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कर्म की टंकार

हम आप न्यायिक अधिकारी जहां कहीं मिलते हैं चर्चा का केन्द्र बिन्दु, धुरी या अक्ष एक ही होता है वह है यूनिट, कार्य निराकरण मापदंड। उसे हम वास्तव में दंड के रूप में ग्रहण करते हैं। इस संबंध में कटुतम विचार लगभग सभी के मन में आते हैं। कुछ अधिकारी बहुत अधिक मात्रा में कार्य करते हैं तो कुछ औसत तो कुछ निर्धारित मानदंड से भी अत्याधिक न्यून। चर्चा में यह बात भी आती है कि उस अधिकारी ने वे प्रकरण निराकृत किए जो पूर्व अधिकारी साक्ष्य समाप्त होने के कगार पर छोड़ गया था अथवा किसी अधिकारी ने एक ही समय न्यायालय कक्ष में कई फ्रन्ट, मोरचे खोल रखे हों जिसमें एक बाबूजी साक्ष्य लिख रहे हों दूसरे भी वही कर रहे हों तथा जज्ज् साहेब तर्क सुन रहे हों। यह भी संभव है कि एक अधिकारी निश्चित ही नियमानुसार परम पावन भावना से नियमानुसार एक समय एक ही कार्य कर रहा हो व अपेक्षित यूनिटस् मात्र दे रहा हो। कुछ अधिकारी काम ही न कर रहे हो अथवा कुछ गणितीय बाजीगिरी कर रहे हो अथवा ऐसे प्रकरण छाँट छाँट कर कर रहे हो जो दिखे भी की कांटेस्टेड (द्विपक्षीय) है व वास्तव में वैसे न हो। और भी कई माध्यम यूनिट प्राप्त करने के लिए रहे होंगे या समय के साथ नई–नई खोज अव्याहत रूप से जारी रह सकती है। हर एक का ईमान व निष्ठा अपनी अपनी है। हो सकता है यह विशाद का विषय हो। यूनिट के निर्धारण के संबंध में पुनः पुनः विचार होता रहता है। लगभग प्रतिवर्ष ऐसा ही हुआ भी है। संभव है यूनिट का मानदंड कठोर हो। पक्ष–विपक्ष में कई बातें कही जा सकती है। लेकिन हम आप जब इस मुद्दे पर चर्चा करते हैं तब स्वयं के क्रिया कलापों, कर्मों के प्रति कोई चिंतन नहीं करते मानों हम इस विषय में दोषी नहीं हैं। वस्तु स्थिति को परखने का यह सुनहरा अवसर है। आत्म परीक्षण कर लेना ज्यादा उचित होगा व किसी सीमा तक स्वयं की भूलों का दोष परिमार्जन भी हो सकेगा।

यह बात तो निश्चित ही है (अपवाद हर एक का होता ही है) कि वाद प्रश्न, चार्ज, आरोपी परीक्षण के प्रश्न हमें ही तैयार करना है। निर्णय व आदेश लेखन का कार्य भी हमें ही करना है। अपेक्षा यह है कि यह कार्य समय पर भी करना है। संभव है निर्णय व आदेश जो विस्तार से लिखे जाना है के लिए टाइपिस्ट की आवश्यकता हो व टाइपिस्ट घर नहीं आता हो लेकिन कुछ कार्य तो घर पर ही स्वयं कर सकते हैं जैसे वाद प्रश्न, आरोप पत्र एवं छोटे– छोटे आरोपी– परीक्षण प्रश्न बनाना। क्या उन्हें हम घर पर तैयार करते हैं? यदि नहीं तो क्यों नहीं यह प्रश्न स्वयं से आत्म परीक्षण में पूछना है। माना कि कोर्ट में ही उन्हें टाइप कराना चाहेंगे। लेकिन क्या घर पर वे प्रकरण हम पढ़कर आते हैं यह भी प्रश्न स्वयं को ही पूछना है। यदि हमने ऐसे कार्य के लिए प्रकरण 15 दिन पश्चात निर्धारित किया है तो यह प्रकरण 15 दिन तक कहां

रहा? क्या इस प्रकरण को हमने अपने घर ले जाने का प्रयत्न किया व इस अवधि में अग्रिम रूप से कार्य करके रखा ? ऐसे प्रकरण हमने तिथि निर्धारण के तुरन्त पश्चात अपने पास रखे हैं तो हमें इस कालावधि के बीच पर्याप्त समय मिल जाता है कि हम ये सब आसानी से कर सकें। यदि समय पर चार्ज अथवा वाद प्रश्न बना लेते हैं तो चक्रीय रूप से हमारे पास कार्य निराकरण हेतु पर्याप्त कार्य रहेगा अन्यथा हमारे पूर्व पीठासीन अधिकारी ने यदि थोड़ा बहुत कार्य करके शेष रखा है तो वह कितने दिन चलेगा। हमने तो कोई अवसर कार्य निराकरण हेतु निर्मित करके रखे ही नहीं हैं। एक पीठासीन अधिकारी ने तो दो–दो साल प्रकरणों में वाद प्रश्न निर्मिति, चार्ज हेतु अथवा सेटलिंग डेट (साक्ष्य निर्धारण) हेतु समय दिया है फिर चाहे हमारे पास समय न हो परन्तु हम दूसरों को समय दे देते हैं। हम आप को सोच में परिवर्तन करना ही होगा अन्यथा हम किसी भी दृष्टिकोण से पद के अनुरूप योग्य सिद्ध नहीं रह पाएंगे। हमारे साथ परिस्थिति ऐसी हो रही है कि निर्धारित कार्य जो केवल हमें ही करना है, वह समय पर नहीं करते हैं तो आने वाले कल की तैयारी नहीं हो पा रही है, यूनिट्स (मात्रा) के हिसाब से भी हम पद के अनुरूप नहीं बैठ पा रहे हैं व गुणवत्ता के दृष्टिकोण से तो पूछो ही मत। तो हम किस काम के। बहुआयामी प्रतिभा भी नहीं, जानकारी भी नहीं। ऐसे में हमारा काम नहीं चल सकेगा। गृह निर्माण के लिए नींव के पत्थर लगते हैं वैसे ही न्यायिक कार्य के लिए होमवर्क (पूर्व तैयारी) की न्यूनतम आवश्यकता होगी। निराशावादी दृष्टिकोण प्रस्तुत करने का लक्ष्य इस संपादकीय का नहीं है परंतु जब सर्वसामान्य रूप से वस्तुस्थिति को देखा जावे तो यह आभास तो होता ही है कि कहीं न कहीं हम चूक कर रहे हैं भूल रहे हैं या जानबूझ कर कर्म से विमुक्त रहने में, आलस में, उपेक्षा में, अकर्मण्यता में उद्दण्डता पूर्ण विकृत आनंद का अनुभव कर रहे हैं। यदि ऐसा है तो यह अनिष्टकर प्रवृत्ति है इससे दूर रहना ही उचित होगा। ऐसे विचारों को चाहे अवसाद कहा जावे अथवा निराशा कहे लेकिन सत्य के पर्याप्त निकट है यह विश्वास करो। ये विचार जिस पृष्ठ भूमि में निर्मित होते हैं उसके पीछे पर्याप्त कारण होते हैं, वरिष्ठ विद्वत जनों का बोध, अनुवभ, मार्गदर्शन व उनके विचारों की अभिव्यक्ति का भी अंश होता है। यह बात 'जागते रहो' स्तंभ के माध्यम से भी प्रगट होती रही है। हमें परिवर्तन लाना होगा रूढ़िवाद का त्याग करना होगा व स्वयं को युगांतकारी विचारों से परिपूर्ण होकर कार्य करना होगा। मन तथा आत्मा के योग का अनहद नाद लय, सूर ताल के साथ झंकारित करना होगा तो ही परिवर्तन आएगा।

पुरूषोत्तम विष्णु नामजोशी

ALL WHO HAVE ACCOMPLISHED GREAT THINGS HAVE HAD A GREAT AIM, HAVE FIXED THEIR GAZE ON A GOAL WHICH WAS HIGH, ONE WHICH SOMETIMES SEEMED IMPOSSIBLE.

ORISON SWETT MARDEM

ARITCLE-1

LECTURE ON ACCOUNTS

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CASH BOOK

Generally all offices maintain their cash book in Form MPTC 5 which is laid down in Rule 53 of Madhya Pradesh Treasury Code Vol. I. But in Districts & Sub-ordinate Courts cash books are maintained in the forms prescribed under Rules & Orders. Civil & Criminal. The reason is that we have several other subsidiary cash books and daily totals there of are posted in the main cash book which is called General Cash Account. Other important cash books are contingent cash account, Civil Court Deposit Register & Classification Register.

It is very important to see that:

The General Cash Account & the Contingent Cash Account, Register of Civil Court deposits etc. are carefully checked daily by **Deputy Clerk of Court.** The checker must see that the previous day's closing balance has been correctly carried over to next day. **Any slip is bound to lead to defalcation.** Totals of subsidiary cash books should be checked daily to rule out any possibility of defalcation. It must be ensured that balances of every subsidiary cash book is included regularly/daily in the General Cash Account.

The closing balance of General Cash Account must be tallied with that shown in the classification register on the close of every month.

PHYSICAL VERIFICATIONS OF CASH

The Cash Balance as per General Cash Account must be verified at the close of every month physically by the **officer-in charge of Nazarat** recording a certificate thereon stating the amount verified.

TOTALLING OF BILLS

Whenever amounts are withdrawn from the Treasury by means of bills, it must be ensured that the total of the bills are duly checked before they are sent to treasury and when the cheque is received from Treasury, it should be promptly entered in cash book as receipt after comparing the amount with the bill.

POSTING OF PAY BILLS AMOUNTS

Payment from pay bills must be posted individual payeewise and not in lumpsum under Rule 462 (1) Rules and Orders, Civil. Total of all columns of pay bills must be checked vertically and horizontally to ensure that no defalcation is possible.

BILL REGISTER

This must be carefully examined as to whether bills have been passed, encashed and entered in cash book to prevent defalcation.

OVER WRITINGS AND ERASURES

These are stricly prohibited (Note 6 below Rule 53 M.P. Treasury Code Vol. I).

RECEIPT BOOKS

An account of all receipt books must be kept in a stock register. the receipt books must be kept in safe custody. Before a receipt book is brought into use, its issue must be recorded in the said register. On the cover of each receipt book a page count certificate must be recorded when is it brought to use and balances of receipt books must be verified physically so that shortages may not lead to possible embazzelments.

CASH BOX

The system of double lock is prescribed in SR 84 of M.P. Treasury Code Vol. I. This must be strictly followed and custody of one key or a lock should be with the cashier while the key of other lock should be with the **officer-in-charge** to ensure that custody is secure. Only one cash box should be used and the use of more than one cash box often causes defalcations.

BTR REGISTER

Before bringing it into use, page count certificate must be recorded and total of pages must be checked to ensure that correct amount is drawn. When cheque is received from Treasury, the amount must be compared with that drawn through BTR & then the cheque must be entered in cash book as receipt and promptly encashed.

UNDISBURSED PAY & ALLOWANCES

Undisbursed pay and allowance must not-be retained for more than 3 months. (Note 2 below SR 276 MPTC Vol. I).

REVIEW OF BILL REGISTERS

These registers must be reviewed every month recording results of review. (SR 197 of M.P.T.C. Vol. I)

CLASSIFICATION REGISTER

This must be put up before **O.I.C.** every month and on his orders on disposal of doubtful items obtained.

PLUS MINUS MEMO

This is to be prepared at the end of each month in the register of Receipts of RDM. The balance as shown in plus minus memorandum must tally with that is shown in Balance Sheet.

PRIVATE CASH

It should not be permitted to be kept in Govt. Cash Box as it has often lead to defalcations.

CANCELLATION OF SUB-VOUCHERS

Sub- Vouchers & duplicates must be cancelled after payment unless they are to be submitted to the High Court or the Accountant General because they can be misused to defalcate the money (SR 310 MPTC Vol I)

CASH

For fetching cash from Treasury/Bank/ Post office precautions about use of police guard should be observed without fail. The precautions of sub-rule 8 SR 53 of M.P.T.C. Vol I should carefully be followed.

CASH COMPRISES

Currency Notes and coins, Revenue stamps and cheques are cash and all of them must be kept in safe custody of in the cash box. Unused Court Fee stamps too are treated as cash (Rule 510- Rules & Orders Civil).

CHECK OF RULE 510- RULES & ORDERS CIVIL

A list of all pending advances received with applications for copies should be prepared from the Register of Applications kept by the head copyist. The total of the list should be added to the progressive total of balance of unexpended advances. From this should be deducted value of court fee stamps. the balance with the Nazir in pass book A and cost of court fee stamps affixed to postal applications. The closing balance must tally with the balance shown in the Account book kept by Head Copyist and the cash in the hands of the Head Copyist.

FINE REGISTER A & B

Transactions with Treasury must be got verified by obtaining consolidated Treasury Receipt every month to compare and check whether the amounts shown as deposited in Treasury in B Register have actually been accounted for in Treasury Accounts. This practice is necessary to prevent embezzelments. If these amounts have not been deposited, the defalcation is established.

CANCELLATION OF USED COURT FEE STAMPS

This is important because otherwise they can be used once again leading to defalcation. Cancellation if done by punching used court fee stamps. (Rule 436 High Court Rules & Orders).

DUPLICATE KEYS AND CASH BOX

They should be deposited in Treasury. (SR 85 M.P.T.C.).

PAYMENTS TO WITNESS

Payments involving larger sums must be made to the person in the presence of Presiding Officer of the Court and it should be ensured that the person appearing as witness had been summoned for that date.

LECTURE ON FUNDAMENTAL RULES

Intitally when Provincial Governments had no autonomy during British Rule after taking over from the East India Company, the Civil Service Regulations applied to all Central and Provincial Government employees. With the passing of Government of India Act, 1919 Provinicial Government were given some autonomy and every Provincial Government made its own Fundamental Rules from 1922. Thus from that year Fundamental Rules replaced the Civil Service Regulations except for Pension Rules which continued to be in force till the Government of M.P. made its own Pension Rules, viz. the M.P. Civil Service (Pension) Rules, 1976.

The Fundamental Rules comprise rules regarding pay regulation, Lien, increments, subsistence allowances, entitlements-on reinstatement from dismissal, removal, termination, suspension, Compensatory allowances, Joining Time, Foreign Service and Licence, Fee for Govt. Quarters allotted to employees. The Leave Rules of Fundamental Rules have been replaced by M.P. Civil Services (Leave) Rules, 1977. Travelling Allowance Rules are Supplementary Rules under SR 44 which governs Compensatory allowances. The joining time Rules of Fundamental Rules have been replaced by separate joining time Rules.

The **Fundamental Rules & the Pension Rules are statutory Rules** under Art. 309 of the Constitution of India.

Definitions are the soul of the Fundamental Rules. Important definitions are mentioned below:-

Duty- FR 9 (6)

Pay- basic FR 9 (21), Personal pay FR 9 (23) and Special Pay 9 (25) Pay Fixation is done on the basis of pay under FR 9 (21) i.e. basic pay generally.

Foreign service FR 9 (7)

Substantive pay FR 9 (28)

Time scale- FR 9 (31) (a) Indentical and same time scales.

Lien- FR 9 (13)

Officiate- FR 9 (19)

Cadre- FR 9 (4)

Travelling Allowance- FR 9 (32)

DISTINCTION BETWEEN PROBATIONER AND ON PROBATION APPOINTEES : A Probationer is an appointee with definite conditions of service and is to be considered having attributes of a substantive status except where rules provide differently. A person appointed "on probation" is different from probationer. He is merely an inservice person appointed to another post e.g. an upper division clerk appointed on probation as Accountant (Audit instruction below FR 9 (6) - Swamy's Central Fundamental Rules). Appointee

'on probation' does not have the distinctive status of a probationer.

FOREIGN SERVICE : Service in which a Government servant receives his pay with the sanction of Government from any source other than the consolidated Fund of the state under Art. 266 of the Constitution of India. e.g. transfer to Municipal Committee, Housing Board, Electricity Board etc. United Nations etc. Under Pension Rules Foreign service does not count for Pension unless pensionary contributions are received. FR 107 to 127 contain Foreign Service Rules.

DISTINCTION BETWEEN FOREIGN SERVICE AND DEPUTATION : Deputation means transfer from one Govt. Department to another. AIR 1987 SC 2291. Foreign service is different. In Foreign service pay is not remunerated out of Consolidated Fund.

STAGE IN TIME SCALE : A time scale rises from minimum to maximum by periodical rise by increments. These incremental steps are stages. The concept of stage is important in pay fixation and increments. Under FR 26 (a) "All duty is a time scale counts for increments in that time scale." Here the words "at that stage" are implied but not printed. To illustrate- A person holds a post in a time scale of 7450-225-11500 and draws pay at that stage of 7450 for 10 months and is then revered as the vacancy was temporary. After 2 years he is appointed to the same post due to vacancy again. At this time the pay is fixed as the stage of 7900/-. He cannot count the earlier service of 10 months for next increment because stage is different and prescribed service of 1 year in that stage of 7,900/- is necessary to reach next stage of 8125. This concept is contained in Proviso to FR 22.

PAY FIXATIONS : FR 30:- FR 30 gives the concept that unless the post of promotion is in higher time scale, no fixation of pay is involved e.g. formly Civil Judge Class II and Class I had the same pay scale. Hence there used to be no fixation of pay on promotion from the post of Civil Judge class II to Civil Judge Class. I. Pay scale being the same only jurisdictions differing.

NEXT BELOW RULE : This is a working rule under FR 30 by way of Government decision. The rule enables a Government servant outside his cadre due to some reason like deputation, foreign service and the like to get **proforma promotion** if his immediate junior in the present cadre is promoted in ordinary course and not in a fortuitous way and the person is fit for such promotion.

FIXATIOIN OF PAY : FR 22 to 22-D are important. Provision to R 22 are significant. There is a general concept that pay fixation under FR 22-D involves grant of 2 increments. This is not always true. Accordirng to the rule the pay of the pay scale from which promotioin is made is fixed notionally increased by one increment and then fixed in the pay scale of promotion at the next stage above that pay. Sometimes benefit of two increments may accure. But this is not generally so.

SUSPENSION & INCREMENT : Unless period of suspension is treated as duty. the increment is advanced by corresponding period [(FR 26 (a)]

STOPPAGE OF INCREMENT : A Goverment servant is drawing salary in pay scale of 2610-60-3150 -65- 3540 at the stage of 2670 from 1.7.96 on 31.3.1997. It is ordered that his next increment is stopped without cumulative effect for 1 year. From 1.7.1997 to 30.6.1998 he will draw salary at the stage of 2670/- only and from 1.7.1998 he will begin to draw salary at the stage of 2810/-.

On the other hand if his increment is stopped cumulatively, then on 1.7.1998 he will draw salary at the stage of Rs. 2740/- and salary at the stage of 2810/- from 1.7.1999. In this way one increment is postponed permanently. Hence if cumulative punishment is given. D.E. must be held under Rule 14 of the M.P. Civil Service (Classification, Control & Appeal) Rules 1966= ***Kulwant Singh Gill vs. State of Punjab. 1991 SCC Supp (1) 504*** and ***Awadh Kishore Tiwari vs. Damodar Valley Corporation, Calcutta, AIR 1994 SC 482.***

TRANSFER : FR 9 (32) gives definition of transfers involving movement from one station to another. This definition is only meant for transfer travelling allowance claims.

LOCAL TRANSFER : Question often arises whether local transfer is also transfer. It is often heard that it is not quoting the definition of transfer under FR 9 (32) (SR17). The joining time is defined under FR 9 (10.) The joining time Rules of FRs. 105 107 have been replaced by the M.P. Civil Services (Joining Time Rules) 1982 and local transfer is included in the definition of transfer vide rule 3 (d) and 1 day's joining time is allowed. This definition is larger. The larger comprises the smaller. ***Chief Justice of A.P. vs. L.V.R. Dixitulu, AIR 1979 SC 193 (199).***

DEARNESS ALLOWANCE : It is not an allowance under FR 44. It is regulated by, separate orders. Example of allowance under FR 44 are Travelling allowance, House Rent Allowance, City Compensatory Allowance etc. FR 44 mainly aims to ensure that the allowance is not a source of profit to the recipient.

SUBSISTENCE ALLOWANCE : This is regulated according to FR 53. The suspended employee must give each month a certificate of non-employment before this amount can be paid.

REINSTATEMENT : The regulation of consequential benefits on reinstatement from dismissal, compulsory retirement or removal are contained in FRs. 54 & 54-A.

