VOL. II PART-II. APRIL 1996

JOTI JOURNAL

JUDICIAL OFFICERS' TRAINING INSTITUTE

HIGH COURT OF MADHYA PRADESH
JABALPUR-482002

EDITORIAL

This issue of the 'JOURNAL' is going to be my swan song. It is with a heavy heart that I am bidding adieu to the J.O.T.I. and the esteemed readers of this 'JOURNAL'. Men may come and men may go but the institution remains. The institution must march ahead through the men manning it.

The Vedas have ordained " चरैवेति चरैवेति " i.e. 'keep on marching, keep on marching". The spirit behind it, is, that don't stand still, keep on marching ahead on the path of progress. History bears a witness to the fact that since the day we gave 'to ourselves the Constitution' and since the day we became a 'SOVEREIGN DEMOCRATIC REPUBLIC' we have taken strides in every field by subjugating and surmounting all difficulties, inclemencies and adversities. In the field of law also the Constitutional Functionaries i.e. the Law Courts have not lagged behind. The Apex Court and the High Courts of this great country have always declared and maintained the supremacy of the Constitution and have kept the banner of "Rule of Law" high even in rough weathers this country was faced with. New horizons have emerged and new vistas have been opened in the field of law by the Apex Court and the High Courts. The law is being shaped everyday to face the challenges of Time and to fulfil the hopes and ambitions of the people of this country. There is tremendous dynamism in our judicial system which has been amply proved during nearly half a century's Constitutional history of this country.

The constant changes and developments in the field of law can be meaningful only when they are allowed to percolate deep to the grass root level of the people. This can be achieved only through the courts which are working at the grass root level, i.e. the hundreds of trial courts and lower courts which are established even in the farthest and remotest corners of this big state.

The Directorate of Training has so far tried to make available to the Judicial Fraternity of the state through the 'JOTI JOURNAL' the latest case law on various subjects of common use in the lower courts and also circulars issued by the High Court from time to time for guidance of lower courts. It has also started taking up problems of Judges which are sent to it for solution. But as is often said nobody is perfect in this imperfect world, Directorate of Training cannot claim to have achieved its goal of disseminating knowledge of law to the members of district Judiciary. It may be able to march in that direction with its avowed adherence to the Vedic command "चरैवेति चरैवेति"

B. K. SHRIVASTAVA

DIRECTOR

CONDUCT OF A TRIAL COURT JUDGE

(By Hon'ble Shri Justice D.M. Dharmadhikari)

It has been truly said that "every Judge, who tries a case, is himself on trial for he is being tried by those present to see that he gives the accused a fair trial". Fair trial means that every case must be heard and determined in an open Court. The constitutional oath administered to every Judge contains the guidelines for administration of justice that it should be 'without fear or favour, affection or ill-will and to uphold the laws and the Constitution." It is however, necessary to humanise the administration of justice. The oath administered to the Queen of England by Archbishop is also appropriate for the work of a Judge. While administering oath, the Archbishop asks the Queen "Will you to your power cause law and justice in mercy to be executed in all your judgments ?" The famous lines of justice Oliver Holmes are also good guide for the work of a Judge: "Spirit of law is not logic but experience." A Judge has to remind himself that he has to uphold the rule of law which means subordination only to law or body of legal doctrines enuciated by his bretheren on the Bench in the past and present and the laws passed by the Legislature.

It is always said " justice must not only be done; but also seem to have been done." Therefore, it is not enough that a case is correctly decided but it is equally important that parties to the case have been given fullest opportunity to place their cases and the points of view and they are heard patiently. In a fair trial it is implicit that no one ought to be condemned unheard and a litigant feels assured that his case will be put before an impartial Judge and by an Advocate who shall have liberty to say all that is to be said on his behalf.

A fair administration of justice also means that the Judge must act on evidence put before him and not on any outside information. He will not listen to any private solicitations and take notice of anything unless it was given in evidence, which is recorded in the presence of parties. A Judge is not to act arbitrarily on his whim and caprice. His every action should be informed by reason. It is not enough for him to come to a right conclusion; but it is necessary to give the process of reasoning by which the conclusion is reached. This is necessary as the parties involved and in the event of an appeal the Appellate Court should be able to know on what grounds or reasons the decision was reached.

A Judge should insist on the counsel to make a methodical presentation of his case. He should be made to state the points in issue, recount the facts in good order and state the law on legal aspects. A Judge should not stifle relevant evidence and good argument; but should not tolerate irrelevant evidence or submissions. He should be able to channelise and control the proceedings conducted before him to let in what is relevant and avoid boredom and waste of time. Judge should extend all courtesies to litigant-public, witnesses and counsel appearing. It is only when respect is shown to others that Judge will receive greater respect; The litigant comes with some complaint or grievance. The Judge should hear him coolly and sympathetically, as the doctor hears and treats a patient.

The aim of Judicial administration of Justice is to impress upon common men and the citizens in general that obedience and adherence to law pays. 'If people are to keep a sense of obligation to law, then it must correspond with what they consider to be right and just or at any rate must not unduly divorced from it. In other words, it must correspond as near as may with justice'. (Lord Denning from Road to Justice).

For a Judge in his journey in the process of law, he has not to rely more on legality - on technical rules of law; but to make effort to see those things which are right and true, because not only that the laws should be just; but they should also be justly administered. Both are important; and, more important is that law should be justly administered. It is no use having just laws, if they are administered unfairly by bad Judges and lawyers. 'A Country can go ahead with those laws that are harsh or unjust so long as they are administered by just Judges who can mitigate their harshness or alleviate their unfairness. But the country cannot long tolerate an illegal system which does not give a fair trial."

So far as the expectations of the society from the Judge are concerned, the following observations of Francis Bacon and Winston Churchill respectively contain valuable guidance and advise:-

"Judges ought to be more learned than witty, more revered than plausible and more advised than confident. Above all things, integrity is their portion and proper virtue".

"A Form of life and conduct for more fair and restricted than the ordinary people is required from Judges. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct".

Some Practical suggestions to the trial court Judges:-

1. He should preside the Court effectively and with dignity.

2. He should channelise and control the proceedings in his court; but should not unduly obstruct or interrupt the work of the lawyers and the recording of evidence by the parties. His participation in the proceedings should be only as a referee in a game.

3. In order to conduct a fair trial, he should hear both the parties patiently, record evidence intelligently and do nothing mechanically - either while recording the evidence or deciding the interlocutory applications.

4. In writing judgments, he should be methodical. He should clearly state the facts, points in issue and the reasons for his conclusion and findings.

5. He should appreciate evidence not as dry words; but on the basis of the background of human conduct and the Judge's own experience of life.

6. He should be courteous to the bar, to the litigant and to the witnesses. He should allow the parties to have their full say; but should tolerate no irrelevance and should not allow himself to be dominated by the parties or their counsel or witnesses.

7. The Judges should, as far as possible, avoid technicality of law to have upper hand in administering justice and he has to deal with the cases on the basis of experience.

8. The Judge should welcome and receive fair criticism of his work from the Bar, Press and the general public. It is a solitary check on all persons in authority that they should be subject to fair criticism.

9. For a successful institutional life as Judge, he should have 'no ambition, no competition and no comparison,' and should ever strive to do his duty to the best of his ability.

