विद्या विनयेन शोभते

प्रशिक्षण शिविरों में प्रशिक्षण काल में विभिन्न प्रकार के अनुभव प्राप्त होते रहते हैं। खट्टे भी तो मीठे भी। न्यायिक अधिकारीगणों का व्यवहार करने का ढंग आचरण शैली उनकी गतिविधियों का ज्ञान भी होता रहता है। उनका मनोविज्ञान समझने का ज्ञान तो मुझे नहीं है लेकिन उनकी गतिविधियां, प्रवृत्ति, क्रियाकलापों की ओर ध्यान अवश्य रहता है।

प्रशिक्षण के प्रति आस्था कितनी है यह बात तो बिना किसी प्रयास के ज्ञात हो जाती है। जब किसी विषय को पढ़ाया जा रहा है तब भी स्वयं स्फूर्त होकर संबंधित पुस्तक न खोलना सामान्य बात है। उन्हें कहना पड़ता है कि प्रशिक्षक जब कोई प्रावधान पढ रहा है तो उसके साथ साथ वे भी उसे मन में पढ़ें। कुछ न्यायिक अधिकारी पुस्तकें साथ नहीं लाते जबकि यह ज्ञात है कि ऐसा करना अनुशासन हीनता है। टिप्पणियों को नोट नहीं करते जब यह बताया जाता है कि आदेशिकाओं में क्या क्या लिखा जाना है। वे ऐसा मानते होंगे कि प्रशिक्षक एक कीर्तनकार है या शास्त्रीय संगीत का कलाकार है जो एक ही बात को विभिन्न सुरों में रागों में आलाप जोड़ झाला गत में अलापता है। कुछ का कहना है कि हमें प्रशिक्षण के लिए बुलाया ही नहीं जाना चाहिए क्योंकि संस्था में जो पढ़ाया जाता है वह तो घर में ही पढ़ सकते हैं। प्रत्युत्तर में यह पूछा जाता है कि यदि ऐसा है तो घर में कितना पढ़ लिया तो अनुत्तरित हो जाते हैं।

ऐसा लगने लगा है कि हमारे संस्कार, हमारी संस्कृति, नैतिक मूल्य शेष ही नहीं रहे हैं। टेम्पो ट्रेक्स कुछ ही वर्षों पूर्व उपलब्ध हुए हैं। अब टेम्पो ट्रेक्स के कारण हमारी धारणाएं, जमीनी सोच विचार, समझ भी जमीन से उठकर ट्रेक्स में आकर बैठ गयी है। वे अधिकारी ट्रेक्स में पीछे के हिस्से में बैठने में संकोच ही नहीं करते शर्म अनुभव करते हैं। 5-6 अधिकारी भी हों तो वे सीधे वाहन चालक को निर्देश देते हैं कि दो ट्रेक्स लाया करो। जिस राष्ट्र में ईंधन की कमी हो जिस राज्य में वेतन बांटने का संकट हो वहां ऐसा चिंतन क्या राष्ट्र के लिए पोषक है? स्वयं के दंभ की आत्मतुष्टी का यह प्रतीक है। हीन भावना से ग्रसित व्यक्तियों की यह कथा व्यथा है।

एक बार कक्षा में वक्ता किसी विषय पर व्याख्यान देने पधारे। उनके सम्मान में उतिष्ठ स्थिति में हो जाना उन्हें अपमानित लगा होगा। एक व्याख्याता जब व्याख्यान देता है तो जो बात कही जा रही है उस बात को सोचना समझना चाहिए ताकि अपना

वैचारिक धरातल आंदोलित हो सके। लेकिन ऐसा होता नहीं है। संभवतः उच्चमन्यता (सुपीरियारिटी काम्पलेक्स) के कारण प्रशिक्षार्थी का विचार होगा कि वक्ता क्या जानता है। वह वक्ता को बीच बीच में टोका टोकी करता था व संपूर्ण वर्ग को उनका भाष्य सुनने में विघ्न डालता था। उक्त विद्यार्थी ने बीच में ही इस अंदाज में एक प्रावधान पढना प्रारंभ किया मानो वक्ता के ज्ञान में वह प्रावधान है ही नहीं। लेकिन विद्यार्थी जब प्रावधान पढ़ना पुनः प्रारंभ कर रहा था तो वक्ता ने अपनी ही पुस्तक से अगला भाग पढकर बता दिया। तब प्रशिक्षु की समझ में आया कि वक्ता निरंक बुद्धि का नहीं है। विद्यार्थी अपनी मूछों पर हाथ फेरते दिखाना चाहता था कि वह कितना विद्वान है। उसकी विद्वता तब छिन्न भिन्न हो गई जब वह अपनी बात पर जोर दे रहा था तो पूछा कि दृष्टांत को पूर्ण रूप से समझा है क्या तो मौन धारण करना पड़ा। एक और विद्यार्थी लेक्चर के समय में बीच में बोल पड़ा कि अमुक दृष्टांत में तो ये कहा है। पलट कर वक्ता ने पूछा आपने वह दृष्टांत पढ़ा है क्या तो विद्यार्थी बोला देखा तक नहीं है। हम प्रशिक्षकों को इस बात का कोई भ्रम नहीं है कि हम सर्व ज्ञाता हैं। यदि हम ज्ञाता होते तो केवल प्रशिक्षक मात्र नहीं होते।

विपरीत इसके ऐसा भी होता रहा है कि हम वक्ताओं को जो बातें मालूम होना चाहिए वे मालूम नहीं थी लेकिन प्रशिक्षुओं को ज्ञात थीं लेकिन वे शालीन थे। अपनी बात को शिष्ट व्यवहार द्वारा प्रतिचिंतन द्वारा अभिव्यक्त भी करते थे। वे ऐसा नहीं कहते थे कि श्रीमान् ये बात गलत है अपितु ऐसा कहते थे कि श्रीमान् इस विषय पर इस प्रकार से चिंतन भी संभव हो सकता है ऐसा लगता है । उनमें किसी भी प्रकार स कोई अहंभाव नहीं था। विपरीत इसके प्रांजलतापूर्ण रूप से सहज भाव से अपनी बात को प्रस्तुत करते थे। प्रशिक्षु व प्रशिक्षक के बीच ऐसे संबंध और अधिक सुरुचिपूर्ण ज्ञान की प्राप्ति, अभिलाषा की ओर गतिशील होते रहे हैं। अपनी कठिनाई को पूछना, समझना एक बात है लेकिन भाषण के मध्य में ही वक्ता को अवरुद्ध करके ऐसी बात पूछना जिसका दूर दूर तक का संबंध वक्ता के व्याख्यान से नहीं है तो स्पष्ट है कि प्रशिक्षु किसी ओर चिंतन में लगा है व अपना बहुमूल्य समय नष्ट कर रहा है व स्वयं का व अपने साथियों का भी नुकसान कर रहा है।

पेछले कुछ समय से माननीय मुख्य न्यायाधिपति श्रीमान ए.के. माथुर महोदय एवं प्रशासनिक न्यायाधिपति श्रीमान डी.पी. एस चौहान महोदय इस बात को भी बता रहे हैं कि प्रशिक्षण का क्या महत्व है। एक प्रसंग भी वे दोहरातें हैं।

खुशामद (खुश आमद) से खुश नसीब हैं। बे अदब (अशीष्ट) (गैर आमद) से बदनसीबी है। खुशामद का भावार्थ है मनुहार, विनय।

जब तक हमारे में अहंकार, दर्पिता, घमंडीपन होगा, दमित आकांक्षा, वंचना से व्यथित रहेंगे तब तक शरीर रूपी न्यायिक अधिकारी के अंदर ज्ञान की पैठ हेतु कोई भी प्रवेश मार्ग नहीं होगा। प्रशिक्षण का मुख्य उद्देश्य ज्ञान तथा अनुभव की संगति स्थापित करना है। ज्ञान तो पुस्तक पढ़ने से ही आ जाएगा लेकिन उसका व्यवहार में उपयोग किस प्रकार से हो सकेगा यह न्यायिक सेवा का महत्वपूर्ण पहलू है। अतः इसके लिए सतत् अभ्यास, साधना (रियाज) करना है, जैसा संगीतकार करता है। यदि ज्ञान तथा अभ्यास की इच्छा है, लगन है तो जहां हम प्रशिक्षण हेतु एकत्र होते हैं उस स्थान की मान मर्यादा का ख्याल रखा जाना चाहिए। ज्ञान तथा अनुभव का यह संगम स्थान है। विनम्रता पूर्वक सीखने से ही हम स्वयं को विकसित उन्नत प्रस्फुटित कर सभ्य बना सकेंगे सुसंस्कृत होंगे तभी हम अपने कार्य क्षेत्र में सफल, विजयी, सौभाग्यशाली होंगे। दूसरे शब्दों में इसी को हम ऋद्धि–सिद्धि, फतहयाबी, कामयाबी, शादकामी, लक्ष्य प्राप्ति कहेंगे।

तद्विद्धि प्रणि पातेन परिप्रश्नेन सेवया।
उपदेक्षन्ति ते ज्ञान ज्ञानिनस्तत्वंदर्शिनः।।
अन्वय :
तत्विद्धि प्रणिपातेन, परिप्रश्नेन, सेवया।
उपदेक्ष्यान्ति, ते ज्ञानम् ज्ञानिनः तत्वदर्शिनः।।

गीता, अध्याय 4 श्लोक 34

अर्थात विनययुक्त रूप से ध्यान से, समझकर प्रश्न पूछना चाहिए ताकि तत्व को जानने वाले तत्वज्ञ, तत्वदर्शी मंडली, उनके अनुभव एवं अभ्यास से तत्व को समझा सकेंगे व दीक्षित कर सकेंगे।

पुरुषोत्तम विष्णु नामजोशी

INTER ACTION

- **IF YOU HAVE A BETTER IDEA AND I HAVE ANOTHER, AND WE EXCHANGE THEM, WE HAVE TWO BETTER IDEAS EACH.**

  IF YOU HAVE ONE RUPEE AND I HAVE ANOTHER, AND WE EXCHANG WE HAVE ONE RUPEE EACH.

- **THE TRAINERS OF TOMORROW ARE THE TRAINEES OF TODAY.**

कर्त्तव्य उपेक्षा एवं अनुशासन की अपेक्षा

"जोति" फरवरी 1999 के प्रकाशन हेतु मुद्रित करने हेतु भेजने के पश्चात प्रशिक्षण संस्थान में व्यवहार न्यायाधीश वर्ग-2 जो 1994 के न्यायिक अधिकारी हैं के दो प्रशिक्षण सत्र पूर्ण हुए। दि 04 फरवरी 1999 के सत्र का शुभारंभ माननीय प्रशासनिक न्यायाधिपति महोदय एवं अध्यक्ष न्यायिक अधिकारी प्रशिक्षण संस्थान समिति श्रीमान डी.पी. एस. चौहान महोदय ने किया एवं तत्पश्चात के सत्र का अर्थात दिनांक 18-2-99 से 25-2-99 सत्र का समापन भी माननीय चौहान महोदय ने किया। उक्त सत्र का मंगलारंभ माननीय मुख्य न्यायाधिपति महोदय श्रीमान ए.के.माथुर साहेब ने किया था।

लगभग 8 लाख रुपयों का गबन किसी एक जिले में होने की सूचना थी अतः उसी विषय पर महत्व देते हुए माननीय माथुर महोदय ने अत्यंत गंभीरतापूर्वक न्यायिक अधिकारीगणों को सचेत करते हुए कहा की जो कर्त्तव्य व अपेक्षाएँ इन अधिकारीगणों से हैं उसकी उपेक्षा हो रही है एवं अनुत्तरदायित्व बोध से कार्य हो रहा है। प्रत्येक अधिकारी ने अपने उत्तरदायित्व का निर्वाह करने की अनिवार्यता पर बल देते हुए कहा कि किसी भी प्रकार से उपेक्षावृत्ति उच्च न्यायालय को ज्ञात होने पर उक्त न्यायिक अधिकारी दंड से नहीं बच पाएगा। कर्त्तव्य पर समय पर न पहुंचने की प्रवृत्ति की ओर ध्यान आकृष्ट करते हुए श्रीमान माथुर महोदय ने यह भी कहा कि प्रत्येक अधिकारी ने 10.30 बजे सुबह अपने चेंबर में उपस्थित होकर अपना प्रशासनिक व कार्यालयीन कार्य करना है व न्यायालयीन समय में न्यायालय में बैठकर गरिमामयी रूप से शिष्ट व्यवहार से भी कार्य करना है। समय पर निर्धारित कार्य न करने की प्रवृत्ति पर भी चिंता दर्शाई गई है। उनका कहना था कि ऐसे न्यायिक अधिकारी गणों की संख्या अत्यंत न्यून है जो दिल और दिमाग से कार्य कर रहे हैं। प्रशिक्षण का उद्देश्य बताते हुए माननीय श्रीमान् माथुर महोदय ने यह भी कहा कि एक दूसरे के अनुभवों का आदान प्रदान होने से कार्य में गुणवत्ता आती है अतः प्रशिक्षण का अधिकाधिक उपयोग करने की अपेक्षा भी की गई।

दिनांक 4 फरवरी 1999 के सत्रारंभ में एवं तत्पश्चात के सत्र समापन में माननीय प्रशासनिक न्यायाधिपति श्रीमान डी.पी. एस चौहान महोदय ने अपनी अभिव्यक्ति इस दिशा में अग्रसर की कि न्यायिक अधिकारीगणों को न केवल अनुशासन प्रिय होना चाहिये स्वयं को भी पद के दृष्टि से मान मर्यादा में रखना चाहिए। प्रलोभनों से मुक्त रहना प्रथम गुण बताते हुए माननीय चौहान महोदय ने यह भी कहा कि आप में इतनी

योग्यता तथा दक्षता होना चाहिए की सर्व सामान्य जन आपको न्यायाधीश के रूप में पहचानें न कि एक सरकारी अफसर के रूप में मात्र। उनका कहना था कि आप अधिकारी तो हैं यह हर एक जन जानता है लेकिन आपका परिचय न्यायिक अधिकारी के रूप में तब ही हो पाएगा जब न्यायिक अनुशासन, न्यायिक मर्यादाओं का पालन किया जाएगा। स्वयं की प्रशंसा स्वयं के मुंह से न करने एवं प्रशंसा सुनकर मंत्र मुग्ध न होने की बात भी आपने व्यक्त की। यदि आप में सामान्य जन से ज्यादा गुणात्मक योग्यता होगी तो लोग आपको उसी दृष्टिकोण से पहचानेंगे। न्यायाधीश को 'संत संप्रदाय' का सदस्य बताते हुए आपने माधुर्यता पूर्ण टिप्पणी की कि असली संत निश्चित की निर्मोही होता है व राग लोभ आदि षड्रिपुओं (काम, क्रोध, लोभ, मोह मद मत्सर) से बचता है।

न्यायिक वेशभूषा की ओर ध्यान आकृष्ट करते हुए माननीय चौहान साहेब ने कहा कि कोई कारण नहीं है न औचित्य है कि हम निर्धारित परिधान नहीं पहन सकते। शर्ट के उपर मात्र टाय(अब बॅड्स), कोट होना चाहिए स्वेटर आदि बिल्कुल नहीं। स्वेटर पहनना हो तो शर्ट के अंदर होगा। कोर्ट के बटन भी बंद रहेंगे। यदि शर्ट के उपर पतूही अथवा बंडी (vest या waistcoat) पहनी है तो ही कोट के बटन खुले रखना चाहिए। माननीय चौहान साहेब स्वयं अपने विद्यार्थी जीवन में एन.सी.सी. से सक्रिय रूप से जुड़े होने के कारण स्वअनुभव से कहा कि फौजी अनुशासन का लक्ष्य रखते हुए उसी अनुशासन का सतत अनुसरण करें। आपकी चाल ढाल वेश भूषा बोलने की पद्धति व कलेवर भी ऐसा हो कि देखने वाला अनुभव करे कि न्यायाधीश वास्तविक रूप से न्यायाधीश है न कि पद धारित व्यक्ति मात्र है।

न्याय मंदिर के रूप में न्यायालयों की पहचान होने के कारण वहां का वातावरण शुद्ध सात्विक होने की अपेक्षा करते हुए कहा के न्यायालयों में स्वच्छता की ओर ध्यान देना होगा जिससे वातावरण भी शुद्ध होता है मन को भी अच्छा लगता है तथा दक्षता में वृद्धि होती है।

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"DO YOU WISH MEN TO SPEAK WELL OF YOU? THEN NEVER SPEAK WELL OF YOURSELF.

- PASCAL

NEVER SPEAK OF YOURSELF TO OTHERS; MAKE THEM TALK ABOUT THEMSELVES INSTEAD; THERE IN LIES THE WHOLE ART OF PLEASING. EVERYBODY KNOWS IT, AND EVERYONE FORGETS IT.

- PROMOD BATRA

दुर्घटना प्रकरणों में सुपुर्दगी विलेख, बैंक गारन्टी एवं नगदी जमाः प्रक्रिया

पुरूषोत्तम विष्णु नामजोशी

म.प्र. उच्च न्यायालय ने रिट पिटीशन ***क्र. 155/1996 एन.डी. सिंघल विरुद्ध राज्य एवं अन्य*** में दि. 10.11.1998 को आदेश पारित किया था जिसका प्रकाशन **1999 (1) एम.पी.एल.जे. पृष्ठ 118** पर हो चुका है तथा **'जोति' खंड 5 भाग 1 फरवरी 1999** के **अंक में पृष्ठ 14** पर भी हुआ है। इस निर्णय के पश्चात प्रशिक्षण शिविरों में न्यायिक अधिकारीगणों ने विभिन्न प्रश्न पूछे थे तथा यथा संभव उनके उत्तर भी स्पष्ट रूप से दिए गए थे। इस लेख के माध्यम से यह प्रयत्न है कि महत्वपूर्ण मुद्दों पर विचार प्रस्तुत किए जावें जिससे इस संबंध में पाठक अपनी ओर से भी विचार करके प्रतिविचारों से अवगत करा सकें जिससे विषय को पूर्णता की ओर ले जाने का प्रयत्न हो। इस लेख के द्वारा विचारों की प्रस्तुति मात्र है। हर कोई अपनी ओर से चिंतन कर ही सकता है तथा अपने–अपने कार्यक्षेत्र में अपने–अपने विचारों के आधार से भी कार्य कर सकता है।

निर्णय के चरण 3 के भाग 3 (1) (2) (3) की ओर ध्यान विशेष रूप से आकर्षित करना है। वो भाग इस प्रकार हैं।

3. Keeping in View all these difficulties, we propose to issue following directions:

1. The Criminal Courts are directed to see as and when the Criminal case is brought before them arising out of the accident either by heavy vehicle or light vehicle or any three wheeler or two wheeler, they will ensure that the original policy of the insurance of the vehicle in question along with driving licence of the person concerned are seized and they shall not be released to the concerned persons unless the photocopies of the insurance policy as well as driving licence are deposited by the concerned accused persons.
2. They shall also ensure that at the time of the delivery of the vehicle involved in the accident on suparatnama in the event of vehicle not insured then solvent security is obtained from the owner of vehicle in question or his agent and along with solvent security in case of heavy/light vehicle a cash security in a sum of **Rs. 50,000/- per victim** is taken or bank guarantee then alone they will release the vehicle in question on suparatnama. In case of insured vehicle they may obtain the current copy of the insurance policy and the driving licence.
3. In case of two wheeler or three wheeler if it is not insured with the insurance company then in that case they will release the vehicle on

suparatnama on obtaining solvent security along with cash security/Bank guarantee in the sum of Rs. **15,000/- per victim.**

एक भ्रम पूर्णरूप से टूट जाना चाहिए कि इस निर्णय के अंतर्गत लिया जाने वाला सुपुर्दगी नामा, बैंक गैरन्टी अथवा नगदी जमा अपराधिक प्रकरण के निराकरण तक के लिए मात्र है। अभियुक्त आरोप स्वीकार करके प्रकरण में दंड संदाय भी कर देता है अथवा जेल की सजा दी हो तथा उसे उसने भुगत भी लिया है तब भी बैंक गारन्टी अथवा नगदी जमा का संबंध अपराधिक प्रकरण से नहीं है यहां तक कि आरोपी को दोष मुक्त भी क्यों न कर दिया गया हो।

इसका प्रत्यक्ष संबंध क्लेम केस (दुर्घटना दावों) से है जो मोटर यान अधिनियम के अंतर्गत चलते हैं। अतः अपराधिक न्यायालयों द्वारा आदेशित बैंक गारन्टी अथवा नगदी जमा की कार्यवाही का अंतिम निराकरण तो क्लेम ट्रिब्यूनलों पर ही छोड़ा जाना चाहिए।

एक प्रश्न यह पूछा गया कि अपराधिक प्रकरण के लंबित होते अथवा निराकृत होने के पश्चात ऐसे सुपुर्दगी नामे बैंक गारन्टी अथवा नगदी जमा को अपराधिक न्यायालयों में कितने दिनों तक लंबित रहना चाहिए एवं वाहनों का क्या करना चाहिए।

जहां तक वाहनों को सुपुर्दगी नामे पर देने का प्रश्न है अथवा निराकरण पश्चात अंतिम रूप से देने का प्रश्न है दं.प्र.सं. की धारा 451 से धारा 459 तक जो प्रावधान पाठ 34 में है, पालन होगा लेकिन ऐसा पालन सशर्त होगा। अर्थात नगदी जमा, बैंक गारन्टी व सुपुर्दगी नामे को भारमुक्त करने का आदेश सशर्त होगा कि जो बैंक गारन्टी अथवा नगदी जमा है उसका निराकरण क्लेम ट्रिब्यूनल द्वारा दिए आदेश के अनुसार ही होगा। वाहन का दिया जाना भिन्न बात है तथा बैंक गारन्टी नगदीजमा एवं वाहन का सुपुर्दगी नामे के अंतर्गत निर्मित भार (चार्ज) का भारमुक्त होना एकदम भिन्न बात है। न्यायिक दंडाधिकारीगण अपने निर्णय में हमेशा यह लिखते ही हैं कि संपत्ति सुपुर्दगी का आदेश अपील होने पर अपील के निर्णयाधीन रहेगा। उसी प्रकार इन अपराधिक प्रकरणों में भी यह लिखा जा सकेगा कि बैंक गारन्टी नगदी जमा संबंधी निराकरण क्लेम ट्रिब्यूनल द्वारा दिए आदेशानुसार अंतिम रूप से होगा। प्रकारान्तर से क्लेम ट्रिब्यूनलों का यह कर्तव्य होगा कि वे इस संबंध में यथोचित आदेश देंगे व यह भी लिखेंगे कि क्या उनके आदेशों का पालन तुरन्त होना है या कि क्लेम केस के अवार्ड (निर्णय) के विरूद्ध होने वाले अपील के निर्णयाधीन रहेगा।