(a) FR 54 : The prescribed authority has power to decide appeals against orders of disciplinary authority under rule 27 or to review such orders under rule 29-A of M.P. Civil Services (Classification, control & Appeal) Rules 1966. When reinstatement is as a result of orders of appellate or Reviewing authority the entitlements are to be decided under FR 54. Under FR 54 (8) any amount earned by such employee during the interregnum shall be adjusted from the claim in this behalf.

(b) FR 54-A : When dismissal, removal or compulsory retirement is set aside

by court, the consequential entitilements shall be regulated as provided in this rule subject to directions, if any, of the Court, Here too under FR 54 A (5) any amount earned during the interregnum have to be adjusted from the claims in this behalf.

REVOCATION OF SUSPENSION : When suspension is revoked pending conclusion of enquiry, then entitlements are regulated under FR 54 (B). Under FR 54 (B) soon on reinstatement specific order regarding pay and allowances for the period ending suspension and whether period of suspension shall be treated as a period spent on duty shall be passed. Failure to pass such order entails liability to pay full pay and allowances in respect of suspension period. **O.P. Gupta's case- AIR 1987 SC 2257 (para 17).**

On conclusion of enquiry, the above order must be reviewed suo motu and appropriate order passed.

In O.P. Gupta's case reference is to FR 54. Till 1971 there was only one FR 54. It was in 1971 that this rule was split up into 3 rules FR 54, FR 54-A & FR 54 B. The judgment deals with position after revocation and hence now applies to FR 54-B.

अनिवार्य सेवा निवृत्ति

उच्च न्यायिक सेवा के निम्न लिखित अधिकारी अनिवार्य सेवा निवृत्त किए गए हैं जो इस प्रकार हैं:

(1) श्री प्रेमप्रकाश अरोरा अति. जिला न्यायाधीश संप्रति मुख्य विधि अधिकारी नगर निगम नई दिल्ली दि. **30-6-99** से सेवा निवृत्त

(2) श्री जी.एस. राठौर जिला न्यायाधीश ग्रेड, संप्रति विशेष कर्तव्य अधिकारी उच्च न्यायालय खंडपीठ इंदौर दि. **10-7-99** से सेवा निवृत्त

(3) श्री रोमानुस बारा अति. जिला न्यायाधीश, ग्वालियर

(4) श्री भानुप्रतापसिंह चौहान व्यवहार न्यायाधीश वर्ग **-2, 1997** बैच, सेवा से मुक्त किए गए।

This is a story about four people named Everybody, Somebody, Anybody and Nobody. There was an important job to be done and Everybody was sure that Somebody would do it. Anybody could have done it but Nobody did it. Somebody got angry about that because it was Everybody's job. Everybody thought Anybody could do it but Nobody realised that Everybody wouldn't do it. It ended up that Everybody blamed Somebody when Nobody did what Anybody could have done!

(1998) 7 SCC 507

RAJDEO SHARMA FACTOR

By- **P.V. NAMJOSHI**

Several difficulties from different quarters have been received regarding the application of Rajdeo Sharma's case reported in ***(1998) 7 SCC 507 (Rajdeo Sharma vs. State of Bihar).***

The Supreme Court has, in this case also made reference to the Common Cause vs. Union of India, ***AIR 1996 SC 1619= 1996 M.P.L.J. 636*** and ***Clarification there on (1996) 6 SCC 775, Common Cause vs. Union of India- 1997 M.P.L.J. page 4.*** Please refer to **'JOTI JOURNAL' Vol. II Part V (October, 1996) page 22** and **corrigendum in Vol. II Part VI (December, 1996) page 30** and ***(1998) 7 SCC 507, Rajdeo Sharma vs. State of Bihar.***

The Article published in 'JOTI JOURNAL' Vol. II Part V page 22 will make the situation very clear and beyond doubt. However, it is stated that some confusion has cropped up in the minds of the Judicial Officers in applying the principle of Common Cause case with Rajdeo Sharma's case. In Rajdeo Sharma's case following directions have been issued by the Supreme Court : Para 17 reads as under.

17 (i) Where the offence is punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall **close the prosecution evidence** on completion of a period of two years from the date of recording the plea of the accused on the charge framed whether the prosecution has examined all the witnesses or not within the said period, and the court can proceed to the next step provided by law for the trial of the case.

(ii) In such cases, if the accused has been in jail for a period of not less than one-half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall **close the prosecution evidence** on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the

interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the said time limit.

On perusal of the directions in Common Cause case's and Raj Deo's case there should be no confusion. The first direction in Raj Deo's case reveals that if the offence is punishable with imprisonment for a period not exceeding 7 years whether the accused is in jail or not, the Court shall **close the prosecution evidence** on completion of a period of 2 years from the date of the recording the plea of the accused on the charges framed. It is immaterial whether prosecution could examine the witnesses or not. The Court has to proceed in the case after closing of the prosecution evidence.

In Common Cause Judgment, **1996 M.P.L.J. 636** there was no direction, for cases in which sentence for less than 7 years was prescribed, for closing of the prosecution evidence and proceeding further in the case. There was also no direction for cases in which sentence for more than 7 years was prescribed. Therefore, the Raj Deo's case should be read in consonance with Common Cause case. After paragraph 2 (1) (c) of **Common Cause case, 1996 M.P.L.J.** ***636*** paragraph 17 (i) (ii) (iii) of **Raj Deo's case, (1998) 7 SCC 507** should be read. Thus the principle of Raj Deo's case will be applicable to cases in which punishment for less than 7 years (but more than 5 years is prescribed) or cases in which more than 7 years punishment is prescribed in respect to closing of the case after expiry of a particular period of pendency of a case.

The Supreme Court has in all cases considered the possibility of delay from the accused's side. Therefore, in Raj Deo's case special reference was made in paragraph No. 12 of the judgment and different aspects were considered referring to the case of ***Abdul Rehman Antule vs. R.S. Naik, (1992) 1 SCC 225.*** In Common Cause judgment, **1997 (1) M.P.L.J. 4** this aspect was specially discussed by clarifying the judgment in Common Cause case of **1996 MPLJ 636.**

In paragraph No. 17 (v) of Raj Deo's case, the Supreme Court has specially said that the above directions will be in addition to and without prejudice to the directions issued in the Common Cause cases, i.e. **1996 MPLJ 636 and 1997 (1) MPLJ 4.** Therefore for ready reference and clear reading of the three judgments, it will be proper to reproduce the extracts from the Common Cause judgment of **1996 MPLJ 636** from para 2 (1) (a) to 2 (1) (c):

" 2 (1) (a)- Where the offences under Indian Penal Code or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding three

years with or without fine and if trials for such offences are pending for one year or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned criminal court shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of section 437 of the Criminal Procedure Code (Cr. P.C.).

2 (1) (b)- where the Offences under Indian Penal Code or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned criminal court shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of section 437, Criminal Procedure Code.

2 (1) (c)- Where the offences under Indian Penal Code or any other law for the time being in force for which the accused are charged before any criminal court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of one year or more, the concerned criminal court shall release the accused on bail or on personal bond to be executed by the accused and subject to imposing of suitable conditions, if any, in the light of section 437, Criminal Procedure Code."

Thereafter the Judicial Officers will be pleased to read paragraph No. 17 (i) (ii) (iii) of Raj Deo's case:

"17 (i) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case.

(ii) In such cases as mentioned above, if the accused has been in jail for a period of not less than one-half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the Court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time-limit." At this stage Judicial Officers are requested to go through paragraph No. 2(d), 2(e), 2(f), 3, 4, 5 and 6 of 1996 of M.P.L.J. 636 interline the remaining directions.

Now the Judicial Officers are requested to read paragraph No. 17 (iv) and (v) of Raj Deo's case and Paragraph No. 2 (i), (ii), (iii) and Paragraph No. 3 (Part-I, II and III) of the judgment of Common Cause Clarification, **1997 (1) MPLJ 4,** together for knowing the causes for delay from the accused's side:-

Raj Deo's Case" 17 (iv)- But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses (i) to (iii).

17 (v)- Where the trial has been stayed by orders of the court or by operation of law, such time during which the stay was in force shall be excluded from the aforesaid period for closing the prosecution evidence.

COMMON CAUSE CLARIFICATORY ORDER : [1997 (1) M.PL.J. 4]

2 (i) In cases of trials before Sessions Court the trials shall be treated to have commenced when charges are framed under section 228 of the Code of Criminal Procedure, 1973 in the concerned cases.

(ii) In cases of trials of warrant cases by magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under section 248 of the Code of Criminal Procedure, 1973.

(iii) In cases trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who ap-

pear or are brought before the Magistrate are asked under section 251 whether they plead guilty or have any defence to make.

3. In paragraph 4 of our judgment in the list of offences to which directions contained in paragraphs 1 and 2 shall not apply, the following additions shall be made : (n) matrimonial offences under Indian Penal Code including section 498-A or under any other law for the time being in force : (o) offences under the Negotiable Instruments Act including offences under section 138 thereof; (p) offences relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under Indian Penal Code or under any other law for the time being in force; (q) offences under section 304-A of the Indian Penal Code or any offence pertaining to rash and negligent acts which are made punishable under any other law for the time being in force; (r) offences affecting the public health, safety, convenience, decency and morals as listed in Chapter XIV of the Indian Penal Code or such offences under any other law for the time being in force.

It is further directed that in criminal cases pertaining to offences mentioned under the above additional categories (n) to (r) wherein accused are already discharged or acquitted pursuant to our judgment dated 1st May 1996 and they are liable to be proceeded against for such offences pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, the concerned criminal Court shall suo motu or an application by the concerned aggrieved parties shall issue within three months of the receipt of this calrificatory order at their end, summons or warrants, as the case may be, to such discharged or acquitted accused and shall restore the criminal cases against them for being proceeded further in accordance with law.

It is however made clear that in trials regarding other offences which are covered by the time limit specified in our earlier order dated 1st May, 1996 wherein the concerned accused are already acquitted or discharged pursuant to the said order, such acquitted or discharged accused shall not be liable to be recalled for facing such trials pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order."

The Judicial Officers are further requested to kindly go through the Article published in 'JOTI JOURNAL' Vol. II Part V October, 1996 at page 22 and corrigendum at the foot of page 23. The corrigendum is given in 'JOTI JOURNAL' Vol. II Part VI (December, 1996) which they might have corrected in due course.

To make the article more useful I am further reproducing the portions of Paragraph No. 2 (2a), (2b), (2c), (2d), (2e) and (2f) of the judgment of Common Cause reported in 1996 MPLJ 636, so that the directions given by the Supreme Court in Common Cause judgment and Rajdeo's case will be at hand for every time whenever the Judicial Officers have to refer to all the three citations:

2. 2 (a)- Where criminal proceedings are pending regarding traffic offences in any criminal court for more than two years on account of non serving summons to the accused or for any other reason whatsoever, the court may discharge the accused and close the cases.

2 (b)- Where the cases pending in criminal courts for more than two years under Indian Penal Code or any other law for the time being in force are compoundable with permission of the court and if in such cases trial have still not commenced, the criminal court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

2 (c) Where the cases pending in criminal courts under Indian Penal Code or any other law for the time being in force pertain to offence which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

2 (d) Where the Cases pending in criminal courts under Indian Penal Code or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such pendency is for more than one year and if in such cases trial have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

2 (e) Where the cases pending in criminal courts under Indian Penal Code or any other law for the time being in force are punishable with imprisonment upto one year, with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

2 (f) Where the cases pending in criminal courts under Indian Penal code or any other law for the time being in force are punishable with imprisonment upto three years, with or without fine, and if such pendency is for more than two years and if in such cases trial have still not com-

menced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases."

Following directions were issued by the Supreme Court stating the cases which will not be governed by **Common Cause Judgment, 1996 M.P.L.J. 636.**

Para 4 of the said judgment is reproduced:-

"Directions (1) and (2) made herein above shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code. Prevention of Corruption Act on any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, (c) Essential Commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offences, (d) offences under Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility; (g) offences relating to public servants, (h) offences relating to coins and Government stamp, (i) offences relating to elections, (j) offences relating to giving false evidence and offence against public justice (k) any other type of offences against the State (l) offences under the Taxing enactments and (m) offences of defamation as defined as defined in section 499, Indian Penal Code."

Paragraph 4 of **the Common Cause Clarificatory Order, 1997 (1) M.P.L.J. 4** should be read after above paragraph in continuation. Paragraph 4 is reproduced as under:

"In paragraph 4 of our judgment in the list of offence to which directions contained in paragraphs 1 and 2 shall not apply, the following additions shall be made : (n) matrimonial offences under Indian Penal Code including section 498-A or under any other law for the time being in force; (o) offences under the Negotiable Instruments Act including offences under section 138 thereof; (p) offences relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under Indian Penal Code or under any other law for the time being in force; (q) offences under sections 304-A of the Indian Penal Code or any offence pertaining to rash and negligent acts which are made punishable under any other law for the time being in force; (r) offences affecting the public health, safety, convenience, decency and morals as listed in Chapter XIV of the Indian Penal Code or such offences under any other law for the time being in force.

It is further directed that in criminal cases pertaining to offences mentioned under the above additional categories (n) to (r) wherein ac-

cused are already discharged or acquitted pursuant to our judgment dated 1st May, 1996 (1996 MPLJ 636) and they are liable to be proceeded against for such offence pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, the concerned criminal Court shall suo motu or on application by the concerned aggrieved parties shall issue within three months of the receipt of this clarificatory order at their end, summons or warrants, as the case may be, to such discharge or acquitted accused and shall restore the criminal cases against them for being proceeded further in accordance with law.

It is however made clear that in trials regarding other offences which are covered by the time limit specified in our earlier order dated 1st May, 1996 wherein the concerned accused are already acquitted or discharged pursuant to the said order, such acquitted or discharged accused shall not be liable to be recalled for facing such trials pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order."

Hereinafter please read paragraph 17 (iv) and (v) of **Raj Deo Sharma's case, (1998) 7 SCC 507** which is reproduced as under:

"17 (iv) But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no court is obliged to enclose the prosecution evidence within the aforesaid period in any of the cases covered by clauses (i) to (iii)

(v) Where the trial has been stayed by orders of the Court or by operation of law, such time during which the stay was in force shall be excluded from the aforesaid period for closing the prosecution evidence. **The above directions will be addition to and without prejudice to the directions issued by this Court in *"Common Cause" A Registered Society v. Union of India (1996) 4 SCC 33: 1996 SCC (Cri) 589,*** as modified by the same Bench through the order reported in ***"Common Cause" A registered Society v. Union of India, (1996) 6 SCC 775 : 1997 SCC (Cri) 42.***

Thus these portions of the judgments will give out the details when the trial Courts have not to apply the directions regarding releasing of the accused on bail or closing the prosecution case as the case may be.

Hope this article will help J.os' to Come to a reasonable Conclusion before they can decide the cases pending before them. This article contains only the view and vision of the writer of the article and is always subject to open debate.

सुधार की अविरत धारा

दोस्तो! समस्या विकट होती जा रही है। विभिन्न स्तरों पर प्रशिक्षण शिविर आयोजित होते रहे हैं। प्रशिक्षण हेतु न्यायिक अधिकारीगण आए तथा गए। लेकिन लगता है प्रशिक्षण आया–गया हो गया। यह कहां तक उचित है इसका मूल्यांकन करना आवश्यक है वह होगा भी। प्रश्न यह है कि क्या हम स्वयं ने भी कभी अपनी योग्यता का क्षमता का सुधार का मूल्यांकन दूसरों की दृष्टिकोण से किया है अथवा आत्म प्रशंसा, आत्मश्लाघा के स्वप्नों में ही स्वयम् को विलीन कर लिया है।

पिछले दिनों नए प्रशिक्षण कार्यक्रम के कार्य से माननीय प्रशासनिक न्यायाधिपति के पास पहुंचा। उन्होंने नोट शीट देखी। पाया कि उसमें मैंने लिखा था कि प्रशिक्षार्थी यदि प्रशिक्षण के समय निर्देशित पुस्तकें नहीं लाएंगे तो अनुशासनहीनता मानी जाएगी। नोट शीट के इस हिस्से को देखकर माननीय महोदय ने कहा कि यह बात नोट शीट में क्यों होना चाहिये। आपको (मुझे) इतना कठोर अनुशासन पालन करवाने वाला होना चाहिए कि वे तुम्हारे (मेरे) नाम से थर्राने लगें व हिम्मत न करें कि बिना पुस्तकों के कक्ष में प्रवेश कर सकें। कहने का तात्पर्य यह है कि प्रशिक्षणं के प्रति हम कितने गंभीर हैं इसकी झलक मिलती है। अपने–अपने मुख्यालयों पर बैठकर कुछ एक का चिंतन यह है कि प्रशिक्षण क्या है हमें सब मालूम है। यदि सब मालूम है तो उसकी छोटी सी झलक तक उनके कार्य में क्यों नहीं मिल रही है। एक माननीय न्यायाधिपति महोदय इस बात से खिन्न तथा दुखी थे कि घंटों आकर प्रशिक्षण केन्द्र पर विचार व्यक्त करते हैं, शब्द–शब्द का विश्लेषण करके, संदर्भ बताकर विचार व्यक्त करते हैं लेकिन जब माननीय अपने न्यायालय में प्रकरण देखते हैं तो इस बात का दुःख होता है कि न्यायिक अधिकारी स्वयं में लेश मात्र परिवर्तन करने की इच्छा नहीं रखते हैं। उसी ढर्रे पर, लीक पर, चलने की मानों शपथ ले रखी है। वे ही माननीय मुझे पूछ रहे थे कि कितने न्यायिक अधिकारी संस्था की पत्रिका पढ़ने की इच्छा रखते हैं अथवा यहां तक कि पत्रिका के पन्ने पलटना चाहते हैं। उन्होंने खुद ने टेबल पर रखी पत्रिका निकाली व कहा वे खुद इसे पढ़ते हैं। एक पत्रिका के प्रकाशित करने की लागत मात्र (कागज एवं छपाई) लगभग 12 रु. होती है। क्या हम बिल्कुल भी गंभीर होकर यह चिंतन नहीं कर सकते हैं कि हमने सतत् रूप से सुधार करना चाहिए। एक सुभाषित है The difference between what I am and what I become is What I Do. अर्थात मैं क्या था से

क्या बन गया के बीच मैं क्या करता था यह समाया हुआ है। अर्थात भूत व भविष्य के बीच में वर्तमान में मैं क्या करता हूं यह महत्वपूर्ण है।

पत्रिका के माध्यम से कारणों सहित विश्लेषण करके बताया था कि समाचार पत्रों में समन्स का प्रकाशन किस प्रकार होना चाहिए लेकिन अधिकांश न्यायिक अधिकारी उन विचारों की मीमांसा भी नहीं करते हैं। एक–एक शहर में दस–दस दुर्घटना दावा अधिकरण है परंतु समन्स से ज्ञात ही नहीं होता कि यह समन्स किस अधिकरण का है। आपसी बोलचाल में पूछने पर यह कहते हैं कि क्या करें, बाबूजी न मानते हैं न समझते हैं न करना चाहते हैं। अर्थात न्यायालय को बाबूजी को ही चलाना है तथा ये साहब जानते भी हैं, समझते भी हैं व मानने को भी तैयार हैं, परंतु बाबूजी के कारण ये काम नहीं कर पा रहे हैं या उस बाबूजी के कारण कर्तव्य निर्वाह न करने हेतु विवश है। एक संयोग ही है कि एक ही मुद्दे पर मुझसे व एक अन्य न्यायिक अधिकारी से प्रश्न पूछा गया। संयोगवश यह बात हमें बाद में पता लगी। मैं यहां उच्च न्यायालय के विधिक सहायता प्रकोष्ठ का कार्य भी देख रहा हूं। विधिक सहायता अधिवक्ता न्यायालय अवमानता का एक आवेदन पत्र विधिक सहायता हेतु लाए। बड़े तैश में थे। कह रहे थे कि उच्च न्यायालय से धारा 389 के अंतर्गत सजा स्थगित हो गई। आदेश की नकल विचारण न्यायालय को गई। पीठासीन अधिकारी ने बड़ी हिकारत की निगाह (उपेक्षापूर्ण दृष्टिकोण) से आदेश देखा तथा कहा कि मेरे निर्णय तो ऐसे होते हैं कि स्थगित ही नहीं होते हैं। आदेश को यूं कर के बाबू को दिया। आरोपी की प्रतिभूति भी ले ली व उसे नहीं छोड़ा है। उच्च न्यायालय की तौहीन हो गई है। कुतुहल वश मैंने आदेश देखा। उसमें लिखा था कि सब–स्टॅण्टिव सेंटेन्स (सारवान सजा) प्रतिभूति देने पर स्थगित होती है। अर्थदंड स्थगित नहीं किया था। वकील से पूछा कि आदेश को समझा ? वो नहीं समझ पा रहे थे। उन्हें, सारवान जेल सजा, अर्थदंड एवं अर्थदंड के व्यतिक्रम में जेल की सजा का अंतर समझाया, तथा माननीय न्यायाधिपति श्रीमान जे.जी. चित्रे महोदय द्वारा पारित निर्णय ***रमेशचंद्र वि. राज्य 1999 (1) जे.एल.जे. 223*** की ओर ध्यान आकृष्ट किया लेकिन वे तो जिद्द पर अड़े रहे कि वे तो उस न्यायिक अधिकारी को नसीहत (मार्गदर्शन निर्देश) दिलाएंगे। ऐसा ही अवसर यहां पर एक अन्य प्रतिनियुक्त न्यायिक अधिकारी को आया। क्या हम इस बात को पुस्तकें खोल कर भी नहीं देखना चाहेंगे। सोहनी के सी आर.पी.सी. 18वां संस्करण धारा 389 नोट 5 पृष्ठ 3972 दृष्टांत ***बुधराम वि. राजस्थान (1980)5 आर.सी. आर.सी. 13*** को देखें। धारा 53 भा.द.वि. को देखें। धारा 30 (1) (बी) दं.प्र.स को

