 (Chapter- 6A):

Hon'ble Supreme Court has settled in case of ***United India Insurance Company Limited v. Ajay Sinha and anr. (2008) 7 SCC 454*** :

> "The Permanent Lok Adalat, in terms of Section 22-D of the Act, while conducting conciliation proceedings or deciding a dispute on merit is not bound by the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 but guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice. Section 22-E of the Act makes an Award of Permanent Lok Adalat to be final and binding on all the parties, which would be deemed to be a decree of a Civil Court. Jurisdiction of the Civil Court to call in question any Award made by the Permanent Lok Adalat is barred. It has the jurisdiction to transfer any Award to a Civil Court and such Civil Court is mandated to execute the order as if it were the decree by the Court."

(5) Section 25 (B) of the Industrial Dispute Act, 1947 and Section 25 (F) of the Industrial Dispute Act, 1947:

Hon'ble Supreme Court has settled in case of ***Milkhi Ram v. Himachal Pradesh State Electricity Board, AIR 2021 SC 5025*** that:

> "When workmen files a civil suit challenging his termination on basis of grounds covered under provisions of the Industrial Dispute Act, 1947, the employer has right to raise jurisdictional objection to proceeding before Civil Court. Civil Court lacks jurisdiction to entertain a suit structured on the provisions of the Industrial Dispute Act, 1947."

(6) Section 18 of Micro, Small & Medium Enterprises Development Act, 2006

Hon'ble High Court of MP has settled in case of ***C.M.D. (EZ) MPPKVVCL & anr. v. Sharad Oshwal, 2016 (2) MPLJ 384*** that:

> "Section 18 provides for reference to Micro and Small Enterprises Facilitation Council in case of any dispute with regard to amount due. Such Council is empowered to conduct conciliation or seek assistance for conciliation. Effective alternate remedy is available. Therefore, jurisdiction of Civil Courts is impliedly barred."

The list is not exhaustive. In other cases same principle, as has been laid down in finding out the exclusion of jurisdiction will be taken into consideration.

Important Legal Position

In case of ***South Delhi Municipal Corporation and anr. v. Today Homes & Infrastructure (P) Ltd. and ors., (2020) 12 SCC 680*** Hon'ble Supreme Court has held that it is settled law that jurisdiction of the Civil Court cannot be completely taken away inspite of either an express or implied bar. The Civil Court shall have jurisdiction to examine a matter in which there is an allegation of non-compliance with the provisions of the statute or any of the fundamental principles of judicial procedure i.e. issues as to fundamental jurisdictional error may form basis of civil suit, despite exclusion of jurisdiction of Civil Court.

Proper course

Hon'ble Supreme Court has settled proper course for person aggrieved from any order passed by Court without jurisdiction, in case of ***Prakash Narain Sharma v. Burmah Shell Cooperative Housing Society Ltd., (2002) 7 SCC 46***, wherein it was laid down that:

"It will be a dangerous proposition to be laid down as one of laws that any individual or authority can ignore the order of the Civil Court by assuming authority upon itself to decide that the order of the Civil Court is one by *coram non judice*. The appropriate course in such case is for the person aggrieved first to approach the Civil Court inviting its attention to the relevant provisions of law and call upon it to adjudicate upon the question of its own jurisdiction and to vacate or recall its order if be one which it did not have jurisdiction in law to make. So long as this is not done, the order of the competent Court must be obeyed and respected by all concerned. A judicial order, not invalid on its face, must be given effect to entailing all consequences, till it is declared void in a duly constituted judicial proceedings"

Conclusion

1. Civil Court has jurisdiction to try all suits of civil nature unless expressly or impliedly barred, as mentioned in Section 9 of the Code.

2. There is a presumption that a Civil Court has jurisdiction to try all suits. Presumption is always to be made in favour of existence of such jurisdiction rather than exclusion. Ouster of Civil Court's jurisdiction is not to be readily inferred. Burden of proof lies on the party who alleges that jurisdiction is barred.

3. The principles relating to issue of exclusion of jurisdiction of Civil Court has been settled in case of ***Dhulabhai*** (supra). As has been laid down, the examination of the scheme of the particular Act to find out the adequacy or sufficiency of remedies provided may be relevant but is not decisive to sustain the jurisdiction of Civil Court, in case where there is express bar of jurisdiction of Court. However, it becomes necessary and result of enquiry may be decisive, where there is no express exclusion of the jurisdiction of the Court.

4. Suit is barred in respect of any particular cause of action, if its institution is precluded by rules provided in the Code itself, as per Section 12 CPC. Certain suits are expressly barred in statutes whereas few are impliedly barred.

5. Jurisdiction of Civil Court cannot be completely taken away inspite of either an express or implied bar. Despite exclusion of jurisdiction of Civil

Court, Civil Suit may be filed to examine matters in which there is an allegation of non-compliance of the provisions of the statutes or any fundamental principles of judicial procedure. ***Dhulabhai*** (supra) & ***South Delhi Municipal Corporation and anr.*** (supra) may be referred.

6. No one can ignore the order of Civil Court by assuming authority upon itself to decide that the order of Civil Court is one without jurisdiction. A judicial order, not invalid on its face, must be given effect, till it is declared void. The proper course is that the aggrieved person has to approach the Civil Court inviting its attention to the objection and to adjudicate the question of jurisdiction to vacate or recall its order, as has been laid down in ***Prakash Narain Sharma*** (supra).

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"A Judge in the Indian system has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that 'every trial is a voyage of discovery in which truth is the quest'. In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law."

- Dr Dalveer Bhandari, J. *in Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370, para 30*

ANALYSIS OF THE PROBATION OF OFFENDERS ACT, 1958

- Institutional Article

"Hate the offence but not the offender" - ***Mahatma Gandhi***

It can be gathered from the above thought as propounded by Mahatma Gandhi, that it is the crime which is to be hated and not the accused. The rationale is that the accused should be protected and readjusted into the mainstream of the society after undergoing reformation. Lately, in the light of ***In Re: Policy strategy for grant of bail Suo Motu Writ Petition (crl.) No. 4/2021*** a lot of emphasis is being laid on the proper application of this law. It is in this backdrop that this article proposes to highlight the intricacies of Probation of Offenders Act, 1958 (hereinafter referred to as Act).

Meaning of Probation

"*Probo*" is a Latin word, the meaning of which is "I prove my worth" i.e. to examine if the accused can live in a free society without breaking the law. "*Probatio*" means "test on approval". Black's law dictionary defines Probation as the act of proving. Hence, it can be gathered that probation means a period of proving or trial. Probation discharges a person subject to commitment by the suspension of sentence. Where an accused is found guilty of committing an offence then, considering the circumstances of the case and the character of the accused, the Act emphasizes that probation can be considered as an alternative to imprisonment and fine. The concept behind probation is that when an accused comes in contact with fellow jail inmates then, there is a high likelihood of him, getting affected by such company which eventually, leads to a deteriorated life for the accused. Also, imprisonment decreases his chances of securing better job prospects.

Historical evolution

Probation is not a new concept. From early 1800 to the present date, probation has tried to reform, remake, remould the offenders into honest, good and law-abiding citizens. In India, the main legal articulation to the reformatory framework for the probation theory is found in procedural code. Initially, it was The Children Act, 1908 which specifically enabled the court to discharge certain guilty parties waiting on probation because of their good conduct. Probation law was expanded further by the enactment in 1923 resulting in the Indian Jails Committees Report (1919-1920). In 1931, the Government of India arranged a

Draft Probation of Wrongdoers Bill and placed it before the then Provincial Governments for their inputs.

Subsequently, a Bill on Probation of Offenders was introduced in Lok Sabha on November 18, 1957. A Joint Committee was formed to consider the Bill allowing for the release of prisoners on probation or after proper admonition and related matters. On 25th February 1958, the Joint Committee delivered its report to Lok Sabha. In Parliament, the Probation of Offenders Act was adopted on the advice of the Joint Committee. The object of the Act is to provide for the release of offenders on probation or after due admonition and for matters connected therewith.

Apart from this Act, the probation law finds mention in Criminal Procedure Code as well. The analogous provision to deal with probation finds place Section 562 of the Code of Criminal Procedure, 1898. After the amendment in 1973, the probation was dealt with in Section 360 of the Code of Criminal Procedure. Section 360 is summarized in the points below:

1. Any person who is not below twenty-one years and is convicted of a crime for which the punishment is imprisonment for seven years or is convicted for an offence punishable with fine;
2. Or any person who is below twenty-one years or if any women convicted of an offence not punishable with imprisonment of life or death and no previous conviction is proved against the offender;
3. And appears before the court, regardless of the circumstances in which he has committed the offence, the court might release the offender on the promise of good conduct.

The court might release him on entering the bond for good conduct and peace instead of punishing the offender with imprisonment. The Hon'ble Supreme Court discussed the intention of legislature behind introducing probation as an alternative to sentencing, in the case of ***Jugal Kishore Prasad v. The State of Bihar, 1973 SCR (1) 875,*** wherein it was stated that, "the aim of the law is to deter the juvenile offenders from turning into obdurate criminals as a result of their interaction with seasoned mature-age criminals in case the juvenile offenders are sentenced to incarceration in jail." It was also observed that the Act is in accordance with the present trend of penology, which says that efforts must be made to change and remold the offender. The notion is that modern criminal

jurisprudence recognizes that no one is born criminal. It was acknowledged that a good number of crimes are a result of socio-economic environment.

Provision regarding release of convict under the Act

Majorly, there are three provisions under which the law can be applied & The Probation of Offenders Act, 1958 contains elaborate provisions relating to probation of offenders, which are made applicable throughout the country. The Act provides four different modes of dealing with youthful and other offenders in lieu of sentence, subject to certain conditions. These include:—

(1) Release after admonition; (section 3)

(2) Release on entering a bond on probation of good conduct with or without supervision, and on payment by the offender the compensation and costs to the victim if so ordered, the courts being empowered to vary the conditions of the bond and to sentence and impose a fine if he failed to observe the conditions of the bond; (section 4)

(3) Persons under twenty-one years of age are not to be sentenced to imprisonment unless the court calls for a report from the probation officer or records reasons to the contrary in writing; (Section 6)

Apart from the above three provisions, Section 12 of the Act holds paramount importance as it mandates that the person released on probation shall not suffer a disqualification attached to a conviction under any other law.

The above provisions are discussed in detail hereinunder.

Section 3: Admonition

Under the Act, a Court may instead of sentencing an accused, when found guilty, may release him after due admonition. This provision has applicability on-

- section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code ; or
- any other offence punishable with imprisonment for not more than 2 years or with fine or with both and no previous conviction is proved against him.

The provision also enumerates the factors to be considered such as nature of offence and character of offender so as to release the accused after due admonition. An explanation is also appended to the section wherein it has been explained that the previous conviction against a person shall include any order made against him under this section or that of section 4.

Section 4: Release on Probation

Section 4 of the Act provides for the power of the court to release certain offenders on probation of good conduct. In contrast to Section 3, Section 4 has a wider scope for it is applicable for all the offence except for offences punishable with death or imprisonment for life. Ingredients are mentioned herein-

- The court by which the person is found guilty is of the opinion that, having regard to the circumstances of the case, the nature of the offence and the character of the offender may direct that the accused to be released on his entering into a bond, with or without sureties.
- The period of such probation can be maximum of 3 years.
- This provision imposes a stringent probation period as the same can be terminated on report of violation of any terms and conditions. The accused in the meantime is expected to keep the peace and be of good behavior.
- The section further requires that the offender or his surety has a fixed place of residence or regular occupation in a place where the court exercises jurisdiction.
- It is expected that the court shall take into consideration the report, if any, of the probation officer, concerned in relation to the case. However, it is not necessary that the court has to act on the probation officers report. It can also gather information from other source and on its own analysis. Section 4 laid down that the court shall consider the report of the Probation officer if any. It is not obligatory on the court to call for and consider the report of the Probation officer in terms of Section 4(2).
- The court may also require the offender to remain under the supervision of a probation officer during a certain period if it thinks that it is in the interests of the offender and of the public. It can also impose appropriate conditions which might be required for such supervision.
- In case, the court does specify such conditional release, it must require the offender has to enter into a bond, with or without sureties, enumerating the conditions. The conditions may relate to the place of residence, abstention from intoxicants, or any other matter as the court thinks appropriate to ensure that the crime is not repeated.
- The non-obstante clause in Section 4 of the Act is a clear manifestation of the intention of the legislatures that the provisions of the Act would have effected notwithstanding any other law for the time being in force.

- It is a general section under which the benefit is extended to the offenders under 21 years of age and also offenders who are above 21 years of age. Discretion is exercised by the court while giving the benefit of probation to the offenders above 21 years of age. No reasons are to be recorded when the benefit of probation is granted to the offenders above 21 years of age.
- Section 4 speaks of punishment and not of imprisonment. The court will not punish him in any manner if on the facts it is satisfied that a particular person guilty of the offenceof the nature enumerated in Section 4 should be released on his entering into a bond. The word 'punishment', therefore, is wide enough to comprehend both the punishment of imprisonment and the punishment of a fine. Therefore, Section 4 empowers a court to remit the fine also and on the plain wording of the section, it will be unreasonable to contend that remission of the fine was not within the competency of the court
- As per section 8 of the Act, the court may, on an application of probation officer, may vary the conditions of the bond entered by the offender under section 4.
- In case of violation of any condition imposed under section 4, the court may under Section 9 of the Act, issue summons to the offender and his surety or even, a warrant of arrest. This information regarding violation can be given by probation officer or any other source. Only reason to believe is enough to proceed under Section 9.

It is important to note that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus, the conviction of the accused or the finding of the court that he is guilty cannot be washed out at all because that is the *sine qua non* for the order of release on probation of the offender. The order of release on probation of the offender is merely in substitution of the sentence to be imposed by the court.

Section 6: Restriction on imprisonment of offenders under 21 years of age

Recently in, ***Lakhvir Singh and ors. v. State of Punjab and anr., (2021) 2 SCC 763***, the Hon'ble Supreme Court dwelled upon the nature of this provision and held that Section 6 provides that a court "must not" sentence a person under the age of 21 years to imprisonment unless sufficient reasons for the same are recorded, based on due consideration of the probation officer's report."

The provision was discussed in detail by Hon'ble Supreme Court in ***Jugal Kishore Prasad v. State of Bihar 4 (1972) 2 SCC 633***, wherein the Court held as under:

> "Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals. The Act gives statutory recognition to the above objective. It is, therefore, provided that youthful offenders should not be sent to jail, except in certain circumstances. Before, however, the benefit of the Act can be invoked, it has to be shown that the convicted person even though less than 21 years of age, is not guilty of an offence punishable with imprisonment for life. This is clear from the language of Section 6 of the Act."

In ***Masarullah v. State of Tamil Nadu, (1982) 3 SCC 485,*** the Hon'ble Supreme Court discussed the mandatory nature of the provision and held that in case of an offender under the age of twenty one years on the date of commission of the offence, the Court is expected ordinarily to give benefit of the provisions of the Act and there is an embargo on the power of the Court to award sentence unless the Court considers otherwise, having regard to the circumstances of the case including nature of the offence and the character of the offender.

The relevant aspects while giving benefit under Section 6 of the Act are:

- The nature of offence;
- The character of the offender; and
- the surrounding circumstances as recorded in the probation officer's report.

As for the computation of the age of 21 years, the Supreme Court in ***Sudesh Kumar v. State of Uttarakhand, (2008) 1 SCC 111***, reiterated that relevant date to determine the age of accused for the purpose of benefit of release on probation under Section 6 of the Probation of Offenders Act, 1958 is the date of imposition of punishment by the trial Court and not the date of

occurrence of the offence. That is to say, if on the date of the order of conviction and sentence by the trial Court, the accused is below 21 years of age, the provisions of Section 6 of the Act will apply.

For what offences Probation cannot be applied ?

Provisions of Probation of Offenders Act, 1958 usually cannot be applied to the following offences:

1. Offences punishable with death or life imprisonment;
2. Heinous offences;
3. Anti-corruption Bureau cases ***(State of Gujarat v. V.A. Chauhan, AIR 1983 SC 359)***;
4. NDPS Cases ***(Vajja Srinivasu v. State of Andhra Pradesh, (2002) 9 SCC 620)***;
5. Section 304-A ***(Dalbir Singh v. State of Haryana, 2000 CriLJ 2283)***
6. Kidnap and abduction ***(Devki v. State of Haryana, AIR 1979 SC 1948)***;
7. Habitual offenders ***(Kamroonissa v. State of Maharashtra, AIR 1974 SC 2117)***;
8. Cases wherein the activities impact the morals of society particularly of the young ***[Uttam Singh v. The State (Delhi Administration), (1974) SCC 4 590].***

Applicability of Probation law when minimum sentence has been imposed

It was in ***Ishar Das v. State of Punjab, (1973) 2 SCC 65*****,** Hon'ble Supreme Court reiterated that non-obstante clause in Section 4 of the Act reflected the legislative intent that provisions of the Act have effect notwithstanding any other law in force at that time. However, this judgement pertains to The Prevention of Food Adulteration Act, 1954 and it's applicability came into question with regards to the other laws prescribing minimum sentence.

Hon'ble Supreme Court in ***Lakhvirsingh and ors. v. State of Punjab and anr., (2021) 2 SCC 763*** has further clarified this position and held that a more nuanced interpretation on this aspect was given in ***CCE v. Bahubali (1979) 2 SCC 279***, it was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. It is in this context, it was observed in ***State of Madhya Pradesh v. Vikram Das, (2019) 4 SCC 125*** that the court cannot award a

sentence less than the mandatory sentence prescribed by the statute. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act came into force.

Difference between Probation of Offenders Act 1958 and Section 360 CrPC

Hon'ble Supreme Court in ***Lakhanlal @ Lakhan Singh v. State of Madhya Pradesh, (2021) 6 SCC 100*** also highlighted the difference between the Act and Section 360 CrPC by pointing the difference between the two provisions:

- The distinction is that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 of CrPC.
- While Section 12 of the Probation of Offenders Act states that a person found guilty of an offence and dealt with under Section 3 or 4 of the Probation of Offenders Act, shall not suffer disqualification, if any, attached to the conviction of an offence under any law.

Power is discretionary

It is important to note that while granting the benefit under the Act, the court shall take into consideration the nature of the offence. If the offence is not trivial in nature, the court should not be lenient in granting such a benefit. Power to release on probation is discretionary and has to be exercised in appropriate cases.

Howsoever, it is noteworthy that the policy of the law is that where an offence is an overly heinous then, grant of probation is ruled out as a matter of law. The heinousness of the offence and its deleterious effect on the body politics, is in the eye of law, *"if not fundamental, a very relevant factor for the grant or refusal of probation."*

Cost and compensation

Section 5 of the Probation of the Offenders Act, 1958 says that if any person is released under Section 3 or Section 4 of this Act, even then the court might order:

- The offender to pay compensation to the victim for the loss or the injury occurred to him; or
- Cost of the proceeding as the court may think reasonable.

The judgment of Hon'ble Patna High Court is relevant on the point of quantum of compensation. In ***Rajeshwari Prasad v. Ram Babu Gupta, AIR 1961 Pat 19*** wherein it was held that the amount of compensation is purely on the discretion of the court to grant if it thinks it is reasonable in the case. Thus, deciding the amount of compensation, it is solely the court's discretion to require payment and costs where it finds.