एक अन्य प्रश्न यह उपस्थित होता है कि ऐसे नगदीजमा बैंक गारंन्टी का अपराधिक न्यायालय क्या करेगी। जैसे ही ये विलेख अथवा नगदी अपराधिक न्यायालय में प्रस्तुत एवं जमा हो जाती है अपराधिक न्यायालयों का यह कर्त्तव्य है कि वे अविलंब संबंधित आरक्षी केन्द्र को जहां प्रथम सूचना रिपोर्ट पंजीकृत हुई थी एवं

आरोप पत्र प्रस्तुत हुआ था को विस्तृत विवरण सहित जिसमें बैंक का नाम, गारन्टी क्रमांक, नगदी जमा की पावती व पुस्तक क्रमांक सुपुर्दगी नामा देने वाले व्यक्ति का नाम पता आदि यथा संभव विस्तृत विवरण तैयार करके आरक्षी केन्द्र को भेजे एवं एक प्रति आहत व्यक्ति के परिजनों में से किसी एक –दो को जिनकी माहिती अपराधिक न्यायालयों को हो गई हो, को भी भेजे। इसका परिणाम यह होगा कि संबंधित परिजनों को एवं आरक्षी केन्द्र के पास यथोचित जानकारी रहेगी। वे उसका यथा समय उपयोग कर सकेंगे। क्लेम केस किस ट्रिब्यूनल में लगेगा यह तो निश्चित नहीं रहता। नए संशोधन द्वारा क्षेत्राधिकार का भारी विस्तार किया गया है व मर्यादाकाल की सीमा नहीं है तथा अभी यह अंतिम रूप से निर्धारित भी होना है कि नए प्रावधानों के अंतर्गत अनुच्छेद 137 के अंतर्गत मर्यादा सीमित की भी जा सकती है या नहीं इसलिए अपराधिक न्यायालयों को व्यवहारिक रूप से संभव नहीं होगा कि वे ऐसे किसी ट्रिब्यूनल को कोई प्रति इस संबंध में भेज पाएंगे भी या नहीं। यदि उन्हें ज्ञात हो जाता है तो वे वैसा कर ही सकते हैं।

नगदी जमा व बैंक गारन्टी नामे की अवधि का जहां तक प्रश्न है वह असीमित समय के लिए हो सकती है जब तक कि न्यायालय उसे भारमुक्त नहीं करता लेकिन बैंक गारन्टी एक निश्चित समय के लिए होती है व स्वयमेव भारमुक्त हो जाती है। अतः बैंक गारन्टी की अवधि यदि असीमित समय तक के लिए रखी जावे तो अति उत्तम लेकिन न्यूनतम तीन वर्ष की तो मांगना ही चाहिए तथा बैंक गारन्टी के संबंध में उसमें यह शर्त भी होना चाहिए की बैंक गारन्टी भारमुक्त हो जाने के पूर्व संबंधित बैंक कम से कम एक माह पूर्व जानकारी उक्त अपराधिक न्यायालय को भेजेगी व पूछेगी की बैंक गारन्टी की अवधि बढ़ाई जाना है क्या? यदि क्लेम केस संस्थित हो चुका हो व उक्त ट्रिब्यूनल ने/या अनेकों ट्रिब्यूनलों में जहां विभिन्न पक्षकारों के केसेस संस्थित किए हैं ने बैंक गारन्टी की माहिती प्राप्त कर ली हो तो इस विषय में ट्रिब्यूनलों ने बैंक को सूचित कर देना चाहिए कि भविष्य में पत्र व्यवहार उन से होगा। यथा संभव क्लेम केसेस एक कोर्ट (ट्रिब्यूनल) से दूसरे में कम से कम हस्तांतरित हो ताकि पत्र व्यवहार में प्रभुता, नियंत्रण (कमांड) बना रहे। बैंक गारन्टी में बंध पत्र या प्रतिभूति पत्र जैसा खुलासा होना चाहिए कि अमुक न्यायालय या अन्य न्यायालय जिसका भी संबंध बैंक गारंटी से रहेगा के आदेशानुसार ही बैंक आदेश का पालन करती रहेगी। इस प्रकार बैंक गारंटी पर अधिकारिता सक्षम न्यायालयों/ट्रिब्यूनलों की बनी रहेगी।

बैंक गारंटी क्या होती है से संबंधित विषय पर माननीय न्यायाधिपति श्रीमान् आर. एस. गर्ग महोदय ने लगभग प्रत्येक प्रशिक्षण शिविर में बताया है। वैसे भी न्यायिक अधिकारी पुस्तकों से भी एवं बैंक अधिकारी गणों के माध्यम से भी जान सकेंगे कि बैंक की प्रक्रिया गारंटी के संबंध में क्या होती है।

एक बात ध्यान रखना है कि वाहन का बीमा होना मात्र पर्याप्त नहीं होता है। वाहन यदि बीमित भी हो लेकिन चालक के पास वाहन चालक की वैध अनुज्ञप्ति नहीं है तो वह वाहन बीमा युक्त होते हुए भी बीमा कंपनी क्षति पूर्ति के लिए दायी नहीं होगी अतः बैंक गारंटी या नगदी जमा उस स्थिति में भी मांग लेना चाहिए जब उपरोक्त अनुसार स्थिति हो। यहां एक बात पूछी जाती रही है कि ऐसा निर्देश तो उच्च न्यायालय के निर्णय में नहीं है तो इसका स्पष्ट उत्तर यह है कि उच्च न्यायालय ने जो निर्णय दिया है उस अनुसार विशेष कर्त्तव्य न्यायालयों के लिए बताए हैं। इसका यह अर्थ नहीं है कि न्यायिक दंडाधिकारी आहत जनों एवं परिजनो के हितों की रक्षा करने के लिए अपनी ओर से न्यायिक विवेक का उपयोग करके आदेश देने से वंचित किया है। प्रशिक्षण काल में एक ऐसा दृष्टांत बार बार बताया जा रहा है। **1981 वि. नोट (भाग 2) नोट क्र. 187** में ***नरसिंगदास वि. मंगल दुबे 5 इलाहाबाद 163 (172)*** पूर्णपीठ का संदर्भ दिया है जिसमें कहा है कि

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided by the Code, but on the converse principle is that every procedure is to be understood as permissible till it is shown to be prohibited by the law."

उच्च न्यायालय का वर्तमान दृष्टांत पढ़ने से भी ज्ञात होता है कि उक्त निर्णय द्वारा जो निर्देश दिए हैं वे आहत व्यक्ति एवं उसके परिजनों के हितों के रक्षण हेतु है अतः जो भी आदेश न्यायिक दंडाधिकारी देगा वह यदि उचित है व हितों के संरक्षण हेतु है तो अवैध कैसे होगा? अतः हम आपका यह कर्तव्य हो जाता है कि उच्च न्यायालय के निर्णय को शब्द व भावना से पढ़कर उसका इस प्रकार उपयोग करना है कि आहत व्यक्ति व परिजनों का हित सुरक्षित हो सके जिससे क्षतिपूर्ति की राशि प्राप्त होने में देरी न हो। व्यवहारिक धरातल पर भी जो कठिनाईयां सामने आएंगी उसका निराकरण व समाधान भी हम आप इसी आधार से करें तो अच्छा होगा। बार बार दृष्टांत को देखते रहे जब जब कठिनाईयां आएंगी। ऐसा करने से दृष्टांत के शब्द एवं भाव के साथ तादात्म्य स्थापित होगा तो भावयुक्त रूप से निर्णय के शब्द बोलेंगे जैसे नवजात शिशु अपने माता से या डॉक्टर से बोलता है। शब्द यद्यपि निर्जीव होंगे लेकिन भाव बोलेगा।

मोटर यान अधिनियम के अंतर्गत भी पुलिस का कर्त्तव्य दर्शाया है तो चालक एवं स्वामी का भी कर्त्तव्य बताया है।यथा धारा 134, 158 विशेषकर 158(6) 159, 160, 161, 163, 163 ख, मोटरयान के केन्द्रीय नियम एवं मध्यप्रदेश के नियम। कृपया उन्हें भी देख लेना उचित होगा। विशेषकर केन्द्रीय नियम 150 (1) तथा प्रोफार्मा क्र. 54 को देखें। एक बात ध्यान करें की बीमा पालिसी की समग्र रूप से सत्यता देख लें कि वह कूट रचित तो नहीं है।

धैर्य एवं विश्वास

साथियो, दोषों से कोई मुक्त नहीं है न यह संभव है कि कोई भूल अथवा दोष कर ही नहीं सकता। कर्म करना तो स्वभाव गत है। प्रत्येक व्यक्ति कुछ न कुछ कर्म करता ही रहता है। कर्म न करना भी एक कर्म ही करना है। जो कर्म करेगा उसमें कुछ न कुछ दोष रहेगा ही। लेकिन दोषों का सतत परिमार्जन भी तो अपेक्षित है। अनावधानता या भूल दोष से एकदम भिन्न है। लेकिन दोष के पीछे महत्वपूर्ण बात मानसिकता की भी रहती है। उपेक्षावृत्ति, लापरवाही, बेदरकार व्यवहार (अवांछित) कनिष्ठ वरिष्ठ एवं समसाथियों के साथ व्यवहार में इसी प्रकार की उपेक्षा का परिणाम यह हो जाता है कि हम स्वयं को अनुशासन मुक्त मान लेते हैं या हम जो कर रहे हैं वही सही मार्ग है ऐसा समझने लगते हैं। इसका स्वाभाविक परिणाम दोष एवं तत्पश्चात कदाचरण में परिणिति होती है। हम किसी से कुछ पूछना नहीं चाहते न स्वयं प्रयत्न, मनोयोग करके उस विषय पर अपना ज्ञान बढ़ाना चाहते हैं। जो व जैसी मर्जी हो उस आधार से आदेश पारित करते हैं। परिणाम वही होता है जो नहीं होना चाहिए।

धारा 4 मर्यादा अधिनियम स्पष्टतः प्रावधान करता है कि यदि किसी दिन या दिन के किसी भी भाग के लिए न्यायालयीन कार्य विधिवत कारण से बंद है तो अगले कार्य दिवस पर यदि कार्यवाही की जावेगी तो वह अवधि में ही होगी। धारा 21 सिविल कोर्ट एक्ट में 'अवकाश' के विषय में उल्लेख है। कोई भी सार्वजनिक अवकाश या शीत –ग्रीष्म कालीन अवकाश भी इसी धारा के अंतर्गत सम्मिलित है। धारा 21 (3) में वर्णित है कि ऐसे अवकाश के दिन यदि कोई कार्य किया भी जाता है तो वह इस कारण मात्र से अवैध नहीं होगा कि वह अवकाश के दिन किया गया है। यह प्रावधान न्यायालयों को सशक्त समर्थ बनाने हेतु है। इसी संबंध में एक न्याय दृष्टांत भी है। ***नगर पालिका विरुद्ध द्वारकादास 1981 (II) वि.नो. 187 एवं ए. आय.आर. 1982 एम.पी. पृष्ठ 6*** जिसमें कहा है कि धारा 21 के अंतर्गत सिविल न्यायालयों को यह भी अधिकार है कि आवश्यकता पड़ने पर ग्रीष्मावकाश में भी विधिवत सिविल कार्य हो सकेगा। लेकिन इसका यह अर्थ तो नहीं है कि पक्षकार एवं अधिवक्ता सभी प्रकार के अवकाश के दिनों में भी उन दावों या कार्यवाहियों को संस्थित करेंगे जिसकी कालावधि अवकाश के दिन या अवकाश काल में समाप्त हो रही है। विपरीत इसके यदि ऐसा है तो आदेश 7 नियम 6 व्य.प्र.स यह दर्शित करता है कि अवधि विधि का किसी विशिष्ठ कारण से लाभ लिया है तो उसका खुलासा करें।

ऐसा ज्ञात हुआ कि ग्रीष्मावकाश के तुरन्त पश्चात पुनः न्यायालय खुलें तो जो दावे एवं कार्यवाहियां तुरन्त पश्चात संस्थित की थी उन्हें इसलिए खारिज कर दिया गया कि ग्रीष्मावकाश में दावे या कार्यवाहियां क्यों संस्थित नहीं की। यह ऐसा चिंतन है जो कई दृष्टिकोणों से विचार करने के तदुपरान्त भी मन में स्वीकार नहीं हो रहा है।

एक अपील थी। किराएदार ने की थी। वादी/ भवन स्वामी को चार में से तीन आधारों पर प्रारम्भिक न्यायालय ने डिक्री दी थी। अपील में केवल दो आधार मान्य हुए शेष अमान्य रहे। अपील न्यायालय ने निर्णय में लिखा कि अपील आंशिक रूप से स्वीकार होती है। सहज भाव से लिखा होगा लेकिन परिणाम यह रहा कि विचारण न्यायालय पशोपेश में पड़ गया कि निर्णय का कौन सा भाग आंशिक रूप से स्वीकार किया है जिसका प्रवर्तन वादी/उत्तरवादी नहीं कर पाएगा।

एक अन्य प्रकरण में एक न्यायिक दंडाधिकारी ने समरी प्रकरण में आरोप विवरण ट्रायल शीट पर बनाया था व उसका स्थानांतरण हो गया। आने वाले न्यायिक दंडाधिकारी ने प्रकरण में सभी साक्ष्य लिपिबद्ध की व निर्णय भी दिया। यह निर्णय अपील न्यायालय ने निरस्त कर निर्देश दिया कि विचारण न्यायालय प्रकरण को पुनः श्रवण करेगा, स्वयं ही पुनः आरोप विवरण बनाएगा तब ही साक्ष्य लिपिबद्ध होगी। संभवतः धारा 326 दं. प्र.सं के प्रावधानों का अर्थान्वय ऐसा ही किया गया होगा। ऐसा अर्थान्वय क्यों व कैसा होगा यह बताना तो अपील न्यायालय का कर्त्तव्य था जो बताना चाहिए कि ऐसा निष्कर्ष क्यों निकाला गया था।

एक अन्य प्रकरण में जो निष्कासन का वाद था एक पक्षीय कार्यवाही हुई। प्रतिवादी यदि रामलाल था तो किराए की एक रसीद किसी हीरालाल की ही रामलाल के नाम से प्रदर्शित हुई। रसीद कट्टे में लगभग चार या पांच प्रतिपर्त रहे होंगे। यदि प्रतिवादी काफी समय से किराएदार था तो ऐसे प्रतिपर्त का तात्पर्य क्या था। संभवतः दावा प्रतिवादी के विरुद्ध डिक्री भी हो गया। प्रकरण में प्रस्तुत प्रलेख भी संभवतः पढ़कर विचार में नहीं लिए गए थे ऐसा प्रतीत होता था। मकान का स्वामित्व वादी को कैसे प्राप्त हुआ इसका भी निर्धारण नहीं हो पाया था।

हम आप काम के भार से दबे हैं। यह बात सही है लेकिन होता यह है कि जिन प्रकरणों में भूलें होती हैं वे ही प्रकरण तो छँट छँट कर ऊपर जाते हैं व ऊपर वालों के ध्यान में इस प्रकार की बातें आ जाती हैं कि हम सब के विषय में एक वर्ग (क्लास ऑफ पर्सन्स) के रूप में छवि बनना प्रारंभ होती है। धैर्य व विश्वास रखना होगा। वरिष्ठ व अनुभवी न्यायाधीशों से सतत् बौद्धिक संपर्क बनाकर रखना होगा ताकि वैचारिक धरातल पर चिंतन हो सके।

JUVENILE JUSTICE ACT 1986
PROBLEMS AND REMEDIES

By Shri Keshv Prasad Tiwari
A.D.J.

"The detention and maltreatment of children in violation of law is far too serious, a matter to be looked that with any complacence and unfortunately a stage has now been reached where as this court cannot be content with the expectation of compliance with its orders in these proceedings, but would go father and exact it" ..... Supreme court in case of Sheela Barse vs. union of India AIR 1988 S C 211.

Juvenile Justice Act, 1986 is brought into force and extended in whole of India on 2.10.1987, to protect and adjudicate certain matters relating to and disposition of delinquent or neglected juvenile. The courts deal with the cases of juveniles on original and appeallate side certain problems crops up before the courts while dealing with the provisions of J.J. Act, 1986, particularly about determination of age and jurisdiction and so on. However, The law has now come to be settled down by various important decisions of Hon'ble Apex Court and High Courts.

The plea of an accused being **"Juvenile"** is often raised before the criminal courts and they are obliged to hold an enquiry regarding the age of the accused to form an opinion whether he is a **"Juvenile"** or not. The procedure for holding this enquiry is provided under Sec. 8 of Juvenile Justice Act which is given as below :-

Sec. 8 - Procedure to be followed by a Magistrate not empowered under the Act-

(1) When any Magistrate not empowered to exercise the power of a board or a Juvenile Court under this Act is of opinion that a person brought before him under any of the provision of this Act (otherwise then for the purposes of giving evidence) is a juvenile, he shall record such opinion and forward the juvenile and the record of the proceedings to the competent authority having jurisdiction over the proceedings.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile had originally brought before it.

The reading of the above provision under Sec. 8 makes it clear that the Magistrate is required to record an opinion in regard to the age of a juvenile and on being satisfied forward the record of the proceeding to the competent court having jurisdiction over the matter. After the Magistrate forward the record to the competent court then the juvenile Magistrate shall proceed with the matter according to Sec. 8(2) of the Act. This view is taken in case ***Rinkoo Khatri vs. State of M.P. (1997 (2) M.P.L.J. 400)*** and in case of ***Suresh Agrawal vs. State of M.P. (1997 (2) M.P.L.J. 591).*** See also case of ***Gopinath Ghosh vs. State of West Bengal AIR 1984 SC 237.***

An accused can raise the plea of being a juvenile even before a court of sessions. (Indra Singh vs. State of M.P. (1990 M.P.L.J. 365) when such a plea is raised it is an obligation of the court to examine that plea and it can not fold its hands without returning a positive finding in that regard. The Appex Court in case of ***'Bhola Bhagat' vs. State of Bihar, 1997 (8) S.C.C. 720*** has held that when a plea is raised on behalf of an accused that he is a **"Child"** within the meaning of the definition of the expression under the act, it becomes obligatory on the court, if entertains any doubt about the age as claimed by the accused to hold an inquiry itself for determination of question of age of the accused or case an inquiry to be held and seek a report regarding the same, if necessary by asking the Parties to head evidence in that regard. When a case is committed to the court of sessions, the Sessions Judge is empowered to make inquiries and determine the age of the accused. It is not necessary to refer back the case to Juvenile Magistrate, 1996 Cr.L.J. 103 Akil Alvi vs. State of U.P.

Some time, the criminal courts adopt a short-cut method of recording a finding about the age of the juvenile only on the basis of **"Marksheets".** This method is not proper. In a recent case of Devendra Singh vs. State of M.P. 1998 (1) M.P.L.J. P. 529. It has been held by Hon'ble High Court of M.P. (Hon'ble Dipak Misra J.) that on admission in the school register can not have the finality for the determination of age as there is tendency in the parents to understate the age or sometime to enhance the age.

When the enquiry was limited to medical certificate and affidavits filed on behalf of the petitioner, it is held that the proper procedure is not followed and the matter was remanded back for further enquiry (1997 II M.P.W.N. Short Note 232 Imren Ali vs. State of M.P.) while holding the enquiry regarding the age of a juvenile the court should not only look to the marksheets, affidavits, ossification test but should allow the parties to lead evidence in that regard. It will be a proper procedure for the courts to record finding about the age of a juvenile after this complete enquiry.

SPECIAL COURT :

The Juvenile Justice Act 1986 is a special act and prevails over the general act (Rohtas vs. State of Haryana, A.I.R. 1979 S.C. 1839, 1979 Cr. L.J. 1365 S.C. 2037 - 1981 Cr.L.J. 1497) In case of Matadin vs. State of M.P. (1994 JLJ 454) it is held that the provision of J.J. Act override the provisions of N.D.P.S. Which is of the year 1985 where as the J.J. Act is of the year 1986. Though, There is provision under Sec. 36-A N.D.P.S. Act says that not-withstanding anything contained in Cr.P.C. all offences under the act have to be tried only by the special court. Thus, irrespective of this provision a juvenile has to be dealt under the J.J. Act because the J.J. Act has an overriding effect over all the law existing at the time of the enforcement of the said Act which is later than the N.D.P.S. Act. Hence, if a person is brought before the special court and claiming to be juvenile under J.J. Act, it is the duty of the special Judge to make an enquiry about the fact whether that person is a juvenile or not, and if the court comes to the conclusion that he is a juvenile then he has

to be dealt under the provisions of Sec. 8 of J.J. Act and if it is held that he is not juvenile, then the general law has to be followed.

In this case, it is further held that, pending enquiry (in case of bail) it will be in fitness of thing that the applicant should be released on bail for a short period i.e. for the period upto which the enquiry is conducted by Special Judge and once after inquiry it is found that he is a juvenile, Then the procedure under Sec. 8 has to be followed otherwise he has to be dealt under the general law.

A juvenile accused involved in offence **under Section 3 of the Atrocities Act** will be delat by juvenile court (1995 Cr.L.J. 330 Kerla D.B.)

Thus, Ratio of these case is that a Juvenile accused involved in offences under the above Acts, will be tried by juvenile court, only.