देखे। समन्स केस वह है जिसमें दो वर्ष या उससे कम की सजा है। इसका यह अर्थ नहीं कि दो वर्ष की सजा तथा दो सौ रुपये अर्थदंड का प्रावधान हो तो वह अपराध वारण्ट केस हो जाएगा।

एक और उदाहरण माननीय न्यायाधिपति महोदय ने दिया। भ्रष्टाचार निवारण अधिनियम की धारा 13 (डी) के तहत आरोप पत्र था, मंजूरी भी उसी धारा की थी। चार्ज 13 (बी) का लगा तथा सजा भी 13 (बी) में ही दी गई। अब उच्च न्यायालय में प्रकरण सुनवाई हेतु आया। धारा 13 (बी) अभ्यस्तरूप से भ्रष्ट आचरण के लिए है तो धारा 13 (डी) किसी विशेष प्रकरण में भ्रष्ट आचरण के लिए है। अभियुक्त कई वर्षों से निलंबित है। प्रकरण रिमांड करते हैं तो अभियुक्त की क्या गति (दुर्गति) होगी तथा नहीं करते हैं व उसे छोड़ देते हैं तथा प्रकरण सजा लायक हो तो अभियोजन की क्या गति (दुर्गति) होगी? यह किसके मति के कारण हुआ व किसकी उपेक्षा से हुआ? ऐसे प्रश्न जब मुझसे पूछे गये तो मैं निरुत्तर था केवल ये कहा कि ऐसा करना हमारा नित्यक्रम हो गया है। मैं ऐसा तो नहीं कह सकता था कि बाबूजी ठीक से काम नहीं करते।

हम हमारी भाषा सुधारना नहीं चाहते हैं। जो शब्दावली बचपन में जानी हो (संभवतया सीखी न भी हो) वही भर जानते हैं। न्यायिक शब्दावली पिछले पचासों वर्षों से वही है। हम अपने दो दिन के बच्चे को भी आप शब्द से पुकारेंगे लेकिन समाचार पत्र में छपे समन्स में तुम ही लिखेंगे। ऐसा वो करते हैं जो हिन्दी भाषी हैं। गुजराती, मराठी में तो तुम अपनत्व के साथ बोला जाता है। न्यायिक कार्य को संभवता हमने सरसरी तौर पर उपर टप्पी करने का मन तो नहीं बना लिया है? यहां रोज कोई न कोई बात सुनने को मिलती है जिसका एक प्रतिशत तक पत्रिका के माध्यम से संसूचित नहीं हो पाता है। दोष या तो प्रशिक्षण का है, प्रशिक्षार्थीगणों का या प्रशिक्षकों का है। कहीं न कहीं रिक्ति है। हम–आप सभी आत्मावलोकन कर लें तो उचित होगा। हर कोई अपने स्तर पर सुधार कर ले। मैं भी आपके साथ ही हूँ। परिवर्तन के लिए सब मिलकर सार्थक प्रयत्न करें एवं वेतन प्राप्त करने वाले नौकर मात्र न रह जाए। हमें अपने पूर्वाग्रहों को, पूर्व चिंतन को त्यागना होगा। नए विचारों को प्रवेश देना होगा। विशालता लिए विचार व चिंतन, न्याय के प्रति आस्था, कर्तव्य के प्रति समर्पण नए विचारों के लिए, कौतुहल युक्त भावना जाग्रत करना पड़ेगी अन्यथा हम कभी नहीं सुधरेंगे। इस भ्रामक कल्पना से जितने जल्दी मुक्त हो जाएंगे उतने ही जल्दी हम सुधर जाएंगे कि अनुच्छेद 311 भारतीय संविधान के अंतर्गत हमारा कोई कुछ भी बिगाड़ नहीं सकता।

TIT-BITS

1. **M.P. ACCOMMODATION CONTROL ACT : S. 12 (1) (C) : 'NUISANCE' : WHAT IT CONSTITUTES :-**
1999 (1) M.P.L.J. 411
BARGIBAI Vs. HARILAL

The defendent tenants (respondents) were carrying on hotel business since 40 to 45 years before the institution of the suit in 1976. Emission of smoke from oven was inherent and the use of even is essential for running the hotel business and cannot be complained of as causing nuisance to plaintiff's son who was having his office in the adjoining accommodation.

The expression 'nuisance' has not been. defined in the M.P. Accommodation control Accommodation Control Act, 1961. No straight jacket formula can be laid to define nuisance. However, if the tenancy is created for a particular purpose and the acts complained of are inherent in the nature of tenancy, it cannot be said that both inherent acts and activities shall come within the expression 'nuisance'.

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2. **CONSTITUTION OF INDIA, ARTICLES 12 AND 226 : "STATE" : INSTRUMENTALITY OF STATE : TEST TO DETERMINE : JURISDICTION UNDER ART. 226 CAN BE EXTENDED TO ANY OTHER PERSON OR BODY OF PUBLIC NATURE EXERCISING PUBLIC DUTIES:-**
1999 (1) M.P.L.J. 416
RAM SWAROOP Vs. MORENA MANDAL SAHAKARI SHAKKAR KARKHANA LTD.

The question whether an entity can be regarded as an instrumentality of the State would be dependent on various factors which may be peculiar to the facts of a particular case. No specific fact can be held to be conclusive and an overall cumulative view has to be taken. Further every autonomous body which seems to have nexus with the Government is not to be encompassed within the sweep of the expression "State" as appearing in Article 12 of the Constitution. In the modern concept of welfare estate, the independent institutions, corporations and agents are generally subject to state control. That would, however, not make them state under Art. 12 of the Constitution. Even if the share-holding of a corporate body lying within the ambit of Art. 23 of the Constitution in an institution or corporation is of a sizable amount that per se would not be of great importance. Contribution by a State to a body corporate may be substantial so much so that the same may constitute the main source of functioning but that would not be of a great importance since money may be coming from other sources. The share-holding of any instrumentality of the state would not make it the holding by the State itself. The real test, therefore, is to find out as to whether the state has any deep and pervasive control over the entity. The persons or bodies who have legal authority to determine questions affecting the common law or statutory rights or obligations of other persons or bodies who are entrusted by the Legislature with functions, powers and duties which involve the making of decisions of a public nature, may fall

within the ambit of the expression 'State' as envisaged under Art. 12 of the Constitution of India. All statutory bodies on which the Legislature has conferred statutory powers and duties which when exercised may lead to the detriment of the people who may have to submit to their jurisdiction, however, clearly fall withing the ambit of the expression 'State' or 'Authority' as envisaged under Art.12 of the Constitution. These categories are, however, not exhaustive and the jurisdiction envisaged under Art. 226 of the Constitution can be extended to any person or body of public nature exercising public duties which it is desirable to control by the remedy of the judicial review.

NOTE : Please see the citation ***(1998) 8 SCC 719, Ram Charan Sharma Vs. Modern Food Industries*** published in the 'Joti Journal' Vol. V Part III, June 1999 issue.

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3. LIMITATION ACT, SECTION 5 AND CPC. O. 41 R. 90: RESTORATION OF APPEAL DISMISSED FOR DEFAULT - SUFFICIENT CAUSE - MISTAKE OUT OF REPEATED CARELESSNESS CONNOT BE CONSTRUED AS SUFFICIENT CAUSE :-

1999 (1) M.P.L.J. 431

SULOCHANA Vs. LOKMANYA SAHKARI GRIHA NIRMAN SANSTHA

Bonafide mistake on part of the counsel may be construed as sufficient cause for restoration of appeal dismissed for default. However, there is a distinction between bonafide mistake and negligence. Negligence on part of the counsel cannot be equated with sufficient cause. Mistake irrespective of its number, if has occured bonafide, may be construed as sufficient cause for restoration. However, mistakes out of carelessness repeatedly, on part of the counse, cannot be construed as sufficient cause. Application for erstoration of appeal dismissed.

NOTE : This case was reported in 'Joti Journal' Vol. III Part V October 1997 issue at page 28 under the head Star Firmament.

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4. M.P. ACCOMMODATION CONTROL ACT, SS. 12 (1) (A) & 13 (6) : ORDER STRIKING OUT DEFENCE AGAINST EVICTION: DEFENDENT IS RESTRICTED FROM RAISING ANY PLEA WHICH COULD AFFECT THE PLEADINGS OF THE PLAINTIFFS IN REGARD TO GROUND UNDER SECTION 12 (1) :-

1999 (1) M.P.L.J. 436

MANORAMA Vs. SURESH

The obvious effect of the order striking out the defence against eviction as contemplated under section 13 (6) of the M.P. Accommodation Control Act is that the defendant stands restricted from raising any plea which could affect the pleadings of the plaintiff as set out in the plaint in regard to the matter relating to the default, which is a ground envisaged under section 12 (1) of the Act, for the grant of the decree. The defendant cannot be held to be entitled to lead any evidence of his own nor can his cross examination be permitted to

travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. The defence against eviction under section 12 (1) of the M.P. Accommodation Control Act set up in the written statement by the defendants had been struck out by order dated. 6.3.1995. The obvious result of such striking out of the defence against eviction was that under a statutory fiction made available as envisaged under section 13 (6) of the Act, the material facts which formed the edifice of the defence against eviction had to be taken to be totally absent and could not be deemed to have been pleaded. The assertion of facts constituting the pleadings in regard to the rate of rent clearly amounted to defence against eviction and since by statutory fiction these material facts could not be deemed to be there in the written statement and were liable to be ignored altogether, there could be no occasion to permit the defendants to lead evidence in support of a plea which was not there at all. ***Saddik Mohammed Shah vs. Mt. Saran and others, AIR 1930 PC 57 (1). Modula India vs. Kamkshya Singh Deo. AIR 1989 SC 162*** and ***Kewal Kumar Sharma vs. Satish Chandra Gothi and another, 1991 MPLJ 458= 1991 JLJ 86*** referred.

Suit for eviction under Section 12 (1) (a), (c) and (o). Decree for eviction under section 12 (1) (a) and 12 (1) (c) passed. Tenant cannot save tenancy by vacating portion of building encroached upon and on payment of damages.

NOTE : (Please refer to Section 12 (11) of the Act regarding forfeiture clause)

O.6 R. 2 CPC and Practice:-

A distinction must be made between ***omission to state material facts*** and ***omission to give full particulars.*** If material facts are omitted, a party should not be allowed to raise a contention on a particular point even if, some materials are available in the evidence. If on the other hand material facts have been pleaded but full particulars have not been given the court may permit the points to be raised on the basis of the evidence unless the opposite party is thereby materially prejudiced. The first obviously relate to a question of jurisdiction and the second to one of procedure.

A party cannot be deemed to be entitled to relief upon facts and documents neither stated nor referred to in the pleadings.

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 party cannot be deemed to be entitled to a relief upon the facts and documents neither stated nor referred to in the pleadings relied upon. 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 override the legitimate consideration of substance. 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, a 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 evidennce. ***Saddik Mohammed Shah vs. Mt. Saran and others, AIR 1930 PC 57 (1)*** relied on.

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5. **CPC. O. 22 RR. 3 AND 11: ABATEMENT OF SUIT : DEATH OF ONE OF THE JOINT LANDLORDS:-**
1999 (1) M.P. L.J. 447
RAM PRAKASH Vs. KRISHNA DAS

During the pendency of the first appeal one of the joint landlords died. The Court refused to condone delay in moving applications for substitution of legal heirs and for setting aside the abatement. Appeal abates in entirely. ***State of Punjab Vs. Nathu Ram, AIR 1962 SC 89, Ramagya Prasad Gupta and others vs. Murli Prasad and others, AIR 1972 SC 1181, Sri Chand vs. M/s Jagdish Pershad Kishan Chand, AIR 1966 SC 1427, Ajay, Verma Vs. Ram Bhorosey Lal and other, AIR 1951 All. 794*** and ***Chhogallal Meghraj Maheshri and others vs. Fakirij, 1954 Nag. 279*** relied on.

NOTE : Mind the distinction between' tenants in common' and ' joint tenants'. To show the distinction Legal Dictionary by N.M. Danj page 307 is reproduced here:

"Joint Tenant vs. Tenant in common: In the case of joint tenants there is no definite share which one of them can grant or transfer, as it is in the case of tenants in common. A joint tenant therefore releases and conveys his share. The peculiar characteristic of joint tenancy is that the right of survivorship prevails among the joint tenants. In the case of joint tenants, notice for arrears of rent and ejectment on one fo them is sufficient : 1973 All 500. If two or more heirs succeed together to the property of an intestate, they shall take the property as tenants in common but not as joint tenants : 1940 PC 215. Joint tenancy is unknown to Hindu Law : 1933 PC 72 ; unknown to Mohamedan Law : 1938 mad 677. Joint tenants have unity of title, unity of commencement of title, unity of intersets, so as in law to have equal shares in the joint estate, unity of possession as well of every part as of the whole and right of survivorship. In tenancy-in-common there is unity of possession but no unity of title i.e. the interests are differently held which means that none of the co-tenure-holders has titile over the entire estate. The title varies : 1977 All 38. Also see 1969 All 526."

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6. **M.P. ACCOMMODATION CONTROL ACT: SECTIONS 42 AND 39 (2): CONNOTATION OF THE WORD 'OTHERWISE' APPEARING IN SECTION 42 OF THE ACT :-**
1999 (1) M.P.L.J.451
DILIP SINGH Vs. PREMCHAND

Residential accommodation allotted to tenant under Section 39 (2). Tenant continuing in service. The competent authority has no jurisdiction to order vacating of accommodation. The word 'otherwise' in Section 42 does not qualify the word 'termination' of tenancy'. The remedy of landlord is to apply under section 12 (1) of the Act.

●

7. **CRMINAL TRIAL AND I.P.C: Ss. AND 302/34 VICE Ss. 396 AND 397 I.P.C. AND Cr.P.C., SECTION 221 (2):-**
1999 (1) M.P.L.J. 478
MUNDA SATYA NARAIN Vs. STATE OF M.P.

Accused armed with deadly weapons entered into a house at night, beat inmates of the house including ladies, looted them of their cash, ornaments and utensils and on their raising hue and cry exploded bombs causing death of a neighbour. Conviction of accused under section 395 read with 397 and 396, Indian Penal Code. Challenge as to. No evidence regarding there having been more than three robbers involved in commission of crime. It was therefore a case of armed robbery at night by committing lurking house trespass and not a case of dacoity. As to the identity of robbers, there was overwhelming evidence against accused No. 1 but not against accused No. 2. Accused No. 1 along with his companion had committed robbery in a joint action causing injuries and death by means of weapons like bombs. offence under sections 392 and 394, Indian Penal Code therefore made out and not under sections 395 and 396. Indian Penal Code. Although there was no independent charge framed against accused No. 1 under section 302, Indian Penal Code, he was certainly vicariously liable for offence of murder under section 302/34, Indian Penal Code in view of section 221 (1), Criminal Procedure Code. Also Convicted under Section 394 read with section 392 and sentenced to imprisonment for life sentences to run concurrently. ***Lakhjeet Singh vs. State of Punjab, 1994 Suppl. (I) SCC 173 at page 177*** relied.

●

8. **CRIMINAL TRIAL : AGE AND EVIDENCE ACT SECTION 35:-**
1999 (1) M.P.L.J. 492
BUDDHA MAHENDRA SINGH Vs. STATE OF M.P.

The accused was prosecuted under Ss. 363, 366 and 376 of the I.P.C. Ossification test indicated that the prosecutrix was aged 17 years. Entry in the register of births maintained by Kotwar showing prosecutrix to have been born on 25.8.1977 showing that she was less than 14 years on 21.11.1994 i.e. the date of the incident. Entry in birth register made by kotwar in discharge of official duty admissible under section 35 of the Evidence Act. ***Harpal Vs. State, AIR 1981 SC 361*** referred.

●

10. **M.P. ACCOMMODATION CONTROL ACT, SECTION 13 (2) (3) AND (6) : COMPLIANCE WITH THE PROVISIONS OF SECTION 13 (2) OR 13 (3) MANDATUM :-**
1999 (1) M.P.L.J. 497
SANKATA DEVI Vs. JAGDISH SINGH

In view of sub-section (6) of section 13 of the M.P. Accommodation Control Act it is clear that there must be a failure on part of the tenant to deposit or pay the amount as required by the Section. In a case where an application under section 13 (6) is moved, it is bounden duty of the Court/RCA to see whether a dispute under section 13 (2) or section 13 (3) has been raised either in the

pleadings or by a separate application. If there is any dispute raised either under section 13 (2) or section 13 (3), of the Act, the court is duty bound and obliged to decide the said dispute. If the court decides the dispute and directs the tenant to make the payment or deposit the amount in the court, then the tenant would be obliged to observe the spirit of the order passed by the court, then the tenant would be obliged to observe the spirit of the order passed by the court. It is only on failure of the defendant to comply with the orders passed under section 13 (2) or 13 (3) of the Act, he can be visited with the penalty under section 13 (6) of the Act, So long as the dispute raised under section 13 (3) is not decided, an application filed under section 13 (6) neither can be allowed nor can be rejected.

●

11. I.P.C. SECTIONS 498-A AND 304-B MEANING OF THE WORDS "SOON BEFORE" EXPLAINED:-
1999 (1) M.P.L.J. 505
MANGAL RAM Vs. STATE

Prosecution case that accused/in-laws of deceased used to maltreat her for not meeting their demand of dowry. Evidence on record showing that deceased was subjected to cruelty in connection with demand of 4 tolas of gold promised at the time of marriage. There was however no material on record to infer that deceased was subjected to cruelty "soon before" her death. In fact there was positive evidence on record that probable and immediate cause of suicide by deceased was the quarrel on date of incident. Legal presumption under section 113-B of Evidence Act could not therefore be drawn against accused. Conviction under section 498-A, Indian Penal Code only maintained.

Appeal allowed insofar as conviction was under section 304-B, Indian Penal Code. ***Keshab Chandra Panda vs. State, 1995 Cri. L.J. 174, Sham Lal vs. State of Haryana, AIR 1997 SCW 1614*** and ***Samir Samanta vs. State, 1993 Cri. L.J. 134,*** relied.

●

12. N.D.P.S. ACT, Ss. 20 (B) (I) AND 50:-
1999 (1) M.P.L.J. 512
ANIL KUMAR Vs. STATE

Accused was not apprised of his right to be searched by the Gazetted Officer but was intimated that he could be searched by Magistrate. This was only partial or half hearted compliance. The mandatory requirement of Section 50 was not complied with. Conviction set aside.

●

13. CR. P.C., SECTION 439: BAIL : GRANT OF TO A CO-ACCUSED:-
1999 (1) M.P.L.J. 516
VISHNURAM VS. STATE

Generally rule of consistency requires that if co-accused has been granted bail and the case of the applicant before the Court is similar and identical he should also be granted bail. Mere parity cannot be said to be sole ground to

grant bail if circumstances show that the accused claiming parity cannot be granted bail on other grounds. In such case bail can be refused.

The general law relating to bail is that if there is nothing to show that the availability of the applicant/accused will not be sure or he will terrorise the witnesses or influence them and there is no severity in the offence or role played by him, he can be enlarged on bail. Where a co-accused has been granted bail by the Court and the case against the applicant before the court is similar and identical, the rule of consistency required that he should also be granted bail. Where a co-accused has been granted bail by the Court and the case against the applicant before the court is similar and identical, the rule of consistency required that he should also be granted bail but the mere fact that the case is at par cannot be said to be ground on the basis of which the subsequent accused has to be granted bail. The Court has to go through the facts and if there are circumstances to show that the accused-applicant who claims bail on parity ground, cannot be granted bail on other grounds his bail can be rejected. To illustrate, it may be pointed out that if it is brought on record that he will not be available, if released on bail or he will terrorise the witnesses or has been terrorising the witnesses or he has suppressed the fact which was within his knowledge, he can be refused bail, Mere parity cannot be said to be sole ground to grant bail.