IMPORTANT JUDGMENTS OF SUPREME COURT AND M.P. HIGH COURT

1. What is the proper procedure to contradict a witness with his case diary statement under Section 162 Cr. P.C. ?

Before the case diary statement is sought to be used, the contradiction must be elicited from the witness. i.e. he must make a statement which is contrary to any recital in the case diary statement. Only then he can be asked if he had made any particular (i.e. such and such) statement to the police. That part of the statement must be read out. If he admits it may be recorded in the deposition sheet that. "I told the police that ...". if he denies it may be recorded that " I did not tell the police that.....:. The contradictory statement must be extracted in the statement as exhibit subject to proof by the investigating officer. After recording the answer the witness should be asked if he has anything to say regarding the contradictory nature of his earlier statement. This is to enable him to explain the contradiction in accordance with the provisions of section 145 Evidence Act. If the Advocate does not put this question, court should give witness the opportunity by asking the question. When the investigation police officer comes to the witness stand for giving evidence the Advocate concerned should get the statement proved unless the witness had admitted it. Here again the statement must be extracted in deposition and reference must be made to the exhibit number.

In this behalf the following Judgments of M.P. High Court and the Supreme Court may be looked into:-

(1) Ramlal Singh vs. State, A.I.R. 1958. M.P. 380.

(2) State of M.P. vs. Kalu Kachru, A.I.R. 1959, M.P. 391 = 1961 JLJ 110.

(3) Tahsildar Singh vs. State of M.P., A.I.R. 1959, SC 1012.

(4) Podda Narayana vs. State of A.P., A.I.R. 1975 SC 1252.

2. Is it necessary that in all cases corroboration of the evidences of the police personnel or an official witness should be insisted as a matter of course?

No it is not always necessary. The Supreme Court in Nathu

Singh vs. State of M.P., A.I.R. 1973 SC 2783 said that there is no law that the evidences of police officer should not be believed unless corroborated. In Prem Ballab and another vs. State of Delhi, A.I.R. 1977 SC 56, the Supreme Court held that there is no rule of law that conviction cannot be passed on the sole testimony of Food Inspector. It is only out of sense of caution that the courts insisted that the testimony of a Food Inspector should be corroborated by some independent witness. It is a necessary caution which has to be borne in mind because the Food Inspector may in a sense be regarded as an interested witness. But this caution is rule of prudence and not a rule of law. In another case Modan Singh vs. State of Rajasthan, A.I.R. 1978 SC, 1511 the Supreme Court has held that if the evidence of the investigating officer who recovered the material objects is convincing the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution version. Yet in another case Sukhpal vs. State of Haryana (1995) 1 SCC 10, the Supreme Court has held that as a rule of prudence it is desirable that the evidence of police personnel should be corroborated preferably by a reliable witness. But in all cases such corroboration cannot be insisted as a matter of course because it may not be possible in all cases to get corroboration from an independent witness. In State of Assam vs. Muslim Barkataki, A.I.R. 1987, SC 98 it has been held that evidence of police officer cannot be underestimated merely because he is a police officer. In Sama Alana Abdulla vs. State of Gujarat (1996) 1 SCC 427 it has been laid down that the evidence of police officers cannot be rejected only on the ground that they were police witnesses and that they were members of raiding party.

3. Whether an Armourer's evidence can be taken to be expert evidence in respect of the firing condition of a fire arm ?

The Supreme Court in Sukhpal vs. State of Haryana (1995) 1 SCC 10 has held that an Armourer who has a special training in the subject is an expert to give opinion about the firing capability of a rifle. It is not absolutely necessary to make a test firing for the purposes of ascertaining whether or not a rifle is capable of firing.

4. Whether a non-tribal can acquire title on the basis of

adverse possession, over agricultural land belonging to a member of Scheduled Tribe in M.P. ?

No, he cannot. In Chamba Ram vs. Chanda, 1993 MPLJ 80 a plaintiff claiming to be in possession of land belonging to Bhumiswami of Sehariya tribe filed suit for declaration of title by adverse possession on the basis of continuous and open possession for 15 years and for injunction. The defendant belonging to Sehariya tribe which was notified as an aboriginal tribe filed written statement admitting the plaintiff's claim and did not object to plaintiff being declared as Bhumiswami of the suit land. The trial court however dismissed the suit holding that accepting the claim of the plaintiff would result in extinction of defendant's title which would be violative of section 165 (6) of the M.P. Land Revenue Code 1959. The decree was confirmed in appeal. In second appeal by plaintiff the Hon'ble High Court of M.P. held that the object behind enacting section 165 (6) of M.P. Land Revenue Code 1959 is to see that aboriginal tribes who are nomadic by nature do always have land with them to have a settled position in life. The term 'Transfer' is not defined in the M.P. Land Revenue Code 1959. 'Transfer' has to be liberally construed assigning an extended meaning to cover every contingency which results in depriving the aboriginal holder of title and vesting the same in favour of any non-aboriginal. Acceptance of claim of the plaintiff of acquisition of title by adverse possession over agricultural holding of the defendant would result in extinction of the defendant's tile violating the express provision contained in Section 165 (6) of the M.P. Land Revenue Code 1959. Reliance was placed on Pandey Orson vs. Ramchander Sahu, A.I.R. 1992 SC 195 where in the Supreme Court while interpreting the term 'Transfer' in section 71 A of Chotanagpur Tenancy Act held that in section 71 A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. What exactly is contemplated by transfer in section 71 A is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of section 71 A.

The Provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in position to keep their property to themselves in the absence of protection. Therefore when the legislature is extending special protection to the named category, the Court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by its scope.

5. Whether after rejection of first application for anticipatory bail under Section 438 Cr. P.C. a second application for such bail is tenable?

A Contrpversy had arisen because of two Conflicting Single Bench decisions of M.P. High Court. In Ramsevak Sharma vs. State 1993 (1) M.P. J.R. 197, a Single Bench held that after the rejection of first application for anticipatory bail under Section 438 Cr. P.C. a second similar application is not maintainable. Contrary to this view another Single Bench in Dharmendra Rao vs. State of M.P. 1993 JLJ 476 held that second petition under Section 438 Cr. P.C. would be tenable if the earlier petition was dismissed.

Now this controversy has been resolved by a Division Bench of M.P. High Court in a decision given on 9.2.96 in Imratlal Vishwakarma vs. State of M.P., Misc. Cr. Case No. 648 of 1995. The Division Bench has held that the second application under Section 438 of Cr. P.C. is maintenable and it would not make any difference if earlier application was rejected on merits or was dismissed on account of having been withdrawn as not pressed.

6. What are the remedies available to a person aggrieved by a compromise decree?

Ans. In Banwarilal vs. Chando Devi, A.I.R. 19993 Sc 1139, the Supreme Court has held that.

> "A party challenging a compromise can file a petition under proviso to R.3 of O. 23 or an appeal under S. 96(1) of the Code, in which he can now question the validity of the compromise in view of R. 1A of O. 43 of the Code. If the agreement or the compromise itself is fradulent then it shall be deemed to be void within the meaning of the explanation

to the proviso to R. 3 and as such not lawful. In the instant case the plaintiff challenged the order recording compromise on the ground his counsel in collusion with defendant of the said suit had played a fraud on him by filing a fabricated petition of compromise although no compromise had been effected between him and the defendant. Further details of fraud were mentioned in the said petition and it was stated that the alleged compromise itself was void, illegal and against the requirement of O.23 R. 3. Therefore the entertaining of the application filed on behalf of plaintiff and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the Court could have recorded such argreement or compromise, by the trial Court was proper. Since the material produced on the record showed that the compromise was not lawful within the meaning of R.3, the order recording compromise could be recalled.