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ध्यानाकर्षण

धारा 13 (बी) (2) एवं 13 हिन्दु विवाह अधिनियम

न्यायिक अधिकारीगणों का ध्यान ***मंजू कोहली वि. देश दीपक कोहली 1997 जे.एल. जे पृष्ठ 32*** की ओर ध्यान आकृष्ट किया जा रहा है। इस संबंध में नोट **1997 'जोति' खंड 3 भाग 2 (अप्रैल 1997) टिट बिट क्र. 8 पृष्ठ 44** पर प्रकाशित किया है।

यह बात ध्यान रखना है कि उक्त प्रावधान में 1 वर्ष 6 माह की अवधि जो वैधानिक अवधि है का पालन विचारण न्यायालय को करना ही है। उक्त अवधि के पूर्व प्रकरणों में राजीनामा व डिक्री नहीं दी जाना चाहिए। क्या प्रक्रिया अपनाना है यह बात उक्त दृष्टांत एवं उसमें उल्लेखित अन्य दृष्टांतों का अवलोकन करके ही निर्धारित करें। उक्त दृष्टांत इस प्रकार है:–

Section 13 B (2) and 13 Hindu Marriage Act:-

Manju kohli vs. Desh Deepak kohli, 1997 JIJ page 32

A joint petition was filed by the applicant and the non-applicant under Section 13-B of the Act. It was held by the High Court that the provisions of Section 13 (2) are mendatory. The parties have to wait atleast for 6 months from the filing of the joint petition. ***AIR 1992 SC 1904 (Smt. Sureshta Devi vs. Om Prakash)*** was followed and **AIR 1986 A.P. 167** and other rulings were distinguished. It was further held that after completion of 6 months the Court has no jurisdiction to pass a decree automatically. The Court has to examine the parties else the very purpose of the provision would be defeated. The consent under 13 (2) must be subsisting consent till the case is heard finally. **(1972) 2 All. ER 667** relied on. Please see ***AIR 1989 Calcutta 115 Apoorve Mohan Ghosh vs. Manashi Ghosh.***

MAINTENANCE OF MALKHANA, NAZARAT AND EMBEZZLEMENT OF PROPERTIES.

R.B. DIXIT,
District Judge (Vig.) Jabalpur,

*[**NOTE** : Recently there was an embezzlement of about Rs. 8,00,000/- Rupees Eight Lakhs) in one district Court. Hon'ble the Chief Justice of M.P. High Court Shri A.K. Mathur had also addressed in the Institutional Training Programme regarding the seriousness to be obesrved by the Judicial Officers in dealing with the office work. He had also warned the Judicial Officers for their dereliction, Slackness and carelessness in attaining. accomplishing office work.*

Senior most District Judge, Shri R.B. Dixit presently posted in S.T. A.T. Gwalior had written an article on "Maintenane of Malkhana, Nazarat and Embezzelment of Properties" which was published in ' JOTI JOURNAL' Vol, III Part I (February 1997) Looking to the relevancy of the same it is again reproduced in this issue for the guidance of the Judicial Officers, Hope that this Article will enlight, awake and guard them of their duties.]

1 Very few of the Judicial Officers realise the importance of Malkhana and Nazarat in working of judicial system. Lack of sufficient knowledge of these branches may land officer-in-charge in trouble and spoil their carrier. On the other hand, if Malkhana and Nazarat is properly handled. it will boost working capacity of a Judicial Officer. Nazarat may be termed as a small secreteriate of court. It controls staff members and their behaviour towards courts and litigating parties. To be a successful Judicial Officer working of Nazarat and Malkhana is to be carefully learnt.

2. It is true that Judicial Officers are not account trained. nor they get enough time to devote for checking accounts and verify Malkhana properties. However if working knowledge of these sections is acquired, it will save a Judicial Officer from committing serious mistakes as officer-in-charge and they will be able to provide proper checks on its working. No Judicial Officer can properly control his staff if he takes such type of personal services or adopts pleasing tactics.

3. A broad principle of dealing accounts and ornaments is that a kind of practical faith on staff is necessary but one should be vigilant enough in this theory of make believe because blind faith leads to embezzlement of public money and properties. It is noticed that an accused of embezzlement is mostly well behaved and appears very innocent. He will cheat his master (officer-in-charge) by his hard working and outward sincerity. He will look like an honest serviceable colleague. The officer-in-charge therefore should not rely on such subordinate officials and check the accounts and properties themselves in time and surprise checking at frequent intervals.

4. From time to time High Court has issued circulars that in case of any loss of public money and properties the Judicial officers (in-charge) will also be held equally responsible and liable for prosecution. In the Circumstances a Judicial Officer should not feel free when he is not directly incharge of Malkhana of Nazarat, because as a presiding officer of a court also he is required to sign and seal many account papers or valuable property. In case any lapse in signing or sealing such papers or property, the judicial Officer may be caught in trouble at any subsequent time, even after his retirement. It is seen that instead of acquiring working knowledge of Malkhana and Nazarat. some Judicial Officers hesitate in signing day to day account papers, in order to save their skin. but it is all the more troublesome to them and subordinate staff. Delay in disposing off daily work causes public complaints against defaulting officers and one has to face checking difficulties in case of piling of work and possibilty of missing document and account links. Maintenance of daily accounts and daily checking are of paramount importance.

5. Rule 458 Rules and orders (Civil) provides that when any defalcation or loss of public money. stamps or other property of more than Rs. 200/- discovered in Nazarat or any other section of office, should be immediately reported to the Accountant General and the Government in the Finance Dept. through the High Court, even when such loss has been made good by the person responsible for it, when the matter has been fully inves-

tigated a further and complete report should be submitted showing the errors or neglect of rules by the officials or officers, concerned.

6. Under Rule 460 Rules & Orders (Civil) Nazarat is required to maintain a Register of properties passing into or through the Nazir under orders of a civil court. In this register articles of movable property only should be entered. The date and manner of disposal of property should be made in col. 9 of this register. Valuables in charge of Nazir should be delivered in presence of Judge or OIC. At the end of each quarter Nazir should prepare an abstract of the pending items and place the register before the officer-in-charge for scrutiny. The Nazir should also send regular reminders to the courts concerned for orders of disposal of the pending items and in cases of unnecessary delay bring it in notice of District Judge through officer-in-charge. Valuable articles should be verified at least once a quarter by the officer-in-charge and at inspection by the District Judge.

7. Rule 461 & Orders (Civil) deals with Register of property passing into the hands of Nazir otherwise than under orders of a civil court. Articles of old furniture. stationery, boxes etc. which are deposited for sale are shown in this register. Register of General Cash Account is maintained under Rule 462 Rules and Order (Civil). All Sums received in cash and disbursed by the Nazir should be accounted for in detail in this register. The register is divided into two parts-one credit of receipts and other is debit or repayment side. Except permanent advance and sums received for disbursement. which can be disbursed within a reasonable time all money in the hands of the Nazir Shall be credited day by day into the treasury. Except under extraordinary circumstances, which should be noted in the remark column of classification register, the cash balance in the hand of Nazir at headquarter should not exceed Rs. 1000/- and at outlying station Rs. 700/- respectively. The daily account shall be examined by the clerk of court or Dy. clerk of court or in absence by Officer-in-Charge and at outlying station by Officer-in-Charge. He shall compare all entries on the receipt side with

the corresponding entries in the Book of Receipt, C.C.D. Register, Processes and Process Fees, Returned Diet Money etc. The Register shall be checked every month by Officer-in-Charge by counting cash balance and record a certificate to that effect.

8. Under Rules 463 & Orders (civil) all sums drawn from treasury on abstract contingent bills and all payments made out of the permanent advance are to be entered in contingent cash Account Register. In no Case shall the Nazir make a payment from the permanent advance or from sums drawn on abstract contingent bills without the signature of the District Judge or clerk of court being affixed to the order of payment. At places where there is no clerk of court every order for payment should be signed by the officer-in-charge. The contingent cash amount shall be checked daily by the officer-in-charge with the vouchers for which payments have been made.

9. Every endeavour Should be made to repay returned diet-money speedly. The Judges. should be particular to see that a notice for repayment of returned diet-money is displayed in every court as required by Rules 465 Rules and Order (Civil). At the beginning of each working day Reader should collect all the process on which diet money has been returned and should total up the sum repayable thereon. This amount is to requisitioned from the Nazir and to be paid to the parties in the presence of the Judge. The transaction in respect of returned diet money should be completed by 12 noon. Such diet money as remains unpaid after close of the case should be sent to the party concerned by money order.

10. Civil Court Deposit (C.C.D.) is a head of account where defalcations have occurred and therefore judges should be vigilant while dealing with this account. Rule 466 Rules and Order (Civil) should be thoroughly learnt. Regarding maintenance of C.C.D. account. All moneys received by sale of executions. deposit of rents, purchase of judicial stamps, copying fees etc. are accounted for in C.C.D. Register. When ever an application for repayment of C.C.D. money is presented. Nazir is required to report the C.C.D. number and amount of deposit on this appli-

cation. After receiving the report a voucher for payment is prepared by the court and Nazir is authorised to draw the amount from treasury for payment to the party concerned, what the judges should see before signing the voucher for payment is whether the amount is really in deposit and/ or if it is not already paid to the party? It is to be seen that in a particular case where money in C.C.D. is deposited through application, Nazir should endorse C.C.D. No. on this application and when an application for receiving payment is made and report of Nazir is called the original remittance List (R.L.) should be called from Nazir for comparing the entries, before signing the voucher of payment.

11. In process of C.C.D. amount a document known as Remittance List is very important. It is divided into two parts. In first part number of deposits with C.C.D. No. and amount is mentioned and in second part amount to be withdrawn with C.C.D. No. is to be entered. Below a balance between the two is to be stated. For example total amount to be deposited on a particular day is Rs. 500/- and amount to be withdrawn is Rs. 400/- then balance of Rs. 100/- only is to be deposited in treasury. on which Treasury Officer will give his receipts, on the other hand if Rs. 400/- is to be deposited and Rs. 500/- is to be withdrawn the balance of Rs. 100/- only is to be paid by the treasury. Now the Officer-in-charge should see that the amount of deposits are checked from duplicate receipt book and amount to be withdrawn for the payment vouchers of the courts, the Judge who signs a payment voucher should verify from the Remittance List that the amount is really deposited in treasury and its payment is outstanding.

12. If process registers. Register of process server's work done and Register showing the work done by Sale Amins are checked (see Rule 377 to 386, 468 and 469 Rules & Orders. Civil) regularly. the probelm of not receiving processes by courts in time. can be easily solved. although fine account is not maintained in Nazarat but the amount of fine is deposited in treasury through Nazir Every Presiding Officer is personally responsible for fine

amount and therefore they should see in beginning of the day that the fine amount realised on previous day was correctly deposited in treasury and fine registers are daily maintained (see Rule 577 to 583 and 590 Rules & Orders. Criminal).

13. High Court is very particular about payment of witnesses (Rule 440 to 444 Rules and Orders. Civil and Rule 588 to 569, 592 and 684 of the Rules and Orders, Criminal) The Court Reader should assess the number of witnesses and amount to be paid to them in early hour of the working day and collect the amount from Nazir. The witnesses should not be left waiting for payment after they are discharged from evidence. The Reader should submit the payment vouchers to Nazir before 4 p.m. every day. The officer-in-charge should see that the statement of account with payment vouchers is submitted in time for the purpose of recoupment, otherwise Nazarat will be left with no money to pay for witnesses next time and judicial officers will come under heavy fire for non-payment to witnesses.

14. Deposit and payment in claim cases is also not conerned with Nazarat but the transaction under this head is carried through Nazir. The best way is to open an account of the party in a registered bank. whenever an order of payment is made. After deposit of claim amount in the bank the concerning party may be authorised to receive payment through cheque. If the amount is to be kept in fix deposit the receipt should be retained in court (till its maturity for payment, No unnecessary delay in payment should be made and no pleader should be handed over authority of payment for any party.

15. Every presiding officer and officer-in-charge of Malkhana, now requires to be specially vigilant because it may spoil their carrier any time in their service life. Most of the officers so much fear in touching Malkhana for disposal of properties. that they always avoid its work. This tendency is the root cause of miseries that are buried deep in the debris of malkhana properties. In most of the malkhanas old pending properties are not only piling up for disposal but also loosing their shape, size and marks of identification. After few years a huge amount of de-

bris of such properties is made to puzzle the judicial officers who come for its disposal. The High Court has not yet framed any rules to coup up with this situation effectively and their is no effective checks on embezzlement of malkhana properties. The every Judicial Officer is given extra units of work for disposal of malkhana properties. Every Judicial Officer may be required to dispose of malkhana properties whose cases are decided by him before he hands over charge at a particular station.

16. Rule 422 to 433, 467 to 470 and 680 of Rules and Orders (Criminal) are to be strictly followed regarding disposal of properties. Judicial Officers are advised to develop following practices in keeping up malkhana upto date:-

(a) Quartery verification of property should be regularly made.

(b) Valuable properties are to be tested. verified and sealed in presence of presiding officer and the metal seal is always kept in personal custody of the presiding officer.

(c) Porperty more than Rs. 500/- is considered as valuable property and should be immediately deposited in Treasury.

(d) Property memo containing receipt of Nazir and Treasury Officer (where necessary) should be checked and kept with the pending case file.

(e) Heavy property should be given on superdiname of any independent person.

(f) Property liable to be destroyed may be destroyed immediately and its sample only be retained, if not required for evidence.

(g) Property liable to be confiscated and likely to be decayed are to be sold immediatly.

(h) Soon after disposal of a case and passing of period of appeal (if no instructions are received from appellate court) property memo is to be endorsed to Nazir with result of the case and manner in which property is to be disposed of.

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उच्च न्यायालय परिपत्र एवं ज्ञापन

अर्द्ध शासकीय पत्र क्र. 5060/ चार-6-6/99 दि. 16 फरवरी 1991 रजिस्ट्रार जनरल, उच्च न्यायालय जबलपुर द्वारा समस्त जिला न्यायाधीश गणों को उल्लेखित।

विषय : गबन की रोकथाम

उपर्युक्त विषयक, गबन की रोकथाम करने के संबंध में समय–समय पर उच्च न्यायालय द्वारा निर्देश प्रसारित किए गए हैं। अभी– अभी एक जिला एवं सत्र न्यायाधीश द्वारा सूचित किया गया है कि उनकी स्थापना पर न्यायालय के दाण्डिक प्रकरणों में अभियुक्तगण द्वारा जमा की गई अर्थदण्ड की राशि को दाण्डिक प्रस्तुतकार द्वारा कोषालय में जमा न कराकर न्यायालयीन चालान पर बैंक की जाली सील लगाकर अत्यधिक शासकीय राशि का गबन किया गया है। अतएव निर्देशानुसार गबन की रोकथाम बावत् समय–समय पर प्रसारित निर्देशों की प्रतिलिपियां ज्ञापन क्रमांक 11693/चार –6–9/74 दिनांक 22–9–1976, आदेश क्रमांक क्यू/ 11/10–4/74 दिनांक 30–1–1976, ज्ञापन क्रमांक 12156/ चार–6–4– 72 दिनांक 16–9–74 पुनः प्रेषित कर कड़ाई से पालत करने हेतु इस निर्देश के साथ प्रेषित किये जा रहे हैं कि आप इस पत्र एवं सहपत्रों की प्रतिलिपि अपने जिले के समस्त न्यायिक अधिकारियों को अग्रेषित कर उनसे पावती प्राप्त कर रजिस्ट्री को प्रेषित करें। यह भी निर्देशित किया जाता है कि भविष्य में कोई हानि होती है तो संबंधित न्यायिक अधिकारियों द्वारा संबंधित नियमों एवं निम्न निर्देशों का पालन किया गया है या नहीं, तथा हानि के लिये वह किस सीमा तक उत्तरदायी है, के संबंध में आप स्पष्ट प्रतिवेदन प्रेषित करें। पूर्व में प्रसारित निर्देशों के अतिरिक्त निम्न निर्देशों का भी कड़ाई से पालन किया जाये :–

(1) मुख्यालय पर जिला नाजिर एवं बाह्य न्यायालयों में नायब नाजिर एक पंजी का संधारण करें, जिसमें प्रत्येक तिथि पर विभिन्न न्यायालयों से बैंक में जमा किये जाने हेतु प्राप्त चालानों के संबंध में निम्नलिखित विवरण हो:–

(1) तिथि (2) प्रेषित राशि (3) न्यायालय का नाम (4) दांडिक प्रस्तुतकार का नाम (5) उक्त राशि– नजारत के जिस कर्मचारी को बैंक में जमा करने हेतु जिला नाजिर/ बाह्य न्यायालय के नायब नाजिर द्वारा अधिकृत किया गया उसका नाम एवं पद

(6) चालान प्राप्त होने पर चालान बुक की प्रतिपर्ण पर अंतिम कालम के नीचे तथा उपरोक्तानुसार संधारित पंजी में भी चालान जमा करने वाले कर्मचारी के पूर्ण हस्ताक्षर (नाम एवं तिथि सहित) लिये जावे। जिला नाजिर/ नायब नाजिर द्वारा उपरोक्तानुसार प्रविष्टियां की गई हैं यह जांच कर, अंतिम कालम में हस्ताक्षर करें।

(2) न्यायालयों में जमा अर्थदण्ड आदि की राशि नजारत के माध्यम से ही बैंक में जमा करायी जायें।

(3) चालान ज़मा होने के पश्चात् नजारत के संबंधित कर्मचारी द्वारा न्यायालय को वापिस दी जाने वाले चालान के प्रतिपर्ण के पृष्ठ भाग पर "मेरे द्वारा आज दिनांक ..... को स्टेट बैंक आफ इंडिया / अन्य बैंक..... ब्रांच में चालान क्रमांक..... द्वारा राशि रुपये ..... जमा की गई" लिखकर नीचे हस्ताक्षर किये जायें तथा कोष्टक में पूरा नाम लिखा जाये।

(4) जिला नाजिर/ नायब नाजिर चालान में पीठासीन अधिकारी अथवा प्रभारी अधिकारी के पूर्ण हस्ताक्षर एवं नाम की सील अंकित होने पर ही चालान एवं राशि प्राप्त करें। जिला नाजिर/नायब नाजिर यह सुनिश्चित करें कि चालान के प्रतिपर्ण पर संबंधित न्यायालय के दांडिक प्रस्तुतकार द्वारा पूर्ण हस्ताक्षर मय नाम के लिखा गया है अथवा नहीं। पूर्ण हस्ताक्षर एवं पूर्ण नाम संबंधित लिपिक का लिखाया जाये।

(5) न्यायालय उपाधीक्षक "फाइन एकाउन्ट" का निरीक्षण करते समय उक्त निर्देश एवं नियम एवं आदेश (दांडिक) में निर्धारित नियमों का कड़ाई से पालन करना सुनिश्चित करें। यदि कोई अनियमितता पाई जाये तो तत्काल जिला न्यायाधीश को सूचित करें।

(6) संबंधित न्यायिक अधिकारी/ अधिकारी, मध्यप्रदेश व्यवहार न्यायालय नियम 1961 के नियम 379 (3) (4) (5) नियम 464, नियम 508, नियम 555, नियम एवं आदेश (दांडिक) के नियम 352,353, 364, नियम 577 से 583, नियम 667, नियम 681 (3) (4) एवं नियम 739 का कड़ाई पूर्वक पालन करें। कुछ प्रकरणों में यह भी देखा गया है कि संबंधित पीठासीन अधिकारी द्वारा जुर्माने की राशि की वसूली एवं उसे बैंक में जमा करने का कार्य अपने प्रस्तुतकार के ऊपर छोड़ दिया जाता

है, वह न केवल नियम विरुद्ध है अपितु जोखिम का भी है। यदि वह उपरोक्त नियमों द्वारा उन पर अधिरोपित कर्त्तव्यों का पालन करें तो जुर्माने की राशियों का व्यपहरण रोका जा सकता है।

(7) संबंधित अधिकारी मध्यप्रदेश व्यवहार न्यायालय नियम 1961 के नियम 466 के नियम 10, नियम 380, नियम एवं आदेश (दांडिक) के नियम 604, 605, 606, 607 तथा मध्यप्रदेश वित्तीय संहिता भाग एक के नियम 29,30,43 एवं 44 का समुचित रूप से पालन करें। मध्यप्रदेश वित्तीय संहिता भाग एक के नियम 29 एवं 30 के अनुसार विभागीय नियंत्रण अधिकारियों का यह कर्त्तव्य है, कि वह यह नियंत्रण रखे कि शासन को देय समस्त राशियां शीघ्र एवं नियमित रूप से वसूल की जाकर लोकनिधि के संचित खाते में जमा की जाये। नियम 43 के अनुसार प्रत्येक न्यायालय या प्राधिकरण जो अर्थदंड अधिरोपित करने हेतु अधिकृत है, का यह सुनिश्चित करने का भी कर्तव्य है कि अर्थदंड के रूप में वसूल की गई राशि कोषालय में जमा की जाती है या नहीं, उक्त संहिता के नियम 44 के अनुसार, प्रत्येक व्यवहारिक अथवा आपराधिक न्यायालय को प्रत्येक माह के अंतिम कार्य दिवस पर संबंधित जिला न्यायाधीश को एक प्रपत्र भेजना होगा जिसमें अर्थदंड की मांग, वसूली, कोषालय में भुगतान बकाया अर्थदंड एवं वापिस किया गया अर्थदंड का विवरण रहता है। जिला न्यायाधीश अपना तथा अपने अधीनस्थ न्यायालयों की एक मासिक विवरण कोषालय अधिकारी को मिलान के लिये भेजेंगे। कोषालय अधिकारी मिलान के पश्चात् उक्त प्रपत्र के सही होने अथवा (न होने का) प्रमाण पत्र देगा।

(8) मुख्यालय पर लेखों की जांच प्रतिदिन एवं बाह्य न्यायालयों पर लेखों की जांच त्रैमासिक रूप से न्यायालय उपाधीक्षक से नियमित रूप से अनिवार्यतः कराई जावे।

(9) प्रत्येक जिले में पदस्थ पीठासीन अधिकारी का यह कर्त्तव्य होगा की वह प्रतिदिन यह सुनिश्चित करे कि न्यायालय में अर्थदंड या अन्यथा रूप से जमा की गई शासकीय राशि कोषालय में जमा कर दी गई है तथा कोषालय का मानक एवं दिनांक न्यायालयीन चालान के प्रतिपर्ण पर तथा रसीद बुक की डुप्लीकेट प्रति पर संबंधित के द्वारा लाल स्याही से अनिवार्यतः अंकित किया जावे।

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प्रशिक्षण काल में यात्रा भत्ता