The applicant/accused made a 4th application for grant of bail on the ground of parity, since his co-accused had already been released on bail. The applicant was allowed bail for a short term of 15 days on the ground of serious ailment of his wife. The applicant surrendered in court in terms of the order passed by the Court. There was no allegation from the side of the prosecution that the applicant during the period he was on bail terrorised the witnesses or did any act which was uncalled for or that the case of the applicant was said to be distinguishable on facts from the accused who had been granted bail. Thus, taking into consideration the totality of facts and circumstances, the application of the applicant for bail allowed.

●

14. M.P. ACCOMMODATION CONTROL ACT, SECTION 12 (1) (A) & TRANSFER OF PROPERTY ACT, SECTION 55 (4) (A) :-
1999 (1) V.B. 253
S.K. JAIN VS. SMT. DAYAWATI

Transferee landlord entitled to receive rent even of prior period of registration of sale-deed when there is specific agreement with the vendor to that effect.

Seller when not entitled to rent and profits upto date of passing of ownership. Specific agreement to the contrary between seller and purchaser may deprive the seller of rent and profits.

NOTE : Judicial Officers are requested to peruse Section 8 of the Transfer of Property Act relating to operation of transfer on the same subject.

●

15. M.P. ACCOMMODATION CONTROL ACT, SECTION 23-A (a) :-
1999 (1) VIBHA 196
RAMASHANKAR VS. BRIJKISHORE

A retired Government servant aged about 70 years who is suffering from knee pain desired accommodation on the ground floor. It was held that his need is a bonafide need. ***Kanchan Bai vs. Smt. Rammabai, 1994 (1) MPWN 33*** relied on.

C.P.C. SECTION 11 : RESJUDICATA : Dismissal of eviction suit under Section 12 (1) (e) and (h) does not operate as Res-Judicata in subsequent suit under Section 23-A (a) need does not remain static. ***Sheila Rani vs. Manish Kumar, 1997 (1) MPLJ 224*** relied on.

●

16. C.P.C., O. 7 R. 11 AND SECTION 2 (2) :- REJECTION OF PLAINT:-
1999 (1) VIBHA 210
JAIN NARAYAN VS. SMT. KUMUD

Decree should be drawn up. Appellat Court should direct trial court to frame decree. ***Phool Chand vs. Gopal Lal, AIR 1967 SC 1470*** followed.

Extract from para 4 of the judgment is reproduced here :

The definition of 'decree' makes it clear that rejection of plaint is included in the definition of 'decree' and, therefore, the trial Court was bound to frame a decree when it rejected the plaint on the ground that the suit was not maintainable. Even otherwise, if the trial Court had come to the conclusion on merits that the suit was not maintainable, it was bound to frame a decree in view of the first part of the definition of 'decree'. Once the judgment passed by the trial Court amounted to a decree, the trial Court was under misapprehension of law that no decree need be framed. The appellant tried to get a decree framed but the application too was rejected by the trial Court. The framing of a decree is essentially, an act of a Court. It is well established that parties cannot suffer on account of mistake of a Court. **Actus curiae neminem gravabit.** Therefore it was the duty of the learned Judge of the lower appellate Court to direct the trial Court to frame a decree as was held by the Supreme Court in the case of ***Phoolchand and another vs. Gopal Lal, reported in AIR 1967 SC 1470.***

NOTE : Please refer to Rule 177 of the Civil Rules and Orders which is as under :-

177 - A decree shall be drawn up in case of dismissal under Order XLI, Rule 11 (1), Civil Procedure Code. No decree Shall be drawn up in case of rejection of plaint and determination of any question falling within section 47 or section 144 or in case of any adjudication from which an appeal lies as an appeal from an order or any order of dismissal for default. But in such cases a schedule of costs shall be drawn up just below the order passed and the names of the parties by whom costs are to be paid and received shall also be stated and signed by the Judge.

Judicial Officers are also requested to see how the operative portion of the judgment is to be written. For that please refer to O. 20 R. 6A, C.P.C.

●

17. CR. P.C. SECTIONS 320 (2) AND 482 :-
1999 (1) VIBHA 213
RAJ KUMAR Vs. STATE

Offence under Section 307, IPC is not compoundable. High Court has no Such jurisdiction. ***Maheshchandra vs. State of Rajasthan, AIR 1988 SC 2111, Annamadevula Srinivasa Rao and another, etc. vs. State of Andhra Pradesh and etc., 1995 Cr. L.J. 3964 and State of Maharashtra vs. Raju alias Raya and another, 1993 Cr.L.J. 3571*** relied on.

●

18. EVIDENCE ACT, SECTION 3: CIRCUMSTANTIAL EVIDENCE:-
1999 (1) VIDHA 247 (D.B.)
MALOOK CHAND VS. STATE

Circumstantial evidence last seen together. Recovery of dead body on information of accused. Recovery of blood stained weapon found proved may be acted upon. **AIR 1984 SC 1622** followed.

●

19. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE OF WITNESSES:-
1999 (1) VIBHA 225
DEVIRAM VS. STATE OF M.P.

Witness not found reliable on one point. His statement cannot be rejected as a whole. He can be relied upon another point if corroborated by other witnesses.

●

20. LIMITATION ACT, ART, 56 AND C.P.C., O.6 R. 17 :-
1999 (1) M.P.L.J. S.N. 41
ABDUL RAHEEM VS. KUDSIA ANEES

The provisions of Art. 56 of the Limitation Act does not apply to defence sought to be raised by defendant.

●

21. I.P.C. SECTIONS 306 AND 107 : ABETMENT TO COMMIT SUICIDE OFFENCE OF :-
1999 (1) M.P.L.J. S.N. 43
RAJALAL Vs. STATE OF M.P.

Unless alleged act of accused falls under any of three categories of acts enumerated in section 107 I.P.C. same would not amount to 'abetment'.

The only allegation against the accused was that it was on account of the harassment and the indecent behaviour of the petitioner towards deceased that he brought an abrupt end to his life, by committing suicide. Making a person liable for an offence punishable under section 306 of the Penal Code, the prosecution has to establish that such person has abetted the commission

of suicide. Unless the alleged act of an accused falls under any of the three categories of acts, enumerated in section 107, Penal Code, the same would not amount to 'abetment'. The petitioner's act of subjecting the deceased to harassment did not fall under any of the three categories of section 107 of the Penal Code. The petitioner's alleged act of subjecting deceased to harassment could be the cause for him to commit suicide, but that certainly would not amount to 'abetment' to commit the same, as defined under section 107 of the Penal Code. Charge framed under section 306, Penal Code quashed and petitioner discharged.

●

22. EVIDENCE ACT, SECTION 138 : CROSS- EXAMINATION:-
1999 (1) M.P.L.J. S.N. 46
REKHA DESAI Vs. RASIKLAL

One must have right to cross-examine witness and simultaneously must have opportunity to cross-examine the witness.

The right and opportunity are two different things.One must have a right to cross-examine a witness and simultaneously must have an opportunity to cross-examine the witness. If an opportunity is given to a person who has no right to cross-examine the witness or lead evidence, then that opportunity would not assassinate upon his rights. Similarly if a person has a right to cross-examine the witness but has no opportunity to cross examine despite his legal right, then the order passed by the Court against his interest would not bind him. The right and opportunity must co-exist one must have a right and must also have an opportunity. The legal representatives had an opportunity to cross-examine the witnesses and lead their evidence but because of order of the High Court dated 15.11.1990 they had no right to cross-examine the plaintiff's witnesses or lead their evidence. Legal representatives were brought on record after the enquiry under the directions of the High Court on 15.11.1990, for the first time on 5.11.1992. Therefore, the trial court did not commit any error in granting defendant's application to cross-examine plaintiff's witnesses.

NOTE : Please see Section 33 of Evidence Act. ***Nandram vs. State, 1995 M.P.L.J. 83*** and ***Dhanesh vs. Ram Kumar, 1997 (2) M.P.L.J. 283.***

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23. CRIMINAL TRIAL: BENEFIT OF DOUBT EFFECT OF:-
1999 (1) M.P.L.J. S.N. 47
PANJAN SINGH Vs. STATE OF M.P.

Benefit of doubt given to some accused in a trial.

If, in a trial, benefit is given to some of accused on the basis of non-mention of their names by the witnesses or because of doubt, that will not mean that the testimony of witnesses should be totally thrown out. The court is within its jurisdiction to say that the testimony is believable beyond doubt in respect of some of the accused. ***AIR 1993 SC 1207*** and ***AIR 1992 SC 191*** relied on.

●

24. CRIMINAL TRIAL : ABSENCE OF MOTIVE FOR MURDER CANNOT DISPROVE THE CRIME AND EVIDENCE ACT, SECTION 8:-
1999 (1) M.P.L.J. 704
AZAD SINGH Vs. STATE

There is a murder of the wife of the accused. Evidence that hits were given to deceased with Gadas corroborated by medical evidence of Autopsy surgeon. No explanation given by accused regarding his blood stained clothes. Absence of motive is not an ingredient for crime and motive is generally hiden in the mind of the criminal and many a time it would not reveal itself outward. So absence of motive cannot disprove crime or lead to inference about its non-commission by accused.

NOTE : Please see section 8 of Evidence Act.

●

25. MOTOR VEHICLES ACT, 1988 SECTION 166:-
1999 (1) M.P.L.J. S.N. 48
VISHNUDATT VS. ARUN KUMAR

Claim for compensation. Rejection of statement of eyewitness regarding number of offending trucks not accepted. Some parties were proceeded ex parte. F.I.R. did not mention numbers of offending vehicles. No material to show absence of enmity. Even in an ex parte claim, clinching, cogent and reliable evidence is necessary to prove the claim. Rejection of claim upheld.

The claimant a bullock cart owner had made a claim under the Motor Vehicles Act, 1988. The Motor Accident Claims Tribunal rejected the claim against the respondent not accepting the evidence of eye-witnesses in respect of number of the offending vehicles trucks and their involvement in the accident. The accident took place when allegedly the trucks were chasing each other and had hit the bullock carts going in the particular sequence. The claimant stated that his bullock cart was third and he was lying on top of the chaff filled in the cart. He does not state anything regarding the number of the trucks. The F.I.R. does not mention the number of the trucks. The evidence of two eyewitnesses, owners of first and second bullock cart is full of contradictions and states impossible situations regarding the accident and of noticing the number of trucks. The owner of the fourth bullock cart was not examined. The statements of the two said eye-witnesses do not inspire confidence. There is no explanation given for not mentioning the numbers of trucks in the F.I.R. On the other hand F.I.R. mentions that ' numbers could be obtained from the barrier'. It shows that numbers of offending vehicles were not known. There is no positive evidence to show that there was no enmity between the claimant and witness on one side and the truck owner on other side. Even if it was an ex-parte proceeding against some respondents, the claimant had to prove his claim by clinching, cogent and reliable evidence. His mere statement cannot be accepted as gospel truth. The claimant has failed to prove so. Therefore the trial Court was justified in rejecting the claim.

●

26. C.P.C. SECTIONS 35 AND 35 A:-
1999 (1) VIDHI BHASVAR 185
H.R. SENGUPTA Vs. M.P.E.B.

Defendant-appellant without sufficient cause withholding possession of premises for more than 25 years after severance is liable to pay exemplary costs of Rs. 10,000/-.

C.P.C., O. 29 R. 1 : Divisional Engineer, MPEB incharge of the quarters signing pleadings. No prejudice caused to defendant. Plaintiff cannot be non-suited on this ground.

LOK PARISAR (BEDAKHLI) ADHINIYAM, 1974, SECTION 15:-

Bar of suit. Eviction of defendant not sought from public premises but does not apply.

●

27. C.P.C., O. 39 Rr. 1 AND 2 AND SECTION 151:-
1999 (1) VIBHA 164
RAMVEER SHARMA VS. SMT. NALINI SHARMA

plaintiff appellant Ramveer had filed a suit for resitituiton of Conjugal rights under Section 9 of the Hindu Marriage Act in the month of October 1997 asserting that he had married the defendent respondent according to the Hindu religion on 16-2-1997, and both of them had signed a declaration before the Notary Public on 21.4.1997, declaring that they were husband and wife. Further, it was held that subsequent to 3.8.1997, the defendant had deserted him without any justifiable reason which necessitated the filing of the suit.

During the pendency of the aforesaid suit the plaintiff filed an application seeking an ad-interim injunction restraining the defendant from marrying any other person.

The respondent wife disputed the marriage. It was held that Court trying matrimonial suits has jurisdiction to grant ad-interim injunction under O. 39 Rr. 1 & 2 or under Section 151 CPC. Such Court is not divested of general power. ***Trilokchand Modi and others vs. Om Prakash Jaiswal. AIR 1974 Patna 335*** dissented from. ***Ravindra vs. Pratibha, 1987 JLJ 370, Kamta Prasad vs. Smt. Om Wati, AIR 1972 All, 153, Ram Krishan Parashar vs. Chironji Lal Vaishya and others, 1977 JLJ 184, Shiv Ram Singh vs. Smt. Mangara and others AIR 1989 All. 164. Prakash Udasi vs. Ashadevi Devani, 1993 (1) MPWN SN 19*** relied on.

It was held that fore tried matrimonial cases under Section 9 or 13 has jurisdiction to grant ad interim injunction. Civil Procedure Code is applicable by virtue of S. 21 of the Act.

●

28. CR. P.C., SECTIONS 156 (3), 202, 203 AND 204:-
1999 (1) VIBHA 174
JAGADISH NARAIN SHARMA Vs. BALKRISHNA SHARMA

Magistrate has to see whether prima facie case is made out or not. ***Balraj Khanna vs. Motiram, 1971 SCC (Cr) 647*** followed.

Power to direct police enquiry under S. 156 (3) is different from power to make enquiry under S. 202. **AIR 1976 SC 1672** followed.

●

29. CR. P.C. SECTION 251:-
1999 (1) VIBHA 171
STATE OF M.P. Vs. BALU ALIAS BALAKRISHAN

The provisions are mandatory. Plea should be recorded in words of the accused. If literate in his own handwriting. Order sheet has also to be signed by the accused. The plea should not be recorded in haste. Order should not be passed in haste. The plea was recorded in a casual manner not permissible. Order not showing the date not ascertainable whether it has been filed by the Magistrate or not. The practice depricated and the case was remanded. Attention was also drawn to the provisions of S. 49-A Excise Act. Minimum sentence prescribed under should be taken note of.

NOTE : The attention of the Judicial Officers is drawn to the provisions of Section 252 and to Section 240 (2) of the Cr. P.C. wherein it is stated that,

"Magistrate shall record the plea as clearly as possible in the words used by the accused"

Therefore it is not correct to write "Aparadh sweekar hai". Of such plea accused should not be convicted.

●

30. EVIDENCE ACT, SECTIONS 134 & 60 AND 3: APPRECIATION OF EVIDENCE:-
1999 (1) VIBHA 180
SAMHAR SINGH Vs. STATE OF M.P.

Wife of the deceased sole eye-witness. injured some incident. Conviction can be based upon her evidence. No corroboration is required.

CRIMINAL TRIAL : Superficial injuries on persons of the accused even if not explained do not give right of self defence.

CRIMINAL TRIAL : APPRECIATION OF EVIDENCE : The number and nature of assaults and injuries on the person of the accused showing intention to cause death. Offence is only murder.

●

31. KASHTHA CHIRAN (VINIYAMAN) ADHINIYAM, 1984 (M.P.) SECTIONS 12, 9, 13 AND 16:-
1999 (1) VIBHA 144
JAGDISH KUMAR Vs. STATE OF M.P.

Minor discrepency found in stock register and actual stock. No proceedings for confiscation started nor complaint lodged before Magistrate. Proportional action should be taken. Siezure of stock and machinery not warranted.

Such seizure without jurisdiction is an enchroachment of fundamental rights of trade and business.

●

32. CONSTITUTION OF INDIA, ART. 254 (2) :-
1999 (1) JLJ 268 (S.C.)
M.P. SHIKSHAK CONGRESS Vs. R.P.F. COMMISSIONER

Ordinary rule under law made by Legislature and Parliament on a subject, law made by Parliament would prevail over State law.

Under Article 254 (1) of the Constitution, if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which parliament is competent to enact, then subject to the provisions of clause (2), the law made by parliament, whether passed before or after the law made by the Legislature of such State, Shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. The ordinary rule, therefore is that when both the State Legislature as well as Parliament are competent to enact a law on a given subject, it is the law made by Parliament which will prevail. **Pt. Rishikesh vs. Salma Begum (1995) 4 SCC 718** distinguished.

●

33. EVIDENCE ACT, SECTIONS 60 AND 35 :-
1999 (1) JLJ 259
DEVI SINGH Vs. STATE

Eye-witness found injured in the same incident. His evidence assumes great importance. Minor discrepencies are bound to come in evidence where there were 9 eye witnesses. Perception. memory and expression differ from person to person.

Register of hospital and other documents not kept according to precribed proforma. Column relating to discharge not filled in. Such piece of evidence cannot be relied on.

●

34. I.P.C. SECTIONS 302/34, 376 (2) (G) AND 201 PT. II:-
1999 (1) JLJ 286
STATE Vs. MOLAI

Minor girl supposed to be safeguarded by accused raped and murdered. Dead body and other incriminating articles hidden. Offence falls in the category of rarest of rare cases. Death sentence can only meet ends of justice. ***Bachan Singh vs. State of Punjab,1980 (2) SCC 684, Rajiv vs. State of Rajasthan, (1996) 2 SCC 175, Dhananjoy Chatterjee Vs. State. of W.B. (1994) 2 SCC 220, Major R.S. Budhwar vs. Union of India & others, (1996) 2 SCC 502, Javed Ahmad Abdul Ahmad Pawai vs. State of Maharashtra. AIR 1983 SC 594, Asrafilal vs. State of U.P., A.I.R. 1987 SC 1721*** and ***Kamta Tiwari vs. State of M.P., 1996 JLJ 694*** Followed.

●

35. **WORDS AND PHRASES:-**
1999 (1) JLJ 255
HARI SHANKAR PATEL Vs. STATE

Dictionaries are not dictates of statute. Sometimes aid is taken from them for finding out meaning which may advance purpose of provision of law.

The word " alongwith" has been given many meanings. i.e., " in company with", "together with" and "in conjunction with". The Word "along" means whether "within" or "by the side of".

●

36. **CR. P.C., SECTION 439 :-**
1999 (1) JLJ 334
STATE Vs. ANANDRAM

Bail application of an accused dismissed by a Judge or Bench. All subsequent bail applications shall be decided by that Judge or Bench Subject to his/ its availability. ***Shahzad Hasan Khan vs. Ishitag Hasan Khan and another, AIR 1987 SC 1613*** followed. ***Narayan Prasad vs. State of Madhya Prasad, 1993 JLJ 225 (FB)*** relied on.

TRANSFER OF CASES BY SESSIONS JUDGES TO ADDITIONAL DISTRICT JUDGES APPOINTED AS SPECIAL JUDGES UNDER S.C. & S.T. (PREVENTION OF ATROCITIES) ACT, 1989 : Additional Sessions Judge appointed as Special Judge under the Act does not loose his status as Additional Sessions Judge under the Code. Criminal cases, appeals or applications placed before Additional Sessions Judge by Sessions Judge either under Section 10 (3) or 194 cannot be refused by Additional Sessions Judge.

CR. P.C., SECTION 194 : Transfer of sessions trials includes transfer of bail applications also.

Paragraph 9 of the judgment is reproduced below:-

In the present case, on a particular date, in absence of the Sessions Judge, Addl. Sessions Judge Shri G.S. Rathore by virtue of section 10 (3) of the code exercised the powers of the Sessions Judge and decided the disputed bail applications. On presentation of the subsequent bail application by the same accused, the Sessions Judge in exercise of the power u/s 194 of the Code made over such applications to Addl. Sessions Judge Shri Rathore for disposal in accordance with law. In Sec. 194 it is stated that an Additional Sessions Judge or Assistant Sessions Judge SHALL TRY such cases as the Sessions Judge by general or special order make over to him for trial. It is not disputed that Shri Rathore although designated as Special Judge under the provisions of SC & ST Act, his status under the provisions of the Cr. P.C. remains that of an Addl. Sessions Judge appointed under Section 9 (3) of the Cr. P.C. As such, the Addl. Sessions Judge posted in a Sessions Division cannot refuse to hear and decide the criminal cases, appeals and applications placed before him for disposal u/s 10 (3) of the Code or make over to him by the Sessions Judge u/s 194 of the Cr.P.C. It is also apparent that the D.O. No. 1415/Confidential dated 3rd September 1996 and D.O. No. 133/Confi-

dential dated 25th January 1996 issued by the Registrar of this Court empowered the Sessions Judge to transfer the Sessions cases for disposal to the Judge of the Special Court designated under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Needless to say that the transfer of a Sessions trial also includes transfer of inter locutory Applications including the bail applications filed before the Sessions Judge of the said Sessions Division.