Report of probation officers

Section 7 of the Probation of the Offenders Act, 1958 deals with the clause that the report of the probating officer is to be kept confidential. No Probation Officer's report is necessary to apply Section 3 of the Act but such report is must under Section 4 of the Act. The Hon'ble Supreme Court in the case of ***State of Madhya Pradesh v. Man Singh (2019) 10 SCC 161*** has held that:

> "Subsection (2) lays down that before making any order under sub-section (1), the Court shall take into consideration the report of the Probation Officer. This Court in a number of judgments has held that before passing an order of probation, it is essential to obtain the report of the Probation Officer concerned."

Hence, before passing an order u/s 4, it is mandatory that the Court shall call for report of the probation of officer.

Burden of proof

It is pertinent to note that the convicts have no indefeasible right to be released. The right is only to be considered for release on license in terms of the Act and the Rules. In ***Dasappa v. State of Mysore*** **1965 CriLJ 372**, it was held that it is only when the court forms an opinion that the offender in a given case should be released on probation of good conduct that it has to act as provided by Section 4 of the Act. It was for the accused to have placed all the necessary material before the court which could have enabled it to consider that the first accused was an offender to whom the benefit of Section 4 would be extended. Hence, the burden of proof lies on the accused to showcase that he deserves to be released on probation.

Conclusion

To conclude, it can be said that the measure of alternative punishment i.e., probation and the objective of the theory of reformative punishment would be achieved only if law pertaining to probation is given due weightage. Probation is

an affirmation of the human inside every being and it must be given importance. It would be of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations. In order to effectively utilize the provisions of the Act, it is expected that at the time of pronouncement of Judgement, the issue of probation be given proper attention. Due consideration should be given to factors such as, circumstances of the case, mens rea, age of the accused, defence taken, past conduct of the accused and gravity of the offence. As per Criminal Jurisprudence, Justice has twin objectives that it should be reformative for the accused and rehabilitative for the victims. Consequently, a cautious approach is required when considering the point of extending the benefit of the Act to the accused, so as to meet the ends of Justice.

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Learning is an ornament in prosperity, a refuse in adversity, and a provision in old age.

- Aristotle

Nothing in life is to be feared. It is only to be understood.

- Marie Curie

All that we are is the result of what we have thought. The mind is everything. What we think, we become.

- Buddha

LAW RELATING TO STATUTORY NOTICE U/S 80 CPC

Tanmay Singh,
I Civil Judge, Junior Division,
Shujalpur, Shajapur

Definition of Notice

For a layman coming to court, a notice is an information sent to him by court about the case instituted against him. A person is said to have notice of a fact, when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

The Hon'ble Apex Court in ***CST v. Subhash & Co., (2003) 3 SCC 454*** has defined 'notice' in the following words-

> **"**The term "notice" originated from the Latin word "notifia" which means "a being known" or a knowing and is wide enough in legal circle to include a plaint filed in a suit. Notice is making something known, of what a man was or might be ignorant of before. And it produces diverse effects, for, by it, the party who gives the same shall have the same benefit, which otherwise he should not have had; the party to whom the notice is given is made subject to some action or charge, that otherwise he had not been liable to; and his estate in danger of prejudice."

At present, the topic under consideration is 'Statutory Notice' under section 80 of the Code of Civil Procedure Code, 1908 (herein after referred to as Code). By way of this article being an efforts is made to do away with the confusion as to the requirement of sending notice to the state or the public officer before knocking the doors of the court.

Statutory Notice

Notices which are issued under the provisions of any law, Act and/or rules and regulations, as prescribed by the legislature for the same, are known as "Statutory Notices". In other words, it can be said that a notice if given under required or permitted statutory provision, is known as "statutory Notice". The factors, which are very necessary to follow during the course of issuance of Statutory Notice are as follows:-

1) The Notice must be given by the party by whom the statutory provision requires it to be given;

2) The Notice must be given to party to whom it is to be given under the statutory provision in question;

3) The Notice must contain the particulars set out in the statutory provisions;

4) The Notice must follow the language of the statutory provision, as far as possible;

5) If the Statute prescribes a particular form, that form should be adhered to;

6) The contents must be in conformity with the statutory requirements; and

7) The mode of service should be in conformity with the statutory provisions.

Civil Suit against the institution provided u/s 80 of the Code

Section 80 of the code provides that a suit cannot be instituted Government or against a public officer in respect of any act done by such officer in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of in case of a suit against the Central Government where it relates to railway, the General Manager of that railway, in case of a suit against any State Government, a Secretary to that Government or the Collector of the district and in case of a public officer, delivered to him or left at his office.

Contents/Requisites of Notice

The essential contents or requisites of a notice u/s 80 of the code are as under:

(1) whether the name, description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice;

(2) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity;

(3) whether a notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section; and

(4) whether the suit is instituted after the expiration of two months of service of notice, and the plaint contains a statement that such a notice has been so delivered or left.

In construing the notice, the Court cannot ignore the object of the legislature, *viz*. to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position. If on a reasonable reading of the notice, the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or irregularities should be ignored.

Rejection of suit in case of non-compliance of provisions of section 80(1) of CPC

The provision for sending a statutory notice is mandatory and in case a party fails to send notice as required under section 80(1) of the code, it would result in dismissal of the suit unless it falls within the exceptions as provided in the later provision of the section.

The Supreme Court in the case of ***State of Andhra Pradesh v. Gundugola Venkata Suryanarayana Garu, AIR 1965 SC 11*** observed that:

> "The object of the notice under Section 80 is to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position and if that course is justified to make amends or settle the claim out of Court. The section is imperative and must undoubtedly be strictly construed: failure to serve a notice complying with the requirements of the statute will entail dismissal of the suit."

Thus, in the light of the above judgement of the Apex Court, it is clear that the notice required under section 80 of the Code must be strictly complied with and has also held that failure to do so shall be a ground of dismissal of the suit.

Exception to the above Rule:

Section 80 sub-clause(2) provides for an exception to the above rule that a suit to obtain an urgent or immediate relief against the government (including the Government of the State of Jammu & Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

Thus, from a bare reading of the above provision it is clear that if an urgent or immediate relief against the government or public officer is claimed and the relief is such that if the suit is not instituted then the purpose would be defeated, if the court permits, then the suit may be instituted without the expiry of two months but no relief shall be granted without hearing the government or the public officer. The liberty given in the above provision is only in regard to the institution of the suit.

No Dismissal of suit where the State is joined as a defendant under amended provisions of Order 1 Rule 3-B or ordered by the court under Order 1 Rule 10 of CPC:

No suit shall be dismissed where in a suit or proceeding referred to in Rule 3-B of Order 1 of CPC, the State is joined as a defendant or non-applicant or where the court orders joinder of the State as defendant or non-applicant in exercise of powers under sub-rule (2) of Rule 10 of Order 1, such suit or proceeding shall not be dismissed by reason of omission of plaintiff or applicant to issue notice under sub-section (1).

Introduction of new cause of action through amendment and notice u/s 80 CPC:

Once a cause of action is already disclosed in the previous notice and if the plaint is further amended because of the facts not within the knowledge of the plaintiff at the time of institution of the suit or for incorporating additional grounds for cause of action disclosed, no fresh notice is required to be given. But, where a new cause of action is introduced by way of an amendment, a fresh notice under section 80 of the Code is required to be given and in case the party introducing such a cause of action fails to send a fresh notice as required under the statutory provision of law, the suit would not be maintainable for the purpose of this newly added cause of action.

The Hon'ble Supreme Court in ***Bishandayal and Sons v. State of Orissa, (2001) 1 SCC 555*** has held as under:

> "In our view, the finding in the impugned judgment that the suit based on this claim was not maintainable is correct and requires no interference. If a new cause of action is being introduced a fresh notice under Section 80 CPC would be required to be given. The same not having been given, the suit on this cause of action was not maintainable."

Thus, from the above ratio, it is clear that where a new cause of action is introduced, a fresh notice is required to be sent to the State Government or the Public Servant informing about the newly introduced cause of action the suit in which such amendment is incorporated would be non-maintainable.

Impleadment of State during pendency of suit and notice u/s 80 of the code:

Where the State Government or the Public Servant is added as a party during the pendency of the suit and the State Government is a necessary party and is not exempted from notice as per section 80(4) of the CPC, the suit is liable to be dismissed for want of notice u/s 80 of the code.

The Allahabad High Court in ***Shri Ram v. Smt. Mullo, 1979 ALR (5) 374 (All)*** has held that:

> "Where suit by plaintiff against auction purchaser of land from Gaon Sabha was filed for possession and injunction but the State Govt. was not impleaded as party though it was a necessary party and notice u/s. 80 CPC was not issued to State Govt. and no exemption from notice was obtained, it has been held that suit was not maintainable for want of notice u/s 80 CPC."

Thus, in the light of the above judgment of the High Court of Allahabad also it is clear that where the State is added as a party during the pendency of the suit, a notice is required to be served as per section 80 of the Code and if no notice is sent or no exemption is granted then the suit is liable to be not maintainable for want of notice.

Suit filed before expiration of two months next after notice u/s 80 CPC, not maintainable:

The mandatory period which is provided by law for filing of the suit after service of notice u/s 80 of the code is two months from the date when the notice is served to the concerned authorities. The period from which the calculation would start is the date on which the notice is delivered. The case of ***Bihari Chowdhary v. State of Bihar, (1984) 2 SCC 627*** is worth perusing in this regard, the relevant extract is as under:

> **"**It must now be regarded as settled law that a suit against the Government or a public officer, to which the requirement of a prior notice under Section 80 CPC is attracted, cannot be validly instituted until the expiration of the period of two months next

> after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable."

Thus, it is clear that where a party is desirous of filing a suit against the State Government and exemption is not granted then there is a requirement that the party let the statutory period of two months expire before instituting a suit lest the suit is liable to be dismissed as not-maintainable.

Effect of error or defect in the notice:

If the notice is clear enough to communicate the just claim of the plaintiff on reasonable reading of the notice and the plaintiff has mentioned all the information as the statute requires him to provide, then any incidental defects or errors may be ignored. The Supreme Court in ***Gundugola Venkata Suryanarayana*** *(supra)* has held that:

> "The section is imperative and must undoubtedly be strictly construed: failure to serve a notice complying with the requirements of the statute will entail dismissal of the suit. But the notice must be reasonably construed. Every venial error or defect cannot be permitted to be treated as a peg to hang a defence to defeat a just claim."

The purpose is to convey to the Government that a suit is going to be filed in the court against it and the State has two months to solve the dispute which has arisen. If the notice is amply clear on the cause of action and the relief claimed then minor defects and errors can be over looked.

Second notice u/s 80 CPC not required after withdrawal of first suit under Order 23 r 1 CPC:

Where the suit is filed against Government after notice is duly issued u/s 80 of the code and thereafter, the same is withdrawn by the plaintiff under Order 23 Rule 1 of CPC with the permission of court to file fresh suit based on the same cause of action, fresh notice u/s 80 CPC before the institution of the second suit is not necessary. The above was observed by the Supreme Court in ***Amar Nath Dogra v. Union of India, (1963) 1 SCR 657*** that:

> "We do not consider that there is much substance in the first objection we have set out above. If the plaint which is being

considered by the Court has been preceded by a notice which satisfies the requirements of Section 80 of the Civil Procedure Code, then the fact that before the plaint then under consideration, there had been another plaint which had been filed and withdrawn cannot, on any principle, be held to have exhausted or extinguished the vitality of the notice issued."

The suit which was withdrawn after the court granted permission to file a fresh suit on the same cause of action then the notice served before the institution of the suit withdrawn cannot be said to have lost its value. The plaintiff cannot be expected to serve another notice and wait for two months before the institution of the suit as the State is already aware about the cause of action of the suit withdrawn and the suit freshly instituted. However, as discussed earlier, if a new cause of action is added then fresh notice is required to be served.

Notice when suit instituted against the State as well as Public Officer:

When a suit is instituted by the plaintiff against the State and a public officer and when notice u/s 80 of the code is served upon the Sate Government and no notice is served on the public servant in the same suit then in such a case suit is not liable to be dismissed for want of notice u/s 80 of the code. since the State Government has already been served a notice and the public servant is an agent of the State Government The Supreme Court has observed the above proposition in ***Ghulam Rasool v. State of J&K, (1983) 4 SCC 623*** to the following tune:

"Once notice was issued to the State under Section 80 of the Code of Civil Procedure there could really be no force in the stand of the Block Development Officer that he had no notice. The suit as framed was one against the State and the Block Development Officer had been impleaded as the State's agency of interference with the plaintiffs' possession."

Person issuing notice and person filing the suit must be the same:

Person issuing notice to Government u/s 80 of the code and the person who files the suit must be essentially the same. But if the person issuing the notice is well identifiable with the person filing the suit (as in the case of proprietor of a firm and the firm itself as plaintiff), then the notice issued by the proprietor in the name of the firm will not be defective or invalid.

However, if the State Government is sufficiently informed that the person filing the suit and the person or body sending the notice is the same person then the notice cannot be said to be painted with faults.

Requirement as to notice under section 80 CPC where defendant is a Corporation etc:

Corporations like U.P. State Handloom Corporation, Electricity Board or Food Corporation of India or any other Statutory Corporation are instrumentality of Government for the purposes of 'State' within the meaning of Article 12 of the Constitution. It nevertheless would not answer description of 'Government' as understood in law. For the above position, the judgment of Allahabad High Court as pronounced in ***U.P. State Handloom Corporation Ltd. v. Prem Sagar Jaiswal, 2008 (6) ALJ 150 (All)(L.B.)*** is worth perusing.

Whether notice is necessary even when no relief is claimed against the Government?

Hon'ble Bombay High Court in ***Chandrakant Govind Deshmukh v. The State of Maharashtra, AIR 1970 Bom 301*** has held as under:

> "The view taken by us finds support in the decision of the Calcutta High Court reported in Mrs. Manilaxmi v. Hindusthan Co-operative Insurance Society Ltd., AIR 1962 Cal 625. In that case the learned Judge held that Section 80 specifically provides that the person giving notice must state, inter alia, his cause of action and the relief which he claims. As no cause of action against the Government or against the public officer is stated and as no relief is claimed against them personally, notice under Section 80 of the CPC was not necessary. It may also be stated that certain observations of their Lordships of the Privy Council in ***Revati Mohan v. Jatindra Mohan, AIR 1934 PC 96*** lend support to the view taken by us. In that case the matter arose out of a suit filed by a mort-agee to enforce his mortgage which had been executed by the manager of the estate appointed under the Bengal Tenancy Act. As monies were not paid a suit was instituted against the manager who was a public officer. No notice under Section 80 had been given to him. The view taken by the High Court was that notice under Section 80 was necessary. When the matter came before their Lordships they held that no notice was necessary and allowed

the appeal. The rule laid down by their Lordships has been well summarized in the placitum in the following Words;

> "In a suit against a public officer it is only where the plaintiff complains of some act purporting to have been done by him in his official capacity that notice is enjoined. But where a mortgagee sues upon a mortgage executed by the former manager under Section 95 of the Bengal Tenancy Act, and the mortgage imposes no personal liability upon the manager, but merely provides that if payment be not made the mortgagee would be entitled to realise his dues by sale through the Court and the mortgagee makes no claim against the manager personally such a suit is not within the ambit of Section 80 and no notice of suit is required."

> "Thus the test laid down by their Lordships is whether any relief is asked personally against the Government or a public officer and this is the test for determining whether notice under Section 80 is required to be (given or not. If relief is asked personally against the Government or a public officer notice under Section 80 is necessary. If no relief personally against them was asked no notice is necessary. As already pointed out no relief is claimed personally either against the State Government or the Registrar in the suit under Section 8 of the Act and therefore no notice under Section 80 of the CPC was required to be given.

It is not necessary to deal in detail with the decision of the Division Bench of this Court and other two decisions which have taken, the same view. In the case before the Division Bench, there was no dispute between the parties and the Division Bench proceeded on an assumption that notice under Section 80 was necessary in a suit filed against the respondent. The point has not been discussed nor any finding has been recorded that notice is required. In the decision of the Single Judge, the fact that the plaintiff is required to state the relief which he claims against the Government or a public officer and the object of Section 80 have not been considered. For reasons, stated above we held that no notice under Section 80 of the CPC is required to be given to the State Government, or the Registrar, prior to the institution of a suit under Section 8 of the Act. In the result, we answer the question framed in the negative. We allow the appeal with costs and set aside the judgment appealed against and send the case back to the Trial Court for disposal in accordance with law."

Therefore, on perusal of the above ratio laid down by the Hon'ble Bombay High Court, it is clear that the real test to identify the requirement of notice is to check whether any relief is claimed personally against the Government or a public servant. If relief is claimed then notice u/s 80 of the Code is required and if no relief is claimed then notice is not required.

Necessity of notice after allowing of application under section 80(2) CPC

After the court has allowed the application of the plaintiff under section 80(2) CPC then no notice required to sent to the State or public officer as provided u/s 80. In other words, section 80(2) allows the plaintiff to institute a suit without serving notice to the state. The above proposition was discussed by the Apex Court in ***State of A.P. v. Pioneer Builders, (2006) 12 SCC 119*** which is as under:

> "Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the court. Leave of the court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given, yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon."

Consequences of registering suit without deciding application under 80(2)

Section 80 of the code does not prescribe any form or manner in which leave of court for institution of the suit under section 80(2) of CPC without notice under sub-section 1 has to be granted. Yet, the court granting leave must indicate the grounds pleaded and there must be application of mind by the court in granting leave to institute suit without serving notice as per section 80(1) CPC. The Supreme Court has held in ***State of Kerala v. Sudhir Kumar Sharma, (2013) 10 SCC 178*** that:

> "We reiterate that till the application filed under Section 80(2) CPC is finally heard and decided, it cannot be known whether the suit filed without issuance of notice under Section 80(1) CPC was justifiable. According to the provisions of Section 80(2) CPC, the

court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice under Section 80(1) CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application under Section 80(2) CPC. We, therefore, come to the conclusion that mere filing of an application under Section 80(2) CPC would not mean that the said application was granted by the trial court.

The trial court ought to have heard and decided the application filed under section 80(2) CPC before hearding an application under Order 7 Rule 11 CPC"

The facts in the above case are such that an application under section 80(2) of the Court was filed by the plaintiff and another application under section 151 was filed for extension of time for payment of court fees which was allowed by the court. The defendants filed an application under Order 7 Rule 11 praying that the suit be rejected for non-compliance of notice under section 80. The same was rejected and the order of trial court was affirmed by the High Court in terms that since the court has proceeded it was presumed that the application u/s 80(2) was granted. The Hon'ble Apex Court has held that the application u/s 80(2) of CPC must be decided by the Court and set aside the order of the trial court rejecting the order under Order 7 Rule 11 and directed the concerned court to first decide the application u/s 80(2) of the Code.

Consequently, it is clear on the reading of the above citation that whenever an application u/s 80(2) of the code is filed a reasoned order must be passed by the court. Without deciding the application u/s 80(2) of the Code, the Court must not proceed. If the trial court proceeds with the trial without deciding the application under section 80(2) of the Code, it may be a ground of rejection of suit for the want of compliance of statutory provision provided u/s 80 of the Code.

Objection as to notice - Who can take?