उच्च न्यायालय म.प्र. जबलपुर द्वारा पत्र क्र. बी/ 1338 तीन-8 -6/23 भाग दस दि. 25 फरवरी 1999 को समस्त जिला न्यायाधीशों को ज्ञापन।

विषयः- न्यायिक प्रशिक्षण संस्था जबलपुर में प्रशिक्षण हेतु सम्मिलित होने वाले न्यायिक अधिकारी गणों के यात्रा देयकों के संबंध में।

उपरोक्त विषय के संदर्भ में कतिपय जिला एवं सत्र न्यायाधीशों द्वारा उच्च न्यायालय से मार्गदर्शन चाहा गया है कि न्यायिक प्रशिक्षण संस्थान में प्रशिक्षण हेतु सम्मिलित होने वाले न्यायिक अधिकारीगणों के यात्रा देयकों का समायोजन किस प्रकार किया जावे।

इस संबंध में आपका ध्यान राज्य शासन के वित्त विभाग द्वारा प्रसारित ज्ञापन क्रमांक 1232/3455/ 76/ चार/ नि–1/ 78, दिनांक 6.11.1978 की ओर आकर्षित किया जाता है। जिसके अंतर्गत निम्नानुसार निर्देश प्रसारित किये गये हैं :–

1. "राज्य शासन के अधीन कार्यरत जो शासकीय सेवक प्रशिक्षण हेतु भेजे जाते हैं उन्हें कितनी अवधि तक मध्यप्रदेश यात्रा भत्ता नियमों के नियम 122 के प्रावधनानुसार यात्रा भत्ता व दैनिक भत्ता देय होगा तथा कितनी अवधि के पश्चात शासन द्वारा समय–समय पर निर्धारित दर पर क्षतिपूर्ति यात्रा भत्ता देय होगा, इस संबंध में वित्त विभाग के ज्ञापन क्र. 1465/2957/ चार /नि–69,दिनांक 15–12–1969 द्वारा प्रशासकीय विभागों को अधिकार प्रदत्त किये गये हैं जिसके अनुसार यदि प्रशिक्षण की अवधि एक माह या उससे कम है तो उस अवधि में पूरी दर से दैनिक भत्ता दिया जा सकता है। यदि प्रशिक्षण की अवधि एक माह से अधिक है तो प्रशिक्षक्षार्थी को दैनिक भत्ता के बजाय एक निश्चित दर से क्षतिपूर्ति भत्ता दिया जाता है। बंबई, कलकत्ता, दिल्ली, नगरों के लिए क्षतिपूर्ति भत्ते की दरें वित्त विभाग के ज्ञापन क्र. 1195/सी.आर./ 2648/ चार/ नि–1/70, दिनांक 30–11–70 के अनुसार निर्धारित की गई हैं।
2. राज्य शासन के ध्यान में यह लाया गया है कि प्रशिक्षणार्थियों को वर्तमान में देय क्षतिपूर्ति भत्तें की दर कम हैं तथा उनमें वृद्धि की आवश्यकता है। शासन ने इस पर विचार कर निर्णय लिया है कि राज्य के भीतर व राज्य के बाहर प्रशिक्षण पर जाने वाले शासकीय सेवकों को निम्न दरों पर दैनिक भत्ता स्वीकृत किया जावे।

   (1) 30 दिन तक के प्रशिक्षण की अवधि के लिये सामान्य भत्ता नियमों के तहत देय दैनिक भत्ता।

(2) प्रशिक्षण अवधि यदि 31 दिन से अधिक हो तो प्रथम 30 दिन के लिए उपरोक्त (1) के अनुसार दर से पूर्ण दैनिक भत्ता तथा 30 दिन से अधिक और 180 दिन तक की अवधि के लिए इस दर का 50 प्रतिशत दैनिक भत्ता। प्रशिक्षण अवधि यदि 180 दिन से अधिक हो तो 180 दिन के बाद की अवधि के लिए इस पर देय दैनिक भत्ते का 25 प्रतिशत दैनिक भत्ता (रहने के लिए प्रशिक्षण संस्था यदि कोई निःशुल्क सुविधा प्रदान करती है) वह अतिरिक्त रूप से प्राप्त होगी।

3. यदि प्रशिक्षण संस्था स्वयं प्रशिक्षणार्थी शासकीय सेवकों के रहने और भोजन की पूर्ण व्यवस्था करती है और उसके लिए कोई दर संस्था द्वारा निर्धारित की जाती है तो राज्य शासन उस दर को स्वीकार कर संबंधित शासकीय सेवक को उस व्यवस्था का लाभ उठाने की अनुमति देगा। इस लाभ के साथ पाकेट व्यय हेतु निम्न दर से भत्ता दिया जावेगाः–

1– ग्रेड "ए" अधिकारियों के लिए	रू. 100 प्रतिमाह
2– ग्रेड "बी" अधिकारियों के लिए	रू. 75 प्रतिमाह
1– ग्रेड "सी" अधिकारियों के लिए	रू. 30 प्रतिमाह

4. प्रशिक्षण संस्था यदि केवल निवास की सशुल्क व्यवस्था करती है तो निवास के चार्जेज, जो देय हैं, वह भी राज्य शासन द्वारा दिये जावेंगे और यह राशि या साधारण भाड़े की राशि, जो भी कम हो, वह दैनिक भत्ते से काट ली जायेगी। अर्थात ऊपर का पैरा 2 के अंतर्गत जो दैनिक भत्ता देय होगा, उसमें से प्रथम 30 दिन के लिए संबंधित शासकीय सेवक के वेतन की 70 प्रतिशत राशि काटी जायेगी और 30 दिन के बाद 180 दिन तक की अवधि के लिए वेतन की 5 प्रतिशत राशि संस्था द्वारा वसूल की जा रही राशि जो कम हो काटी जावेगी, 180 दिन के बाद कोई राशि नहीं काटी जावेगी।

5. वित्त विभाग के ज्ञापन क्रमांक 1331/ चार/नि–1/73, दिनांक 17.9.73 सहपठित ज्ञापन क्रमांक 581/835/नि–1/चार, दिनांक 25.5.75 के अनुसार दैनिक भत्तों पर लगाई 10 प्रतिशत कटौती इन आदेशों के अंतर्गत देय दैनिक भत्ते पर भी लागू होगी।

6. यह आदेश जारी होने के दिनांक से प्रभावी होंगे तथा जो शासकीय सेवक वर्तमान में प्रशिक्षण पर होंगे, उन पर लागू नही होंगे अर्थात वे पूर्व में स्वीकृत दरों पर ही दैनिक भत्ता/ क्षतिपूर्ति भत्ता प्रशिक्षण अवधि में प्राप्त करते रहेंगे। यह आदेश उन प्रकरणों में भी लागू नही होंगे, जहां प्रकरण विशेष में शासन के विशिष्ट आदेशों के अंतर्गत क्षतिपूर्ति भत्ते की दरें निर्धारित की गई हैं।

7. वित्त विभाग के ज्ञापन क्रमांक 1475/2957/चार/ नि–1/69, दिनांक 15.12.69 द्वारा प्रशासकीय विभागों को प्रदत्त अधिकारों पर जो अन्य प्रतिबंध है। वे यथावत प्रभावी रहेंगे।

राज्य शासन द्वारा तत्पश्चात वित्त विभाग के ज्ञापन क्रमांक 1646/4134/नि.–1 /चार/82 दिनांक 17.12.1982 के अंतर्गत निर्देश जारी करते हुए आगे और स्पष्टीकरण दिया गया है, जो निम्नानुसार है :–

1. "विषय–प्रशिक्षण प्राप्त करने वाले सरकारी कर्मचारियों को यात्रा भत्ता, दैनिक भत्ता।

   वित्त विभाग के ज्ञापन क्रमांक 1232/3455/76/चार/नि–1/78 दिनांक 6.11.78 के पैरा तीन में यह प्रावधान किया गया है कि प्रशिक्षण अवधि में यदि प्रशिक्षण संस्था स्वयं प्रशिक्षणार्थी शासकीय सेवकों के रहने और भोजन की पूर्ण व्यवस्था करती है और उसके लिए कोई दर संस्था द्वारा निर्धारित की जाती है तो राज्य शासन उस दर को स्वीकार कर संबंधित सेवकों को उस व्यवस्था का लाभ उठाने की अनुमति देगा। इस लाभ के साथ उक्त ज्ञापन में निर्धारित दर पाकेट व्यय भी दिया जावेगा।

2. राज्य शासन द्वारा चौधरी वेतन आयोग की अनुशंसा पर विचार कर अब यह निर्णय लिया गया है कि प्रशिक्षण पर भेजे जाने वाले शासकीय सेवक यदि संस्था द्वारा प्रदान की गई भोजन तथा आवास सुविधाओं का लाभ उठाता है तो वहां उसे उक्त ज्ञापन के अनुसार पूर्व में स्वीकृत पाकेट व्यय के स्थान पर प्रशिक्षण स्थान पर उपलब्ध दैनिक भत्ते का एक चौथाई दर से जेब खर्च प्राप्त होगा।

3. यह आदेश दिनांक 14.10.1982 को अथवा उसके पश्चात प्रशिक्षण पर भेजे जाने वाले कर्मचारियों के मामले में लागू होंगे। जो शासकीय सेवक पूर्व से ही प्रशिक्षण पर हैं वे जब तक वर्तमान प्रशिक्षण पर रहेंगे इस आदेश के प्रसारित होने के पूर्व प्रचलित आदेशों के अनुसार निर्धारित दर पर ही जेब खर्च प्राप्त करते रहेंगे।"

आगे और आपका ध्यान वित्त विभाग द्वारा प्रसारित ज्ञापन क्रमांक डी. 87/ 2607/86/ नि.1/ चार, दिनांक 2.9.1988 को और भी आकर्षित किया जाता है जिसके तहत शासकीय सेवकों को यात्रा के दौरान मध्यप्रदेश स्टेट टूरिज्म डेवलपमेंट कारपोरेशन लिमिटेड के होटल्स, टूरिस्ट बंगलों एवं हॉली डे होम्स में ठहरने की सुविधा प्रदत्त की गई है जो निम्नानुसार है:–

1. "शासकीय कर्मचारियों को यात्रा के दौरान लोक निर्माण विभाग के विश्राम भवन एवं विश्राम गृहों में उपलब्धता के आधार पर ठहरने की सुविधा अनुमत है। विश्राम

भवन एवं गृहों में आवास सुविधा उपलब्ध न होने की स्थिति में कर्मचारियों को ठहरने की असुविधा होती है। इस स्थिति को विचार में लेते हुए राज्य शासन द्वारा यह निर्णय लिया गया है कि शासकीय कर्मचारियों को दौरा यात्राओं में राज्य के मध्यप्रदेश स्टेट टूरिज्म डेवलपमेंट कारपोरेशन द्वारा चलाया जा रहे होटल्स, मोटेल्स, टूरिज्म बंगलों एवं हॉलीडे होम्स में ठहरने की अनुमति दी जावे।

2. इस सुविधा के लिए पात्रता निम्नानुसार रहेगी।

शासकीय सेवक ग्रेड	**पात्रता**
1. ग्रेड "ए" के वे अधिकारी जिनका चौधरी वेतनमान में वेतन रु. 2500 प्रतिमाह या इससे अधिक हो	सिंगल आक्युपेन्सी वातानुकूलित आवास सुविधा
2. ग्रेड "ए" व ग्रेड "बी"	सिंगल आक्युपेन्सी गैर–वातानुकूलित आवास सुविधा
3. ग्रेड "सी" एवं ग्रेड "डी"	डारमेटरी में ठहरने की सुविधा जहां उपलब्ध हो।

3. राज्य पर्यटन विकास निगम द्वारा उनके होटल्स एवं आवास व्यवस्थाओं में (Lodging) ठहरने के लिए निर्धारित किराये की दर से 10 प्रतिशत छूट दी जावेगी। कर्मचारियों को उनके देयकों का भुगतान स्वयं करना होगा जिसकी प्रतिपूर्ति बाद में यात्रा देयकों में भुगतान की गई रसीदों के आधार पर की जावेगी। इस छूट (Discount) की सुविधा के लिए मध्यप्रदेश राज्य पर्यटन विकास निगम द्वारा मांगे जाने पर शासकीय कर्मचारियों को अपना परिचय पत्र अथवा शासकीय कर्मचारी होने का प्रमाण पत्र प्रस्तुत करना होगा।"

म.प्र. शासन के वित्त विभाग द्वारा अपने ज्ञापन क्रमांक एफ. आर. 17–05 /96 /ब–9/ चार दिनांक 2.7.1996 के अंतर्गत पुनः निम्नानुसार निर्देश प्रसारित किये गये है:–

राज्य शासन के आदेश क्र. डी. 870/2607/86/नि–1/ चार, दिनांक 02 सितम्बर, 1986 क्रमांक 455/679/ नि.–1/87/चार, 27 अगस्त 1987 और क्र. 142/326/92/नि./चार, दिनांक 10.06.92 को निरस्त करते हुए राज्य शासन शासकीय सेवकों को शासकीय कार्य से प्रदेश के भीतर दौरे पर सरकारी सर्किट हाऊस, रेस्ट हाऊस इत्यादि में ठहरने की सुविधा के अलावा ठहरने की निम्नानुसार अतिरिक्त सुविधाओं की स्वीकृति, प्रदान करता है:–

1. राज्य के मध्यप्रदेश, स्टेट डेवलपमेंटस कारपोरेशन द्वारा चलाये जा रहे होटल्स, मोटल्स, टूरिस्ट बंगलों एवं हालीडे होम्स में निम्नानुसार ठहरने की पात्रता होगी:–

शासकीय सेवक ग्रेड	पात्रता
1. ग्रेड "ए" के वे अधिकारी जिनका वेतन 5,100/– प्रतिमाह या इससे अधिक हो।	सिंगल आक्युपेंसी वातानुकूलित आवास सुविधा
2. ग्रेड "ए" व "बी" अधिकारियों के लिए।	सिंगल आक्युपेंसी गैर वातानुकूलित आवास सुविधा
3. ग्रेड "सी" व ग्रेड "डी"	डारमेटरी में ठहरने की सुविधा जहां उपलब्ध हो।

(1) रेल्वे रिटायरिंग रूम, भारत सरकार के गेस्ट हाऊस, भारत सरकार और राज्य सरकार के अर्ध शासकीय संस्थाओं के गेस्ट हाऊस जैसे म.प्र. गृह निर्माण मंडल, म.प्र. माध्यमिक शिक्षा मंडल, अपेक्स बैंक आदि के गेस्ट हाऊस (इत्यादि में ठहरने की अनुमति इस शर्त के साथ दी जाती है कि किराये की राशि की क्षतिपूर्ति म.प्र. राज्य पर्यटन विकास, निगम के होटल मोटल्स में ठहरने की पात्रता की सीमा तक मान्य होगी।

(2) इसके अलावा प्रथम श्रेणी अधिकारियों को म.प्र. के भीतर निजी होटलों में भी ठहरने की पात्रता इस शर्त के साथ होगी कि किराये की प्रतिपूर्ति म.प्र. राज्य पर्यटन विकास निगम के होटल्स की सीमा तक की जायेगी।

(3) उपरोक्त ठहरने की व्यवस्था के देयकों का भुगतान संबंधित अधिकारी/कर्मचारी को स्वयं करना होगा, जिसकी प्रतिपूर्ति बाद में यात्रा देयकों में भुगतान की गई रसीदों के आधार पर की जायेगी। प्रतिपूर्ति के लिये लोक निर्माण विभाग या म.प्र. पर्यटन विभाग निगम के आवास को अनुपलब्धता के प्रमाण पत्र की जरूरत नहीं है।

(4) राज्य पर्यटन विकास निगम द्वारा उनके होटल्स एवं आवास व्यवस्थाओं में ठहरने के लिए निर्धारित किराये की दर में 10 प्रतिशत की छूट दी जायेगी। इस छूट की सुविधा के लिए म.प्र. राज्य पर्यटन विकास निगम द्वारा मांगे जाने पर शासकीय कर्मचारियों को अपना परिचय पत्र अथवा शासकीय होने का प्रमाण–पत्र प्रस्तुत करना होगा।

यह आदेश जारी होने के दिनांक से प्रभावशाली होंगे।

उपरोक्त समस्त आदेश न्यायिक अधिकारियों पर भी यथावत लागू माने जावें। अतः आपसे यह अपेक्षा की जाती है कि प्रशिक्षण संस्थान में प्रशिक्षण में सम्मिलित होने वाले न्यायिक अधिकारियों के यात्रा देयकों का निराकरण भी शासन द्वारा प्रसारित उक्त निर्देशानुसार ही किया जावे।

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CIRCULAR

HIGH COURT OF M.P.'S D. O. LT. NO. 111-1-5/57 CH. 1/99 DTD. 22.02.99 ADDRESSED TO ALL THE DISTRICT JUDGES AND VIGILANCE DISTRICT JUDGES BY THE VIGILANCE REGISTRAR.

SUB :- Regarding punctuality to attend the Courts.

It is brought to the notice of the High Court that normally Judicial Officers reach the Court around 11.00 am. whereas office time is 10.30 am and the Court time is 11.00 am.

Hon'ble the Chief Justice, therefore, directed that you will ensure that all the Judicial Officers should reach the office at 10.30 am, positively and attend the Court at 11.00 am. it is also directed that you will see that Judicial Officers are available in Chamber from 10.30 am and attend the Court at 11.00 am. In case, any officer is not available in the Chamber at 10.30 am and in the Court at 11.00 am, you will report the matter to the High Court.

Please circulate these instructions amongst all the subordinate Judicial Officers under you, for strict compliance.

Extract from "Rules and Orders Civil" :-

Rule1. (1) The ordinary hours of sitting, for all Courts shall be 11 a.m. to 5 p.m.

(2) There shall be ordinarily be an interval (not exceeding half an hour) at about 2 p.m.

Rule 2. (a) The Judicial work of the day shall be taken up punctually at 11 a.m. and shall have precedence over all other work. In no circumstances are presiding Judges to permit their administrative or departmental work to interfere with the strict observance of this Rule.

(b) Administrative or departmental work shall be done either before the sitting or after the rising hour or after the disposal of the day's judicial work should it occur earlier. On days when the administrative work to be done heavy presiding Judges may rise half an hour earlier for the purpose.

Rule 5. (1) The working hours in every judicial office shall be from 10.30 a.m. to 5 p.m. Figure "10.30" has been substituted for "11" by Corrigendum No. 3473-IIII-I-5/57, dated 13.4.61, published in M.P. Gazette, Part IV (Ga) dated 23.4.61, P. 266.

(2) It is the duty of every Judge to insist on the punctual attendance of all members of the establishment at the hour prescribed by this rule. On the entry in the attendance register of the hour of arrival of each member, and on the prompt and regular despatch of all official business.

NOTE 2 -

(a) At the headquarter of a civil district, the Clerk of Court and at outlying stations, the Reader to the Senior Judge is generally responsible for seeing that ministerial officers attend punctually at the prescribed hour, and that they commence work promptly and do not leave before the hour fixed, or, if their work is not up-to-date, until they receive permission to leave. The attendance register should be submitted punctually at 11.10 a.m. (Now it is 10.40 a.m.) to the Clerk of Court or Reader, as the case may be, who should mark in red ink any official's late attendance. The register shall then be laid every day before the senior Additional District Judge at headquarters or the senior Judge at an outstation for his signature.

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सूचना

"जोति जनरल" 1998 की वार्षिक अनुक्रमणिका लगभग तैयार हो गई है। समयाभाव के कारण इस अंक के साथ प्रकाशित नहीं हो पा रही है। जून 1999 के अंक के साथ वितरित होने की संभावना है।

- **ANY ONE WHO STOPS LEARNING IS OLD, WHETHER AT TWENTY OR EIGHTY. ANY ONE WHO KEEPS LEARNING STAYS YOUNG. THE GREATEST THING IN LIFE IS TO KEEP YOUR MIND YOUNG.**
- **NOTHING CAN STOP THE MAN WITH THE RIGHT MENTAL ATTITUDE FROM ACHIEVING HIS GOAL; NOTHING ON EARTH CAN HELP THE MAN WITH THE WRONG MENTAL ATTITUDE.**
- **WE SHOULD REALISE THAT MAN HAS ONLY A MIND WHICH CONCEIVES THOUGHTS, BUT ALSO A HEART WHICH PUT THEM INTO PRACTICE.**

TIT-BITS

1. **JUDGMENT ON NOTIFICATION DATED 7-9-1989 GRANTING EXEMPTION TO WAKF UNDER SEC. 3 (2), M.P. ACCOMMODATION CONTROL ACT**
1994 M.P. L.J. 597 (D.B.)
(SMT.) CHINTAMANI Vs. STATE OF MADHYA PRADESH

ORDER

EXEMPTION FROM THE APPLICABILITY OF THE ACT :

Section 3 (2) is constitutionally valid but power is to be exercised reasonably. Notification dated 7-9-1989 granting exemption under Section 3 (2) is constitutionally illegal and void being violative of Article 14. It was held that the tenant of wakf would be governed by the M.P. Accommodation Control Act.

Following are the extracts from the judgment :

Section 3 (2) of the M.P. Accommodation Control Act is constitutionally valid. This, however, does not mean that uncontrolled or unguided discretion has been vested in the State Government to grant exemption. The State Government while exercising this power to grant exemption from applicability of the Act has to act according to the provisions of Article 14 of the Constituion. The obligation to act reasonably is always implicit in such cases. The Notification dated 7.9.1989 in so far as it exempts a wakf from the opertion of the Madhya Pradesh Accommodation Control Act, 1961 is constitutionally illegal and void being violative of Article 14. As a necessary consequence, a tentant of wakf would be governed by the provisions of the Madhya Pradesh Accommodation Control Act, 1961. There was nothing whatsoever on record to ascertain why and how the State Government decided to grant the exemption. There was also nothing on record to consider whether the basic conditions necessary for granting exemption were satisfied. Since the effect of the Notification was to withdraw the protection from the tenants of wakf and leave then to the mercy of the wakf some strong reasons were required to justify exemption. ***State of Madhya Pradesh Vs. Kanhaiyalal, 1970 MPLJ 973, S. Kandaswamy Chettiar Vs. State of Tamil Nadu, AIR 1985 SC 257*** and ***Ishwarlal and another Vs. the Madarsa Taiyabia Committe,*** 1981 M.P. Rent Control Journal 138 relied.