●

37. C.P.C., O. 1 R. 10 AND O. 2 R. 3 :-
1999 (1) JLJ 349
PAHALWAN SINGH Vs. LEELA BAI

10 sale-deeds were executed on different dates to different persons. These different persons cannot challenge the sale deed in one suit.

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38. SAMAJ KE KAMJOR ..... ADHINIYAM, 1976 (M.P.). SECTION 5 AND RULE 3 MADE THERE UNDER READ WITH Ss. 5, 4 AND 29 LIMITATION ACT:-
1999 (1) JLJ 360
MANDAS Vs. STATE OF M.P.

Under Section 5 of the Act, an application not made within 12 months from the publication of Rules is barred by time. No period of limitation can be extended.

Special enactment is a complete Code in itself. Provisions of Limitation Act not made applicable. Period of Limitation cannot be extended. **Sakuru vs. Tanaji, AIR 1985 SC 1279, K. Venkaiah vs. Venkateswara Rao. AIR 1978 AP 166, AIR 1974 SC 480, AIR 1970 SC 1477** and **AIR 1969 SC 872** relied on.

●

39. EVIDENCE ACT, SECTION 35:-
1999 (1) JLJ 373 (SC)
CHIEF EXECUTIVE OFFICER Vs. SURENDRA KUMAR VAKIL

Old registers maintained in regular course coming from right custody entries therein reliable.

SECTIONS 18 AND 31 EVIDENCE ACT : Plaintiff Changing his - stand regarding right in disputed property. Admission may be taken to the effect that he was not sure about his right in the property. ***Shri Krishan vs. The Kurukshetra University, Kurukshetra, AIR 1976 SC 376*** distinguished.

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40. M.P. ACCOMMODATION CONTROL ACT: Ss. 12 (1), 13 (1) AND 20 AND C.P.C. SECTION 115 AND O. 41 R. 33:-
1999 (1) JLJ 385
RANU GHOSH (SMT.) Vs. RAI BAHADUR

Paragraphs 3, 7 and 8 of the Judgment are reproduced below:-

Shri H.B. Agrawal, learned cousel for the non-applicant No. 1 submits that the revision at the instance of one of the tenant is not maintainable because the order against the other two defendants has attained finality and this Court cannot set aside the order in favour of one of the defendant only. This preliminary objection can straight way be rejected in view of provisions of order 41 Rule 33 CPC. Rule 33 of Order 41 provides that the Court shall be entitled to exercise its power in a case where the appeal is only against the part of the decree or one of the defendant alone has filed the appeal. It further provides that if the contingency requires, the Court shall set aside the orders of the lower Court irrespective of the fact that some of the defendants have not choosen to file any appeal. Even if the provisions of Order 43 Rule 33 CPC in their terms may not apply to the revision, the principles underlying Rule 33 of Order 41 can certainly be applied. The objection is over ruled.

The pre-condition of application to Section 13 (1) is that a suit must be on any of the grounds referred to in Section 12 of the Act. If a suit is not under the provisions of Section 12 of the Act, the provisions of Section 13 would not be applicable. The Court below was not justified in observing that the present suit could be deemed to be a suit under Section 12 (1) (a) of M.P. Accommodation Control Act. When the plaintiffs came with the specific case that provisions of Section 12 of the Act are not applicable and their suit is under Section 20 of the Act then the Court below was not justified in observing that the suit could be treated to be a suit under Section 12 (1) (a) of the Act. The legal position is clear that a tenant in a suit under section 20 of the Act is not obliged to comply with the provisions of Section 13 (1) of the Act. In para 10 of the plaint, the plaintiff has made a categorical statement that the suit is filed under Sec. 20 M.P. Accommodation Control Act read with Section 106 of Transfer of Property Act. If that is the statement of the plaintiff then the Court could not make out any case for the plaintiff.

The order passed by the Court below deserves to and is accordingly set aside.

It is however observed that defendant who is enjoying the possession of the property should not use the pendency of the suit as an handle to defeat the rights of the landlord who otherwise is entitled to receive the rent. If advised. the tenant may deposit all the arrears and may continue to deposit the monthly rent. If it is not done the landlord shall be free to move an application before the trial Court that the tenants be directed to furnish security to the satisfaction of the trial Court for due performance of the decree which may ultimately be passed against the tenants.

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41. CR. P.C., SECTIONS 210 (2), 301 AND 221 (1) & (2) :-
1999 (1) JLJ 388
RAFIQ KHAN Vs. SMT. JAMILA BEE

Police case and private complaint of one and the same incident should be tried together and not separately.

Person once convicted or acquitted of an offence cannot be tried again for

the same offence and cannot also be tried again for other offence on the same facts. ***Natarajan vs. State of Tamil Nadu, 1991 Cr.L.J. (1) 2329*** relied on.

I.P.C. Ss. 498 A, 506, 323 and 342 : Accused tried for offences under Ss. 498 A and 506. They were acquitted. They can not be tried again for offences under Ss. 323 and 342 I.P.C. (on the same facts)

●

42. TRANSFER OF PROPERTY ACT, SECTIONS 58 (d) AND 59:-
1999 (1) JLJ 399
BALAKRISHAN Vs. MOHSIN BHAI

Unregistered usufructuary mortgage. Mortgagee remaining in possession for 12 years acquires right of mortgagee, and not that of full title. 1963 JLJ 712 relied on.

ABOLITION OF JAGIRS ACT, 1951 (M.B.) : Sections 4 (1), 20 (1) and 2 (viii):- Tenant of Jagirdar not cultivating land on date of vesting. Land cultivated by is mortgaged. Such land vested in State. No right of pucca tenant accrued to tenant under Section 20 (1) AIR 1991 SC 663 followed, and 1978 JLJ 703 distinguished.

Tenant of Jagir mortgaged land on date of vesting i.e. 4.12.52 Mortgage ceased to exist. Mortgagee in possession becomes tresspasser.

Definition of expression "land cultivated personally" is restrictive and exhaustive. Cultivation of mortgagee cannot be deemed to be cultivation of mortgagor/tenant.

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43. C.P.C. O. 41 R. 27:-
1999 (1) VIDHI BHASVAR (VIBHA) 106
STATE OF M.P. Vs. MULIYA BAI

While dealing with application for additional evidence in appeal, the appellate Court should see that whether the Court is unable to pronounce the judgment on the material before it without taking into consideration the additional evidence sought to be admitted. The prayer for additional evidence when is merely for filling of the copy in evidence is to be rejected.

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44. C.P.C., O. 47 R. 1:-
1999 (1) VIBHA 99
MALIK SINGH Vs. SURESH KUMAR

Point not raised in main case cannot be raised in review petition.

M.P. Civil Courts Act, Sections 3 (2) and 7 (2) :-

The distribution memo prepared under Section 7 (2) has force of law. Any petition before Addl. District Judge has to be presented as per Distribution Memo. M/s Badrilal Vs. Giridhari Lal, 1988 JLJ 274 distinguished.

M.P. MUNICIPALITIES ACT, 1961, S. 20 (2) PRESENTATION OF ELECTION PETITION:- This provision has to be read in conjunction with Civil Courts

Act. It does not override Civil Courts. Act. Civil Courts Act overrides all other Acts for purposes of civil litigation.

Para 7 of the judgment is reproduced for further details:-

It is not in dispute before me that in the Distribution Memo made by the learned District Judge, he clearly stated that the election petition under M.P. Municipalities Act are required to be submitted to his Court. It cannot be disputed that the Distribution Memo has force of law. If the Distribution Memo compels a litigant to institute proceedings in a particular Court that too under an order which has the force of law, then it cannot be expected from such a party that contrary to the provisions of law, relying upon certain other legal provisions, he would ignore the mandatory provisions of Civil Courts Act and would institute original civil proceedings in a Court which otherwise has the jursidiction, but does not have the jurisdiction because of the Distribution Memo. A litigant was forbidden from instituting his election petition before the Addl. District Judge, Khurai. Section 20 sub-section (2) of Municipalities Act, 1961 does clearly provide that an election petition can be filed or presented to the Addl. District Judge having permanent seat of his Court within the revenue district in which such election or nomination is held. This provision is to be read in conjunction with the Civil Courts Act. The Courts are created under the Civil Courts Act and they derive their jurisdiction under the Civil Courts Act. Place of sueing or a Court where the litigation to be instituted may be provided by a different Act, but the Civil Courts Act. Place of sueing or a Court where the litigation to be instituted may be provided by a different Act, but the Civil Courts Acts, for the purposes of civil litigation would over-ride all other provisions. Civil Courts Act is not a subordinate legislation to M.P. Municipalities Act, If the legal provisions are read in their true perspective, it would clearly mean to say that in accordance with the Distribution Memo prepared under section 7 of sub-section (2) of Civil Courts Act, an election petition under the Municipalities Act was to be instituted in the Court of the District Judge and for the purpose of its trial and decision, the District Judge was duty bound to transfer it to the Court having a permanent seat at the place where the election or nomination took place.

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45. LAND ACQUISITION ACT, 1894, SECTIONS 2 (1A), 23 AND 28:-
1999 (1) VIBHA 106
STATE OF M.P. Vs. MULIYA BAI

Assessment of market price of acquired land. Inconvenience of land holders to cultivate remaining land divided into two parts should be considered. By acquisition some land rendered unfit for every purpose should also be taken into account.

12% extra compensation on market value has also to be paid under section 1 (1 A). The provision is mandatory. In this case the amount of compensation was enhanced and on enhanced amount interest was ordered to be paid.

●

46. CR.P.C., SECTION 102:-
1999 (1) VIBHA 112
DINESH CANDRA Vs. STATE OF M.P.

Seizure of huge cash by police can be handed over to the Income Tax Authorities. The action is not prohibited. Police can seize property on mere suspicion also.

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47. CR. P.C. SECTION 196 (1) AND I.P.C. SECTION 295 A:-
1999 (1) VIBHA 96 (SC)
MANOJ RAI Vs. STATE

No sanction was given in accordance with Section 196 (1) of the Cr. P.C. to prosecute the appellant under S.295 A of I.P.C. Therefore, the Supreme Court quashed the impugned proceedings.

●

48. CR.P.C. SECTION 251 :-
1999 (1) VIBHA 68
MANOHAR SHRAMA Vs. STATE OF M.P.

Severe consequences ensuing from pleading of guilty. Accused should be given some time to think over. This was a case tried by Motor Vehicles Magistrate.

NOTE : The attention of the Judicial Officers is invited to Rule No. 137, Rules and Orders Criminal by M.P. High Court. The rule is reproduced here for ready reference:-

"137:- The following cases should not be tried summarily:-

(a) cases which are prima facie likely in the event of a conviction to call for more severe punishment than can be awarded on summary trial, e.g., cases of cattle theft and cases against previously convicted offenders;

(b) cases which are prima facie likely to be long and complicated;

(c) cases arising out of disputed title; and

(d) cases in which, for any particular reason, it is desirable that there should be a full record of the evidence for future reference, e.g. cases in which Government servants of any rank are concerned as accused persons.

NOTE : Summary procedure in such cases, though strictly legal, is not appropriate and should not be followed."

●

49. EVIDENCE ACT, SECTION 24:-
1999 (1) VIBHA 116
KEVAL SINGH Vs. STATE OF M.P.

Extra- judicial confession proved by truthful witness may be basis for

conviction. S*tate of U.P. vs. M.K. Anthony, AIR 1985 SC 48* and ***Narayan Singh and others Vs. State of M.P. AIR 1985 SC 1678*** followed.

I.P.C. SECTION 436 : Demand of custody of wife refused by her brother. Accused under such state of mind set fire to the house. Total loss was about Rs. 1,000/- .The accused is entitled to lenient view. Sentence of custodial imprisonment reduced to already undergone sentence. Sentence of fine was maintained.

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50. EVIDENCE ACT, SECTION 45:-
1999 (1) VIBHA 126
INAYAT MOHAMMAD Vs. STATE OF M.P.

Weapon of offence not shown to the doctor. Injuries on person of victim cannot be ascertained rightly. ***Ishwar Singh vs. State. 1947 SC 2423*** followed.

●

51. MOTOR VEHICLES ACT, SECTIONS 140. 140-3 166 : AND WORKMEN'S COMPENSATION ACT, Ss. 10 & 22:-
1999 (1) VIBHA 96
RUKMANI Vs. RATNESH KUMAR

Driver of vehicle died due to his own negligence. The claim petition should be filed before Workmen's Compensation Commissioner. **B. Prabhakar and another Bachima alias Musthari, 1984 ACJ 582** relied on.

In this case compensation for no fault liability was paid by Motor Claims Tribunal. The case was ordered to be tried by Workmen's Compensation Commissioner. It makes no difference as provision is applicable before both.

Being an important judgment it is reproduced as it is:-

This order shall dispose of both these appeals.

These appeals are directed against the order dated 3.12.1996 passed in Claim Case No. 116/96 by III Additional Motor Accidents Claims Tribunal, Shivpuri.

Briefly stated facts are that on 20th July, 1995 while the deceased Baboolal was driving the Truck No. M.P. 08/1875, when he passed through culvert of Panu river overflowing , the truck fell down and the deceased died. His wife and children filed a claim petition before the Claims Tribunal. The opposite party denied the claim. Insurance Company futher raised an objection that the matter is one which is to be decided under Workmen's Compensation Act and triable before the Workmen's Compensation Commissioner. The Claims Tribunal framed issues and issue No. 6 is in regard to the above objection. It was further contended that the claim petition as filed under the Motor Vehicles Act is not tenable.

During the pendency of the application under section 140 of the Motor Vehicles Act the Tribunal awarded no- fault liability of Rs. 50,000/-. Learned Tribunal while deciding the claim finally held that the deceased driver was

negligent, as such the claimants are entitled only for Rs. 50,000/- which is for no-fault liability, Claimants have filed the appeal bearing M.A. No. 34/97, challenging the findings that the deceased was rash and negligent. They also claim enhancement of compensation. The Insurance Company has filed the appeal bearing M.A. No. 101 of 1997 on the ground that the claimants ought to have filed their claim under the Workmen's Compensation Act before the Workmen's Compensation Commissioner.

Shri Agrawal, learned counsel appearing for the Insurance Company submitted that in the facts and circumstances the matter ought to have been preferred before the Workmen's Compensation Commissioner under the provisions of Workmen's Compensation Act. It was pointed out by rival parties that under section 143 the provisions of no-fault liability are also applicable.

Counsel for the parties submitted that the claimants are entitled for no-fault liability under both the acts and that amount has already been awarded as no-fault liability cannot be faulted with. It is contended that it would be just and proper if the matter is directed to be adjudicated by the Workmen's Compensation Commissioner.

A petition before the Commissioner, under Workmen's Compensation Act is tenable, in the circumstances even where death of driver is due to his own negligence. For this recourse the reliance is placed on a decision reported in 1984 ACJ 582 (B. Prabhakar and another vs. Bachima alias Musthari).In this view of the matter the petition would be entertained by Workmen's Compensation Commissioner. Parties Submit that period spent in prosecuting the claim and the appeal be directed it be excluded and if the petition is filed within a month, it be treated within limitation.

It is, therefore, directed that if the claimants file a petition before the Workmen's Compensation Commissioner under the Workmen's Compensation Act Within a period of one month from today, the same shall be entertained and decided expeditiously by the Commissioner on it's own merit, Without being influenced from any of the findings recorded in the impugned award.

In this view of the matter, both the appeals are disposed of with the above directions.

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52. C.P.C., O. 39 Rr. 1 AND 2:-
1999 (1) M.P.L.J. 667
CANTONMENT BOARD, SAGAR Vs. SUDHANSHU HARSH BAHADUR

Cantonment Board even though has power to dismantle illegal constructions not disentitled from grant of injunction not to make constructions which are not permissible.

An injunction can always be granted against a person if he is proceeding to act contrary to law or is trying to make certain constructions which are not permissible, which have not been permitted or which are contrary to the granted sanction. The authority constituted under the Act can certainly maintain a suit against a tort feasor and a wrong doer. A civil court cannot say that as under

the statutory powers the authority can undo the wrong, the civil court would not exercise its jurisdiction. While considering the case under the provisions of Specific Relief Act and under Order 39, Rules 1 and 2, Civil Procedure Code, the endeavour of the court should be to see as to whether such a person has a prima facie case; in whose favour the balance of convenience is and whether nongrant of the relief prayed for would cause mischief or irreparable injury to the said persons. True it is that the statutory authority which regulates buildings, building sanctions and building conditions can always demolish the illegal constructions, but it cannot be gainsaid that they are required to exercise their jurisdiction only after the wrong is done. The first and foremost question for consideration would be whether such an authority has a civil right to come to the civil court and whether under the law an interim order restraining the other side from doing a particular act can be granted in favour of such a complaint/plaintiff.

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53. ADVOCATES ACT, SECTION 34 : LAWYERS AND CLIENTS BOYCOTT:- 1999 (1) M.P.L.J. 706
STATE OF M.P. Vs. KAMLA SHANKAR

Advocates are officers of Court and belong to noble profession. Strikes or boycotts are foreign to Judicial administration system. There can be no boycott of any Court.

The Court is not apprised as to why the counsel for the parties are not present, It is pointed out by the Bench Secretary that lawyers are on strike today as he read this thing in the newspapers. No reliance can be placed on the newspaper report. If the lawyers are on strike, then minimum required from them is that they should have apprised the Court in advance. Nobody apprised the Court even when the Court assembled. So far as abstaining from the work by the lawyers is concerned, this Court is not expressing any opinion though it comes within the meaning of misconduct under the Rules framed by the Bar Council of India under the Advocates Act, 1961. A lawyer has got dual duty; one duty to his client and the another duty to the Court and in discharge of his duties he cannot act in such callous manner. If he abstains from work of his client, he is not supposed to retain the fees but he is supposed to return the same. The phenomena of strike or boycott is foreign to the judicial system. Both these concepts are beyond the administration of justice system as the administration of justice is essential to the citizen as it relates to life and liberty both, and the justice cannot be denied to a person even for a single minute. The concept of strike is of a labour class. The lawyers do not fall in that class. They are called "Officers of the Court" and belong to the noble profession where they are called "learned" and when they are called learned, certainly it means that they are possessed of learning but resortation to such method creates a doubt. So far as boycott of the Court or walkout are concerned, they are also foreign to the judicial administration system as there could be no boycott of any Court. Boycott could be in the other public bodies and walkout is a concept which relates to the proceedings of a meeting in which mutual

deliberation takes place, such as the legislative bodies, club meeting and other bodies co-operate or non-co-operate.

We consider it proper to indicate that the Court premises are not the private premises of any individual. They are the premises under the control. In the High Court, Hon'ble the Chief Justice and in the District Court, the District Judge are in the control of the premises. Ingress and egrees in the Court cannot be stopped by the method of placing locks on the entry gates etc. or by threatening the litigants by placing locks on the entry gates etc. All these activities are beyond the scope of the members of the Bar who are in legal profession by statutory process and they are regulated, controlled and guided by the statute, statutory orders, directions and rules as well as the directions of the Courts as High Court under section 34 of the Advocates Act, 1961 has got the ample power to regulate as to who are entitled to practice in the High Court and this power is given under the said statute by the Parliament in exercise of the power under Entry No. 78, List I of Schedule-VII.

We think at this stage it would be a sufficient indication to the learned members of the Bar that they should conduct themselves in a befitting and dignified manner so to enhance the dignity of the judicial administrative system as well as the faith of the people in the system. No doubt, there could be grievances to the individual advocate or community but for that law has provided a forum and not only this if the grievance is of such nature which could be sorted out, then it is the duty of the concerned advocate or group of the adcovates or association to have contacted the District Judge or to have contacted Hon'ble the Chief Justice, or the concerned Inspecting Judge or the Administrative Judge of the High Court, but they are not expected to take everything in their own hands and they are not expected to move in the direction so to paralyse the working of the system which amounts interference in the course of justice.

NOTE : Please see the citation ***(1999) 1 SCC 37, Mahavir vs. Jacks Aviation Pvt. Ltd.*** published in 'JOTI JOURNAL' Vol.V Part II, April 1999 issue at page 117.