"Section 96(3) of the Code says that no appeal shall lie from a decree passed by the Court with the consent of the parties. Rule 1A(2) has been introduced saying that against a decree passed in a suit after recording a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should not have been recorded. When S. 96(3) bars an appeal against decree passed with the consent of parties, it implies that such decree is valid and binding on the parties unless set aside by the procedure prescribed or available to the parties. One such remedy available was by filing the appeal under O.43 R. 1(m). If the order recording the compromise was set aside, there was no necessity or occasion to file an appeal against the decree. Similarly a suit used to be filed for setting aside such decree on the ground that the decree is based on an invalid and illegal compromise not binding on the plaintiff of the second suit. But after the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3A of O.23. As such a right has been given under R. 1A (2) of O.43 to a party, who challenges the recording of the compromise, to question the validity there of while preferring an appeal against the decree. S. 96 (3) of the Code shall not be a bar to such an appeal because S. 96 (3) is applicable to cases where the factum of compromise or agreement is not in dispute."

YOUR PROBLEMS AND THEIR SOLUTION

QUESTIONS SENT BY CAMIL XALXO, ADDITIONAL SESSIONS JUDGE, RAIPUR

Q. In normal concept dying declarations intervene the occurrence and the death of the maker.

(a) But in cases under section 306 and 304-B of I.P.C. the prosecution is producing in evidence the letters of the deceased written to relatives, friends or acquaintance, long or soon before the occurrence.

(b) The parental relatives, friends, acquaintances, neighbours are in evidence reproducing the narrations made to them by the deceased, long or soon before the occurrence (i.e. not after the occurrence).

Do they constitute dying declarations to become admissible ?

Ans. Yes. They do constitute dying declaration and are admissible as such under section 32 (1) of the Indian Evidence Act. According to section 32 (1) of the Indian Evidence Act where the cause of any person's death comes into question the statement made by that person as to the cause of his death or, "as to any of the circumstances of the transaction which resulted in his death" are relevant whether that person at the time when they were made was or was not under expectation of death. This clause refers to two kinds of statements:-

(a) when the statement is made by a person as to the cause of death or

(b) when the statement is made by a person as to any of the circumstances of the transaction which resulted in his death.

The words "resulted in death" do not mean "caused his death". The expression, "any of the circumstances of the transaction which resulted in his death" is wider in scope than the expression, "the cause of his death". The declarant need not actually have been apprehending death.

The following judgments are very important and every Judge should read them to have a clear picture of the scope of the provisions of section 32 (1) of Evidence Act, specially the significance of the words "the circumstances of the transaction which resulted in his death":-

(i) Pakala Narayanaswami vs. Emperor, A.I.R. 1939 PC 1947.

(ii) In re Kalusingh Motisingh and others, A.I.R. 1964 M.P. 30

In a recent judgment in Mithailal vs. State of Maharashtra, 1993 Cr. J. 3580, the Bombay High Court has held that death of a married woman due to starvation, cruelty, and ill treatment - statement made by deceased in letter written by her to her brother revealing a tell-tale story having relation to the cause of death is admissible under section 32 (1) of the Evidence Act. The Supreme Court has in SHARAD BIRDHI CHAND SHARMA VS. STATE of Maharastra, A.I.R. 1984 SC 1622 held that with regard to the scope of Section 32 (1) the following propositions emerge:-

"(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect the Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the

entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under S. 32.

(3) The second part of Cl. (i) of section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story the said statement would clearly fall within the four corners of section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

I believe that the above mentioned judgments will allay your doubts about the scope of dying declarations in respect of cases under Section 306 and 304-B of I.P.C.

QUESTIONS SENT BY SHRI B.K. CHANSORIYA, CIVIL JUDGE CLASS-I BEGUMGUNJ

Q.1 In a suit for restitution of conjugal rights instituted by a Muslim husband against his wife what shall be the valuation of suit for the purposes of court fees? Will it be equal to the amount of Mahr stipulated to be paid by husband, and will the court fees be payable on the said amount, or a fixed court fee of Rs. 30 shall be payable?

Ans. Schedule II of M.P. Court Fees Act deals with those suits and applications on which fixed court fee is payable. Article 17 of Schedule II deals with those suits on which the fixed court fee of Rs. 30 is payable. But the suit for restitution of conjugal rights does not come under Article 17. Article 20 of Schedule II deals with petitions under Indian Divorce Act and Article 20-A deals with petitions under Special Marriage Act and the Hindu Marriage Act and under both these Articles a fixed court fee of Rs. 20 is payable. Therefore, if a Hindu or a person governed by a Special Marriage Act brings a suit for restitution of conjugal rights then according to Article 20-A a fixed court fee of Rs. 20 only shall be payable. A suit for restitution of conjugal rights under Mohammedan Law has not been provided for in any of the Articles of Schedule II. Therefore, court fee shall be payable on the value of the suit. Such value shall not be equal to the amount of Mahr. Rules framed by M.P. Government under Suits Valuation Act vide Notification No. 1641, dated 28-09-1911 as amended by Notification No. 7777/363-V, dated 12-04-1924 provide that the suits for restitution of conjugal rights, for declaration of validity of marriage or for divorce shall be valued at Rs. 400/-. Thus a suit for restitution of conjugal rights instituted by a Muslim husband shall be valued at Rs. 400/- and accordingly a court fee of Rs. 40/- shall be payable on it according to Schedule 1-A of M.P. Court Fees Act.

Q.2. If a decree for restitution of conjugal rights is passed and the Muslim wife does not comply with the decree, whether in such a situation the Muslim wife can be ordered to make periodical payments. (कालिक संदाय) and can the Court enforce the order of periodical payment against wife?

Ans. The question is purely hypothetical. There is no such provision of law that in case a Muslim wife does not comply with the decree of restitution of conjugal rights she will be liable to make any payment to her husband during the period of non-compliance of decree. A decree for restitution of conjugal rights can be enforced and executed in accordance with the provisions of Order 21 Rule 32 CPC only which does not contain any provision for periodical payment.

Q.3. Whether in case of con-compliance with the decree of restitution of conjugal rights by a Muslim wife, the husband can withhold the payment of deferred dower and appropriate it towards the amount which may be ordered to be paid to him for non-compliance of the decree by the wife?

Ans. No. The amount of dower or Mahr can not be withheld by the husband. The deferred dower, which is paid after divorce shall become immediately payable to the wife after divorce. Since the decree for restitution of conjugal rights does not involve any divorce there is no question of paying or withholding the deferred dower. As has been mentioned above, the wife is not liable to pay any amount to the husband for committing default in complying with the decree of restitution of conjugal rights, therefore there is no question of withholding any amount of Mahr.

QUESTIONS SENT BY SHRI V.K. DUBEY, ADDL. CHIEF JUDICIAL MAGISTRATE, KATNI, DISTRICT JABALPUR

Q.1 In a case under Section 125 Cr. P.C. order for interim maintenance was passed against the non applicant. The non applicant is appearing in the case and taking part in further proceedings of the case but he is not paying the interim maintenance to the petitioner wife. The amount of interim maintenance is not recoverable from his property because he has no property at all, nor he is prepared to pay interim maintenance. Can the order for interim maintenance be enforced in accordance with the provisions of Section 125 (3) Cr. P.C. and the husband may be sentenced to imprisonment? What is the procedure for the enforcement of the order of interim maintenance?