This judgment was set aside by the following judgment of the Supreme Court.

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C.A. NO. 9909 OF 1995 (ARISING OUT OF S.L.P. (C) NO. 4360 OF 1994 *THE STATE OF M.P. Vs. SMT. CHINTAMANI AGARAWAL* DECIDED ON 19-10-95 (UNREPORTED)

The State of Madhya pradesh in exercise of the powers under sub-section 2 of section 3 of the M.P. Accommodation Control Act. 1964 (the Act.) exempted all buildings owned by the Madhya Pradesh Wakf Board (Board) from the operation of the Act. The Notification dated November 7, 1989 granting

exemption to the Board under the above- mentioned provision of the Act was challenged before the High Court. The High Court quashed the Notification on the short ground that there was no material before the State Government to reach the satisfaction that it was necessary to issue the impugned Notification.

Learned counsel for the State of M.P. has invited our attention to the letter dated March 26, 1976, by the then Prime Minister of India addressed to the Chief Minister of the State of M.P. Suggesting, for the reasons given in the said letter , to grant exemption of the provisions of the Act to the properties owned by the Wakf. Thereafter, the State of M.P. made enquiries from various other States in this respect. On receipt of the replies, the matter was considered and therafter, the exemption Notification was issued. We are satisfied that there was sufficient material before the State Government for issuing the impugned Notification. We, therefore, set aside the impugned judgment of this Court in ***S. Kandaswamy Chettiar vs. State of Tamil Nadu and (1985 (1) SCC 290).***

Learned counsel for the respondents, however, States that the respondents are prepared to pay the market rent provided the Board permits them to continue as tenants. The respondents may approach the Board in this respect. Learned counsel appearing for the Board very fairly states that the offers of the respondents will be considered sympathetically. The appeal is disposed of, No costs.

NOW PRESENT VIEW

1998 (2) JLJ 292= 1998 (5) SCC. 597
MANGILAL VS SHRI CHUTURBHUJA MANDIR

ORDER DT. 01-4-1998

1. Though notice was served on the respondent none appears for the respondent. We have heard learned Senior Counsel for the appellant. The appellant was a tenant under the respondent herein. The respondent filed a normal civil suit for ejectment of the appellant. The Suit was proceeded with as if the provisions of the Madhya Pradesh Accommodation Control Act (here in after called "the Act") are not applicable. The suit was dismissed. The appeal was allowed. A second appeal was filed in the High Court. It was contended on behalf of the appellant before the High Court that the Act applies in as much as the notification issued under section 3 (2) of the said Act was held by a Division Bench of the Madhya Pradesh in ***Chintamani Chandra Mohan Agarwal Vs. State of M.P.*** 1994 MPLJ 597 to be unconstitutional and invalid. Therefore, the suit was not maintainable. The High Court was of the view that the said judgment will not apply to the present case by a Mandir as that case was decided with reference to a Wakf. On that ground, the High Court upheld the decree for ejectment.
2. We are of the view that the High Court was not right in proceeding as if the notification issued under section 3 (2) of the Act was considered by the Madhya Pradesh High Court in the said judgment with reference to its application for Wakf alone. The Division Bench of the Madhya Pradesh

High Court after referring to judgments of this Court has expressly held that the notification dated 7.9.1989 was unconstitutional and invalid. The effect of that was that there was no notification under section 3 (2) of the Act. Section 3 (2) of the Act reads as follows:

" 3. Act not to apply to certain accommodations (1)

(2) The Government may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilised for that institution or nursing home or maternity home"

3. The notification issued on 7.9.1989 under the above section reads as follows:

Notification No. F-24 (4) 83-XXXII-I dated the 7th September, 1989 In exercise of the powers conferred by sub-section (2) of section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961), the State Government hereby exempts all the accommodation owned by

(i) the Wakf, registered under the Wakf Act, 1954 (No. 29 of 1954), or

(ii) the public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (No. XXX of 1951), for an educational, religious or charitable purpose, from all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961).

4. In the absence of such notification the respondent cannot file a suit simpliciter for ejectment without resorting to the provisions of the Madhya Pradesh Accommodation Control Act, 1961 It was not brought to our notice that any other notification was subsequently issued. In the circumstances, the judgment of the High Court is set aside and the suit for ejectment stands dismissed.

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2. ARMS ACT SECTION 25: WORKABILITY OF FIRE ARMS :-
(1999) 1 SCC 132
HARNEK SINGH Vs. STATE

Accused was found in possession of a pistol and 25 live cartridges. Pistol was loaded with cartridges but they were not sent to the armourer for the test firing. It was held that the police officers were competent enough to depose about the working condition of the weapon and the circumstance that the pistol was loaded with catridges it can be said with reasonable certainity that it was in working condition.

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3. RENT CONTROL AND EVICTION- BONAFIDE REQUIREMENT :-
(1999) 1 SCC 141
RAM NARAYAN Vs. RANI

Question regarding bonafide requirement of landlord, Whether landlord

has any other reasonably suitable residential accommodation is a question intermixed with the question of bonafide requirement. That the landlord has another reasonably suitable accommodation is a good defence for the tenant. If so, then the further question would be whether that accommodation is more suitable than the suit premises and it would not solely depend upon pleadings. The non-disclosure by the landlord about his having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the Court and case of neither party was prejudiced. (Provisions of Delhi Rent Control Act were considered).

PLEADINGS :- O. 6. R. 4CPC :- Defective or vague pleadings would not be fatal if both the parties understood what the case pleaded was and accordingly placed material before the court and neither party was prejudiced.

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4. C. P. C. O. 22. R. 3:-
(1999) 1 SCC 158
JAGDISH PRASAD Vs. SUKH RAM

The case was pending before High Court on the date of death of party the application for bringing on record legal representatives not maintainable before Supreme Court.

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5. I. P. C. SECTION 304-A :-
(1999) 1 SCC 188
RAKESH Vs. STATE

The delay on the part of the doctor to attend on the patient would not amount to an offence under Section 304-A of the I. P. C. It may at worst be a case of civil negligence and not one of culpable negligence. That apart death of patient being due to poisoning and there being no allegation against the doctor that he administered poison to the patient no prima facie case of rash or negligent act on the part of the doctor made out.

The charge-sheet was quashed.

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6. CRIMINAL TRIAL - CIRCUMSTANTIAL EVIDENCE :-
(1999) 1 SCC 199
STATE OF RAJASTHAN Vs. MAHAVIR

Circumstances establishing guilt of the accused. There was a death of married woman caused by extensive burn injuries. Husband and wife were staying together and none else was residing with them. Broken pieces of bangles were found in the varandah. Dead body was found lying in the centre of the cot. There was also delay in sending information of the incident to the father of the deceased. The deceased took false plea of alibi. It was held that the circumstances of the case and the chain circumstances is complete.

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7. **I. P. C. SECTIONS 302/34 AND 201 :-**
(1999) 1 SCC 229
BIHARI LAL Vs. STATE

Question of bride burning. Evidence of neighbours establishing that the deceased was treated in a cruel manner by her in-laws. Conduct of the appellants also establishing their guilt. However, witness not specifically stating that B also treated her cruelly. Being a government servant and a married man 'B' would not have taken part in treating the deceased cruelly and causing her death without any reason. It was held in the circumstances of the case 'B' deserves to be acquitted.

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8. **I. P. C. SECTIONS 302/34 AND 452 : APPLICATION OF EVIDENCE IN A MURDER TRIAL :-**
(1999) 1 SCC 233
GAJJAN SINGH Vs. STATE

Evidence of eyewitnesses found reliable. Minor inconsistencies immaterial. Immediately after the deceased hit by gunshots witnesses placing him on a cot. Hence absence of the blood on the ground is of no consequence. Two guns seized by the police not belonging to the appellants but to the acquitted accused who were tried with the appellants. Consequently non-production of report of the ballistic expert of no consequence. Evidence clearly establishing that both the appellants had gone together and had fired shots at the deceased.

SECTION 237 Cr. P. C. :- Charge under Ss. 302/149 I. P. C. and Conviction under Ss. 302/34 I. P. C. Maintenability :-

In para 6 of the judgment Supreme Court held that,

> "It is also submitted by the learned counsel that only Ratan Singh was alleged to have caused the death of the deceased and there was no independent charge of causing death against Gajjan Singh. He has been convicted under Section 302 read with Section 34. The evidence clearly establishes that both the appellants had gone together to the Haveli and had fired shots at the deceased. Gajjan Singh was charged with an offence punishable under Section 302 read with Section 149 IPC. Therefore, the courts below have not committed any illegality or impropriety in convicting him under Section 302 IPC read with Section 34."

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9. **CRIMINAL TRIAL: CIRCUMSTANTIAL EVIDENCE :-**
(1999) 1 SCC 252
MOHD. MAHIRUDDIN Vs. STATE OF BIHAR

paragraphs 2 and 3 of the judgment are reproduced :-

The three appellants were convicted under Section 302 read with section 34 IPC for the murder of Bibi Matluwa by the trial court after considering the

circumstances which were proved against them. The High Court on reappreciation of the evidence has also come to the conclusion that the prosecution had satisfactorily proved the incriminating circumstances which establish the guilt of the appellants. The trial court and also the High Court took into consideration the false explanation given by the appellants soon after the incident as regards the cause of death of Bibi Matluwa.

In our opinion, the Courts below were right in relying upon these circumstances and the false explanation given by the appellants which supplied the missing link in the chain of circumstances which was otherwise complete.

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10. JUDGMENT :-
(1999) 1 SCC 273
V. S. CHARATI Vs. HUSSEIN

A decision rendered by a Tribunal/Court in absence of challenge becomes final and binding on both the parties and merely because it may be wrong, it would not become a nullity. The judgment has an effect of Res-Judicata also.

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11. CONVERSION OF APPEAL INTO REVISION : POWERS OF THE COURT:
1998 (II) M. P. W. N. 44
HIRAMANI SHUKLA Vs. RAVINDRA SHUKLA

Order of interim maintenance under Section 24 of Hindu Marriage Act is not applicable but under Section 115 of the CPC where appeal not found tenable may be treated as revision.

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12. MOTOR VEHICLES ACT, 1939 : SECTION 110-B :-
1998 (II) M. P. W. N. 36
INDRAPAL PANDEY Vs. HARBANS SINGH

Deceased non-earning member, looking after household work and agriculture. Notional income of Rs. 600/- p.m. may be assessed. Aged 28 years. Multiplier of 16 may the applied to assess just compensation.

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13. MOTOR VEHICLES ACT, 1988 SECTION 170 :-
1998 (II) M. P. W. N. 47
KAILASH NATH Vs. KISHORI LAL

Owner and driver not turning up and contesting the case. Insurer may seek permission to contest on merits on all issues.

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14. MOTOR VEHICLES ACT, 1939 SECTION 110-B: COMPENSATION :MEANING AND EXPRESSION AND MODE OF CALCULATION :-
1998 (2) V.B. 276
SUJAN PAL SINGH Vs. CHANDAN SINGH PATEL

The word "Compensation" means anything given to make things equiva-

lent, a thing given to or make amends for loss, recompense, remuneration or pay. The expression is more comprehensive term. It include a claim for damages. In fixing quantum of compensation court has to rise above sentimentalities and should try to compensate not for his injured feeling but for his financial loss real and probable. ***C.K. Subramonia Iyerr vs. T. Kunhikuttan Nair, AIR 1970 SC 376*** was followed.

In the present case there was a death of child of 10 years of age. There was no evidence as to capacity of parents to highly educate the deceased child adduced. Award of Rs. 48,000/- was held proper, and Just. ***Rukhmani Devi and others vs. Basantilal and others, 1984 ACJ 548*** was relied on.

NOTE: Please see 'Joti Journal' Vol. IV Part VI (December 1998) at page 68.

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15. C.P.C. : 41 R. 23A AND 25 AND 0. 17 R. 1: APPRECIATION OF EVIDENCE AND ABSENCE OF ADVOCATE:-
1998 (2) V.B. 282
RAMDAS Vs. TANTIRAM.

Location of disputed plot required to be determined for proper adjudication. The lower appellate Court was justified in remanding the case for the purpose. In the Present case the main controversy between the parties was with respect to the measurements of disputed land and unless the specific land could be located the case could not be determined. Therefore, the lower appellate Court committed no error in remanding case for proper location after formulating point which was necessary for just decision of the case.

Consequently the learned trial Court is however, directed to get the land demarcated by appointing a competent person as Commissioner and decide the case on merits.

So far as the question of hearing the appellants' learned senior counsel who could not reach the Court can be said to be bound to wait for a learned counsel. Of course, sufficient opportunity has to be given to the counsel. Local counsel was present who was conducting the case. It was his normal as well as professional duty to have argued the case even though the senior counsel could not reach. He had failed to discharge his duty in not arguing the case.

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16. EVIDENCE ACT SECTIONS 60 AND 45 I.P.C. SECTIONS 307 AND 326:-
1998 (2) V.B. 287
MAHESH PAPI VS. STATE

Evidence of injured complainant duly corroborated by medical evidence and other witnesses cannot be disbelieved. Knife injuries were suffered by the complainant. Some of them were on the vital parts of the body. Offence

falls under section 326 of the I.P.C. ***Kailash Prasad vs. State, 1980 SC 106*** was referred to.

Paragraphs 5,6,7 and 8 of the judgment are reproduced:-

Shri Rakesh Saxena, learned counsel for the appellant initially contended that there is no legal and reliable evidence on record to hold that the appellant is the author of the injuries. It was contended that complainant Gurvedsingh (PW5), himself has a criminal record. On the report lodged by appellant, criminal cases against the complainant under sections 110 and 151 Cr.P.C. were also instituted as admitted by PW 5 Gurvedsingh in para 3 of his evidence. It is contended that his evidence is not worthy of reliance. PW 5 Gurvedsingh is the person, who is complainant and injured person. He has sustained injuries and the same have been found on his body. His version is corroborated by Dr. P.K. Dubey and the injury report, Ex. P-2. The evidence of PW 5 Gurvedsingh is further corroborated by PW 8 Babli alias Daljeet Kaur, who is sister of PW 5. Shri Saxena then contended that in the facts and circumstances, the offence would not be under section 307 IPC. He referred to injury report Ex. P-2 and contended that an X-ray was advised by the doctor P.K. Dubey (PW 2) regarding injuries No. 1,2,3 and 5 and rest of the injuries were simple in nature. PW 2 Dr. Dubey in para 5 of his statement has stated that about these injuries the x-ray was done, the report of which is Ex. P-3 and all was normal. In Ex. P-3 which is the report of x-ray no abnormity was deducted. Learned counsel relied on AIR 1980 SC 106 (Kailash Prasad Kanodia and another vs. State of Bihar) to contend that the offence would be under section 324 IPC in view of the evidence of PW 2, Dr. P.K. Dubey and the injury report, Ex. P-2 and Ex. P-3.

The injuries sustained by the complainant Gurvedsingh are mentioned in Ex. P-2. He has sustained many injuries; most of them are on vital parts of the body. PW 2 Dr. P.K. Dubey has deposed that the injuries has sustained as many as nine injuries. The relevant parts on which the injuries have been inflicted and the nature of the injuries sustained by the complainant, in the opinion of this Court, the offence would be under section 326 IPC. The appellant is therefore held guilty for the offence under section 326 of IPC.

So far as sentence is concerned, learned counsel for the appellant contended that the appellant has remained in jail for about 19 months. The ends of justice would be served if he is sentenced to the period already undergone with fine of Rs. 2,000/-. In default of payment of fine, he shall suffer imprisonment for six months.

The appeal is therefore, partly allowed. The conviction of the appellant is altered to section 326 of IPC and sentence is reduced to the period already undergone with a fine of Rs. 2,000/-. In default of payment of fine, the appellant shall suffer imprisonment for six months. The fine after being deposited shall be paid to the complainant.

17. **CR. P.C. SECTION 401 (3) :-**
1998 (2) V.B. 299
VIMAL SINGH Vs. KHUMAN SINGH

Revision under S. 401 against judgment of acquittal. High Court cannot convert judgment of acquittal to one of conviction. Bar contained under S. 401 (3) operates. ***Chenna Swamy vs. State of A.P., AIR 1962 SC 1788*** was relied on.

Revision by private party against judgment of acquittal can be entertained in exceptional cases. There should be glaring illegality, miscarriage of justice or jurisdictional incompetence.

Revision at instance of private party against judgment of acquittal. Trial Court appreciating evidence of every witness. High Court cannot convict accused on re-appreciation of evidence.

NOTE : Please refer to **1998 (2) V.B. 116 Prem Shankar vs. Kushal Prasad** reported in **'JOTI JOURNAL'** Vol. V Part I (February 1999) at page 47.

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18. **ADMINISTRATIVE LAW; NATURAL JUSTICE - SPEAKING ORDER - QUASI JUDICIAL AUTHORITIES :-**
(1999) 1 SCC 45
VASANT D. BHAVSAR Vs. BAR COUNCIL OF INIDA

The disciplinary Committee of the Bar Council of India finding advocate guilty of professional misconduct and suspending him from practice for two years. No discussion of the evidence in discussing in its order. It was held that Disciplinary Committee of Bar Council of India erred in not discussing evidence before it. To state that evidence on record proved beyond the shadow of a doubt that complaint substantiated not enough. Orders must set out reasons for which they were passed. Where orders based on evidence there must be analysis of the same and conclusion must be based on such analysis.

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19. **RENT CONTROL AND EVICTION - SUB- LETTING PLEADINGS :-**
(1999) 1 SCC 47
VIRENDRA KASHINATH RAVAT Vs. VINAYAK N. JOSHI

Suit for eviction decreed on ground of unlawful sub-letting and confirmed on appeal. Amended version of plaint stating that "pending the suit the defendants have or any of them has inducted in the suit premises Defendants 1 and 5 unlawfully". It was held on the facts that High Court erred in overturning conclusions of two fact finding courts on the ground that averment regarding sub-letting was insufficient.

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20. **EVIDENCE ACT SS. 24 AND 27 :-**
(1999) 1 SCC 57
DWARIKA DAS Vs. STATE

Extra-judicial confession. Proof of. Witness before whom alleged extra-

judicial confession made not disclosing about such confession statement to the police or any body else for five days. His conduct held inconsistent with the conduct of an ordinary human being. Witness suspecting that his wife was having illicit relation with the appellant making it highly improbable that the appellant would take this witness into confidence to disclose about such a heinous crime. Hence in the circumstances of the case extra judicial confession was not proved. Recovery of crime articles of axe, hoe and clothes of the deceased pursuant to the statement made by the accused under S. 27, Evidence Act. Absence of evidence to show that those clothes belonged to the deceased. Axe and hoe could not be connected with the crime in question. Held, in the circumstances, nexus of recovered articles with the crime not established.

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21. MOTOR VEHICLES ACT, 1939 SECTIONS 110-B, 95 PROVISO, 92-A AND 92-B :-
(1999) 1 SCC 90
HELEN C. REBELLO Vs. MAHARASHTRA S.R.T.C.

Compensation for death in motor accident. Computation of Life Insurance amount received by heirs on account of the victim's death, held, not deductible. Common law principle of adjusting the pecuniary advantages coming from whatever source by reason of death, held not to be interpreted in such cases as referring to pecuniary advantages coming on account of accidental death and not other forms of death. Hence, provident fund, family pension, cash balance, shares, fixed deposits, etc., cannot be terms as "pecuniary advantages" for the purposes of Motor Vehicles Act.

The meaning of the words "Which appears to be just" were explained by the Supreme Court as under :-

Section 110-B of the 1939 Act empowers the Tribunal to determine the compensation which appears to it TO BE JUST. Use of the words "which appears to it to be just" widens the scope of determination of compensation which is neither under the Indian Fatal Accidents Act, 1855 nor under the English Fatal Accidents Act, 1846. This shows that the word "just" was deliberately, brought in Section 110-B of the 1939 Act to enlarge the consideration in computing the compensation which, of course, would include the question of deductibility, if any. This leads one to an irresistible conclusion that the principle of computation of the compensation both under the English Fatal Accidents Act, 1846 and under the Indian Fatal Accidents Act, 1855 by the earlier decision, as restrictive in nature was in the absence of any guiding words therein, hence the courts applied the general principle at the common law of loss and gain but that would not apply to the considerations under Section 110-B of the 1939 Act which enlarges the discretion to deliver better justice to the claimant, in computing the compensation, to see what is just. The word "just", as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair reasonable and equi-

table, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law.

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22. NEGOTIABLE INSTRUMENTS ACT, SS. 139 & 138 :-
(1999) 1 SCC 113
MARUTI UDYOG LTD. Vs. NARENDER AND OTHERS

Presumption must be drawn that holder of the cheque received the cheque of the nature referred to in S. 138 unless the contrary is proved.

Para 2 of the judgment is reproduced :-

"In view of the express provisions of Section 139 of the Negotiable Instruments Act, 1881, a presumption must be drawn that the holder of the cheque received the cheque, of the nature referred to in Section 138, for the discharge of any debit or other liability unless the contrary is proved. Therefore, the High Court was not justified in entertaining and accepting the plea of the accuse respondent at the initial stage of the proceedings and quashing the complaints filed by the appellant. We, therefore, allow these appeals, set aside the impugned orders of the High Court and direct the trial court to proceed with the complaints in accordance with law."

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23. MOTOR VEHICLES ACT, 1939, S. (2) (B) AND (C):-
1999 (1) M.P.L.J. SHORT NOTE 1
SUKHNANDAN RAM SAHU Vs. ORIENTAL INSURANCE CO. LTD.

Breach of policy. Tractor insured for agricultural operation and for transportation of goods of owner used for taking a woman for delivery along with her relations met with accident resulting in death of four persons. Insurance Company not liable to pay compensation to claimants of deceased as rightly exonerated by Tribunal.