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54. HINDU MARRIAGE ACT, SECTION 13 (1) (I-A) :- CRUELTY:-
1999 (1) M.P. L.J. 714
NARESH PUROHIT Vs. P.K. SHOBHANA

In petition for divorce under section 13 (1) (i-a) instances must be clubbed together and inference had to be drawn if behaviour of the spouse comes under term "cruelty".

Cruelty is a relative term. Cruelty which is necessary for passing the decree of divorce under section 13 (1) (i-a) of the Hindu Marriage Act has to be gathered from the evidence on record. The instances have to be clubbed together and reasonable inference has to be drawn whether the behaviour of the spouse comes under the term "cruelty" or not. It is not expected that in all cases the party praying for divorce should prove the mental cruelty by indicating the injury caused to the health. While coming to conclusion in respect of

such cruelty as contemplated under section 13 (1) (i-a) regard must be had to the social status, education level of the parties and the society which they live. So also it is necessary to see whether the parties are expected to live together and continue their matrimonial lives.

●

55. CRIMINAL TRIAL : UNDUE HASTE IN DISPOSAL DEPRICATED:-
1999 (1) M.P.L.J. 733
STATE OF M.P. Vs. GANGA SINGH

'Justice Delayed is Justice Denied' and 'Justice Hurried is Justice Burried' are the two 'Age Old Sayings' which reflects extreme situations which no 'Judicial System' can afford, as both are bound to obstruct the 'Natural Flow' of 'Fountain of Justice'. For an Ideal' course, the courts are to strike a balance between these two situations. 'Speedy Trial' no doubt is the need of the hour but not in the manner and fashion in which the trial court had proceeded in the case. The incident, in question, took place on 14.4.1988. The charge-sheet against the accused person was filed on 30.5.1988, and the charge against them for the commission of the offence punishable under sections 435/34, Indian Penal Code were framed the same day. The case then was fixed for recording the evidence of the prosecution witnesses on 4.6.1988. Though there was no representation on behalf of the prosecution/State on 4.6.1988, but as one prosecution witness Samar Bahadur appeared himself, the trial Court, after recording his evidence, closed the prosecution case and passed the impuged judgment of acquittal within 1½ months of the commission of the offence. In appeal by the State challenging the judgment of the acquittal, the High Court held that 'Speedy Trial' does not mean that the parties to the litigation are not to be granted sufficient opportunity for leading their evidence in the case. It was apparent from the charge-sheet filed against the accused persons, as many as 6 witnesses were proposed to be examined by the proseuction at the trial. It was the duty of the trial court to see that all material witnesses in case are examined, and if necessary coercive process ought to have been issued, for ensuring their presence in the Court. The trial Court, not having adopted the above procedure. has committed serious illegality, which warrants interference. by this court, in this appeal against acquittal. Looking to the serious nature of the offence. alleged against accused persons, the judgment of acquittal set aside and case remanded to trial court for proceeding in accordance with law. Refusing to interfere in the matter would certainly amount to encouraging the tendency of disposing the matters in 'undue haste' which deserved to be nipped at the bud. ***Sunil Kumar Pal vs. Phota Shiekh and others, AIR 1984 SC 1591*** relied on.

●

56. ARMS ACT, SECTION 25:-
1999 (1) MPWN 42 (SC)
JASPAL SINGH Vs. STATE OF PUNJAB

Possession of gun with empties in its chamber does not constitute any offence in absence of proof of its being in working order.

●

57. C.P.C., O. 1 R. 10:-
1999 (1) MPWN 14
RAM VILAS GUPTA VS. KISHORILAL

Suit for arrears of rent and ejectment. Third person claiming to be tenant. Neither necessary nor proper party.

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58. C.P.C. O. 1 R. 10:- (THIRD PARTY CLAIMING TENANT)
1999 (1) MPWN 19
SULTAN KHAN Vs. REHMAN KHAN

Suit for declaration of title. All co-sharers. residuaries and co-owners are necessary parties. Rightly impleaded to avoid multiplicity of litigation.

●

59. C.P.C. O. 7, Rr. 10 AND 10-A, O. 43 R. 1 AND O. 39 Rr. 1 & 2:-
1999 (1) JLJ 74
TEMPLE ACHLESHWAR Vs. TEMPLE SHRI ACHLESHWAR PUBLIC TRUST

Suit filed on behalf of deity by pujari, Pujari himsalf cannot claim any right in such suit. Provision for returning the plaint applies when there is another competent Court to try the suit. Plaint cannot be returned to present it before Tribunal. Suit deliberately filed in Court having no jurisdiction. Return of plaint cannot be asked for.

Composit order under O. 7 R. 11 and O. 39 Rr. 1 & 2 passed rejecting plaint. Civil appeal preferred with full court-fees Appeal registered as miscellaneous appeal does not change the nature of civil appeal. Suit barred by law. Plaint has to be rejected cannot be returned.

NOTE : The case was already reported before. But looking to the importance of the case it is reproduced.

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60. C.P.C. O. 41 R. 3A:-
1999 (1) MPWN 41
STATE OF M.P. Vs. PRADEEP KUMAR

Time barred appeal not accompanied with application for condonation of delay supported by affidavit not maintainable.

●

61. CR. P.C., SECTION 173 (2):-
1999 (1) MPWN 18 (SC)
STATE THROUGH C.B.I. Vs. RAJ KUMAR JAIN

Opinion of Investigation Officer not found based on full and complete investigation. Further investigation may be ordered by the Court.

●

62. **CR. P.C. SECTIONS 378 (1) (4) AND 401:-**
1999 (1) MPWN 25 (SC)
JASBIR Vs. STATE OF PUNJAB

Accused acquitted in case instituted on police report. Appeal by complainant not maintainable. Such appeal may be converted into revision.

●

63. **EVIDENCE ACT, SECTION 32:-**
1999 (1) MPWN 38 (SC)
JAI PRAKASH Vs. STATE OF HARYANA

Complaint reduced in writing by police may be used as dying declaration. Deceased alive for four days after dying declaration recorded as complaint. Why other dying declaration was not recorded. Question should be asked from investigation officer in cross-examination. Dying declaration not recorded as such but as complaint no certificate of mental fitness nor question and anwer form is necessary.

●

64. **EVIDENCE ACT, SECTION 35:-**
1999 (1) MPWN 31
DARSHAN SINGH Vs. STATE OF M.P.

Birth entry made in dischare of official duty can be proved by mere production.

●

65. **HINDU SUCCESSION ACT, SECTION 8:-**
1999 (1) MPWN 16
SHAITAN BAI Vs. SMT. PREMI BAI

Male Bhumiswami died in 1964-65. Widow and daughter would succeed equally.

●

66. **MOTOR VEHICLES ACT, 1988, SECTION 140:-**
1999 (1) T.A.C. 109 (A.P.H.C.)
DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD. ONGOLE Vs. TUMU GURAVA REDDY

No fault liability and liability of Insurance Company. Interpretation of section 140. Liability of Insurer becoming co-extensive with that of owner after insurance of vehicle and liability is absolute. Plea of the defence available under Chapter XI, or the breach of terms of policy cannot be invoked by insurer in a claim under Section 140. Claimants also need not plead negligence of deceased or injured nor wrongful act on part of owner or any person. An insured tractor-trailer while proceeding towards agricultural fields, connecting hook delinked and trailer fell in canal. Collies in the trailer drowned, some of them died and some injured. Tribunal held the Insurer liable under no fault liability for payment of compensation. Whether Insurance Company can plead statutory defence or breach of terms of policy in a claim under Section 140. No Finding of Tribunal upheld.

●

67. NEGOTIABLE INSTRUMENTS ACT, 1881, SECTION 138:-
1999 (1) MPWN 21
GOPAL CHAND Vs. STATE OF M.P.

Notice on accused not served and returned as "not claimed". Another copy sent through UPC not received back. Issuance of process cannot be quashed.

NOTE : Please see S. 27 General Clauses Act and S. 114 Evidence Act.

●

68. REGISTRATION ACT, 1908, SECTIONS 17 (a) AND 49:-
1999 (1) MPWN 10
CHHOTE KHAN Vs. HOHRA BAI

Gift deed requiring registration but not registered can still be looked into for collateral purpose of possession.

●

69. ACCOMMODATION CONTROL ACT, 1961 (M.P.), SECTIONS 12 (1) (A) AND 13 (1) :-
1999 (1) VIDHI BHASVAR 49
GOPAL SELAR Vs. BADRILAL

Assertion as to payment of rent but not issuance of receipts. Mere oral testimony not sufficient. Tenant has to further explain why the rent was not sent through money order.

Notice of demand of rent. Arrears of rent and also rent for the subsequent period demanded till continuance of tenancy. Such demand does not invalidate demand notice.

Persistent defaults in payment of rent cannot be condoned.

●

70. C.P.C., O. 6 R. 17:-
1999 R.N. 118 (HC)
GYAN SINGH Vs. SMT. KUNWARDEVI

Amendment sought in appeal by imposing lapse to counsel. No name of counsel revealed. His affidavit not filed. Amendment refused.

●

71. CR. P.C. SECTIONS 389 AND 397:-
1999 (1) JLJ 223
RAMESH CHANDRA Vs. STATE OF M.P.

Suspension of sentence. Includes suspension of fine also. Accused a suspended public servant cannot deposit fine of Rs. 30,000/- instead of deposit of fine furnishing of security ordered.

Word "sentence" used under means substantive sentence as well as sentence of fine.

●

72. **CONSUMER PROTECTION ACT, 1986, SECTIONS 12 AND 17:-**
1999 (1) CPR 23 (NC)
UNITED INDIA INSURANCE CO. LTD. Vs. SATRUGHAN SHARMA

Insurance claim. Accident took place on 19.5.92 at 7.50 A.M. Car damaged in the accident. Insurance Company repudiated the claim on the ground that premium for renewal of the insurance policy was deposited on 22.5.92 and policy was issued on 19.5.1992 at 10 A.M. As accident took place at 7.50 A.M. i.e. prior to the issue of policy hence not covered by policy. Claim for compensation rightly repudiated. Car hypothecated with the Bank and it was the duty of the Bank to get the policy renewed before the expiry of the insurance cover. Insured had deposited the amount of preimium of insurance policy with the Bank 3 days in advance before the expiry of the policy. Held deficiency in service of Bank. Bank held liable to pay the entire loss to insured.

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73. **CRIMINAL TRIAL:-**
1999 (1) JLJ 228
BRINDAWAN SINGH Vs. STATE OF M.P.

Sexual offence. Statement of prosecutrix corroborated by other witnesses. No question of appreciation of evidence arises in the light of pronouncement of Supreme Court in case of ***Gurumith Singh, 1996 SCC (Cr) 316.***

●

74. **M.P. LAND REVENUE CODE, 1959, SECTION 117:-**
1999 R.N. 126 (HC)
PARWATIBAI Vs. SAWAN

Continuous entries in khasra as widow of deceased Bhumiswami GIVE RISE TO PRESUMPTION OF A VALID MARRIAGE.

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75. **M.P. LAND REVENUE CODE, 1959, SECTIONS 170-A AND 170-B:-**
1999 R.N. 122 (HC)
DHRUVANRAYAN Vs. SUKLIBAI

Provisions under S. 170-A invoked and case decided against holder of land. Order in favour of holder under S. 170-B is of no help. Title alleged to have been acquired by oral sale before 1959. Declaration of title sought after 15 years from the Civil Court is of no avail.

Declaration not given within two years of enforcement. Any action thereafter is after thought.

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76. **MUNICIPALITIES ACT, 1961 (M.P.):- SECTIONS 19, 19 (1) (C), 40 AND 41 (UNAMENDED) AND SECTION 19 (2) AMENDED):-**
1999 (1) JLJ 195
CHAND KHAN Vs. STATE OF M.P.

Distinction between elected and nominated members was none except that nominated member could not vote in meetings of council.

State Government is not at liberty to nominate any person as member. Such member should have special knowledge of municipal administration. He should also be of municipal area.

Nominated member holds office during pleasure of State Government Member nominated before amendment shall be governed by amended provision which has been incorporated during his membership. Nominate councillor/member may be terminated at any time. He holds office during pleasure of State Government. No notice or hearing opportunity is required.

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77. I.P.C., SECTIONS 376 AND 366:-
1999 (1) JLJ 228
BRINDAWAN SINGH Vs. STATE OF M.P.

Prosecutrix cannot be put on par with an accomplice Her statement duly corroborated by other witnesses. Sufficient for conviction.

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78. STAMP ACT, 1899 : SCHEDULE I-A, ART. 23 AND S. 47-A (AS AMENDED IN M.P.)
1999 R.N. 118 (HC)
GYAN SINGH Vs. SMT. KUNWARDEVI

Agreement to sell immovable property. Possession given to purchaser. Such agreement is deemed to be a conveyance for levy of stamp duty. Provisions of S. 47-A would be applicable.

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79. TRANSFER OF PROPERTY ACT : SECTION 55:-
1999 R.N. 118 (H.C.)
GYAN SINGH Vs. SMT. KUNWARDEVI

Sale deed executed by holder of power of attorney after withdrawal of powers. Such sale deed has no effect.

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80. WORKMEN'S COMPENSATION ACT : SECTION 17:-
1999 (1) T.A.C. 466 (KANT. HC)
M/S UNITED INDIA INSURANCE CO. LTD. Vs. MOHAMMED

Bar under Section. Claim for personal injury matter referred before Lok Adalat and parties agreed for compensation of Rs. 80,664/- Compromise application filed before commissioner. Commissioner not passing award in terms of compromise and awarding Rs. 1,00,830/- as compensation. Whether order passed by the Commissioner requires to be interfered. Held yes. Commissioner estopped from resorting to procedural irregularity after filing of compromise petition. Award passed by Lok Adalat got the sanctity. Award of Commissioner Set aside and award of Lok Adalat Confirmed.

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81. **NEGOTIABLE INSTRUMENTS ACT, 1881, Ss. 138 proviso (c) and 142 (b) : LIMITATION PERIOD, MODE OF COMPUTATION :-**
(1999) 3 SCC 1
SAKETH INDIA LTD. Vs. INDIA SECURITIES LTD.

Where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. This rule has been consistently followed and has been adopted in the General Clauses Act and the Limitation Act, Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The notice of bouncing of the cheque having been served on the drawer on 29-9-1995, the period of 15 days in the present case expired on 14-10-1995. So cause of action for filing complaint would arise from 15-10-1995. The day (15th October) is to be excluded for counting the period of one month. Therefore, the complaint filed on 15.11.1995 is within time. See S.12 Limitation Act and S.9 General Clause Act.

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82. **NEGOTIABLE INSTRUMENTS ACT, 1881, S. 118 (A) :-**
(1999) 3 SCC 35
BHARAT BARREL & DRUM MANUFACTURING COMPANY Vs. AMIN CHAND

Presumption that promissory note was for consideration is rebuttable. Initial burden lies on defendant to prove non-existence of consideration by bringing on record such facts and circumstances which may lead the court to believe non-existence of consideration or non-existence so probable that a prudent man would act upon the plea that it did not exist. This can be done either by direct evidence or by preponderance of probabilities showing that existence of consideration was improbable, doubtful or illegal. If burden is discharged, onus shifts on plaintiff to prove passing of consideration as a matter of fact and failure to prove would disentitle him to relief. In case of defendant's failure to discharge the initial burden, plaintiff would be entitled to benefit of presumption under S. 118 (a). On facts held, defendant failed to discharge the initial burden and hence plaintiff entitled to benefit of presumption even if plaintiff's evidence was not believed. Approach of High Court based on technicalities and procedural wrangles disapproved.

CIVIL PRACTICE AND PROCEDURAL LAW : Technicalities of law and procedural wrangles should not erode faith of business community dealing in mercantile and trade.

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83. **C.P.C., O. 21 Rr. 1 & 2 AND O. 37:-**
(1999) 3 SCC 80
INDUSTRIAL CREDIT & DEVELOPMENT SYNDICATE (I.C.D.S.) LTD. Vs. SMITHABAI H. PATEL

Decretal amount comprising principal, costs and interest. Payment made by judgment-debtor otherwise than in accordance with R. 1 and without recording of satisfaction under R. 2. How to be adjusted under various heads by the decree-holder. Held, the payment has to be adjusted strictly in accordance with the directions of the court, if any, **In absence of such directions, adjustment has to be made, subject to an agreement to the contrary between the parties, firstly towards interest and costs and thereafter towards principal amount.** However, the onus to prove the existence of such contrary agreement, held, is on the person so pleading. A decree-holder refusing to follow a contrary instruction of the judgment-debtor, held, is under no obligation to intimate the judgment-debtor of his refusal or to return the payment. Further held, Ss. 59 to 61 of Contract Act do not deal with cases where principal and interest are due under a single debt.

CONTRACT ACT, Ss. 59 TO 61:-

These section contain general rules for appropriation of payment towards several distinct debts and not towards various heads of one debt. Section 60 cannot be read independently excluding the provisions of S. 59. S. 60 confers a discretion in favour of the creditor and not in favour of judgment-debtor. These provisions apply only in pre-decretal stage and not in post-decretal stage.

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84. C.P.C. SECTION 11, RESJUDICATA:-
(1999) 3 SCC 91
NAZIM ALI Vs. ANJUMAN ISLAMIA

Claims contrary to findings in a previous suit are barred by res judicata. Though in the previous suit plaintiffs not raising the issue of ownership in relation to the entire property the defendant wakf raising plea that the entire property belonged to it and therefore the suit was liable to be dismissed. Suit decreed declaring that the plaintiffs were the title-holders. Thereafter appeals right up to Supreme Court argued on the basis of the plea raised by the defendants and decree finally upheld. The wakf (defendants in the previous suit) then filing another suit seeking a declaration that the decree-holders had no right over the disputed property. Held, the findings in the previous suit having been upheld another suit based on claims contrary thereto will be barred by principles of res judicata. On facts, High Court erred in holding that the previous decision did not set up the bar of res judicata. Muslim Law. Wakfs. Dispute between Anjuman and private owners of land.

EVIDENCE ACT, SECTION 115 : ESTOPPEL AND RESJUDICATA:-

Decision in previous suit that a certain agreement does not bind the parties on the principles of estoppel. Not open to the court deciding second suit to re-examine that aspect of the matter and to hold that the same amounts to estoppel.

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85. C.P.C. SECTION 11, RESJUDICATA:-
(1999) 3 SCC 145
WALI MOHAMMED Vs. RAHMAT BEE (SMT.)

Findings in previous suit whether on facts operated as Resjudicata. Rahmat Bee suing Wali Mohammed for declaration of his right to manage and possess the graveyard and Dargah. Trial court dismissing the suit and holding the suit property to be wakf property and that the graveyard, Dargah and a house constructed in the suit property were under the management of Wali Mohammed and that the house was being used as a musafirkhana. All appeals preferred by Rehmat Bee, dismissed. Subsequently Wali Mohammed as mutawalli and person in charge of the very same property. suing Rehmat for recovery of possession. In such, circumstances, the findings given by the trial court in the previous suit, held, operated as res judicata in the subsequent suit. Hence, in the subsequent suit Rehmat bee could not be permitted to prove his title to the said house on the basis of a gift deed registered before the filing of the previous suit. Moreover, not having raised the plea of adverse possession in the previous suit, held, Rehmat bee could not raise that plea in his defence in the subsequent suit. Plea of adverse possession on facts was also barred by constructive res judicata.

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86. C.P.C.O. 39 R. 1: TEMPORARY INJUNCTION:-
(1999) 3 SCC 161
ASHWINKUMAR K. PATEL Vs. UPENDRA J. PATEL

Where agreement for sale of land found to be invalid but plaintiff proved possessory right and permissive possession which accepted by owners, held. plaintiff entitled to temporary injunction in his favour. Held, on facts. High Court in appeal erred in remitting the temporary injunction application to trial court for disposal afresh, merely because it disagreed with the reasoning of the trial court.

C.P.C. , O. 41 Rr. 23 & 24 : Remand of case by appellate court. High Court should not ordinarily remand a case merely because it considers the reasoning of the lower court to be wrong. Remand of a case causes delay and prejudice to involved parties. Thus when material is available before it High Court should exercise its own discretion and decide the appeal.

PRACTICE AND PROCEDURE : Remand. To avoid delay which would be caused by further remand (from Supreme Court back to High Court) the Supreme Court may decide the case itself. To avoid delays cases should not be unnecessurily remitted to lower courts for reconsideration.