Ans. There is no statutory provision for grant of interim maintenance under Section 125 or in any other section of

the Code of Criminal Procedure. It was in the case of Smt. Savitri vs. Govind Singh, A.I.R. 1986 SC 984=1986 Cr. L.J. 41=1985 MPLJ 662. that the Supreme Court for the first time propounded the law that in a proceeding for maintenance under Section 125 Cr. P.C. the Magistrate has jurisdiction to pass the order directing the person against whom an application is made under it to pay a reasonable sum by way of interim maintenance pending final disposal of the application. Naturally the framers of law had not anticipated this development of law and therefore, no separate provision of recovery of interim maintenance has been made in section 125. But this does not mean that the order of interim maintenance has to be left as a mere paper order or it has to be left at the sweet will and mercy of the person against whom it is made. If the above judgment of Supreme Court is read carefully it will be found in para 6 of the judgment (at page 986 of A.I.R.) that the Supreme Court has very clearly suggested the ways and means by which the order can be enforced and the fruits of the order can be realised by the beneficiary of the order. It has been observed that.

"Every Court must be deemed to possess by necessary intendment such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubi aliquid concediture, conceditur et-id sine auo-res ipsa esse non potest (Where anything is conceded. there is conceded also anything without which the thing itself cannot exist).'

In Sarmaniya Bai vs. M.P. Rajparivahan Nigam 1990, MPLJ 387=1990 JLJ 386 a Full Bench of M.P. High Court relying on I.T.O. vs. Mohammad Kunhi, A.I.R. 1969, SC 430 has held that it is a firmly established rule that an express grant of statutory powers carries with it by necessary implication the authority to use reasonable means to make such grant effective. It has also been observed that where an inferior court is empowered to grant an injunction the power of punishing disobedience to it by commitment is impliedly covered by an enactment. but the power be useless if it cannot be enforced.

Looked at the problem in hand in the light of above observations of the Full Bench and also of the Supreme Court

there should be no difficulty in implementing the order of interim maintenance in the same manner as an order of maintenance passed under Section 125 (1) Cr. P.C. can be enforced under the provisions of section 125 (3) Cr. P.C.

There is one more provision in the Code of Criminal Procedure which is contained in section 431 which says that any money (other than a fine) payable by virtue of an order made under this Code and the method of recovery of which is not otherwise expressly provided for. shall be recovered as if it were a fine.

If you still feel any difficulty in following the procedure for recovery prescribed under Section 125 (3) Cr. P.C. you can have recourse to the provisions of section 431 Cr. P.C. and recover the amount in the same manner as if it were an amount of fine.

Q.2 Whether Magistrate can issue a warrant of arrest at the request of police during investigation of a cognizable offence before the filing of charge sheet in Court and also whether Magistrate can issue a proclamation and warrant of attachment under the provisions of Section 82 and 83 of the Code of Criminal Procedure before filing of charge-sheet in the Court?

Ans. Yes. Police can request the Magistrate for issuing a warrant of arrest against an accused during investigation and before filing of charge-sheet in the court and the magistrate can issue such warrant of arrest. and if the warrant of arrest is returned unserved then the magistrate on the request of police may issue processes under sections 82 and 83 of the Code of Criminal Procedure. Though there is no express provision in the Code of Criminal Procedure for issuance of warrant of arrest before the filing of challan and taking conizance of the offence by the magistrate still there are number of judicial pronouncements which lend support to this view. You may conveniently refer to Ram Narayan Singh vs. A. Sen A.I.R. 1958, Allahabad, 758 in which Supreme Court decision in R.R. Chari vs. State of U.P., A.I.R. 1951 SC 207 has been referred to.

Q.3 Whether an accused who after first remand to judicial custody under section 167 Cr. P.C. was released on interim

bail number of times during investigation by Sessions Court and ultimately surrendered before the magistrate and was remanded to judicial custody but the total period of detention was not more than 90 or 60 days, can be released on bail under the provisions of Section 167 (2) Cr. p.C. after the expiry of a period of 90 or 60 daysas the case may be commencing from the date of first remand?

Ans. The provisions contained in the proviso to sub section (2) of Section 167 Cr. P.C. are attracted only when the Magistrate has authorised the detention of the accused during investigation continuously. The proviso enacts the rule that the Magistrate shall not authorise the detention of the accused after the expiry of the period of 90 days or 60 days as the case may be, if the accused is ready and willing to furnish bail. This proviso simply gives a right to the accused to be released on bail if he has been in custody for a period of 90 or 60 days. If the accused was not in detention for 90 or 60 days then the provisions of the proviso to Section 167 (2) Cr. P.C. would not be attracted.

The word 'remand' means remanding the accused to custody i.e. sending him back to custody. When the accused is released on interim bail by the Magistrate himself or by the Sessions Judge there was no question of granting remand. Remand is never granted of a person who is free on bail. Remand is granted of only that person who is in detention. So when any accused was on bail during the interim period there was no question of remand for 90 or 60 days so as to entitle him for the facility of bail under the proviso to subsection (2) of Section 167 of Cr. P.C. We simply advise you to look into A.I.R. 1992 SC 1768 besides looking into the cases cited at page 13 of 'JOTI JOURNAL', Vol. I. part I (October 1995).

CIRCULARS

DIRECTORATE OF TREASURIES AND ACCOUNT,

MADHYA PRADESH

NO:262/Acctts./64/2125 BHOPAL, dt. the 16-7-66

To,

All Commissioners of Divisions,

All Collectors,

All District & Session Judge,

All Heads of the Departments,

All Treasury Officers,

Sub: Disposal of confiscated gold and gold ornaments.

In continuation of memo No. 1092/IV R. 8/66 dated 28 June 66 from the Finance Deptt. of the Govt. of Madhya Pradesh the following instructions are issued for regulating the procedure for collecting confiscated gold and gold ornaments at Bhopal Treasury and for sending it to the Mint at Bombay.

2. The Presiding Officer of the Court which makes the order declaring the articles confiscated to Govt., should have them weighed in his presence. An exact and detailed descriptive inventory of the articles should be prepared in triplicated and each copy should be authenticated by the full signature of the Presiding Officer. The inventory should also state the approximate total value of the articles. The articles and one copy of the authenticated inventory should be placed in strong cloth lines envelope and sealed with the official seal of the court, or if where is no such seal, with the personal seal of the Presiding Officer, This envelope should in turn be kept inside another strong cloth-lines envelope and similarly sealed. if the articles are too large, numberous, or irregular in shape to be kept inside and envelop strong metal receptacles may be used for this purpose. All the sealing should be done in the presence of the presiding officer and over each envelope/receptacle, the presiding officer should

certify that it was sealed in his presence. If the estimated value of the articles is not more than Rs. 5,000/- the sealed packets may be sent to the Try. Officer. Bhopal be registered post/parcel insured for an appropriate amount. If the value exceeds of Rs. 5,000/- the packets should be sent to the Treasury Officer, Bhopal with a reliable messenger. In either case, one copy of the authenticated inventory should be sent simultaneously to the Treasury Officer Bhopal. by name be registered post.