It had been clearly mentioned in the Insurance Policy of the Vehicle (Tractor) that it was insured for agricultural operation and also for transportation of own goods. The vehicle at the time of the accident was used for transporting a woman for delivery along with her relations and met with accident resulting in death of four persons. Section 96 (2) (b) of the Motor Vehicles Act, 1939, says that vehicle shall not be used for hire or reward. The vehicle was used for transporting passengers for obvious reason, a social work, other than for the purpose of agricultural operation and therefore, the Insurance Company could not be held liable. Tractor along with trolly, trolly was not permitted for transporting the persons. Therefore, clause (c) of sub-section (2) of section 96 was also attracted in such contingency. Hence, the Tribunal had rightly exonerated the Insurance Company of its liability.

1994 ACJ 987, 1994 ACJ 822, 1989 MPLJ 387 = 1989 ACJ 770 and 1998 (1) MPLJ 89, referred.

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24. O. 1R. 10 CPC:-
1999 (1) M.P.L.J. SHORT NOTE 6
SULTAN KHAN Vs. REHMAN KHAN

Suit for declaration and injunction filed by the plaintiff against his own brother claiming title on the basis of a Will as alleged. The sister and the nephews moved an application for their joinder stating that as their rights would be adversely affected and they have right in the property, they be joined in the suit. The trial Court permitted the said persons to be joined as parties. Order challenged by plaintiff in revision. When the plaintiff is seeking a declaration of title over the property then in such a case all co-sharers residuaries and co-owners would be necessary parties because any declaration in favour of one of the brothers is certainly going to affect their rights. It may be true that the judgment may not bind such persons who are not parties to the suit, but at the same time it also cannot be lost sight of that such persons would be required to institute another suit to establish their title and it would lead to multiplicity of the litigation. Trial Court was not unjustified in granting the application.

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25. **CONSTITUTION OF INDIA, ARTICLE 21, CONCEPT OF BAIL; DELAY IN ACQUITTAL AND RELEASE OF ACCUSED IN JAIL:-**
1999 (1) M.P. L.J. 74
GOKUL SINGH Vs. STATE

The Concept of speedy trial has become a mandate of Article 21 of the Constitution. Right to speedy trial is the fundamental right and if the trial is delayed it would amount to the denial of justice and entitle an accused to be admitted to bail. But, a significant but, the case of delay whether attributable to the prosecution or to the accused has to be borne in mind at the time of exercise of judicial discretion for grant of bail. Irrefragably, the delay in trial is an important factor to be taken note of at the time of consideration of application for bail and no Court can take a myopic view in this regard but simultaneously it cannot be magnified to ostracize the role played by the accused in causing the delay. The age old principle that he who seeks discretion must conduct himself cannot be given a decent burial to confer the concession of bail to an accused who has made a deliberate attempt to cause delay with ultimate intention to gain advantage of such delay. Delay caused by the accused would not entitle him to be released on bail. ***Hussainara Khatoon vs. State of Bihar, AIR 1979 SC 1360, Kadra Pehadiya vs. State of Bihar, AIR 1981 SC 939 Kehar singh vs. Union of India, AIR 1989 SC 653, R.P. Upadhayay vs. State of A.P. and others, (1996) 3 SCC 422, "Common Cause" vs. Union of India and other, (1996) 4 SCC 33, Shaheen Welfare Association vs. Union of India and others (1996) 2 SCC 616, Ramroop Singh vs. State of M.P., 1987 MPLJ 1256*** referred.

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26. HINDU MARRIAGE ACT, SECTION 13 (1) (ib) : DESERTION BY WIFE : 1999 (1) M.P.L.J. 125
PRAFULLA KUMAR Vs. SMT. SARALA

Following are the requirements for the desertion :

The act of desertion conveys following things : (1) Withdrawal of the society of a spouse from other, (ii) Without the consent, wish of spouse so aggrieved, (iii) Without an intimation to such spouse, (iv) With the intention of not returning.

The parties were married on 4-6-1985 at Indore and lived together till 20-4-1987 when they separated from each other. Since 20-4-1987 both of them were residing separately. On 20-4-1987 the respondent-wife visited the house of the appellant-husband along with her mother and took away all her belongings and the articles termed as stridhan including marriage gifts. Before presentation of matrimonial petition, the wife had filed a petition for restitution of conjugal rights. The said petition came to be dismissed in default. However, no application for its restoration was filed by the wife nor was the order challenged by her by resorting to other provisions of law. She did not file any matrimonial petition for restitution of conjugal right thereafter. In the divorce petition under section 13 (1) (ib) of the Hindu Marriage Act, the husband alleged that it was the wife who abruptly decided to desert him since 20th April, 1987, when she went to the house of his parents along with her mother and took away all the articles which were given to her by her parents in the marriage and by others as marriage gifts. The wife on the other hand alleged that she had gone to the house of parents of husband for taking those articles at the behest of her husband himself because the husband wanted to abandon his parents for staying separately from them at Indore. On appeal by the husband challenging the dismissal of his petition for divorce.

The right of making a prayer for decree of restitution of conjugal rights, is a continuous right. A spouse who has been deserted by other spouse has such a right intermittently. On dismissal on default of earlier petition for restitution of conjugal rights, fresh matrimonial petition for decree for restitution maintainable.

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27. SECTION 115 CPC; JUDICIAL PROCESS: ADVOCATES BOYCOTTING TRIAL COURT JUDICIAL PROCESS- DUTY OF THE COURT:- (1999) 1 SCC 37
MAHAVIR Vs. JACKS AVIATION PVT. LTD.

During the pendency in the court of the Additional District Judge. Shri S.L. Dhingra of a Civil Suit for recovery of possession of a building, plaintiff/appellant filed an application under O.12 R. 6 CPC for pronouncing of judgment on the basis of certain admissions in the written statement the defendant filed objections to the same. Meanwhile the Delhi Bar Association passed a resolution dated 15-5-1998 calling for boycott, by all its members, of the court of Shri S.N. Dhingra. When the application under Order 12 Rule 6 came up for

arguments on 21-5-1998, the advocate for the defendant, without putting in an appearance, filed an unusual application under Section 151 CPC stating that due to the Bar Association resolution he was bound not to appear, and seeking transfer to the case "suo motu" by the Additional District Judge.

The Additional District Judge dismissed the advocate's application on the ground that there was no provision under Section 151 CPC for transfer of cases. The defendant then filed a revision petition before the High Court, which entertained the same and stayed proceedings before the trial court. The plaintiff also entered appearance and submitted that he had no objection to the case being transferred. The High Court however did not pass any order and adjourned the matter several times. On 10-9-1998 the defendant filed a civil miscellaneous petition again seeking transfer of the case from the court of Shri Dhingra, ADJ "in the event the honourable High Court is pleased to allow the revision" The basis for this new application was a newspaper description of a disgraceful scene in the court of Shri Dhingra. ADJ. The Secretary of the Delhi Bar Association had made a shouted demand that the Judge stop working. 'The Judge did not stop work and the Secretary then hurled abuse in filthy language at him. Litigants present had protested. The High Court responded merely by calling for the "conmments" of the ADJ, Shri Dhingra about the transfer application and posted the revision petition to January 1999.

The plaintiff/appellant then filed the present SLP challenging the High Court's order entertaining the revision petition and also the last adjournment.

Allowing the appeal, the Supreme Court held that

The High Court committed a jurisdictional error in entertaining the revision petition filed by the defendant challenging the order dismissing the application for "suo motu" transfer of the case. That order is clearly not revisable by the High Court in view of the specific interdict embodied in the proviso to Section 115 (1) CPC. Under the same sub-section, a High Court is empowered to call for the records of any case which has been decided by any court subordinate thereto, if it had exceeded or failed to exercise the jurisdiction vested in it, or had acted illegally or with material irregularity. In such cases, the High Court has power to make such order as it thinks fit, The restriction against exercise of such a general power has been incorporated in the proviso which was inserted in the sub-section by the CPC Amendment Act of 1976.

Out of the two clauses in the proviso, the latter clause could be resorted to only if that order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the respondent. Thus, even if such an order passed by the subordinate court has any illegality or is affected by material irregularity, the High Court will not interfere unless the said order, if allowed to stand, would occasion a failure of justice or its effect would be infliction of irreparable injury to any party.

Ramlal vs. Madan Gopal, 1995 Supp (4) SCC 655, distinguished

Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear.

No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.

Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in courts of law.

If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate.

Lt. Col. S.J. Chaudhary v. State (Delhi Admn.) (1984) 1 SCC 722 : 1984 SCC (Cri) 163, followed

Warvelle's Legal Ethics, p. 182, relied on

This is not a case where the respondent was prevented by the Additional District Judge from addressing oral arguments, but the respondent's counsel prevented the Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that Court for ever as the Delhi Bar Association took such a decision. Here the counsel did not want a case to be decided by that Court. By such conduct, the counsel prevented the judicial process to have flowed on its even course. The respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation.

No advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court.

A change of court is not allowable merely because the other side too has no objection for such change. Or else, it would mean that when both the parties combine together they can avoid a court and get a court of their own choice.

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28. C.P.C. O. 23 AND R. 3-A AND O. 32, R. 7: COMPROMISE; SETTING ASIDE :-
1999 (1) M.P.L.J. 63
GUDDI Vs. BANWARI RAMESHWAR

Compromise decree was passed when the plaintiff was minor and permission was not sought under O. 32, Rule 7. After attainment of majority the minor filed a suit claiming relief of declaration that the decree passed during minority was illegal and void and relief of injunction was also prayed. Such suit is not tenable. Remedy is by application to the Court which had passed the decree in view of O. 23, R. 3A.

In a suit filed by the plaintiff in the year 1990 prayed a decree of declaration in respect of title to the agricultural holdings insuit as well as a decree for permanent prohibitory injunction. Civil Suit No. 3-A/83 was filed by the applicant during her minority wherein besides her mother she had also been impleaded as plaintiff under the guardianship of her mother. The suit was decided in terms of compromise. The plaintiff had asserted that the provisions of Order 32, Rule 7, Civil Procedure Code had not been complied with by the trial Court and the compromise was a collusive affair and her mother had acted against the interest of the plaintiff. The trial Court under the impugned order came to the conclusion that the decree passed in Original Civil Suit No. 3-A/83 was based on a compromise and in view of the prohibition contained in Order 23, Rule 3A, Civil Procedure Code no suit was maintainable challenging the decree based on compromise and in this view of the matter there could be no justification for allowing the amendment as prayed for. Application for amendment in the plaint was accordingly rejected. In revision application challenging the said order.

It was held that the bar contained in Order 23, Rule 3A of the Code of Civil Procedure stood clearly attracted, and the only remedy available to the plaintiff was to get the decree set aside by moving an application before the Court which had passed the decree, which application had to be dealt with in accordance with law. No justifiable ground had been made out for any interference in the impugned order by this Court while exercising the revisional jurisdiction envisaged under section 115, Civil Procedure Code, ***Civil Revision No. 1428/97, Bharat Bhooshan vs. Omprakash and another (Gwalior Bench M.P.)*** decided on 2.4.1998, relied on.

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29. N.D.P.S. ACT (61 OF 1985), Ss. 50(1) AND 20 (b) (ii) :-
1999 (1) M.P.L.J. 67
AMAR BAHADUR Vs. STATE

Seizure of charas from possession of accused. The Police Superintendent who was a gazetted officer accompanied with the Searching Officer. The Superintendent of Police told the accused that new person who want to search is a Gazetted Officer. The accused raised no objection to be searched before him. There was no breach of requirement of section 50 (1). The option of the accused is limited to saying that he wants to be searched before a Gazetted

Officer or a Magistrate. It is for the searching officer's to take him before any of these. That is searching officer's choice. ***State of Punjab vs. Balbir Singh, AIR 1994 SC 1872*** and ***Manohar Lal vs. State of Rajasthan, (1996) 11 SCC 391*** referred. Please refer to ***1998 (2) Vidhi Bhashwar 34 Mewa Ram vs. State*** reported in **'JOTI JOURNAL' Vol. IV Part V October 1998** at page 62.

Sealed article was sent to F.S.L. 37 days after recovery. There was no mention in seizure memo as to what was the nomenclature of seal with which packets were sealed. Whether it was the seal of the Superintendent of Police or his Assistant. Prosecution failed to prove that articles sent to F.S.L. were the same as were recovered from accused.

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30. CPC, O. 7 R. 7, O. 7 RR. 10, 10-A & 11 (D) O, 43 R, 1, O. 39 RR. 1,2 & SECTION 92 AND M.P. PUBLIC TRUSTS ACT, 1951 SS. 26 AND 27 (4): 1999 (1) JLJ 74
TEMPLE ACHLESHWAR Vs. TEMPLE SHRI ACHLESHWAR PUBLIC TRUST

Suit filed on behalf of diety by pujari. Pujari himself cannot claim any right in such suit. suit if barred by law under O. 7 R. 11 (d) plaint has to be rejected. It cannot be. returned back. Provisions for returning the plaint applies when there is another competent Court to try a Suit. Plaint cannot be returned to be presented it before the Tribunal (***Ram Bali vs. Jaipal, AIR 1978 ALL 514 and Choturam vs. Budhuram, AIR 1976 Punjab 354*** relied on).

LETTERS PATENT : Clause 10:- Composite order passed rejecting plaint and vacating ad interim injunction. Appeal filed as miscellaneous civil appeal on full court- fees may be treated as regular civil appeal. L.P.A. against decision in such. appeal is maintainable. ***Mahesh Chandra Choubey vs. M.M. Dubey, 1995 JIJ 141*** distinguished.

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31. CR. P.C.: SECTION 157, SENDING REPORT OF OCCURRENCE TO THE MAGISTRATE:
1999 (1) JLJ 49
STATE VS. RAMMI

It may also be mentioned that non-sending of copy of F.I.R. to the Magistrate under Section 157 Cr. P.C. is also not such a vital infimity as to discredit the whole prosecution evidence. In fact, we find that the investigating officer in his statement before the Court claims to have sent such report to the Magistrate after recording F.I.R. He only states in paragraph 16 of his cross-examination that in the absence of availability of the diary of that date he was unable to state as to when and at what time he sent the copy of F.I.R. to the Magistrate, On this evidence, it cannot be held that there was non-compliance of the provisions of Section 157 of the Cr. P.C.

EVIDENCE ACT SECTION 45:-

Human blood found on weapons and clothes of the accused persons, is a relevant factor. Evidence of such withesses connot be discarded on the

ground that witness was related to deceased and was a resident of other place.

Section 27 of the Evidence Act was also discussed stating as under:-

As a matter of fact, from careful assessment of the evidence made by us, we find that a very natural, cognet and consistent version of the incident has been given by the eye witness which is go highly reliable that the conviction could have been based on it independently of any other supporting evidence of discovery and seizure of weapons and blood stained clothes.

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32. CRIMINAL PRACTICE: APPRECIATION OF EVIDENCE:-
1999 (1) JLJ 1
SAJJAN SINGH Vs. STATE

Appreciation of evidence. One has to reconstruct the scene on the basis of eye witnesses' account. One has to reconstruct the whole scene to appreciate the evidence of the witnesses. In fact. scene is to be reconstructed on the basis of the statement of the witnesses and other evidence on record.

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33. CR. P.C. SECTION 125 : MAINTENANCE:
1999 (1) M.P. L.J. SHORT NOTE 11
ABDUL HAMID Vs. SMT. SHABIHA

Under the provisions of section 125,Criminal procedure Code, a minor daughter, not suffering from any physical or mental abnormality or injury, is entitled to get mai tenance from her father until she attains her majority, Thus a father, under the provisions of section 125, Criminal Procedure Code. is not under an obligation to pay maintenance to her major daughter unless she is unable to maintain herself on accout of any physical or mental abnormality or injury. Where it was not even pleaded that non-petitioner was unable to maintain herself on account of some physical or mental abnormality or injury as admittedly the non-petitioner had attained majority on 26.10.1993, the petitioner- father was under no abligation to pay maintenance to the non-petitioner after 26.10.1993. Thus the trial Court, apparently, had fallen into error in holding that the petitioner would be liable to pay maintenance even after 26.10.1993, till 6.11.1995, the day on which he had filed the application under section 127, Criminal Procedure Code on the ground that he did not approach the Court immediately after 26.10.1993. The Impugned order, therefore, cannot be sustained and is liable to be modified to that extent.

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34. EVIDENCE ACT, SECTION 9:-
1999 (1) M.P.L.J. SHORT NOTE 17
MANOHAR SINGH ALIAS RAKKA Vs. STATE OF M.P.

Identification. Accused/appellants and articles seized shown to complainant and her mother. Subsequent proceedings held for identification of articles or accused/ appellants cannot be relied upon. In absence of other evidence or

material against accused/ appellants to connect them with crime their conviction and sentence under section 395 read with section 397. Indian Penal Code set aside. AIR 1989 SC 1410 relied on.

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35. M.P. LAND REVENUE CODE, 1959, SECTION 257 (x) :-
1999 (1) M.P.L.J. SHORT NOTE 18
LAL KUNWAR Vs. SHIV NARAIN

Where the plaintiff had come with the specific case that he was a Bhumiswami who had been improperly dispossessed, the remedy for the plaintiff was under section 250 of the M.P. Land Revenue Code. The Civil Court had no Jurisdiction to try the suit even though there was a concurrent finding of fact, on that basis plaintiff cannot succeed especially when the civil Court had no jurisdiction to grant relief in view of section 257 (x) which provides: Exclusive jurisdiction of revenue authorities 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 possession or order on any matter which the State Government, the Board, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no civil Court shall exercise jurisdiction conferred in the prescribed matter wihich includes "Any decision regarding reinstatement of a Bhumiswami improperly dispossessed under section 250." 1989 (1) M.P.W.N. 84, relied on.

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36. I.P.C. SECTION 498 : CRUELTY:
1999 (1) M.P.L.J. 167
NAWAL KISHORE Vs. STATE OF M.P.

In prosecution for offence under sections & 306 and 498-A, Indian Penal Code, there accused was acquitted of offence under section 306. It was held that there was no evidence that the deceased committed suicide or that she died otherwise than in normal circumstances. It was also held by the trial Court that there was no reliable evidence of cruelty against the accused. Therefore, they were acquitted. However, mainly relying upon the letters written by the accused/appellant it was held that the appellant mentally tortured and thus subjected the deceased to cruelty and he was held guilty for offence punishable under section 498-A of Indian Penal Code, and was accordingly convicted and sentenced. On appeal by the accused challenging his conviction and sentence under section 498-A, Indian penal Code.

It was further held that the father had stated that the deceased complained about harassment to her mother who informed about the same to him, Obviously therefore the statement regarding harassment to the deceased is not based on the information given by the deceased herself. So far as the mother of deceased was concerned, she had given a general statement that the accused/appellant, his parents, brother and sister-in-law used to demand Rs. 5,000/- and a tola of gold from the deceased and they used to abuse her and

beat her. However, in the above statement there were no specific allegations of harassment or cruelty meted out to the deceased, by the accused/appellant. Such vague and general statement therefore cannot be relied upon to draw an inference of cruelty to the deceased by the accused/ appellant. All the above letters were written a few months prior to the 'Gauna' ceremony of the deceased and were thus written much prior to the death of deceased. No letters written by the accused/appellant after the 'Gauna' ceremony had been produced by the father of the deceased. If there was any demand of dowry and harassment in pursuance there of, certainly the accused/ appellant would have addressed some letters either to her brother or her father after 'Gauna' also. The non-production of any letter after 'Gauna' ceremony of deceased was an eloquent circumstance and indicated that the appellant did not address any letter containing any demand of dowry. This negatived the oral statements of witnesses that accused demanded dowry and on account of non-fulfilment there of used to torture the deceased. On perusal of the letters, the finding of the learned trial Judge that the appellant by his letters written to his wife has subjected her to cruelty, does not appear to be justified. Therefore, the conviction of accused/appellant under section 498-A of the Indian Penal Code was not proper. ***Salmat Ali vs. State of Bihar, AIR 1995 SC 1863*** relied on.

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37. MOTOR VEHICLES ACT, 1988, SECTIONS 166, 166 (3) AND 175:- 1999 (1) M.P.L.J. 222
MANIKLAL Vs. MOHD. ISMAIL

Where the claim was based on composite negligence of driver, owner of the passenger bus and the outside agency the Railways, the applications for compensation could not have been dismissed at the threshold. However, after enquiry, if the Tribunal comes to a conclusion that a case of contributory negligence or composite negligence on the part of the Railway administration is not made out, claim application will fail against the Railway administration. The claim application will also fail if composite or contributory negligence or negligence is found not proved against the owner and driver of the passenger bus and Railway administration is found responsible for the accident, In that case the Claims Tribunal will have no jurisdiction to fix the liability and to pass an award. ***Pilli Kamaraj and others vs. Sajja Chandramouli an others, 1993 ACJ 232*** Distingulshed. ***Gujarat State Road Transport Corporation vs. Union of India and others, AIR 1998 Guj. 13 = 1987 ACJ 734, Union of India vs. Sushila Devi and others, AIR 1990 All 82= 1990 ACJ 1 F.B., Minu B. Mehta vs. Balkrishna Ramchandra Nayam, 1977 ACJ 118 (S.C.), United India Insurance Co. Ltd. vs. Premkumaran and others, 1988 ACJ 597 (Kerala), Union of India vs. Dr. Sewak Ram and others, 1993 ACJ 366 (Raj.)*** and ***Amrita Devi Vs. S.K. Shrivastava and others,*** 1997 ACJ 61 (All.) approved. ***Pilli Kamaraj and others vs. Sajja chandramouli and others. 1993 ACJ 232 (A.P.)*** dissented.

Where even though the Railway Administration and its driver though necessary parites for adjudicating the claim so as to attain finality were not joined as party to the claim petition such party can be impleaded as part to the application for compensation as question of bar of limitation will not be applicable due to omission of sub-section (3) from section 166. It would be open for the claimants to make an appropriate application before the Tribunal can decide the same in accordance with law after notice to the concerned parties. ***Dhannalal vs. D.P. Vijay Vargiya, (1996) 4 SCC 652*** relied on.

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38. MOTOR VEHICLES ACT, 1939, S. 110 (1), (2), (4), AND M.P. CIVIL COURTS ACT SECITON 15 (2):-
1991 (1) M.P.L.J. 240
LAXMI Vs. NANDLAL

Merely because the registration number if not mentioned in first information report, testimony of the witnesses cannot be discarded as it is well settled that the first infromotion report is not a substative piece of evidence. The object of first information report from the point of view of the information is to set the criminal law in motion. ***Hasib vs. the State of Bihar, AIR 1972 SC 283*** relied on.