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87. C.P.C., O. 23 R. 1 & SECTION 115 WITHDRAWAL OF PETITION AFTER OBTAINING ADVANTAGE
(1999) 3 SCC 115
EXECUTIVE OFFICER, ARTHA ARESWARA TEMPLE Vs. R. STHYAMOORTHY

Withdrawal of dismissed original petiton as well as revision petition against the same, by petitioner-revisionist. Permissibility. General principles restated. Where the petitioner revisionists had obtained an advantage on remand by Supreme Court withdrawal, held, impermissible. Case directed to be decided on merits.

Section 115- Revisional Jurisdiction of High Court. Jurisdictional facts whether wrongly decided by the District Court or rightly, held can be examined in the jurisdiction under S. 115. Hence, in the instant case, the question whether the corpus or the income of the property was dedicated to the temple and whether the nature of the property was such as its alienation could be permitted only by the Commissioner under T.N. Hindu Religious and Charitable Endowments Act and not by District Court under the Trusts Act, held could be decided in revision by construing the trust deed. Moreover, in view of the consent order passed by Supreme Court in the earlier SLP, additional evidence could be received by High Court directly or through the District Court.

TRUSTS AND TRUSTEES- Jurisdiction of Court. Parens Patriae jurisdiction. Held courts have a general "parens patriae" jurisdiction over religious and charitable trusts. Religious and charitable endowments. Nature of Court's jurisdiction over.

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88. C.P.C., O. 22 R 2 AND OR. 1 R. 10 : RIGHTS OF L.RS. EXPLAINED :-
(1999) 3 SCC 109
GUJRAJ Vs. SUDHA

L.Rs. take the place of and are bound by pleading of their predecessor. They cannot pursue their own individual rights and interests particularly when they have earlier failed to establish themselves as having any other status in relation to the case. Held, in view of the finding recorded by the trial court that the L.Rs. on earlier occasions moved the court under O. 1 R. 10 but failed, High Court erred in observing that the proposed L. Rs. could take up all other defences arising from their individual rights. [Please see O 22 R. 4(2) CPC]

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89. CRIMINAL TRIAL : RELATED WITNESSES:-
(1999) 3 SCC 97
RACHAMREDDI CHENNA REDDY Vs. STATE

Mere relationship of the witness with the deceased is no ground to discard his testimony. Relation of deceased would not try to implicate any innocent person in the murder of the deceased.

I.P.C. SECTIONS 149/302 AND 148 : APPRECIATION OF EVIDENCE:-

Common object. Inference of. Inferable from nature of weapons used, manner and sequence of attack and the setting and surroundings under which occurrence took place. Accused persons appearing at the scene of occurrence with lethal weapons in their hands and mercilessly asaulting the deceased after surrounding him. Held. clearly exhibits that their common object was nothing but to kill the deceased.

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90. I.P.C. SECTIONS 103, 104, 304 Pt. I AND 326:-
(1999) 3 SCC 102
JAI BHAGWAN Vs. STATE OF HARYANA

Section 104 IPC will apply if the wrong doer commits or attempts to commit any of the following offences: (1) theft, (2) mischief or trespass not of the description which is covered under Section 103, subject of course to restrictions mentioned in section 99 IPC; and in such a case, the right of private defence or property would extend only to causing harm other than death to him.

The action of the deceased and his sons coming to the land in possession of the accused group was to irrigate the land which, on the facts of this case, could only amount to criminal trespass within the meaning of Section 441 IPC. The right of the accused appellants, therefore, extended only to causing of harm other than death.

Accused No. 1 and accused No.-3 on the land were armed with deadly weapons. On the exhortation given by their mother, both of them, one after the other, murderously assaulted the deceased with the weapons with which they were already armed. It was not a case of a free fight and it cannot be said that they did not intend to cause the injuries inflicted by them. They intended to cause injuries and did inflict the said injuries which caused the death of Prithvi, the deceased. Therefore, they are not entitled to protection of Section 104 IPC. But for the fact that they exceeded the right of self-defence of property under section 104 IPC the offence committed by them would have been one under Section 302 IPC.

It follows that accused No. 1 and 3 have been rightly convicted under Part I of Sections 304/34 IPC by the High Court.

So far as accused No. 2 is concerned, he had been convicted by the High Court under Section 326 IPC. Since he is one of the co-owners and possessors of the land and the offence committed by him is causing grievous hurt by a dangerous weapon, he is protected as he did so in exercise of the right of private defence of property under Section 104 IPC, so he cannot be found guilty of offence under section 326 IPC.

I.P.C. S. 34 : COMMON INTENTION HOW TO INFER:-

To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to be individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstance of each case.

91. GUARDIANS AND WARDS ACT, 1890, SECTION 17:-
(1999) 3 SCC 126
N. NIRMALA Vs. NELSON JEYAKUMAR

The respondent- father was permitted to continue the custody as legal guardian. The Single Bench of the High Court confirmed the custody of the minor daughter with the father but gave visiting rights to the appellant-mother.

The Division Bench of the High Court by its impugned judgment while dismissing the appeal has deprived the appellant of her visiting right for which there was no cross-objection on the part of the respondent.

The High Court held that mother should not be denied visiting rights in relation to minor daughter in custody of father without adequate justification. The Division Bench of the High Court was not justified in denying mother's visiting rights.

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92. RES JUDICATA S.11 AND S.11 (Expln IV) AND 041 R: 22. C.P.C. (1999) SCC. 149
FERRO ALLOYS CORPN. LTD. Vs. UNION OF INDIA:

Before any issue is said to be heard and finally decided, the Court considering it has to be shown to have expressly considered such an issue and to have decided it one way or the other and such decision should have obtained finality in the hierarchy of proceedings. Then only such an issue can be said to be heard and finally decided between the parties.

It is not possible to accept the contention that the question as to whether the assessment of the need for chrome ore, so far as the appellant is concerned, as approved by the Expert Committee and accepted by the Central Government, involved any error or not or whether it was required to be reassessed for upward revision was expressly adjudicated upon by the Supreme Court in the previous decision and the findings thereon, therefore, could not be made the subject- matter of fresh proceedings between the parties. Not only were the contesting parties not heard on this issue but also there was no final decision thereon inter se these parties. Consequently. it is difficult to appreciate the view that the controversy in this connection raised by the appellant in the subsequent proceedings was finally concluded by the Supreme Court in the earlier proceedings and hence the present proceedings raising this issue are barred by res judicata.

The principle of constructive res judicata can be invoked even inter se the respondents, in order to attract the bar of Explanation IV to Section 11 CPC and before it can be held that any subsequent contention on the point can be treated to be hit by the bar of constructive res judicata, it has to be seen whether such a contention might and ought to have been made the ground of defence or attack in such former proceedings. Only then such a matter can be deemed to have been a matter directly and substantially in issue in such former proceedings. If such a plea is not required to be raised by the contesting respondents with a view to successfully meet the case of the appellant,

then such a plea inter se the contesting respondents would remain in the domain of independent proceedings giving an entirely different cause of action inter se the contesting respondents with which the appellants would not be concerned. Such pleas based on independent causes of action inter se the respondents cannot be said to be barred by constructive res judicata in the earlier proceedings where the lis is between the appellants on the one hand and all the contesting respondents on the other. In other words, when the appellants are not concerned with the inter se disputes between the contesting respondents such inter se disputes amongst the respondents would not give rise to a situation wherein it can be said that such contesting respondents might and ought to have raised such a ground of defence or attack for decision of the Court.

Iftikhar Ahmed vs. Syed Meharban Ali, (1974) 2 SCC 151 : AIR 1974 SC 794; Chandu lal Agarwalla v. Khalilur Rahaman, AIR 1950 PC : 77 IA 27; Sheoparsan Singh v. Ramnandan Prasad Narayan Singh, AIR 1916 PC 78 : 43 IA 91: Ram Bhaj v. Ahmad Said Akhtar Khan, AIR 1938 Lah 571, approved.

Considering the basic requirements of the principle of constructive res judicata amongst the co-respondents in TISCO and IDCOL's appeals, it has to be found out whether inter se those co-respondents the question of correct assessments of the present appellant's need for chrome ore was necessary to be agitated by the present appellant for enabling the Court to give appropriate relief to TISCO and IDCOL in their appeals before the Supreme Court. The grievance of the appellant in the present proceedings regarding the alleged error in the assessment of its requirement for chrome ore and the question whether such assessment was required to be revised upwards, which may be relevant for deciding the appellant's independent claim against the Central Government as well as the State of Orissa and also vis-a-vis other contesting claimants being three other respondents had nothing to do with the question of granting relief to the appellants TISCO and IDCOL in the said earlier proceedings. As this important condition was not satisfied for attracting the bar of constructive res judicata against the appellant, it is not possible to agree with the contention that the apellant's grievance in the present proceedings was also barred on the ground of constructive res judicata, in the light of the earlier decision of the Supreme Court in TISCO case.

Order 41 Rule 22 CPC can apply only when the respondent-in-appeal can support the order of the lower court on any ground held against it. In TISCO's appeal there was no occasion for the appellant to support the earlier judgment of the High Court on any ground which could have been said to be wrongly decided against it nor could the appellant support the Central Government's order.

93. **HINDU MINORITY AND GUARDIANSHIP, ACT, S. 6 (a):_**
AIR 1999 SC 1149
MS. GITHA HARIHARAN Vs. RESERVE BANK OF INDIA

Mother Can act as natural guardian of minor even when father is alive. Word 'after' in S. 6 (a) has to be read as meaning "in the absence of father" to make the section consistent with constitutional safeguard of gender equality. Section 19 (b) of Guardians and Wards Act has to be construed similarly. The Supreme Court held the decision to operate prospectively.

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94. CR. P.C. S. 397 (2):-
(1999) 3 SCC 134
RAJENDRA Vs. UTTAM

It would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same.

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95. CONTRACT ACT, SECTIONS 4, 2 (B) AND 3:-
(1999) 3 SCC 172
DELHI DEVELOPMENT AUTHORITY Vs. RAVINDRA MOHAN

Acceptance is not complete till communicated. Mere noting on the file of acceptance of the auction not enough. Knowledge of the bidder about such noting inconsequential.

ESTOPPEL : Public interest estoppel does not operate where considerations of public interest are involved.

AUCTION : Public auction. Acceptance of bid at a public auction and deposit of 25% of the bid amount, does not constitute transfer of property.

TRANSFER OF PROPERTY ACT, SECTION 43 : Transfer by an unauthorised person who subsequently acquires interest in property transferred. Section 43 is applicable only where transfer has already taken place.

On the date of the auction, the plot being in the green, belt, could not and should not have been put to auction. There is no estoppel against statute and when the considerations of public interest are involved. The acceptance of the bid recorded by the Vice-Chairman, DDA on the file was bad for two reasons. Firstly, **it was so recorded after the passing of the interim order of stay by the High Court though it was in the process of being communicated.** Secondly, the acceptance was not communicated by the DDA to the respondents and therefore the acceptance was not complete. Merely because the respondents gathered knowledge of the acceptance having been recorded on the file would not make any difference. Reliance on Section 43 of the Transfer of Property Act is entirely misconceived in as much as there was no transfer or grant ever made by the DDA in favour of the respondents. Acceptance of the bid at a public auction and depost of 25% of the bid amount do not constitute a transfer of property. The respondents have no basis in law to support their claim.

Even the equitable considerations would not justify a public authority like the DDA being directed today to provide an alternate plot to the respondents in the same locality and at the same price after a lapse of 14 years from the date of the auction.

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96. ADVOCATES ACT, 1961, Ss. 24 (1), 3 (d), 17, 7, 49 (af), (ag), (ah). 23, 28, 29, 33, 34 (1), 49-A & 52 AND BAR COUNCIL OF INDIA TRAINING RULES, 1995, Rr, 2, 4, 5, 7, 10, 15 & 15-A:-
(1999) 3 SCC 176
V. SUDEER Vs. BAR COUNCIL OF INDIA

Training after passing up LL.B examinations power of Bar Council of India to make such rules not traceable, under any of the relevant provisions of the Act after the said amendment.

Such rules are ultravires.

NOTE : Judicial Officers are requested to go through the whole judgment if they are interested to know about the principles thereto.

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97. HINDU SUCCESSION ACT, 1956, S. 14 (1) AND S. 14 (2):-
(1999) 3 SCC 234
BENI BAI (SMT) Vs. RAGHUBIR

Sub-section (1) of Section 14 applies to the cases where the conferment of right on a Hindu widow was in lieu of maintenance or in recognition of her pre-existing right as provided under the Shastric law and the Hindu Women's Rights to property Act. Sub-Section (2) of Section 14 of the Act would apply only to such cases where grant conferred a fresh right or title for the first time and while conferring the said right, certain restrictions were placed by the grant or transfer.

In the present case, the limited interest conferred upon the widow by virtue of the will being in lieu of maintenance and in recognition of her pre-existing right, the said right transformed into an absolute right by virtue of Section 14 (1) of the Act. The said right was not conferred on her for the first time. Thus sub-section (2) of Section 14 of the Act has no application to the present case. Under such circumstances, the widow became the absolute owner of house and was fully competent to execute the gift deed in favour of her daughter. The gift deed executed by the widow was thus valid.

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98. HINDU LAW; JOINT FAMILY BLENDING OF SEPARATE PROPERTY:-
(1999) 3 SCC 240
SUBRAMANIA REDDY Vs. VENKATASUBBA REDDI

Property inherited by a member of the joint family under a will cannot be included in joint family properties and cannot be treated as having got blended with other properties. The properties were allotted to a widow. Her husband had brought in certain properties which got blended with the joint family prop-

erties. That fact taken a long with the fact that she had become a widow and was issueless taken into consideration to make a sort of family arrangement pursuant to which the property in question alloted to her. On the basis trial Court and High Court, on a thorough examination of pleadings and evidence, sustaining the allotment of the property of her. There is no reason to disturb that conclusion.

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99. Cr.P.C., Ss. 154, 173 and 482:-
(1999) 3 SCC 247
M. KRISHNA Vs. STATE OF KARNATAKA

Second FIR covering partly the same subject-matter and period. Legality of such FIR and investigation pursuant thereto challenged. It was an offence under S. 13 (1) (e) read with S. 30 (2) of the Prevention of Corruption Act. F.I.R. against, in respect of the period 1-8-1978 to 24-8-1989 and investigation pursuant thereto culminating in submission of 'B' report which, after a public notice accepted by the trial court. Subsequently another FIR filed making the same allegation against the same officers for the period 1-8-1978 to 25-7-1995. Such a second FIR, held, not by itself illegal. Hence could not be quashed and investigation pursuant thereto could not be restrained under Section 482.

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100. TRANSFER OF PROPERTY ACT, Ss. 91, 58 & 111:-
(1999) 3 SCC 251
CHERIYAN SOSAMMA Vs. SUNDARESSAN PILLAI

The mortgagor issued usufructuary mortage in favour of lessee's wife (Sosamma) where as her husband Abraham Cheriyar was lessee of the mortgagor lessee. Parties intending to continue the lease agreement despite execution of the mortgage. On redumption of the mortgage, held, there cannot be automatic termination of lease and hence lessee- mortgagee not required to deliver actual or physical possession of the property. In absence of surrender of leasehold rights at the time of execution of the mortgage, mortgagor cannot obtain deliver of physical possession of the property. Implied surrender of lessee's right would depend upon intention of the parties at the time of execution of the mortgage. For the above conclusions. though lessee was the husband and mortgagee his wife living with him, they, considered as one and the same.

●

101. C.P.C., S. 34 & ARBITRATION ACT: POWER TO GRANT INTEREST:-
(1999) 3 SCC 257
JAGDISH RAI Vs. UNION OF INDIA

Generally interest is granted during four stages. 1. from the accrual of the cause of action till filing of arbitration proceedings, 2. during pendency of proceedings before the arbitrator; 3. future interest arising between date of award and date of decree; and 4. interest arising from date of decree till realization of award.

The claim for interest not having been made before the Court in which proceedings for making the award the rule of the court were pending would certainly disentitle the appellant for making such a claim during the first three stages of prearbitration and post-arbitration that is between award and filing of application in as much as several considerations will have to be examined before the award of interest and at what rate. Therefore, when the award had not been challenged for not granting interest, the award could not be upset to that extent. The view taken by the High Court appears to be correct to that extent. However, that is not the end of the matter.

The High Court ought to have further examined whether the appellant was entitled to any interest after the decree was made in terms of the award. The Courts have taken the view that the award of interest under Section 34 CPC is a matter of procedure and ought to be granted in all cases when there is a decree for money unless there are strong reasons to decline the same. In the present case, the appellant had made a claim for interest before the arbitrator but the same had been denied and no reasons are forthcoming thereto. Whatever that may, at any rate after the Sub-Judge made an award the rule of the court, the decree ought to contain a provision for making payment of interest. If such payment had not been made, appropriate correction of the decree could be ordered to be made when an application had been made before the High Court.

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102. Cr. P.C. Ss. 482 AND 2 (d), 154, 155 and 190, 200 : QUASHING OF COMPLAINT:-
(1999) 3 SCC 259
RAJESH BAJAJ Vs. STATE NCT OF DELHI

Complaint cannot be quashed merely because one or two ingredients of the offence have not been stated in detail. Quashing of complaint onground that the complaint disclosed a commercial or money transaction not justified. Many a cheating is committed in the course of commercial or money transaction.

The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

In the present case the High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a cullender of finest gauzes for testing the ingredients under Section 415 IPC. Such an en-

deavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transection simpliciter wherin no semblance of criminal offence is involved.

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103. Cr. P.C., SECTION 197:-
(1999) 3 SCC 284
N.K. OGLE Vs. SANWALDAS

District Collector by an order accompanying the Revenue Collection Certificate, requiring the Tehsildar to recover a certain sum of lease money from Sanwaldas, Tehsildar registering the matter and getting a demand letter issued and served on Sanwaldas but Sanwaldas did not made payment. Subsequently he went to Tehsildar office with his scooter. Tehsildar seizing the scooter and getting the same auctioned. Such an act on the part of Tehsildar, held, was a bonafide act in purported exercise of the power under M.P. Land Revenue Code. Hence in absence of necessary sanction under S. 197 Cr. P.C. complaint under S. 379 Penal Code filed by Sanwaldas against Tehsildar on account of seizure of the scooter was not maintainable. Further it was held, that the High Court erred in examining the legality of the order of attachment of the Collector at this stage and in holding otherwise on that ground. The Supreme Court further held as under:-

Before coming to a conclusion whether the provisions of Section 197 Cr. P.C. will apply, the court must come to a conclusion that there is a reasonable connection between **the act complained of and the discharge of official duty;** the act must bear such relation to the duty that the accused could lay a reasonable claim that he did it in the course of the performance of his duty. Therefore, in the present case the conclusion is inescapable that the act of the Tehsildar in seizing the scooter of the respondent was in discharge of his official duty which he was required to do in purported exercise of the power under the M.P. Land Revenue Code on the basis of the order issued by the Collector for getting the lease money from the respondent and said act cannot be said to be a pretended or fanciful claim on the part of the Tehsildar. The High Court committeed error at that stage in examining the flaw or legality of the order of attachment issued by the Tehsildar. Therefore, the acts complained of by the respondent in his complaint under Section 379, IPC against the Tehsildar cannot be taken cognizance of by any court without prior sanction of the competent authority under Section 197 Cr. P.C. Admittedly there was no such sanction of the competent authority.

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104. N.D.P.S. ACT, Ss. 32-A 36-B SECTION 32-A OVERRIDES SECTION 36-B & Ss. 389, 432, 433 Cr.P.C. AND POWERS OF THE HIGH COURT UNDER CHAPTER 292 Cr.P.C. (APPEAL):- SUSPENTION OF SENTENCE
1999 (3) SCC PAGE 32192.
MAKTOOR SING Vs. STATE OF PUNJAB

The question was whether the sentence passed one person convicted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") could be suspended during the pendency of appeal presented by him. Soliciting an affirmative answer, the appellant contended that Section 36-B of the Act must be deemed to have preserved all the powers mentioned in Section 389 of the Cr.P.C. including the power to suspned the sentence. The appellant further contended that Through S. 32-A of the Act, Parliament had sought to curb the power of the Government under Sections 432 and 433 Cr.P.C. and not the power of the High Court to suspend sentence. Rejecting these contentions, the Supreme Court-held, When Section 36-B of the Act is juxtaposed with Section 32-A, the latter must dominate over the former mainly for two reasons. First is that Section 32-A overrides all the provisions of the Code, by specific terms, through the non obstante limb incorporated therein. Second is that in view of the words "so far as may be" used in Section 36-B, the High Court can exercise powers and Chapter XXIX of the Cr. P.C. only to the extent such powers are applicable.

If the intention of Parliament in enacting Section 32-A of the Act were only to curb the Government's powers under Sections 432 and 433 Cr.P.C., Parliament would, instead of using the present all covering words in the non obstante clause, have emplyed the words "notwithstanding anything contained in Chapter XXXII of the Code.". Precision and brevity are generally the hallmarks of legislative draftmanship.