3. The Treasury Officer. Bhopal should treat these packets in the same way as valuables lodged in the Treasury for safe custody. but kept them in a separates receptacle and maintain a separate register for recording particulars of all such items. Besides other details usually recorded in such cases. this register should also show the estimated value of the articles in each packet as stated by the presiding officer of the court concerned. The Treasury Officer should be particularly careful to see that the seals on the packets are intact when they are received by him and that they remain intact till the packets are opened in his presence in the mint at Bombay. The authenticated inventories received separately by post should be posted in a guard files which should remain in the personal custody of the Treasury Officer.

4. When the total estimated value of the gold hold by the Try. exceeds Rs. One lakh a list of all such articles should be sent confidentially to the Master of the mint at Bombay and he should be asked to specify the date and time when the gold could be brought to the mint. These should be so determined that the packets could be taken directly from the Bombay railway station to the mint without the necessity of having to be stored any here outside the Mint and that the articles could be taken even by the Mint the same day. The Treasury Officer. Bhopal should carry the packets personally to the mint at Bombay with an appropriate armed escort.. The packets should be opened in the presence of the Try. Officer and an authorised representative of the Master of the mint after both satisfy then seal that who seals thereon are intact. The articles should be checked with reference to the two copies of the inventories one inside the packet and the other in the guard file of the Try. Officer and then weighed. If the

description exactly tallies and the weight is also found to be reasonably correct after making due allowance for the deficient sensitivity of the seal used by the Court, the articles should be handed over to the Mint and an acknowledgement obtained on the ubvebtory record by the Treasury Officer in his guard file. The Mint could, course, amplify the description of the articles where the recorded description is considered inadequate or record their correct weight in its acknowledgement, if it happens to differ the weight in its acknowledgement if it happens to differ from the weight shown by the Presiding Officer of the confiscating court. If the articles are found to be not as described in the inventories or if their weight is found to be far deficient that the difference cannot be assured wholly to the lack of sensitivity in the scales used by the court, the articles should be resealed in the manner already described in the presence of the two officers. A fresh descriptive inventory showing the correct description and weight of the articles should be prepared and signed by both the officers before the articles are resealed. The Try. Officer, Bhopal would bring back the resealed packet and the correct inventory relodge the forms in his strong room and make a detailed report of the facts of the case to the Gold Control Officer of the State Government who will decide what further action is to be taken in the matter.

These arrangements have been concurred in by the Law Deptt. of the Govt. Madhya Pradesh and the Master of the Mint Bombay.

Sd/- A. S. Krishanmoorthy

Director

Treasuries and Accounts, MP, Bpl.

HIGH COURT OF MADHYA PRADESH JABALPUR

NO. 4804 DATED, JABALPUR, THE 30TH APRIL, 1973.

IV-6-4/72.

To

All the District & Sessions Judges, in the state.

Sub: Losses of public property and money by theft inter-mis Appropriations and defalcntions.

It has come to the notice of the High Court that the Officer-in-charge of the different sections, e.g. Nazart, copying etc. and Presiding Officers do not strictly follow the rules and instructions in the matter of checking of the accounts and handing the properties received in criminal cases. Non-compliance with the rules and laxity of supervision on the part of the officers result in loss of public money and property. with a view to preventing such losses, I am directed to invite attention to the following:-

(i) General checks and precautions prescribed in S.R. 53 of M.P. Treasury Code, Vol. I to be observed by the Officer-in-charge of the cash.

(ii) The provisions contained in Rules 379 (3) and (4) of the Rules and Orders (Civil) regarding the checking of the Process- Writers accounts.

(iii) Rules 462 to 466 of the Rules & Orders (Civil) regarding the checking of the different account registers of the Nazarat sections.

(iv) Rules 509 to 511 of the rules and orders (civil) regarding the checking of the accounts registres of the copying section.

(v) Rules 352 to 364 of the Rules & Orders (Cr.) regarding relaxation and credit of fines by the Presiding Officers and Rule 577 and 583 regarding maintenance of Registers of Fines.

(vi) Rules 124 and 680 of the Rules & Orders (Cri.) regarding receipt, preservations and safe custody of properties received in criminal cases resd with the instructions in sued in the Registry Memorandum No. 621/III-19-18/69 dated 13.1.1970 regarding their physical verification.

(vii) Supervisory functions to be performed by the Officers, enjoined by Rules 386 and 429 of the Rules & Orders (Civil).

2. The subordinate Judge and Magistrate working under your control may be directed to strictly observe the provisions of the Rules mentioned above, apply the prescribed checks and take adequate precautionary measures so as to prevent losses of public money, stores and properties by mis-appropriation, defalcation and thefts.

3. It may also be impressed upon all the Officer-in-charge Nazarat and other sections and the Magistrate handling properties in Criminal Cases that they should exert the same vigilance, generally as a person of ordinary prudence would exercise in respect of his own money and property. While the High Court might condone no officer's honest errors of judgment involving financial loss, it is determined to strictly enforce personal liability against any office who is found dishonest, careless or negligent in the discharge of the duties and functions entrusted to him.

4. These instructions may be specifically brought to the notice of each of the Civil Judge, Addl. District & Sessions Judge and Magistrate working under your control, their acknowledgements obtained and forwarded to this Registry for record.

Ad/- (M. L. Malik)

Registrar.

उच्च न्यायालय मध्यप्रदेश, जबलपुर

ज्ञापन

क्रमांकः 12589/ चार–6–15/76 जबलपुर दिनांक 21.10.76

प्रति,

जिला एवं सत्र न्ययाधीश,

समस्त

विषयः मालखाने में रखी संपत्तियों की हानियों की रोकथाम बाबत

निर्देशानुसार जिला एवं सत्र न्यायाधीश, जबलपुर के ज्ञापन क्रमांक 2060/दो–11–89/73, दिनांक 23–8–76 की कण्डिका 6 की प्रति लिपि संलग्न कर निवेदन है कि जिस प्रकार के अनुदेश जिला एवं संत्र न्यायाधीश, जबलपुर ने, उक्त कण्डिका में, नजारत विभाग के प्रभारी अधिकारियों एवं नाजिरों को दिये हैं वैसे ही अनुदेश आप अपने जिले के नजारत विभाग के प्रभारी अधिकारियों, पीठासीन अधिकारियों, नाजिरों एवं नायब नाजिरों को देवें

संलग्न : ज्ञापन दिनांक 23.8.76 कंडिका 6 की प्रतिलिपि

सही

(म. श. येवलेकर)

डिप्टी रजिस्ट्रार

जबलपुर, दिनांक 21.10.76

कार्यालय जिला एवं सत्रा न्यायाधीश, जबलपुर

ज्ञापन

कमांक 2060/दो–11–89–73, जबलपुर, दिनांक 23 अगस्त, 1976

6– जब भविष्य में इस प्रकार की होने वाली हानियों की रोक के लिये किये गये उपाय?