It is fairly settled proposition that the objections as to notice can be raised by the defendants for whose benefit such notice was introduced in law. It can be better understood from an example that where a suit is instituted conjointly

against a private person and the State Government and the suit is proceeded *ex parte* against the State Government then the private party has no right to object that whether any notice was sent u/s 80 of the Code or whether the compliance of statutory period of two months was done by the party or not. It is for the benefit of the State Government and thus only State Government can raise objection for want of notice. The cases which can be referred for the above proposition are ***Gaja v. Dasakoeri, AIR 1964 All 471*** and ***Karthiayani Pillai v. Neelacanta Pillai Raman Pillai and ors. 1968 KLT 838*** and also***, Hari Sinha @ Hari Prasad Singh v. Gurupad Sambhav Ram, Chief Trustee, Baba Bhagvan Ram Avdhut Trust Bramha Nishthalay, Sogda and ors., 2018 (1) MANISA 61 (CG)*** wherein it has been held that a party who does not accrue right to notice cannot challenge a suit on the ground of want of notice.

Waiver of notice

The party for whose benefit the provision for sending notice is provided under the law may either expressly or by actions waive of the requirement of notice. The Hon'ble Apex Court in ***Bishandayal*** (supra) has held that:

> *"*There can be no dispute to the proposition that a notice under Section 80 can be waived. But the question is whether merely because in the amended written statement such a plea is not taken it amounts to waiver. This contention was argued before the appellate court. Even otherwise, we find that in the suit itself Issue 4 had been raised as to whether or not there was a valid and appropriate notice under Section 80. Such a point having been taken in the original written statement and an issue having been raised, it was not necessary that in the amended written statement such a plea be again taken."

In the recent judgment of Hon'ble High Court of Madhya Pradesh in ***Managing Director Corporation Lamta Project Balaghat, Tehsil and District Balaghat (Madhya Pradesh) v. Bhejanlal (dead) S/O NaruPawar through his Legal Representatives and ors. S.A.NO 1551/2020*** has held that:

> "Thus, it is clear that the basic purpose of the notice under Section 80 of CPC is to give an opportunity to the State and its functionaries to resolve the dispute thereby saving the valuable time and money of the State. However, it is a procedural law.

> Although, provision of Section 80 of CPC is mandatory but it can be waived by the defendants.
>
> If the written statement filed by the defendants is considered, then it is clear that no objection was raised before the Trial Court. Even, the said objection has been raised for the first time during the course of arguments only. 18. Be that as it may.
>
> Since the requirement of Section 80 of CPC can be waived by the defendants and by not having raised the same in the written statement, this Court is of the considered opinion that once the defendants have waived the requirement of Section 80 of CPC, the respondents cannot be non-suited on the ground of premature nature of suit."

Thus, from the perusal of the above citations it is clear that that such a notice as required by the law u/s 80 can be waived by the party for whose benefit the notice was required to be sent. Such waiver can be either express or implied by not raising an objection as to want of notice.

Conclusion

It can be inferred from the above discussions that the requirement of notice u/s 80 of the Code is a mandatory provision and no suit against the State or public officer can be instituted until notice as contemplated u/s 80(1) CPC is given and the statutory period of two months has lapsed from the date of delivery of notice. The party may apply for leave of the court to institute a suit where urgent relief is required without serving the notice to the concerned Government or public officer. In such a case, the Court may pass a reasoned order and allow the party to institute a suit without sending notice as contemplated u/s 80 of the Code. However, it is pertinent to note that no relief shall be granted unless opportunity of hearing is extended to the concerned State Government or the Public officer to put forth its case.

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विधिक समस्यायें एव समाधान

(इस स्तम्भ के अन्तर्गत मध्यप्रदेश के अधीनस्थ न्यायालयों के न्यायाधीशों द्वारा अकादमी के संज्ञान में लाई गई विधिक समस्याओं का उपयुक्त हल प्रस्तुत करने का प्रयास किया जाता है। इस स्तम्भ के लिये न्यायाधीशगण अपनी विधिक समस्याएं अकादमी को भेज सकते हैं। चयनित समस्याओं के समाधान आगामी अंको में प्रकाशित किये जाएंगे।)

1. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 के अंतर्गत मजिस्ट्रेट को आवेदन करने की क्या परिसीमा है?

धारा 12 घरेलू हिंसा से महिलाओं के संरक्षण अधिनियम, 2005 के अंतर्गत आवेदन प्रस्तुत करने की कोई परिसीमा अधिनियम में वर्णित नहीं हैं। केवल यह आवश्यक है कि घटना के समय आवेदक तथा अनावेदक घरेलू नातेदारी में हो। न्यायदृष्टांत ***वी.डी. भानोट विरूद्ध सविता भानोट (2012) 3 एससीसी 183*** में यह अभिनिर्धारित किया गया है कि यदि किसी महिला के साथ अधिनियम, 2005 के प्रभावी होने से पूर्व भी यदि कोई घरेलू हिंसा कारित की गई तो वह अधिनियम के प्रभावी होने के पश्चात् आवेदन प्रस्तुत कर सकती है।

न्यायदृष्टांत ***श्रीमती शबानी उर्फ चंदा बाई एवं अन्य विरूद्ध मोहम्मद तालिक एवं अन्य आपराधिक अपील क्रमांक 362/2011 निर्णय दिनांक 30.10.2023 में माननीय उच्च न्यायालय राजस्थान*** द्वारा यह अभिनिर्धारित किया गया है कि यदि आवेदिका के साथ शादी के पश्चात् घरेलू हिंसा कारित की गई थी तो वह उस अवधि में कारित घरेलू हिंसा के लिये तलाक के पश्चात् भी आवेदन प्रस्तुत कर सकती है उक्त मत को ***माननीय उच्चतम न्यायालय द्वारा एसएलपी (क्रिमिनल) नंबर 655/2014 दिनांक 10.05.2018*** में सही ठहराया है।

न्यायदृष्टांत ***कामातची विरूद्ध लक्ष्मी नारायण, 2022 एससीसी ऑनलाइन एससी 446*** में यह अभिनिर्धारित किया गया है कि धारा 12 के आवेदन को ''अपराध'' के संबंध में प्रस्तुत आवेदन नहीं माना जा सकता। अधिनियम के अंतर्गत अपराध धारा 31 के अंतर्गत तब गठित होगा जब धारा 12 के आवेदन पर किये गये आदेश का उल्लंघन होगा। अपराध के संबंध में परिसीमाकाल की गणना धारा 12 के आदेश के उल्लंघन से शुरू होगी। साथ ही यह भी उल्लेखित किया है कि धारा 12 के आवेदन के संबंध में परिसीमा काल का कोई प्रारंभिक समय नही होगा।

अतः यह स्पष्ट है कि धारा 12 अधिनियम के अंतर्गत आवेदन प्रस्तुत करने की कोई परिसीमा नहीं होती है।

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2. **व्यतिक्रम जमानत के आवेदन का निराकरण करते समय रिमाण्ड दिये जाने वाले दिन की गणना कैसे की जायेगी?**

दण्ड प्रक्रिया संहिता की धारा 167 (2)(a)(i) के अनुसार मजिस्ट्रेट अभियुक्त व्यक्ति को कुल मिलाकर नब्बे दिन से अधिक की अवधि के लिये निरोध में रखा जाना प्राधिकृत नहीं करेगा जहॉ अन्वेषण ऐसे अपराध के सम्बन्ध में है जो मृत्यु, आजीवन कारावास या दस वर्ष से अन्यून की अवधि के लिए कारावास से दण्डनीय है। इसी प्रकार धारा 167 (2)(a)(ii) के अनुसार कुल मिलाकर साठ दिन से अधिक की अवधि के लिए प्राधिकृत नहीं करेगा जहॉ अन्वेषण किसी अन्य अपराध के संबंध में है; और यथास्थिति, नब्बे दिन या साठ दिन की उक्त अवधि की समाप्ति पर यदि पुलिस द्वारा अन्वेषण पूर्ण कर अंतिम प्रतिवेदन प्रस्तुत नही किया है और अभियुक्त व्यक्ति जमानत देने के लिये तैयार है और दे देता है तो उसे जमानत पर छोड़ दिया जायेगा।

रिमाण्ड 60 दिनो या 90 दिनो की गणना में शामिल किया जाना चाहिये या नही, इस प्रश्न के संबंध में न्यायादृष्टांत ***इन्फोर्समेंट डायरेक्टरेट भारत संघ विरूद्ध कपिल वाधवा एवं अन्य, आपराधिक अपील क्रमांक 701–702/2020 निर्णय दिनांक 27 मार्च, 2023*** में माननीय उच्चतम न्यायालय के दो न्यायाधीशगण की पीठ द्वारा किये गये रेफरेंस के उत्तर में तीन न्यायाधीशगण की पीठ ने न्यायदृष्टांत ***स्टेट ऑफ म.प्र. विरूद्ध रूस्तम एवं अन्य, 1995 (सप्ली.) 3 एससीसी 221*** एवं ***रवि प्रकाश सिंह विरूद्ध स्टेट ऑफ बिहार, (2015) 8 एससीसी 340*** में वर्णित विधि को सही नहीं माना और निर्धारित किया कि रिमाण्ड की दिनांक को 60 दिवस/90 दिवस की गणना में शामिल किया जायेगा। और यह भी निर्धारित किया कि उक्त अवधि पूर्ण होने पर आरोपी व्यतिक्रम जमानत प्राप्त करने का अधिकारी हो जाता है।

इस प्रकार अब विधि अनुसार रिमाण्ड दिनांक को व्यतिक्रम जमानत आवेदन के निराकरण के समय निर्धारित अवधि में जोड़कर 60 दिवस /90 दिवस की गणना की जावेगी।

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3. **क्या ऐसा दस्तावेज जिसका स्टाम्पित होना अपेक्षित है, में स्टाम्प की कमी या उसका अभाव, ऐसे दस्तावेज में लिखे आर्बिट्रेशन एग्रीमेंट को भी अप्रभावी बना देता है?**

सामान्यतः आर्बिटेशन एग्रीमेंट किसी प्रकार से स्टाम्पित होना विधि द्वारा अपेक्षित नहीं है परंतु जहां पर आर्बिट्रेशन एग्रीमेंट स्वतंत्र रूप से लिखा हुआ दस्तावेज न होकर किसी ऐसे दस्तावेज का भाग होता है जिसका कि स्टाम्पित होना स्टाम्प अधिनियम के अधीन अपेक्षित होता है और स्टाम्पित होने के अभाव में ऐसा दस्तावेज विधि रूप से प्रवर्तनीय नहीं रह जाता है, तब ऐसे दस्तावेज में लिखे आर्बिट्रेशन एग्रीमेंट में इसका क्या प्रभाव पड़ेगा यह लंबे समय से विवादित प्रश्न रहा है ।

माननीय सर्वोच्च न्यायालय की तीन सदस्यीय पीठ ने इस बिंदु पर स्पष्टीकरण हेतु इसे पांच सदस्यीय संवैधानिक पीठ को रेफर किया था क्योंकि इस बिंदु पर माननीय सर्वोच्च न्यायालय की दो खण्डपीठों ने पृथक–पृथक मत व्यक्त किये थे। प्रथम निर्णय माननीय सर्वोच्च न्यायालय का ***SMS Tea Estate Private Limited v. Chandmari T. Company Private Limited (2011) 4 SCC 777*** का है जिसमें माननीय सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया था कि किसी वाणिज्यिक संविदा में स्टाम्प डयूटी का अपर्याप्त होना आर्बिट्रेशन एग्रीमेंट को भी अप्रभावी बना देता है । वहीं माननीय सर्वोच्च न्यायालय की तीन सदस्यीय पीठ ने प्रकरण ***N. N. Global Mercantile Private Limited v. Indo Unique Flame Limited (2021) 4 SCC 379*** में ***SMS Tea*** (supra) से विपरीत मत दिया । इसी कारण ***N. N. Global*** (supra) के प्रकरण को इस बिंदु पर स्पष्टीकरण हेतु वृहद पीठ को रेफर किया गया था।

माननीय सर्वोच्च न्यायालय की पांच सदस्यीय खण्डपीठ ने इस प्रकरण में 3:2 के बहुमत से यह अभिमत दिया है कि यदि ऐसा दस्तावेज जिसमें आर्बिट्रेशन एग्रीमेंट लिखा हुआ है और जिसका स्टाम्प अधिनियम के अधीन स्टाम्पित होना अपेक्षित है तब ऐसे दस्तावेज का अस्टाम्पित होना उस आर्बिट्रेशन एग्रीमेंट को भी अप्रभावी बना देता है । अतः ऐसे दस्तावेज के विधि अनुसार स्टाम्पित हो जाने के बाद ही उसमें अंतर्विष्ट आर्बिट्रेशन एग्रीमेंट प्रभावी होगा ।

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If I have the belief that I can do it, I shall surely acquire the capacity to do it even if I may not have it at the beginning.

- Mahatma Gandhi

PART- II

NOTES ON IMPORTANT JUDGMENTS

38. BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 – Section 4 (3) (a)

(i) Benami transaction – Burden of proof – Lies on the one who alleges transaction to be benami.

(ii) Circumstances which can be taken as a guideline to determine the nature of transaction – Principle reiterated.

बेनामी संव्यवहार (प्रतिषेध) अधिनियम, 1988 – धारा 4 (3) (क)

(i) बेनामी संव्यवहार – सबूत का भार उस पक्ष पर होता है, जो संव्यवहार का बेनामी होना अभिकथित करता है ।

(ii) संव्यवहार की प्रकृति ज्ञात करने हेतु परिस्थितियॉ जिन्हें मार्गदर्शक के रूप में विचार में लिया जा सकता है – सिद्धांत दोहराया गया।

Pushpalata v. Vijay Kumar (dead) through L.Rs. and ors.

Judgment dated 05.09.2022 passed by the Supreme Court in Civil Appeal No. 4078 of 2022, reported in 2023 (1) MPLJ 305 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in ***Binapani Paul v. Pratima Ghosh, (2007) 6 SCC 100***, where this court cited with approval extracts from ***Valliammal (D) by LRS. v. Subramaniam and ors., (2004) 7 SCC 233***:

> "Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in ***Valliammal*** (supra) wherein a Division Bench of this Court held:
>
> "This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through.

But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to ***Jaydayal Poddar v. Bibi Hazra, (1974) 1 SCC 3, Krishnanand Agnihotri v. State of M.P., (1977) 1 SCC 816, Thakur Bhim Singh v. Thakur Kan Singh, (1980) 3 SCC 72, Pratap Singh v. Sarojini Devi, 1994 Supp (1) SCC 734*** and ***Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah, (1996) 4 SCC 490***. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of the fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and (6) the conduct of the parties concerned in dealing with the property after the sale. [***Jaydayal Poddari*** (supra)]

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another.

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39. CIVIL PROCEDURE CODE, 1908 – Section 11, Order 33 Rules 5 & 15-A and Order 7 Rule 11

(i) Application to sue as indigent person – Can be rejected on the ground that suit is vexatious, barred by *res judicata* or on the around of no cause of action – Observation confined to decision of such application only.

(ii) Rejection of an application to sue as an indigent person – Applicant may institute suit after paying requisite court fees – However, defendant may object under Order 7 Rule 11 of the Code on such grounds.

सिविल प्रक्रिया संहिता, 1908 – धारा 11, आदेश 33 नियम 5 और 15–क एवं आदेश 7 नियम 11

(i) **निर्धन व्यक्ति के रूप में वाद लाने का आवेदन – वाद तंग करने वाला, पूर्वन्याय से बाधित अथवा बिना वाद कारण के आधार पर निरस्त किया जा सकेगा – टिप्पणी केवल आवेदन के निराकरण तक सीमित।**

(ii) **निर्धन व्यक्ति के रूप में वाद लाने के आवेदन का नामंजूर किया जाना – आवेदक आवश्यक न्याय शुल्क संदाय कर वाद संस्थित कर सकता है – तथापि प्रतिवादी आदेश 7 नियम 11, सिविल प्रक्रिया संहिता, 1908 के अधीन ऐसे आधारों पर आपत्ति कर सकेगा।**

Solomon Selvaraj and ors. v. Indirani Bhagawan Singh and ors.

Judgment dated 02.12.2022 passed by the Supreme Court in Civil Appeal No. 8885 of 2022, reported in 2023 (1) MPLJ 300 (SC)

Relevant extracts from the judgment:

From the scheme of Order 33 CPC, it emerges that the application under Order 33 Rule 1 CPC seeking permission to sue as indigent person can be rejected on the grounds mentioned in Order 33 Rule 5 CPC. It includes that the allegations in the application would not show cause of action …… or that the allegations made by the applicant in the applications show that the suit would be barred by law for the time being in force (Order 33 Rule 5(d) & (f) CPC). Identical question came to be considered by this Court in the case of ***Kamu alias Kamala Ammal v. M. Manikandan and anr., (1998) 8 SCC 522***. While considering Order 33 Rule 5, CPC, it is observed and held that the application for permission to sue as an indigent person has to be rejected and could not be allowed if the allegations in the plaint could not show any cause of action.

Applying the law laid down by this Court in the aforesaid decision and when having *prima facie* found that the plaint does not disclose any cause of action and the suit is barred by *res judicata,* it cannot be said that the learned Trial Court committed any error in rejecting the application to sue as indigent persons.

However, at the same time taking into consideration Order 33 Rule 15 and 15A CPC and when the application to sue as indigent person is rejected and/or refused, the Court may, while rejecting an application, under Order 33 Rule 15A CPC grant time to the applicant to pay the requisite Court fee within such time as may be fixed by the Court or extended by it from time to time and upon such payment and on payment of cost referred to in Rule 15 within that time, the suit

shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented, even considering Order 33 Rule 15 CPC on refusing to allow to sue as an indigent person which may be a bar to any subsequent application of the like nature in respect of the same right to sue, the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, therefore, taking into consideration Order 33 Rule 15A and Order 33 Rule 5 CPC, instead of remanding matter to the learned Trial Court to pass an appropriate order granting the appellants – original applicants time to pay the requisite court fee and now when the appellants have agreed to pay the requisite court fees, we grant further four weeks' time to the appellants – original applicants to pay the requisite court fees and on payment of such court fees the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented. However, it is observed that any observations made by the learned Trial Court and the High Court that the suit is barred by res judicata and/or on no cause of action shall be treated confine to deciding the application to sue as indigent person only. However, at the same time it will be open for the defendants to file an appropriate application to reject the plaint under Order 7 Rule 11 CPC and/or any other application to reject the plaint and as and when such application is/are filed, the same be considered in accordance with law and on its own merits without in any way being influenced by any of the observations made by the High Court while rejecting the application to sue as indigent persons.

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40. CIVIL PROCEDURE CODE, 1908 – Section 104, Order 9 Rule 13 and Order 43 Rule 1(d)

(i) ***Ex parte*** **decree –Application filed for setting aside condonation of delay – Need of proper examination as to whether** ***ex parte*** **decree was justified and whether sufficient cause has been shown for the delay has to be necessarily considered.**

(ii) Remedy available against ***ex parte*** **judgment and decree – Either to file an application under Order 9 Rule 13 CPC or to prefer an appeal before first appellate court – On refusal under Order 9 Rule 13 of the Code, regular first appeal is available under Order 43 Rule 1(d) CPC.**

सिविल प्रक्रिया संहिता, 1908 – धारा 104, आदेश 9 नियम 13 एवं आदेश 43 नियम 1(घ)

(i) एकपक्षीय डिक्री – विलंब को क्षमा कर आदेश अपास्त कराये जाने के संबंध में प्रस्तुत आवेदन – इसका परीक्षण किया जाना आवश्यक है कि क्या एकपक्षीय डिक्री न्यायोचित थी और क्या विलंब की माफी के संबंध में उचित कारण दर्शायें गये है ।

(ii) एकपक्षीय निर्णय एवं डिक्री के संबंध में उपलब्ध उपचार – आदेश 9 नियम 13 सीपीसी के अंतर्गत आवेदन प्रस्तुत किया जा सकता है या आदेश के विरूद्ध प्रथम अपीलीय न्यायालय में अपील प्रस्तुत की जा सकती है – संहिता के आदेश 9 नियम 13 के आवेदन के नामंजूर किये जाने की दशा में, नियमित प्रथम अपील आदेश 43 नियम 1 (घ) व्य.प्र.स. के अंतर्गत प्रस्तुत की जा सकती है।

Mohamed Ali v. V. Jaya and ors.