That apart. if the object of Section 32-A is to take away the power of the Government to suspend, remit or commute the sentence, the legislative exercise in enacting the said provision is practically of futility because even without Section 432 Cr.P.C. the appropriate Government can suspend, remit or commute sentences in exercise of the constitutional functions under Article 72 or 161. ***Maru Ram vs. Union of India (1981) 1 SCC 107: 1981 SCC (Cri) 112: AIR 1980 SC 2147; Kehar Singh vs. Union of India, (1989) 1 SCC 204: 1989 SCC (Cri) 86: AIR 1989 SC 653,*** relied on.

Moreover, in the Statement of Objects and Reasons for introducing Bill 125 of 1988 in the Lok Sabha (which later became the Act which inserted Section 32-A), no concern was shown against the executive powers of remission or communication or suspension of sentence. Moreover, there was no criticism from any quarter that the Government had been remitting or suspending or commuting sentences awarded to persons convicted of offences under the Act.

Further. since by Section 37 of Act, the Court's power to release an accused on bail during the period before conviction has been drastically curtailed, the position regarding bail cannot be more liberal and lighter after the trial court finds him guilty of the offence of completion of the adjudication. Section 32-A was intended to plug the lacuna which existed during the pre-amendment stage.

Besides section 32-A itself exempted cases falling under Section 27 of the Act by putting the words "other than Section 27" within a parenthesis. This

is because Section 27 deals with offences of far leaser degree than other offences in the Act. ***Berlin Joseph v. State, (1992) 1 Crimes 1221 ; 1992 KLT 514 ; Anwar v. State (1994) 2 Crimes 687 (Raj) ; Rajendra Singh v. State of M.P. 1995 Cri LJ 3248 (M.P.)*** impliedly approved.

Amarjit Singh v. State, (1993) 2 Recent Cr. R 466; Jyotiben Ramlal Purohit v. State of Gujarat, (1997) 3 Recent Cr R 607, overruled.

Therefore, it has to be held that Section 32-A of the Act has taken away the powers of the Court to suspend a sentence passed on persons convicted of offences under the Act (except Section 27) either during pendency of any appeal or otherwise. Similarly, the power of the Government under Sections 432, 433 and 434 of the Cr. P.C. have also been taken away, Section 32-A would have an overriding effect with regard to the powers of suspension, commutation and remission provided under the Criminal Procedure Code.

The word "awarded" occurring in Section 32 held not restricted to sentence passed by the final court. It includes even that passed by the trial court. Sentence cannot be suspended by the trial court by resorting to S. 389 (3) Cr. P.C.

The concerning paragraph of the judgment paragraph 24 is reproduced here :

The third premise adopted by the Gujarat High Court is based on a fallacious assumption that inspite of Section 32-A, the trial court has power to suspend the sentence passed on a conviction under Section 26 of the Act. Learned judges wrongly assumed that under Section 389 (3) of the Code, a trial court has such a power. The effect of any order passed under Section 389 (3) of the Code is to suspend the sentence, as can be discerned from the words in the specific "and the sentence of imprisonment shall be deemed to be suspended". When power of suspending the sentence is taken away by the legislative interdict, it would apply to the Court which convicts the accused as well. A legal premise cannot be made up on a wrong assumption.

CONSTITUTION OF INDIA, ART. 136 : DIRECTION TO ALL COURTS BY THE SUPREME COURT:-

Statute Curtailing court's power to suspend the sentence pending appeal. In view of prohibition in S. 32-A of NDPS Act against granting suspension of the sentence awarded under the Act on the one hand and apprehension of miscarriage of justice in many cases due of long pendency of appeals on the other, held, the problem could be solved by Parliament. Till then Registry of each High Court directed to include the appeals against convictions under the Act on priority basis in the hearing list.

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105. ARMS ACT, SECTION 25 AND T.A.D.A. ACT, SECTION 5:-
(1999) 3 SCC 337
AKMAL AHMAD Vs. STATE OF DELHI

Accused found to be in possession of revolver with catridges without licence or other authorisation in a notified area. In absence of rebuttal of the presumption that such possession was with intention to use the said firearms for a terrorist or disruptive act, the accused, held, was rightly convicted under S. 5 of TADA Act and not under S. 25 of Arms Act.

CRIMINAL TRIAL : POLICE WITNESS : Police personnel. Testimony of search and seizure, by not being corroborated by any independent witness, held would not stand vitiated solely for that reason.

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106. REGULAR BAIL APPLICATION UNDER SECTION 167 CR. P.C. WHEN APPLICATION IS PENDING BEFORE THE HIGH COURT.
M. CR. C. NO. 2776/99
MUSTAQ QURESHI Vs. STATE OF M.P.

Order dated 16.7.1999, passed by Hon'ble Shri Justice Dipak Misra, Judge High Court of M.P. at Jabalpur, Main Seat.

The applicant was taken into custody in connection with crime No. 98/99 registered for the offences punishable under sections 363, 366 and 376 and 3 (1) (Xii) of the SC&ST (Prevention of Atrocities) Act, 1989.

2. This matter came up for hearing on 12-7-99, on that day Mr. Husain submitted that after expiry of 90 days as the charge-sheet had not been filed, an application for grant of bail in accordance with the provisions enshrined under section 167 (2) Cr. P.C. was filed before the learned Special Judge. Hoshangabad but the said Court had refused to accept the petition on the ground that an application for regular bail is pending before this Court. Taking note of the submission of the learned counsel for the applicant it was directed that if such an application would be filed before the learned Special Judge,he would do well to dispose of the same in accordance with law. The matter was adjourned to 16-7-99.

Today. it is submitted by Mr. Husain, that in pursuance of the order dated 12-7-99 an application was filed before the learned Special Judge, Hoshangabad, on 13-7-99 and the learned Special Judge on consideration of the same has enlarged the applicant on bail. It is further submitted by Mr. Husain that certain Courts are not entertaining the petitions under section 167 (2) of Cr.P.C. if the application for grant of regular bail is pending before the higher Courts. **Needless to emphasize that the grant of regular bail on merits stands on a different footing than grant of bail in accordance with the provisions engraffed under section 167 (2) of Cr.P.C. Pendency of an application for grant of regular bail before the higher Courts does not debar the court below to exercise its jurisdiction as provided under 167 (2) of Cr. P.C. if circumstances so warrant. It is hereby made clear that if an application is filed in quite promptitude after the expiry of the stipulated time the same should be dealt within accordance with law.**

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107. STOP PRESS TIT-BIT.

UP-TO-DATE CASE LAW ON BAIL

SS. 167 (2), 437, 439 (1) AND 439 (2) CR. P.C. SCOPE OF THESE SECTIONS :-

MISC. CR. C. NO. 4018/99 AKHLAR VS. STATE. ORDER PASSED BY HON'BLE JUSTICE SHRI R.S. GARG AT JABALPUR SEAT. DATED 04-8-99.

Facts And Paragraph 19 to Part Of The Paragraph 29 are Reproduced :

By this petition Under Section 439 read with Section 167 (2) of the Code of criminal procedure the applicants who have been arrested by the police Mandideep in connection with crime No. 227/98 for committing offences punishable under sections 467, 471, 478, 487 read with Section 198 I.P.C. and Sections 34, 36 and 39 of M.P. Excise Act have prayed for grant of bail.

2. Undisputedly, the accused persons were arrested on 27-12-98 for transporting illicit liquor. The prosecution case is that the applicants in a tanker of Indian Oil Company which is generally used for carrying and transporting L.P.G. were transporting the liquor without any authority. The prosecution case is that the accused persons and others after forging certain documents used the same for transporting the liquor and as each of them was involved in commission of the crime, they were required to be arrested. Undisputedly, the accused persons were arrested on 27-12-98 It is also not in dispute before me that upto 12-5-99 i.e. the date of the order passed by the learned Sessions Judge, Raisen challan was not filed. At a request made by Shri Jain, learned Counsel for the applicants. I enquired from the Session Judge, Raisen as to whether challan was filed or not Shri Shirpurkar, Addl. Registrar (Judicial) after making the enquiries informed me that upto 29th of July. 99 Challan was not filed before the competent court.

3. The applicants filed an application under Section 167 (2) Cr. P.C. before the trial court interalia pleading that as they were in custody for more than 90 days and as the challan was not filed, the applicants were entitled to be released on bail, in view of Section 167 (2) of the code of Criminal Procedure. The learned trial court rejected the said application on 12-5-99 observing that without perusing the case-diary, it would not be proper to direct release of the applicants. Being dissatisfied by the said order, the applicants preferred an application before the SessionJudge who found that the accused persons were arrested on 26-12-98 and were in judicial custody from 27-12-98. He found and it is undisputed fact, that within the period of 90 days and upto the date of his order challan was not filed by the Police. He also found that the police did not file challan up to the date of his order before the competent court. The learned Session Judge observing that an order passed under section 167 (2) of Cr. P.C. is an order in default and if such an order is passed in favour of the accused the court granting the application as a right to recall the grant of bail under section 439 (2) of Cr. P.C. Referring to the merits of the case, the learned Judge

found that the accused persons who were transporting illicit liquor would not be entitled to be released on.

19. A fair reading of the judgment of the Supreme Court [***Sanjay Datt Vs. State (1994) 5 SCC 410***] would make it clear that the "indefeasible right" of the accused to be released on bail in default of completion of the investigation and filing of the challan within the time allowed, is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. From the judgment of the Supreme Court. it would clearly appear that from the time of default till the filing of the challan, the right of the accused is indefeasible. None has an authority either under the law or because of the obsession that the accused cannot be released on bail. Once the Supreme Court had said that the right of the accused is indefeasible None has an authority either under the law or because of the obsession that the accused cannot be released on bail. Once the Supreme Court had said that the right of the accused is indefeasible then non observance of the order of the Supreme Court and nonfollowing the ratio of the judgment of the Supreme Court would perilously border contempt of the lawful authority of the Supreme Court.

20. In the matter of ***Dr. B.S. Panchal vs. State of Gujarat*** (A.I.R. 1996 SC 2897) considering the provisions of Narcotic Drugs and psychotropic Substances Act specially Section 37 of the Act, the Supreme Court observed that Section 37 of the Act does not exclude application of proviso (a) to Section 167 (2), therefore failure of prosecution to file charge-sheet within prescribed time under section 167 (2) would creat a right in favour of the accused. The Supreme Court following the judgment of the constitutional Bench in the matter of Sanjay Dutt (supra) observed that the right would remain indefeasible between the date of the default and filing of the challan and, if an accused person fails to exercise his right to be released on bail, after filing of the charge-sheet he cannot exercise the right available to him under Section 167 (2). The Supreme Court also observed that once such an accused is released under section 167 (2) of the Cr. P.C. he cannot be re-arrested on the mere filing of the charge-sheet.

21. In the matter of ***Manoj vs. State of M.P.*** (1999 (Vol.2) J.L.J. 1, the Supreme Court again observed that benefit under section 167 (2) proviso (a) is available to an accused of an offence under N.D.P.S. Act, The Supreme Court observed that the police officer is obliged to produce the accused before the nearest judicial Magistrate.

22. From the above judgments of the Supreme Court. it would clearly appear that irrespective of the nature of the offence or the provisions of law for violation of which the accused has been arrested if the challan/charge-she-et is not filed within the period prescribed i.e. 60 days or 90 days, the accused would have a right to be released on bail. The accused is required to be informed by the Magistrate that because of the defaults and lapses on the part of the prosecution if such accused furnishes bail to the

satisfaction of Magistrate such an accused would be released. Such a right of the accused is indefeasible from the date of default up to the date of the filing of the challan. None has a right to keep the accused in jail if the challan has not been filed within the prescribed period when the accused is applying for and is ready and willing to furnish bail to the satisfaction of the Judicial Magistrate. The right of the accused would stand defeated if he does not apply for grant of bail and the challan happens to be filed.

23. Once the bail is granted to an accused under section 167 (2) of the Cr. P.C. on simply filing of the challan the accused cannot be taken back in custody. The law mandates that once an accused is released under section 167 (2) he would be deemed to have been released under provisions of Chapter XXXIII of the Cr.P.C. such an accused can be taken back in custody if an application under section 437 (5) or 439 (2) is filed. For cancellation of the bail the Court is required to see not only the allegations but will have to keep in mind the observations made by the Supreme Court. None has an authority to say that because accused has committed a ghastly crime and as the bail granted to him is likely to be cancelled under section 437 (5) or 439 (2). bail under section 167 (2) should not be granted.

24. An earlier refusal of bail on merits would not be a ground to refuse bail under section 167 (2). The rejection of the bail application on merits has nothing to do with the default of the prosecution. Section 167 authorises a judicial Magistrate to keep the man in custody either for 60days or 90 days but the law mandates and commands a judicial Magistrate to henceforth release the accused if the prosecution agency did not choose to file the challan within 60 days or 90 days and the accused has applied for and is ready and willing to furnish bail.

25. For following the provisions of law if the accused is required to go to the jail then violation of Section 167 (2) would open the lock of the jail and lapses on the part of the prosecution/Investigation agency would pave his path for his coming out. A judicial order cannot put lock on the jail gates if the accused is entitled to be released because of the lapses or default of the prosecution.

26. It may appear to the Judge considering the application filed under section 167 (2) that the prosecution agency was purposefully not filing the challan against the accused within the prescribed period but the Court being bound by the legal provisions cannot say that it would detain the accused in jail and infringe his fundamental right guaranteed under Article 22 of the Constitution of India read with Section 167 (2) of the Cr.P.C.

27. If the Court feels that the investigating agency or the investigation officer was hand and glove with the accused then the Court may ask the superior officers to take an action against such defaulting officer but for the lapses committed by such an officer the accused cannot be denied the freedom. The prosecution is bound to suffer because of the lapses of its officer, R.S.

The department may take action against such a defaulting officer but under the provisions of law the Court has no authority to extend the time for filing the challan by rejecting the application for grant of bail. All concerned are bound by law and any violation of the legal provisions would certainly lead to serious consequences.

28. The present is a case of judicial apathy and obsession, the learned Section Judge appears to have been unnecessarily influenced by the merits of the matter. Consideration of the merits is absolutely irrelevant when an application under section 167 (2) is under consideration. A Judge is bound to act in accordance with law. His personal grievance/grudges obsession and fear have no role to play. If a Judge is allowed to be influenced or swayed away by his personal feelings, it is likely to lead to lawlessness because every judge would interpret the law according to his own whim and capricious and is likely to commit breach of the mandatory provisions of law.

29. In the opinion of this Court, the Magistrate so also the Session Judge acted absolutely without jurisdiction in rejecting the applicants bail application. In view of the above discussion, the applications were required to be allowed, The application is allowed.

Cases Referred

1. ***Raghubir Singh Vs. State of Bihar*** (A.I.R. 1987 SC 149)
2. ***Rajnikant Vs. Intelligence Officer, Narcotic Control Bureau, New Delhi*** (A.I.R. 1990 SC 71)
3. ***Hussainara Khatoon Vs. State of Bihar*** (A.I.R. 1979 SC 1377)
4. ***Umashankar Vs. State of M.P.*** (1982 MPLJ 291)
5. ***State of U.P. Vs. Laxmi Brahman*** (A.I.R. 1983 SC 439)
6. ***Chaganti Satyanarayana Vs. State of Andhra Pradesh*** (A.I.R. 1986 SC 2130)
7. ***C.B.I. Special Investigation Cell -I Vs. Anupam J. Kulkarni*** (A.I.R. 1992 SC 1768)
8. ***Raghubir Singh Vs. State of Bihar*** (AIR 1987 SC 149)
9. ***Rajnikant Vs. Intelligence Officer, Narcotic Control Bureau, New Delhi*** (AIR 1990 SC 71) now stand overruled by Aslam's Case.
10. ***Aslam Babalal Desai Vs. State of Maharashtra*** (AIR 1993 SC 1)
11. ***Directorate of Enforcement Vs. Deepak Mahajan*** (AIR 1994 SC 1775)
12. ***Sanjay Datt Vs. State*** (1994 Vol.5 SCCC 410)
13. ***Dr. B.S. Panchal Vs. State of Gujarat*** (AIR 1996 SC 2807)
14. ***Manoj Vs. State of M.P.*** (1999 Vol. 2 J.L.J.)

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LETTER NO. SBC/MP/AFFIXATION= AKN STAMPS/99 SENT BY STATE BAR COUNCIL OF M.P. JABALPUR ADDRESSED TO THE REGISTER M.P. HIGH COURT. JABALPUR AND ENDORSED BY H.C. WIDE L.NO. B/3100/I-81/83 DATED. 9TH JULY. 1999.

Subject:- **Amendment In Adhivakta Kalyan Nidhi Adhiniyam 1982 Passed By The Government Of Madhya Pradesh Vide Its Act Number 16/ 99 Enhancement of Denomination of AKN Stamps From Rs. 2/- To Rs. 4/- And From Rs. 5/- To Rs. 10/- On The Vakalatnamas/ Memo Of Appearance To Be Filed By The Advocates In Sub-Ordinate Courts And High Courts Respectively.**

The State Bar Council of Madhya Pradesh very kindly draw-your attention towards the fact that the Government of Madhya Pradesh vide its Act No. 16/ 99 "M.P. Adhivakata Kalyan Nidhi (Sansodhan) Adhi Niyam 1999" has been pleased to amend Section 18 of the Original Act viz. Adhivakta Kalyan Nidhi Adhi Niyam, 1982 and has made the new provision that

(i) Wherever the Advocates are filing their Vakalatnamas/Memo of Appearance, they shall affix the AKN Stamps worth Rs 4/- denomination instead of Rs 2/- in Courts Sub- ordinate to High Courts-viz. Before the District & Sessions-Judge and Civil Judge as well as before the Authorities below State Level and Rs. 10/- instead of Rs. 5/- denomination in the High Court and- Authorities and Tribunals having the Status of State Level.

(ii) The above amended Act has been published in M.P. Rajpatra (Extra Ordinary) Issued dated 14 May 1999 and from this date has become effective.

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NOTIFICATION NO. F.6-1/96-XXI-B(1) DATED THE 5TH JULY 1996.

In exercise of the powers conferred by **sub-section (1) of Section 62 of the CODE OF CRIMINAL PROCEDURE, 1973 (No. 2 of 1974),** the State Government hereby make the following rules, namely :

1. SHORT TITLE : These rules may be called the Madhya Pradesh, Service of Summons Rules, 1994.

2. DEFINITIONS : In these rules unless the context otherwise requires -

(i) "Court" means a criminial court constituted under Section 6 of the Code of Criminal procedure, 1973 (No. 2 fo 1974).

(ii) "Process Server" means a person appointed as process server under the Civil Court Rules, 1961.

(iii) "Public Servant" shall have the same meaning as is assigned to that expression in the Indian Penal Code, 1860 (No. 45 of 1860) and includes process server.

3. SERVICE OF SUMMONS : Every summons issued by a court shall be served by a Police Officer or by an Officer of the Court or other public servant to named specifically by the Court issuing such summons.

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THE COURT FEES (MADHYA PRADESH) AMENDMENT ACT, 1999

NO. 15 OF 1999

(Received the assent of the Governor on the 5th May, 1999; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)" dated the 11th May 1999).

An Act further to amend the Court Fees Act, 1870 in its application to the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the Fiftieth year of the Republic of India as follows:-

NOTES

Statement of objects and reasons : The existing rate of fees for Article 17 of Schedule II of the Court fees Act, 1870 is meagre. In view of the rising costs it has been felt necessary to enhance the proper fees to meet the expenditure and for this purpose it is proposed to amend the Court Fees Act, 1870 in its application to the State of Madhya Pradesh suitably.

2. Hence this Bill.

1. Short title and commencement : (1) This Act may be called the Court Fees (Madhya Pradesh Amendment) Act, 1999.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

2. Amendment of Central Act No. VII of 1870, in its application to the State of Madhya Pradesh : The Court Fees Act, 1870 (No. VII of 1870) (hereinafter referred to as the Principal Act) in its application to the State of Madhya Pradesh be amended in the Manner hereinafter provided.

3. Amendment of Schedule II : In Schedule II of the Principal Act, in Article, 17, in the Column pertaining to proper fee, for the words "sixty rupes" the following words shall be substituted. namely:-

"When presented to the Court of Civil Judge Class- II.	...	One Hundred rupees.
When presented to the Court of Civil Judge Class-I	...	Two Hundred rupees.
When presented to the Court of Additional District Judge or District Judge.	...	Five Hundred rupees."

Note : Published in M.P. Rajpatra (Asadharan) dated 11-5-99 page 724 (1)