इस व्यवहार जिले के नजारत विभाग के प्रभारी अधिकारियों एवं नाजिरों को यह हिदायत दी जा रही हैं, कि यदि किसी दीवानी प्रकरण में किसी पक्षकार से ऐस आभूषण या ऐसे रत्न नजारत में जमा करने का अवसर आता हैं तो जब तक जमा

करने वाला किसी सुनार से धातु की शुद्धता या जोहरी से रत्न की प्रमाणिकता को न्यायाधीश व नाजिर के सामने जांच करवा कर प्रमाणिकता का लिखित प्रमाण प्रत्र नहीं देता तब तक नजिर माल लेने के समय माल के विवरण में यह लिखेगा "जिसे सोने का या चांदी का होना कहा जाता है" ओर यह भी लिखेगा कि "जैसा करने वाले ने प्रमाणिकता की जांच मांग पर भी नहीं करवाई है।" हर दशा में ऐसे माल को न्यायालय के न्यायाधीश के समक्ष पक्षकार से लेकर वही रजिस्ट्रर आफ प्रापर्टी में इन्द्राज कर पक्षकार व न्यायाधीश के भी हस्ताक्षर लिये जावें।

यदि किसी अन्य रीति से याने किसी कर्मचारी जैसे मजकूरी द्वारा लाने पर ऐसा माल जमा करना हो तब नाजिर किसी मोताविर सराफ या सुनार को पक्षकार के खर्च पर मेहनताना देकर वुलाऐं और प्रभारी अधिकारी नजारत के समक्ष धातु या रत्न की प्रमाणिकता का प्रमाण प्रत्र प्राप्त करें और तब उस माल का इन्द्राज रजिस्ट्रर आफ प्रापर्टी में करें। हर दशा में यह सब कार्यवाही प्रभारी अधिकारी नजारत के सामने होनी चाहिये।

सही
(के. के. वर्मा)
जिला एवं सत्र न्यायाधीश,
जबलपुर
21–8–76

उच्च न्यायालय मध्यप्रदेश, जबलपुर

ज्ञापन

क्रमांकः ए/1476 / जबलपुर, दिनांक 13 फरवरी, 1980
तीन.19.10/78

प्रति,

जिला एवं सत्र न्यायाधीश,

विषयः संपत्तियों के गबन के रोकथाम बाबात्।

उच्च न्यायालय का प्रतिवेदित आपराधिक प्रकरणों से संबंध संपत्तियों के व्यपहरण के मामलो से यह ज्ञात होता है कि गबन् फलस्वरूप हुये हानियों का मुख्य कारण यह हैं कि संबधित पीठासीन अधिकारी नियम तथा आदेश (आपराधिक) के नियम 124 तथा 680 एवं इस रजिस्ट्री के ज्ञापन क्रम क 4278/तीन–2–9/40 भाग–पांच,

क्रमांक 2, दिनांक 6–6–66, 621, तीन–19–18/69, दिनांक 13–1–70, 4804/चार–6–4–/72, दिनांक 30–4–73, 2871/तीन–2–9/40 भाग पांच, क्रमांक 2, दिनांक 1–3–75 तथा 12589/चार–6–15/76 दिनांक 21–10–76 (प्रतिलिपियां संलग्न) का अनुपालन स्वयं नही करते हैं और उनके अनुपालन का भार अपने अधीनस्थ कर्मचारियों पर छोड़ देते हैं। उपरोक्त निर्देशों के प्रसारण के उपरान्त यह आशा की गई थी कि संपत्तियों के गबन की घटनाओ पर नियंत्रण रखा जा सकेगा परन्तु यह देखा जा रहा हैं कि दिन प्रतिदिन संपत्तियों के गबन की घटनायें बढ़ती जा रही हैं। यह स्थिति सहन करने योग्य नहीं हैं।

अतः आपसे निवेदन हैं कि:–

(1) आप अपने जिले के समस्त न्यायिक अधिकारियों को उपरोक्त नियमों, निर्देशों तथा निम्न निर्देशों का कड़ाई पूर्वक पालन करनें के लिये निर्देशित करें:–

(अ) जैसे ही संपत्ति, पूरक नियम 47, विधि एवं विधायी कार्य विभाग के पृष्ठाकंन क्रमांक एफ.क. ई./4/35/74 आर.वी./चार दिनांक 4–12–74 के अनुसार, प्राप्त हो वैसे ही उसे, अपने समक्ष सीलबन्द कराकर नियम 680 तथा आदेश (आपराधिक) के अनुसार कोषालय में नाजिर के माध्यम से सुरक्षा हेतु जमा करावें और यदि संबंधित प्रापटी मेंमों कोषालय अधिकारी की पावती सहित यथा समय प्राप्त न हो तो वे स्वयं इस संबंध में जांच करें अथवा उसकी रिपोर्ट जिला एवं सत्र न्यायाधीश को करें। यह प्रक्रिया जब भी मूल्य वान संपत्ति कोषालय से मंगवाई जावें, अपनाई जावें। इस बात की ओर पर्याप्त ध्यान दिया जाना आवश्यक हैं कि मूल्यवान संपत्तियों नाजिर अथवा नायब नाजिर अपने हस्ताक्षर से कोषालय से वापस नही मंगा सकते,

(ब) यदि संपत्तियों जेवर या रत्नों के रूप में हो तों उनकी प्रमाणिकता की जांच इस रजिस्ट्री के ज्ञापन क्रमांक 12689/चार–6–15/76, दिनांक 21–10–76 द्वारा प्रसारित निर्देशों के अनुसार उन्हें कोषालय में जमा किया जाने से पूर्व करा ली जायें।

(स) अन्य मूल्यवान संपत्तियों जिनको मालखाने में नियम अनुसार नाजिर के अधिपत्य में रखा जाना वाछंनीय हैं उनको भी संबंधित पीठासीन अधिकारी अपने समक्ष सीलबन्द करावें और उन्हें नाजिर के पास जमा करावें। यह भी देखें कि 250/– से कम मूल्य की मूल्यवान संपत्तियों तथा अन्य संपत्तियों से संबंधित प्रापर्टी–मेमो संपत्तियों की रसीद सहित उनके न्यायालय में यथा समय प्राप्त हो गये हैं अथवा नही, और यदि

यथा समय प्राप्त नहीं हुयें हैं तो इस संबंध में ये स्वयं जांच करें अथवा उसकी रिपोर्ट जिला एवं सत्र न्ययाधीश को करें। वे इस बात की ओर भी ध्यान दें कि कोई भी सम्पत्ति प्रस्तुतकार या अन्य कर्मचारी के पास पड़ी न रहें।

(उ) मालखानें में रखी तथा कोषालय में जमा समस्त संपत्तियों का सत्यापन प्रत्येक न्यायिक अधिकारी (अपने न्यायालय से संबंधित संपत्तियों का) यथा समय नियमानुसार कड़ाई पूर्वक करें और उसके परिणाम से अपने जिला एवं सत्र न्यायाधीश को अर्ध शासकीय पत्र द्वारा अवगत करावें।

(छ) प्रत्येक प्रकरण के निकाल उपरान्त संपत्तियों का निकाल नियमानुसार न्यायालय के आदेश अनुरूप यथा समय करायें।

(क्ष) उनका ध्यान मध्यप्रदेश वित्त संहिता भाग–2, अपेन्डिक्स (पद) की ओर आकर्षित किया जावें तथा उनके शासकीय धन एवं संपत्तियों के संबंध में वैसी जागरूकता अपनाने के लिये स्पष्ट रूप से निदेर्शित किया जावें कि अपनी संपत्ति व धन की सुरक्षा के लिये अपनातें है।