Judgment dated 11.07.2022 passed by the Supreme Court in Civil Appeal No. 4113 of 2022, reported in (2022) 10 SCC 477

Relevant extract from the judgment:

Whether the revision application before the High Court under Article 227 of the Constitution of India can be said to be maintainable or not has not at all been considered. Even otherwise, the remedy against an *ex parte* judgment and decree available to the defendants was, either to file an application under Order IX Rule 13 of CPC or to prefer an appeal before the First Appellate Court. The defendants availed the first remedy by way of filing the applications under Order IX Rule 13 of CPC. However, there was a huge delay of 1522 and 2345 days, which was not condoned by the learned Trial Court.

Without expressing anything on whether the learned Trial Court was justified in refusing to condone the delay, the High Court has simply set aside the order passed by the learned Trial Court refusing to condone the delay in so far as original defendant Nos. 2 to 4 are concerned. The High Court ought to have dealt with and considered the question, whether, the learned Trial Court was justified in refusing to condone the delay or not. There is no discussion at all on the order passed by the learned Trial Court refusing to condone the delay.

Even otherwise and as observed hereinabove, against the *ex parte* judgment and decree, the remedy by way of an appeal before the First Appellate Court was available. Therefore, the High Court ought not to have entertained the

revision application under Section 115 of CPC and under Article 227 of the Constitution of India. The High Court ought not to have entertained such a revision application challenging the *ex parte* judgment and decree. Once there was a statutory alternative remedy by way of an appeal available to the defendants, the High Court ought not to have entertained a writ petition or revision application under Article 227 of the Constitution of India.

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41. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 3 and 4

Abatement of suit/appeal – Multiple defendants/respondents as co-owners or co-sharers of land – Non-substitution of legal representatives after demise of some of the respondents during pendency of appeal – Held, when the entire estate was represented by original plaintiffs and co-sharers were joined as defendants as proper parties and estate duly represented by surviving parties on record, appeal cannot be dismissed as abated.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 3 एवं 4

वाद/अपील का उपशमन – भूमि के सह–स्वामी या सह–खातेदार के रूप में एक से अधिक प्रतिवादीगण/ उत्तरवादीगण – अपील के लंबित रहते हुये कुछ प्रतिवादीगण/उत्तरवादीगण की मृत्यु होने पर वैध प्रतिनिधियों को प्रतिस्थापित न किया जाना – अभिनिर्धारित, जहॉ संपूर्ण संपत्ति का प्रतिनिधित्व मूल वादीगण द्वारा किया गया हो और सह– स्वामियों को उचित पक्षकार होने से प्रतिवादीगण के रूप में जोड़ा गया हो और उत्तरजीवी पक्षकारों द्वारा संपत्ति का उचित प्रतिनिधित्व किया जाना अभिलेख से भी दर्शित होता हो, तब अपील को उपषमित होने के आधार पर खारिज नहीं किया जाएगा।

Delhi Development Authority v. Diwan Chand Anand and ors.

Judgment dated 11.07.2022 passed by the Supreme Court in Civil Appeal No. 2397 of 2022, reported in (2022) 10 SCC 428

Relevant extracts from the judgment:

As observed and held by this Court in the case of ***A. Vishwanathan Pillai v. LAO, (1991) 4 SCC 17,*** the co-owner is as much an owner of the entire property as a sole owner of the property. No co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand, he has

right, title and interest in every part and parcel of the joint property. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. It is observed that, therefore, one co-owner can file a suit and recover the property against strangers and the decree would enure to all the co-owners. The aforesaid principle of law would be applicable in the appeal also. Thus, in the instant case, when the original plaintiffs – two co-owners instituted the suit with respect to the entire suit land jointly owned by the plaintiffs as well as defendants nos. 9 to 39 and when some of the defendants/respondents in appeal died, it can be said that estate is represented by others – more particularly the plaintiffs/heirs of the plaintiffs and it cannot be said that on not bringing the legal representatives of the some of the co-sharers – defendants – respondents in appeal the appeal would abate as a whole.

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42. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 3 and 5
Legal representative – Application filed on the basis of Will – Entitlement of applicant whether by way of testamentary succession or non-testamentary succession – If any enquiry is required to be made, court can determine the question as provided under Order 22 Rule 5.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 3 एवं 5
विधिक प्रतिनिधि – वसीयत के आधार पर आवेदन प्रस्तुत किया गया – आवेदक चाहे वसीयती उत्तराधिकार या निर्वसीयती उत्तराधिकार के आधार पर हकदार हो – यदि कोई जाँच की जाना आवश्यक है तब न्यायालय आदेश 22 नियम 5 में उपबंधित रीति से प्रश्न का अवधारण कर सकती है।

R. Krsna Murtii v. R.R. Jagadesan

Judgment dated 21.07.2022 passed by the Supreme Court in Civil Appeal No. 4832 of 2022, reported in AIR 2022 SC 3477

Relevant extracts from the judgment:

Leaving aside any other aspect of the matter, it is but apparent that the appellant is admittedly the son of the deceased plaintiff. Thus, his entitlement, whether by way of testamentary succession or non-testamentary succession, as being the legal heir of the deceased plaintiff cannot be denied. That being the position, the application made by him for substituting himself as the legal representative of the deceased plaintiff could not have been declined by the Trial Court.

In this regard too, it would be relevant to point out that if any inquiry was required to be made, the Trial Court could have adopted the course envisaged by Rule 5 of Order XXII of the Civil Procedure Code, 1908 but, in any case, the application made by the appellant could not have been dismissed altogether.

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43. CIVIL PROCEDURE CODE, 1908 – Order 39 Rule 1 & 2

Temporary injunction – Refusal of – Plaintiffs are not the sole owners of the suit property – Possession of suit property not *prima facie* established – *Prima facie* case, balance of convenience and irreparable loss, all these ingredients not found in favour of the plaintiff – Held, the trial Court rightly rejected the application filed under Order 39 Rules 1 and 2.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 1 एवं 2

अस्थायी निषेधाज्ञा – नामंजूर किया जाना – वादीगण वादग्रस्त संपत्ति के एकमात्र स्वामी नहीं है – वादग्रस्त संपत्ति पर प्रथम दृष्टया आधिपत्य स्थापित नहीं – प्रथम दृष्टया मामला, सुविधा का संतुलन और अपूरणीय क्षति, ये सभी तत्व वादी के पक्ष में नहीं – अभिनिर्धारित, विचारण न्यायालय द्वारा आवेदन अन्तर्गत आदेश 39 नियम 1 एवं 2 उचित ही निरस्त किया गया।

Bhagwantibai and ors. v. Rajendra Kumar

Order dated 08.03.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 2993 of 2021, reported in AIR 2022 MP 120

Relevant extracts from the order:

Prima facie, respondent/plaintiff is not sole owner of the suit property and his possession of the suit property is not prima-facie established. He did not produce any relevant document to establish that Annapurna Aata Chakki was being run by him since last 30 years on the suit property, therefore, in view of the above, respondent / plaintiff dies not deserve for any temporary injunction against the petitioner.

In absence of prima facie case, if the temporary injunction is granted in favour of the respondent/plaintiff, then the petitioners/defendants will suffer such a irreparable loss, which cannot be compensated in terms of money, therefore, prima-facie case, balance of convenience and irreparable loss, all these ingredents are not found in favour of the respondent/plaintiff, therefore, the trial Court has

rightly rejected the application filed under Order 39 Rule 1 and 2 of CPC filed by the respondent/plaintiff.

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44. CIVIL PROCEDURE CODE, 1908 – Order 43 Rule 1(r) and Order 39 Rules 1 & 2

Interim injunction – Restrictions on power of Appellate Court – Appellate court has an advantage of appreciating the view taken by trial court and examining the correctness or otherwise thereof within the limited area available – Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion, except where discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. [*Wander Ltd. v. Antox India (P) Ltd, 1990 Supp SCC 727, followed]*

सिविल प्रक्रिया संहिता, 1908 – आदेश 43 नियम 1(द) एवं आदेश 39 नियम 1 व 2

अंतरिम निषेधाज्ञा – अपीलीय न्यायालय की शक्तियों पर प्रतिबंध – अपीलीय न्यायालय के पास विचारण न्यायालय द्वारा लिये गये दृष्टिकोण की सराहना करना और उपलब्ध सीमित क्षेत्र के भीतर उसकी शुद्धता या अन्यथा की जाँच करने का अधिकार है – अपीलीय न्यायालय, विचारण न्यायालय के विवेकाधिकार को प्रतिस्थापित कर स्वयं के विवेकाधिकार का प्रयोग नहीं करेगी, सिवाय इसके कि जहाँ विवेकाधिकार का मनमाना प्रयोग किया गया था प्रतिकूल रूप से प्रयोग किया गया हो या विधि के सुस्थापित सिद्धांतों का उल्लंघन कर अंतरिम निषेधाज्ञा स्वीकार या अस्वीकार की हो। *(वान्डर लिमिटेड विरूद्ध एन्टोक्स इंडिया (प्र.) लिमिटेड, 1990 एससीसी अनुसरित)*

Shyam Sel and Power Limited and anr. v. Shyam Steel Industries Limited

Judgment dated 14.03.2022 passed by the Supreme Court in Civil Appeal No. 1984 of 2022, reported in (2023) 1 SCC 634

Relevant extracts from the judgment:

The hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of

appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. If the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts. As observed by this Court in ***Monsanto Technology LLC v. Nuziveedu Seeds Ltd., (2019) 3 SCC 381,*** the appellate court cannot usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

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45. CRIMINAL PROCEDURE CODE, 1973 – Section 125
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Section 12

(i) Maintenance – Issue of overlapping jurisdiction – Wife can claim maintenance under different statutes – When deciding the quantum of maintenance, court has to consider the maintenance amount passed in other proceedings.

(ii) Parties to the application are required to file affidavit of disclosure of assets as mentioned in Enclosures I, II and III of the judgment.

(iii) Factors to be considered for determining quantum, enumerated.

(iv) From what time maintenance can be granted? Maintenance to be awarded from the date of filing of application.

(v) Execution – Order of maintenance may be enforced like a decree of civil court.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125
घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धारा 12

(i) भरण पोषण – क्षेत्राधिकार के अतिव्यापन होने का विवाद – पत्नि विभिन्न विधि के अंतर्गत भरण पोषण प्रार्थित कर सकती है – भरण पोषण निर्धारित करते समय न्यायालय को अन्य कार्यवाहियों में पारित आदेश को विचार में रखना चाहिए।

(ii) आवेदन के पक्षकारों को निर्णय में दिये गये प्रारूप **I**, **II** एवं **III** के अनुसार शपथ पत्र पर आस्तियों का प्रकटीकरण करना आवश्यक है।

(iii) भरण पोषण के निर्धारण हेतु विचार योग्य कारक बताये गये।

(iv) भरण पोषण कब से देय होगा? भरण पोषण आवेदन प्रस्तुति दिनांक से देय होगा।

(v) निष्पादन – भरण पोषण के आदेश का निष्पादन व्यवहार न्यायालय की डिक्री के समान हो सकेगा।

Rajnesh v. Neha & anr.

Judgment dated 04.11.2020 passed by the Supreme Court in Criminal Appeal No. 730 of 2020, reported in 2022 (4) Crimes 371 (SC)

Relevant extracts from the judgment:

It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the Applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.

Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers Under Article 136 read with Article 142 of the Constitution of India:

(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrate's Court, as the case may be, throughout the country;

(b) The Applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

(c) The Respondent must submit the reply alongwith the Affidavit of Disclosure within a maximum period of four weeks. The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the Respondent.

The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the Applicant is educated and professionally qualified; whether the Applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the Applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in Section 125(2) Code of Criminal Procedure, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Code of Criminal Procedure In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced Under Section 28A of the Hindu Marriage Act, 1956 (sic1955); Section 20(6) of the D.V. Act; and Section 128 of Code of Criminal Procedure, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the Code of Civil Procedure, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

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***46. CRIMINAL PROCEDURE CODE, 1973 – Section 188**
Offence committed by Indian citizen outside India – Previous sanction not required at cognizance stage – However, trial cannot commence without sanction.

दण्ड प्रक्रिया संहिता, 1973 – धारा 188
भारत के बाहर भारतीय नागरिक द्वारा अपराध – संज्ञान स्तर पर पूर्व मंजूरी आवश्यक नहीं – यद्यपि मंजूरी के बिना विचारण प्रारंभ नहीं किया जा सकता।

Nerella Chiranjeevi Arun Kumar v. State of Andhra Pradesh and anr.
Order dated 02.08.2021 passed by the Supreme Court in Special Leave Petition (Crl.) No. 3978 of 2021, reported in 2022 (3) Crimes 279 (SC)

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47. CRIMINAL PROCEDURE CODE, 1973 – Section 204
DRUGS AND COSMETICS ACT, 1940 – Sections 27(d) and 34
Issuance of process – Report of the seized drug sample concluded the drug to be of sub-standard quality – Complaint was filed before the CJM under the Act. Summons issued to all the accused. No specific averments made against the appellants. Complaint found to be lacking the requirements of section 34 of the Act – Order of issuance of summons was quashed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 204
औषधि एवं प्रसाधन सामग्री अधिनियम, 1940 – धाराएं 27 (घ) एवं 34
आदेशिका जारी किया जाना – जब्त किये गये औषध नमूने की रिपोर्ट में औषध को अवमानक गुणवत्ता का पाया गया। मुख्य न्यायिक मजिस्ट्रेट के समक्ष अधिनियम के अंतर्गत परिवाद प्रस्तुत किया गया। समन समस्त अभियुक्तगण को जारी किये गये। अपीलार्थीगण के विरूद्ध विशिष्ट अभिवचन नहीं किये गये। परिवाद में अधिनियम की धारा 34 के आवश्यकताओं की पूर्ति नहीं – समन जारी करने के आदेश को अपास्त किया गया।

Lalankumar Singh & ors. v. State of Maharashtra
Judgment dated 11.10.2022 passed by the Supreme Court in Criminal Appeal No. 1757 of 2022, reported in 2022 (4) Crimes 412 (SC)

Relevant extracts from the judgment:

Merely because a person is a director of a company, it is not necessary that he is aware about the day today functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day today affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

It can thus be seen that there are no specific averments insofar as the present appellants are concerned. It is further to be noted that the present appellants are neither the managing director nor the whole time directors of the accused company.

It is further to be noted that, in accordance with the provisions of Rule 76 of the said Rules read with Form 28, the Accused Nos. 9 and 10 have specifically been approved by the licensing authority in Form 28. Accused No.9 was approved as a person under whose active direction and personal supervision the manufacture would be conducted as required under sub rule (1) of Rule 76 of the said Rules. Similarly, Accused No.10, who was approved as a head of the testing unit, was to be incharge for carrying out the test of the strength, quality and purity of the substances as may be required under the provisions of Part X of the said Rules. We are therefore of the considered view that the complaint is totally lacking the requirement of Section 34 of the said Act.

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48. CRIMINAL PROCEDURE CODE, 1973 – Sections 239 and 240 PREVENTION OF CORRUPTION ACT, 1988 – Sections 13 (1) (e) and 13 (2)

(i) Framing of charge – Facts to be considered – *Prima facie* case is to be seen and not probative value of materials on record.

(ii) Word "groundless"– Connotation of – Section 239 is not merely an empty or routine formality – Valuable provision for the benefit of accused.

(iii) "Known sources of income" – Meaning explained – Sources known to prosecution and not the sources within personal knowledge of accused – Onus to prove the sources is on accused – Cannot discharge this onus at the stage of charge.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 239 एवं 240

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 13 (1) (ड़) एवं 13 (2)

(i) आरोप विरचित करना – तथ्य जिन पर विचार किया जाना है – केवल प्रथम दृष्टया मामला देखा जाना है – अभिलेख पर सामग्री के प्रमाणिक मूल्य को नहीं देखा जाना है ।

(ii) शब्द ''निराधार''– अभिप्राय – धारा 239 केवल कोरी या महत्वहीन औपचारिकता मात्र नहीं है – अभियुक्त के लाभ के लिए एक मूल्यवान प्रावधान है।

(iii) ''आय के ज्ञात स्त्रोत'' – अर्थ समझाया गया – अभियोजन पक्ष को ज्ञात स्त्रोत न कि अभियुक्त की व्यक्तिगत जानकारी के स्त्रोत – ''स्त्रोत को'' साबित करने का दायित्व अभियुक्त पर है – आरोप के स्तर पर इस दायित्व को उन्मोचित नहीं किया जा सकता है।

State through Deputy Superintendent of Police v. R. Soundirarasu Etc.

Judgment dated 05.09.2022 passed by the Supreme Court in Criminal Appeal No. 1452 of 2022, reported in AIR 2022 SC 4218

Relevant extracts from the judgment:

Section 239 has to be read along with Section 240 of the CrPC.

If the Magistrate finds that there is *prima facie* evidence or the material against the accused in support of the charge (allegations), he may frame charge in accordance with Section 240 of the CrPC.

But if he finds that the charge (the allegations or imputations) made against the accused does not make out a *prima facie* case and does not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 of the CrPC, the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Indeed, in a case where the Magistrate takes cognizance of an offence without taking note of Section 468 of the CrPC, the most appropriate stage at which the accused can plead for his discharge is the

stage of framing the charge. He need not wait till completion of trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing charge if the facts so justify.

The real test for determining whether the charge should be considered groundless under Section 239 of the CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239 of the CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

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49. CRIMINAL PROCEDURE CODE, 1973 – Section 319

Summoning of co-accused – Application was moved to make the appellant a co-accused owing to appearance in CCTV footage – Held, for adding a co-accused u/s 319 of the Code, crucial test is that the evidence, if goes unrebutted, would lead to conviction.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

सह अभियुक्तगण को आहूत किया जाना – सी.सी.टी.व्ही. फुटेज में दृष्टिगोचर होने के आधार पर अपीलार्थी को सह अभियुक्त के रूप में संयोजित करने हेतु आवेदन प्रस्तुत किया गया – अभिनिर्धारित, संहिता की धारा 319 में सह अभियुक्त को संयोजित करने हेतु निर्णायक परीक्षण यह है कि अभिलेख पर आई साक्ष्य, यदि अखंडित रह जाती है, तो दोषसिद्धी होगी।

Naveen v. State of Haryana & ors.

Judgment dated 01.11.2022 passed by the Supreme Court in Criminal Appeal No. 1866 of 2022, reported in 2022 (4) Crimes 439 (SC)

Relevant extracts from the judgment:

The Constitution Bench has given a caution that power under Section 319 CrPC is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

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50. CRIMINAL PROCEDURE CODE, 1973 – Section 319

(i) Power to summon a person who is not an accused – Order passed after judgment – Whether such power can be exercised after judgment has been rendered? Held, No – Such order has to precede the judgment.