If the driver of the vehicle is discharged under Section 304-A of I.P.C. by criminal Court,Order of discharge would be inconsequential for the decision of the claim petition. ***Dhanvanti vs. Phoolvati, 1994 MPLJ 674*** relied on.

In the present case the litigant was illeterate. When the Claims Tribunal finds that evidence led is not sufficient Tribunal should direct the parties to lead evidence in accordance with the requirements of law.

If the plea of alibi raised that vehicle in question was not involved in accident, burden lies on such person who raises such plea. It is well settled proposition of law that the evidence recorded in criminal case and finding recorded there on should not be used in a claim case for the purposes of deciding the claim It is inadmissible.

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39. CR.P.C. SECTION 125:-
1999 (1) M.P.L.J. 237
SHYAMKALI Vs. BHAIYALAL

Person who is capable of earning has to earn for his dependants. A person who is capable of earning has to earn for his wife and children. Unfounded allegations of adultery against wife. It amounts to cruelty. Wife in the circumstances entitled to reside separately.

In the present case the Sessions court has been merely swayed by the fact that, the petitioner has no sufficient cause to live separate from the husband and the husband has not remarried although she too was not living an unchest life. In reaching this conclusion the Sessions Court appears to have lost sight of the obvious. If false allegations of unchastity are made against a

wife. it is a cruelty itself. If such allegation is false, the wife is entitled to live separate from the husband and to seek maintenance.Had the Sessions Court approached the matter from this angle, a proper adjudication ought to have been made. So the observation of the Sessions Court for denying the right of maintenance to the wife on total misunderstanding of legel implication and effect of allegation of the husband. The Additional Sessions Judge lost sight of this justification about her separate living.

The Magistrate has not discussed at all the evidence regarding capability of the husband to maintain the wife or its extent. The husband was healthy person of 26 years of age, therefore, a young and healthy person, who claimed in his statement that he was earning with his parents in the field and was also tending the animals. It clearly shows, that he had joint earning with his parents. He was putting in his labour. In that sence, the wife has right to claim maintenance from those earnings. What would be the extent of those earnings should have been decided by trial Magistrate or at least by the Sessions Court. Some fair estimate on day to day expenses of life, could be made. The Sessions Court dealt with the matter in a non-serious manner by merely referring to the fact that no specific amount of earning has been Stated. The legal position has to be that, a person who is capable of earning has to earn for his dependents. i.e. for his wife and child. The evidence of the wife and her witnesses is that this respondents, husband works on land. and tends milk animal with his parents. This is admitted by the husband also. the trial Magistratc should assess, what would be considered as fair earning out of labour put in by this respondent. In such type of case, a wife can hardly be expected to produce specific evidence of earning of husband nor it can be said that the labour of the husband is producing no earning. In fact, an able person is expected to work for his wife. The respondent is, after all living, eating and clothing himself.

In view of the above observation, I find that the findings of both the Courts below were unjustified and based on total misappreciation of law as also of facts. Inferences which ought to have been taken in law, have not been taken. the wife was justified in separate living. There was allegation against her, of living in adultery, It amounts to cruelty against her. husband's earning remains to be assessed by the trial Magistrate, so the present petition is accepted. Findings of both the Courts below are set aside. It will not be proper for this Court, in the first instance to reach the findings of the possible earnings of the husband. The matter is remanded back to the trial Magistrate to reach a conclusion of the extent of the earnings of the husband, on the basis of the evidence existing on this record and then to fix maintenance payable to the petitioner-wife by the husband.

The petition is accordingly allowed. Notices to parties shall be given by the trial Magistrate to hear them on quantum of earnings of the husband and quantum of maintenance for wife.

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40. CR.P.C. SECTION 125, MARITAL STATUS OF PARTIES :-
(1998) 8 SCC 447
SANTOSH (SMT) Vs. NARESH PAL

Prima facie satisfaction of magistrate sufficient. Such satisfaction is subject to final order in civil proceedings if any. High Court not justified in interfering with pure finding of fact reached by the Magistrate.

We have heard learned counsel for the parties finally by their consent. The short question is whether the appellant is the married wife of the respondent who had failed and neglected to maintain her and therefore, she is entitled to maintenance under section 125 of the Code of Criminal Procedure. Learned counsel for the respondent was right when he contended that unless there is a legal marriage between the parties, order under Section 125 CrPC cannot be passed. However, learned Judicial Magistrate after consindering this question came to the conclusion that the respondent was already divorced from his frist wife and thereafter he had entered into a second marriage with the appellant who was also a divorcee. The High Court took the contrary view and observed that the appellant had not proved that she was the married wife of the respondent and that she had her first husband, Satendra and there was no dissolution of her marriage with him. These are the question which are required to be thrashed out finally in civil proceedings. In a proceeding for maintenance under Section 125 CrPC the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt. Consequently, in our view the High Court was not justified in interfering with the pure finding of fact reached by learned judicial Magistrate in a proceeding under Section 125 CrPC and therefore only on this, Short ground and without expressing any opinion on the marital rights of the parties which may have to be adjudicated in civil proceedings, the order of the learned magistrate passed under Section 125 CrPC will have to be affirmed and the judgment and order of the High Court is set aside. The appeal is allowed. No costs.

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41. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985, SECTIONS 8/18 AND 50:-
(1998) 8 SCC 449
STATE OF RAJASTHAN Vs. GOPAL

1. In this appeal, the order of acquittal passed by the Rajasthan High Court, Jaipur Bench on 2-9-1988 in SB Criminal Appeal No. 333 of 1988 is under challenge. The respondent was convicted for the offence under Section 8 read with Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") by the learned Sessions Judge, Ajmer in Sessions Case No. 80 of 1987. For the aforesaid offence, the respondent-accused was sentenced to 10 years' rigorous imprisonment together with a fine of

rupees 1,00,000 in default of payment, further rigorous imprisonment for two years.

2. The prosecution case in short was that on 12-4-1986 the accused was apprehended by Head Constable Amanullah at the platform of Ajmer Railway Station at about 7.45 a.m. When the said Constable had been checking the passengers who had been getting down from the train, the accused tried to avoid the Head Constable, but he was apprehended and interrogated by the said Head Constable and the said Head Constable felt that something was kept in the pocket of the accused. Thereafter a plastic bottle of glucose had been found in possession of the accused and it transpired that it contained opium. Opium weighing 800 gm was recovered from the possession of the accused. Two samples each of 30 gm were taken from such seized opium and such samples were sealed in two packets. One sample was sent to the Forensic Science Laboratory for examination. From the report of the Forensic Laboratory, it transpired that the seized article was opium having 6.02% morphine.

3. In passing the order of acquittal, the High Court has noted that the seizure of the narcotic substance was doubtful because the Seal on the sample sent for chemical analysis could not be compared with the seal on the seized article kept in the Police Malkhana because the seal on the sample sent to analyst could not be produced in the Court for verification. Even the seal which was put on the seized article kept in the Police Malkhana could not be ascertained excepting the word "Ajmer" It may be stated here that since the said article had been seized on the railway platform according to the prosecution case, the seal of the Stationmaster had been used, but the Stationmaster was not examined to prove whether the seal put on the seized article and kept in the Police Malkhana really contained the seal of the Stationmaster.

4. The accused was apprehended by the Head Constable and thereafter was taken to the Railway Police Station and the search and seizure had been conducted there. The accused was not given any option to exercise his discretion for being searched in the presence of a magistrate or before a gazetted police officer. Therefore, mandatory provisions of Section 50 had also not been complied with, In the aforesaid facts, the order of acquittal is not required to be interfered with by this Court, This appeal, there fore, fails and is dismissed. The bail bonds furnished by the respondent shall stand discharged.

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42. CONSUMER PROTECTION ACT, 1986 SECTION (a)(i) :- CLAIM INVOLVING INTERPRETATION OF INSURANCE POLICY:-
(1998) 8 SCC 357
***SAUSHISH DIAMONDS LTD.* Vs. NATIONAL INSURANCE CO. LTD.**

The appellant has approached the National Consumer Disputes Redressal

Commission for recovery of the loss of diamonds entrusted to the Commission Agent. The National Consumer Disputes Redressal Commisssion, New Delhi in its order dated 28.9.1995 passed the order holding that since Insurance Company has repudiated the claim it declined to grant the relief. Thus, this appeal.

Shri Harish Salve, the learned Senior Counsel for the appellant, contended that in view of the policy undertakek by the respondent, the Commission could have granted the relief, instead of relegating the appellant to a civil action. We find no force in the contention. We have gone through the stand taken by the respondent in the repudiation. The very interpretation of the policy itself is subject-matter of the dispute. Under these circumstances, the Commission rightly relegated the parties to a Civil action. It is true that limitation has run out against the appellants during the pendancy of the proceedings. There fore, the time taken between the date of the filing of the claim before the Commission and the date of its disposal, namely, 28-9-1995 would be considered by the civil court for exclusion under Section 14 of the Limitation Act, 1963, The appeal is accordingly dismissed.

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43. CONSUMER PROTECTION ACT, 1986 SECTIONS 21,22 AND 23:- ORDER OF NATIONAL COMMISSION RELEGATING THE COMPLAINANT TO CIVIL SUIT AT A BELATED STAGE:-
(1998) 8 SCC 387
AMAR JWALA PAPER MILLS (INDIA) AND ANOTHER Vs. STATE BANK OF INDIA

The order under appeal was passed on 26-3-1997 in a complaiht that was filed before the National Consumer Disputes Redressal Commission, New Delhi, in 1993, The order state

> that "the dispute reised by the complainant involves complicated issues of fact and law, the satisfactory determination of which cannot be made except after elaborate evidence is adduced (both oral as well as documentary) and detailed arguments are heard, all of which can be properly done only in a regular suit instituted before a civil court".

The complainant was relegated to the remedy of filing a civil suit. It is in appeal by special leave.

2. What the order under appeal does not say is (and this is admitted by both sides) that all the evidence, oral and documentary, that both sides had to lead was led before the Commission and that concluding arguments were in progress when the impugned order was passed. It cannot be that the complexity of the matter was only discovered at the stage of the concluding arguments, and for this purpose we assume that there is some complexity in the matter for reading the complaint and the reply does not suggest it. The case of the complainant is that the respondent-Bank had sanctioned cash credit facilities in a certain sum and had, without notice to the complainant, reduced that sum causing loss to the complainant,

which loss was claimed by the complainant.

3. Relegating a complainant four years after the filing of the complaint to a civil suit might mean that the complainant has no remedy at all because limitation would have run against him.

4. While we would be reluctant to interfere with an order of the Commission that decides at an initial stage of a complaint that complicated question of fact and law arise and that, therefore, the complainant must go before a civil court, we cannot be oblivious of the fact that in this case four years have passed and all the evidence has already been led by both sides before the Commission. In the circumstances, we think that the Commission must itself proceed to hear and decide the complaint.

5. The appeal is allowed. The order under appeal is set aside. The complaint, being, Original Petition No. 94 of 1993, is restored to the file of the National Consumer Disputes Redressal Commission, New Delhi, to be heard and decided according to law. Both parties shall be entitled to address concluding arguments to the Commission afresh

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44. RENT CONTROL AND EVICTION : SUBSEQUENT EVENTS:-
(1998) 8 SCC 358
SATYA PAL SIKKA Vs. AMAR NATH

Eviction suit. High Court in second appeal remanding the matter to lower appellate court for reconsideration. Application made by tenant before lower appellate court for considering subsequent events. Lower appellate Court after considering the application rejected the application taking the view that landlord would suffer greater hardship if premises not vacted by tenant. High Court holding that the application for considering subsequent events would be considered at the time of disposal of the proceedings challenging the order of lower appellate court. Held, High Court erred in doing so.

Paragraphs 1. and 2. are reproduced:-

Leave granted. Heard learned counsel for the parties. The order impugned in this appeal is the direction of the High Court dated 1.11.1996 given in CMWP No. 15061 of 1996. The Allahabad High Court by the said impugned order remanded the appeal to the lower appellate court for reconsideration after allowing the parties to lead further evidence. It may be stated that previously the said eviction suit had travelled up to the High Court and an order of remand was made by the High Court to the lower appellate court by directing the lower appellate court to consider the questions framed by the High Court on the basis of the materials on recored by judgment dated 22.8.1988. Such questions had been considered by the lower appellate court after remand and on considering the materials on record, the lower appellate court had answered in favour of the landlord by indicating that the landlord would suffer greater hardship if the premises in question was not vacated and the possession of the same was not given to the landlord. It may also be stated here that before the lower appellate court. the appellant-tenant made an application for

taking into consideration the subsequent events. Such application had also been considered and rejected by the lower appellate court. Against such order of rejection, the High Court was moved. It is stated by the learned counsel for the appellent that the High Court directed that the said application would be considered at the time of disposal of the proceedings challenging the order of lower appellate court. appears to us that by the impugend order, the High Court has proceeded erroneously on the footing that the earlier order of remand did not mean that the appeal was to be disposed of (sic not) only on the basis of the materials already on record but such appeal was to be disposed of on the basis of the materials which were already on record along with the fresh materials which would come on the record on the basis of further evidence of the parties. Such interpretation of the earlier order of remand is clearly erroneous. The High Court was not entitled to sit in appeal over the earlier order of remand made by it. As the lower appellate court has come to specific findings in favour of the landlord on considering the materials on record. there was no occasion for the High Court to interfere with the same particularly on an erroneous premise that the lower appellate court had failed to appreciate the scope and import of the earlier order of remand which envisaged that the parties could lead further evidence.

We, therefore, allow this appeal and set aside the impugned order passed by the High Court, and affirm the judgment of the lower appellate Court. There will be no order as to costs.

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45. SERVICE OF PROCESS : CONTEMPT BY POLICE
***M.A. NO. 1204/98 & RAJENDRA KUMAR S.P. SATNA Vs. STATE OF M.P.* DECIDED ON 15-2-99, BY HON'BLE SHRI A.K. MATHUR HON'BLE SHRI DIPAK MISHRA. M.P. HIGH COURT JABALPUR, M.P.**

This is an appeal directed against the order of the learned Single Judge passed in Contempt Petition No. 32/97, dated 16.7.1998, whereby the learned Single Judge has punishe the appellant with imposition of a fine of Rs. 500/- or to suffer simple imprisonment of one day. The appellant has also been directed to pay a sum of Rs. 500/- as costs of these proceedings.

Unfortunately, the witnesses were not produced by the prosecution despite the fact that the trial was directed by this Court to be completed within a period of three months. Learned counsel submitted that those witnesses were recalled and by that time, they had changed their addresses and despite all the efforts, the witnesses could not be served. The delinquent/appellant has tendered unconditional apology and prayed for mercy that this was a mistake on his part that he could not get those witnesses served expeditiously and produced them in time. Since the appellant has appeared in person today and tendered unconditional apology that in future he will be vigilant, we do not intend to punish him. It is the responsibility of the Police to serve summons to the witnesses in time and produce them in the Court. It has come to our notice that trials are delayed because of non service of notice.

A direction was issued by this Court as well as by the State Administration for holding of the meeting of Coordination Committee in the Chamber of the District Judge with the Collector and the Superintendent of Police to overcome these difficulties. It seems that the direction issued has also not been properly complied with and the witnesses are not produced and as a result there of administration of criminal justice has to suffer. Since, the contemner/appellant is present in person today and has tendered unconditional apoligy and assures that such mistake will not be repeated in future, we do not propose to award any substantive sentence or sentence of fine. We accept his bonafide apology and discharge him from this notice.

Let a copy of this order be sent to D.G.P. so that he will direct all the Superintendent of Police of the District in all over the State that summons of the cases for faithfully served and the witnesses are produced expeditiously for trial otherwise, it will be a criminal contempt of the Court and the concerned delinquent shall be dealt with seriously. The appeal is allowed accordingly.

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46. RE-PLEA (PLEA OF GUILT, SUBSEQUENT TO PLEADED NOT GUILTY S. 229 CR.P.C. (241-252 CR.P.C. ALSO)
1996 CR. L.J. 440 RAMKISHUN VS. STATE

Plea of guilt can be taken at any stage of trial after framing of charge.

Paragraphs 10,11and 12 reproduced :-

10. In this connection learned counsel for the appellant argued that the language used in Section 229 Cr.P.C. should be read to mean that if once the charge was framed. because initially the appellant/accused had claimed to be tried and pleaded not guilty, his subsequent admission of guilt cannot be recorded.The learned A.G. A.has refused the said argument. For ready reference Section 229 Cr. P.C. may be quoted here:

"229 Conviction on plea of guilty:

If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict, him thereon.

11. It is stated at the outset that plea of guilt of an accused is a voluntary act. It does not partake character of confession. The stage of investigation is over much before the stage of pleading guilt reaches. The Judge's task is to find out truth involved in the case before him and if at any stage the accused pleads guilty and the Judge is satisfied that the said plea is voluntary plea and without any coercion, physical or mental, there is nothing in the Cr.P.C. to prevent such a guilt being recorded and thereafter on its basis, conviction can safely be recorded.

12. Moreover, in the instant case in the statement under Section 313 Cr. P.C. also the appellant has reiterated his plea of guilt. He has said it in so many words that he had killed his wife by the axe he was carrying. Under the circumstances, the trial Judge was justified in placing reliance on the said plea of guilt and rightly closed the prosecution evidence. The

necessity of evidence would arise only if and when the charge is not accepted. There is no reason to restrict the applicability of Section 229 Cr. P.C. to a Particluar date or accasion but the purport of section is obvious that plea of guilt can be advanced by an accused at any stage of the trial after framing charge.

NOTE:

Please refer to ***Ganeshmal vs. State A.I.R. 1980 S.C. 264*** (Joti vol. II. PART 1 Feb. 1996) Please read it carefully and understand the facts of the case. Distinguish that Judgment on facts and then understand the principle of law laid down in 1996 Cr. L.J. 449 Gas Cuoted above) and in the following referred citations) J.O.T.I. VOL. III PART VI DEC. 1997 PAGE 40.

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47. ARBITRATION ACT 1940, Ss. 14,29,30 AND FIRST SCHEDULE PARA 7-A :- (AS INSERTED BY S, 24 OF U.P. CIVIL LAWS (REFORMS AND AMENDMENT) ACT, 1976)
(1999) 1 SCC 63
STATE OF U.P. Vs. HARISH CHANDRA AND CO. AND OTHER CASE

Necessity award for pre-reference period. Stipulation prohibiting it, if any, in the contract relevant clause in Special Conditions of Contract providing "No claim for interest or damages will be entertained by the Government with respect to any moneys or balances which may be lying with the Government owing to any dispute difference;.or misunderstanding between the Engineer-in-Charge in marking periodical or final payments or in any other respect whatsoever". It was held that clause does not prohibit the arbitrator to award interest for the pre-reference period on the amount found due for the work done by the contractor.

The clause in question in the Special Conditions of Contract provides that the claim for interest by way of damages was not to be entertained against the Government with respect to only a specified type of amount, namely, any moneys or balances which may be lying with the Government owing to any dispute, difference between the Engineer-in-Charge and the contractor; or misunderstanding between the Engineer-in-Charge and the contractor in marking periodical or final payments or in any other respect whatsoever. The words "or in any other respect whatsoever" also referred to the dispute pertaining to the moneys or balances which may be lying with the Government pursuant to the agreement meaning thereby security deposit or retention money or any other amount which might have been with the Government and refund of which might have been withheld by the Government. The claim for damages or claim for payment for the work done and which was not paid for would not obviously cover any money which may be said to be lying with the Government. Consequently, on the express language of this clause, there is no prohibition which could be culled out against the respondent-contractor that he could not raise the claim for interest by way of damages before the arbitrator on the relevant items placed for adjudication.

The question purely on merits of the award cannot be raised in objection under Section 30. Under Section 30 the proceedings are not in the nature of appeal against award. Hence contention that claims regarding work of cutting of rock were wrongly granted by arbitrator, cannot be made subject-matter of objection under Section 30.

Under First Schedule para 7-A as amended by U.P. Act there is a bar on the powers of the arbitrator and not on the powers of the Court. When arbitrator awarded interest at the rate of 6 percent because he had no authority or power to go beyond that and not because it found the rate to be reasonable, it was within the discretionary jurisdiction of the trial court to instead award 15.5 percent interest on the decretal amount from the date of the decree till satisfaction of the decree and High Court erred in reducing the rate again to 6 percent.

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48. COURT FEES ACT, S. 7 (IV) (C) :-
1999 (1) M.P.L.J. 37
MOHAMMAD JAMEEL KHAN Vs. MITHTHULAL KHUSHAL SINGH

The plaintiff filed a suit for declaration and injunction alleging defendant got fictitious sale-deeds executed fraudulently and got his thumb impression on the pretext of Mukhtarnama which were wholly fictitious and illegal. He, therefore, valued the suit for the purpose of jurisdiction at 20 times of the land revenue and paid court-fees thereon. The written statement was filed by defendants 3 to 8 and an application was moved by them purporting to be under Order 7, Rule 11(b), (d) of Civil Procedure Code. It was alleged that the Court fee paid was insufficient. The court fee ought to have been paid on the valuation of the sale deed. This application was rejected. The defendants challenged the said order in revision.

It was held that while considering the question of payment of court fee, the allegations contained in the plaint have to be seen. The plaintiff cannot be permitted to mould the facts and circumstances and the real intention. It transpires that the intention of the plaintiff was something different than what had been claimed. The court cannot overlook it. In case where the plaintiff sought a declaratory relief only, but in substance aimed at setting aside sale deeds, court fee has to be paid in accordance with law governed by section 7 (iv)(c) of the Court Fees Act. Third parties without notice of the alleged fraud can acquire rights and interest in the property and get it enforced against the person defrauded. It cannot under the circumstances be taken that he was not a party to the document. Unless the document is got cancelled by a decree of Court, it remains a valid document. The relief of declaration cannot be sufficient. The plaintiff has to ask for a consequential relief of cancellation of sale-deed in order to avoid it. Consequently, as a consequential relief of cancellation of sale deeds is necessary on the facts of the case. The plaintiff was required to pay advalorem court fee on the value of the sale-deeds under section 7 (iv) (c) of the Court Fees Act as laid down in the Full Bench decision in ***Santosh Chandra vs. Gyan Sunder Bai, 1970 MPLJ 363.*** The suit has also

to be valued accordingly. ***Mt. Rupia vs. Bhatu Mahton, AIR 1944 (31)*** Patna, 17 relied on.