2. (1) आपसे यह भी निवेदन हैं कि उपरोक्त निर्देश प्रत्येक न्यायिक अधिकारी के ध्यान में लाया जावें ओर उनकी पावती दो प्रतियों में प्राप्त कर उनमें से एक प्रति अपने कार्यालय में रिकार्ड हेतु रखें और एक प्रति इस रजिस्ट्री को इस ज्ञापन के प्राप्त होने के दिनांक से एक महिने के भीतर प्रेषित करें।

(2) आप यह भी देखें कि उपरोक्त नियमों तथा निर्देशों का आपके जिलें में नियुक्त समस्त न्यायिक अधिकारियों द्वारा उनका पालन किया जाता हैं और अधीनस्थ न्यायालयों के सालाना निरिक्षण करते समय आप इस बात की जांच करें कि उक्त अधिकारी ने उपरोक्त नियमों व निर्देशों का पालन समुचित रूप से किया अथवा नहीं ओर यदि यह पाया जायें कि उन्होंने उनका पालन उचित रूप से नहीं किया तो इस रजिस्ट्री के ज्ञापन क्रमांक 12156/चार–6–4/72 दिनांक 16–9–74 द्वारा प्रसारित निर्देशों के अनुसार उनकी गोपनीय चरित्रावली लिखते समय उनके द्वारा नियमों तथा निर्देशों की अवहेलना किये जाने वावत् विचार करें।

(3) साथ ही यह भी निवेदन है कि गबन हानि का प्रकरण जैसे ही प्रकाश में आये उसकी सूचना इस रजिस्ट्री को देवें तथा वित्त विभाग के ज्ञापन क्रमांक एक–3/22/79/मि–5/चार, दिनांक 31–7–79 के अनुसार

प्राथमिक जांच करावें और यह पाने पर कि संबंधित न्यायिक अधिकारी की लापरवाही, उपरोक्त नियमों तथा निर्देशों की अवहेलना के कारण हानि होना पाया जायें तों उनके विरूद्ध विभागीय जांच करने के प्रस्ताव इस रजिस्ट्री को प्रेषित करें क्योंकि प्राय यह देखा जा रहा हैं कि हानि के संबंध में जांच कराये जाते समय केवल संबधित कर्मचारी के विरूद्ध ही जांच कराई जाती हैं और संबंधित न्यायिक अधिकारी जिनके द्वारा की गई अनियमितता, निर्देशों की अवहेलना अथवा अपने अधीनस्थ कर्मचारियों के कार्यो में नियंत्रण नहीं रखने के कारण हानि होती हैं, कोई जांच नही कराई जाती। अतः यह बांछनीय हैं कि उनके विरूद्ध आवश्यक जांच की जावें ओर यह स्पष्ट रूप से प्रतिवेदित किया जावें कि अनियमितताओं, नियमों का उलंघन तथा अधीनस्थ कर्मचारी पर प्रर्याप्त नियंत्रण नही रखने के कारण कितनी हानि हुई।

हस्ताक्षर
(एस. आर. चौरे)
डिप्टी रजिस्ट्रार

उच्च न्यायालय मध्यप्रदेश जबलपुर

क्रमांक ए/1650/ जबलपुर — दिनांक 16 फरवरी, 1981
तीन 2–9/40 भाग–पांच

प्रति,

जिला एवं सत्र न्यायाधीश,

विषयः आपराधिक प्रकरणों से सम्बद्ध सम्पत्तियों के व्यपहरण की रोकथाम बाबत्।

आपका ध्यान इस रजिस्ट्री के ज्ञापन क्रमांकः–

(1) 4278/तीन–2–9/40 भाग पांच नस्ती 2, दिनांक 6–6–66
(2) 621/तीन–1918/69 दिनांक 13–1–70
(3) 4804/चार–6–4/72 दिनांक 30–4–73
(4) 8013/चार–6–9/77दिनांक 2–5–78 एवं
(5) 20/1476/तीन–19–10/78 दिनांक 13–2–80

की ओर आकर्षित करते हुये सूचित किया जाता है कि उपरोक्त ज्ञापनों द्वारा आपराधिक प्रकरणों से संबधित संपत्तियों का गबन, दुर्विनियोग आदि द्वारा क्षति की रोक थाम

एवं समाप्ति हेतु निर्देशन इस आशा से प्रसारित किये थे कि संबंधित अधिकारी नियमों का पालन कड़ाई से स्वंय करेंगें एवं अपने अधीनस्थ कर्मचारियों द्वारा भी करवायेगे। परन्तु देखने में यह आया है कि संबधित अधिकारी एवं उनके अधीनस्थ कर्मचारियों द्वारा उपरोक्त ज्ञापनों में दिये गये अनुदेशों की अवज्ञा एवं अवहेलना की जा रही है तथा आपराधिक प्रकरणों से संबधित सम्पत्तियों का सव्यवहार नियम तथा आदेश (आपराधिक) के नियम 124 तथा 680 का पूर्णतया उलंघन करते हुये किया जाता है जिसके परिणाम स्वरूप संपत्तियों के व्यपहरण की घटनाये दिन पर दिन बढ़ती जा रही है।

2. जिला एवं सत्र न्यायाधीशों के आधीन नजारत अनुभाग एवं मालखाने का निरीक्षण करते हुये यह भी देखा गया है कि आपराधिक प्रकरणों से सम्बद्ध सम्पत्तियों का न्यायालय एवं नाजिर के मध्य आदान प्रदान नियम तथा आदेश (आपराधिक) के नियम 680 में द्वारा विहित प्रापर्टी मेमोरेन्डम के माध्यम के बिना ही किया जाता है। निराकृत प्रकरणों से सम्बद्ध संपत्तियों का निराकरण यथा समय नियमानुसार नहीं किया जाता और वे सम्पत्तियाँ मालखाने में आलंक्षित पड़ी रहती है तथा उनकी और कोई ध्यान नहीं दिया जाता। उनका निराकरण संबधित न्यायालय के आदेशानुसार अथवा अन्यथा संबधित नियमानुसार नहीं किया जाता हैं।
3. अतः माननीय मुख्य न्यायाधिपति महोदय के निर्देशानुसार आपको यह परामर्श दिया जाता है कि:–
   (1) आप उपरोक्त मामलों की ओर स्वयं व्यक्तिगत रूप से ध्यान दें और संबधित पीठासीन अधिकारियों, प्रभारी अधिकारियों नजारत मालखाना नजारत अनुभाग में कार्यरत कर्मचारियों एवं कनिष्ठ नायब नाजिरों को प्रापर्टी मेमो के माध्यम से ही सम्पत्तियों के आदान प्रदान किये जाने का महत्व स्पष्ट करें तथा बिना प्रापर्टी मेमो के सम्पत्तियों का आदान प्रदान तत्काल बन्द किये जाने बाबत एवं नियम तथा आदेश (आपराधिक) के नियम 680 के अनुसार ही प्रापर्टी मेमों के माध्यम से ही सम्पत्तियों का आदान प्रदान भविष्य में किये जाने के संबंध में तत्काल निर्देश प्रसारित करें। साथ ही समस्त नायब नाजिरों प्रभारी अधिकारी मालखाना को यह भी निर्देश दिये जावे कि किसी भी परिस्थिति में प्रापर्टी मेमों के बिना कोई भी संपत्ति न तो प्राप्त ही करे और न दें।
   (2) निराकृत प्रकरणों के संबंद्ध सम्पत्तियों के निकाल के लिये कुछ अवधि के लिये एक अथवा आधे (अंशकालिक दण्डाधिकारी की प्रतिनियुक्ति