(ii) When case is bifurcated – Whether it is appropriate to consider the evidence of main case to summon additional accused in split up case? Held, No – Court has to look for evidence recorded in split up case and not in the main case which has already been concluded.

(iii) Guidelines to follow while exercising power u/s 319 CrPC issued.

(iv) Criminal trial – When can it be said that trial is concluded ? Explained.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

(i) ऐसे व्यक्ति को आहूत करने की शक्ति जो अभियुक्त नहीं है – निर्णय के पश्चात् पारित आदेश – क्या ऐसी शक्ति का प्रयोग निर्णय देने के बाद किया जा सकता है? अभिनिर्धारित, नहीं – ऐसा आदेश को निर्णय के पूर्व होना चाहिए।

(ii) जब मामला विभाजित हुआ हो – क्या विभाजित मामले हेतु अतिरिक्त अभियुक्त को आहूत करने के लिये मुख्य मामले के साक्ष्य पर विचार करना उचित है? अभिनिर्धारित, नहीं – न्यायालय को विभाजित मामले में अभिलिखित साक्ष्य को देखना चाहिए न कि मुख्य मामले में जो कि पहले ही समाप्त हो चुका है ।

(iii) द.प्र.स. धारा 319 के अंतर्गत शक्तियों का प्रयोग करते हुए पालन किये जाने वाले दिशा निर्देश जारी किये गये।

(iv) आपराधिक विचारण – विचारण समाप्त हो गया है, ऐसा कब कहा जा सकता है? स्पष्ट किया गया ।

Sukhpal Singh Khaira v. State of Punjab

Judgment dated 05.12.2022 passed by the Supreme Court in Criminal Appeal No. 885 of 2019, reported in (2023) 1 SCC 289 (5 Judge Bench)

Relevant extracts from the judgment:

The following substantial questions of law were raised for further consideration and the matters were placed before Hon'ble the Chief Justice of India for constitution of a Bench of appropriate strength to consider the questions

raised. Hon'ble the Chief Justice has accordingly constituted this Bench to consider the questions raised, which read as hereunder: -

> "I. Whether the trial court has the power under Section 319 of Cr. P.C. for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?
>
> II. Whether the trial court has the power under Section 319 of the Cr. P. C. for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?
>
> III. What are the guidelines that the competent court must follow while exercising power under Section 319 Cr.P.C.?"

Therefore, from a perusal of the provisions and decisions of this Court, it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of Section 360 of Cr.P.C. Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence. When considered in the context of Section 319 of Cr.P.C., there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a new accused based on the evidence available on record which would not prejudice the existing accused since in any event they are convicted.

One other aspect which is necessary to be clarified is that if the trial against the absconding accused is split up (bifurcated) and is pending, that by itself will not provide validity to an application filed under Section 319 of Cr.P.C. or the order of Court to summon an additional accused in the earlier main trial if such summoning order is made in the earlier concluded trial against the other accused. This is so, since such power is to be exercised by the Court based on the evidence recorded in that case pointing to the involvement of the accused who is sought to be summoned. If in the split up (bifurcated) case, on securing the presence of the absconding accused the trial is commenced and if in the evidence recorded therein it points to the involvement of any other person as contemplated

in Section 319 of Cr.P.C, such power to summon the accused can certainly be invoked in the split up (bifurcated) case before conclusion of the trial therein.

Whether the trial court has the power under Section 319 of Cr.P.C. for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 of Cr.P.C. is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

Whether the trial court has the power under Section 319 of the Cr.P.C. for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/ pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion. What are the guidelines that the competent court must follow while exercising power under Section 319 Cr.P.C.?"

(i) If the competent court finds evidence or if application under Section 319 of Cr.P.C. is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under Section 319 of Cr.P.C. and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of Cr.P.C., the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

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***51. CRIMINAL PROCEDURE CODE, 1973 – Section 438**

Anticipatory bail – Multiple accused – How to be considered? While granting bail to multiple accused, the part played by each accused person needs to be taken into consideration along with the nature of allegations.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438

अग्रिम जमानत – एक से अधिक अभियुक्त – कैसे विचार किया जाएगा? बहुत से अभियुक्त को जमानत का लाभ देते समय आरोप की प्रकृति के अतिरिक्त प्रत्येक अभियुक्त द्वारा निभाई गई भूमिका पर विचार किये जाने की आवश्यकता है।

Central Bureau of Investigation v. P. S. Jayaprakash and anr.

Judgment dated 02.12.2022 passed in Criminal Appeal Nos. ……of 2022, reported in (2023) 1 SCC 314

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52. HINDU MARRIAGE ACT, 1955 – Sections 5 (i), 11, 13(1) (i) (ia) and 23A

Suit for dissolution of marriage on ground of adultery and cruelty u/s 13 (1) (i) & (ia) of the Act – Counter-claim by wife u/s 23-A of the Act is maintainable to declare second marriage of her husband as illegal, *void ab initio* u/s 11 of the Act.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 5 (i), 11, 13(1) (i) (ia) एवं 23क

जारकर्म एवं क्रूरता के व्यवहार के आधार पर अधिनियम की धारा 13 (1) (i) एवं (ia) के अंतर्गत विवाह विघटन हेतु वाद – प्रत्यर्थी पत्नी द्वारा अधिनियम की धारा–11 के अधीन पति के दूसरे विवाह को अवैध, प्रारम्भ से शून्य घोषित कराने हेतु धारा 23क के अधीन प्रतिदावा पोषणीय ।

Ritu v. Sushil

Order dated 22.07.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4054 of 2018, reported in 2023 (1) MPLJ 255

Relevant extracts from the order:

From perusal of the provisions of sections 5 & 11 of Hindu Marriage Act, 1955, it is crystal clear that the petitioner /wife who is legally married first wife of the respondent / husband is mostly affected party by the second marriage performed by the respondent / husband, therefore, it is held without hesitation that the second marriage, if any, has been performed by the respondent / husband is clear cut in contravention of the clauses (i) (iv) and (v) of Section 5 of the Hindu Marriage Act and, therefore, the petitioner / wife is legally entitled to avail the provisions of Section 11 of the Hindu Marriage Act because the petitioner/wife is the first party not the third party as held by the learned Family Court in the impugned order.

Further, Section 23A of the Act itself penults the making of a counterclaim. It is evident from a bare reading of Section 23A of the Act that a party defending any action brought under the Hindu Marriage Act for divorce, judicial separation or restitution of conjugal rights is not only entitled to do so on the ground of the adultery, cruelty or desertion but also make a counter-claim for any relief under the Act on anyone of those grounds. The provision makes it explicit that any such charge of adultery, cruelty and desertion if proved against the respondent, the Court may give to the petitioner any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking any such relief on that ground. That is precisely what the petitioner had done in the instant case. She had not only set-up a defence to the action brought by the respondent-husband but also made a counterclaim for a decree for dissolution of marriage under Section 13(ia) and (ib) of the Hindu Marriage Act. The counterclaim ought to have been logically registered as a separate petition by the Family Court in terms of the Hindu Marriage Rules, 1956. The Family Court ought to have kept in view the well-settled legal position. In any such eventuality, the Court was required to proceed with the counter-claim and take the same to its logical conclusion. The Family Court has unfortunately remained oblivious of that position and has proceeded to dismiss the petition filed by the respondent - wife without so much as making a mention of the any counter-claim made before it. The order appears to have been passed without proper application of mind and in

a hurry; and wrong interpretation of the relevant provisions of the Hindu Marriage Act has been done. It is therefore difficult to sustain the same.

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53. HINDU MARRIAGE ACT, 1955 – Section 13(1)(ia)
Decree of divorce – Criminal complaints and prosecution lodged by wife – Found baseless – Charges framed against husband and family members quashed – Held, husband and family suffered mental cruelty on spree of criminal cases filed by wife – Order affirmed in appeal.

हिन्दू विवाह अधिनियम, 1955 – धारा 13(1)(इक)
विवाह विच्छेद की आज्ञप्ति – पत्नी द्वारा दाण्डिक परिवाद एवं अभियोजन दायर – निराधार पाये गए – पति एवं परिवार के सदस्यों के विरूद्ध विरचित आरोप अभिखण्डित – पत्नी द्वारा दाण्डिक प्रकरण दायर करने की होड़ में पति एवं परिवार को मानसिक क्रूरता कारित हुई – आदेश की अपील में पुष्टि।

Richa v. Pradhuman

Judgment dated 21.11.2022 passed by the High Court of Madhya Pradesh (DB) Gwalior Bench in First Appeal No. 975 of 2017 reported in 2023 (1) MPLJ 421

Relevant extracts from the judgment:

In the case in hand, allegations of mental cruelty have been raised by the respondent / husband on twin grounds of her integrity and filing of 6 criminal complaints. So far as allegations on the basis of filing of criminal complaints are concerned, it appears that respondent has a valid case where mental cruelty has been inflicted.

Trial Court framed the charges against the accused persons and husband and his family members by way of Cr. R. No.87/2017 challenged the framing of charge for offence under Section 498-A of IPC and Section 3/4 of the Dowry Prohibition Act, 1961 whereas, framing of charges under Sections 7, 376 and 511 of IPC was challenged by way of Cr. R. No.447/2017. Both the criminal revisions were heard analogously by this Court and vide order dated 22.05.2020, both the revisions were allowed and charges framed against the petitioners were quashed and all accused were discharged. They not only suffered incarceration but also faced the rigours of prosecution which is sufficient to attract mental cruelty. [See: ***K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226, Dr.(Mrs.) Malathi Ravi M.D.***

v. B.V. Ravi M.D., (2014) 7 SCC 640 and ***K. Sriniwas v. K. Sunita, (2014) 16 SCC 34***]. Therefore, plea of mental cruelty stands proved.

Cumulatively, case is sufficiently made out by the respondent for mental cruelty and trial Court did not err in passing the impugned judgment on the basis of mental cruelty on the ground of spree of criminal cases registered at the instance of appellant / wife.

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54. HINDU MINORITY AND GUARDIANSHIP ACT, 1956 – Sections 6 and 13
GUARDIANS AND WARDS ACT, 1890 – Section 6

(i) Custody of minor – Provisions of both the Acts of 1956 and 1890 are to be considered.

(ii) Guiding principles – Reiterated.

(iii) Factors to be considered – Regular source of income of parent – Better exposure in life – Opportunity for minor to grow in disciplined manner – Whether parent taking interest in claiming custody – Natural guardian is given priority.

हिन्दू अप्राप्तवयता और संरक्षकता अधिनियम, 1956 – धाराएं 6 एवं 13
संरक्षक और प्रतिपाल्य अधिनियम, 1890 – धारा 6

(i) अवयस्क की अभिरक्षा – अधिनियम, 1956 एवं अधिनियम, 1890 दोनों के प्रावधान विचारणीय।

(ii) मार्गदर्शक सिद्धांत – दोहराए गए ।

(iii) विचार योग्य कारक – माता/पिता की नियमित आय का स्त्रोत – जीवन में बेहतर अवसर – अनुशासित तरीके से अवयस्क के प्रगति करने का अवसर – क्या माता/पिता अवयस्क की अभिरक्षा प्राप्त करने में रूचि रखते हैं – नैसर्गिक संरक्षक को प्राथमिकता ।

Anand Kumar and anr. v. Lakhan

Judgment dated 16.11.2022 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 2526 of 2018, reported in 2023 (1) MPLJ 457

Relevant extracts from the judgment:

While approaching the dispute in respect of custody of child, relevant provisions under Hindu Minority & Guardianship Act, 1956 are also to be taken into consideration. As per Section 2 of Act of 1956, the provisions of this Act

shall be in addition to, and not, save as expressly provided, in derogation of, the Guardian and Wards Act, 1890. Section 6 of the Act of 1956 talks about Natural Guardians of a Hindu Minor.

If the provisions of Act of 1890 and Act of 1956 are seen in juxtaposition then the conclusion appears is that the welfare of minor is paramount consideration while considering the custody, in appointment or declaration of a person as guardian of Hindu minor by a Court.

The Hon'ble Supreme Court had the occasion to consider this aspect time and again and reiterated in following words in the matter of ***Tejaswini Guad and ors. v. Shekhar Jagdish Prasad Tewari and ors., (2019) 7 SCC 42***:

After referring to number of judgments and observing that while dealing with child custody cases, the paramount consideration should be the welfare of the child and due weight should be given to child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings, in ***Nil Ratan Kunda v. Abhijit Kundu, (2008) 9 SCC 413***, it was held as under:

> "In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing there from. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision

should rest with the court as to what is conducive to the welfare of the minor."

The above discussed legal position can be applied on the anvil of facts and circumstances of this case to reach to a just conclusion. In the case in hand, respondent / father is working as Constable in I.T.B.P., a paramilitary force and earning regular salary. Regular source of income guarantees a continuous flow of money, modest though, but certainly sufficient to look after the interest of child. Secondly, being a member of Indian Paramilitary Force, he leads a disciplined life and therefore, discipline would inculcate into the family set up and would help the minor to grow in disciplined manner which if compared to the life likely to be led with maternal grandparents then the difference would appear clearly. Thirdly, father has shown his keen interest to bring upon his child and take him under his supervision. Therefore, he moved the application before the trial Court and pursuing it here also. When both the parties were called by this Court and when father was asked about his position then he was very firm and interested in taking his child in his custody.

Beside that, being employee of Central Paramilitary Force, minor will get better exposure in life and would have access to different regions and cultures and therefore, growth of his personality would be more prominent in guardianship of his father rather than in company of his maternal grandparents.

Over and above, father as per Section 6 of Act of 1956, is Natural guardian of minor and since he is his biological father also, therefore, statute also favours the cause of respondent as father.

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55. INDIAN PENAL CODE, 1860 – Sections 34 and 302
EVIDENCE ACT, 1872 – Sections 3 and 32

(i) **Oral dying declaration – On the day of occurrence, witness was working in his agricultural field – His presence in his field could be said to be natural – Oral dying declaration of the deceased made before witness – There is no good reason for witness to come before the trial court and depose falsely against the accused persons – Statement corroborated with the medical evidence on record – Such dying declaration can be relied upon.**

(ii) **Examination of accused – Relevancy – In his statement**

recorded u/s 313 of the Code, accused has not explained where he was between the incident and date of his arrest – This incriminating circumstance, if taken into consideration with other circumstances on record, is relevant.

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 302

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 32

(i) मौखिक मृत्युकालिक कथन – घटना के दिन साक्षी अपनी कृषि भूमि पर कार्य कर रहा था – अपनी भूमि पर उसकी उपस्थिति को स्वभाविक कहा जा सकता है – मृतक द्वारा साक्षी के समक्ष मौखिक मृत्युकालीन कथन किया गया – साक्षी के लिये ऐसा कोई समुचित कारण नहीं है कि वह न्यायालय के समक्ष आये और अभियुक्तगणों के विरूद्ध मिथ्या कथन करे – कथन अभिलेख पर उपलब्ध चिकित्सीय साक्ष्य से समर्थित है – मौखिक मृत्युकालिक कथन पर विश्वास किया जा सकता है।

(ii) अभियुक्त का परीक्षण – सुसंगति – धारा 313 द.प्र.सं. के अन्तर्गत अभिलिखित कथन में अभियुक्त ने यह स्पष्ट नहीं किया कि वह घटना और गिरफ्तारी दिनांक के मध्य कहां था – यदि इस अभिशंसी परिस्थिति को अभिलेख पर उपलब्ध अन्य परिस्थितियों के साथ विचार में लिया जाए तो सुसंगत होगी।

Kamal Khudal v. State of Assam

Judgment dated 14.07.2022 passed by the Supreme Court in Criminal Appeal No. 470 of 2015, reported in AIR 2022 SC 3341

Relevant extracts from the judgment:

In our view, the oral evidence of the PW-2, namely, Hanu Khetrapal is quite natural. On the day of occurrence, he was working in his agricultural field. His presence in his field could be said to be natural. There is no good reason for Hanu Khetrapal (PW-2) to come before the trial court and depose falsely against the accused persons. It is not even the case of the accused appellant herein that Hanu Khetrapal (PW-2) had some axe to grind against him, including the other co-accused and, therefore, fabricated the entire story of an oral dying declaration. Besides the same, the oral dying declaration of the deceased made before Hanu Khetrapal (PW-2) stands corroborated with the medical evidence on record.

We also take notice of the fact that the appellant herein came to be arrested on 23rd of July, 2007, that is, almost after about 8 days from the date of incident. He was absconding. He was not available at his house. The appellant

accused in his further statement recorded under Section 313 of the CrPC has not explained where he was between 15.07.2007 and 23.07.2007, that is, till the date of his arrest. This is one another incriminating circumstance and, if taken into consideration with the other circumstances on record, would bear some relevance while deciding the guilt of the accused.

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56. INDIAN PENAL CODE, 1860 – Sections 201, 302 and 376
CRIMINAL PROCEDURE CODE, 1973 – Sections 432, 433 and 433A
EVIDENCE ACT, 1872 – Sections 3, 27 and 106

(i) Circumstantial evidence – Last seen theory – Mother and aunt of deceased saw the appellant taking the victim with him – Appellant was a neighbour and a person of same community, there could be no reason to suspect the intent of appellant – Five golden principles, named as *panchsheel* of proving a case based upon circumstantial evidence, reiterated.

(ii) Recovery of dead body – At the instance of appellant, clearly proved by witness – Irregularities in preparation of memo by IO, not material to falsify the factum of information – Incriminating part of accused statement made to police – Extent of admission under section 27.

(iii) Death penalty – Permissibility – In case where conviction is based on circumstantial evidence, capital punishment can indeed be awarded.

भारतीय दण्ड संहिता, 1860 – धाराएं 201, 302 एवं 376
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 432, 433 एवं 433क
साक्ष्य अधिनियम, 1872 – धाराएं 3, 27 एवं 106

(i) परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – मृतिका की माँ तथा चाची द्वारा अपीलार्थी को मृतिका के साथ ले जाते हुये देखा – अपीलार्थी पड़ोसी था और एक ही जाति का व्यक्ति, उसके आशय पर शंका व्यक्त किये जाने का कोई कारण नहीं – परिस्थितिजन्य साक्ष्य के मामले को प्रमाणित करने वाले पाँच स्वर्णिम सिद्धांत जिन्हें पंचशील कहा जाता है, दोहराये गये।

(ii) शव की बरामदगी – साक्षीगण द्वारा अपीलार्थी की निशादेही से बरामद किया जाना स्पष्टतः प्रमाणित – अनुसंधान अधिकारी द्वारा पंचनामा तैयार करने में कारित अनियमितता, को सूचना के औचित्य को गलत साबित

करने के लिये कारक नहीं माना जा सकता – अपीलार्थी द्वारा अपराध में संलिप्त करने वाले धारा 27 के कथन की स्वीकारोक्ती की सीमा।

(iii) मृत्यु दण्ड – अनुज्ञेयता – परिस्थितिजन्य साक्ष्य के आधार पर हुई दोषसिद्धी में भी मृत्युदण्ड अधिरोपित किया जा सकता है।

Pappu v. State of Uttar Pradesh

Judgment dated 09.02.2022 passed by the Supreme Court in Criminal Appeal No. 1097 of 2018, reported in (2022) 10 SCC 321 (Three Judge Bench)

Relevant extracts from the judgment:

It is hardly a matter of doubt or debate that when 'last seen' evidence is cogent and trustworthy which establishes that the deceased was lastly seen alive in the company of the accused; and is coupled with the evidence of discovery of the dead body of deceased at a far away and lonely place on the information furnished by the accused, the burden is on the accused to explain his whereabouts after he was last seen with the deceased and to show if, and when, the deceased parted with his company as also the reason for his knowledge about the location of the dead body. The appellant has undoubtedly failed to discharge this burden. Applying the principles enunciated in the case of ***State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254***, we have no hesitation in endorsing the view of the High Court that the appellant having been seen last with the deceased, the burden was upon him to prove as to what happened thereafter, since those facts were within his special knowledge. For the appellant having failed to do so, it is inevitable to hold that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides another strong link in the chain of circumstances against the appellant.