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49. M.P. ACCOMMODATION CONTROL ACT. Ss.23-A AND 23-J :- DEFINITION OF LANDLORD, POSSESSION OF THE LANDLORD ON THE DATE OF THE INSTITUTION OF THE SUIT:-
1999 (1) M.P.L.J. 82
LAXMI DEVI SHRIVASTAVA Vs. ANIL KUMAR

On the date when the application was filed before the competent authority the applicant had not retired from service. The event of his subsequent retirement will not enable him to maintain an untenable application when filed.

Section 23-A in Chapter III-A of the Madhya Pradesh Accommodation Control Act, 1961 makes a special provision for eviction of tenant of ground of bonafide requirement, if the case is covered within the provisions contained in this chapter which is a self contained provision. A definition of 'landlord' for the purposes of Chapter III-A has been provided in section 23-J. The word 'landlord' has also been defined in the Act in section 2 (b), but the definition given under section 23-J of the word 'Landlord' is for the purposes of Chapter III-A only. The landlord on 17-1-1997 filed an application under section 23-A of the Act on the ground that he was an employee in the Air Force and was to retire in November, 1997. It was contended that the he was in Air Force Services and posted at Pune and on retirement wanted to settle in the house occupied by the tenant. A plain reading of the provisions of Sections 23-A and 23-J, goes to show that the petition when it was moved was wholly incompetent in as much as the petitioner was not a landlord within the meaning of section 23-J. Even if by subsequent events, the petitioner became the landlord, it will not confer any right on the petitioner to evict the defendants tenants on the basis of the petition moved by the petitioner on the date when he was not the landlord within the meaning of word 'landlord' given in the Act. The subsequent event bringing his within the meaning of landlord cannot enable him go get a relief on the basis of a petition moved when he was not the landlord i.e. the date of petition. It is one of those cases in which subsequent event-s will not have any effect. The petition filed for eviction of the tenant was incompetent as on the date when it was presented the R.C.A. had no jurisdiction to entertain it. Petition for eviction as filed before the Rent Controlling Authority dismissed. ***P. Venkateswarlu Vs. Motor & General Traders, AIR 1975 SC 1409*** and ***Rameshwar Vs. Jot Ram, AIR 1976 SC 49*** relied on.

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50. CONTRACT ACT, 1872 - Ss. 2 (E), 3,4, AND 8: BINDING CONTRACT OR MERE NEGOTIATION: CONSENSUS AD IDEM CAN BE SPELT OUT FROM THE CONTEMPORANEOUS CORRESPONDENCE:-
(1999) 1 SCC 1
RICKMERS VERWALTUNG Vs. INDIAN OIL CORPORATION LTD.

An agreement, even if not signed by the parties, can be spelt out from correspondence exchanged between the parties. It is the duty of the court to

construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The court is required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention to the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence.

In the present case though the relevant clause of the agreement, which provided that the respondent was to open a standby irrevocable letter of credit for freight amount of each shipment for the cargo in transit, does not show whether the condition of establishing a standby irrevocable letter of credit or the furnishing of performance guarantee were conditions precedent to the conclusion of contract but there was enough material on record (correspondence exchange between the parties) to show that they were meant to be conditions precedent. From a careful perusal of the entire correspondence on the record it is clear that no concluded bargain had been reached between the parties as the terms of the standby letter of credit and performance guarantee were not accepted by the respective parties. In the absence of acceptance of the standby letter of credit and performance guarantee by the parties, no enforceable agreement could be said to have come into existence. The correspondence exchanged between the parties shows that there is nothing expressly agreed between the parties and no concluded enforceable and binding agreement came into existence between them. The parties were only negotiating and had not arrived at any agreement. There is a vast difference between negotiating a bargain and entering into a binding contract. After negotiation of bargain in the present case, the stage never reached when the negotiations were completed giving rise to a binding contract. The relevant clause of the charter party relating to arbitration had no existence in the eye of law because no concluded and binding contract ever came into existence between the parties.

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51. ARBITRATION ACT (10 OF 1940) SECTION 20 (4) :-
1999 (1) M.P.L.J. 55
WESTERN COALFIELDS LIMITED Vs. M/S NARBADA CONSTRUCTIONS

Reference to Arbitrator. Adjudication of counter claim is not beyond the scope of reference.

Where the claimant goes before the Arbitrator with set of claims, and the other party resists by filing counter claim or advances counter claims, if there be any, it is the duty of the Arbitrator to consider both claim and counter claim before making the award, otherwise the Arbitrator misconducts himself.

Where eventhough, the order of reference did not speak of counter claim but as the disputes had arisen between the parties in relation to the claims and counter claims of the parties concerning the contract covered by Arbitration agreement, Arbitrator was bound to decide and separate reference on counter claims was not necessary. ***K.V. George vs. Secretary to Government Water and Power Department, Trivandrum and another, AIR 1990 SC 53*** relied on.

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52. SECTION 320 CR.P.C. : POWERS OF THE SUPREME COURT AND HIGH COURT TO RECORD COMPROMISE IN WHICH COMPROMISE IS NOT PERMISSIBLE :-
1999 (1) SUPREME 216
RAM LAL Vs. STATE OF JAMMU & KASHMIR

An offence which law declares to be non-compoundable even at the permission of the Court cannot be compounded till and as such offence under Section 326 I.P.C. cannot be permitted to be compounded in view of legislative ban under Section 320 (9) of Cr.P.C.

The whole judgment is reproduced here :-

The first appellant Ram Lal stands convicted of the offence under Section 326 of the IPC and is undergoing a sentence of three years. The second appellant has been convicted of Section 324 of the IPC and was sentenced to imprisonment for two years. The parties have compromised and a petition for compounding has been filed. We cannot accede to the request for compounding in regard to the offence under Section 326 IPC as the same is a non-compoundable offence. Sr. D.D. Thakur, learned Senior Counsel invited our attention to the decisions of this court in ***Y. Suresh Babu vs. State of A.P. & Anr., 1987 (2) JT 361 and Mahesh Chand and another vs. State of Rajasthan, 1990 SCC (Suppl.) 681*** where in non-compoundable offences were allowed to be compounded. In Y. Suresh Babu (Supra) it was specifically observed that said case "shall not be treated as a precedent". In the latter case (Mahesh Chand) offence under Section 307 IPC was permitted to be compounded with the following observations.

> "We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and circumstances under which the offence was committed, it may be proper that the trial Court shall permit them to compound the offence."

We are unable to follow the said decision as a binding precedent. Section 320 which deals with "compounding of offences" provides two Tables therein, one containing descriptions of offences which can be compounded

by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the Court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else. Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms:

"(9) No offence shall be compounded except as provided by this section."

It is apparent that when the decision in Mahesh Chand (Supra) was rendered attention to the learned Judges was not drawn to the aforesaid legal prohibition. Nor was attention of the learned judges who rendered the decision in Y. Suresh Babu (Supra) drawn. Hence those were decisions rendered per incuriam. We hold that an offence which Law declares to be non-compoundable even, with the permission of the Court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non-compoundable and hence we cannot accede to the request of the learned counsel to permit the same, to be compounded.

However, considering the fact that parties have to come to a settlement and the victims have no grievance now and considering the further fact that first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he had already undergone. We order so and direct the jail authorities to set him at liberty forthwith.

Regarding the second appellant we permit the parties to compound the offence (Section 324 IPC) in view of the joint application filed by the legal representatives of the deceased complainant and the second appellant (vide his application No.Cri.M.P. No. 7648/98). In view of the aforesaid compounding of the offence under Section 324 IPC we set aside the conviction and sentence passed on the second appellant and he is acquitted under Section 320 (8) of the Code of Criminal Procedure, 1973.

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53. 1999 (1) JLJ 14 (F.B.)
SUDHA GUPTA Vs. STATE OF M.P.

O. 6 R. 2 & 0. 14 R.1 CPC:

It is settled law that though liberal consideration to the pleadings is to be given so as to allow any question to be raised and discussed covered thereunder yet a petitioner cannot be deemed to be on entitled to a relief upon the facts and evidence neither stated nor referred to in the pleadings relied upon. It was observed by the privy council in the case of ***Saddik Mohammed Shah vs. Mt, Saran and others,*** reported in **AIR 1930 Privy Council 57 (1)** that where a claim has never been made no amount of evidence can be looked into upon a plea which was never pur forward. A decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It should, however, not be lost sight of that consideration of form cannot over-ride the legitimate consideration of sub-

stance. If a plea is not specifically made and yet it is covered by an issue by implication and the parties know that said plea was involved, in that event the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence.

WORDS AND PHARSES MEANING OF : LIABILITY AND NEGLIGENCE:-

'Liability' is normally grounded on some finding of fault or wrong in addition to a finding of responsibility for some occurrence. According to Bouveir's Law Dictionary, ' Liability is the state of being bound or obliged in law of justice. Anderson's Law Dictionary defines "liability" as the state of being bound or obliged in law or justice to do, pay or make good something, legal responsibility. In Black's Law Dictionary the expression ' liability' has been indicated to denote 'every kind of legal obligation, responsibility or duty, the state of being bound or obliged in law or justice to do, pay or make good something; the state of one who is bound in law and justice to do something which may be enforced by action.

It must not be lost sight of that care is a matter of degree, but it is difficult to define the precise legal standard of care required in all cases of negligence. The standard of care then is a question of fact depending upon the circumstances of each case. In determining this standard what has to be considered is as to how a reasonable and prudent man would behave under given circumstances. Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs will do or doing something which a prudent and reasonable man would not do. In the realm of negligence rigid rules give right to avoidable injustice. The degree of competent care and skill therefore by which the respondents are to be judged has to be such as may be reasonably expected from an average person in his profession and from any person specially gifted or qualified. The burden of proving negligence rests upon the person who asserts it. In medical negligence cases it is for the patient to establish his case against the medical man and not for the medical man to prove that he acted with sufficient care and skill. In all cases the facts proved must be sufficiently compelling to give rise to an inference of negligence. A mere conjecture will be insufficient. No human being is infallible and in the present state of science even the most eminent specialist may be at fault in detecting the true nature of the disease condition. A case of serious fault where the diagnosis of the disease was palpably wrong has to lead to an irresistible conclusion about negligence being committed. That is to say if the mistake is of such nature that it has to imply absence of reasonable skill and care regard having had to the ordinary level of skill in the profession, a medical man may be guilty of negligence if he fails to attend to his patient with regularity and promptitutde which his patient's condition demands but he can only be held if his lack of attention leads to an avoidable deterioration of the patient's condition.

COURT: SENTIMENTS:-

Sentiment is a dangerous will of the wisp. The court should not be carried

away by any sympathy for the party in such cases as yeiding to instinct will tend to ignore the cold logic of law. It should be remembered that the law is the embodiment of all wisdom. Disregardful of law. however, hard, the case may be it should not be done.

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54. CR P.C. SECTIONS 156 (3), 200 AND 202 :- LAW EXPLAINED:-
1999 (1) M.P. L.J. 260
SHYAMLAL Vs. LAU KUSH

It is stated in the petition that the petitioner belongs to "Chamar" community. The non-applicants, who are 'Brahmins' with the intention and precalculated plan, endeavoured to take possession of the land belonging to the petitioner, the non-applicant No. 1 initiated a proceeding under section 145 of the Cade forming the subject matter of crimmnal Case No. 17/89 in the Court of City Magistrate, Satna in the year 1989 ih which the non-applicant No. 1 became unsuccessful. Thereafter, he filed Civil Suit No. 105-A/95 against the petitioner and others in the Court of Civil Judge, Class-II, Satna and also moved an application for temporary injunction. The said application for interim injunction was rejected on 17-4-1995 which was challenged by the non-applicant No. 1 in Civil Appeal No. 32/95 before the learned Additional District Judge who refused to interfere. Having lost in both the forums, as stated in the petition, the non-applicant No. 1 along with others tried to enter into the land of the petitioner in an illegal manner which was resisted by the younger brother of the petitioner in his absence but the protest was not paid heed to and the non-applicant No. 1 and his group abused the mother, sister and brother of the petitioner and to some other persons of their community and threatened the younger brother of the petitioner with dire consequences if they made efforts to enter into possession. The non-applicants took away the reaped crops of paddy and Soyabin of the petitioner who after returining to the village orally reported the matter at police station but the same was not recorded. Thereafter the same was reported to the S.P. Satna and a copy of it was given to the Town Inspector of Police Station, Kolegaon, As no action was taken by the police, he filed a complaint petition in the court of Specisal Judge, Satna on 7.11.1996 Thereafter he also filed an application under section 94 of the Code. The learned Special Judge by order dated 19.1.1996 held the allegations made in the complaint petition disclosed a cognizable offence and accordingly directed that a copy of the complaint along with the application filed under section 94 of the Code be sent to the S.P. concerned who shall cause investigation by a senior officer and submit a report. On 16.12.1996 the report was submitted by the Additional S.P. Satna and the Court placed the matter for further hearing on 16.1.1997. On the date fixed the learned Special Judge recorded the absence of the complainant and held that there was land dispute between the complainant and the accused persons and as per the report of the investigating agency no case was made out for offences punishable under section 3 (i) (v) (vi) (x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 or section 382/34 of the Indian Penal Code. Being of this view he rejected the application under section 203 of the Code which is assailed in this revision.

2 A. I have heared Mr. A. Usmani, learned counsel for the petitioner and Mr. S.D. Khan, learned counsel for the respondents. It is contended by the learned counsel for the petitioner that the court below has erred in law in rejecting the complaint of the petitioner without examining and hearing the complaint. It is his further submission that the petitioner was present and, in fact, had signed in the order-sheet but the learned Judge has committed an error of record by recording that the complainant was absent, Mr. Khan the learned Counsel for the respondents in his turn, supported the impugned order. Referring and following the casses of ***H.S. Bains vs. State, AIR 1980 SC 188*** and ***Tularam vs. Kishor Singh, AIR 1977 SC 2401*** the High Court said as under:

> It is quite clear that the power of investigation vests with the police in regard to any cognizable offence without the order of a Magistrate. Under sub-section (3) of the Code the Magistrate who has been empowered under section 190 of the Code may direct the police to investigate a case. Pursuant to the direction given by the competent Magistrate police investigates and submits a report to the Magistrate who is required to deal with the matter. It is to be noted here that the Magistrate under section 202 of the Code occuring, in Chapte XV has also the authority to direct an investigation to be made by the Police Officer. It is to be borne in mind that there is a distinction between the scope of power of the Magistrate while directing investigation under section 156 (3) and 202 of the Code. Investigation under section 156 (3) is directed at the re-cognizance stage whereas the direction under section 202 of the code relates to a stage after taking cognizance but before issuance of process.

It is luminously clear that the Competent Court after receipt of the report may drop the action by holding that there is no sufficient ground for proceeding further or he may take cognizance on the basis or original complaint and proceed to examine the complainant and his witnesses under section 200 of the Code. In the case at hand, the Court below has observed that there are no materials to proceed against the accused but while doing so he has stated that he has passed the order under section 203 of the Code. On a bare perusal of the provision envisaged under section 203 of the Code it is apparent that the complaint under section 203 of the Code can only be dismissed after considering the statements on oath (if any) of the complainant and the witnesses, and the result of the inquiry or investigation under section 202 of the Code. As the direction by the Court to the investigating agency to cause an investigation was not one under section 202 of the Code the question of dismissal of the complaint under section 203 did not arise. At best it can be regarded as dismissal of the proceeding for lack of sufficient materials collected, during the investigation in pursuance of the direction under section 156 (3) of the Code.

On a perusal of the impugned order. I find that exept referring to the police report. no reasons have been ascribed. It has been mentioned that the complainant was not present. Mr. Usmani, learned counsel for the applicant, has

urged with vehemence that the complainant was present on that day and his presence was marked in the order-sheet. Be that as it may, as the reasons have not been recorded for accepting the report ans the complainant has a grievence and she Court below has jurisdiction to consider the complaint in spite of the report of the police, I am of the considered opinion that the Court below should hear the complaint in the matter and pass a reasoned order keeping in view the law laid down in the case of Tularam and others and H.S. Bains.

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55. CR.P.C. SECTIONS 401, 378 AND 210:-
(1998) 8 SCC 451
KISHAN SWAROOP Vs. GOVT. OF NCT OF DELHI

ORDER

1. Leave granted. Heard the learned counsel for the parties.
2. On a report lodged by the appellant with the Sadar Bazar Police Station, Delhi a case was registered against three persons. After police submitted charge-sheet (challan) against them they stood their trial for offences punishable under sections 381 and 411 of the Indian Penal Code. The trial ultimately ended in their acquittal and aggrieved thereby the appellant filed a revision petition in the Delhi High Court. At the time of hearing of the petition the High Court posed the question whether the appellant was required to obtain permission from the Public Prosecutor to file such a petition and relying upon the judgment of this Court in ***K. Chinnaswamy Reddy v. State of A.P. AIR 1962 S.C. 1788*** and some judgments of the High Courts, it answered the same in the affirmative and dismissed the revision petition without prejudice to the appellant's right to approach it a fresh after obtaining the requisite permission. The above order is under challenge in this appeal.
3. From the impugned judgment we find that the High Court has referred to the provisions of Sections 378 and 210 of the Code of Criminal Procedure to conclude that is was the primary responsibility of the State to file appeal/revision and therefore no criminal revision in respect of an order which is appealable at the instance of the State could/should be entertained without the requisite permission of the Public Prosecutor. In drawing the above inference the High Court failed to notice that if the Code of Criminal Procedure did not empower a private party to file a revision petition against an order of acquittal passed in a case instituted on a police report a formal permission of the Public Prosecuter would not entitle him to do so. To put it differently, a Public Prosecutor cannot vest a private party with a right which it has not got under the Code.
4. In dealing with the revision powers of the High Court vis-a-vis the right of a private party to move in revision against an order of acquittal

passed in a case instituted upon a police report this Court observed in *Chinnaswamy Reddy* (on which judgment the High Court relied) as under.

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the state may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the proeedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice."

(emphasis supplied)

5 In view of the earlier discussion of ours and the abovequoted observations of this Court we unhesitatingly quash the impugend order and allow this appeal.

NOTE : Please refer to (1993) 3 SCC 690 (1973) 2 SCC 583, (1975) 4 SCC 477

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56. CONSTITUTION OF INDIA, ARTICLE 141 : BINDING LAW AND THE LAW DECLARED BY THE SUPREME COURT, EFFECT:- (1998) 8 SCC 275
C.N. RUDRAMURTHY Vs. K. BARKATHULLA KHAN

Judicial discipline requires that clear pronouncement by the Supreme Court about what the law on a matter is, must be treated as binding by all the courts in India. Where the Supreme Court has stated that the law laid down in a particular case is the applicable law, it was not open to the High Court to consider or rely on any supposedly conflicting decision. karnataka Rent Control Act, 1961 (22 of 1961),S. 31- DC Bhatia's case ***(D.C. Bhatia vs. Union of India (1995) 1 SCC 104)*** and ***Shoba Surendra vs. S.V. Rajan, Civil Appeal No. 13754/96*** decided on **1.11.1996 (1998) 8 SCC 281** were followed. It was further held that ***I.L.R. 1986 Karnataka 2480, Padmanabh Rao vs. State of Karnataka*** impliedly overruled. Overruling by implication and the nature and effect was also explained. Re-examination by Supreme Court of case not expressly overruled if still necessary. Where the Supreme Court has applied its mind to the facts of the case before it and the law as declared by it in a previous case, held, the Supreme Court need not re-examine a case which had by implication been declarled incorrect. When the law as declared by the Supreme Court Contradicts what has been stated in another case, that case stood impliedly overruled.

If the interpretation put by the Court is not in accord with the legislative policy or there is a change in policy, it is certainly open to the Legislature to intercede and make appropriate law in that regard.

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57. C.P.C. O. 6 R. 2 AND SECTION 47:-
(1998) 8 SCC 315
D.M. DESHPANDE Vs. JANARDHAN KASHINATH KADAM

A vague pleading regarding a plea. Mere raising of plea without factual basis not sufficient for the purpose of raising an issue.

Paragraphs 9 and 10 are reproduced:-

Learned counsel for the appellants has relied upon three decisions in support of his contention that a vague plea does not justify an issue being framed. In this connection, a reference was made to ***Ram Sarup Gupta vs. Bishun Narain Inter College, (1987) 2 SCC 555*** where the Court has held that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the absence of any pleading, evidence if any produced by the parties cannot be considered. The object and purpose of a pleading is to enable the adversary party to know the case of the opponent. In order to have a fair trial, it is imperative that the parties should state the essential material facts so that the other party may not be taken by surprise. The Court, has however, cautioned against a pedantic approach to the problem and has directed that the court must ascertain the substance of the pleading and not the from, in order to determine the case. The respondents have emphasised latter observations. In the present case, however, no material in support of the plea of tenancy has been set up anywhere in any form. In case of ***Nilesh Construction Co. v. Gangubai, AIR 1982 Bom 491: 1982 Mah LJ 664*** the Court observed that before a reference to the Mamlatdar for deciding the issue of tenance under the Bombay Tenancy and Agriculltural Lands Act, 1948 is made, the alleged tenant must disclose in his pleadings, details about the tenancy and the exact nature of the right which is claimed by him. An issue of tenancy cannot be raised on a vague plea.

Similarly in an earlier case of ***Pandu Dhondi Yerudkar v. Ananda Krishna patil, (1974) 76 Bom LR 368*** the High Court has observed that when in spite of particulars being asked for a vague plea is made by the defendant contending that he is a tenant of the land, the court should hesitate to frame such an issue on such a vague plea, unless the defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created. However, in that case since an issue regarding tenancy had already been raised, it was obligatory for the Court to refer this issue to the authorities under the Tenancy Act. The Court, therefore held that the issue had to be so determined.

DISMISSAL

Shri J.K. Verma, Additional District Judge, Bilaspur was dismissed from services on 7.2.1999.

OPINIONS AND VIEWS EXPRESSED IN THE MAGAZINE ARE OF THE WRITERS OF THE ARTICLES AND NOT-BINDING ON THE INSTITUTION AND FOR JUDICIAL PROCEEDING.