अविलम्ब की जाना वांछनीय है तथा प्रतिवर्ष ग्रीष्मकालीन अवकाश में जिला मुख्यालय में दो दण्डाधिकारियों तथा अन्य न्यायालयों में एक दण्डाधिकारी की प्रतिनियुक्ति विशेष रूप से निराकृत प्रकरणें से सम्बद्ध सम्पत्तियों के निकाल किये जाने के लिये कर्यावाही किया जाना वाछंनीय है।

हस्ता.
(एस. आर. चौरे)
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ज्ञापन

क्रमांकः– ए/3248/तीन–19–28/87 जबलपुर, दिनांक 23 मार्च, 1989

प्रति,

जिला एवं सत्र न्यायाधीश,

विषयः तीन वर्ष से अधिक कोषालय में रखी बहूमूल्य सीलबन्द सम्पत्तियों के सत्यापन बाबत।

संचालक कोष एवं लेखा द्वारा मध्य प्रदेश कोष संहिता भाग–1 के सहायक नियम 47 (ii) की ओर इस रजिस्ट्री का ध्यान आकर्षित कर निवेदन किया है कि न्यायालयों द्वारा जो बहुमूल्य सम्पत्तिया सीलबन्द पेकेट्स में कोषालय में सुरक्षार्थ जमा की जाती हैं उनहें तीन वर्ष की अवधि के उपरान्त वापस प्राप्त कर उससे सम्बन्धित प्रकरण से जांच पड़ताल कर पुनः सुरक्षार्थ कोषालय में जमा नही की जाती हैं। इन नियमों का अनुपालन करने से न्यायालय की सम्पत्तियों का सत्यापन हो जाता है। तथा कोषालय द्वारा आक्षेप उठाना बन्द हो जावेगा।

अतएव आपसे निवेदन है कि उक्त नियमों का कड़ाई से पालन करने के लिये आपके अधीनस्थ समस्त प्रभारी अधिकारियों को निर्देशित करने का कष्ट करें तथा यह सुनिश्चित कर लेवें कि प्रभारी अधिकारियों द्वारा इन नियमों को पालन किया जा रहा है।

सही
(एस. के. पाण्डे)
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ज्ञापन

क्रमांक ए/8717/तीन–19–30/66(भाग–पांच), जबलपुर, दिनांक 27 सित. 91

प्रति,

जिला एवं सत्र न्यायाधीश,

विषयः आपराधिक सम्पत्तियों के गबन/हानि की रोकथाम बाबत्।

सिविल एवं अधीनस्थ न्यायालयों के कार्यालयों में निरस्त हो रहे शासकीय धन के दुविनियोजन/हानि/गबन में वृद्धि पर विचारोपरान्त यह पाया गया, कि रजिस्ट्री द्वारा उक्त प्रकरणों की रोकथाम के लिये समय–समय पर जारी किये गये निदेर्शो, का मालखाना प्रभारी/संबधित न्यायालयों के पीठा–सीन अधिकारियों द्वारा कड़ाई से पालन नहीं किया जाता।

अतः निर्देशानुसार, आपका ध्यान पुनः इस रजिस्ट्री द्वारा उक्त गबन/ हानि के प्रकरणों की रोकथाम हेतु समय–समय पर जारी किये गये ज्ञापन क्रमांक 4804/चार–6–4/72, दिनांक 30.4.1973, ज्ञापन क्रमांक 8013–चार–6–9–77, दिनांक 2.5.1978, ज्ञापन क्रमांक ए/1476/तीनः19–10/78 दिनांक 13.2.80. तथा ज्ञापन क्रमांक ए/6281/तीन–19–18/80, दिनांक 7.7.1981 की ओर आकर्षित कर निवेदन है, कि उक्त निर्देशों से संबंधित अधिकारियो/कर्मचारियों को भलीभंति अवगत करवा दें, तथा उनका कड़ाई से पालन किया जाना अपेक्षित है। उक्त निर्देशों में शिथिलता बरतने पर यह तर्क स्वीकार नहीं किया जायेगा, कि न्यायिक कार्य की अधिकतावश उनके द्वारा रजिस्ट्री निर्देशों का पालन नहीं किया जा सका, फलतः दोषी अधिकारियों को उत्तरदायी पाये जाने पर वे भी समुचित दण्ड के भागीदार होंगे।

सही

(एम. के. तिवारी)

एडीशनल रजिस्ट्रार

उच्च न्यायालय मध्यप्रदेश, जबलपुर

ज्ञापन

क्र.बी/6821/बी.एफ. 9/91 जबलपुर, दिः–29 अगस्त, 1991

प्रति,

जिला एवं सत्र न्यायाधीश,

यथा निर्देशित आपसे अनुरोध है कि आपके जिले में पदस्थ समस्त न्यायिक अधिकारियों को इस तथ्य से अवगत करावें कि उनके यहां विलंबित प्रकरणों में जब भी भविष्य में अन्य न्यायिक अधिकारियों विशिष्टकर अन्य स्थानों में पदस्थ की साक्ष्य हेतु आवश्यकता हो तो उन्हें समंस के साथ संबधित न्यायिक अधिकारी को संबोधित "लेटर ऑफ रिक्वेस्ट" के अतिरिक्त उच्च न्यायालय से साक्ष्य हेतु ऐसे अधिकारियों के लिये आवश्यक अनुमति प्राप्त करने के संदर्भ में भेजे गये प्रतिवेदन में इस आशय की टीका निम्न बिदुंओं पर आवश्यक रूप से स्पष्ट उल्लेख करें:–

(अ) पदाधिकारी का साक्ष्य किस तथ्य की पुष्टि के लिये आवश्यक हैं।

(ब) इसी तथ्य पर अन्य कौन–कौन से साक्षी के साक्ष्य भी हैं?

(स) क्या अन्य शेषसाक्षी के साक्ष्य अनुपलब्ध हैं?

(द) उक्त साक्ष्य के अभाव में प्रकरण के विनिश्चयन में क्या मूलभूत तथ्य असिद्व रह जायेगा?

(य) निष्कर्ष पर क्या प्रभाव पड़ेगा?

आपसे यह भी निवेदन है कि अन्य जिले में पदस्थ न्यायिक अधिकारियों को साक्ष्य हेतु आहूत करते वक्त मांगी गई उक्त तथ्यों पर पीठासीन अधिकारी के टीका का स्वयं भी आकंलन करें, तद्तर न्यायिक अधिकारी की साक्ष्य आवश्यक ही है तो इसे रजिस्ट्री को अग्रेषित करें क्योंकि बहुधा केवल तकनीकी आधार पर एवं औपचारिक साक्षी होने के बावजूद भी न्यायिक अधिकारियों को साक्ष्य हेतु बुलाया जा रहा है, इस कारण से शासन को न केवल अपव्यय अपितु संबधित आहूत किये गये न्यायिक अधिकारों के न्यायालय का कार्य भी अवरूद्ध हो जाता है।

विशिष्ट रूप से यह उल्लेखित है कि ऐसे समंस पर रजिस्ट्री की अनुमति प्राप्त करने हेतु कम से कम 45 दिन पूर्व संबधित समंस मय वांछित जानकारी, इस कार्यालय को आवश्यक रूप से प्राप्त हो जाना चाहिये।

सही

(एच. डी. मिश्रा)

एडीशनल रजिस्ट्रार