In the case of ***Inspector of Police v. John David, (2011) 5 SCC 506*** relied upon by the learned counsel for the respondent, this Court has reiterated the principle that when there is a recovery of an object of crime on the basis of information given by the accused which provides a link in the chain of circumstances, such information leading to discovery is admissible. It has also been held that minor loopholes and irregularities in investigating process cannot form the crux of the case on which the accused can rely upon to prove his innocence, when there is strong circumstantial evidence deduced from the investigation which logically and rationally point towards the guilt of the accused.

In ***Ravishankar v. State of M.P., (2019) 9 SCC 689***, a 3-Judge Bench of this Court re-affirmed the conviction of the appellant of the offences of

kidnapping, rape, and resultant death of a 13-year-old girl and destruction of evidence. The case had been that of circumstantial evidence and on the question of sentence, this Court examined as to whether death sentence was justified. Though this Court made it clear that even in the case where conviction is based on circumstantial evidence, capital punishment could indeed be awarded but then, proceeded to observe that this Court had been increasingly applying the theory of 'residual doubt', *which effectively create a higher standard of proof over and above the "beyond reasonable doubt" standard used at the stage of conviction, as a safeguard against routine capital sentencing, keeping in mind the irreversibility of death.* Applying this theory and indicating certain 'residual doubts', it was held that the said case fell short of 'rarest of rare' case. In that case too, the Court commuted the death sentence into one of life for the remainder of the natural life.

The Court also examined the theory of 'residual doubt'; and after a survey of the decisions of this Court and those of the U.S. Supreme Court, observed as under:

> "These features are only illustrative to say that the theory of "residual doubt" that got developed was a result of peculiarity in the process adopted. Even then, what is material to note is that the theory has consistently been rejected by the US Supreme Court and as stated ***Franklin v. Lynaugh, 1988 SCC Online US SC 138*** O'Connor, J.: *"Nothing in our cases mandated the imposition of this heightened burden of proof at capital sentencing."*

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57. INDIAN PENAL CODE, 1860 – Section 302

Murder – Original informant was not examined – Recovery of the weapon used was not proved – Held, there can be conviction on the basis of the deposition of the sole eye-witness – Recovery of the weapon used in the commission of offence is not a *sine qua non* to convict the accused – Acquittal set aside.

भारतीय दण्ड संहिता, 1860 – धारा 302

हत्या – मूल सूचनाकर्ता का परीक्षण नहीं किया गया – घटना में प्रयुक्त आयुध की जब्ती प्रमाणित नहीं – अभिनिर्धारित, एकमात्र चक्षुदर्शी साक्षी की साक्ष्य के आधार पर भी दोषसिद्धी की जा सकती है – घटना में प्रयुक्त आयुध की जब्ती अभियुक्त की दोषसिद्धी हेतु अपरिहार्य नहीं है – दोषमुक्ति को अपास्त किया गया।

State through the Inspector of Police v. Laly @ Manikandan and anr.

Judgment dated 14.10.2022 passed by the Supreme Court in Criminal Appeal No. 1750 of 2022, reported in 2022 (4) Crimes 493 (SC)

Relevant extracts from the judgment:

The submission on behalf of the accused that as the original informant – Mahendran has not been examined and that the other independent witnesses have not been examined and that the recovery of the weapon has not been proved and that there is a serious doubt about the timing and place of the incident, the accused are to be acquitted cannot be accepted. Merely because the original complainant is not examined cannot be a ground to discard the deposition of PW1. As observed hereinabove, PW1 is the eye witness to the occurrence at both the places. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness.

As observed hereinabove, PW1 is an eye witness. He has fully supported the case of the prosecution. As per settled position of law, there can be a conviction on the basis of the deposition of the sole eye witness, if the said witness is found to be trustworthy and/or reliable. As observed hereinabove, there is no reason to doubt the credibility and/or reliability of PW1. Therefore, it will be safe to convict the accused on the sole reliance of deposition of PW1.

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58. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 3

(i) Non-recovery of weapon – Effect – When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the accused would not materially affect the case of the prosecution.

(ii) Contradiction, when material – If the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved merely on the basis of normal or natural contradiction in their testimony.

भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम, 1872 – धारा 3

(i) हथियार का बरामद न होना – प्रभाव – जहां यथेष्ट मौखिक साक्ष्य चिकित्सीय साक्ष्य से समर्थित हो वहाँ केवल अभियुक्त से हथियार की बरामदगी न होना अभियोजन के प्रकरण को तात्विक रूप से प्रभावित नहीं करेगी।

(ii) विरोधाभास कब तात्विक है – यदि प्रत्यक्षदर्शी साक्षी के कथन अन्यथा दृढ़ एवं विश्वसनीय हों तब ऐसे कथनों को केवल इस आधार पर कि उसकी साक्ष्य में सामान्य अथवा स्वभाविक विरोधाभास है, अविश्वसनीय नहीं माना जा सकता।

Mekala Sivaiah v. State of Andhra Pradesh

Judgment dated 15.07.2022 passed by the Supreme Court in Criminal Appeal No. 2016 of 2013, reported in AIR 2022 SC 3378

Relevant extracts from the judgment:

The facts and evidence in present case has been squarely analyzed by both Trial Court as well the High Court and the same can be summarized as follows:

i. The prosecution has discharged its duties in proving the guilt of the appellant for the offence under Section 302 IPC beyond reasonable doubt.

ii. When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the appellant would not materially affect the case of the prosecution.

iii. If the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.

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59. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Sections 24 and 27
CRIMINAL PROCEDURE CODE, 1973 – Section 313

LEGAL SERVICES AUTHORITIES ACT, 1987 – Section 9

(i) Circumstantial evidence – Accused convicted for committing crime of murder – Tests to apply for conviction on the basis of circumstantial evidence – Enumerated.

(ii) Disclosure statement – Weapon of offence and blood stained clothes were allegedly recovered at the instance of accused – Investigating officer did not mention the exact words uttered by the accused in his oral evidence – Disclosure statement was not accepted.

(iii) Extra-judicial confession – Accused allegedly made an extra-judicial confession that he had brutally killed his wife – Extra-judicial confession can be relied only when it passes the test of credibility.

(iv) Motive – Chain of circumstantial evidence snapped – Disclosure statement was not relied – Consideration of other circumstances such as, motive not necessary

(v) Accused examination – Accused allegedly offered false explanation – Conditions to use explanation as an additional link laid down.

(vi) Injury – Accused had injuries at the time of arrest – It is the duty of prosecution to explain such injury – Failure to explain indicates innocence of accused.

(vii) Legal aid – Accused was provided with legal aid – Cross-examination was found to be below average – It is the duty of court to ensure that an accused put on a criminal trial is effectively represented by a defence counsel.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धाराएं 24 एवं 27

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

विधिक सेवा प्राधिकरण अधिनियम, 1987 – धारा 9

(i) परिस्थितिजन्य साक्ष्य – अभियुक्त को हत्या का अपराध कारित करने के लिए दोषसिद्ध किया गया – परिस्थितिजन्य साक्ष्य के आधार पर दोषसिद्ध किये जाने हेतु परीक्षण की विधि प्रतिपादित।

(ii) प्रकटीकरण कथन – अपराध में प्रयुक्त आयुध एवं रक्त से सने कपड़े अभियुक्त के प्रकटीकरण के आधार पर कथित रूप से जप्त किये गये – अनुसंधान अधिकारी ने अपनी मौखिक साक्ष्य में अभियुक्त द्वारा बोले गये एकदम सटीक शब्दों को नहीं बताया – प्रकटीकरण कथन ग्राह्य नहीं।

(iii) न्यायिकेत्तर संस्वीकृति – अभियुक्त ने कथित रूप से न्यायिकेत्तर संस्वीकृति दी की उसने अपनी पत्नि की निर्दयता पूर्वक हत्या की थी – न्यायिकेत्तर संस्वीकृति पर तभी विश्वास किया जा सकता है जब वह विश्वसनीयता की कसौटी पर खरी उतरे।

(iv) हेतुक – परिस्थितिजन्य साक्ष्य की श्रृंखला नष्ट हो गई – प्रकटीकरण कथन पर भी अविश्वास किया गया – अन्य तथ्यों जैसे की हेतु पर विचार आवश्यक नहीं।

(v) अभियुक्त परीक्षण – अभियुक्त ने कथित रूप से असत्य स्पष्टीकरण दिया – ऐसे स्पष्टीकरण को अतिरिक्त कड़ी के रूप में प्रयोग हेतु शर्तें प्रतिपादित की गईं।

(vi) उपहति – अभियुक्त की गिरफ्तारी के समय उसके शरीर पर उपहति कारित थी – अभियोजन का यह कर्तव्य है कि वह ऐसी उपहति का स्पष्टीकरण दें – स्पष्टीकरण ना देना अभियुक्त के निर्दोष होने की ओर इंगित करता है।

(vii) विधिक सहायता – अभियुक्त को विधिक सहायता प्रदाय की गई थी – प्रतिपरीक्षण औसत से कम होना पाया गया – न्यायालय का यह कर्तव्य है कि वह सुनिश्चित करे कि एक अभियुक्त जिसे आपराधिक विचारण में लाया गया है, को विचारण के दौरान प्रभावशील रूप से बचाव अधिवक्ता द्वारा अभियुक्त का प्रतिनिधित्व किया जाए।

Ramanand @ Nandlal Bharti v. State of Uttar Pradesh

Judgment dated 13.10.2022 passed by the Supreme Court in Criminal Appeal No. 64 of 2022, reported in 2022 (4) Crimes 580 (SC)

Relevant extracts from the judgment:

Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:

(i) Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(ii) Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;

(iii) The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of

the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved.

When the accused while in custody makes such statement before the two independent witnesses (*panch* witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (*panch* witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

An extra – judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the

perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

Even if it is believed that the accused appellant had a motive to commit the crime, the same may be an important circumstance in a case based on circumstantial evidence but cannot take the place as a conclusive proof that the person concerned was the author of the crime. One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the accused appellant but suspicion, howsoever strong, cannot be a substitute for proof of the guilt of the accused beyond reasonable doubt.

The fact that we have ruled out the circumstances relating to the making of an extra judicial confession and the discovery of the weapon of offence as not having been established, the chain of circumstantial evidence snaps so badly that to consider any other circumstance, even like motive, would not be necessary.

Before a false explanation can be used as an additional link, the following essential conditions must be satisfied:

(i) Various links in the chain of evidence led by the prosecution have been satisfactorily proved.

(ii) Such circumstances points to the guilt of the accused as reasonable defence.

(iii) The circumstance is in proximity to the time and situation.

In ***Mohar Rai and Bharath Rai v. State of Bihar, AIR 1968 SC 1281*** it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true, or at any rate, not wholly true. Likewise in ***Lakshmi Singh and ors v. State of Bihar, (1976) 4 SCC 394,*** it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in ***Vijay Singh*** **v.** ***State of U.P., (1990) CriLJ 1510.***

It is by far now well-settled for a legal proposition that it is the duty of the court to see and ensure that an accused put on a criminal trial is effectively represented by a defence counsel, and in the event on account of indigence, poverty or illiteracy or any other disabling factor, he is not able to engage a counsel of his choice, it becomes the duty of the court to provide him appropriate and meaningful legal aid at the State expense. What is meant by the duty of the State to ensure a fair defence to an accused is not the employment of a defence counsel for namesake. It has to be the provision of a counsel who defends the accused diligently to the best of his abilities. While the quality of the defence or the caliber of the counsel would not militate against the guarantee to a fair trial sanctioned by Articles 21 and 22 resply of the Constitution, a threshold level of competence and due diligence in the discharge of his duties as a defence counsel would certainly be the constitutional guaranteed expectation. The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent.

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60. INTERPRETATION OF STATUTES:

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 2 (xvii) (a) and 15

(i) Seizure – Once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no other test would be necessary for establishing the guilt of the accused.

(ii) Interpretation of statutes – While interpreting a statute, the court has to prefer an interpretation which advances the purpose of the statute.

संविधियों का निर्वचनः

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 2 (xvii)(क) एवं 15

(i) जब्ती – एक बार यह निर्धारित हो जाता है कि जब्तशुदा 'पॉपी स्ट्रॉ' में 'मॉर्फीन' एवं 'मेकोनिक एसिड' की अंतर्वस्तु निहित है तो अभियुक्त के दोषसिद्धी के निर्धारण हेतु अन्य किसी परीक्षण की आवश्यकता नहीं है।

(ii) संविधियों का निर्वचन – किसी भी प्रावधान के निर्वचन के समय न्यायालय को ऐसी व्याख्या को प्रधानता देना चाहिए जो कि संविधि के उद्देश्य को अग्रेषित करे।

State of Himachal Pradesh v. Nirmal Kaur @ Nimmo and ors.

Judgment dated 20.10.2022 passed by the Supreme Court in Criminal Appeal No. 956 of 2012, reported in 2022 (4) Crimes 527 (SC)

Relevant extracts from the judgment:

Recently, a three-Judges Bench of this Court in the case of ***Hira Singh and anr v. Union of India and anr.***, ***(2020) 20 SCC 272*** while answering a reference with regard to the correctness of the view taken by this Court in the case of ***E. Micheal Raj v. Narcotics Control Bureau***, ***(2008) 5 SCC 161*** to the effect that, when any narcotic drug or psychotropic substance is found mixed with one or more neutral substance for the purpose of imposition of punishment, it is the content of narcotic drug or psychotropic substance which would be taken into consideration, the Court held thus:

> "In ***Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440,*** it is observed by this Court that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It is further observed that though the intention of the Court is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. It is the duty of the Court to mould or creatively interpret the legislation by liberally interpreting the statute. In the said decision this Court has also quoted (at SCC pp. 453-54, para 25) the following passage in Maxwell on Interpretation of Statutes, 10th Edn. p. 229:
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> > "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. … Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

It could thus be seen that it is more than a settled principle of law that, while interpreting the provisions of the statute, the court has to prefer an interpretation which advances the purpose of the statute.

In the result, we hold that, once a Chemical Examiner establishes that the seized 'poppy straw' indicates a positive test for the contents of 'morphine' and 'meconic acid', it is sufficient to establish that it is covered by sub- clause (a) of Clause (xvii) of Section 2 of the 1985 Act and no further test would be necessary for establishing that the seized material is a part of 'papaver somniferum L'. In other words, once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no other test would be necessary for bringing home the guilt of the accused under the provisions of Section 15 of the 1985 Act.

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61. LAND ACQUISITION ACT, 1894 – Section 23

(i) Ready Reckoner – Purpose – For the calculation of stamp duty – Cannot be the basis for determination of compensation.

(ii) Determination of compensation – Factors to be considered – There cannot be a uniform market value of the land for the purpose of determination of the compensation for the land – The market value of different lands vary from place to place and it depends upon various factors.

भूमि अधिग्रहण अधिनियम, 1894 – धारा 23

(i) तैयार संगणक – प्रयोजन – स्टाम्प शुल्क के आंकलन के लिए – प्रतिकर के निर्धारण के लिए आधार नहीं माना जा सकता।

(ii) प्रतिकर का निर्धारण – विचार में लिये जाने वाले कारक – भूमि के संबंध में प्रतिकर का निर्धारण करने के आशय से एक समान बाजार मूल्य नहीं हो सकता – विभिन्न भूमियों का बाजार मूल्य स्थान के अनुसार परिवर्तित होता है और जो विभिन्न कारकों पर निर्भर होता है।

Bharat Sanchar Nigam Limited v. M/s. Nemichand Damodardas and anr.

Judgment dated 11.07.2022 passed by the Supreme Court in Civil Appeal No. 3478 of 2022, reported in AIR 2022 SC 3458

Relevant extracts from the judgment:

We are in complete agreement with the view taken in the case of ***Jawajee Nagnathan v. Revenue Divisional Officer, Adilabad, A.P. and ors., (1994) 4 SCC 595 and Lal Chand v. Unior of India and onr., AIR 2010 SC 170*** that the prices mentioned in the Ready Reckoner for the purpose of calculation of the

stamp duty, which are fixed for the entire area, cannot be the basis for determination of the compensation under the Land Acquisition Act.

Why the prices mentioned in the Ready Reckoner, which is basically for the purpose of collecting proper stamp duty and registration charges shall not be the basis for determination of the compensation for the lands acquired under the Land Acquisition Act is required to be considered from another angle also. It cannot be disputed that the rates mentioned in the Ready Reckoner are for the lands of the entire area and the uniform rates are determined with respect to different lands.

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62. LIMITATION ACT, 1963 – Sections 5, 12 and 14

(i) Conduct of party – Lacks due diligence and was negligent – Not entitled to condonation of delay u/s 5 of the Act and exclusion of time spent in wrong forum u/s 14 of the Act – Principle reiterated.

(ii) No appeal in the eyes of law – Unless delay in filing appeal is condoned.

(iii) Exclusion of time u/s 14 of the Act rejected – Condonation of delay u/s 5 of the Act – Not permissible on same set of facts.

परिसीमा अधिनियम, 1963 – धाराएं 5, 12 एवं 14

(i) पक्षकार का आचरण – सम्यक तत्परता का अभाव तथा लापरवाही – अधिनियम की धारा 5 के अधीन विलंब से क्षमा एवं गलत मंच पर व्यतीत किया गया समय धारा 14 के अधीन समय के अपवर्जन का अधिकारी नहीं – सिद्धांत दोहराया गया।

(ii) अपील प्रस्तुत करने में हुआ विलंब क्षमा न किये जाने तक विधिक दृष्टि में अपील का अस्तित्व नहीं ।

(iii) अधिनियम की धारा 14 के अधीन समय का अपवर्जन निरस्त – अधिनियम की धारा 5 के अधीन विलंब क्षमा करना – उन्हीं तथ्यों पर अनुज्ञात नहीं।

Ku. Mangla Deshore v. Mst. Krishna Bai (dead) by LRs. A. Madhusudan and ors.

Judgment dated 14.07.2022 passed by the High Court of Madhya Pradesh in Second Appeal No. 743 of 2000, reported in 2023 (1) MPLJ 330

Relevant extracts from the judgment:

As has been held by Hon'ble Apex Court in the case of ***Ramji Pandey and ors. v. Swaran Kali, AIR 2011 SC 489***, as the conduct of respondents throughout lacks due diligence and was also negligent, they would not be entitled to benefit of condonation of delay under section 5 of the Limitation Act and time spent in wrong forum cannot be excluded and delay cannot be condoned.

It is well settled that unless the delay in filing of appeal is condoned, there is no appeal in the eyes of law. If the matter is considered from this angle, then on the date of passing of the impugned judgment dated 18.02.2000, there was no appeal in the eyes of law. In my considered opinion after condoning the delay of a long period under Order 41 Rule 3A CPC, it was the duty of first appellate court to admit the appeal as provided under Rule 11 and then to hear the final arguments as provided under Rule 12 of Order 41 CPC, but nothing was followed by learned first appellate court and on the same date appeal was allowed just contrary to law settled by Full Bench of this Court in the case of ***Maniram and ors. v. Mst. Fuleshwar and ors., 1996 MPLJ 764 (FB).***

However, after recording negative findings on the same set of facts with regard to Section 14 of the Limitation Act there was no occasion available with the first appellate court to consider the question of condonation of delay again on same set of facts in view of Section 5 of the Limitation Act. As the delay in filing the first appeal was not condonable, therefore there was no question of deciding the appeal on merits. Accordingly, the impugned judgment and decree deserves to be and is hereby set aside and the judgment and decree passed by learned trial court is restored.

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63. LIMITATION ACT, 1963 – Section 14

(i) Condonation of delay u/s 5 of the Act and exclusion of time u/s 14 of the Act – Cannot be equated.

(ii) Period once excluded u/s 14 of the Act – Cannot be counted for purpose of computing the period for condonation of delay u/s 5 of the Act.

परिसीमा अधिनियम, 1963 – धारा 14

(i) अधिनियम की धारा 5 के अधीन विलंब से छूट तथा अधिनियम की धारा 14 के अधीन समय का अपवर्जन – एक समान नहीं माने जा सकते।

(ii) अधिनियम की धारा 14 के अंतर्गत एक बार अपवर्जित समय – अधिनियम की धारा 5 के अधीन विलंब के क्षमा करने की अवधि की गणना हेतु विचार में नहीं लिया जा सकता।

Laxmi Srinivasa R and P Boiled Rice Mill v. State of A.P. and anr.

Order dated 14.11.2022 passed by the Supreme Court in Special Leave Petition (C) No. 11225 of 2022, reported in 2023 (1) MPLJ 410 (SC)

Relevant extracts from the order:

It is an accepted position that the appellant had filed a writ petition before the High Court on 24.02.2018, which was not entertained vide the order dated 07.03.2018 on the ground that the appellant should approach the Appellate Authority. The appellant is entitled to ask for exclusion of the said period in terms of Section 14 of the Limitation Act, 1963. Exclusion of time is different, and cannot be equated with condonation of delay. The period once excluded, cannot be counted for the purpose of computing the period for which delay can be condoned. Of course for exclusion of time under Section 14 of the Limitation Act, 1963, the conditions stipulated in Section 14 have to be satisfied.

[See – ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and ors., (2008) 7 SCC 169*** and ***Kalpraj Dharamshi and anr. v. Kotak Investment Advisors Limited and anr., (2021) 10 SCC 401***]

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64. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Permanent disability – Amputation of right arm – The fact that applicant was serving and his salary was 1000 USD, the loss of income should be taken at least ₹ 30,000/- per month.

मोटर यान अधिनियम, 1988 – धारा 166

प्रतिकर – स्थायी निर्योग्यता – दाहिनी भुजा का विच्छेदन – इस तथ्य को देखते हुए कि आवेदक सेवा में था और उसका वेतन 1000 यू.एस.डी. था, तब आय की हानि कम से कम 30000 रूपये प्रतिमाह ली जानी चाहिए।

Ramesh v. Karan Singh and anr.

Judgment dated 16.09.2022 passed by the Supreme Court in Civil Appeal No. 6365 of 2022, reported in 2022 ACJ 2658

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***65. MOTOR VEHICLES ACT, 1988 – Section 166**

Contributory negligence – Proof – Neither allegation about contributory negligence in written statement nor any evidence was produced – Tribunal erred in holding that accident occurred as a partial negligence of deceased.

मोटर यान अधिनियम, 1988 – धारा 166

योगदायी उपेक्षा – प्रमाण – लिखित कथन में योगदायी उपेक्षा के विषय में न तो कोई अभिकथन किया गया और न ही कोई साक्ष्य प्रस्तुत की गई – अधिकरण की यह अवधारणा कि दुर्घटना मृतक की आंशिक उपेक्षा से कारित हुई, गलत थी।

Awdhesh Kumari and ors. v. Harishchandra and ors.

Judgment dated 31.03.2022 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 1121 of 2015, reported in 2022 ACJ 2440

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66. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168

(i) Accident caused by harvester No. 4598 – No need to register harvester – Registration No. 4598 identifies the tractor on which harvester was mounted – Tractor properly implicated in the case – Insurance Company liable to pay compensation.

(ii) Harvester mounted on Tractor – Harvester not included in schedule – Additional premium not required – Additional premium is payable in case of trailers mentioned in schedule of trailers.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 168

(i) हारवेस्टर क्रमांक 4598 से दुर्घटना कारित – हारवेस्टर का पंजीयन आवश्यक नहीं – पंजीयन क्रमांक 4598 से ट्रेक्टर की पहचान पुष्ट होती है, जिससे हारवेस्टर जुड़ा है – ट्रेक्टर को मामले में उचित आलिप्त किया गया – बीमा कंपनी प्रतिकर के भुगतान हेतु दायित्वाधीन।

(ii) ट्रेक्टर से जुड़ा हुआ हारवेस्टर – हारवेस्टर अनुसूची में सम्मिलित नहीं – अतिरिक्त प्रीमियम आवश्यक नहीं – ट्रेलरों की अनुसूची में वर्णित ट्रेलरों के मामले में अतिरिक्त प्रीमियम भुगतान योग्य ।

Manager, Magma HDI General Insurance Co. Ltd, Kolkata v. Puja Bhalavi and ors.

Order dated 10.11.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 2054 of 2017, reported in 2023 (1) MPLJ 454

Relevant extracts from the order:

There is identification of the tractor and its owner in the *dehati nalishi* itself, therefore, contention of the learned counsel for the Insurance Company that tractor has been falsely implicated is not made out. Once it is mentioned on the date of accident itself that harvester caused accident and number is mentioned as 4598, name of the owner is mentioned, then admittedly when harvester is not required to be registered separately registration No.4598 is that of the tractor on which harvester was mounted and not of the harvester.

It is clear that additional premium is payable in respect of any trailer mentioned in schedule of trailers. Insurance Company has though mentioned threshing machines, drums, bailing machines, trusses and tiers, but has not mentioned harvester to be included in the schedule of trailers and therefore, harvester being not a trailer mentioned in the schedule no additional premium will be payable in terms of India Motor Tariff (IMT). 48.

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67. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168

(i) Motor accident case – Determination of compensation – Income Tax Return (ITR) being statutory document, may be considered for computation of annual income.

(ii) The Act being a beneficial legislation, concept of 'just and fair' compensation should be of paramount importance.

(iii) Calculation of 'just and fair' compensation – Explained.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 168

(i) मोटर दुर्घटना प्रकरण – प्रतिकर का निर्धारण – आयकर रिटर्न वैधानिक दस्तावेज होने से वार्षिक आय की गणना में विचार योग्य।

(ii) अधिनियम के लाभकारी विधान होते हुए 'उचित एवं न्यायसंगत, सिद्धांत के आधार पर प्रतिकर दिया जाना प्रमुख कारक होगा ।

(iii) 'उचित एवं न्यायसंगत प्रतिकर की गणना – व्याख्या की गई ।

Anjali and ors. v. Lokendra Rathod and ors.

Judgment dated 06.12.2022 passed by the Supreme Court in Civil Appeal No. 9014 of 2022, reported in 2023 (1) MPLJ 415 (SC)

Relevant extracts from the judgment:

The deceased was aged 28 years at the time of the accident, and he used to run a business of scrap and earned Rs. 15,000/- per month as claimed by the appellants, in support the appellants had filed the deceased's Income Tax Return for financial year 2009-2010 before the Tribunal which showed the total income of deceased to be Rs.1,18,261/-, approx. Rs.9855/- per month. The MACT disregarded the deceased's Income Tax Return on the ground that neither any ITR prior to 2009-2010 nor any other document with regard to the deceased's income was filed before the Tribunal. The MACT while relying on this Court's judgment in ***Laxmi Devi & ors. v. Mohammad Tabbar & anr.*, *(2008) 12 SCC 165*,** held the deceased to be a skilled labour and fixed his income at Rs.4000/- per month i.e., Rs.48,000/- per annum. The Tribunal applied a multiplier of '17' and deducted one-fourth (1/4th) of the income towards his personal expenses for the purpose of calculation of the compensation under the head of loss of dependency. A total sum of Rs.6,12,000/- was awarded towards loss of dependency, to this Rs.10,000/- was added for loss of pain & suffering and Rs.2,000/- for funeral expenses. The MACT awarded a total sum of Rs.6,24,000/- (Rupees Six Lakh Twenty-Four Thousand only) towards compensation with interest @ 6% per annum from the date of the Claim Petition till date of realization.

The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased's annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in ***Malarvizhi & ors. v. United India Insurance Co. Ltd. and ors., (2020) 4 SCC 228*** has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In ***Malarvizhi*** (supra), this Court has laid as under:

> "10. …We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased."

Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010.

The provisions of the Motor Vehicles Act, 1988 gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. In ***Sarla Verma & ors. v. Delhi Transport Corporation & anr., (2009) 6 SCC 121*** this Court has laid down as under:

> "16. ..."Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."

In the instant case the deceased is survived by seven (7) dependents, hence in view of the ***Sarla Verma*** (supra) judgment and the Constitution bench judgment of this Court in ***National Insurance Co. Ltd. v. Pranay Sethi & ors., (2017) 16 SCC 680,*** the appropriate deduction for personal expenses for deceased ought to be 1/5th only and not 1/4th as applied by the Tribunal and High Court.

The Tribunal erred by not making any additions to future prospects of the deceased, whereas the High Court by placing reliance on ***Sarla Verma*** (supra) and ***Pranay Sethi*** (supra) held that since the deceased was under 40 years of age and was self-employed, he be entitled to addition of future prospects of 40% of his established income. We find no error in the High Court's reasoning for adding 40% of the deceased's income towards future prospects.

The Tribunal awarded meagre sums of Rs.10,000/- and Rs.2,000/- towards conventional heads and funeral expenses, respectively, whereas the High Court while placing reliance on ***Pranay Sethi*** (supra) awarded Rs.70,000/- under conventional heads and Rs.10,000/- towards funeral expenses of the deceased. Although the High Court was correct in placing reliance on ***Pranay Sethi*** (supra), the High Court erred by not granting an increment of 10% on the conventional heads in every three years as directed in the ***Pranay Sethi*** (supra).

Hence, we are of the opinion that the High Court ought to have added the increment of 10% to the conventional heads as per the dictum in ***Pranay Sethi*** (supra).

A three-Judge Bench of this Court in ***United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur and ors., (2021) 11 SCC 780*** after considering ***Pranay Sethi*** **(supra)**, has awarded spousal consortium at the rate of Rs.40,000/ (Rupees forty thousand only) and towards loss of parental consortium to each child at the rate of Rs.40,000/ (Rupees forty thousand only). The compensation under these heads also needs to be increased by 10%. Thus, the spousal consortium is awarded at Rs.44,000/ (Forty-four thousand only), and towards parental consortium at the rate of Rs.44,000/ each (Total Rs.1,32,000/-) is awarded to the three children.

In light of the above mentioned discussion, the Appellants are entitled to the following amounts:

S. No.	Head	Compensation Awarded
1.	Income	Rs. 9,855/- per month
2.	Future Prospects	Rs.3,942/- (i.e. 40% of the income)
3.	Deduction Towards personal expenses	Rs.2,300/- (i.e. 1/6th of expenses Rs.9,855 + Rs.3,942)
4.	Total Annual Income	Rs.1,37,964/- [(i.e. 5/6th of Rs.9,855 + Rs.3,942) x 12]
5.	Multiplier	17
6.	Loss of Dependency	Rs.23,45,388/- (i.e. Rs.1,37,964 x 17)
7.	Funeral Expenses	Rs. 50,000/-
8.	Loss of Estate	Rs. 20,000/-
9.	Loss of Spousal Consortium	Rs. 44,000/-
10.	Loss of Parental Consortium to each of the three children	Rs. 44,000/- each
11.	Total Compensation to be Paid	Rs. 25,91,388/-.

Thus the total compensation payable to the appellants is Rs. 25,91,388/- with interest at 9% per annum from the date of filing of the application till the date of payment of the compensation to the Appellants.

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68. MOTOR VEHICLES ACT, 1988 – Section 168 (1)
Compensation – Road accident – Deceased aged 12 years – It is just and proper to accept the notional income of Rs. 30,000/- p.a. including future prospects and using multiplier of 15.

मोटर यान अधिनियम, 1988 – धारा 168 (1)

प्रतिकर – सड़क दुर्घटना – मृतक की आयु 12 वर्ष – भविष्य की संभावनाओं को सम्मिलित करते हुए अनुमानित आय 30,000 रूपये प्रतिवर्ष स्वीकार करना और 15 के गुणक का प्रयोग उचित और न्यायसंगत है।

Meena Devi v. Nunu Chand Mahto and ors.

Judgment dated 13.10.2022 passed by the Supreme Court in Civil Appeal No. 7255 of 2022, reported in 2022 ACJ 2478

Relevant extracts from the judgment:

It is apparent that in the cases of child death, the notional income of ₹ 15,000/- as specified in the II Schedule of Motor Vehicles Act has been enhanced on account of devaluation of money and value of rupee coming down from the date on which the II Schedule of M.V. Act was introduced and the said notional income was treated as ₹ 30,000/- in the case of ***Kishan Gopal and anr. v. Lala and ors., (2014) 1 SCC 244*** and ₹ 25,000/- in ***Kurvan Ansari @ Kurvan Ali & anr. v. Shyam Kishore Murmu and anr., (2022) 1 SCC 317*** in age group of 10 and 7 years, respectively.

Thus, applying the ratio of the said judgments, looking to the age of the child in the present case i.e. 12 years, the principles laid down in the case of ***Kishan Gopal*** (supra) are aptly applicable to the facts of the present case. As per the ocular statement of the mother of the deceased, it is clear that deceased was a brilliant student and studying in a private school. Therefore, accepting the notional earning ₹ 30,000/- including future prospects and applying the multiplier of 15 in view of the decision of this Court in ***Sarla Verma & ors. v. Delhi Transport Corporation and anr., (2009) 6 SCC 121*** the loss of dependency comes to ₹ 4,50,000/- and if we add ₹ 50,000/- in conventional heads, then the total sum of compensation comes to ₹ 5,00,000/-. As per the judgment of MACT, lump sum compensation of ₹ 1,50,000/- has been awarded, while the High Court enhanced it to ₹ 2,00,000/- up to the value of the Claim Petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made hereinabove. Hence, we determine the total compensation as ₹ 5,00,000/- and on reducing the amount as awarded by the High Court i.e. ₹ 2,00,000/-, the enhanced amount comes to ₹ 3,00,000/-.

At this stage, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in ***Nagappa v. Gurdayal Singh and ors., (2003) 2 SCC 274,*** it was observed that under the MV Act, there is no restriction that the

Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation exceeding the claimed amount.

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69. N.D.P.S. ACT, 1985 – Sections 37 and 67
CRIMINAL PROCEDURE CODE, 1973 – Section 439
Bail – Nothing was recovered from the possession of the accused – Not safe to conclude that he is not guilty of the offence – The length of the period of his custody or the fact that the charge-sheet has been filed and trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting bail to the accused.

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 37 एवं 67
दण्ड प्रक्रिया संहिता, 1973 – धारा 439
जमानत – अभियुक्त के आधिपत्य से कुछ भी बरामद नही हुआ – अभियुक्त अपराध का दोषी नहीं है ऐसा निष्कर्ष सुरक्षित नहीं – अभिरक्षा की लंबी अवधि अथवा यह तथ्य कि अंतिम प्रतिवेदन प्रस्तुत किया जा चुका है और विचारण आरंभ हो गया है अभियुक्त को जमानत प्रदान करने के प्रेरक आधारों के रूप में नहीं माना जा सकता।

Narcotics Control Bureau v. Mohit Aggarwal

Judgment dated 19.07.2022 passed by the Supreme Court in Criminal Appeal No. 1001 of 2022, reported in AIR 2022 SC 3444 (Three Judge Bench)

Relevant extracts from the judgment:

In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

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70. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 139
EVIDENCE ACT, 1872 – Section 45

Dishonour of cheque – Standard of proof for rebuttal of presumption is preponderance of probabilities – Cheque filled by person other than drawer – Signature and delivery of cheque by accused to complainant admitted – Presumption u/s 139 arises and cannot be rebutted by mere hand writing expert report.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 और 139
साक्ष्य अधिनियम, 1872 – धारा 45

चेक का अनादरण – उपधारणा के खंडन के लिए प्रमाण का मानक – संभावनाओं की प्रबलता है – लेखीवाल (जारीकर्ता) के अलावा अन्य व्यक्ति द्वारा चेक भरा गया – अभियुक्त द्वारा चैक पर हस्ताक्षर एवं परिवादी को प्रदाय करना स्वीकृत – धारा 139 के अंतर्गत उपधारणा की जायेगी और मात्र विशेषज्ञ रिपोर्ट से इसका खंण्डन नहीं किया जा सकता है।

Oriental Bank of Commerce v. Prabodh Kumar Tiwari

Judgment dated 16.08.2022 passed by the Supreme Court in Criminal Appeal No. 1260 of 2022, reported in 2022 (3) Crimes 345 (SC)

Relevant extracts from the judgment:

For determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.

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71. PREVENTION OF CORRUPTION ACT, 1988 – Section 19

(i) Sanction for prosecution – Delay – Consequences – After expiry of three months and additional one month, the aggrieved party would be entitled to approach the writ court concerned to seek appropriate remedy.

(ii) Sanction for prosecution – Delay – Effect – Consequence of non-compliance of statutory period in granting of sanction shall not be the sole ground for quashing of the criminal proceeding.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 19

(i) **अभियोजन की मंजूरी – विलंब – परिणाम – तीन माह और अतिरिक्त एक माह की अवधि बीत जाने के पश्चात् व्यथित पक्ष उपयुक्त उपचार प्राप्त करने हेतु संबंधित रिट न्यायालय में प्रार्थना करने का अधिकारी होगा।**

(ii) **अभियोजन की मंजूरी – विलंब – प्रभाव – मंजूरी प्रदान करने में वैधानिक अवधि का अनुपालन नहीं करना आपराधिक कार्यवाही को अभिखंडित करने का एकमात्र आधार नहीं होगा ।**

Vijay Rajmohan v. Central Bureau of Investigation (Anti-Corruption Branch)

Judgment dated 11.10.2022 passed by the Supreme Court in Criminal Appeal No. ….. of 2022, reported in (2023) 1 SCC 329

Relevant extracts from the judgment:

The new proviso to Section 19 mandating that the competent authority shall endeavour to convey the decision on the proposal for sanction within a period of three months can only be read and understood as a compelling statutory obligation. We are not inclined to accept the submission of the learned ASG that this proviso is only directory in nature. In the first place, the consistent effort made by all branches of the State, the Judiciary, the Legislative, and the Executive, to ensure early decision-making by the competent authority cannot be watered down by lexical interpretation of the expression endeavour in the proviso.

The sanctioning authority must bear in mind that public confidence in the maintenance of the Rule of Law, which is fundamental in the administration of justice, is at stake here. By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny, thereby vitiating the process of determination of the allegations against the corrupt official ***Subramaniam Swamy v. Manmohan Singh, (2012) 3 SCC 64.*** Delays in prosecuting the corrupt breeds a culture of impunity and leads to systemic resignation to the existence of corruption in public life. Such inaction is fraught with the risk of making future generations getting accustomed to corruption as a way of life. Viewed in this context, the duty to take an early decision inheres in the power vested in the appointing authority to grant or not to grant sanction. In fact, the statement of object and reasons for the 2018 amendment of Section 19 clearly explain the purpose as under: -

> "…Further, in the light of a recent judgment of the Supreme Court, the question of amending section 19 of the Act to lay down clear criteria and procedure for sanction of prosecution, including the stage at which sanction can be sought, timelines within which order has to be passed, was also examined by the Central Government and it is proposed to incorporate appropriate provisions in section 19 of the Act."

The intention of the Parliament is evident from a combined reading of the first proviso to Section 19, which uses the expression 'endeavour' with the subsequent provisions. The third proviso mandates that the extended period can be granted only for one month after reasons are recorded in writing. There is no further extension. The fourth proviso, which empowers the Central Government to prescribe necessary guidelines for ensuring the mandate, may also be noted in this regard. It can thus be concluded that the Parliament intended that the process of grant of sanction must be completed within four months, which includes the extended period of one month.

If it is mandatory for the sanctioning authority to decide in a time-bound manner, the consequence of non-compliance with the mandatory period must be examined. This is a critical question having no easy answer. In ***Subramanian Swamy*** (supra), this Court suggested that Parliament may consider providing deemed sanction if a decision is not taken within the prescribed period. The Appellant herein contends the very opposite that the criminal proceedings must be quashed if the decision is not taken within the prescribed period.

In the first place, non-compliance with a mandatory period cannot and should not automatically lead to the quashing of criminal proceedings because the prosecution of a public servant for corruption has an element of public interest having a direct bearing on the rule of law. This is also a non-sequitur. It must also be kept in mind that the complainant or victim has no other remedy available for judicial redressal if the criminal proceedings stand automatically quashed. At the same time, a decision to grant deemed sanction may cause prejudice to the rights of the accused as there would also be non-application of mind in such cases.

Accountability has three essential constituent dimensions.

(i) responsibility, (ii) answerability and (iii) enforceability. Responsibility requires the identification of duties and performance obligations of individuals in authority and with authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of

responsibility and accountability to be taken. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.

Accountability, as a principle of administrative law, when applied to the issue that we are dealing with, translates in this manner. Responsibility for grant of sanction for prosecution of a public servant under Section 19 of the PC Act is always vested in the appointing authority. Identification of appointing authority is always clear and straight forward. The 2018 amendment specifically obligates the appointing authority to convey the decision within three months and to provide for the reasons to be recorded in writing for the extended period of one month. This amendment, in fact, evidences legislative incorporation of answerability, the second constituent of accountability. For enforceability, Parliament has expressly empowered the Central Vigilance Commission under Section 8(1) (f) of the CVC Act to review the progress of the applications pending with the competent authorities, and this function must take within its sweep the power to deal with the consequences of failure of the competent authority to comply with its statutory duty. This power and responsibility of CVC is clear from the provisions of the statute and decipherable from functions entrusted to it.

In conclusion, we hold that upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the non- grant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, the CVC shall enquire into the matter in the exercise of its powers under Section 8(1) (e) and (f) and take such corrective action as it is empowered under the CVC Act.

The second issue is answered by holding that the period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be Accountable for the delay and be subject to judicial review and administrative action by the CVC under Section 8(1)(f) of the CVC Act.

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72. SPECIAL MARRIAGE ACT, 1954 – Section 40-B(3)
CIVIL PROCEDURE CODE, 1908 – Section 96 (2) and Order 9 Rule 13

(i) ***Ex parte*** **decree of divorce – Appeal filed on the ground that the Family Court has decided the matter swiftly – Enactment has special provision relating to adjournment, conclusion of trial within time limit – Notice served – No ground for appeal.**

(ii) **Appeal u/s 96(2) of CPC against** ***ex parte*** **decree of divorce – Ground that Family Court has committed an error in proceeding** ***ex parte*** **is not arguable – Finding given on merit or on jurisdiction of Court below, may be challenged.**

(iii) **Setting aside** ***ex parte*** **decree – Recourse to the special procedure under Order 9 Rule 13 CPC is available.**

विशेष विवाह अधिनियम, 1954 – धारा 40-ख(3)
सिविल प्रक्रिया संहिता, 1908 – धारा 96 (2) एवं आदेश 9 नियम 13

(i) विवाह विच्छेद की एकपक्षीय आज्ञप्ति – कुटुम्ब न्यायालय द्वारा तीव्र गति से प्रकरण के निराकरण के आधार पर अपील संस्थित – अधिनियम में विचारण के स्थगन तथा समयसीमा में निराकरण हेतु विशेष प्रावधान – सूचना पत्र तामील – अपील का आधार नहीं ।

(ii) एकपक्षीय विवाह विच्छेद आज्ञप्ति के विरूद्ध सिविल प्रक्रिया संहिता की धारा 96(2) में अपील – कुटुम्ब न्यायालय द्वारा एकपक्षीय कार्यवाही कर त्रुटि कारित किये जाने का आधार तर्कपूर्ण नहीं – गुण–दोष पर अथवा विचारण न्यायालय के क्षेत्राधिकार के संबंध में दिये गये निष्कर्ष पर आक्षेप अनुज्ञेय ।

(iii) एकपक्षीय विवाह विच्छेद आज्ञप्ति को अपास्त कराना – सिविल प्रक्रिया संहिता के आदेश 9 नियम 13 के अंतर्गत विशेष प्रक्रिया उपलब्ध।

Lee Anne v. Arunoday Singh

Judgment dated 09.07.2022 passed by the High Court of Madhya Pradesh in First Appeal No. 445 of 2020, reported in 2023 (1) MPLJ 264

Relevant extracts from the judgment:

The appellant has raised eye-brows on the speed with which the family Court has decided the matter. In the teeth of Section 40-B of the Act of 1954, the proceedings cannot be jettisoned merely because it were conducted with quite promptitude.

The legislative mandate ingrained in this provision makes it obligatory to conduct the proceeding on day-to-day basis until its conclusion. The Court below, in fact has not proceeded with that speed and ensured that the appellant/defendant had received notices, got sufficient opportunity to participate in conciliation proceedings and in the Court proceedings. Sub-section 2 of Section 40-B puts an obligation to the family Court to make endeavour to decide the trial within six months. Thus, on this account no fault can be found in the proceedings of the Court below.

The legislative intent in inserting Section 40-B is to ensure that the trial and appellate proceedings arising out of Special Marriage Act are decided within a time frame. Sub-section 3 of Section 40-B makes it obligatory for the appellate Court to make endeavour to conclude the 8 hearing within three months from the date of service of notice of appeal on the respondent. Thus, speed and acceleration of proceeding is requirement of the enactment. The only aspect which needs to be taken care of is service of notice to the other side and adjournments which are necessary in the interest of justice.

We find substance in the argument of learned Senior Counsel for the respondent that in this regular first appeal which is analogous to a first appeal under Section 96 (2) of CPC, it is not open to the appellant to argue that the family court has committed an error in proceeding *ex parte*. The appellant can only attack the findings given on merits or on the aspect of jurisdiction of Court below as per the material available on record. For this reason, even otherwise, the order of proceeding ex parte by the Court below cannot be a subject matter of judicial review in this appeal.

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73. SPECIFIC RELIEF ACT, 1963 – Section 10

(i) Amendment in the Act – Prospective in nature and cannot apply to those transactions that took place prior to its coming into force.

(ii) Performance of contract – Limitation – When the time period for performance is not fixed then the purchaser can take recourse to the notice issued but such circumstances do not come into play when fixed time period was clearly mandated in the contract.

(iii) Contract to sell immovable property – Whether time is the essence of contract? Even if it does not appear from the contract, the court may infer that it is to be performed within reasonable time.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 10

(i) अधिनियम में संशोधन – प्रकृति में भविष्यवर्ती एवं उन संव्यवहारों पर लागू नहीं हो सकता जो इसके प्रभाव में आने से पूर्व के हैं ।

(ii) संविदा का पालन – परिसीमा – जब पालन हेतु समय सीमा निर्धारित नहीं हो तब क्रेता जारी सूचनापत्र का अवलंब ले सकता है किंतु जब संविदा में निर्धारित समय सीमा स्पष्टतः आदेशित हो तब उक्त परिस्थितियॉ प्रचलन में नहीं।

(iii) अचल संपत्ति को विक्रय करने की संविदा – क्या समय संविदा का सार है? भले ही संविदा से ऐसा प्रतीत न हो रहा हो, तो भी न्यायालय यह अनुमानित कर सकता है कि संविदा का पालन उचित समय में किया जाना चाहिए।

Katta Sujatha Reddy and anr. v. Siddamsetty Infra Projects Private Limited and ors.

Judgment dated 25.08.2022 passed by the Supreme Court in Civil Appeal No. 5822 of 2022, reported in (2023) 1 SCC 355
(Three Judge Bench)

Relevant extracts from the judgment:

At the outset, this Court has perused Clause 3 of the agreements, which is in two parts. The first part provides for the purchaser's obligation, while the second part details the obligation of the vendors to provide the requisite certificates. Although both the obligations were required to be completed within the stipulated period of three months, there is a substantive difference between these two sets of obligations. The obligation upon the vendors concerned was production of certain certificates, such as income tax exemption certificate and agriculture certificate. No consequences were spelt out for non-performance of such obligations. Whereas the obligation on the purchaser, was to make the complete payment of the sale consideration within three months. The clause further mandates forfeiture of the advance amount if the payment obligation is not met within the time period stipulated therein.

In this context, this Court in ***Chand Rani (dead) by LRs. v. Kamal Rani (dead) by LRs., (1993) 1 SCC 519,*** held as under:

"25. From an analysis of the above case law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. from the express terms of the contract;
2. from the nature of the property; and
3. from the surrounding circumstances, for example: the object of making the contract."

In this context, we may note that Article 54 of the Limitation Act provides for two consequences based on the presence of fixed time period of performance. It is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors' reply thereto. In the case at hand, the aforesaid circumstances do not come into play as a fixed time period was clearly mandated by Clause 3 read with Clause 23 of the agreements to sell, as explained above.

In light of the above, we may note that the suit filed by the purchaser was clearly barred by limitation in view of the first part of Article 54 of the Limitation Act and no amount of payment of advance could have remedied such a breach of condition.

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74. SPECIFIC RELIEF ACT, 1963 – Section 16(c)

Specific performance of contract – Readiness and willingness – Plaintiff did not have sufficient funds to discharge his part of contract – Making subsequent deposit of balance consideration after lapse of seven years – Deposit in court would not establish plaintiff's readiness and willingness. [*Umabai v. Nilkanth Dhondiba Chavan, (2020) 11 SCC 790* relied]

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16 (ग)

संविदा का विनिर्दिष्ट पालन – तैयारी एवं तत्परता – वादी के पास संविदा के अपने भाग का पालन करने के लिए पर्याप्त राशि नहीं थी – सात वर्ष व्यतीत होने के उपरांत अवशेष प्रतिफल का पश्चातवर्ती जमा किया जाना – न्यायालय में जमा करना वादीगण की तैयारी एवं तत्परता को स्थापित नहीं करता। (*उमाबाई वि. नीलकांत धौनदिबा चावन, (2020) 11 एससीसी 790* अवलंबित)

U.N. Krishnamurthy (since deceased) Thr. LRs. v. A.M. Krishnamurthy

Judgment dated 12.07.2022 passed by the Supreme Court in Civil Appeal No. 4703 of 2022, reported in AIR 2022 SC 3361

Relevant extracts from the judgment:

In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. Reliance may be placed on ***Umabai v. Nilkanth Dhondiba Chavan, (2005) 6 SCC 243*** where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish Plaintiff's readiness and willingness within meaning of section 16(c) of Specific Relief Act.

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***75. SPECIFIC RELIEF ACT, 1963 – Section 20**

Suit for specific performance of contract – Agreement to sale – Execution of agreement and receipt of earnest money undisputed – Possession delivered – Sale deed to be executed upon receiving of certificate – Third party rights created by vendor – None of the vendors were examined – Adverse inference can be drawn against them.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

संविदा के विनिर्दिष्ट पालन हेतु वाद– विक्रय करार – करार का निष्पादन और अग्रिम धन की प्राप्ति निर्विवाद – आधिपत्य भी प्रदान किया गया – प्रमाण पत्र प्राप्त होने पर विक्रय विलेख निष्पादित किया जाना तय – विक्रेता द्वारा तृतीय पक्ष के हित सृजित – किसी भी विक्रेता की साक्ष्य नहीं कराई – उनके विरूद्ध प्रतिकूल निष्कर्ष निकाला जा सकता है।

M/s Shivali Enterprises v. Smt. Godavari (Deceased) Thr. LRs. and ors.

Judgment dated 13.09.2022 passed by the Supreme Court in Civil Appeal No. 8904 of 2010, reported in AIR 2022 SC 4388

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76. SPECIFIC RELIEF ACT, 1963 – Section 34
SUCCESSION ACT, 1925 – Section 63
EVIDENCE ACT, 1872 – Section 68

(i) Possession of one co-owner is possession of all co-owners.

(ii) Burden of proving a Will shall always lie on the propounder.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34
उत्तराधिकार अधिनियम, 1925 – धारा 63
साक्ष्य अधिनियम, 1872 – धारा 68

(i) एक सहस्वामी का कब्जा, सभी सहस्वामी का कब्जा मान्य।

(ii) वसीयत को प्रमाणित करने का भार हमेशा प्रतिपादक पर होता है ।

Ramkali (dead) by L.Rs. Anand Kishore Shukla and ors. v. Muritkumari (dead) by L.Rs. Gopal Krishan Pandey and ors.

Judgment dated 20.07.2022 passed by the High Court of Madhya Pradesh in Second Appeal No. 1015 of 2004, reported in 2023 (1) MPLJ 367

Relevant extracts from the judgment:

Certainly, in para 32 of the impugned judgment passed by the learned trial Court, the defendants 2–5 were held to be in physical possession of the property in question but at the end of para 32 itself, the learned Court found the plaintiff and defendants 1 –2 to be co-owners and in possession of the land in question. It is well settled that every co-owner is deemed to be in possession of every inch of the land because possession of one co-owner is possession of all.

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77. SPECIFIC RELIEF ACT, 1963 – Section 34
When suit is barred by proviso to Section 34 for not claiming relief of possession? Proper approach – Court should not dismiss the suit straightaway but should afford opportunity to plaintiff to amend the plaint claiming consequential relief.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

कब्जे के अनुतोष की मांग नहीं करने के कारण कब वाद धारा 34 के परंतुक से वर्जित है? उचित दृष्टिकोण – न्यायालय को वाद तुरंत निरस्त नहीं करना चाहिए अपितु वादी को पारिणामिक अनुतोष की मांग करने हेतु वादपत्र में संशोधन का अवसर उपलब्ध कराना चाहिए।

Ganpatlal v. Ganga Bai and ors.

Judgment dated 31.10.2022 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 204 of 2002, reported in ILR 2023 MP 496

Relevant extracts from the judgment:

It has been the consistent view that where plaintiff who is able to sue for further relief omits to do so and proviso to Section 42 of the Specific Relief Act, 1963 becomes applicable, the Court should not dismiss the suit straight-away but should afford an opportunity to the plaintiff to amend his plaint to claim the consequential relief. It is then for the plaintiff to amend the plaint and claim the consequential relief or to face the possibility of the suit being dismissed. Even if after being afforded such an opportunity, the plaintiff fails to avail the same then his suit has to be dismissed. In any case, the suit should not be dismissed immediately upon recording of finding that the same is barred by the proviso to Section 34 of the Specific Relief Act.

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PART – III

CIRCULARS /NOTIFICATIONS

NOTIFICATION DATED 22.03.2023 OF THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE REGARDING DATE OF ENFORCEMENT OF WILD LIFE (PROTECTION) AMENDMENT ACT, 2022

S.O. 1394(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Wild Life (Protection) Amendment Act, 2022 (18 of 2022), the Central Government hereby appoints the 1st day of April, 2023 as the date on which the said Act shall come into force.

[F. No. 1-25/2022 WL]
BIVASH RANJAN,
Additional Director General of
Forests (WL) & Director, Wild Life Preservation.

का.आ. 1394 (अ).– केन्द्रीय सरकार, वन्य जीव (संरक्षण) संशोधन अधिनियम, 2022 (2022 का 18) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 अप्रैल, 2023 को, उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम प्रवृत्त होगा।

(फा.सं. 1–25/2022 डबल्यूएल)
बिवास रंजन,
अपर वन महानिदेशक (डबल्यूएल)
और निदेशक, वन्य जीव परीक्षण

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"What is necessary is to have Judges who are prepared to fashion new tools, forge new methods, innovate new strategies and evolve a new jurisprudence, who are judicial statesmen with a social vision and a creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability, not to any party in power nor to the opposition nor to the classes which are vociferous but to the half-hungry millions of India who are continually denied their basic human rights. We need Judges who are alive to the socio-economic realities of Indian life, who are anxious to wipe every tear from every eye, who have faith in the constitutional values and who are ready to use law as an instrument for achieving the constitutional objectives."

- P.N. Bhagwati, J. *in S.P. Gupta v. Union of India, 1981 Supp SCC 87, para 27.*

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

मध्यप्रदेश भण्डार क्रय तथा सेवा उपार्जन नियम – 2015 (यथा संशोधित 2022)

आदेश क्रं. एफ 9–20/2021/अ– 73 भोपाल दिनांक 13.01.2023 के अनुसार आदेश क्रं. 11208–3209–ग्यारह–अ, दिनांक 26 अगस्त 1974 में मध्यप्रदेश वित्तीय संहिता जिल्द– 2 के विद्यमान परिशिष्ट– 5 में प्रतिस्थापित मध्यप्रदेश भण्डार क्रय नियम एवं सेवा उपार्जन संबंधी पूर्व में जारी समस्त आदेश, निर्देश/ नियम निष्प्रभावी करते हुए संलग्न परिशिष्ट अनुसार मध्यप्रदेश भण्डार क्रय तथा सेवा उपार्जन नियम, 2015 (यथा संशोधित 2022) को प्रभावी किया गया है।

उक्त नियमावली का क्यू आर कोड के माध्यम से अध्ययन किया जा सकता है।

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मध्यप्रदेश न्यायिक सेवाएं (वेतन, पेंशन तथा अन्य सेवानिवृत्ति लाभों का पुनरीक्षण) नियम, 2022

फा. क्रं. 482 – इक्कीस – ब (एक) – 2023 – यतः, माननीय सर्वोच्च न्यायालय द्वारा डब्ल्यू.पी.(सी) 643/15 ऑल इंडिया जजेस एसोसिएशन विरूद्ध यूनियन ऑफ इडिया तथा अन्य दिनांक 27 जुलाई 2022 में दिये गये निर्देशों के पालन में तथा भारत के संविधान के अनुच्छेद 309 के परंतुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए मध्यप्रदेश के राज्यपाल द्वारा मध्यप्रदेश न्यायिक सेवाएं (वेतन, पेंशन तथा अन्य सेवा निवृत्ति लाभों का पुनरीक्षण) नियम, 2022 बनाये गये हैं। जिसे मध्यप्रदेश राजपत्र (असाधारण) में दिनांक 03 फरवरी 2023 को प्रकाशित किया गया है।

उक्त नियमावली का क्यू आर कोड के माध्यम से अध्ययन किया जा सकता है।

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ज्ञान का प्रकाश सभी अंधेरो को समाप्त कर देता है।

- स्वामी विवेकानंद

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